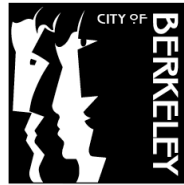


AGENDA



BERKELEY CITY COUNCIL MEETING

**Tuesday, October 26, 2021
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 audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx>.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/87152148000>. 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: **871 5214 8000**. 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. Ghost Gun Ordinance**
From: Councilmember Taplin (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Hahn (Co-Sponsor), Councilmember Droste (Co-Sponsor)
Recommendation: Adopt second reading of an Ordinance amending the Berkeley Municipal Code to prohibit any person other than a licensed manufacturer or importer from possessing, selling, offering for sale, transferring, purchasing, transporting, receiving, or manufacturing an unfinished firearm frame or receiver that has not been imprinted with a serial number, subject to certain exceptions pursuant to state law; and prohibiting any person from possessing, manufacturing or assembling a firearm that has not been imprinted with a serial number, subject to certain exceptions pursuant to state law.
First Reading Vote: All Ayes
Financial Implications: Staff time
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 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.
Financial Implications: None
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 3. Referral Response: Amending City Council Office Budget Expenditure and Reimbursement Policies**
From: City Manager
Recommendation: Adopt a Resolution revising the Councilmember Office Budget Relinquishment and Grant Policy to add that donations to nonprofit organizations be made on behalf of the City Council and the residents of Berkeley.
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 4. Appointment of Emergency Standby Officer for City Council District 2 and Resignation of Second Standby Officer for District 7**
From: City Manager
Recommendation: Adopt a Resolution confirming the appointment of a newly nominated standby officer for City Council District 2 to serve in the event the elected official is unavailable during an emergency, removing the second standby officer for District 7, and rescinding Resolution No. 69,190-N.S.
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900

Consent Calendar

- 5. Revised Conflict of Interest Code**
From: City Manager
Recommendation: Adopt a Resolution adopting a revised Conflict of Interest Code for the City of Berkeley and rescinding Resolution No. 69,152–N.S.
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 6. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the council meetings of September 14, 2021 (closed and regular), September 21, 2021 (special) and September 28, 2021 (closed and regular).
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 7. Contract No. 32100161 Amendment: Dorothy Day House for Services at 742 Grayson Street**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend contract number 32100161 with Dorothy Day House, adding \$548,096 for a new total not to exceed amount of \$1,657,618, to include the operation of homeless shelter for people living in vehicles in an off-street safe parking program for Recreational Vehicles at 742 Grayson Street, and extending the contract through September 30, 2022.
Financial Implications: See report
Contact: LaTanya Bellow, City Manager's Office, (510) 981-7000
- 8. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on October 26, 2021**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: Parking Meter Fund - \$300,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 9. Contract: Federal Engineering, Inc. for Prioritized Dispatch Consulting**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Federal Engineering, Inc. (Contractor) to provide prioritized dispatch consulting services from November 1, 2021 to October 30, 2022 in an amount not to exceed \$100,000 with an option to extend for two additional two-year terms, for a total contract amount not to exceed \$300,000.
Financial Implications: See report
Contact: Abe Roman, Fire, (510) 981-3473

Consent Calendar

- 10. Contract No. 31900009 Amendment: Building Opportunities for Self-Sufficiency (BOSS) for Property Management Services at 2111 McKinley Ave**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 31900009 with Building Opportunities for Self-Sufficiency (BOSS) to fund property management services at 2111 McKinley Avenue in Berkeley, a supported housing site for mental health division clients, to increase the amount by \$287,712 for a total contract not to exceed \$657,712, and to extend the contract through November 1, 2023.
Financial Implications: FY22 Budget - \$287,712
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 11. Contract No. 32100019 Amendment: Sonya Dublin Consulting as the External Evaluator, Tobacco Prevention Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32100019 with Sonya Dublin Consulting as the External Evaluator for Health, Housing and Community Services Public Health Division's Tobacco Prevention Program, increasing the amount by \$9,900 for a total amount not to exceed \$103,500, and extending the contract through December 31, 2021.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 12. Contract: Discovery Health Services, Vendor for Citywide COVID-19 Testing**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with Discovery Health Services for weekly onsite employee COVID-19 testing, for the period covering November 1, 2021 to November 1, 2022 for an amount not to exceed \$450,000.
Financial Implications: See report
Contact: Donald E. Ellison, Human Resources, (510) 981-6800
- 13. Contract: Voya for Third-Party Administrator for COBRA Administration and Retiree Health Premium Assistance Plan Administration**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with Voya for COBRA Plan administration and administration of the Retiree Health Premium Assistance Plan for non-sworn retirees and other retiree medical programs for sworn Fire and Police, for the period covering November 1, 2021 to November 1, 2026 for an amount not to exceed \$112,000.
Financial Implications: See report
Contact: Donald E. Ellison, Human Resources, (510) 981-6800

Consent Calendar

14. Resolution Authorizing an Amendment to CalPERS Contract Pursuant to California Government Code 20516

From: City Manager

Recommendation: Adopt a Resolution to initiate process to amend the contract between the Board of Administration, California Public Employees' Retirement System and the City Council for the City of Berkeley pursuant to California Government Code 20516 to effectuate changes to the cost sharing agreement between the City and Unrepresented PEPRA members in the following Units: Units X-1 (Unrepresented Hourly Non-Career); X-2 (Retired Annuitants); Z-1 (Confidential and Executive Management Employees); Z-2 (Confidential Professional Employees); Z-3 (Confidential Clerical Employees); Z-6 (Legislative Analysts); and Z-9 (Unrepresented at-will positions in the Rent Stabilization Program) (collectively referred to as "Unrepresented Group").

As part of the most recent negotiations regarding the memorandum of understanding between the City and SEIU Local 1021 Maintenance and Clerical (MC), the parties agreed to reduce the MC PEPRA members' employer cost share (Ramp Down) of eight percent (8%) over the term of the current MOUs. Although the Unrepresented Group is not represented by a labor group, they customarily receive the same negotiated benefits afforded to the MC chapters.

Financial Implications: See report

Contact: Donald E. Ellison, Human Resources, (510) 981-6800

15. Revise Housing Inspector Supervisor Classification and Salary

From: City Manager

Recommendation: Adopt a Resolution amending Resolution No. 69,996-N.S. Memorandum of Understanding: Public Employees Union - Local 1, revising the Housing Inspector Supervisor Classification and Salary.

Financial Implications: See report

Contact: Donald E. Ellison, Human Resources, (510) 981-6800

16. Assistant Inspector, Housing Inspector I, Housing Inspector II, and Senior Housing Inspector

From: City Manager

Recommendation: Adopt a Resolution amending Resolution No. 69,991-N.S. Classification and Salary Resolution for SEIU 1021 Community Services and Part-Time Recreation Activity Leaders Memorandum Agreement, Unit L (career and non-career, miscellaneous and administrative employees) adding Assistant Inspector, Housing Inspector I, Housing Inspector II and Senior Housing Inspector.

Financial Implications: See report

Contact: Donald E. Ellison, Human Resources, (510) 981-6800

Consent Calendar

- 17. Dell Computers, Inc.: Using National Association of State Procurement Officials (NASPO) ValuePoint Cooperative Purchasing Agreement for Computer Hardware and Software Purchases**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to increase spending authority with Dell Computers, Inc. for the purchase of computer and server hardware, software, and related services, utilizing pricing and contracts, amendments, and extensions from the National Association of State Procurement Officials (NASPO) ValuePoint for the period beginning October 26, 2021 through June 30, 2023 for an amount not-to-exceed (NTE) \$1,939,538 with \$1,019,769 in Fiscal Year 2022 and \$919,769 in Fiscal Year 2023.
Financial Implications: Various Funds - \$1,939,538
Contact: LaTanya Bellow, City Manager's Office, (510) 981-7000
- 18. Contract No. 122411-2 Amendment: Communication Strategies for Consulting Services for Voice over IP (VoIP) Extending Support and Maintenance and AT&T Phone Bill Audit**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 122411-2 with Communication Strategies for Consulting Services for Voice over IP (VoIP) extending Support and Maintenance and in order to conduct a phone billing audit of AT&T, increasing the contract amount by \$14,625 for a total not-to-exceed amount of \$97,436 from July 1, 2017 to June 30, 2023.
Financial Implications: IT Cost Allocation Fund - \$14,625
Contact: LaTanya Bellow, City Manager's Office, (510) 981-7000
- 19. Grant Application: the San Francisco Restoration Authority Measure AA Grant Program for Pre-Construction documents for Potential Improvement Projects at Aquatic Park**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to: 1) submit a grant application in the amount of \$897,000 to the San Francisco Restoration Authority Measure AA Grant Program to prepare pre-construction technical documents for potential improvement projects at Aquatic Park; 2) accept any grants; 3) execute any resulting grant agreements and any amendments; and that Council authorize the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Consent Calendar

- 20. Grant Application: Boating Safety and Enforcement Equipment (BSEE) grant program of the California Division of Boating & Waterways**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to 1) submit a grant application to the California Division of Boating and Waterways 2021 BSEE grant program for \$20,000; 2) accept any grants; and 3) execute any resulting grant agreements and any amendments; and the City Council authorizes the implementation of the projects and appropriation of funding for related expenses subject to securing the grant.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 21. Renewal of the Elmwood Avenue BID for Calendar Year 2022**
From: Elmwood Advisory Board
Recommendation: Adopt a Resolution approving the Elmwood Business Improvement District Advisory Board's (hereafter "Elmwood BID Advisory Board" or "the Advisory Board") recommendation that Council: 1) approve the 2021 Annual Report and preliminary budget for proposed improvements in the District for calendar year 2022; 2) declare its intent to levy an assessment to finance improvements in the District for calendar year 2022 and 3) direct the City Clerk to schedule a public hearing on the renewal of the assessment for November 16, 2021.
Financial Implications: See report
Contact: Kieron Slaughter, Commission Secretary, (510) 981-7530
- 22. Renewal of the Solano Avenue BID for Calendar Year 2022**
From: Solano Avenue BID Advisory Board
Recommendation: Adopt a Resolution approving the Solano Avenue Business Improvement District Advisory Board's (hereafter "Solano BID Advisory Board" or "the Advisory Board") recommendation that Council: 1) approve the 2021 Annual Report and preliminary budget on proposed improvements in the District for calendar year 2022; 2) declare its intent to levy an assessment to finance improvements in the District for calendar year 2022; and 3) direct the City Clerk to schedule a public hearing on the renewal of the assessment for November 16, 2021
Financial Implications: See report
Contact: Eleanor Hollander, Commission Secretary, (510) 981-7530

Council Consent Items

- 23. Budget Referral: Reckless Driving and Sideshow Deterrence Improvements**
From: Councilmember Taplin (Author)
Recommendation: That the City Council refers to the FY2023 budget process the funding of sideshow deterrence infrastructure, traffic circles or botts' dots, at the following intersections:
Seventh Street and Addison Street, Eighth Street and Channing Way, Bonar Street and Allston Way, Bonar Street and Bancroft Way, additional intersections to be determined by the Transportation Division of the Public Works Department. The Transportation Division shall determine which intersections best qualify for bott's dots and which qualify for traffic circles.
Financial Implications: See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 24. Budget Referral: Sidewalk Repair on Arterial Streets**
From: Councilmember Taplin (Author)
Recommendation: That the City Council refers to the FY2023 budget process an allocation of \$600,000 from the General Fund for the purpose of funding sidewalk repairs on major West and South Berkeley arterial streets including Sacramento Street, Alcatraz Avenue, and Dwight Avenue.
Financial Implications: See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 25. CalVIP Grant Application Authorization**
From: Councilmember Taplin (Author)
Recommendation: Authorize the City Manager to respond to Requests For Proposals (RFPs) and submit applications to the California Violence Intervention and Prevention (CalVIP) Grant Program in future funding cycles in order to provide resources for community safety initiatives.
Financial Implications: None
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 26. Presentation Request: Study to Achieve Equity in City Contracting - "Berkeley Inclusion in Opportunity Index"**
From: Councilmember Bartlett (Author) and Councilmember Harrison (Co-Sponsor)
Recommendation: Request for Mason Tillman Associates Ltd (MTA) to present their findings and recommendations from the "Berkeley Inclusion in Opportunity Index" study at the November 9th, 2021 City Council meeting. The presentation should include an analysis of the City's use of local, small, emerging, and diverse enterprises. The study focuses on enterprises experiencing barriers to access in obtaining City contracts in construction, architecture, engineering, professional services, goods, and other services.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

Council Consent Items

- 27. Support Net Energy Metering**
From: Councilmember Hahn (Author), Mayor Arreguin (Co-Sponsor), Councilmember Bartlett (Co-Sponsor) and Councilmember Harrison (Co-Sponsor)
Recommendation: Approve a Resolution in support of Net Energy Metering and transmit copies to Governor Gavin Newsom, State Senator Nancy Skinner, Assemblymember Buffy Wicks, and members of the California Public Utilities Commission Board (CPUC).
Financial Implications: None
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
- 28. Amend City Council Rules of Procedure and Order to Allow Extension of Items in Committee in Writing**
From: Councilmember Robinson (Author)
Recommendation: Adopt a Resolution revising the City Council Rules of Procedure and Order to amend Chapter III, Section G, Subsection 4 to allow the Chair of a Committee to accept a Primary Author's written request that their item remain in Committee past the 120 day deadline rather than requiring that extensions be approved by a full vote of the committee.
Financial Implications: See report
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
- 29. Budget Referral: Public Bank East Bay**
From: Councilmember Robinson (Author), Mayor Arreguin (Co-Sponsor), Councilmember Bartlett (Co-Sponsor) and Councilmember Harrison (Co-Sponsor)
Recommendation: Refer \$50,000 to the November 2021 AAO process for a contribution to the Friends of the Public Bank East Bay for the development of a business plan for the Public Bank East Bay.
Financial Implications: General Fund - \$50,000
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
- 30. Budget Referral: Durant Parklet and Telegraph Plaza Improvements**
From: Councilmember Robinson (Author) and Mayor Arreguin (Co-Sponsor)
Recommendation: Refer \$60,000 to the November 2021 AAO process for placemaking improvements in the Telegraph District, consisting of the installation of a public parklet on Durant Avenue and the closure of the right-turn slip lane at the Dwight Triangle to create a public plaza.
Financial Implications: \$60,000
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

Council Consent Items

- 31. Budget Referral: Telegraph Shared Streets Feasibility Study**
From: Councilmember Robinson (Author), Mayor Arreguin (Co-Sponsor) and Councilmember Hahn (Co-Sponsor)
Recommendation: Refer \$500,000 to the November 2021 AAO process for conducting a feasibility study of the Telegraph Shared Streets project.
Financial Implications: \$500,000
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

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.

- 32. Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04 (Continued from October 12, 2021) (Item contains supplemental material)**
From: City Manager
Recommendation: Conduct a public hearing and, upon conclusion, adopt the first reading of a local Accessory Dwelling Unit (ADU) Ordinance [Berkeley Municipal Code (BMC) Chapter 23C.24] and amendments to relevant Definitions [BMC Chapter 23F.04] in the Zoning Ordinance.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action Calendar – Public Hearings

33. Proposed Ordinance Amending Paragraph ‘NN’ of Berkeley Municipal Code Section 19.48.020

From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt the second reading of Ordinance No. 7,788-N.S. which modifies the language of Paragraph ‘NN.’ of Berkeley Municipal Code Section 19.48.020 (“Amendments to the California Fire Code) by adopting a building standard which is more restrictive than that standard currently contained in the California Fire Code and which will expand the existing local code amendment that requires the installation of fire sprinklers in new structures and the retrofit fire sprinklers into existing structures that currently exists in Fire Zone 3 to include structures located in Berkeley Fire Zone 2.

First Reading Vote: All Ayes

Financial Implications: See report

Contact: Abe Roman, Fire, (510) 981-3473

Action Calendar – Old Business

34. Identifying City Council Referrals for Removal *(Continued from October 12, 2021)*

From: City Manager

Recommendation: 1. Review the referrals marked as rescinded by the sponsoring Councilmember or District; 2. Consider the referrals identified by Councilmembers for further discussion; and 3. Approve the removal of referrals that have been marked as rescinded by the sponsoring Councilmember or District.

Financial Implications: None

Contact: Dee Williams-Ridley, City Manager, (510) 981-7000

Action Calendar – Old Business

35. **Amending the Berkeley Election Reform Act (BERA) Relating to Officeholder Accounts** *(Reviewed by the Agenda & Rules Committee) (Continued from October 12, 2021)*

From: Agenda & Rules Committee: Mayor Arreguin, Councilmember Hahn, Councilmember Wengraf

Recommendation: Take one of the following actions:

1. Refer a proposal to the Fair Campaign Practices Commission (FCPC) amending the Berkeley Election Reform Act (BERA), BMC Chapter 2.12, and Lobbyist Registration Act, BMC Chapter 2.09, to enact “a reasonable set of limitations and rules” to regulate the maintenance of officeholder accounts, as developed and referred for consideration by the Agenda and Rules Committee; or
2. Refer a proposal to the FCPC amending BERA, BMC Chapter 2.12, to prohibit Officeholder Accounts, as originally proposed by the Fair Campaign Practices Commission.

Policy Committee Recommendation: Send the item to Council with two proposed alternatives: 1) Councilmember Hahn’s proposal to regulate officeholder accounts, and 2) the Fair Campaign Practices Commission proposal to prohibit officeholder accounts; and to include the Commission’s analysis of regulating officeholder accounts in the item that goes to the full Council.

Financial Implications: See report

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

36. **Objective Standards Recommendations for Density, Design and Shadows** *(Continued from October 12, 2021) (Item contains supplemental material)*

From: Joint Subcommittee for the Implementation of State Housing Laws

Recommendation: Refer to the Planning Commission and Design Review Committee to review the recommendations from the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) for objective standards for density, design and shadows and draft Zoning Ordinance amendments for City Council consideration.

Financial Implications: See report

Contact: Alene Pearson, Commission Secretary, (510) 981-7400

37. **Letter to Senate Budget Committee Chair Sen. Skinner Regarding Berkeley Pier** *(Continued from October 12, 2021)*

From: Councilmember Taplin (Author), Mayor Arreguin (Co-Sponsor), Councilmember Robinson (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)

Recommendation: Send a letter to State Senator Nancy Skinner (D-Berkeley), Chair of the Senate Budget Committee, requesting state budget allocations for urgent infrastructure needs at the Berkeley Municipal Pier.

Financial Implications: None

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Action Calendar – Old Business

38. **Budget Referral: Allocate General Fund Revenues to Support Pilot Program Offering Free AC Transit on Sundays in Berkeley** *(Continued from October 12, 2021) (Item contains supplemental material)*
From: Councilmember Harrison (Author) and Councilmember Bartlett (Co-sponsor)
Recommendation: Refer to the November 2021 budget process approximately \$500,000 in General Fund Revenue toward fully subsidizing AC Transit fares originating from Berkeley on Sundays for at least one calendar year and possible restoration of the suspended Line 80 serving some of Berkeley's lowest income neighborhoods.
Financial Implications: General Fund - \$500,000
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Action Calendar – New Business

39. **Proposal to Allocate Revenues Generated by the Transient Occupancy Tax in the Waterfront Area to the Marina Fund to Avoid Insolvency, Rebuild its Fund Balance and to Stabilize its Finances** *(Reviewed by the Budget & Finance Policy Committee)*
From: Parks and Waterfront Commission
Recommendation: That Council adopt a Resolution adopting a policy that all Transient Occupancy Taxes (TOT hotel tax) generated at the Berkeley Waterfront be allocated to the City's Marina Enterprise Fund. All other property, sales, utility users, and parking taxes; as well as business license and franchise fees, would continue to be allocated to the City's General Fund.
Policy Committee Recommendation: Send the item to Council with a negative recommendation and additionally request a referral to the Budget & Finance Policy Committee to discuss and develop alternative revenue streams for the Marina Fund including a dedicated reserve.
Financial Implications: See report
Contact: Roger Miller, Commission Secretary, (510) 981-6700

Information Reports

40. **Annual Commission Attendance and Meeting Frequency Report**
From: City Manager
Contact: Mark Numainville, City Clerk, (510) 981-6900
41. **Senior Center Survey Results – Fiscal Year 2021**
From: City Manager
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
42. **Parks and Waterfront Commission Work Plan for 2021-2022**
From: City Manager
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Public Comment – Items Not Listed on the Agenda

Adjournment

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

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

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be posted on the City's website at <http://www.cityofberkeley.info>.

Agendas and agenda reports may be accessed via the Internet at <http://www.cityofberkeley.info/citycouncil>

COMMUNICATION ACCESS INFORMATION:

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



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

I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on October 14, 2021.

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

Mark Numainville, City Clerk

Communications – October 26, 2021

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.

Homelessness

1. Councilmember Taplin
2. Diana Bohn
3. Maria St. John
4. Alison Huetter
5. Hugh Fountain
6. Tim Southwick
7. Laura Menard
8. Councilmember Bartlett
9. Jae Wheeler

RV Parking

10. Maryann O’Sullivan
11. Diana Bohn
12. Mimi Mougovan
13. Yesica Prado

Street Paving Equity

14. Kelley Zito
15. Mikko Jokela
16. Lauren Gularte
17. Markus Feyh

Automated License Plate Readers (ALRP)

18. 18 similarly-worded from letters
19. Becca Schonberg

Affordable Housing Overlay

20. Alfred Twu
21. Nico Nagle, on behalf of the Housing Action Coalition

North Berkeley BART Zoning

22. Mary Rose

Leonard Powell Saga

23. Steve Martinot

Lori Droste’s Interview Request

24. Jalaya

BUSD Student Vaccine Mandate

25. Nathan Shepard

Sugar-Sweetened Beverage Product Panel Experts Commission (SSBPPE)

26. Holly Scheider, Chairperson, SSBPPE Commission

City Vacant Positions

27. Margot Smith

Police Accountability Board, et al

28. Katherine Lee, Interim Director of Police Accountability (2)

Mask Mandate

29. Anne McClintock

30. COVID-19 Information Service, City of Berkeley

31. B. Beekman

UC Berkeley Adding 20,000 Students

32. Margot Smith

Sanctuary City and Motorola

33. B. Beekman

Mats in King Pool Locker Room

34. Katie Calvert

Public Toilets in Front of the People's Park Mural

35. Rachel Neuman

36. Diana Bohn

37. Amy Kimmel

38. Sylvia

39. Harvey Smith

40. Kelly Hammargren

41. Liam Garland, Director of Public Works

42. Carol Denney

43. Carrie Olson

44. Gar Smith

45. Marcia Poole

46. Councilmember Harrison

47. Maris Arnold

48. Deborah Green

49. Lisa Teague

50. Daniella Thompsin

51. Maureen Kildee

52. Lee Altenberg

53. Max Ventura

- 54. Andrea Prichett
- 55. Alan Steinbach

Bayer Healthcare – Public Hearing Notice

- 56. Alene Pearson, on behalf of Planning

URL's Only

- 57. Russbumber (2)
- 58. Vivian Warkentin

Supplemental Communications and Reports

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

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

ORDINANCE NO. 7,789-N.S.

ADDING CHAPTER 13.73 OF THE BERKELEY MUNICIPAL CODE, PROHIBITION OF POSSESSION OR SALE OF NON-SERIALIZED, UNFINISHED FIREARM FRAMES OR RECEIVERS AND NON-SERIALIZED FIREARMS

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

Section 1. Findings

The Council of the City of Berkeley hereby finds and determines as follows:

- A. Berkeley is experiencing a rise in detection and seizure of firearms lacking serial numbers or other identifying markings, commonly known as “ghost guns”
- B. A ghost gun is a firearm constructed using unfinished firearm parts, including unfinished frames or receivers, which house the operating parts of the firing mechanism.
- D. Ghost gun kits contain all necessary parts to complete assembly and turn an unfinished frame or receiver into a functional firearm. Numerous online videos illustrate how to easily assemble a ghost gun.
- E. A firearm assembled from a ghost gun kit is non-serialized and untraceable through law enforcement databases.
- F. Ghost gun kits are widely available for purchase, circumventing the background check process, allowing individuals who are prohibited from possessing or purchasing firearms due to criminal history, restraining orders, age, or mental illness to easily obtain them.
- G. The majority of ghost guns recovered by the Berkeley Police Department (“BPD”) are seized from individuals prohibited from legally possessing or purchasing firearms.
- H. The increased availability of ghost guns threatens the public safety and welfare of the residents of Berkeley.
- I. As of September 24, 2021, 22 of the 77 guns seized by BPD to date in 2021 were ghost guns--both handguns and rifles. There have been 34 shootings in the City so far this year, up from 25 at this time last year.
- J. Ghost guns have been linked to multiple shootings in Berkeley in recent years.
- K. The increase of ghost guns in Berkeley is consistent with national trends. Between 2016 and 2020, law enforcement agencies across the country reported approximately 23,906 ghost guns to the Bureau of Alcohol, Tobacco, Firearms, and

Explosives as having been recovered from crime scenes, including 325 homicides or attempted homicides.

L. Federal law does not fully regulate ghost gun kits or parts. The Congress of the United States has not, expressly or by implication, preempted additional regulation of firearms by state and local authorities. State law regulates some, but not all, aspects of ghost gun kits or parts.

M. State law provisions regulating the sale and purchase of firearm precursor parts do not become effective until July 1, 2022.

N. The Legislature of the State of California has not, expressly or by implication, preempted the entire field of firearms regulation not in conflict with state law; and

O. The Council of the City of Berkeley (“Council”) intends this Ordinance to be applied and interpreted consistent with federal and state law.

P. Council finds and declares this Ordinance necessary in order to eliminate non-serialized, untraceable firearms, thereby promoting and protecting the public health, safety, and general welfare of the residents of the City of Berkeley.

Q. Council finds and declares this Ordinance will promote effective law enforcement by providing reasonable measures to address the dangers posed to the community by ghost guns.

R. Council further finds it is within its police powers to implement and enforce the provisions of this Ordinance.

Section 2. Berkeley Municipal Code Chapter 13.73 is added to read as follows:

Chapter 13.73
BANNING NON-SERIALIZED PRECURSOR PARTS AND NON-SERIALIZED FIREARMS

13.73.010. Purpose

Purpose and Intent. It is the purpose and intent of this section that possession, purchase, sale, receipt, and transportation of non-serialized, unfinished frames and unfinished receivers, and non-serialized firearms within the City of Berkeley be prohibited for the protection, health, and welfare of the public, to further effective law enforcement, and to provide the City with reasonable measures to address the dangers to the community posed by non-serialized firearms, commonly known as “ghost guns.” This section is intended to be applied and interpreted consistent with state and federal law.

13.73.020 Definitions

Except as where context otherwise requires, the following definitions apply in this chapter:

- A. “Federal Firearms Importer” means a licensed firearm importer as defined in 18 U.S.C. § 921(a)(9) (2019), as may be amended.
- B. “Federal Firearms Manufacturer” means a licensed firearm manufacturer as defined in 18 U.S.C. § 921(a)(10) (2019), as may be amended.
- C. “Firearm” has the same meaning as in California Penal Code section 16520(a), as may be amended. As used in this section, firearm shall include a handgun, rifle, or shotgun.
- D. “Frame” means the primary structural component of a firearm to which the fire control components are attached.
- E. “Handgun” has the same meaning as in California Penal Code section 16640, as may be amended.
- F. “Non-serialized firearm” means a firearm that is not either imprinted with a serial number issued to that firearm by a Federal Firearms Importer or Federal Firearms Manufacturer in compliance with federal law or engraved or permanently affixed with a serial number provided by the California Department of Justice for that firearm.
- G. “Person” has the same meaning as in Berkeley Municipal Code section 1.04.010.
- H. “Receiver” means the primary structural component of a firearm to which the fire control components are attached.
- I. “Rifle” has the same meaning as in California Penal Code section 17090, as may be amended.
- J. “Shotgun” has the same meaning as in California Penal Code section 17190, as may be amended.
- K. "Unfinished frame or receiver" means any forging, casting, printing, extrusion, machined body or similar article that: (1) has reached a stage in manufacture where it may readily be completed, assembled or converted to be a functional frame or receiver when combined with other parts; or (2) is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once finished or complete.

13.73.030 Prohibition—non-serialized unfinished frames or receivers, non-serialized firearms

It is unlawful for any person to:

- A. Possess, purchase, transport, or receive an unfinished frame or receiver, unless the unfinished frame or receiver is imprinted with a serial number issued to that unfinished frame or receiver by a Federal Firearms Importer or Federal Firearms Manufacturer, or engraved or permanently affixed with a serial number provided by the California Department of Justice for that unfinished frame or receiver.

1. This subsection shall not apply to a Federal Firearms Importer or Federal Firearms Manufacturer, or a party who holds a current firearm precursor part vendor license issued pursuant to California Penal Code section 30485.
2. This subsection shall not apply to an employee or sworn peace officer of a local, state, or federal law enforcement agency if the employee or sworn peace officer is acting within the scope of official duties.
3. This subsection shall not apply to a common carrier licensed or regulated under state or federal law or an authorized agent of a common carrier when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property.

B. Sell, offer to sell, transfer, or offer to transfer an unfinished frame or receiver, unless the unfinished frame or receiver is imprinted with a serial number issued to that unfinished frame or receiver by a Federal Firearms Importer or Federal Firearms Manufacturer, or engraved or permanently affixed with a serial number provided by the California Department of Justice for that unfinished frame or receiver.

1. This subsection shall not apply where the party purchasing or receiving the unfinished frame or receiver is a Federal Firearms Importer or Federal Firearms Manufacturer, or holds a current firearm precursor part vendor license issued pursuant to California Penal Code section 30485.
2. This subsection shall not apply to an employee or sworn peace officer of a local, state, or federal law enforcement agency if the employee or sworn peace officer is acting within the scope of official duties.
3. This subsection shall not apply to a common carrier licensed or regulated under state or federal law or an authorized agent of a common carrier when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property.

C. Possess, purchase, transport, or receive a non-serialized firearm.

1. This subsection shall not apply to an employee or sworn peace officer of a local, state, or federal law enforcement agency if the employee or sworn peace officer is acting within the scope of official duties.
2. This subsection shall not apply to a common carrier licensed or regulated under state or federal law or an authorized agent of a common carrier when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property.

3. This subsection shall not apply to a non-serialized firearm if any of the following conditions apply:
 - (i) The non-serialized firearm has been rendered permanently inoperable.
 - (ii) The non-serialized firearm is an antique firearm as defined in California Penal Code section 16170, as may be amended.
 - (iii) The non-serialized firearm was manufactured or assembled prior to 1968.
 - (iv) The non-serialized firearm has been determined to be a collector's item pursuant to 26 U.S.C. Ch. 53, including § 5845 (2019), as may be amended, or a curio or relic pursuant to 18 U.S.C. Ch. 44, including § 921(a) (2019), as may be amended, and 27 C. F. R. § 478.11 (2019), as may be amended.
 - (v) The non-serialized firearm has been entered into the centralized registry set forth in California Penal Code section 11106, as may be amended, prior to July 1, 2018, as being owned by a specific individual or entity if that firearm has assigned to it a distinguishing number or mark of identification.
4. It shall be an affirmative defense to a violation of this subsection that the person is in compliance with California Penal Code section 29180, as may be amended.

13.73.040 Outreach, enforcement

A. Upon enactment of this ordinance, the City shall promptly take reasonable efforts to inform all residents of its terms. The information shall include notice that all residents who possess any unfinished frame or receiver or any assembled or manufactured firearm that lacks a serial number required under subsections A, B, or C, of section 13.73.030 will not be penalized under this section if they surrender the non-complying unfinished frame or receiver or assembled firearm to a law enforcement agent or agency.

B. A violation of subsection B of section 13.73.030, or a violation stemming from the same transaction, is punishable as a Class 1 Misdemeanor.

C. Every violation of subsections A, or C of section 13.73.030 shall constitute a misdemeanor and upon conviction shall be punishable as set forth in Chapter 1.20 of this code. The first violation will not be penalized if the violator possesses, transports or receives three (3) or fewer firearms or unfinished frames or receivers, surrenders those firearms or unfinished frames or receivers to law enforcement, and does not commit additional violations of this chapter in the year following the violation.

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

Section 4. Effective date. Except for subsections A, and C of section 13.73.030, this ordinance shall take effect thirty (30) days after its adoption. Subsections A, and C of this section will take effect six (6) months after the other provisions of the ordinance take effect.

At a regular meeting of the Council of the City of Berkeley held on October 12, 2021, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.



Office of the City Attorney

CONSENT CALENDAR
October 26, 2021

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.

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 28, 2021, the Council will need to review and ratify the resolution by October 28, 2021.

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 will need to again review the need for the continuing necessity of holding City legislative body meetings via videoconference and teleconference by October 28, 2021.

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
October 26, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Mark Numainville, City Clerk
 Subject: Referral Response: Amending City Council Office Budget Expenditure and Reimbursement Policies

RECOMMENDATION

Adopt a Resolution revising the Councilmember Office Budget Relinquishment and Grant Policy to add that donations to nonprofit organizations be made on behalf of the City Council and the residents of Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On March 9, 2021, Council adopted a referral to prepare a change in the City Council Expenditure and Reimbursement policies to have donations to nonprofit organizations be made in the name of the entire Berkeley City Council on behalf of the residents of Berkeley rather than from individual Council members. This item adopts a new resolution to include the revisions requested by the referral and the original policies in Exhibit A of Resolution No. 67,992-N.S.

BACKGROUND

On July 25, 2006, the City Council adopted Resolution No. 63,412–N.S. to establish the expenditure and reimbursement policy required by state law, and on September 10, 2013, revised that policy through the adoption of Resolution No. 66,295–N.S. On May 30, 2017, the City Council adopted Resolution No. 67,992-N.S. which incorporated the Councilmember Office Budget Relinquishment and Grant Policy into the Expenditure and Reimbursement policies.

This change to the Expenditure and Reimbursement policies originated with a two-part recommendation from the Open Government Commission to regulate officeholder accounts and to prepare changes to the Councilmember Office Budget Relinquishment and Grant Policy. A positive recommendation was made by the Agenda & Rules Committee to the City Council on part two of the Commission's recommendation.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

This report and resolution are a response to the direction of the City Council on March 9, 2021.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

Attachments:

1: Resolution

Exhibit A: Councilmember Office Budget Relinquishment and Grant Policy

2: Council Budget Relinquishment Report Template

3: March 9, 2021 Referral Item

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

AMENDING CITY COUNCIL OFFICE BUDGET EXPENDITURE AND
REIMBURSEMENT POLICIES

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, these funds may be relinquished to the General Fund and allocated to local organizations that support a municipal purpose; and

WHEREAS, on May 30, 2017, the City Council rescinded Resolution No. 66,295-N.S. and replaced it with Resolution No. 67,992-N.S., which incorporated by reference, Exhibit A to the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

WHEREAS, on March 9, 2021, the City Council adopted a referral to prepare a change in the City Council Expenditure and Reimbursement policies.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A of Resolution No. 67,992-N.S. is revised and re-adopted to include that donations to non-profit organizations be made in the name of the entire Berkeley City Council on behalf of the residents of Berkeley.

BE IT FURTHER RESOLVED that the policy concerning Councilmember Office Budget Relinquishment and Grant Policy is hereby adopted to read as follows:

Exhibit A: Councilmember Office Budget Relinquishment and Grant Policy

October 26, 2021

Exhibit A

Councilmember Office Budget Relinquishment and Grant Policy

Introduction – Limitations on the Expenditure of Public Funds

The basic purpose of the City as an entity is to exist and function *as a municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.
(*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus, the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose.

The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.
(*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

Criteria for Grants of City Funds from Councilmember Office Budgets

All relinquishments and grants of public funds to nonprofit organizations are made in the name of the entire Berkeley City Council on behalf of the residents of Berkeley.

October 26, 2021

Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be “pre-approved” each fiscal year by Council resolution.

Table 1.

Recipient	Purpose
The City (e.g., the Berkeley Public Library, the Berkeley Animal Shelter)	Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
BUSD and other public agencies operating in Berkeley	Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
Entities with which the City is co-sponsoring a public event in Berkeley (e.g., Earth Day, Solano Stroll).	City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed.
Entities in Berkeley to which the City already contributes funds for municipal purposes (e.g., affordable housing or social service nonprofits)	To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.



[First Last name]
Councilmember District [District No.]

CONSENT CALENDAR
[Meeting Date (Month Day, yyyy)]

To: Honorable Mayor and Members of the City Council
From: Councilmember [Author Last Name], District [Council District Number]
Subject: [Recipient]: Donations of Funds to Support a Municipal Public Purpose

RECOMMENDATION

On behalf of the City Council and the residents of Berkeley, adopt a Resolution approving the expenditure of an amount not to exceed \$[amount] per Councilmember, to the [Recipient] with funds relinquished to the City’s general fund to support a municipal public purpose.

FISCAL IMPACTS OF RECOMMENDATION

\$[amount] is available from Councilmember Budget discretionary accounts.

BACKGROUND

We are proposing that the City Council make a grant of \$[amount] to [Recipient] for [state the public purpose] on behalf of the City Council and the residents of Berkeley.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

CONTACT PERSON

[Name], [Title], [Department], [Phone Number]

Attachments:
1: Resolution

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, a California non-profit tax exempt corporation enter organization name seeks funds in the amount of [\$enter amount] to provide the following public services enter services; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose Enter text here: explain what the funds will buy and how Berkeley citizens will specifically benefit. Do not make general statements like "Berkeley citizens support the environment and the organization does important environmental work."

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to [\$enter amount per office] shall be granted to enter organization name, on behalf of the City Council and residents of Berkeley, to fund the following services enter services.

BE IT FURTHER RESOLVED that (for further action if needed; if not delete) - ends in a period (.).

Exhibits **[Delete if there are NO exhibits]**

A: Title of the Exhibit

B: Title of the Exhibit

Consent Calendar

- 9. Loan Application: Dock Replacement at the Berkeley Marina**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to sign a loan agreement with the California Department of Boating and Waterways and to accept the funds for a loan not to exceed \$5,500,000 for replacement of D & E docks at the Berkeley Marina.
Financial Implications: See report
 Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 69,746–N.S.
- 10. Grant Application: Environmental Enhancement and Mitigation Project (EEMP) Proposal**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit an Environmental Enhancement and Mitigation (EEM) grant application to plant urban forest trees in the amount up to \$500,000; to accept the grant; to execute any resultant revenue agreements and amendments; and authorizing the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.
Financial Implications: Revenue - \$500,000
 Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 69,747–N.S.
- 11. Amendments to the Berkeley Election Reform Act (BERA) to Regulate Officeholder Accounts and Proposed Changes to City Council Office Budget Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)** *(Reviewed by the Agenda & Rules Committee) (Item contains Supplemental Material)*
From: Fair Campaign Practices Commission
Recommendation: Form a joint subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.
(On February 8, 2021, the Agenda & Rules Committee made a positive recommendation to the City Council on part two of the Commission recommendation to prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.)
Financial Implications: None
 Contact: Sam Harvey, Commission Secretary, (510) 981-6950
Action: Approved the recommendation of the Agenda & Rules Committee revised to change the word “citizens” to “residents.”



Office of the City Manager

CONSENT CALENDAR

October 26, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Appointment of Emergency Standby Officer for City Council District 2 and Resignation of Second Standby Officer for District 7

RECOMMENDATION

Adopt a Resolution confirming the appointment of a newly nominated standby officer for City Council District 2 to serve in the event the elected official is unavailable during an emergency, removing the second standby officer for District 7, and rescinding Resolution No. 69,190-N.S.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

With the election of Councilmember Taplin in November of 2020, the new Councilmember has submitted a nomination for Jennifer Shanoski to serve as his standby officer. The City Clerk has determined that the nominee meets the requirements and may be approved by the City Council.

On May 31, 2021, Varsha Sarveshwar, the second standby officer for Councilmember Robinson resigned from the position due to her relocation out of Berkeley. Councilmember Robinson still has a first and third standby officer currently appointed.

BACKGROUND

On March 14, 1995, the Council adopted Resolution No. 57,906-N.S., designating a procedure for the selection of Standby Officers for City Councilmembers in the event of an emergency. The original resolution was updated on April 23, 2019 by Resolution No. 68,830-N.S. which update the qualifications required for standby officers. This procedure is part of the City's emergency preparedness planning and ensures that in the case of a disaster or other catastrophic emergency causing the unavailability of one or more members of the Council (or Standby Officers where a Councilmember is unavailable), government can continue to function. Under state law, a Councilmember or Standby Officer is "unavailable" when he or she is "either killed, missing, or so

seriously injured as to be unable to attend meetings and otherwise perform his [or her] duties.” (Govt Code § 8636.)

RATIONALE FOR RECOMMENDATION

With the election of a new Councilmember in the November 2020 election, it is necessary to update the resolution to include the newly nominated standby officer.

CONTACT PERSON

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

Attachments:

1: Resolution

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

CONFIRMING THE APPOINTMENT OF STANDBY OFFICERS AND RESCINDING
RESOLUTION NO. 68,454-N.S.

WHEREAS, by Resolution No. 57,906-N.S. adopted March 14, 1995, the Council enacted a policy for the appointment of Standby Officers to serve in each Councilmember's place in the event the Councilmember is unavailable during a disaster; and

WHEREAS, each Councilmember has nominated Standby Officers and the City Manager has found all the nominees to be qualified in accordance with the standards set forth in Resolution No. 57,906-N.S.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following persons are hereby confirmed as Standby Officers to serve in place of a Councilmember in case the Councilmember is unavailable during a catastrophic emergency, and that they shall serve in the order listed, successive Standby Officers serving only if the preceding officer or officers are unavailable. The definition of "unavailable" shall be as set forth in Government Code Section 8636: an officer is either killed, missing, or so seriously injured as to be unable to attend meetings and otherwise perform his or her duties; or as that Section may be hereafter amended.

For Mayor Jesse Arreguin

1. Linda Maio
2. John Selawsky
3. Gordon Wozniak

For Councilmember Rashi Kesarwani

1. Laurie Capitelli
2. Beth Gerstein
3. Teresa Clarke

For Councilmember Terry Taplin

1. Jennifer Shanoski
2. None Designated
3. None Designated

For Councilmember Ben Bartlett

1. *Pending*
2. Kathleen Crandall
3. Emily Modde

For Councilmember Kate Harrison

1. Holly Scheider
2. Kelly Hammargren
3. Erin Diehm

For Councilmember Sophie Hahn

1. John C. Hitchen
2. Ronnie Cohen
3. *Pending*

For Councilmember Susan Wengraf

1. Ray Yep
2. Gordon Wozniak
3. Linda Maio

For Councilmember Rigel Robinson

1. Solomon Alpert
2. None Designated
3. Timothy Xavier Johnson

For Councilmember Lori Droste

1. Laurie Capitelli
2. *Pending*
3. None Designated

BE IT FURTHER RESOLVED, that Resolution No. 68,454-N.S. is hereby rescinded.



Office of the City Manager

CONSENT CALENDAR

October 26, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Revised Conflict of Interest Code

RECOMMENDATION

Adopt a Resolution adopting a revised Conflict of Interest Code for the City of Berkeley and rescinding Resolution No. 69,152–N.S.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND EFFECTS

The Political Reform Act requires all cities to adopt and promulgate a Conflict of Interest Code (Code) which specifies designated positions subject to financial disclosure and provides for specific levels of financial disclosure. It also requires amendments to the Code within designated time periods to reflect changed circumstances, including the creation of new positions which must be designated and relevant changes in duties assigned to existing positions (Government Code Sections 87100, et seq.).

Revisions to the Code were made in consultation with the City Attorney's Office and Department Directors. A redlined version of the Code provides all the additions and deletions (Attachment 2).

Department appendices have been updated to reflect changes in department organization, including the addition of newly established classifications and the deletion of classifications which have been abolished. The following departments have updated disclosure appendices: City Manager; Finance; Health, Housing, and Community Services; Parks, Recreation and Waterfront; Planning and Development; Public Works; and the Rent Stabilization Board. A new appendix has been added for the Office of the Director of Police Accountability. Appendices for the now-defunct Police Review Commission and Oversight Board to the Berkeley Successor Agency, as well as that of the Measure O Bond Oversight Committee, whose functions have been merged with the Housing Advisory Commission, have been removed, and new disclosure appendices have been added for the Police Accountability Board, Reimagining Public Safety Task Force, and the Independent Redistricting Commission.

BACKGROUND

The City of Berkeley's first Conflict of Interest Code was adopted on October 1, 1982 by Resolution No. 51,425–N.S. and has been amended as necessary over time to reflect changes in regulations, departmental organizational structure, designated positions within departments, and commissions. A revised Code was last adopted by the City Council on October 29, 2019 by Resolution No. 69,152–N.S.

The Code accurately designates all positions that make or participate in the making of governmental decisions. The disclosure categories assigned to these positions require the disclosure of all investments, business positions, interests in real property and sources of income, which may foreseeably be affected materially by the decisions made by those designated positions. The Code includes all other provisions required by Government Code Section 87302 and incorporates by reference FPPC Regulation 2 Cal. Admin. Code Section 18730.

The City began allowing employees to complete their Statement of Economic Interests (Form 700) filings electronically in 2009 while still requiring that signed hard copies be submitted; fully electronic filing was certified by the State and became mandatory in 2015. In response to requests from board and commission members, electronic filing was implemented on a voluntary basis for commissioner filings beginning January 1, 2020, and over 99% of commissioners have chosen to participate. This has resulted in more on-time filings, fewer amendment requests, and a large reduction in staff time and paper usage.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Implementation of electronic filing of Form 700s has saved a substantial amount of paper and vehicle trips to 2180 Milvia Street.

RATIONALE FOR RECOMMENDATION

The City is required by state law to adopt a Conflict of Interest Code. Ongoing revisions are necessary to ensure that the Code accurately reflects the designated positions outlined in each department's organizational structure.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

Attachments:

1: Resolution

Exhibit A: Conflict of Interest Code – Department Appendices

Exhibit B: Conflict of Interest Code – Commission Appendices

Exhibit C: Conflict of Interest Code – Consultant Appendix

Exhibit D: Conflict of Interest Code – Index

2: Conflict of Interest Code – Revisions Highlighted with Strikeout and Underline

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

ADOPTING A REVISED CONFLICT OF INTEREST CODE FOR THE CITY OF BERKELEY AND RESCINDING RESOLUTION NO. 69,152–N.S.

WHEREAS, the Political Reform Act, Government Code Sections 81000, et seq., requires every state or local government agency to adopt and promulgate a Conflict of Interest Code; and

WHEREAS, state law as specified in the Political Reform Act (the Act) requires the City Council as the code-reviewing body to direct the review of its conflict of interest code; and

WHEREAS, the Act further requires that such direction must occur by July 1 of each even numbered year; and

WHEREAS, the Act additionally requires the submission of a revised conflict of interest code for approval by the code-reviewing body or the notification of said body that no changes are necessary; and;

WHEREAS, the Fair Political Practices Commission has adopted a regulation, 2 Cal. Adm. Code Section 18730, which contains the terms of a standard model Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments to the Political Reform Act; and

WHEREAS, the City of Berkeley may incorporate in its Conflict of Interest Code, by reference, regulation, 2 Cal. Adm. Code Section 18730; and

WHEREAS, on October 1, 1982, the City Council of the City of Berkeley adopted Resolution No. 51,425–N.S., Conflict of Interest Code, for the City of Berkeley; and

WHEREAS, the Code has been amended over time to incorporate changes in regulations, departmental organizational structure, changes in job classifications, and the addition and deletion of certain boards and commissions; and

WHEREAS, Resolution No. 69,152–N.S, adopted October 29, 2019, City of Berkeley's Conflict of Interest Code, requires minor amendments to reflect the current organizational structure of departments, their designated positions and level of disclosure; and

WHEREAS, the Council has determined that the attached Conflict of Interest Code accurately sets forth the current organizational structure of departments, their designated positions, and the respective categories of financial interests which should be made reportable and those boards and commissions which should be designated and the respective categories of financial interests which should be made reportable by their members; and

WHEREAS, state law allows the City to accept Form 700 electronically and designate the electronic filing as the filing of record, and the City has the ability to accept and process electronic filings.

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of Berkeley as follows:

Section 1. That Resolution No. 69,152–N.S. is hereby rescinded.

Section 2. That the City of Berkeley Conflict of Interest Code is hereby adopted, as attached, and includes the following:

(a) With the additions noted below, the terms of 2 Cal. Adm. Code Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and made a part of the Conflict of Interest Code of the City of Berkeley except that: (1) the term "investment" shall apply to financial interests in non-profit organizations as well as business entities; (2) the term "interest in real property" includes interests in berths at the Berkeley Marina regardless of when they expire; (3) the terms "non-profit organization" and "business entity" are limited to the jurisdiction in the same manner as the term "investment," i.e., they apply only if the non-profit organization, the business entity, or any parent, subsidiary or otherwise related entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business in the jurisdiction at any time during the two years prior to the time any statement or other action is required under this Code.

(b) Designated Positions with Reporting Requirements.

Elected officials, legislative assistants, members of boards and commissions appointed by the City Council, consultants and City employees holding designated positions shall be considered designated positions subject to reporting requirements under the Conflict of Interest Code, and shall disclose financial interests as set forth in the appendices listing individual disclosure categories.

Section 3. Filing of Statements

Persons holding designated positions shall file Statements of Economic Interests with the City of Berkeley on Fair Political Practices Commission forms, in conformance with the individual disclosure categories and State guidelines, when requested by the City Clerk. The City Clerk will retain custody of the statements and make the statements available for public inspection and reproduction. City Employees and Legislative Assistants in designated positions shall file electronic Statements of Economic Interests (e-file). The electronic filing will be the filing of record for City Employees and Legislative Assistants. City Commissioners may file in paper or file electronic Statements of Economic Interests (e-file). Statements filed electronically by Commissioners will be the filing of record.

Section 4. Late Filings and Failure to File Statements

Any violation of any provision of this Code is subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Government Code Sections 81000 et seq. The following additional regulations shall apply to City of Berkeley (a) employees, (b) legislative assistants, (c) members of boards and commissions appointed by the City Council or by an existing City commission, and (d) consultants:

a. City Employees:

If a City employee fails to e-file an Assuming Office or Annual Statement of Economic Interests within thirty days after the City Clerk has given specific written notice of non-filing, they shall be suspended without pay until such time as the required disclosure form has been e-filed. The employee's supervisor shall comply with the provisions of the appropriate Memorandum of Understanding or City of Berkeley Personnel Rules and Regulations in imposing such suspension, in addition, the City Clerk shall impose late filing fees in accordance with Government Code Section 91013 and 91013.5. Prior to resuming active employment with the City of Berkeley, all outstanding statements must be filed and any outstanding fine, payable under Government Code Section 91013, shall be paid. No person shall resume active employment with the City of Berkeley if there are outstanding statements or fines.

b. Legislative Assistants

If a legislative assistant fails to e-file an Assuming or Annual Statement of Economic Interests within thirty days after the City Clerk has given specific written notice of non-filing, the legislative assistant shall be terminated until such time as the required disclosure form has been e-filed, in addition, the City Clerk shall impose late filing fees in accordance with Government Code Sections 91013 and 91013.5. Prior to being reappointed by a Councilmember, all outstanding statements must be filed and any outstanding fine, payable under Government Code Section 91013, shall be paid. No person shall resume employment as a legislative assistant if there are outstanding statements or fines.

c. Members of Boards and Commissions:

If a member of any non-elected board or commission specified in the Code fails to file an Assuming Office Statement of Economic Interests within thirty days after their date of appointment, the commissioner's term shall expire. Similarly, if an Annual Statement of Economic Interests is not filed within thirty days after the City Clerk has given specific written notice of non-filing, the member's term on the commission shall expire. The City Clerk shall notify the commissioner that their term has expired and the appointing councilmember that a vacancy exists on the commission; in addition, the City Clerk shall impose late filing fees in accordance with Government Code Sections 91013 and 91013.5.

If the commissioner has not taken the Oath of Office and not attended any meetings, the commissioner is deemed not to have accepted the appointment and is not subject to filing obligations.

Prior to being reappointed to any commission, all outstanding filings for all commission appointments must be filed and any outstanding fines, payable under Government Code Section 91013, shall be paid. No person shall be appointed to any commission if there are outstanding statements or fines; and no person shall be appointed to any commission for a period of one year if terminated from any commission more than once for failure to file statements.

d. Consultants:

If a consultant, as defined in 2 Cal. Code Regs. Section 18701, fails to file any Statement of Economic Interests within thirty days after the City Clerk has given specific written notice of non-filing, they shall be advised by the City's project manager that no further payments shall be made by the City of Berkeley under the contract until such statement has been received by the City Clerk. The City Clerk shall also impose late filing fees in accordance with Government Code Sections 91013 and 91013.5.

Section 5. Interest and Positions in Non-Profit Organizations - Disclosure and Disqualification

Whenever a disclosure category requires disclosure of specific financial interests or positions in business entities, disclosure of the equivalent financial interests or positions in non-profit organizations is required. Disqualification shall be required as to a disclosed interest or position in a non-profit organization whenever disqualification would have been required as a result of an equivalent financial interest or position in a business entity.

Section 6. Revisions to the City's Conflict of Interest Code

The City Clerk will review the City's Conflict of Interest Code on an annual basis and if changes are required will submit a revised code for Council approval, or if no changes are necessary so notify the City Council, by the applicable deadline specified in the Political Reform Act.

AUDITOR'S DEPARTMENT APPENDIX

Designated Employees	Disclosure Categories
City Auditor	1
Audit Manager	1
Auditor II	1
Auditor I	1
Deputy City Auditor for Payroll Management	1
Senior Auditor	1

Disclosure Categories

Category 1

All designated employees shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property; and all sources of income, including gifts, loans and travel payments.

CITY ATTORNEY'S OFFICE APPENDIX

Designated Employees

Disclosure Categories

Administration

City Attorney	1
Assistant City Attorney	1
Deputy City Attorney I, II, & III	1
Paralegal	1

Disclosure Categories

Category 1

All designated employees shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property; and all sources of income, including gifts, loans and travel payments.

CITY CLERK DEPARTMENT APPENDIX

Designated Employees	Disclosure Categories
City Clerk	1
Deputy City Clerk	1
Assistant City Clerk	1
Assistant Management Analyst	1

Disclosure Categories

Category 1

All designated employees assigned to this category shall disclose all business entities, and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property; and all sources of income, including gifts, loans and travel payments.

CITY MANAGER'S DEPARTMENT APPENDIX

Designated Employees	Disclosure Categories
Administration	
City Manager	1
Deputy City Manager	1
Assistant City Manager	1
Assistant to the City Manager	1
Administrative Hearing Examiner	1
Senior Management Analyst	1
Associate Management Analyst	1
Assistant Management Analyst	1
Community Services Specialist II	2
Digital Communications Coordinator	1
Health Services Program Specialist	3
Animal Care Services	
Animal Services Manager	1
Registered Veterinary Technician	1
Code Enforcement Group	
Code Enforcement Supervisor	1
Code Enforcement Officer	1

EXHIBIT A-4

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**City Manager’s Department Appendix
Page 2**

Designated Employees	Disclosure Categories
Office of Economic Development	
Manager of Economic Development	1
Economic Development Project Coordinator	1
Community Development Project Coordinator	1
Assistant Management Analyst	1
Civic Arts Coordinator	1
Office of Budget and Fiscal Management	
Budget Manager	1
Senior Management Analyst	1

Disclosure Categories

Category 1

Designated employees assigned to this category shall disclose all business entities, and non-profit organizations in which they have an investment or in which they are a director officer, partner, trustee, employee or hold any position of management; all interests in real property; and all sources of income, including gifts, loans and travel payments.

Category 2

Designated employees assigned to this category shall disclose business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income manufactures, distributes, sells or otherwise provides goods or services of the type utilized by the division or program to which the designated employee is assigned.

EXHIBIT A-4

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**City Manager's Department Appendix
Page 3**

Disclosure Categories (Continued)

Category 3

Designated employees assigned to this category shall disclose business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income manufactures, distributes, sells or otherwise provides goods or services of the type utilized by any division or program in the Department of Health, Housing and Community Services.

FINANCE DEPARTMENT APPENDIX

Designated Employees	Disclosure Categories
Administration	
Director of Finance	1
Systems Accountant	1
Senior Systems Analyst	1
Accounting Division	
Accounting Manager	1
Senior Accountant	2
Treasury Division	
Revenue Development Supervisor	1
Revenue Development Specialist II	1
Treasury Manager	1
Revenue Collections Division	
Revenue Collection Manager	1
General Services Division	
General Services Manager	1
Senior Buyer	1
Buyer	1
Contract Administrator	1

EXHIBIT A-5

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**Finance Department Appendix
Page 2**

Disclosure Categories

Category 1

Designated employees assigned to this category shall disclose all business entities and non-profit organizations in which they have an investment or in which are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property; and all sources of income including gifts, loans and travel payments.

Category 2

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:

- (a) is a financial institution or is otherwise eligible under state law to have city funds, including pension, retirement and deferred compensation funds, deposited with it or invested in it;
- (b) is of the type which has provided services, including but not limited to professional advice on investment, bond, tax or legal matters, to the Finance Department within the previous two years;
- (c) is subject to a City of Berkeley licensing requirement; or
- (d) provides real property sales or management services or owns or operates real property of the type leased or purchased by the City of Berkeley within the previous two years.

EXHIBIT A-5

FIRE AND EMERGENCY SERVICES DEPARTMENT APPENDIX

Designated Employees	Disclosure Categories
Fire - Office of the Chief	
Fire Chief	1
Fire Captain I/II	2, 3
Administrative & Fiscal Services Manager	1
Associate Management Analyst	3
Training	
Assistant Fire Chief	1
Fire Captain I/II	2, 3
Paramedic Supervisor	2, 3
Operations	
Deputy Fire Chief	1
Assistant Fire Chief	1
Battalion Chief	1
Fire Captain I/II	2, 3
Fire Prevention	
Fire Marshal	1
Deputy Fire Marshal	1
Fire Prevention Inspectors	2

EXHIBIT A-6

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**Fire and Emergency Services Department Appendix
Page 2**

Designated Employees

Disclosure Categories

Fire Prevention (Continued)

Fire and Life Safety Plans Examiner	2,4
Assistant Management Analyst	2, 4

**Special Operations Division
Office of Emergency Services/Emergency Medical Services**

Assistant Fire Chief	1
Emergency Services Coordinator	4

Disclosure Categories

Category 1

Designated employees assigned to this category shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property, and all sources of income, including gifts, loans and travel payments.

Category 2

Designated employees assigned to this category shall disclose any interest in commercial, industrial, or institutional real property; in residential rental property consisting of three or more units; or any other property subject to fire inspection. In addition, designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:

- (a) owns, manages, or operates real property of the type subject to fire inspection; or
- (b) is in the building and construction industry, including but not limited to architects, developers, contractors, sub-contractors, materials suppliers or consultants.

EXHIBIT A-6

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**Fire and Emergency Services Department Appendix
Page 3**

Disclosure Categories (Continued)

Category 3

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income manufactures, distributes, sells, leases or otherwise provides goods, equipment, or services of the type utilized by the Fire and Emergency Services Department.

Category 4

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income manufactures, distributes, sells, leases or otherwise provides goods, equipment or services of the type utilized by the division or program of the Fire and Emergency Services Department to which the designated employee is assigned.

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HEALTH, HOUSING AND COMMUNITY SERVICES DEPARTMENT APPENDIX

Designated Employees	Disclosure Categories
Office of the Director	
Administrative & Fiscal Services Manager	1
Associate Management Analyst	2
Director of Health, Housing & Community Services	1
Deputy Director of Health, Housing & Community Services	1
Senior Management Analyst	2
Public Health Program Physician/Deputy Health Officer	1, 6
Community Services Specialist III	4, 6, 8
Community Services Specialist I	4, 6
Health Officer	1
Senior Health Services Program Specialist	4, 6
Senior Health Management Analyst	4, 6
Supervising Public Health Nurse	4, 6
Health Services Program Specialist	3
Accounting Office Specialist Supervisor	4
Epidemiologist	8
Aging Services Division	
Manager of Aging Services	1
Mental Health Clinical Supervisor	4, 6
Senior Citizen Center Director	4, 6

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**Health, Housing and Community Services Department Appendix
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Designated Employees **Disclosure Categories**

Aging Services Division (Continued)

Senior Health Services Program Specialist	4, 6
Transportation Services Coordinator	4, 6

Housing and Community Services Division

Associate Management Analyst	6
Associate Planner	8
Community Development Project Coordinator	1
Manager of Housing and Community Services	1
Community Services Specialist II, III	8
Senior Community Development Project Coordinator	1
Homeless Services Coordinator	8
Senior Management Analyst	2
Building Inspector I (Certified)	1

Environmental Health

Environmental Health Supervisor	1
Manager of Environmental Health	1
Registered Environmental Health Specialist	8
Senior Environmental Health Specialist	1
Vector Control Technician	8

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**Health, Housing and Community Services Department Appendix
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Designated Employees **Disclosure Categories**

Mental Health

Community Services Specialist II	4
Health Services Program Specialist	2
Manager of Mental Health Services	1
Assistant Manager of Mental Health Services	1
Mental Health Clinical Supervisor	4, 6
Mental Health Program Supervisor	2
Supervising Psychiatrist	1
Supervising Mental Health Nurse	4, 6

Public Health

Manager of Public Health Services	1
Health Nutrition Program Coordinator	4, 6
Health Services Supervisor	1
Senior Health Services Program Specialist	4, 6
Supervising Public Health Nurse	4, 6
Health Services Program Specialist	3
Epidemiologist	8
Community Services Specialist III	4, 6
Community Services Specialist I	4, 8

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**Health, Housing and Community Services Department Appendix
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Disclosure Categories

Category 1

Designated employees assigned to this category shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property; and all sources of income, including gifts, loans and travel payments.

Category 2

Designated employees assigned to this category shall disclose business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income manufactures, distributes, sells or otherwise provides goods or services of the type utilized by any division or program in the Department of Health, Housing and Community Services.

Category 3

Designated employees assigned to this category shall disclose any interest in real property located within a Berkeley target area or neighborhood strategy area. In addition they shall also disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income including gifts, loans and travel payments; if the business entity, non- profit organization or source of income is:

- a) a building contractor or subcontractor of the type performing work under Berkeley Housing Rehabilitation Programs; or
- b) is from individuals who have applied for or received housing rehabilitation assistance from the City of Berkeley within the previous two years.

Category 4

Designated employees assigned to this category shall disclose business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income manufactures, distributes, sells or otherwise provides goods or services of the type utilized by the division or program in the Department of Health, Housing and Community Services to which the designated employee is assigned.

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Health, Housing and Community Services Department Appendix Page 5

Category 5

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:

- a) manufactures, distributes, sells installs or otherwise markets equipment for energy conservation or alternative energy development; or
- b) provides services, including but not limited to design, repair, advocacy or consultation services, in the areas of energy conservation or alternative energy development.

Category 6

Designated employees assigned to this category shall disclose all business entities or non-profit organizations in which they have an investment, or in which they are a director, officer, partner, trustee, employee or hold any position of management and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income is of the type which receives funds under contract with the City of Berkeley to:

- a) Serve the social welfare needs of the people of Berkeley; or
- b) Provide health services, including but not limited to emergency services, obstetric, gynecological or maternity care, care for chronic or communicable diseases, and mental health; or
- c) Provide services to the aging; or
- d) Lease, own, or operate real property of the type suitable for the program or services under the supervision of the designated employee; or of the type suitable to be leased, owned, or operated by the City of Berkeley for health programs under the supervision of the designated employee.

Category 7

Designated employees assigned to this category shall disclose any interest in real property consisting in whole or in part of residential rental property. In addition, they shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of

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**Health, Housing and Community Services Department Appendix
Page 6**

Category 7 (Continued)

management; and income, including gifts, loans and travel payments; if the business entity or source of income has an interest in, operates or manages residential rental property.

Category 8

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:

- a) is of the type whose contracts with the City of Berkeley are monitored by the Department of Health, Housing and Community Services or which receives funds under contract with the City of Berkeley to serve the social welfare needs of the people of the Berkeley; or
- b) is of the type which manufactures, distributes, sells or otherwise provides goods or services of the type utilized by the designated employee's division of the Department of Health, Housing and Community Services

Category 9

Designated employees assigned to this category shall disclose all business entities or non-profit organizations in which they have an investment, or in which they are a director, officer, partner, trustee, employee or hold any position of management; any interest in real property within one-fourth mile of any Berkeley Senior Center and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income is of the type which receives funds under contract with the City of Berkeley to:

- a) Serve the social welfare needs of the people of Berkeley; or
- b) Provide health services, including but not limited to emergency services, care for chronic or communicable diseases, and mental health; or
- c) Provide services to the aging; or
- d) Lease, own, or operate real property of the type suitable for the program or services under the supervision of the designated employee; or of the type suitable to be leased, owned, or operated by the City of Berkeley for community services programs under the supervision of the designated employee.

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HUMAN RESOURCES DEPARTMENT APPENDIX

Designated Employees	Disclosure Categories
Director of Human Resources	1
Human Resources Manager	1
Equal Employment, Opportunity & Diversity Officer	1
Employee Relations Manager	1
Occupational Health and Safety Officer	2, 3
Occupational Health and Safety Specialist	3
Senior Human Resources Analyst	2, 3
Training Officer	2
Worker's Compensation Analyst	3
Benefits	
Associate Human Resources Analyst	3

Disclosure Categories

Category 1

Designated employees in this category shall disclose all business entities and non-profit organizations in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property and all sources of income, including gifts, loans and travel payments.

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**Human Resources Department Appendix
Page 2**

Disclosure Categories (Continued)

Category 2

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:

- (a) is a labor union; or
- (b) is of the type which has provided the Human Resources Department within the previous two years with testing materials or services, or with services of any other kind including but not limited to consultant services or medical examination services; or
- (c) provides training, organizational development or facilitator services.

Category 3

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or are a director, officer, partner, trustee, employee or hold any position of management; and income including gifts, loans and travel payments; if the business entity, non-profit organization or source of income is of the type which provides insurance of any kind, including but not limited to workers' compensation, health, life or liability insurance or related services.

DEPARTMENT OF INFORMATION TECHNOLOGY APPENDIX

Designated Employees	Disclosure Categories
Director of Information Technology	1
Senior Management Analyst	1
Senior Systems Analyst	1
Senior Information Systems Specialist	1
Customer Service Manager	1
Information Systems Manager	1
Application Programmer Analyst II	1
Information Security Manager	1
Database Administrator	1

Disclosure Categories**Category 1**

Designated employees assigned to this category shall disclose all business entities, and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property; and all sources of income, including gifts, loans and travel payments.

EXHIBIT A-9

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LIBRARY DEPARTMENT APPENDIX

Designated Employees	Disclosure Categories
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Administration Services

Director of Library Services	1
Deputy Director of Library Services	1
Administrative & Fiscal Services Manager	1

Circulation Services Division

Circulation Services Manager	1
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Children's/Neighborhood Services Division

Library Services Manager	1
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Technical Services & Information Technology

Library Information Systems Administrator	1
Library Services Manager	1

Maintenance Division

Senior Building Maintenance Supervisor	1
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Disclosure Categories**Category 1**

Designated employees assigned to this category shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property; and all sources of income, including gifts, loans and travel payments.

EXHIBIT A-10

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MAYOR AND COUNCIL DEPARTMENT APPENDIX

Designated Employees	Disclosure Categories
Mayor	1
City Councilmembers	1
Chief of Staff	1
Assistant to the Mayor	1
Legislative Assistant/Administrative Assistant	1

Disclosure Categories

Category 1

Designated employees assigned to this category shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property; and all sources of income, including gifts, loans and travel payments.

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OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY APPENDIX

Designated Employees

Disclosure Categories

Police Accountability Commission Staff

Director of Police Accountability	1
Police Review Commission Officer	1
Police Review Commission Investigator	1

Disclosure Category

Category 1

Designated employees assigned to this category shall disclose any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization, or source of income:

- (a) manufactures, distributes, sells or otherwise markets weapons, ammunition, or other law enforcement equipment;
- (b) is of the type which offers law enforcement training courses considered by the Police Accountability Board and Office of the Director of Police Accountability; or
- (c) is a member of the Berkeley Police Department.

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PARKS, RECREATION & WATERFRONT DEPARTMENT APPENDIX

Designated Employees	Disclosure Categories
Office of the Director	
Director of Parks, Recreation and Waterfront	1
Deputy Director	1
Senior Management Analyst	1
Associate Civil Engineer	1
Supervising Civil Engineer	1
Capital Improvement Programs Manager	1
Assistant Civil Engineer (Registered)	1
Parks Division	
Parks Superintendent	1
Senior Forestry Supervisor	2, 3
Senior Landscape Gardener Supervisor	2, 3
Building Maintenance Supervisor	2, 3
Senior Building Maintenance Supervisor	2, 3
Recreation Division	
Recreation and Youth Services Manager	1
Camp Manager	2, 3, 4
Recreation Program Supervisor	1
Aquatics Facilities Supervisor	3
Recreation Coordinator	3

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**Parks, Recreation and Waterfront Department Appendix
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Designated Employees

Disclosure Categories

Recreation Division (Continued)

Aquatics Coordinator	3
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Waterfront Division

Waterfront Manager	1
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Harbormaster	3, 5
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Waterfront Supervisor	2, 5
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Disclosure Categories

Category 1

Designated employees assigned to this category shall disclose all business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property and all sources of income, including gifts, loans and travel payments.

Category 2

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income including gifts, loans and travel payments; if the business entity, non-profit organization or source of income is of the type which manufactures, distributes, sells, leases or otherwise provides the Parks, Recreation & Waterfront Department with:

(a) goods of any kind, including but not limited to heavy equipment, vehicles, machinery, tools, fuel products or other equipment; or

(b) services of any kind, including but not limited to building or construction services and consultant services.

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**Parks, Recreation and Waterfront Department Appendix
Page 3**

Disclosure Categories (Continued)

Category 3

Designated employees assigned to this category, shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income manufactures, distributes, sells, leases or otherwise provides goods, equipment, machinery, supplies or services of the type used by the division or program of the Parks, Recreation & Waterfront Department to which the designated employee is assigned.

Category 4

Designated employees assigned to this category shall disclose all interests in real property. In addition, they shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:

- (a) owns, operates or manages real property; or
- (b) is a utility; or
- (c) is in the building or construction industry, including but not limited to architects, engineers, building construction contractors or subcontractors, materials suppliers, or consultants.

Category 5

Designated employees assigned to this category shall disclose:

- (a) all interests in real property located on or within one-fourth mile of the Berkeley Waterfront, including any leasehold interest in berths at the Berkeley Marina; and
- (b) any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee or employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:
 - (i) is located on the Berkeley Waterfront;

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**Parks, Recreation and Waterfront Department Appendix
Page 4**

Disclosure Categories

Category 5 (Continued)

- (ii) has an interest in real property on the Berkeley Waterfront; or does business, has done business within the previous two years, plans to do business on the Berkeley Waterfront, including but not limited to architects, engineers, real estate developers, building contractors, lawyers and others involved in projects or proposals on the Berkeley Waterfront.

PLANNING AND DEVELOPMENT DEPARTMENT APPENDIX

Designated Employees **Disclosure Categories**

Office of the Director / Administration

Director of Planning and Development	1
Administrative and Fiscal Services Manager	1
Associate Management Analyst	1
Assistant Management Analyst	1
Community Services Specialist II	2, 4

Permit Service Center

Permit Center Coordinator	1
Senior Permit Specialist	2, 4
Permit Specialist	2, 4

Land Use Planning Division

Land Use Planning Manager	1
Principal Planner	1
Senior Planner	1
Associate Planner	1
Assistant Planner	1
Planning Technician	1

Building and Safety Division

Building and Safety Manager	1
Assistant Building and Safety Manager	1

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**Planning and Development Department Appendix
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Designated Employees	Disclosure Categories
Building and Safety Division (Continued)	
Resilient Buildings Program Manager	1
Supervising Building Inspector	2, 4
Senior Building Inspector	2, 4
Building Inspector I & II (Certified)	2, 4
Building Plans Engineer	2, 4
Senior Building Plans Engineer	2, 4
Building Plans Examiner	2, 4
Senior Building Plans Examiner	2, 4
Community Services Specialist I & II	2, 4
Toxics Management Division	
Hazardous Materials Manager	1
Hazardous Materials Specialist I & II	3
Office of Energy and Sustainable Development	
Energy Program Manager	1
Associate Management Analyst	2, 4
Community Services Specialist I, II, & III	2, 4
Housing Code Enforcement	
Assistant Management Analyst	1
Housing Inspector	1

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**Planning and Development Department Appendix
Page 3**

Designated Employees

Disclosure Categories

Housing Code Enforcement (Continued)

Housing Inspector (Certified)	1
Housing Inspector Supervisor	1

Disclosure Categories

Category 1

Designated employees assigned to this category shall disclose all business entities or non-profit organizations in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property; and all sources of income including gifts, loans and travel payments.

Category 2

Designated employees assigned to this category shall disclose all interests in real property. In addition, they shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income has an interest in real property or is in the building and construction industry, including but not limited to architects, developers, contractors, sub-contractors, materials suppliers or consultants.

Category 3

Designated employees assigned to this category shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:

- (a) produces, uses, collects or disposes of hazardous and toxic materials; or
- (b) provides consulting services in the areas of source reduction and recycling, and the management, treatment and disposal of hazardous wastes and materials.

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**Planning and Development Department Appendix
Page 4**

Disclosure Categories (Continued)

Category 4

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:

- (a) manufactures, distributes, sells installs or otherwise markets equipment for energy conservation or alternative energy development; or
- (b) provides services, including but not limited to design, repair, advocacy or consultation services, in the areas of energy conservation or alternative energy development.

POLICE DEPARTMENT APPENDIX

Designated Employees	Disclosure Categories
Chief of Police	1
Administrative & Fiscal Services Manager	1
Police Captain	1

Disclosure Categories

Category 1

Designated employees assigned to this category shall disclose all business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property; and all sources of income, including gifts, loans and travel payments.

PUBLIC WORKS DEPARTMENT APPENDIX

Designated Employees	Disclosure Categories
Office of the Director	
Director of Public Works	1
Deputy Director of Public Works	1
Senior Management Analyst	2
Associate Management Analyst	2
Administrative & Fiscal Services Manager	1
Assistant Management Analyst	2
Disability Services Specialist	2, 4
Community Development Project Coordinator	1, 4
Public Works Operations Manager	1, 4
Solid (Zero) Waste and Recycling Manager	1, 5
Occupational Health and Safety Officer	2, 3
Engineering Division	
Manager of Engineering	1, 4
Assistant Management Analyst	3
Associate Civil Engineer	2, 4
Engineering Inspector	2, 6
Senior Engineering Inspector	2, 6
Chief of Party	2
Assistant Public Works Engineer	2
Junior Public Works Engineer	2

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**Public Works Department Appendix
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Designated Employees

Disclosure Categories

Engineering Division (Continued)

Assistant Civil Engineer (Registered)	2, 4
Supervising Civil Engineer	1, 4, 6
Senior Drafting Technician	2, 4
Building Inspector	1, 6
Senior Building Inspector	2, 6
Environmental Compliance Specialist	2, 4

Transportation Division

Deputy Director of Public Works	1
Principal Planner	1
Senior Planner	1
Associate Planner	1
Assistant Planner	2, 4
Parking Services Manager	2
Supervising Traffic Engineer	1, 4
Associate Transportation Engineer	2, 4
Assistant Transportation Engineer	2, 4
Associate Civil Engineer	2, 4
Assistant Management Analyst	2
Traffic Maintenance Supervisor	2

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Designated Employees

Disclosure Categories

Transportation Division (Continued)

Parking Meter Maintenance and Collection Supervisor	2
Senior Public Works Supervisor	3

Zero Waste Division

Solid (Zero) Waste and Recycling Manager	1, 5
Senior Solid (Zero) Waste Supervisor	2
Recycling Program Manager	3, 5
Solid (Zero) Waste Supervisor	3, 5
Public Works (Zero Waste) Operations Manager	1, 4, 5
Environmental Compliance Specialist	1
Field Representative	2
Associate Management Analyst	2

Facilities Management Division

Environmental Compliance Specialist	3, 7
Facilities Maintenance Superintendent	2, 6
Senior Building Maintenance Supervisor	3, 6
Building Maintenance Supervisor	3, 6
Senior Electrical Supervisor	1, 4
Lead Communications Technician	1

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**Public Works Department Appendix
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Designated Employees

Disclosure Categories

Equipment Maintenance

Equipment Maintenance Superintendent	2, 4
Senior Equipment Supervisor	3

Streets Division

Public Works Maintenance Superintendent	2
Senior Public Works Supervisor	3
Assistant Management Analyst	2, 4
Public Works Supervisor	3
Sewer Maintenance Assistant Supervisor	3

Disclosure Categories

Category 1

Designated employees assigned to this category shall disclose all business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property; and all sources of income, including gifts, loans and travel payments.

Category 2

Designated employees assigned to this category shall disclose entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income including gifts, loans and travel payments; if the business entity, non-profit organization or source of income is of the type which manufactures, distributes, sells, leases or otherwise provides goods or services of the type used by any division or program of the Public Works Department.

**Public Works Department Appendix
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Disclosure Categories (Continued)

Category 3

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income including gifts, loans and travel payments; if the business entity, non-profit organization or source of income manufactures, distributes, sells, leases or otherwise provides goods, equipment, machinery, supplies or services of the type used by the division or program of the Public Works Department to which the designated employee is assigned.

Category 4

Designated employees assigned to this category shall disclose all interests in real property. In addition, they shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:

- (a) owns, operates or manages real property; or
- (b) is a utility; or
- (c) is in the building or construction industry, including but not limited to architects, engineers, building construction contractors or subcontractors, materials suppliers, or consultants.

Category 5

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income is of the type which:

- (a) collects or hauls solid waste;
- (b) builds or operates any solid waste disposal facility, transfer or processing station or resource recovery facility;
- (c) engages in solid waste recycling activities; or

**Public Works Department Appendix
Page 6**

Disclosure Categories

Category 5 (Continued)

- (d) acts as a consultant to entities or organizations engaged in the above activities.

Category 6

Designated employees assigned to this category shall disclose any interest in real property located in an area of Berkeley in which the utility lines have not been undergrounded. In addition, they shall disclose business entities, or non-profit organizations, in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity or source of income is a public utility company which does any work related to the provision of utility services, is a construction company or subcontractor of such company or has an interest in real property in an area of Berkeley in which the utility lines have not been undergrounded.

Category 7

Designated employees assigned to this category shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:

- (a) produces, uses, collects, stores, or disposes of hazardous or toxic materials; or
- (b) provides consulting services in the areas of source reduction or recycling, or the management, treatment or disposal of hazardous wastes or materials.

RENT STABILIZATION BOARD APPENDIX

Designated Officials	Disclosure Categories
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Commissioners (Board Members)	1, 2, 3
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Designated Employees	Disclosure Categories
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Executive Director	1, 2, 3
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Deputy Director	1, 2, 3
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Assistant Management Analyst	2, 3
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Associate Management Analyst	2, 3
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Senior Management Analyst	2, 3
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Community Services Specialist II	2, 3
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Community Services Specialist III	2, 3
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Senior Hearing Examiner	2, 3
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Hearing Examiners	2, 3
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General Counsel	1, 2, 3
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Staff Attorneys II & III	1, 2, 3
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Senior Planner	2, 3
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Associate Planner	2, 3
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EXHIBIT A-17

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10/21

RENT STABILIZATION BOARD APPENDIX

Page 2

Disclosure Categories

Category 1

Designated employees assigned to this category shall disclose:

- (a) All investment and interest in, and all sources of income from real property including but not limited to ownership, sale, management, transfer or exchange.
- (b) All investments in and sources of income, including gifts, loans and travel payments from entities which own, sell, manage, transfer or exchange real property.
- (c) Any management position including but not limited to a director, officer, partner or trustee in any business entity or non-profit organization subject to or potentially affected by the regulatory authority of the Rent Board.
- (d) The assuming office statement shall disclose all interests and dealings in real property, including but not limited to ownership, sale, management, transfer or exchange, and interests in entities whose primary purpose is the ownership, sale, management, transfer or exchange of real property, during the previous three years.

Category 2

Designated employees assigned to this category shall disclose:

- (a) All investments and interests in and all sources of income from real property, including but not limited to ownership, sale, management, transfer or exchange, subject to the regulatory authority of the Rent Board.
- (b) All investments and business positions in and sources of income, including gifts, loans and travel payments from entities which own, sell, manage, transfer or exchange real property, subject to the regulatory authority of the Rent Board.

Category 3

Designated employees assigned to this category shall disclose investments and business positions in business entities, non-profit organizations and sources of income, including gifts, loans and travel payments of the type which, within the past two years, have contracted with the City of Berkeley to provide services, supplies, materials, machinery or equipment to the Board.

EXHIBIT A-17

RETIRED ANNUITANT APPENDIX

Designated Employees

Disclosure Categories

Retired Annuitants who perform the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a designated position in the City's Conflict of Interest Code.

*

Disclosure Categories

*Disclosure required at the same level as the comparable designated position identified elsewhere in this Code.

ANIMAL CARE COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income:

- a) provides services, goods, or equipment related to the care, treatment or control of animals; or
- b) does business, has done business within the previous two years, or plans to do business with any city owned animal shelter, including but not limited to architects, engineers, building contractors, lawyers and others involved in projects or proposals connected with the building or modification of any City owned animal shelter.

EXHIBIT B-1

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-1 Animal Care.docx
10/21

BERKELEY ENERGY COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee, or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income is of the type which:

- (1) is engaged in the building construction trades;
- (2) manufactures, distributes, sells, installs, or otherwise markets equipment for energy conservation or alternative energy development; or
- (3) provides services, including but not limited to design, repair, advocacy, financial, or consultation services, in the areas of energy conservation or alternative energy development.

EXHIBIT B-2

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-2 Energy.docx

10/21

BOARD OF LIBRARY TRUSTEES APPENDIX

Designated Officials

Members of the Board

Disclosure Category

Members of the Board shall disclose any interest in real property within a 1/2 mile of any Berkeley municipal library. In addition, members of the Board shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel-payments; if the business entity, non-profit organization, or source of income is of the type which:

- (a) manufactures, repairs, distributes, sells, leases or otherwise markets library materials and equipment including, but not limited to, books, periodicals, art slides or prints, records, and cataloguing equipment or systems; or
- (b) has contracted with the Berkeley Library Department within the previous two years to provide any other kinds of goods or services to the Department.

EXHIBIT B-3

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-3 Library Board.docx
10/21

CANNABIS COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose:

- (1) All interests in real property located in the City of Berkeley; and
- (2) Any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization or source of income is of the type which:
 - a) manufactures, distributes, sells, installs, or otherwise markets equipment or supplies for cultivation or consumption of the plant Cannabis sativa L. or any of its derivatives; or
 - b) operates any cannabis business or organization, including collectives and dispensaries; or
 - c) engages in activities or provides services that involve planting, cultivating, harvesting, transporting, dispensing, delivering, selling at retail or wholesale, manufacturing, compounding, converting, processing, preparing, storing, packaging, or testing, any part of the plant Cannabis sativa L. or any of its derivatives.

EXHIBIT B-4

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-4 Cannabis.docx
10/21

CHILDREN, YOUTH, AND RECREATION COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All Members of the Commission shall disclose:

- (a) all interests in business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization or source of income is related to the work in the field of early childhood development, education, childcare, recreational programs and activities, and

- (b) all interests in real property within $\frac{1}{4}$ mile of any Berkeley park, mini-park or municipal recreation facility or within $\frac{1}{4}$ mile of any open space suitable for development into a park or mini-park.

EXHIBIT B-5

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-5 Children, Youth & Rec.docx
10/21

CIVIC ARTS COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose business entities, and non-profit organizations in which they have an investment, or in which they are a director, officer, partner, employee, or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income:

- (1) has applied for, is receiving, or within the previous two years has received, funds through the City to advance the Arts in Berkeley;
- (2) has profited from the creation, production, sale, or display of any artistic endeavor;
or
- (3) has provided services, goods, or equipment to artistic endeavors.

EXHIBIT B-6

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-6 Civic Arts.docx
10/21

COMMISSION ON AGING APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization or source of income has applied for, is receiving or within the previous two years has received funds through the City of Berkeley to provide services to the aging. In addition, members of the Commission shall disclose any interest in real property located within 1/4 mile of any of the Berkeley Senior Centers.

EXHIBIT B-7

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-7 Aging.docx

10/21

COMMISSION ON DISABILITY APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose business entities and non-profit organizations in which they hold an investment or in which they are a director, officer, partner, trustee, employee or have any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income within the previous two years has provided services, goods, or equipment to disabled persons.

EXHIBIT B-8

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-8 Disability.docx

10/21

COMMISSION ON LABOR APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income:

- (1) is a union or other organization which represents or has sought to represent employees or management in collective bargaining; or
- (2) has applied for, is receiving, or within the previous two years has received funds through the City of Berkeley to provide services to organizations whose purpose is to serve the legal rights and economic interests of labor.

EXHIBIT B-9

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-9 Labor.docx

10/21

COMMUNITY ENVIRONMENTAL ADVISORY COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income:

- (a) produces, uses, collects or disposes of hazardous and toxic materials; or
- (b) provides consulting services in the areas of source reduction and recycling, and the management, treatment and dispersal of hazardous wastes and materials.

EXHIBIT B-10

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-10 CEAC.docx
10/21

COMMUNITY HEALTH COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose business entities or non-profit organizations in which they have an investment or are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity or non-profit organization provides goods or services relating in any way to the provision, administration or financing of health care or health planning, education and information.

EXHIBIT B-11

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-11 Community Health.docx
10/21

DESIGN REVIEW COMMITTEE APPENDIX

Designated Officials

Members of the Committee

Disclosure Category

All members of the committee shall disclose any interest in real property consisting in whole or in part of a building located in any commercially zoned area in the City of Berkeley. In addition, members of the Committee shall disclose any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income has an interest in real property consisting in whole or in part of a building located in a commercially zoned area; derives income from the sale of construction supply materials; or performs construction services or renovation services including landscaping, architectural, and interior decorating.

EXHIBIT B-12

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-12 Design Review.docx
10/21

DISASTER AND FIRE SAFETY COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

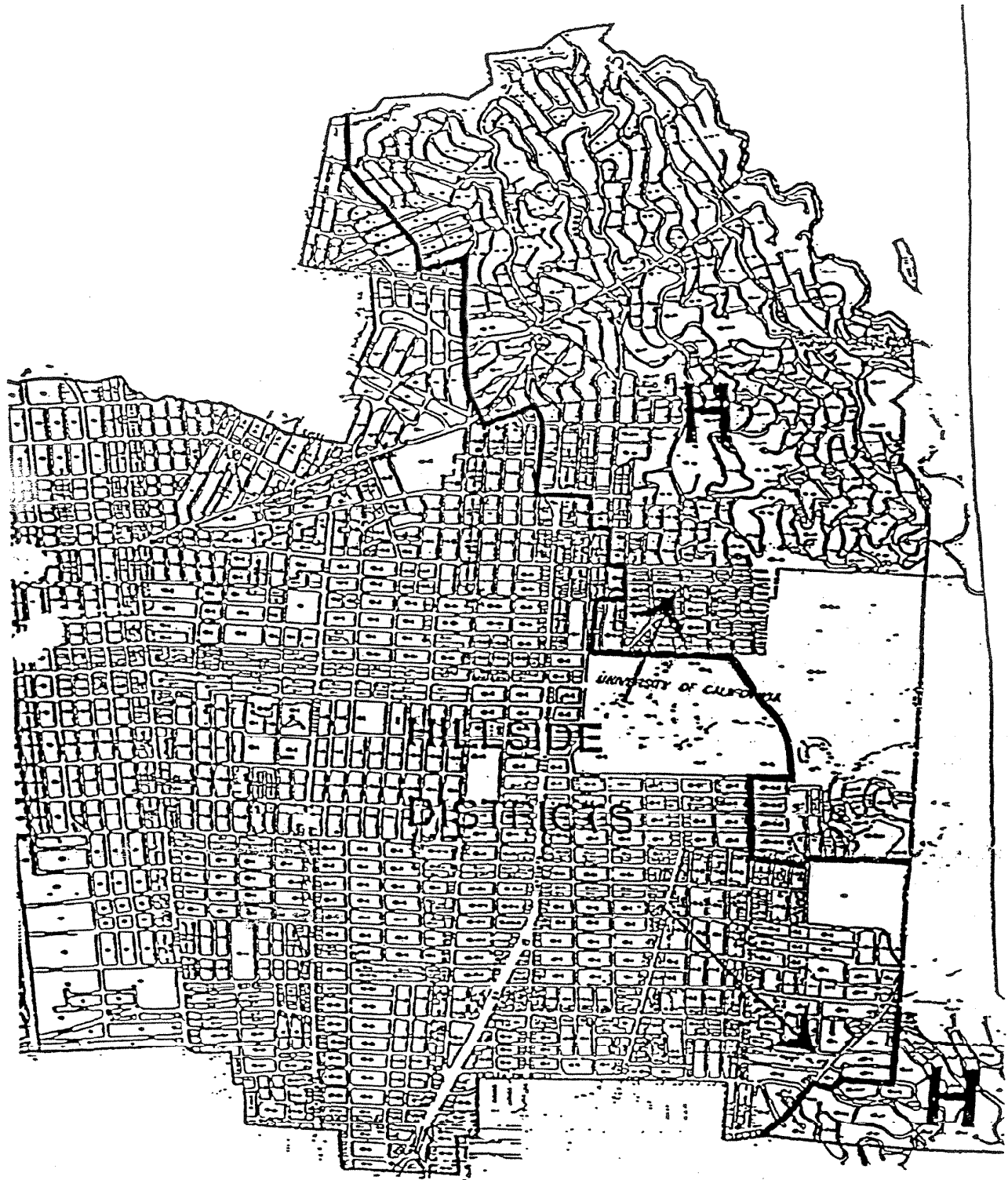
All members of the Commission shall disclose all interests in real property located in the City of Berkeley.

In addition, members of the Commission shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee, or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income is of the type which:

- a) manufactures, distributes, sells, leases, or otherwise provides goods or services that may be used in planning, preparing for or responding to a disaster or emergency as defined in BMC Ch. 2.88.020;
- b) provides consulting services in the areas of disaster management or disaster preparedness;
- c) offers disaster preparedness, fire service, or emergency medical services training courses;
- d) acts as a consultant to organizations engaged in fire inspection, fire prevention, code enforcement, chipper and debris removal, landscaping or any other fire preparedness service.
- e) provides architectural, engineering or construction work in the areas of seismic retrofitting, upgrades or disaster recovery.

EXHIBIT B-13

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10/21



ATTACHMENT A TO DISASTER AND FIRE SAFETY COMMISSION

**ELMWOOD BUSINESS IMPROVEMENT DISTRICT
ADVISORY BOARD APPENDIX**

Designated Officials

Members of the Board

Disclosure Category

All members of the Board shall disclose all interests in real property located in or within one mile of the Elmwood Business Improvement District as defined in Attachment A to this Appendix, and any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income; if the business entity, non-profit organization, or source of income is:

- (a) located in or within one mile of the Elmwood Business Improvement District;
- (b) has an interest in real property located in or within one mile of the Elmwood Business Improvement District; or
- (c) does business, has done business within the previous two years, or plans to do business in or within one mile of the Elmwood Business Improvement District, including but not limited to architects, engineers, real estate developers, building contractors, lawyers and others involved in projects or proposals located in or within one mile of the Elmwood Business Improvement District.

EXHIBIT B-14

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-14 Elmwood BID.docx
10/21

ATTACHMENT A

**ELMWOOD BUSINESS IMPROVEMENT DISTRICT
ADVISORY BOARD APPENDIX**

7.84.030 Boundaries of district.

The boundaries of the District are as specified in this section and in the District's Boundary Map attached to the ordinance codified in this chapter and on file with the office of the City Clerk.

Western Boundary. A line connecting the western edge of all parcels fronting on the western side of College Avenue in the C-E zoning district from 2832 College to 2992 College but including the City-owned Elmwood parking lot that is accessed from Russell Street, and addresses on Ashby from 2629 to 2648. The parcels along the western boundary are as follows:

Assessor's Book 053:

Block 1695: Parcels 11, 12-1, and 12-2.

Assessor's Book 052:

Block 1568: Parcels 3, 4-1, 5-1, 5-2, 6-2, 7, 9, 11-1, 12-1, 49, 50, 51, 52, 53, 55, and 56.

Block 1573: Parcels 2, 4-1, 6, 14, 15, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, and 103.

Eastern Boundary. A line connecting the eastern edge of all parcels fronting on the eastern side of College Avenue from 2887 College Avenue to 2999 College Avenue and 2701 Webster Street. The parcels along the eastern boundary are as follows:

Assessor's Book 053:

Block 1696: Parcel 15.

Assessor's Book 052:

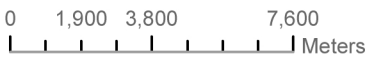
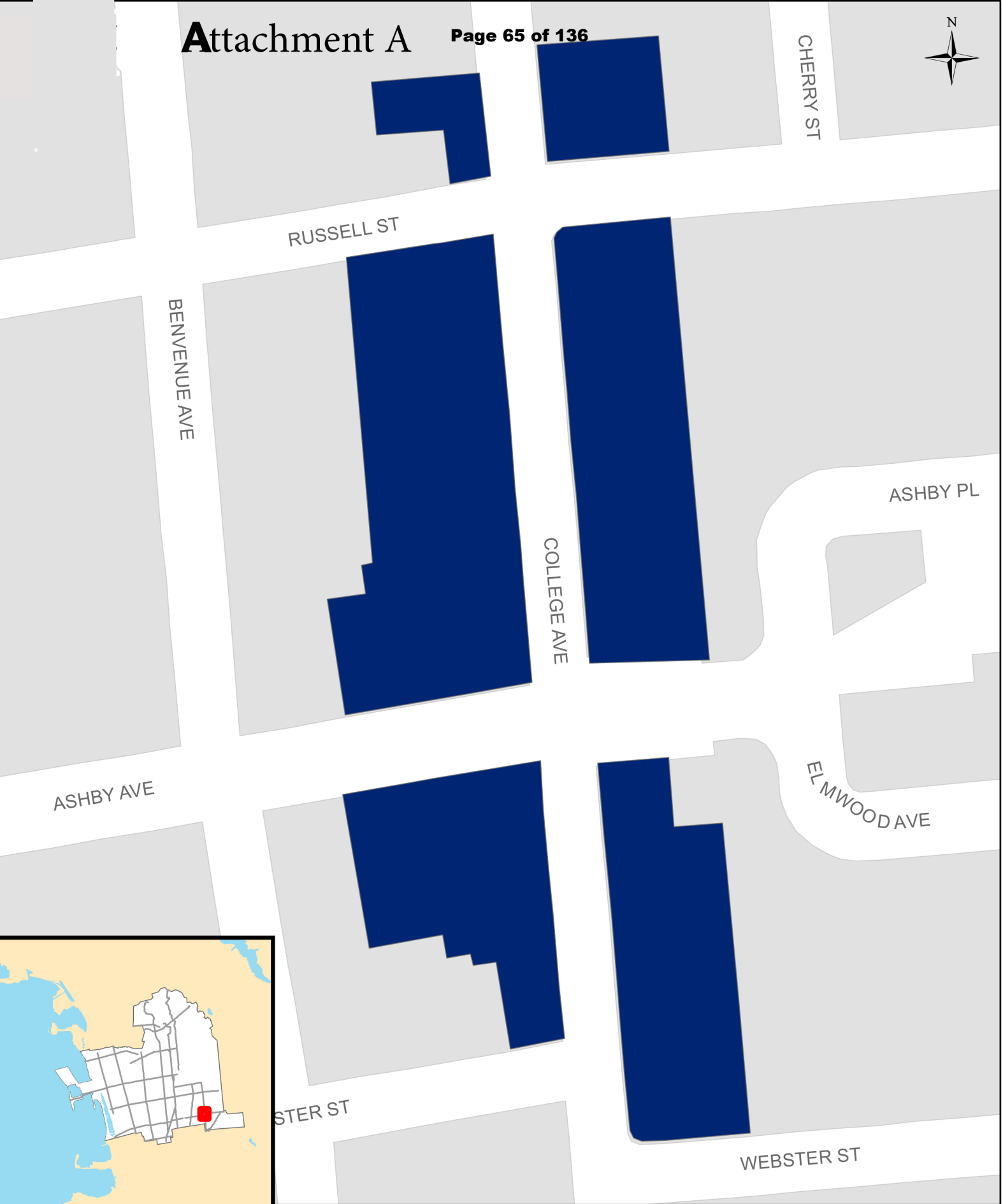
Block 1567: Parcels: 16, 17, 18, 19, 20, 21, 22, 23, 24, 62, 63, 64, 66, 67, 68, 87, 88, 89, 90, and 91.

Southern Boundary. Webster Street.

Northern Boundary. A line connecting the northern edge of parcel 053-1695-011 (2832 College) on the western side of College and the northern edge of parcel 053-1696-015 (2887 College) on the eastern side of College. (Ord. 7317-NS § 3 (part), 2013)

EXHIBIT B-14

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10/21



ELMWOOD BUSINESS IMPROVEMENT DISTRICT

FAIR CAMPAIGN PRACTICES COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income is required to file campaign reports under the Berkeley Election Reform Act of 1974, or acts as a consultant on campaign matters.

EXHIBIT B-15

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-15 Fair Campaign.docx
10/21

HOMELESS COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the commission shall disclose all interests in real property located in the City of Berkeley.

In addition, members of the commission shall disclose any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income:

- (1) is engaged in serving the social welfare needs of the homeless in the City of Berkeley;
- (2) owns or manages real property in Berkeley; or
- (3) derives income from the sale of construction supply materials, or performs construction services or renovation services, including landscaping, architectural, and interior decorating.

EXHIBIT B-16

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-16 Homeless.docx

10/21

HOMELESS SERVICES PANEL OF EXPERTS

Designated Officials

Members of the Commission

Disclosure Category

All members of the commission shall disclose all interests in real property located in the City of Berkeley.

In addition, members of the commission shall disclose any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income:

- (1) is engaged in serving the housing or social welfare needs of the homeless in the City of Berkeley;
- (2) owns or manages real property in Berkeley; or
- (3) derives income from the sale of construction materials, or performs construction or renovation services, including landscaping, architectural, and interior decorating.

EXHIBIT B-17

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-17 Homeless Services Panel.docx
10/21

HOUSING ADVISORY COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Board shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property located in the City of Berkeley; and all sources of income, including gifts, loans, and travel payments..

EXHIBIT B-18

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-18 Housing Advisory.docx
10/21

HUMAN WELFARE AND COMMUNITY ACTION COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose business entities and non-profit organizations in which they have an investment or are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization or source of income is of the type which receives funds under contract with the City of Berkeley to serve the social welfare needs of the people of Berkeley.

EXHIBIT B-19

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-19 Human Welfare.docx
10/21

INDEPENDENT REDISTRICTING COMMISSION

Designated Officials

Members of the Commission

Disclosure Categories

Members of the Commission shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property located in the City of Berkeley; and all sources of income, including gifts, loans, and travel payments.

EXHIBIT B-20

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-20 Independent Redistricting Commission.docx

10/21

JOINT POWERS FINANCING AUTHORITY APPENDIX

Designated Officials

Members of the Authority

Disclosure Category

Members of the Authority shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property located in the City of Berkeley; and all sources of income, including gifts, loans, and travel payments.

EXHIBIT B-21

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10/21

**JOINT SUBCOMMITTEE ON THE IMPLEMENTATION OF STATE HOUSING LAWS
APPENDIX**

Designated Officials

Members of the Commission

Disclosure Category

All members of the Board shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property located in the City of Berkeley; and all sources of income, including gifts, loans, and travel payments.

EXHIBIT B-22

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10/21

LANDMARKS PRESERVATION COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose any interest in real property located in the City of Berkeley consisting in whole or in part of a building more than 40 years old. In addition, members of the Commission shall disclose any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income has an interest in real property located in the City of Berkeley consisting in whole or in part of a building more than 40 years old.

EXHIBIT B-23

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-23 Landmarks.docx
10/21

LOAN ADMINISTRATION BOARD APPENDIX

Designated Officials

Members of the Board

Disclosure Category

All members of the Board shall disclose all business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property located in the City of Berkeley; and all sources of income, including gifts, loans, and travel payments.

EXHIBIT B-24

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-24 Loan Admin.docx
10/21

MENTAL HEALTH COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose business entities and non-profit organizations in which they have an investment or are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income is of the type which has received mental health funds administered by the City of Berkeley.

In addition, members of the Commission shall disclose any interest in real property located within 1/4 mile of any clinical mental health site operated by the City of Berkeley or supported in whole or in part by funds administered by the City of Berkeley.

EXHIBIT B-25

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-25 Mental Health.docx
10/21

PARKS AND WATERFRONT COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All Members of the Commission shall disclose:

- (a) all interest in real property within $\frac{1}{4}$ mile of any Berkeley park, mini-park or municipal recreation facility or within $\frac{1}{4}$ mile of any open space suitable for development into a park or mini-park; and
- (b) any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income is engaged in park design, construction, maintenance or renovation or in the manufacture, distribution or repair of park, recreation or playground equipment; and
- (c) all interests in real property located on or within $\frac{1}{4}$ mile of the Berkeley Waterfront, including any leasehold interest in berths at the Berkeley Marina; and
- (d) any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization or source of income:
 - i. is located on the Berkeley Waterfront;
 - ii. has an interest in real property on the Waterfront; or
 - iii. does business, has done business within the previous two years, or plans to do business on the Berkeley Waterfront, including but not limited to architects, engineers, real estate developers, building contractors, lawyers and others involved in projects or proposals on the Berkeley Waterfront.

EXHIBIT B-26

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-26 Parks & Waterfront.docx
10/21

PEACE AND JUSTICE COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose business entities, non-profit organizations, and financial institutions in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income:

- (1) has applied for, is receiving or within the previous two years has received funds through the City of Berkeley to serve the goal of creating a world community in which the relations between people are based on equality and respect for human rights, or the abhorrence of exploitation and oppression;
- (2) has profited from the manufacture, sale, development, or testing of any weapon, or any device, substance, chemical, or geological agent, which is designed or used principally as a means of individual or mass destruction;
or
- (3) is from individuals who control or serve as directors of financial institutions.

EXHIBIT B-27

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10/21

PERSONNEL BOARD APPENDIX

Designated Officials

Members of the Board

Disclosure Category

All members of the Board shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or the source of income is:

- (1) a union or other organization which represents or has sought to represent employees in collective bargaining; or
- (2) a health plan, an insurance company, or a financial institution offering services of the type made available as fringe benefits to unrepresented employees of the City of Berkeley.

EXHIBIT B-28

G:\CLERK\CONFLICT CODE\Code Updates\2021 Code\Report\Exhibit B\B-28 Personnel Board.docx
10/21

PLANNING COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property located in the City of Berkeley; and all sources of income, including gifts, loans, and travel payments.

EXHIBIT B-29

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POLICE ACCOUNTABILITY BOARD APPENDIX

Designated Officials

Members of the Board

Disclosure Category

All members of the Board shall disclose any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income:

- (a) manufactures, distributes, sells or otherwise markets weapons, ammunition, or other law enforcement equipment;
- (b) is of the type which offers law enforcement training courses considered by the Commission; or
- (c) is a member of the Berkeley Police Department.

EXHIBIT B-30

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PUBLIC WORKS COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all sources of income, including gifts, loans, and travel payments; and all interests in real property located in the City of Berkeley.

EXHIBIT B-31

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REIMAGINING PUBLIC SAFETY TASK FORCE

Designated Officials

Members of the Task Force

Disclosure Categories

All members of the Task Force shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property located in the City of Berkeley; and all sources of income, including gifts, loans, and travel payments.

EXHIBIT B-32

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**SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT
ADVISORY BOARD APPENDIX**

Designated Officials

Board Members

Disclosure Category

All members of the Board shall disclose all interests in real property located on or within one mile of the Solano Avenue Business Improvement District as defined in Attachment A to this Appendix, and any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income; if the business entity, non-profit organization, or source of income is:

- (a) located in or within one mile of the Solano Avenue Business Improvement District;
- (b) has an interest in real property located in or within one mile of the Solano Avenue Business Improvement District; or
- (c) does business, has done business within the previous two years, or plans to do business in or within one mile of the Solano Avenue Business Improvement District, including but not limited to architects, engineers, real estate developers, building contractors, lawyers and others involved in projects or proposals located in or within one mile of the Solano Avenue Business Improvement District.

EXHIBIT B-33

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ATTACHMENT A

SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT
ADVISORY BOARD APPENDIX

Boundaries of the Solano Avenue Business Improvement District

ZONE A

Includes all businesses on real estate parcels with frontage on Solano Avenue or in the C-SO zone between The Alameda and the Berkeley/Albany line.

Northern Boundary:

A line connecting the northern edges of all parcels fronting on the northern side of Solano Avenue or in the C-SO zone from the Albany Town Line to The Alameda. The parcels along the northern boundary are as follows:

Assessor's Map 62:

Block 2848: Parcels 13 and 14

Block 2870: Parcels 16,17-2, 18,19 and 20

Block 2872: Parcels 17,18,19, 20, 21, 22, 23, 24, 25 and 26

Block 2871: Parcels 7-2, 10, 11, 12-1, 15-1, 16-1, 19, 20, 21 and 22

Assessor's Map 61:

Block 2602: Parcels 2, 3-1, 3-2, 4, 5, 5-1, 6, 8, 9, 33-1, 35-4, 37, 38, 40-1, 43-1,44-1, 45, 46, 47, 48, 49, 50 and 51

Eastern Boundary

The western edge of The Alameda

Southern Boundary

1. A line connecting the southern edges of all parcels fronting on the southern side of Solano Avenue or in the C-SO zone from The Alameda to the Albany Town Line. The parcels along the southern boundary are as follows:

Assessor's Map 61

Block 2603: Parcels 1,3-3 and 4

Block 2611: Parcels 1-2, 4, 25-3, 25-4 and 28-1

Block 2612: Parcels 1 and 2

Block 2613: Parcels 1-1, 5-1 and 6

Block 2614: Parcels 1, 2, 3, 4 and 22 through 28

2. The northern edge of Solano Avenue from Tulare Avenue to a point approximately 100 feet west of Neilson Street.

EXHIBIT B-33

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ATTACHMENT A

SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT
ADVISORY BOARD APPENDIX

Western Boundary

The Albany Town Line

ZONE B

Includes all businesses within the boundaries of the District on parcels not fronting on Solano Avenue between The Alameda and the Berkeley/Albany line or in the C-SO zone. The boundaries of the Zone B areas are as follows:

Area 1

A line around the three parcels immediately south of Zone A on the western edge of The Alameda. This area includes the following parcels:

Assessor's Map 61

Block 2603: Parcels 5, 6, and 7

Area 2

A line around the block enclosed by the eastern edge of The Alameda, the southern edge of Solano Avenue, the western edge of Contra Costa Avenue and the northern Edge of Los Angeles Avenue. This area includes the following parcels:

Assessor's Map 61

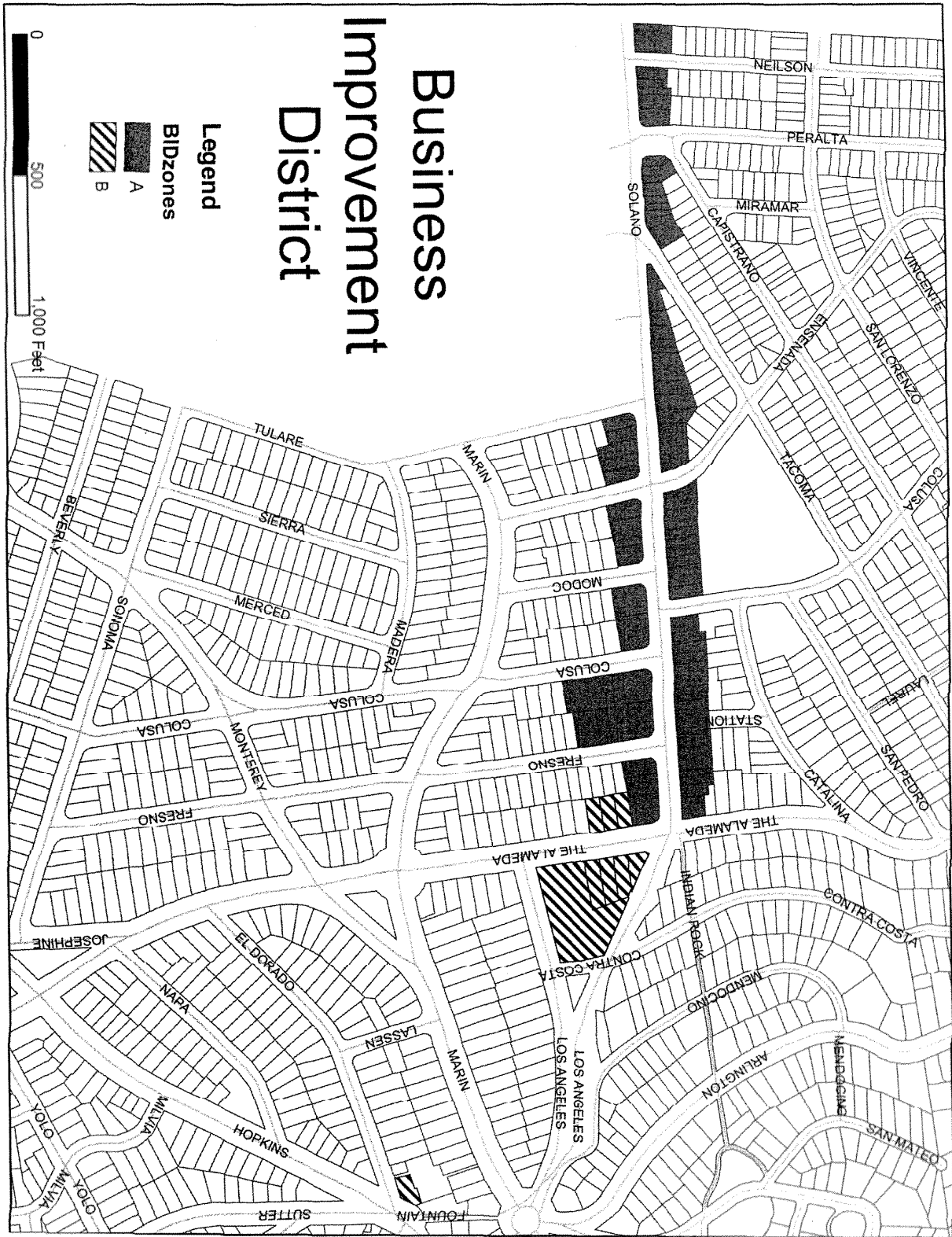
Block 2575: Parcels 40-1, 41, 42, 43 and 44

Area 3

A line around Parcel 3-7, Block 2571, Assessor's Map 61

EXHIBIT B-33

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SUCCESSOR AGENCY APPENDIX

Designated Officials and Employees	Disclosure Categories
Members of the Successor Agency	1
Staff of the Agency	1

Disclosure Categories

Category 1

Designated employees assigned to this category shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property located in the City of Berkeley; and all sources of income, including gifts, loans and travel payments.

SUGAR-SWEETENED BEVERAGE PRODUCT PANEL OF EXPERTS APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization or source of income:

- (1) provides services related to youth food and nutrition programs or school-based food and nutrition programs;
- (2) provides childhood nutrition education;
- (3) provides health care services that address diabetes, weight or other conditions that result from consumption of sugar; or
- (4) conducts public health research related to categories 1, 2 or 3 above.

Members of the Commission shall also disclose employment by or income from Berkeley Unified School District.

EXHIBIT B-35

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10/21

**SUPPLEMENTAL RETIREMENT AND INCOME PLAN
“SRIP” COMMITTEE APPENDIX**

Designated Employees

Supplemental Retirement and Income Plan “SRIP” Committee Members and Alternates

Disclosure Category

All Supplemental Retirement and Income Plan “SRIP” Committee members shall disclose business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property located in the City of Berkeley; and all sources of income, including gifts, loans, and travel payments.

EXHIBIT B-36

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10/21

TRANSPORTATION COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

All members of the Commission shall disclose:

- (a) all interests in real property located in the City of Berkeley;
- (b) all business entities or non-profit organizations, in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and
- (c) all income, including gifts, loans, and travel payments; from (a) or (b) above, or from an individual who has an interest in real property located in the City of Berkeley or who owns or operates a business entity or non-profit organization.

EXHIBIT B-37

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10/21

ZERO WASTE COMMISSION APPENDIX

Designated Officials

Members of the Commission

Disclosure Category

Members of the Commission shall disclose any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income is of the type which:

- (a) collects or hauls solid waste;
- (b) builds or operates any solid waste disposal facility, transfer or processing station or resource recovery facility;
- (c) engages in solid waste recycling activities; or
- (d) acts as a consultant to entities or organizations engaged in the above activities.

EXHIBIT B-38

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10/21

ZONING ADJUSTMENTS BOARD APPENDIX

Designated Officials

Members of the Board

Disclosure Categories

All members of the Board shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property located in the City of Berkeley; and all sources of income, including gifts, loans, and travel payments.

EXHIBIT B-39

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CONSULTANTS APPENDIX¹

Designated Employees

Disclosure Categories

Consultants who make (not just recommend) governmental decisions, such as whether to approve a rate, rule, or regulation, whether to issue, deny, suspend, or revoke any permit, license, application, certificate or similar authorization, adopt or grant City approval to a plan, design, report, study, or adopt or grant City approval of policies, standards, or guidelines for the City or any subdivision thereof

1

Consultants who act in a staff capacity with the City, and in that capacity perform the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a designated position in the City’s Conflict of Interest Code.

Disclosure required at the same level as the comparable designated position identified elsewhere in this Code.

Category 1

Designated consultants assigned to this category shall disclose:

- (a) All business entities or non-profit corporations in which they are a director, officer, partner, trustee, employee or hold a position of management; interests in real property, investments; and income, including gifts, loans and travel payments.²
- (b) When the consultant is a corporation or partnership, only individuals from the firm that participate in City decisions or act in a staff capacity must file disclosure statements.

¹ Only consultants who make a governmental decision or act in a staff capacity as defined in 2 Cal. Code Regs. Section 18701, as amended from time to time, shall be subject to economic disclosure requirements.

² Consultants who make governmental decisions shall disclose pursuant to the broadest disclosure category in the Code subject to the following limitation:

The chief executive officer may determine in writing that a particular consultant, although a “designated position,” is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in the section. Such written determination shall include a description of the consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. The chief executive officer’s determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

EXHIBIT C

**EXHIBIT D: LISTING OF ALL BERKELEY CONFLICT OF INTEREST CODE
DEPARTMENT, COMMISSION AND CONSULTANT APPENDICES**

DEPARTMENTS

<u>EXHIBIT</u>	<u>DEPARTMENT</u>
A-1	Auditor's Department Appendix
A-2	City Attorney's Office Appendix
A-3	City Clerk Department Appendix
A-4	City Manager's Department Appendix
A-5	Finance Department Appendix
A-6	Fire and Emergency Services Department Appendix
A-7	Health, Housing and Community Services Department Appendix
A-8	Human Resources Department Appendix
A-9	Information Technology Department Appendix
A-10	Library Department Appendix
A-11	Mayor and Council Department Appendix
A-12	Office of the Director of Police Accountability Appendix
A-13	Parks, Recreation & Waterfront Department Appendix
A-14	Planning and Development Department Appendix
A-15	Police Department Appendix
A-16	Public Works Department Appendix
A-17	Rent Stabilization Board Appendix
A-18	Retired Annuitant Appendix

EXHIBIT D

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**EXHIBIT D: LISTING OF ALL BERKELEY CONFLICT OF INTEREST CODE
DEPARTMENT, COMMISSION AND CONSULTANT APPENDICES**

BOARDS AND COMMISSIONS

<u>EXHIBIT</u>	<u>COMMISSION</u>
B-1	Animal Care Commission Appendix
B-2	Berkeley Energy Commission Appendix
B-3	Board of Library Trustees Appendix
B-4	Cannabis Commission
B-5	Children, Youth, and Recreation Commission Appendix
B-6	Civic Arts Commission Appendix
B-7	Commission on Aging Appendix
B-8	Commission on Disability Appendix
B-9	Commission on Labor Appendix
B-10	Community Environmental Advisory Commission Appendix
B-11	Community Health Commission Appendix
B-12	Design Review Committee Appendix
B-13	Disaster and Fire Safety Commission Appendix
B-14	Elmwood Business Improvement District Advisory Board
B-15	Fair Campaign Practices Commission Appendix
B-16	Homeless Commission Appendix
B-17	Homeless Services Panel of Experts
B-18	Housing Advisory Commission Appendix

EXHIBIT D

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**EXHIBIT D: LISTING OF ALL BERKELEY CONFLICT OF INTEREST CODE
DEPARTMENT, COMMISSION AND CONSULTANT APPENDICES**

BOARDS AND COMMISSIONS cont'd

<u>EXHIBIT</u>	<u>COMMISSION</u>
B-19	Human Welfare and Community Action Commission Appendix
B-20	Independent Redistricting Commission Appendix
B-21	Joint Powers Financing Authority Appendix
B-22	Joint Subcommittee on the Implementation of State Housing Laws
B-23	Landmarks Preservation Commission Appendix
B-24	Loan Administration Board Appendix
B-25	Mental Health Commission Appendix
B-26	Parks and Waterfront Commission Appendix
B-27	Peace and Justice Commission Appendix
B-28	Personnel Board Appendix
B-29	Planning Commission Appendix
B-30	Police Accountability Board Appendix
B-31	Public Works Commission Appendix
B-32	Reimagining Public Safety Task Force Appendix
B-33	Solano Avenue Business Improvement District Advisory Board Appendix
B-34	Successor Agency Appendix
B-35	Sugar-Sweetened Beverage Product Panel of Experts

EXHIBIT D

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**EXHIBIT D: LISTING OF ALL BERKELEY CONFLICT OF INTEREST CODE
DEPARTMENT, COMMISSION AND CONSULTANT APPENDICES**

BOARDS AND COMMISSIONS cont'd

<u>EXHIBIT</u>	<u>COMMISSION</u>
B-36	Supplemental Retirement and Income Plan (SRIP) Committee Appendix
B-37	Transportation Commission Appendix
B-38	Zero Waste Commission Appendix
B-39	Zoning Adjustments Board Appendix

EXHIBIT D

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**EXHIBIT D: LISTING OF ALL BERKELEY CONFLICT OF INTEREST CODE
DEPARTMENT, COMMISSION AND CONSULTANT APPENDICES**

CONSULTANTS

C

Appendix applies to all Consultants

EXHIBIT D

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CITY MANAGER'S DEPARTMENT APPENDIX

Designated Employees

Disclosure Categories

Administration

City Manager	1
Deputy City Manager	1
Assistant City Manager	1
Assistant to the City Manager	1
Administrative Hearing Examiner	1
Senior Management Analyst	1
Associate Management Analyst	1
Assistant Management Analyst	1
Community Services Specialist III	1 <u>42</u>
Digital Communications Coordinator	1
<u>Health Services Program Specialist</u>	<u>3</u>

Animal Care Services

Animal Services Manager	1
Registered Veterinary Technician	1

Code Enforcement Group

Code Enforcement Supervisor	1
Code Enforcement Officer	1

EXHIBIT A-4

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City Manager 2021.docx
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**City Manager’s Department Appendix
Page 2**

Designated Employees **Disclosure Categories**

Office of Economic Development

Manager of Economic Development	1
Economic Development Project Coordinator	1
Community Development Project Coordinator	1
Assistant Management Analyst	1
Civic Arts Coordinator	1

Office of Budget and Fiscal Management

Budget Manager	1
Senior Management Analyst	1

~~**Police Review Commission Staff**~~

Police Review Commission Officer	3
Police Review Commission Investigator	3

Disclosure Categories

Category 1

Designated employees assigned to this category shall disclose all business entities, and non-profit organizations in which they have an investment or in which they are a director officer, partner, trustee, employee or hold any position of management; all interests in real property; and all sources of income, including gifts, loans and travel payments.

Category 2

Designated employees assigned to this category shall disclose business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization

EXHIBIT A-4

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or source of income manufactures, distributes, sells or otherwise provides goods or services of the type utilized by the division or program to which the designated employee is assigned.

Category 3

Designated employees assigned to this category shall disclose business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income manufactures, distributes, sells or otherwise provides goods or services of the type utilized by any division or program in the Department of Health, Housing and Community Services.

Category 3

~~Designated employees assigned to this category shall disclose any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization, or source of income:~~

- ~~(a) ——— manufactures, distributes, sells or otherwise markets weapons, ammunition, or other law enforcement equipment;~~
- ~~(b) ——— is of the type which offers law enforcement training courses considered by the Police Review Commission; or~~
- ~~(c) ——— is a member of the Berkeley Police Department.~~

Category 4

~~Designated employees assigned to this category shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income including gifts, loans and travel payments, business entities, and non-profit organizations whose sources of income is in the music, theater, dance or fine arts communities, including individual artists, arts organizations and other groups promoting the arts.~~

EXHIBIT A-4

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FINANCE DEPARTMENT APPENDIX

Designated Employees	Disclosure Categories
Administration	
Director of Finance	1
Systems Accountant	1
Senior Systems Analyst	1
Accounting Division	
Accounting Manager	1
Senior Accountant	2
Treasury Division	
Revenue Development Supervisor	1
Revenue Development Specialist II	1
Treasury Manager	1
Revenue Collections Division	
Revenue Collection Manager	1
General Services Division	
General Services Manager	1
Senior Buyer	1
Buyer	1
<u>Contract Administrator</u>	<u>1</u>

EXHIBIT A-5

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**Finance Department Appendix
Page 2**

Disclosure Categories

Category 1

Designated employees assigned to this category shall disclose all business entities and non-profit organizations in which they have an investment or in which are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property; and all sources of income including gifts, loans and travel payments.

Category 2

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:

- (a) is a financial institution or is otherwise eligible under state law to have city funds, including pension, retirement and deferred compensation funds, deposited with it or invested in it;
- (b) is of the type which has provided services, including but not limited to professional advice on investment, bond, tax or legal matters, to the Finance Department within the previous two years;
- (c) is subject to a City of Berkeley licensing requirement; or
- (d) provides real property sales or management services or owns or operates real property of the type leased or purchased by the City of Berkeley within the previous two years.

EXHIBIT A-5

HEALTH, HOUSING AND COMMUNITY SERVICES DEPARTMENT APPENDIX

Designated Employees	Disclosure Categories
----------------------	-----------------------

Office of the Director

Administrative & Fiscal Services Manager	1
Associate Management Analyst	2
Director of Health, Housing & Community Services	1
Deputy Director of Health, Housing & Community Services	1
Senior Management Analyst	2
<u>Public Health Program Physician/Deputy Health Officer</u>	<u>1, 6</u>
<u>Community Services Specialist III</u>	<u>4, 6, 8</u>
<u>Community Services Specialist I</u>	<u>4, 6</u>
<u>Health Officer</u>	<u>1</u>
<u>Senior Health Services Program Specialist</u>	<u>4, 6</u>
<u>Senior Health Management Analyst</u>	<u>4, 6</u>
<u>Supervising Public Health Nurse</u>	<u>4, 6</u>
<u>Health Services Program Specialist</u>	<u>3</u>
<u>Accounting Office Specialist Supervisor</u>	<u>4</u>
<u>Epidemiologist</u>	<u>8</u>

Aging Services Division

Manager of Aging Services	1
Mental Health Clinical Supervisor	4, 6
Senior Citizen Center Director	4, 6

EXHIBIT A-7

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**Health, Housing and Community Services Department Appendix
Page 2**

Designated Employees

Disclosure Categories

Aging Services Division (Continued)

Senior Health Services Program Specialist	4, 6
Transportation Services Coordinator	4, 6

Housing and Community Services Division

Associate Management Analyst	6
Associate Planner	8
Community Development Project Coordinator	1
Manager of Housing and Community Services	1
Community Services Specialist I	4, 8
Community Services Specialist II, III	8
Employment Program Administrator	1
Senior Community Development Project Coordinator	1
Homeless Services Coordinator	8
Senior Management Analyst	2
Building Inspector I (Certified)	1

Environmental Health

Environmental Health Supervisor	1
Manager of Environmental Health	1
Registered Environmental Health Specialist	8
Senior Environmental Health Specialist	1
Vector Control Technician	8

EXHIBIT A-7

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**Health, Housing and Community Services Department Appendix
Page 3**

Designated Employees **Disclosure Categories**

Mental Health

Community Services Specialist II	4
Health Services Program Specialist	2
Manager of Mental Health Services	1
Assistant Manager of Mental Health Services	1
Mental Health Clinical Supervisor	4, 6
Mental Health Program Supervisor	2
Supervising Psychiatrist	1
<u>Supervising Mental Health Nurse</u>	<u>4, 6</u>

Public Health

Manager of Public Health Services	1
Health Nutrition Program Coordinator	4, 6
Health Officer	1
Health Services Supervisor	1
Senior Health Services Program Specialist	4, 6
Supervising Public Health Nurse	4, 6
Health Services Program Specialist	3
Senior Health Management Analyst	4, 6
Epidemiologist	8
<u>Community Services Specialist III</u>	<u>4, 6</u>
<u>Community Services Specialist I</u>	<u>4, 8</u>

EXHIBIT A-7

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Health, Housing and Community Services Department Appendix Page 4

Disclosure Categories

Category 1

Designated employees assigned to this category shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property; and all sources of income, including gifts, loans and travel payments.

Category 2

Designated employees assigned to this category shall disclose business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income manufactures, distributes, sells or otherwise provides goods or services of the type utilized by any division or program in the Department of Health, Housing and Community Services.

Category 3

Designated employees assigned to this category shall disclose any interest in real property located within a Berkeley target area or neighborhood strategy area. In addition they shall also disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income including gifts, loans and travel payments; if the business entity, non- profit organization or source of income is:

- a) a building contractor or subcontractor of the type performing work under Berkeley Housing Rehabilitation Programs; or
- b) is from individuals who have applied for or received housing rehabilitation assistance from the City of Berkeley within the previous two years.

Category 4

Designated employees assigned to this category shall disclose business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income manufactures, distributes, sells or otherwise provides goods or services of the type utilized by the division or program in the Department of Health, Housing and Community Services to which the designated employee is assigned.

EXHIBIT A-7

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Health, Housing and Community Services Department Appendix Page 5

Category 5

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:

- a) manufactures, distributes, sells installs or otherwise markets equipment for energy conservation or alternative energy development; or
- b) provides services, including but not limited to design, repair, advocacy or consultation services, in the areas of energy conservation or alternative energy development.

Category 6

Designated employees assigned to this category shall disclose all business entities or non-profit organizations in which they have an investment, or in which they are a director, officer, partner, trustee, employee or hold any position of management and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income is of the type which receives funds under contract with the City of Berkeley to:

- a) Serve the social welfare needs of the people of Berkeley; or
- b) Provide health services, including but not limited to emergency services, obstetric, gynecological or maternity care, care for chronic or communicable diseases, and mental health; or
- c) Provide services to the aging; or
- d) Lease, own, or operate real property of the type suitable for the program or services under the supervision of the designated employee; or of the type suitable to be leased, owned, or operated by the City of Berkeley for health programs under the supervision of the designated employee.

Category 7

Designated employees assigned to this category shall disclose any interest in real property consisting in whole or in part of residential rental property. In addition, they shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of

EXHIBIT A-7

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Health, Housing and Community Services Department Appendix
Page 6
Category 7 (Continued)

management; and income, including gifts, loans and travel payments; if the business entity or source of income has an interest in, operates or manages residential rental property.

Category 8

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:

- a) is of the type whose contracts with the City of Berkeley are monitored by the Department of Health, Housing and Community Services or which receives funds under contract with the City of Berkeley to serve the social welfare needs of the people of the Berkeley; or
- b) is of the type which manufactures, distributes, sells or otherwise provides goods or services of the type utilized by the designated employee's division of the Department of Health, Housing and Community Services

Category 9

Designated employees assigned to this category shall disclose all business entities or non-profit organizations in which they have an investment, or in which they are a director, officer, partner, trustee, employee or hold any position of management; any interest in real property within one-fourth mile of any Berkeley Senior Center and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income is of the type which receives funds under contract with the City of Berkeley to:

- a) Serve the social welfare needs of the people of Berkeley; or
- b) Provide health services, including but not limited to emergency services, care for chronic or communicable diseases, and mental health; or
- c) Provide services to the aging; or
- d) Lease, own, or operate real property of the type suitable for the program or services under the supervision of the designated employee; or of the type suitable to be leased, owned, or operated by the City of Berkeley for community services programs under the supervision of the designated employee.

EXHIBIT A-7

HUMAN RESOURCES DEPARTMENT APPENDIX

Designated Employees	Disclosure Categories
Director of Human Resources	1
<u>Human Resources Manager</u>	<u>1</u>
Equal Employment, Opportunity & Diversity Officer	1
Employee Relations Manager	1
Occupational Health and Safety Officer	2, 3
Occupational Health and Safety Specialist	3
Senior Human Resources Analyst	2, 3
Training Officer	2
Worker's Compensation Analyst	3
Benefits	
Associate Human Resources Analyst	3

Disclosure Categories**Category 1**

Designated employees in this category shall disclose all business entities and non-profit organizations in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property and all sources of income, including gifts, loans and travel payments.

Exhibit A-8

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**Human Resources Department Appendix
Page 2**

Disclosure Categories (Continued)

Category 2

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:

- (a) is a labor union; or
- (b) is of the type which has provided the Human Resources Department within the previous two years with testing materials or services, or with services of any other kind including but not limited to consultant services or medical examination services; or
- (c) provides training, organizational development or facilitator services.

Category 3

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or are a director, officer, partner, trustee, employee or hold any position of management; and income including gifts, loans and travel payments; if the business entity, non-profit organization or source of income is of the type which provides insurance of any kind, including but not limited to workers' compensation, health, life or liability insurance or related services.

OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY APPENDIX**Designated Employees****Disclosure Categories****Police Accountability Commission Staff**

<u>Director of Police Accountability</u>	<u>1</u>
<u>Police Review Commission Officer</u>	<u>1</u>
<u>Police Review Commission Investigator</u>	<u>1</u>

Disclosure Category**Category 1**

Designated employees assigned to this category shall disclose any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization, or source of income:

- (a) manufactures, distributes, sells or otherwise markets weapons, ammunition, or other law enforcement equipment;
- (b) is of the type which offers law enforcement training courses considered by the Police Accountability Board and Office of the Director of Police Accountability; or
- (c) is a member of the Berkeley Police Department.

EXHIBIT A-12

PARKS, RECREATION & WATERFRONT DEPARTMENT APPENDIX

Designated Employees	Disclosure Categories
----------------------	-----------------------

Office of the Director

Director of Parks, Recreation and Waterfront	1
Deputy Director	1
Senior Management Analyst	1
Associate Civil Engineer	1
Supervising Civil Engineer	1
Capital Improvement Programs Manager	1
<u>Assistant Civil Engineer (Registered)</u>	<u>1</u>

Parks Division

Parks Superintendent	1
Senior Forestry Supervisor	2, 3
Senior Landscape Gardener Supervisor	2, 3
Building Maintenance Supervisor	2, 3
Senior Building Maintenance Supervisor	2, 3

Recreation Division

Recreation and Youth Services Manager	1
Camp Manager	2, 3, 4
Recreation Program Supervisor	1
Aquatics Facilities Supervisor	3

EXHIBIT A-4213

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**Parks, Recreation and Waterfront Department Appendix
Page 2**

Designated Employees

Disclosure Categories

Recreation Division (Continued)

Recreation Coordinator	3
Aquatics Coordinator	3

Waterfront Division

Waterfront Manager	1
Harbormaster	3, 5
Waterfront Supervisor	2, 5

Disclosure Categories

Category 1

Designated employees assigned to this category shall disclose all business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property and all sources of income, including gifts, loans and travel payments.

Category 2

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income including gifts, loans and travel payments; if the business entity, non-profit organization or source of income is of the type which manufactures, distributes, sells, leases or otherwise provides the Parks, Recreation & Waterfront Department with:

- (a) goods of any kind, including but not limited to heavy equipment, vehicles, machinery, tools, fuel products or other equipment; or
- (b) services of any kind, including but not limited to building or construction services and consultant services.

EXHIBIT A-4213

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**Parks, Recreation and Waterfront Department Appendix
Page 3**

Disclosure Categories (Continued)

Category 3

Designated employees assigned to this category, shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income manufactures, distributes, sells, leases or otherwise provides goods, equipment, machinery, supplies or services of the type used by the division or program of the Parks, Recreation & Waterfront Department to which the designated employee is assigned.

Category 4

Designated employees assigned to this category shall disclose all interests in real property. In addition, they shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:

- (a) owns, operates or manages real property; or
- (b) is a utility; or
- (c) is in the building or construction industry, including but not limited to architects, engineers, building construction contractors or subcontractors, materials suppliers, or consultants.

Category 5

Designated employees assigned to this category shall disclose:

- (a) all interests in real property located on or within one-fourth mile of the Berkeley Waterfront, including any leasehold interest in berths at the Berkeley Marina; and
- (b) any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee or employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:
 - (i) is located on the Berkeley Waterfront;

EXHIBIT A-4213

**Parks, Recreation and Waterfront Department Appendix
Page 4**

Disclosure Categories

Category 5 (Continued)

- (ii) has an interest in real property on the Berkeley Waterfront; or does business, has done business within the previous two years, plans to do business on the Berkeley Waterfront, including but not limited to architects, engineers, real estate developers, building contractors, lawyers and others involved in projects or proposals on the Berkeley Waterfront.

PUBLIC WORKS DEPARTMENT APPENDIX

Designated Employees	Disclosure Categories
----------------------	-----------------------

Office of the Director

Director of Public Works	1
Deputy Director <u>of Public Works</u>	1
Senior Management Analyst	2
Associate Management Analyst	2
Administrative & Fiscal Services Manager	1
Assistant Management Analyst	2
Disability Services Specialist	2, 4
Community Development Project Coordinator	1, 4
Public Works Operations Manager	1, 4
Solid (Zero) Waste and Recycling Manager	1, 5
<u>Occupational Health and Safety Officer</u>	<u>2, 3</u>

Engineering Division

Manager of Engineering	1, 4
Assistant Management Analyst	3
Associate Civil Engineer	2, 4
Engineering Inspector	2, 6
<u>Senior Engineering Inspector</u>	<u>2, 6</u>
Chief of Party	2
Assistant Public Works Engineer	2

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**Public Works Department Appendix
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Designated Employees **Disclosure Categories**

Engineering Division (Continued)

Junior Public Works Engineer	2
Assistant Civil Engineer (Registered)	2, 4
Supervising Civil Engineer	1, 4, 6
Senior Drafting Technician	2, 4
Building Inspector	1, 6
Senior Building Inspector	2, 6
Environmental Compliance Specialist	2, 4

Transportation Division

Transportation Manager	1
Deputy Director of Public Works	1
Principal Planner	1
Senior Planner	1
Associate Planner	1
Assistant Planner	2, 4
Parking Services Manager	2
Supervising Traffic Engineer	1, 4
Associate Traffic <u>Transportation</u> Engineer	2, 4
Assistant Traffic <u>Transportation</u> Engineer	2, 4
Associate Civil Engineer	2, 4
Assistant Management Analyst	2

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Public Works 2021.docx
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**Public Works Department Appendix
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Designated Employees **Disclosure Categories**

Transportation Division (Continued)

Traffic Maintenance Supervisor 2

Parking Meter Maintenance and Collection Supervisor 2

Senior Public Works Supervisor **3**

Zero Waste Division

Solid (Zero) Waste and Recycling Manager 1, 5

Senior Solid (Zero) Waste Supervisor 2

Recycling Program Manager 3, 5

Solid (Zero) Waste Supervisor 3, 5

Public Works (Zero Waste) Operations Manager 1, 4, 5

Environmental Compliance Specialist 1

Field Representative 2

Associate Management Analyst **2**

Facilities Management Division

Environmental Compliance Specialist 3, 7

Facilities Maintenance Superintendent 2, 6

Senior Building Maintenance Supervisor 3, 6

Building Maintenance Supervisor 3, 6

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**Public Works Department Appendix
Page 4**

Designated Employees **Disclosure Categories**

Facilities Management Division (Continued)

Senior Electrical Supervisor	1, 4
Lead Communications Technician	1

Equipment Maintenance

Equipment Maintenance Superintendent	2, 4
Senior Equipment Supervisor	3

Streets Division

Public Works Maintenance Superintendent	2
Senior Public Works Supervisor	3
Assistant Management Analyst	2, 4
Public Works Supervisor	3
Sewer Maintenance Assistant Supervisor	3

Disclosure Categories

Category 1

Designated employees assigned to this category shall disclose all business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property; and all sources of income, including gifts, loans and travel payments.

Category 2

Designated employees assigned to this category shall disclose entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income including

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**Public Works Department Appendix
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Disclosure Categories

Category 2 (Continued)

gifts, loans and travel payments; if the business entity, non-profit organization or source of income is of the type which manufactures, distributes, sells, leases or otherwise provides goods or services of the type used by any division or program of the Public Works Department.

Category 3

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income including gifts, loans and travel payments; if the business entity, non-profit organization or source of income manufactures, distributes, sells, leases or otherwise provides goods, equipment, machinery, supplies or services of the type used by the division or program of the Public Works Department to which the designated employee is assigned.

Category 4

Designated employees assigned to this category shall disclose all interests in real property. In addition, they shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:

- (a) owns, operates or manages real property; or
- (b) is a utility; or
- (c) is in the building or construction industry, including but not limited to architects, engineers, building construction contractors or subcontractors, materials suppliers, or consultants.

Category 5

Designated employees assigned to this category shall disclose business entities or non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity, non-profit organization or source of income is of the type which:

- (a) collects or hauls solid waste;

EXHIBIT A-16

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**Public Works Department Appendix
Page 6**

Disclosure Categories

Category 5 (Continued)

- (b) builds or operates any solid waste disposal facility, transfer or processing station or resource recovery facility;
- (c) engages in solid waste recycling activities; or
- (d) acts as a consultant to entities or organizations engaged in the above activities.

Category 6

Designated employees assigned to this category shall disclose any interest in real property located in an area of Berkeley in which the utility lines have not been undergrounded. In addition, they shall disclose business entities, or non-profit organizations, in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans and travel payments; if the business entity or source of income is a public utility company which does any work related to the provision of utility services, is a construction company or subcontractor of such company or has an interest in real property in an area of Berkeley in which the utility lines have not been undergrounded.

Category 7

Designated employees assigned to this category shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income including gifts, loans and travel payments; if the business entity, non-profit organization or source of income:

- (a) produces, uses, collects, stores, or disposes of hazardous or toxic materials; or
- (b) provides consulting services in the areas of source reduction or recycling, or the management, treatment or disposal of hazardous wastes or materials.

EXHIBIT A-16

RENT STABILIZATION BOARD APPENDIX

Designated Officials**Disclosure Categories**

Commissioners (Board Members)

1, 2, 3

Designated Employees**Disclosure Categories**

Executive Director

1, 2, 3

Deputy Director

1, 2, 3

Assistant Management Analyst

2, 3

Associate Management Analyst

2, 3

Senior Management Analyst

2, 3

~~Administrative Staff Assistant~~~~2, 3~~~~Community Services Specialist I~~~~2, 3~~

Community Services Specialist II

2, 3

Community Services Specialist III

2, 3

Senior Hearing Examiner

2, 3

Hearing Examiners

2, 3

~~Chief General~~ Counsel

1, 2, 3

Staff Attorneys I, II & III

1, 2, 3

Senior Planner

2, 3

Associate Planner

2, 3

~~Assistant Planner~~~~2, 3~~**EXHIBIT A-4617**

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RENT STABILIZATION BOARD APPENDIX

Page 2

Disclosure Categories

Category 1

Designated employees assigned to this category shall disclose:

- (a) All investment and interest in, and all sources of income from real property including but not limited to ownership, sale, management, transfer or exchange.
- (b) All investments in and sources of income, including gifts, loans and travel payments from entities which own, sell, manage, transfer or exchange real property.
- (c) Any management position including but not limited to a director, officer, partner or trustee in any business entity or non-profit organization subject to or potentially affected by the regulatory authority of the Rent Board.
- (d) The assuming office statement shall disclose all interests and dealings in real property, including but not limited to ownership, sale, management, transfer or exchange, and interests in entities whose primary purpose is the ownership, sale, management, transfer or exchange of real property, during the previous three years.

Category 2

Designated employees assigned to this category shall disclose:

- (a) All investments and interests in and all sources of income from real property, including but not limited to ownership, sale, management, transfer or exchange, subject to the regulatory authority of the Rent Board.
- (b) All investments and business positions in and sources of income, including gifts, loans and travel payments from entities which own, sell, manage, transfer or exchange real property, subject to the regulatory authority of the Rent Board.

Category 3

Designated employees assigned to this category shall disclose investments and business positions in business entities, non-profit organizations and sources of income, including gifts, loans and travel payments of the type which, within the past two years, have contracted with the City of Berkeley to provide services, supplies, materials, machinery or equipment to the Board.

EXHIBIT A-4617

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INDEPENDENT REDISTRICTING COMMISSION

Designated Officials

Members of the Commission

Disclosure Categories

Members of the Commission shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property located in the City of Berkeley; and all sources of income, including gifts, loans, and travel payments.

EXHIBIT B-20

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~~MEASURE O BOND OVERSIGHT COMMITTEE~~

~~Designated Officials~~

~~Members of the Commission~~

~~Disclosure Category~~

~~All members of the Board shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property located in the City of Berkeley; and all sources of income, including gifts, loans, and travel payments.~~

~~EXHIBIT B-24~~

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~~OVERSIGHT BOARD APPENDIX~~

~~Designated Employees~~
~~Disclosure Categories~~

~~Members of the Board~~

~~1~~

~~Disclosure Categories~~

~~Category 1~~

~~Designated employees assigned to this category shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property located in the City of Berkeley; and all sources of income, including gifts, loans and travel payments.~~

POLICE ACCOUNTABILITY BOARD APPENDIX

Designated Officials

Members of the Board

Disclosure Category

All members of the Board shall disclose any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income:

- (a) manufactures, distributes, sells or otherwise markets weapons, ammunition, or other law enforcement equipment;
- (b) is of the type which offers law enforcement training courses considered by the Commission; or
- (c) is a member of the Berkeley Police Department.

EXHIBIT B-31

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~~POLICE REVIEW COMMISSION APPENDIX~~

~~Designated Officials~~

~~Members of the Commission~~

~~Disclosure Category~~

~~All members of the Commission shall disclose any business entity or non-profit organization in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; and income, including gifts, loans, and travel payments; if the business entity, non-profit organization, or source of income:~~

- ~~(a) manufactures, distributes, sells or otherwise markets weapons, ammunition, or other law enforcement equipment;~~
- ~~(b) is of the type which offers law enforcement training courses considered by the Commission; or~~
- ~~(c) is a member of the Berkeley Police Department.~~

EXHIBIT B-31

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REIMAGINING PUBLIC SAFETY TASK FORCE

Designated Officials

Members of the Task Force

Disclosure Categories

All members of the Task Force shall disclose all business entities and non-profit organizations in which they have an investment or in which they are a director, officer, partner, trustee, employee or hold any position of management; all interests in real property located in the City of Berkeley; and all sources of income, including gifts, loans, and travel payments.

EXHIBIT B-32

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EXHIBIT D: LISTING OF ALL BERKELEY CONFLICT OF INTEREST CODE DEPARTMENT, COMMISSION AND CONSULTANT APPENDICES

DEPARTMENTS

<u>EXHIBIT</u>	<u>DEPARTMENT</u>
A-1	Auditor's Department Appendix
A-2	City Attorney's Office Appendix
A-3	City Clerk Department Appendix
A-4	City Manager's Department Appendix
A-5	Finance Department Appendix
A-6	Fire and Emergency Services Department Appendix
A-7	Health, Housing and Community Services Department Appendix
A-8	Human Resources Department Appendix
A-9	Information Technology Department Appendix
A-10	Library Department Appendix
A-11	Mayor and Council Department Appendix
<u>A-12</u>	<u>Office of the Director of Police Accountability Appendix</u>
A- 12 <u>13</u>	Parks, Recreation & Waterfront Department Appendix
A- 13 <u>14</u>	Planning and Development Department Appendix
A- 14 <u>15</u>	Police Department Appendix
A- 15 <u>16</u>	Public Works Department Appendix
A- 16 <u>17</u>	Rent Stabilization Board Appendix
A- 17 <u>18</u>	Retired Annuitant Appendix

EXHIBIT D

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**EXHIBIT D: LISTING OF ALL BERKELEY CONFLICT OF INTEREST CODE
DEPARTMENT, COMMISSION AND CONSULTANT APPENDICES**

BOARDS AND COMMISSIONS

<u>EXHIBIT</u>	<u>COMMISSION</u>
B-1	Animal Care Commission Appendix
B-2	Berkeley Energy Commission Appendix
B-3	Board of Library Trustees Appendix
B-4	Cannabis Commission
B-5	Children, Youth, and Recreation Commission Appendix
B-6	Civic Arts Commission Appendix
B-7	Commission on Aging Appendix
B-8	Commission on Disability Appendix
B-9	Commission on Labor Appendix
B-10	Community Environmental Advisory Commission Appendix
B-11	Community Health Commission Appendix
B-12	Design Review Committee Appendix
B-13	Disaster and Fire Safety Commission Appendix
B-14	Elmwood Business Improvement District Advisory Board
B-15	Fair Campaign Practices Commission Appendix
B-16	Homeless Commission Appendix
B-17	Homeless Services Panel of Experts
B-18	Housing Advisory Commission Appendix

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**EXHIBIT D: LISTING OF ALL BERKELEY CONFLICT OF INTEREST CODE
DEPARTMENT, COMMISSION AND CONSULTANT APPENDICES**

BOARDS AND COMMISSIONS cont'd

<u>EXHIBIT</u>	<u>COMMISSION</u>
B-19	Human Welfare and Community Action Commission Appendix
B-20	Independent Redistricting Commission Appendix
B- 20 <u>21</u>	Joint Powers Financing Authority Appendix
B- 21 <u>22</u>	Joint Subcommittee on the Implementation of State Housing Laws
B- 22 <u>23</u>	Landmarks Preservation Commission Appendix
B- 23 <u>24</u>	Loan Administration Board Appendix
B-24	Measure O Bond Oversight Committee
B-25	Mental Health Commission Appendix
B-26	Oversight Board Appendix
B- 27 <u>26</u>	Parks and Waterfront Commission Appendix
B- 28 <u>27</u>	Peace and Justice Commission Appendix
B- 29 <u>28</u>	Personnel Board Appendix
B- 30 <u>29</u>	Planning Commission Appendix
B-30	Police Accountability Board Appendix
B-31	Police Review Commission Appendix
B- 32 <u>31</u>	Public Works Commission Appendix
B-32	Reimagining Public Safety Task Force Appendix
B-33	Solano Avenue Business Improvement District Advisory Board Appendix

EXHIBIT D

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**EXHIBIT D: LISTING OF ALL BERKELEY CONFLICT OF INTEREST CODE
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BOARDS AND COMMISSIONS cont'd

<u>EXHIBIT</u>	<u>COMMISSION</u>
B-34	Successor Agency Appendix
B-35	Sugar-Sweetened Beverage Product Panel of Experts
B-36	Supplemental Retirement and Income Plan (SRIP) Committee Appendix
B-37	Transportation Commission Appendix
B-38	Zero Waste Commission Appendix
B-39	Zoning Adjustments Board Appendix

EXHIBIT D

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**EXHIBIT D: LISTING OF ALL BERKELEY CONFLICT OF INTEREST CODE
DEPARTMENT, COMMISSION AND CONSULTANT APPENDICES**

CONSULTANTS

C

Appendix applies to all Consultants

EXHIBIT D

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Office of the City Manager

CONSENT CALENDAR
October 26, 2021

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Mark Numainville, City Clerk
Subject: Minutes for Approval

RECOMMENDATION

Approve the minutes for the council meetings of September 14, 2021 (closed and regular), September 21, 2021 (special) and September 28, 2021 (closed and regular).

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1. September 14, 2021 - Closed City Council Meeting
2. September 14, 2021 – Regular City Council Meeting
3. September 21, 2021 – Special City Council Meeting
4. September 28, 2021 – Closed City Council Meeting
5. September 28, 2021 - Regular City Council Meeting

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

TUESDAY, SEPTEMBER 14, 2021

4:00 P.M.

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/89434002712>. 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); enter Meeting ID: 894 3400 2712. 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.

Preliminary Matters

Roll Call: 4:04 p.m.

Present: Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: Kesarwani, Bartlett

Councilmember Bartlett present at 4:09 p.m.

Councilmember Kesarwani present at 4:34 p.m.

Public Comment - Limited to items on this agenda only – 1 speaker

CLOSED SESSION:

The City Council will convene in closed session to meet concerning the following:

1. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(1)

- a. WCAB Case Numbers: #ADJ13215643

Action: M/S/C (Arreguin/Hahn) to provide direction to outside counsel and approved a stipulated settlement of permanent disability with an award of lifetime future medical care up to \$83,302.50 with an award of lifetime future medical care, as to a workers' compensation matter WCAB Case Number: # ADJ13215643.

Vote: Ayes – Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Kesarwani.

2. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6

Negotiators: Dee Williams-Ridley, City Manager, Paul Buddenhagen, Deputy City Manager, LaTanya Bellow, Interim Deputy City Manager, Ravinder Rangi, Employee Relations Manager, Jon Holtzman, Labor Negotiator, Dania Torres-Wong, Labor Negotiator, Burke Dunphy, Labor Negotiator, Jen Louis, Interim Chief of Police, Abe Roman, Interim Fire Chief.

Employee Organizations: International Brotherhood of Electrical Workers (IBEW), Local 1245, SEIU 1021 Community Services and Part-time Recreation Activity Leaders, Berkeley Fire Fighters Association Local 1227, Berkeley Police Association, Service Employees International Union, Local 1021 Maintenance and Clerical Chapters, Berkeley Fire Fighters Association, Local 1227 I.A.F.F./Berkeley Chief Fire Officers Association, Public Employees Union Local 1, Unrepresented Employees.

Action: No reportable action taken.

OPEN SESSION:

The City Council met in closed session pursuant to Government Code section 54956.9(d)(2) and provided direction to outside counsel and approved a stipulated settlement of permanent disability with an award of lifetime future medical care, as to a workers' compensation matter WCAB Case Number: #ADJ13215643.

Adjournment

Action: M/S/C (Arreguin/Robinson) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 5:55 p.m.

I hereby certify that the foregoing is a true and correct record of the special closed meeting of the City Council held on September 14, 2021.

Mark Numainville
City Clerk

MINUTES
BERKELEY CITY COUNCIL MEETING
Tuesday, September 14, 2021
6:00 PM

JESSE ARREGUIN, MAYOR

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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

Report from Closed Session

On September 14, 2021, the City Council met in closed session pursuant to Government Code section 54956.9(d)(2) and provided direction to outside counsel and approved a stipulated settlement of permanent disability with an award of lifetime future medical care, as to a workers' compensation matter WCAB Case Number: # ADJ13215643.

Roll Call: 6:14 p.m.

Present: Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: None

Ceremonial Matters:

1. Pledge of Allegiance to the Flag
2. Presentation on SB 1383 Implementation from StopWaste
3. Adjourned the meeting in memory of Philip Kreycik, Berkeley Resident
4. Adjourned the meeting in memory of Vincent Kohler, Berkeley Resident
5. Adjourned the meeting in memory of Dorothy Snodgrass, Cultural Artist
6. Adjourned the meeting in memory of Carole Schimmerling, Local activist
7. Adjourned the meeting in memory of Roy Doolan, Local Attorney

City Auditor Comments:

The City Auditor noted Item 27 from the energy Commission regarding the City Fleet and the Commission's excellent work on the topic. The Auditor also highlighted Item 44 the Audit Plan and noted the planned upcoming audits for FY 2021-2022.

City Manager Comments: None

Public Comment on Non-Agenda Matters: 10 speakers.

Public Comment on Consent Calendar and Information Items Only: 25 speakers.

Consent Calendar

Action: M/S/C (Arreguin/Robinson) to accept revised materials from the City Manager on Item 35 (Baseline Zoning Ordinance)

Vote: All Ayes.

Action: M/S/C (Arreguin/Robinson) to adopt the Consent Calendar in one motion except as indicated.

Vote: All Ayes.

Recess Items

- 1. Contract: Berkeley Convention and Visitor's Bureau, d.b.a. Visit Berkeley**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a sole source contract and any amendments with the Berkeley Convention and Visitors' Bureau, d.b.a. Visit Berkeley, to distribute one-twelfth of annual Berkeley Transient Occupancy Tax funds to support tourism marketing and promotion for the period from July 1, 2020 through June 30, 2023 for a not to exceed amount of \$700,000.
Financial Implications: Transient Occupancy Tax Fund - \$700,000
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
Action: Adopted Resolution No. 70,000–N.S.
- 2. Contract No. 32000240 Amendment: Berkeley Unified School District for Mental Health Services Act-Funded Programs**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to execute an amendment to Contract No. 32000240 with Berkeley Unified School District (BUSD) to provide Mental Health Services Act (MHSA) funded programs in local schools through June 30, 2022 increasing the contract by \$245,000 for a new total not to exceed amount of \$637,778.
Financial Implications: Mental Health Services Act Fund - \$245,000
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 70,001–N.S.
- 3. Revenue Grant Contract: Fiscal Year 2021-22 Alcoholic Beverage Control Grant**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a grant contract and any subsequent amendments with the State of California Department of Alcoholic Beverage Control (ABC) in the amount of \$72,440 for one fiscal year, July 1, 2021 through June 30, 2022.
Financial Implications: \$72,440 in revenue
Contact: Jennifer Louis, Police, (510) 981-5900
Action: Adopted Resolution No. 70,002–N.S.

Recess Items

- 4. Contract: ERA Construction, Inc. for 1322 Glendale Avenue Retaining Wall Project**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to approve plans and specifications for the 1322 Glendale Avenue Retaining Wall Project, Specification No. 21-11448-C; accept the bid of ERA Construction, Inc. as the lowest responsive and responsible bidder; and execute a contract and any amendments, extensions or other change orders until completion of the project, in accordance with the approved plans and specifications in an amount not to exceed \$1,038,103, which includes a 10% contingency for unforeseen circumstances.
Financial Implications: Various Funds - \$1,038,103
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 70,003–N.S.
- 5. Contracts: TBWBH Props and Measures and V.W. Housen & Associates for Vision 2050 Implementation Services**
From: City Manager
Recommendation: Adopt two Resolutions ratifying the action taken by the City Manager during recess to execute contracts with:
1. TBWBH Props and Measures for one year in an amount not to exceed \$175,000; and
2. V.W. Housen & Associates for one year in an amount not to exceed \$175,000, for Vision 2050 Implementation Services.
Financial Implications: General Fund - \$350,000
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 70,004–N.S. (TBWBH) and Resolution No. 70,005–N.S. (V.W. Housen).
- 6. Contract: Elavon for Recreation Online Registration Payment Processing**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess, authorizing the City Manager to execute a contract with Elavon for online credit card payment processing transaction services for the Recreation Division’s online registration system, for an amount not to exceed \$220,000 for the term commencing on or about September 1, 2021 through May 31, 2023.
Financial Implications: Various Funds - \$220,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 70,006–N.S.

Consent Calendar

- 7. 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) and Determining the Immediate Need for and Adopting a City Employee Vaccination Policy**
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, and July 20, 2021, and reviewing the need to adopt an employee vaccination policy immediately and ratifying adoption of such policy in advance of completion of the meet-and-confer process regarding the policy's potential bargainable impacts pursuant to Government Code section 3504.5
Financial Implications: See report
Contact: Farimah Brown, City Attorney, (510) 981-6950, Dee Williams-Ridley, City Manager, (510) 981-7000
Action: Adopted Resolution No. 70,007–N.S. as revised Supplemental Communications Packet #2 from the City Attorney.
- 8. Establish 2022 City Council Meeting Schedule**
From: City Manager
Recommendation: Adopt a Resolution establishing the City Council regular meeting schedule for 2022, with starting times of 6:00 p.m.
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
Action: Adopted Resolution No. 70,008–N.S.
- 9. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the council meetings of July 1, 2021 (closed), July 13, 2021 (closed and regular), July 14, 2021 (closed), July 20, 2021 (special-4pm and special-6pm), July 27, 2021 (closed, special and regular) and July 29, 2021 (special).
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
Action: Approved minutes as submitted.

Consent Calendar

- 10. Contract No. 108410-1 Amendment: Paw Fund for Spay and Neuter Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 108410-1 with Paw Fund to provide no cost spay and neuter surgeries to eligible pet owners, to increase the amount by \$9,812 for a total contract amount not to exceed \$116,966 and subject to the City's annual appropriation process, and to extend the contract through September 14, 2022.
Financial Implications: General Fund - \$9,812
Contact: Paul Buddenhagen, City Manager's Office, (510) 981-7000
Action: Adopted Resolution No. 70,009–N.S.
- 11. Adopt a Resolution Authorizing MuniServices, LLC to Examine the Local Sales or Transactions and Use Tax Records on Behalf of the City of Berkeley**
From: City Manager
Recommendation: Adopt a Resolution authorizing MuniServices, LLC to perform examination of the local sales or transactions and use tax records. MuniServices provides City of Berkeley sales tax audit services which includes examination of the Local Sales or Transactions and Use Tax records pertaining to the Bradley-Burns Local Sales and Use Tax Law which is part of the Revenue and Taxation Code in California.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted Resolution No. 70,010–N.S.
- 12. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 14, 2021**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: Various Funds - \$4,075,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Approved recommendation.

Consent Calendar

- 13. Amendments to Berkeley Municipal Code Section 19.44.020 (Housing Advisory Commission)**
From: City Manager
Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 19.44.020 to include oversight of Measure O bond-funded housing initiatives as established by Resolution No. 68,703-N.S. and future voter-approved bonds and measures dedicated to affordable housing.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted first reading of Ordinance No. 7,782–N.S. Second reading scheduled for September 28, 2021.
- 14. Contract No. 10209E Amendment: Bay Area Hearing Voices Network**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to amend Contract No. 10209 with Bay Area Hearing Voices Network for hearing voices support groups for adults and youth who hear voices and have visions, to increase the amount by \$34,736 for a total contract amount not to exceed \$137,914, and to extend the contract through June 30, 2022.
Financial Implications: Mental Health Services Act Fund - \$34,736
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 70,011–N.S.
- 15. Mental Health Services Act Fiscal Year 2021-2022 Annual Update**
From: City Manager
Recommendation: Adopt a Resolution approving the Mental Health Services Act Fiscal Year 2021-2022 Annual Update, which provides information on current and proposed uses of funds for mental health programming, and forwarding the Update to appropriate state officials.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 70,012–N.S.

Consent Calendar

- 16. Revenue Contract: Department of Health Care Services Performance Contract for City of Berkeley**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with the California Department of Health Care Services (DHCS) from July 1, 2021 through June 30, 2024, for the Mental Health Services Act (MHSA), Lanterman-Petris-Short (LPS) Act, Projects for Assistance in Transition from Homelessness (PATH), Community Mental Health Services Block Grant (MHBG), and Crisis Counseling Assistance and Training Program (CCP) programs and county provision of community mental health services pursuant to the Bronzan-McCorquodale Act. For the purposes of this contract, DHCS considers the City of Berkeley a small County.
Financial Implications: Approximately \$26,035,194 (revenue)
 Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 70,013–N.S.
- 17. Revenue Contracts: FY 2022 Aging Services Programs**
From: City Manager
Recommendation: Adopt five Resolutions authorizing the City Manager or her designee to execute any resultant revenue agreements and amendments with Alameda County to provide congregate and home-delivered meals, family caregiver support, senior center activities, and information and assistance services to seniors for the following programs for Fiscal Year 2022:
1. Congregate Meals in the amount of \$47,000;
 2. Home Delivered Meals in the amount of \$57,527;
 3. Family Caregiver Support Program in the amount of \$41,195;
 4. Senior Center Activities in the amount of \$28,350; and
 5. Information and Assistance Services in the amount of \$61,500.
- Financial Implications:** See report
 Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 70,014–N.S. (Congregate), Resolution No. 70,015–N.S. (Home), Resolution No. 70,016–N.S. (Family), Resolution No. 70,017–N.S. (Senior), and Resolution No. 70,018–N.S. (Information), including revisions in Supplemental Communications Packet #2 from HHCS.
- 18. Classification and Salary Range: Communications Specialist**
From: City Manager
Recommendation: Adopt a Resolution amending Resolution No. 69,998-N.S. Classification and Salary Resolution for Unrepresented Manual to add to Unit Z-2 (Confidential Professional Employees) the classification Communications Specialist with an hourly salary range of \$47.33 - \$56.18 effective September 14, 2021.
Financial Implications: See report
 Contact: LaTanya Bellow, Human Resources, (510) 981-6800
Action: Adopted Resolution No. 70,019–N.S.

Consent Calendar

- 19. Contract 104583-1 Amendment: Government Finance Officers Association for System Design Document Review to Support Enterprise Resource Planning Implementation**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract amendment with the Government Finance Officers Association for business process review services, increasing the amount by \$40,000 for a total contract value not to exceed \$194,285 from March 16, 2015 to December 30, 2021.
Financial Implications: FUNDS\$ Replacement Fund - \$40,000
 Contact: Savita Chaudhary, Information Technology, (510) 981-6500
Action: Adopted Resolution No. 70,020–N.S.
- 20. Contract No. 32100060 Amendment: RevolutionCyber, LLC for Professional Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32100060 with RevolutionCyber, LLC for additional professional services for the implementation of the City’s Data Safety program, for an amount not to exceed \$19,250 and a total contract value not to exceed \$121,275 from November 13, 2020 through June 30, 2022.
Financial Implications: General Fund - \$19,250
 Contact: Savita Chaudhary, Information Technology, (510) 981-6500
Action: Adopted Resolution No. 70,021–N.S.
- 21. Contract No. 10785 Amendment: West Coast Arborist, Inc. for Tree Removal and Pruning Service**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend contract No. 10785 with West Coast Arborist, Inc. for tree removal and pruning service by increasing the contract amount by \$250,000 for a not-to-exceed amount of \$1,190,000 and extending the term to November 24, 2023.
Financial Implications: Parks Tax Fund - \$250,000
 Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 70,022–N.S.
- 22. Contract No. 31900137 Amendment: ELS Architecture and Urban Design for On-Call Architectural Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 31900137 for on-call architectural services with ELS Architecture and Urban Design by increasing the contract amount by \$900,000 for a total not-to-exceed amount of \$2,600,000.
Financial Implications: Measure T1 Fund - \$900,000
 Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 70,023–N.S.

Consent Calendar

- 23. Contract No. 31900202 Amendment: Bay Area Tree Specialists for As-needed Tree Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend contract No. 31900202 with Bay Area Tree Specialists for as-needed tree services, increasing the amount by \$300,000 for a total contract amount not-to-exceed \$800,000 and extend the term to May 28, 2023.
Financial Implications: Various Funds - \$300,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 70,024–N.S.
- 24. Contract No. 31900218 Amendment: West Coast Arborists, Inc. for As-needed Tree Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend contract No. 31900218 with West Coast Arborists Inc. for as-needed tree services, increasing the amount by \$300,000 for a total-amount-not to exceed amount of \$500,000 and extend the term to May 28, 2023.
Financial Implications: Various Funds - \$300,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 70,025–N.S.
- 25. Purchase Orders Extension: Diesel Direct West, Inc. for Fuel for City Vehicles and Equipment**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend the multi-year purchase orders with Diesel Direct West, Inc. for fuel for City vehicles and equipment, increasing the combined amount by \$1,400,000 for a total amount not to exceed \$8,844,000, and extending the term through June 30, 2022 or until authorized funds are exhausted.
Financial Implications: Various Funds - \$1,400,000
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 70,026–N.S.

Consent Calendar

- 26. Transfer of Two Property Parcels to the State of California for the Ashby-San Pablo Intersection Improvements Project**
From: City Manager
Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute the attached Grant Deed for Parcel No. 63719 and Quitclaim Deed for easement on Parcel No. 63720-1 with the State of California, Department of Transportation (“Caltrans”) and any associated documents as necessary for the transfer of the property interests in these two parcels of property to Caltrans, for the Ashby-San Pablo Intersection Improvements Project (“Project”), Specification No. 18-11182-C.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted first reading of Ordinance No. 7,783–N.S. Second reading scheduled for September 28, 2021.
- 27. Recommendations for Fleet Electrification Policy and Financing**
From: Energy Commission
Recommendation: Refer to the City Manager to update the Municipal Fleet Electrification Assessment and electric vehicle (EV) charging funding priorities to respond to the City Auditor’s Report “Fleet Replacement Fund Short Millions” and to align with the objectives stated in the City’s Electric Mobility Roadmap to Prioritize Municipal Fleet Modal Shift to Electric Bicycles and Other Forms of Zero-Emissions Mobility Where Feasible.
Financial Implications: See report
Contact: Billi Romain, Commission Secretary, (510) 981-7400
Action: Adopted recommendation.
- 28. Letter of Support for SB-459 Political Reform Act of 1974: Lobbying**
From: Open Government Commission
Recommendation: Send a letter of support to Senator Nancy Skinner in support of SB-459 Political Reform Act of 1974: Lobbying.
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950
Action: Adopted recommendation.

Consent Calendar

- 29. Referral Response: Recommendation to Retain Current Structure of Zero Waste Commission**
From: Zero Waste Commission
Recommendation: The Zero Waste Commission recommends that its current structure remain intact, and with an updated charter that reflects historic goals, and both current and future developments in the City of Berkeley's Zero Waste programs, facilities, services, policies, and state- and county-imposed mandates.
Financial Implications: See report
Contact: Heidi Obermeit, Commission Secretary, (510) 981-6300
- Action:** To take no action on the Commission recommendation pursuant to Council's previous direction on June 15, 2021.
Vote: Ayes – Kesarwani, Taplin, Bartlett, Wengraf, Robinson, Droste, Arreguin; Noes – Harrison, Hahn.
- 30. 2022 UC Berkeley Chicanx Latinx Legacy Event**
From: Mayor Arreguin (Author)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$1,000 per Councilmember including \$1,000 from Mayor Arreguin, to the UC Berkeley Chicanx Latinx Alumni Association, the fiscal sponsor of the 2022 UC Berkeley Chicanx Latinx Legacy Events, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.
Financial Implications: Mayor's Discretionary Funds - \$1,000
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Adopted Resolution No. 70,027–N.S. amended to include contributions from the following Councilmembers up to the amounts listed: Councilmember Bartlett \$250; Councilmember Hahn - \$200; Councilmember Harrison - \$200.
- 31. Annual Appropriations Ordinance (AAO) Referral: Supply Bank**
From: Mayor Arreguin (Author)
Recommendation: Refer to the November 2021 Annual Appropriations Ordinance process \$25,000 for Supply Bank to support their services in providing essential school supplies to Berkeley families.
Financial Implications: \$25,000
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Councilmember Bartlett added as a co-sponsor. Recommendation approved.

Council Consent Items

32. **Expansion of the Berkeley Fair Elections Program**
From: Mayor Arreguin (Author), Councilmember Droste (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor), Councilmember Harrison (Co-Sponsor)
Recommendation: Refer to the Fair Campaign Practices Commission (FCPC) to develop an ordinance to expand the Berkeley Fair Elections Program to include School Board Director, Rent Board Commissioner and City Auditor among the offices eligible to participate in the public financing program.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Recommendation approved.
33. **Resolution in Support of Observance of August 30, the International Day of the Victims of Enforced Disappearances in El Salvador**
From: Councilmember Kesarwani (Author), Councilmember Harrison (Co-Sponsor)
Recommendation: Adopt a Resolution in support of retroactively enacting August 30 as a day of observance in recognition of the International Day of the Victims of Enforced Disappearances in El Salvador.
Financial Implications: None
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110
Action: Mayor Arreguin added as a co-sponsor. Adopted Resolution No. 70,028–N.S.
34. **Resolution Expressing Conceptual Support for an East Bay Wildfire Prevention and Vegetation Management Joint Powers Agency**
From: Councilmember Wengraf (Author), Mayor Arreguin (Co-Sponsor), Councilmember Droste (Co-Sponsor), Councilmember Taplin (Co-Sponsor)
Recommendation: Adopt a Resolution in favor of Conceptual Support for an East Bay Wildfire Prevention and Vegetation Management Joint Powers Agency.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
Action: Adopted Resolution No. 70,029–N.S. as revised in Supplemental Communications Packet #1 from Councilmember Wengraf.

Recess 8:57 p.m. – 9:08 p.m.

Action Calendar

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

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

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

Action Calendar – Public Hearings

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

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

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

35. Adoption of the Baseline Zoning Ordinance (BZO)

From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt the first reading of an Ordinance rescinding the current Berkeley Municipal Code (BMC) Title 23 and adopting the new Baseline Zoning Ordinance (BZO) as BMC Title 23 with an effective date of December 1, 2021.

Financial Implications: See report

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

Public Testimony: The Mayor opened the public hearing. 2 speakers.

M/S/C (Arreguin/Robinson) to continue the public hearing to September 28, 2021.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Harrison.

Action Calendar – Old Business

- 36. Objective Standards Recommendations for Density, Design and Shadows From: Joint Subcommittee for the Implementation of State Housing Laws** *(Continued from July 27, 2021) (Item contains supplemental material)*
Recommendation: Refer to the Planning Commission and Design Review Committee to review the recommendations from the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) for objective standards for density, design and shadows and draft Zoning Ordinance amendments for City Council consideration.
Financial Implications: See report
Contact: Alene Pearson, Commission Secretary, (510) 981-7400
Action: Item 36 continued to September 28, 2021.

- 37. Amending the Berkeley Election Reform Act (BERA) Relating to Officeholder Accounts** *(Reviewed by the Agenda & Rules Committee) (Continued from May 25, 2021)*
From: Agenda & Rules Committee: Mayor Arreguin, Councilmembers Hahn and Wengraf
Recommendation: Take one of the following actions:
1. Refer a proposal to the Fair Campaign Practices Commission (FCPC) amending the Berkeley Election Reform Act (BERA), BMC Chapter 2.12, and Lobbyist Registration Act, BMC Chapter 2.09, to enact “a reasonable set of limitations and rules” to regulate the maintenance of officeholder accounts, as developed and referred for consideration by the Agenda and Rules Committee; or
2. Refer a proposal to the FCPC amending BERA, BMC Chapter 2.12, to prohibit Officeholder Accounts, as originally proposed by the Fair Campaign Practices Commission.
Policy Committee Recommendation: Send the item to Council with two proposed alternatives: 1) Councilmember Hahn’s proposal to regulate officeholder accounts, and 2) the Fair Campaign Practices Commission proposal to prohibit officeholder accounts; and to include the Commission’s analysis of regulating officeholder accounts in the item that goes to the full Council.
Financial Implications: See report
Contact: Agenda & Rules Committee members: Jesse Arreguin, Committee Chair, (510) 981-7100, Sophie Hahn, Councilmember, District 5, (510) 981-7150, Susan Wengraf, Councilmember, District 6, (510) 981-7160
Action: M/S/C (Arreguin/Robinson) to schedule Item 37 for the October 12, 2021 meeting.
Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Harrison.

Councilmember Harrison absent at 8:57 p.m.

- 38. Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Committee** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*

Action Calendar – New Business

- 39. Open Government Commission Recommendations to City Council Regarding Teleconferenced Meetings**
From: Open Government Commission
Recommendation: Establish City Council practices for holding public meetings via teleconference technologies: (1) clearly define how the order of public speakers is determined and maintain a speaker's queue visible to members of the public; (2) clearly outline the process by which a speaker may cede time to another speaker; and (3) require that addendums to agenda items be made accessible to the public on the City Website as soon as they are made available to members of City Council.
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950
Action: Moved to Consent Calendar and adopted the recommendation from the Mayor in Supplemental Communications Packet #2.
- 40. Implementation of California Senate Bill 1383 Short-Lived Climate Pollutants**
From: City Manager
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Received and filed.
- 41. Mental Health Services Center Renovation Project Wins American Public Works Association (APWA) National Award**
From: City Manager
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Received and filed.
- 42. Fair Campaign Practices Commission FY2021-2022 Work Plan**
From: Fair Campaign Practices Commission
Contact: Sam Harvey, Commission Secretary, (510) 981-6950
Action: Received and filed.
- 43. Open Government Commission FY2021-2022 Work Plan**
From: Open Government Commission
Contact: Sam Harvey, Commission Secretary, (510) 981-6950
Action: Received and filed.
- 44. City Auditor Fiscal Year 2022 Audit Plan**
From: Auditor
Contact: Jenny Wong, Auditor, (510) 981-6750
Action: Received and filed.

Public Comment – Items Not Listed on the Agenda – 0 speakers.

Adjournment

Action: M/S/C (Arreguin/Robinson) to adjourn the meeting.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin;
Noes – None; Abstain – None; Absent – Harrison.

Adjourned at 10:07 p.m.

I hereby certify that the foregoing is a true and correct record of the City Council regular meeting held on September 14, 2021.

Mark Numainville
City Clerk

Communications – September 14, 2021

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.

Homelessness + RV's + Tent Encampments + Harassing Business Customers + City of Reno Outreach and Enforcement Solution, Etc.

1. John Caner on behalf of Downtown Berkeley Association
2. Councilmember Harrison
3. Todd Andrew (2)
4. Margot Smith
5. Eric Friedman
6. Jan Nakamura
7. Nathan Scullion
8. Diana Bohn (4)
9. Russbumper
10. Daisy Reynado, owner of University Haircare
11. Wini Williams
12. Steve Martinot
13. Kenneth Berland
14. Elana Auerbach
15. Alex Sharenko
16. Brent Mishler
17. Kathleen Curran
18. Shmuel Weissman
19. Hillary Kilmnik
20. Ben Buettner
21. Tim Southwick, on behalf of Toyota of Berkeley

Housing (Infill + Affordable + BART + ADU)

22. Avram Gur Arye (3)
23. Councilmember Harrison

- 24. Andreas Clover, on behalf of the Building & Construction Trades Council of Alameda County
- 25. Tony Corman
- 26. Marica Poole
- 27. Chris Paizis

SB 9

- 28. Berkeley Neighborhoods Council
- 29. Madeleine Shearer

Berkeley Marina and Ferry

- 30. Camille Antinori

Dangerous Intersection of Ashby & MLK

- 31. Thuan Tran
- 32. Farid Javandel, on behalf of the City of Berkeley
- 33. Tarik Adnan Moon

UC Berkeley Agreement + 1921 Walnut + LRDP

- 34. Sas Colby
- 35. Peter Smalley
- 36. Doug Jackson
- 37. Zee Hakimoglu
- 38. Shirley Dean
- 39. Christine Schwartz
- 40. Diana Bohn
- 41. Marcia Poole
- 42. Margot Smith
- 43. Nazli Parvizi
- 44. Natalie Logusch
- 45. Greysonne Coomes

Berkeley Mutual Aid

- 46. David Peattie, on behalf of Berkeley Disaster Prep Neighborhood Network (2)

Ghost Guns

- 47. Eric Friedman

Consolidating Human Welfare & Peace and Justice Commissions

- 48. Praveen Sood, Chair of Human Welfare and Community Action Commission

Francisco Street Danger

- 49. David Lerman
- 50. Public Works, City of Berkeley

Easy Does It Emergency Services – Abuse of Clients and Staff

- 51. Hollynn
- 52. Omowale Fowles

Frances Albrier Community Center Funding

- 53. Mikko Jokela

Berkeley Labor Commission

- 54. Andrea Mullarkey

Eden I&R Newsletter

- 55. Eden I&R (2)

Palestinian Action

- 56. Linda Franklin

Pet Parade in Downtown Berkeley

- 57. John Caner
- 58. Amy Murray

Vaccinations

- 59. Vivian Warkentin

August 8th as Burma Day

- 60. Jeremiah Pinguelo

5G

- 61. Carol Hirth
- 62. Stephanie Thomas

Police Use of Military Equipment

- 63. Carol Denney

Skate Park

- 64. Beth Mora

FAA Flight Pattern Change

- 65. Steven Miyake

Unusual Problems in the Supreme Court

- 66. Christopher Johnson

Afghanistan Crisis

- 67. Crystal Ngo

Disposition of Council Referral PRJ 0019733 and PRJ 0012451

- 68. Katherine Lee, Interim Director of Police Accountability

Requiring Vaccinations for Police Department Employees

69. Izzy Ramsey, on behalf of the Police Accountability Board

70. LaTanya Bellows, Human Resources Director

Defective Induction Cooktops

71. Ben Hubbell

Demise of Milvia Street, near Civic Center

72. Michael Katz

Downtown Berkeley Association Staff Incident

73. Moni Law

Abusive Noise from 2734 College Avenue

74. Anne Whyte

California's Drought

75. Wende Williams Micco

76. Berkeley's Mayor Office

Community Gardens and Open Space

77. Bonnie Borucki

URL's Only

78. Russbumper (6)

Supplemental Communications and Reports 1

Item #34: Resolution Expressing Conceptual Support for an East Bay Wildfire Prevention and Vegetation Management Joint Power Agency

79. Revised material, submitted by Councilmember Wengraf

Item #35: Adoption of the Baseline Zoning Ordinance (BZO)

80. David Kellogg

Item #38: Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Committee

81. Revised material, submitted by Councilmember Harrison

Supplemental Communications and Reports 2

Item #7: 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) and Determining the Immediate Need for and Adopting a City Employee Vaccination Policy

82. Supplemental material, submitted by the Attorney's Office

Item #17: Revenue Contracts: FY 2022 Aging Services Program

83. Revised material, submitted by HHCS

Item #32: Expansion of the Berkeley Fair Elections Program

84. ACLU of Northern California

Item #35: Adoption of the Baseline Zoning Ordinance (BZO)

85. Revised material, submitted by Councilmember Hahn

86. Tom Lent, on behalf of Walk Bike Berkeley

Item #39: Open Government Commission Recommendations to City Council Regarding Teleconferenced Meetings.

87. Supplemental material, submitted by Mayor Arreguin

Supplemental Communications and Reports 3

Presentation on SB 1383 Implementation from Stop Waste

88. Presentation submitted by Public Works, Zero Waste Division

Item #7: 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) and Determining the Immediate Need for and Adopting a City Employee Vaccination Policy

89. Patrick McCullough

Item 29: Referral Response: Recommendation to Retain Current Structure of Zero Waste Commission

90. Martin Bourque, on behalf of the Ecology Center

Item #30: 2022 UC Berkeley Chicana Latinx Legacy Event

91. David Denton

Item #35: Adoption of the Baseline Zoning Ordinance (BZO)

92. Revised material, submitted by Planning

93. Presentation, submitted by Planning

94. George Porter

Item #38: Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Committee

95. Alfred Twu and Igor Tregub, on behalf of the Sierra Club (2)

96. Elnora Williams

**MINUTES
SPECIAL MEETING OF THE
BERKELEY CITY COUNCIL**

**Tuesday, September 21, 2021
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 Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/88120816296>. 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: 881 2081 6296. 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: 6:05 p.m.

Present: Kesarwani, Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: Bartlett

Councilmember Bartlett present at 6:06 p.m.

Worksession

1. Housing Element Update

From: City Manager

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

Action: Presentation made and discussion held.

Public Comment - Items on this agenda only – 22 speakers

Adjournment

Action: M/S/C (Arreguin/Robinson) to adjourn the meeting.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin;
Noes – None; Abstain – None; Absent - Droste.

Councilmember Droste absent at 8:21 p.m.

Adjourned at 8:29 p.m.

I hereby certify that the foregoing is a true and correct record of the city council special meeting held on September 21, 2021.

Mark Numainville
City Clerk

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

- None

Supplemental Communications and Reports 3

Item #1: Housing Element Update

1. Presentation, submitted by Planning

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

TUESDAY, SEPTEMBER 28, 2021

5:00 P.M.

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

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*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free); enter Meeting ID: 839 7282 1687. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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

Preliminary Matters

Roll Call: 5:04 p.m.

Present: Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: Kesarwani, Bartlett

Public Comment - Limited to items on this agenda only – 0 speakers

CLOSED SESSION:

The City Council will convene in closed session to meet concerning the following:

1. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTIONS 54956.9(a) AND 54956.9(d)(1):

- a. Hesselgesser v. City of Berkeley, Superior Court of the State of California, County of Alameda Case No. RG18929031, removed to and now pending in United States District Court, Northern District of California Case No. 3:19-cv-00610-JD

Action: M/S/C (Wengraf/Hahn) to authorize the City Attorney to settle Hesselgesser v. City of Berkeley, et al. United States District Court, Northern District of California, Case No. 3:19-CV-00610-JD for \$110,000.

Vote: Ayes - Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent - Kesarwani, Bartlett.

OPEN SESSION:

The City Council met in closed session and authorized the City Attorney to settle Hesselgesser v. City of Berkeley, et al. United States District Court, Northern District of California, Case No. 3:19-CV-00610-JD for \$110,000.

Adjournment

Action: M/S/C (Arreguin/Robinson) to adjourn the meeting.

Vote: Ayes - Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent - Kesarwani, Bartlett.

Adjourned at 5:26 p.m.

I hereby certify that the foregoing is a true and correct record of the City Council special closed meeting held on September 28, 2021.

Mark Numainville
City Clerk

MINUTES
BERKELEY CITY COUNCIL MEETING
Tuesday, September 28, 2021
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

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*To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free)** and enter Meeting ID: **821 4397 5247**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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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: 6:03 p.m.

Present: Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: Kesarwani, Taplin, Bartlett

Councilmember Taplin present at 6:04 p.m.

Councilmember Kesarwani present at 6:09 p.m.

Councilmember Bartlett present at 6:15 p.m.

Ceremonial Matters:

1. Recognition of Berkeley Fire for Efforts to Save Echo Lake Camp
2. Recognition of Loren Jones, Local Activist
3. Adjournment in Memory of Professor Leon Litwack, UC Berkeley Professor
4. Adjournment in Memory of Gene Poschman, Former Planning Commissioner
5. Adjournment in Memory of Frank Darr, Local Activist
6. Recognition of September as Childhood Cancer Month

City Manager Comments:

City Manager showed a video from the Fire Department regarding wildfire evacuation. The Fire Department is holding practice evacuations on October 8 and October 9.

Public Comment on Non-Agenda Matters: 10 speakers.

Public Comment on Consent Calendar and Information Items Only: 40 speakers.

Consent Calendar

Action: M/S/C (Arreguin/Robinson) to accept an urgency item from Mayor Arreguin pursuant to Government Code Section 54954.2(b)(2) entitled Re-Establishing a COVID-19 Business Damage Mitigation Fund. Councilmember Robinson added as a co-sponsor.

Vote: All Ayes.

Action: M/S/C (Arreguin/Robinson) to accept an urgency item from the City Attorney pursuant to Government Code Section 54954.2(b)(2) entitled Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference.

Vote: All Ayes.

Action: M/S/C (Arreguin/Harrison) to accept revised and supplemental materials on Item 16 (City Manager), Item 18 (Harrison), and Item 23 (Taplin).

Vote: All Ayes.

Action: M/S/C (Arreguin/Wengraf) to adopt the Consent Calendar in one motion except as indicated.

Vote: All Ayes.

Recess 9:12 p.m. – 9:22 p.m.

Urgency Item: Re-Establishing a COVID-19 Business Damage Mitigation Fund

From: Mayor Jesse Arreguín (Author)

Recommendation: Refer to the City Manager to re-establish the COVID-19 Business Damage Mitigation Fund in an amount up to \$50,000 to provide one-time grants to small businesses who experience property damage due to vandalism and other problematic behavior during this COVID-19 local State of Emergency. Authorize the City Manager to appropriate funding for the Mitigation Fund from Berkeley Relief Fund donations received through the East Bay Community Foundation.

Action: Approved recommendation.

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

From: Farimah Faiz Brown, City Attorney

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.

Action: Adopted Resolution No. 70,030–N.S.

Recess Items

1. **Contract No. 32100192 Amendment: California Constructores for Construction of Pedestrian Improvements at California Street/Dwight Way Intersection**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 32100192 with California Constructores for work on the Fiscal Year 2020 Sidewalk Repairs Project, Specification No. 20-11409-C, to perform safety-related pedestrian improvements at the California Street/Dwight Way intersection, increasing the current contract amount by up to \$175,900, for a total amount not to exceed \$2,175,900.
Financial Implications: General Fund - \$175,900
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 70,031–N.S.

Consent Calendar

- 2. Amendments to Berkeley Municipal Code Section 19.44.020 (Housing Advisory Commission)**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,782–N.S. amending Berkeley Municipal Code Chapter 19.44.020 to include oversight of Measure O bond-funded housing initiatives as established by Resolution No. 68,703-N.S. and future voter-approved bonds and measures dedicated to affordable housing.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted second reading of Ordinance No. 7,782-N.S.
- 3. Transfer of Two Property Parcels to the State of California for the Ashby-San Pablo Intersection Improvements Project**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,783-N.S. authorizing the City Manager to execute the attached Grant Deed for Parcel No. 63719 and Quitclaim Deed for easement on Parcel No. 63720-1 with the State of California, Department of Transportation (“Caltrans”) and any associated documents as necessary for the transfer of the property interests in these two parcels of property to Caltrans, for the Ashby-San Pablo Intersection Improvements Project (“Project”), Specification No. 18-11182-C.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted second reading of Ordinance No. 7,783-N.S.
- 4. Contract No. 9712A Amendment: QuickCaption, Inc. for Real-Time Closed Captioning Stenography Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 9712A with QuickCaption, Inc. for the provision of real-time closed captioning stenography services, including captioning virtual meetings, at all work sessions, regular and special meetings of the City Council and Successor Agency to the former Redevelopment Agency, increasing the contract by \$120,000 for a total not to exceed amount of \$321,900.
Financial Implications: General Fund - \$120,000
Contact: Mark Numainville, City Clerk, (510) 981-6900
Action: Adopted Resolution No. 70,032–N.S.

Consent Calendar

- 5. Grant from the William and Flora Hewlett Foundation**
From: City Manager
Recommendation: Adopt a Resolution accepting a \$10,525 grant from the William and Flora Hewlett Foundation, which augments a prior grant of \$20,000 awarded and accepted in 2019 for an assessment of arts space affordability challenges, displacement risks and possible strategies to protect affordable spaces for arts organizations, artists and cultural workers in Berkeley.
Financial Implications: \$10,525 (Grant)
Contact: Dave White, City Manager's Office, (510) 981-7000
Action: Adopted Resolution No. 70,033–N.S.
- 6. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 28, 2021**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: Various Funds - \$6,675,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Approved recommendation.
- 7. Contract: Genasys for Citywide Outdoor Warning System**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to enter into a contract with Genasys, Inc. for consulting, planning, construction, installation, software hosting, and implementation of a Citywide Outdoor Warning System (OWS), for a total amount not to exceed \$1,974,457.
Financial Implications: Measure FF - \$1,974,457
Contact: Abe Roman, Fire, (510) 981-3473
Action: Adopted Resolution No. 70,034–N.S.
- 8. Grant Application: Funding from FEMA's Assistance to Firefighters Grant to Support a Regional Fire Service Leadership Development Academy**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to apply for and accept a grant, and any amendments, from the Federal Emergency Management Agency (FEMA) Assistance to Firefighters Grant Program in the amount of \$168,272 to fund a Regional Fire Service Leadership Development Academy (LDA), and to accept grant funds and execute resulting grant agreements.
Financial Implications: See report
Contact: Abe Roman, Fire, (510) 981-3473
Action: Adopted Resolution No. 70,035–N.S.

Consent Calendar

- 9. Contract No. 31900132 Amendment: Building Opportunities for Self-Sufficiency for Representative Payee Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a contract amendment with vendor Building Opportunities for Self-Sufficiency (BOSS) to provide Representative Payee services. The amendment will add \$100,000 to the current contract and extend it through June 30, 2022 for a total contract not to exceed amount of \$300,000.
Financial Implications: Mental Health Service Act Fund - \$100,000
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 70,036–N.S.
- 10. Contract: Berkeley Free Clinic for Laboratory Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments or extensions with the Berkeley Free Clinic (BFC) for laboratory services, in an amount not to exceed \$150,000 for the period July 1, 2021 through June 30, 2024.
Financial Implications: General Fund - \$150,000
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 70,037–N.S.
- 11. Memorandum of Understanding with Alameda County Behavioral Health Care Services for Wellness Center Operations**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to adopt a Memorandum of Understanding between the City of Berkeley and Alameda County Behavioral Health Care Services for the term July 1, 2021 through June 30, 2023 for an expenditure of up to \$491,933 to fund the operational costs of a Mental Health Wellness Center located in Berkeley.
Financial Implications: Mental Health Service Act Fund - \$491,933
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 70,038–N.S.
- 12. Donation: Memorial Bench at Cesar Chavez Park in Memory of Nancy Park**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Cesar Chavez Park in memory of Nancy Park.
Financial Implications: \$3,400 (donation)
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 70,039–N.S.

Consent Calendar

- 13. Donation: Memorial Bench at Greg Brown Park in memory of Michael, Anna, and John Wyman**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Greg Brown Park in memory of Michael, Anna, and John Wyman.
Financial Implications: \$3,400 (donation)
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 70,040–N.S.
- 14. Donation: Memorial Bench at the Jane Hammond Softball Field at Corodonicos Park in memory of Dixie Lewis**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Jane Hammond Softball Field at Codornices Park in memory of Dixie Lewis.
Financial Implications: \$3,400 (donation)
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 70,041–N.S.
- 15. Donation: Memorial Bench at Shorebird Park at the Berkeley Marina in Memory of Shay M. Finnegan**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Shorebird Park in memory of Shay M. Finnegan.
Financial Implications: \$3,400 (donation)
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 70,042–N.S.

Consent Calendar

16. Exclusive Negotiating Agreement with Innovation Properties Group for 199 Seawall Drive

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an Exclusive Negotiating Agreement with Innovation Properties Group to develop a pre-development agreement that could lead to a long-term lease of City property at 199 Seawall Drive and a short-term license for a portion of the adjacent parking lot.

Financial Implications: None

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Action: Adopted Resolution No. 70,043–N.S. as amended in the supplemental materials from the City Manager with a revision in Section 8.e. of Exhibit A, the agreement, to read:

e. Labor Peace. IPG understands that it is the City's expectation that any future Master Lease, and any potential sublease agreements, would include provisions that a hospitality operation at the 199 Seawall Drive property shall be required to provide evidence satisfactory to the City that it is party to a labor peace agreement that protects the City's proprietary interest in the property.

17. Contract No. 10508 Amendment: Ben Noble, City and Regional Planning for Zoning Ordinance Revision Project (ZORP)

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10508 with Ben Noble, City and Regional Planning, to develop objective standards in the Zoning Ordinance as ZORP Phase 2, increasing the contract amount by \$125,000 to a new total not-to-exceed contract amount of \$425,000, and extending the contract period to December 31, 2023.

Financial Implications: General Fund - \$125,000

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

Action: Adopted Resolution No. 70,044–N.S.

Consent Calendar

18. Lease Agreement with Motorola Solutions for Public Safety Radios

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to enter into an initial seven-year lease and any future amendments with seven annual payments estimated at \$920,000 and not to exceed \$6.5 million dollars total for public safety radios with Motorola Solutions.

Financial Implications: See report

Contact: Jennifer Louis, Police, (510) 981-5900, Abe Roman, Fire, (510) 981-3473

Action: 1) Adopted Resolution No. 70,045–N.S. authorizing the City Manager to enter into an initial seven-year lease and any future amendments with seven annual payments estimated at \$920,000 and not to exceed \$6.5 million dollars total for public safety radios with Motorola Solutions.

2) Adopt the following policy: It is the policy of the Berkeley City Council that the City of Berkeley, including the Berkeley Police Department and Berkeley Fire Department, will continue its practice of the primary channel being used in an unencrypted manner and shall only use encrypted public safety radio channels during Special Response Team operations, special patrol and investigative operations, prolonged critical incidents, execution of search warrants, or to transmit Criminal Justice Information and Personally Identifiable Information related to the California Law Enforcement Telecommunications System and pursuant to California Department of Justice Information Bulletin No. 20-09-CJIS. In accordance with the First Amendment and in spirit of transparency, all other public safety radio transmissions shall be unencrypted and thereby transmittable to the news media and public through scanners or other relevant technology.

3) Provide direction to the City Manager that before the contract is executed the City Manager will present an item for the sanctuary policy waiver to the Council on a future agenda.

Vote: Ayes – Kesarwani, Taplin, Wengraf, Robinson, Droste, Arreguin; Noes – Bartlett, Harrison; Abstain – Hahn.

19. Purchase Orders: Bruce's Tire, Inc. for New Automobile and Truck Tires

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute yearly purchase orders for new tires for City owned vehicles and equipment with Bruce's Tire, Inc. in an amount not to exceed \$2,900,000 for FY 2022 through FY 2026.

Financial Implications: Equipment Maintenance Fund - \$2,900,000

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

Action: Adopted Resolution No. 70,046–N.S.

Consent Calendar

20. Extending the Requirements for Telestaff Time Reporting

From: Disaster and Fire Safety Commission

Recommendation: The Disaster and Fire Safety Commission (DFSC) recommends that the Berkeley Fire Department require that all overtime recorded for Fire Suppression be coded properly in the Telestaff application to show the reason for the overtime. Further, to assist determining what overtime is eligible to be charged to Measure GG as “Minimum Staffing” that overtime must be properly coded as supporting minimum staffing. (Currently, this would be code 00FS10 and 00FS11). This would not affect charges for Measure GG approved time or overtime. In addition, we recommend that in any future reports to the DFSC on Measure GG budget that the report include a breakdown of the time by labor purpose of both regular and overtime.

Financial Implications: See report

Contact: Keith May, Commission Secretary, (510) 981-3473

Action: Approved the City Manager’s recommendation:

The City Manager concurs with the content and recommendations of the Disaster and Fire Commission’s Report. At the time of this report, details regarding how the information was being transferred from the Telestaff program and added to Enterprise Resource Management Application (ERMA) was not fully realized by the Disaster and Fire Safety Commission.

Telestaff records all overtime of personnel with various codes that relates to specific reasons that personnel are being hired to work. Those codes are noted and assigned in ERMA when payroll is being completed by finance staff. The Commission’s recommendation is a standard practice when staff is completing payroll procedures.

21. Appointment of Tommy Escarcega to Mental Health Commission

From: Mental Health Commission

Recommendation: Adopt a Resolution appointing: Tommy Escarcega as a representative of the Special Public Interest, Consumer Category, to complete her first 3-year term beginning September 29, 2021 and ending September 28, 2024.

Financial Implications: None

Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400

Action: Adopted Resolution No. 70,047–N.S.

Council Consent Items

22. Referral to Strengthen Public Health and Environmental Impact Mitigation for Industrial Facilities in the Manufacturing Zone

From: Councilmember Kesarwani (Author), Councilmember Taplin (Co-Sponsor), Councilmember Droste (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)

Recommendation: Refer to the City Manager to: Establish a procedure for enhanced review of use permits in the manufacturing zone for industrial facilities—upon initial submission or upon submission of an amended use permit—in order to ensure public health and environmental impacts are appropriately mitigated as a condition of the use permit. Further, if appropriate, consider mitigation that includes the use-permit applicant contracting with a certified third-party to install air quality monitoring device(s) that can enable periodic reporting on pollutants relevant to the particular industrial process proposed in the initial or amended use permit. Explore feasibility of increasing penalty fee schedule as a deterrence for use-permit violations related to public health and environmental impacts, such as air, noise, and water pollution.

Financial Implications: Staff time

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

Action: Approved recommendation as revised in Supplemental Communications Packet #2 from Councilmember Kesarwani to add Councilmembers Droste, Taplin and Wengraf as cosponsors. Also, to add limited refinements to the recommendation specifying ongoing monitoring and reporting of pollutants associated with the particular process proposed in the initial or amended use permit; and adds soil pollution to the list of potential environmental impacts.

Council Consent Items

23. Amending BMC Section 14.56.070 for 3-Ton Commercial Truck Weight Limit on Berkeley's Bicycle Boulevards and on At-Risk West Berkeley Residential Streets

From: Councilmember Taplin (Author), Councilmember Kesarwani (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)

Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 14.56.070 to add 3-ton commercial truck weight limits on:

1. Ninth Street between Dwight Way and Heinz Avenue
2. Addison Street between San Pablo Avenue and Sixth Street;
3. Allston Way between San Pablo Avenue and Sixth Street;
4. Bancroft Way between San Pablo Avenue and Sixth Street;
5. Channing Way between San Pablo Avenue and Fourth Street;
6. Dwight Way between San Pablo Avenue and Sixth Street;
7. Camelia Street between Eighth Street and Ninth Street;
8. Eighth Street between Jackson Street and Camelia Street;
9. Ninth Street between Camelia Street and Cedar Street;
10. Virginia Street between Sacramento Street and Martin Luther King Jr. Way;
11. Virginia Street between Shattuck Avenue and Euclid Avenue;
12. Channing Way between Martin Luther King Jr. Way and Piedmont Avenue;
13. Heinz Avenue between Ninth Street and San Pablo Avenue;
14. Russell Street between San Pablo Avenue and Shattuck Avenue;
15. Russell Street between Telegraph Avenue and Claremont Avenue;
16. California Street between Hopkins Street and University Avenue;
17. California Street between Dwight Way and Russell Street;
18. King Street between Russell Street and Stanford Avenue;
19. Milvia Street from Dwight Way to Russell Street;
20. Bowditch Street from Bancroft Way to Dwight Way;
21. Hillegass Avenue from Dwight Way to Woolsey Street

Financial Implications: See report

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Action: Adopted first reading of Ordinance No. 7,784–N.S. as revised in Supplemental Communications Packet #2 and Packet #3 from Councilmember Taplin to add several at-risk streets in neighborhoods experiencing through truck traffic, add Councilmember Hahn as a co-sponsor, and add exemptions for qualifying vehicles. Second reading scheduled for October 12, 2021.

24. Resolution in Support of Afghan Refugees

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

Recommendation: Adopt a Resolution in support of refugees from Afghanistan.

Financial Implications: None

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Action: Adopted Resolution No. 70,048–N.S.

Council Consent Items

- 25. Accessible Recreation Center for Ashby BART East Parking Lot** *(Item contains revised materials)*
From: Councilmember Bartlett (Author), Mayor Arreguin (Co-Sponsor), Councilmember Taplin (Co-Sponsor), Councilmember Harrison (Co-Sponsor)
Recommendation: Refer to the City Manager to explore the feasibility of incorporating an accessible recreation center as part of the development of the Ashby BART East Parking Lot.
Financial Implications: See report
 Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
Action: Item withdrawn by request of the author.
- 26. Adopt a Resolution Renewing and Re-Affirming Wildfire Prevention and Safety**
From: Councilmember Wengraf (Author), Councilmember Harrison (Co-Sponsor), Councilmember Hahn (Co-Sponsor)
Recommendation: Request that the Berkeley City Council adopt a resolution re-affirming that wildfire prevention and safety is a top priority in the City of Berkeley.
Financial Implications: None
 Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
Action: Adopted Resolution No. 70,049–N.S. as revised in Supplemental Communications Packet #1 from Councilmember Wengraf to add mention of AP News analysis reporting Berkeley Hills zip code 94708 in the worst 1% of state for wildfire evacuation, the article and map showing 94708 location.
- 27. Amending BMC Section 14.56.040 to Reduce the Commercial Weight Limit on Marin Ave**
From: Councilmember Wengraf (Author), Councilmember Hahn (Co-Sponsor), Councilmember Taplin (Co-Sponsor), Councilmember Droste (Co-Sponsor)
Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 14.56.040 to reduce the commercial vehicle weight limit from four tons gross weight to three tons gross weight on Marin Avenue between Grizzly Peak Boulevard and The Marin Fountain Circle.
Financial Implications: See report
 Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
Action: Adopted first reading of Ordinance No. 7,785–N.S. Second reading scheduled for October 12, 2021.

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 Calendar – Public Hearings

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

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.

28. **ZAB Appeal: 2943 Pine Avenue, Use Permit #ZP2020-0107**

From: City Manager

Recommendation: Conduct a public hearing, and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2020-0107 to construct a 729 square-foot, second-story addition to an existing one-story 1,822 square-foot single-family dwelling, with an average height of 23 feet 1 inch, add a fifth bedroom, and legalize an existing 10-foot fence at the rear and left side, on a lot that is existing non-conforming for lot coverage, and dismiss the appeal.

Financial Implications: None

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

Public Testimony: The Mayor opened the public hearing. 12 speakers. M/S/C (Arreguin/Wengraf) to close the public hearing.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – None; Absent – Droste (Recused – lives within 500 feet of subject property).

Action: M/S/C (Hahn/Harrison) to adopt Resolution No. 70,050–N.S. affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2020-0107 to construct a 729 square-foot, second-story addition to an existing one-story 1,822 square-foot single-family dwelling, with an average height of 23 feet 1 inch, add a fifth bedroom, and legalize an existing 10-foot fence at the rear and left side, on a lot that is existing non-conforming for lot coverage, and dismiss the appeal.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – None; Absent – Droste (Recused – lives within 500 feet of subject property).

Action: M/S/C (Arreguin/Wengraf) to suspend the rules and extend the meeting to 11:30 p.m. to hear Items 30 and 32 and stating the intent to call a special meeting to hear Item 31.

Vote: All Ayes.

Action Calendar – Public Hearings

29. **Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04** *(Continued from July 13, 2021)*

From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt the first reading of a local Accessory Dwelling Unit (ADU) Ordinance [Berkeley Municipal Code (BMC) Chapter 23C.24] and amendments to relevant Definitions [BMC Chapter 23F.04] in the Zoning Ordinance.

Financial Implications: None

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

Action: Item continued to October 12, 2021 including Supplemental material in Supplemental Communications Packet #1 from Councilmember Harrison.

30. **Adopt a Resolution and Ordinance for a Shared Electric Micromobility Permit Program**

From: City Manager

Recommendation: Conduct a public hearing and upon its conclusion:

1. Adopt a Resolution approving a Shared Electric Micromobility Permit Program, establishing fees for the program, and designating the City Manager as custodian of the program; and
2. Adopt the first reading of an Ordinance adding Berkeley Municipal Code Chapter 14.63 and amending Chapter 14.68 to establish the Shared Electric Micromobility Permit Program and related parking regulations.

Financial Implications: See report

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

Public Testimony: The Mayor opened the public hearing. 6 speakers.

M/S/C (Arreguin/Robinson) to close the public hearing.

Vote: All Ayes.

Action: M/S/C (Arreguin/Hahn) to suspend the rules and extend the meeting to 11:40 p.m.

Vote: All Ayes.

Action: M/S/C (Robinson/Arreguin) to 1. Adopt Resolution No. 70,051–N.S.; 2. Adopt first reading of Ordinance No. 7,786–N.S.; 3. Amend the Terms and Conditions document to raise the speed limit for e-bikes to 20 mph; and 4. Refer to the City Manager to develop a process for micromobility operators to request and pay the City to convert on-street vehicle parking spaces to shared micromobility parking, especially in high use areas downtown, near campus, and along commercial corridors. Second reading scheduled for October 12, 2021.

Vote: All Ayes.

Action Calendar

31. **Approval of Interim Regulations for the Police Accountability Board and Office of the Director of Police Accountability for Handling Complaints Against Sworn Officers of the Police Department**
From: Police Accountability Board and Director of Police Accountability
Recommendation: Approve Interim Regulations to be used by the Police Accountability Board and Director of Police Accountability for Handling Complaints Against Sworn Officers of the Police Department under City Charter Article XVIII, Section 125 (Measure II). The City Council is asked to choose between the Board's modified proposal, conditioned upon City Attorney approval, or the Interim Director's preferred version.
Financial Implications: None
Contact: Katherine Lee, Interim Director of Police Accountability, (510) 981-4950
Action: Item 31 continued to a special meeting of the City Council at a date to be determined by the Mayor.

Action Calendar – Public Hearing

32. **Adoption of the Baseline Zoning Ordinance (BZO)** *(Continued from September 14, 2021) (Item contains supplemental material)*
From: City Manager
Recommendation: Conduct a public hearing and, upon conclusion, adopt the first reading of an Ordinance rescinding the current Berkeley Municipal Code (BMC) Title 23 and adopting the new Baseline Zoning Ordinance (BZO) as BMC Title 23 with an effective date of December 1, 2021.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- Public Testimony:** The Mayor opened the public hearing. 1 speaker. M/S/C (Arreguin/Wengraf) to close the public hearing.
Vote: All Ayes.
- Action:** M/S/C (Hahn/Wengraf) to adopt first reading of Ordinance No. 7,787–N.S. as presented in Supplemental Communications Packet #2 from the City Manager. Second reading scheduled for October 12, 2021.
Vote: All Ayes.

Action Calendar

33. **Objective Standards Recommendations for Density, Design and Shadows From: Joint Subcommittee for the Implementation of State Housing Laws** *(Continued from September 14, 2021) (Item contains supplemental material)*
Recommendation: Refer to the Planning Commission and Design Review Committee to review the recommendations from the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) for objective standards for density, design and shadows and draft Zoning Ordinance amendments for City Council consideration.
Financial Implications: See report
Contact: Alene Pearson, Commission Secretary, (510) 981-7400
Action: Item 33 continued to October 12, 2021.

Information Reports

34. **Sanctuary City Contracting Compliance Report for FY 2020**
From: City Manager
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Received and filed.
35. **Financial First Aid Kit: A Guide to Emergency Financial Preparedness for Berkeley Residents**
From: Auditor
Contact: Jenny Wong, Auditor, (510) 981-6750
Action: Received and filed.

Public Comment – Items Not Listed on the Agenda – 1 speaker.

Adjournment

Adjourned at 11:40 p.m.

I hereby certify that the foregoing is a true and correct record of the City Council regular meeting held on September 28, 2021.

Mark Numainville
City Clerk

Communications

Item #26: ZAB Appeal: 2943 Pine Avenue, Use Permit #ZP2020-0107

1. Anne Nachtwey
2. Everett and Shannon Hartwell

Tent Encampments - Homelessness

3. Jae Wheeler, oh behalf of Music Lovers, Inc. (2)
4. Charles Clarke
5. Jed Waldman

BART Housing

6. Ann Einkelstein
7. Theo Posselt
8. Serena Lim
9. Elliot Parrish
10. Matthew Wadlund
11. Tyson Miklebost
12. Forest Kaser
13. Laura Stevens
14. Jane Scantlebury
15. Ariella Granett
16. Betsy Thagard
17. Donna Graves
18. Sean Kennedy
19. Laura Klein
20. Marcia Freedman

Masks – Vaccines – COVID-19

21. Wise Queen
22. Alfred Manning
23. Snowsu2t3@
24. Vivian Warkentin

Satellite Affordable Housing Associates (SAHA)

25. Sabina McMurtry

UA Homes

26. Benjamin Hubbell

Drinking Water in Berkeley

27. David Lerman

East Bay Community Energy

28. EBCE

1740 San Pablo Ave New Construction – Funding Application

29. Kate Traynor, on behalf of BRIDGE

Support for Affordable Housing Overlay

30. BNHCA Steering Committee

Free Speech at Council Meetings

- 31. Barbara Gilbert
- 32. Eric Friedman

Ashby Garden at 1376 Ashby - Land Purchase Proposal

- 33. Bonnie Borucki

Supplemental Communications and Reports 1

Re-Establishing a COVID-19 Business Damage Mitigation Fund

- 34. Urgent item, submitted by Mayor Arreguin

Item #26: Adopt a Resolution Renewing and Re-Affirming Wildfire Prevention and Safety

- 35. Revised material, submitted by Councilmember Wengraf

Item #28: ZAB Appeal: 2943 Pine Avenue, Use Permit #ZP2020-0107

- 36. Linda Yen

Item #29: Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04

- 37. Supplemental material, submitted by Councilmember Harrison
- 38. Jenniffer Hamilton
- 39. Ben Obriecht
- 40. Claudia Kawczynska
- 41. Debra Sanderson, Co-chair, ADU Task Force

Item #31: Approval of Interim Regulations for the Police Accountability Board and Office of the Director of Police Accountability for Handling Complaints Against Sworn Officers of the Police Department

- 42. Zipporah Collins

Item #32: Adoption of the Baseline Zoning Ordinance (BZO)

- 43. Supplemental material, submitted by Planning

Supplemental Communications and Reports 2

Item #22: Referral to Strengthen Public Health and Environmental Impact Mitigation for Industrial Facilities in the Manufacturing Zone

- 44. Revised material, submitted by Councilmember Kesarwani

Item #23: Amending BMC Section 14.56.070 for 3-Ton Commercial Truck Weight Limit on Berkeley's Bicycle Boulevards and on At-Risk West Berkeley Residential Streets

- 45. Supplemental material, submitted by Councilmember Taplin
- 46. Igor Tregub

Item #28: ZAB Appeal: 2943 Pine Avenue, Use Permit #ZP2020-0107

- 47. Rena Rickles Law Office (5)
- 48. Linda Yen

Item #29: Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04

49. George Porter

Item #30: Adopt a Resolution and Ordinance for a Shared Electric Micromobility Permit Program

50. Ben Gerhardstein, on behalf of Walk Bike Berkeley

Item #31: Approval of Interim Regulations for the Police Accountability Board and Office of the Director of Police Accountability for Handling Complaints Against Sworn Officers of the Police Department

51. Revised material, submitted by the Police Accountability Board

52. Sally Nelson

53. Margot Smith

Item #32: Adoption of the Baseline Zoning Ordinance (BZO)

54. Supplemental material, submitted by Planning

Supplemental Communications and Reports 3

Re-Establishing a COVID-19 Business Damage Mitigation Fund

55. Supplemental material, submitted by Mayor Arreguin

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

56. Urgent item, submitted by the City Attorney's Office

Item #16: Exclusive Negotiating Agreement with Innovation Properties Group for 199 Seawall Drive

57. Revised material, submitted by Parks, Recreation and Waterfront

Item #18: Lease Agreement with Motorola Solutions for Public Safety Radios

58. Supplemental material, submitted by Councilmember Harrison

59. Maryann O'Sullivan

60. Yael Platt

61. Elana Auerbach

62. Negeene Mosaed

63. Romeo Channer

64. Michael Freeman

Item #22: Referral to Strengthen Public Health and Environmental Impact Mitigation for Industrial Facilities in the Manufacturing Zone

65. Igor Tregub, on behalf of the Sierra Club

Item #23: Amending BMC Section 14.56.070 for 3-Ton Commercial Truck Weight Limit on Berkeley's Bicycle Boulevards and on At-Risk West Berkeley Residential Streets

66. Supplemental material, submitted by Councilmember Taplin

Item #28: ZAB Appeal: 2943 Pine Avenue, Use Permit #ZP2020-0107

67. Presentation, submitted by Planning

68. Rena Rickles

Item #29: Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04

69. Lisa and Tim Goodman

70. Henson Jones

Item #30: Adopt a Resolution and Ordinance for a Shared Electric Micromobility Permit Program

71. Ben Gerhardstein, on behalf of Walk Bike Berkeley

72. Rowan Naldoo, on behalf of Independent Medical Supplies

73. Bob Walsh, on behalf of Government Partnerships

74. Luis and Orellana, on behalf of Golden Gate Park Activities Center

Item #31: Approval of Interim Regulations for the Police Accountability Board and Office of the Director of Police Accountability for Handling Complaints Against Sworn Officers of the Police Department

75. Holly Scheider

76. Cindy Shamban

77. Elizabeth Ferguson

78. Julianna Dickey

79. Catherine Huchting

80. Debbie Perkins (2)

81. Mary Elieisar

82. Tony Wilkinson



Office of the City Manager

CONSENT CALENDAR
October 26, 2021

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: Contract No. 32100161 Amendment: Dorothy Day House for Services at
 742 Grayson Street

RECOMMENDATION

Adopt a resolution authorizing the City Manager to amend contract number 32100161 with Dorothy Day House, adding \$548,096 for a new total not to exceed amount of \$1,657,618, to include the operation of homeless shelter for people living in vehicles in an off-street safe parking program for Recreational Vehicles at 742 Grayson Street, and extending the contract through September 30, 2022.

FISCAL IMPACTS OF RECOMMENDATION

This amendment to extend and increase the funding of an existing contract will fund the Dorothy Day House (DDH) off-street RV parking program at 742 Grayson. Staff proposes using General Fund - Measure P funding in the amount of \$398,096 as well as a recent donation of \$150,000 to the City of Berkeley, Berkeley Homeless Fund earmarked for this program, for a combined additional annual cost of \$548,096. The donation of the \$150,000 and the \$398,096 in General Fund – Measure P will be included in FY 2022 First Amendment to the Annual Appropriations in November. Funds would be expended in FY 2022 and FY 2023. Because the Homeless Services Panel of Experts has exhausted all of its regular meetings for Calendar Year 2021, staff did not have the opportunity to bring this proposed use of Measure P funding before the Panel.

CURRENT SITUATION AND ITS EFFECTS

Based on the enduring homelessness crisis, the City Council has repeatedly extended Resolution No. 68,206–N.S., which declared a homeless shelter crisis in the City of Berkeley. On January 21, 2020 the City Council passed a recommendation for the City Manager to establish an outdoor emergency shelter in Berkeley. On April 27, 2021 the City Council adopted resolution 69,808-N.S. authorizing the City Manager to execute a contract with DDH to operate a temporary indoor-outdoor shelter for individuals living in tents and RVs at 742 Grayson.

This amendment to the existing contract (#32100161) would allow an additional homeless sheltering program to be setup at 742 Grayson that would allow approximately 40 recreational vehicles (RVs) to park in this lot and off of city streets.

The Safe RV parking program will provide temporary parking accommodations for up to 40 households living in their RVs, and is designed to be as low barrier as possible. It will have a fence for security, but no nighttime curfews. Pets will be accommodated, but not minor children. (In the event we encounter families with minor children in the course of our outreach, we immediately refer them to family shelter beds through the Family Front Door.) There will be water for hand-washing and portable toilets; for guests that prefer to use their own septic systems, we are creating a voucher program for vehicles to dump their wastewater at a nearby off-site licensed dump station. Additionally, there will be some support for fixing vehicles that need maintenance to remain operational. Due to cost and timing constraints, there will not be electrical hookups, but guests can operate a personal generator if they have one, and there will be charging for personal devices at the on-site office.

The property that the City plans to use is already under lease to the City through September 2022.

BACKGROUND

DDH has operated the Berkeley Emergency Storm Shelter (BESS) for fifteen years. Up until FY 2017, DDH operated BESS as an overnight emergency shelter on a first-come, first served basis for up to 45 nights for a maximum capacity of 65 people each night dependent on weather conditions.

In addition to this program, DDH has operated an expanded and extended winter shelter on a nightly basis since September of 2018. The DDH Shelter provides nightly shelter for up to 52 homeless people.

On April 27, 2021, Council authorized contract number 32100161 with Dorothy Day House to operate the Horizon Transitional Village program at 742 Grayson Street. This program provides 50 beds to unsheltered Berkeley residents in a low-barrier setting.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT

Opening the safe RV parking program will allow up to 40 RVs to move off the streets and into facilities that include regular trash service and hygiene facilities. Additionally, on a pilot basis, those RVs that wish to use their own septic systems will be provided vouchers to dump their wastewater at an approved nearby facility. This will create a number of environmental benefits for the City, namely:

- The reduction of accumulated trash and debris on public streets and into storm drains;
- Reduction of illegal wastewater discharge into the City's storm drains, which ultimately drain into the Bay; and

Contract No. 32100161 Amendment: Dorothy Day House
for services at 742 Grayson

CONSENT CALENDAR
October 26, 2021

- Freeing up of more on-street parking, reducing the need for vehicles in the neighborhood to circle while looking for parking.

Vehicles that already operate personal generators on the street will be allowed to continue operating them at the site, but no new generators will be purchased for program guests, thus adding no net new emissions.

RATIONALE FOR RECOMMENDATION

DDH has a long history of operating the winter shelter, including an expanded and extended nightly shelter for the past few winter seasons. DDH has successfully operated a nightly shelter for more than four years. DDH has also been operating the Horizon Transitional Village Program at 742 Grayson since July 2021. This addition to the contract would utilize the expertise of DDH in starting up and operating shelters, and also build upon the established relationship between DDH and the City to offer a new RV parking program through at least March 2022.

ALTERNATIVE ACTIONS CONSIDERED

An amendment and extension of the existing DDH contract for additional homeless services is most expeditious and efficient so other actions were not considered.

CONTACT PERSON

Darrin Rafferty, Acting Assistant to the City Manager, (510) 981-7000
Peter Radu, Assistant to the City Manager, (510) 981-7045

Attachment:

1. Resolution

RESOLUTION NUMBER ##,###-N.S.

CONTRACT NO. 32100161 AMENDMENT WITH DOROTHY DAY HOUSE FOR SERVICES AT 742 GRAYSON STREET

WHEREAS, the severe housing and shelter shortage in the Bay Area has led thousands of households to find shelter in Recreational Vehicles (RVs); and

WHEREAS, city streets were not designed to accommodate permanent vehicular residency, creating a number of impacts including trash and wastewater discharge; accumulation of possessions that obstruct sidewalks and the vehicular right-of-way; and the elimination of parking spaces; and

WHEREAS, the City Council authorized contract number 32100161 with Dorothy Day House on April 27, 2021, creating the Horizon Transitional Village Program at 742 Grayson Street; and

WHEREAS, the City Council has entered into a lease for the property at 742 Grayson Street, which includes a large outdoor lot that can accommodate up to 40 RVs; and

WHEREAS, providing safe, off-street places for RV residents to park their vehicles and have access to sanitary facilities is an emerging best practice, providing dignity to the RV residents and minimizing impacts on city streets; and

WHEREAS, the City Manager has received a \$150,000 donation to the Berkeley Homeless Fund, to be used to offset the operating expenses associated with this safe, off-street RV parking program; and

WHEREAS, the remainder of the funding for this contract amendment will come from General Fund – Measure P Fund (totaling \$398,096) and will be included in FY 2022 First Amendment to the Annual Appropriations in November.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City manager or her designee to amend Contract No. 32100161 to create a safe parking program for RVs at 742 Grayson Street, adding \$548,096 for a new total not to exceed amount of \$1,657,618, and extending the contract through September 30, 2022.



Office of the City Manager

CONSENT CALENDAR
October 26, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on October 26, 2021

RECOMMENDATION

Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

Total estimated cost of items included in this report is \$300,000.

<u>PROJECT</u>	Fund	<u>Source</u>	Amount
CITY OF BERKELEY MOBILE PARKING PAYMENT SERVICES	631	Parking Meter Fund	\$300,000
Total:			\$300,000

CURRENT SITUATION AND ITS EFFECTS

On May, 6, 2008, Council adopted Ordinance No. 7,035-N.S. effective June 6, 2008, which increased the City Manager's purchasing authority for services to \$50,000. As a result, this required report submitted by the City Manager to Council is now for those purchases in excess of \$100,000 for goods; and \$200,000 for playgrounds and construction; and \$50,000 for services. If Council does not object to these items being sent out for bid or proposal within one week of them appearing on the agenda, and upon final notice to proceed from the requesting department, the IFB (Invitation for Bid) or RFP (Request for Proposal) may be released to the public and notices sent to the potential bidder/respondent list.

Formal Bid Solicitations and Request for Proposals
Scheduled for Possible Issuance After Council
Approval on October 26, 2021

CONSENT CALENDAR
October 26, 2021

BACKGROUND

On May 6, 2008, Council adopted Ordinance No. 7,035-N.S., amending the City Manager's purchasing authority for services.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Finance Department reviews all formal bid and proposal solicitations to ensure that they include provisions for compliance with the City's environmental policies. For each contract that is subject to City Council authorization, staff will address environmental sustainability considerations in the associated staff report to City Council.

RATIONALE FOR RECOMMENDATION

Need for the services.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, (510) 981-7329

Attachments:

1: Formal Bid Solicitations and Request for Proposals Scheduled For Possible Issuance After Council Approval on October 26, 2021

a) City of Berkeley Mobile Parking Payment Services

Note: Original of this attachment with live signature of authorizing personnel is on file in General Services.

DATE SUBMITTED: October 26, 2021

SPECIFICATION NO.	DESCRIPTION OF GOODS / SERVICES BEING PURCHASED	APPROX. RELEASE DATE	APPROX. BID OPENING DATE	INTENDED USE	ESTIMATED COST	BUDGET CODE TO BE CHARGED	DEPT. / DIVISION	CONTACT NAME & PHONE
22-11478-C	City of Berkeley Mobile Parking Payment Services	11/1/2021	12/1/2021	<p>Contractor will implement phone-based payment at all on- and off-street metered parking spaces within the City. Contractor will supply all software, hardware, signage/decals, and interface facilities to enable system.</p> <p>Contractor will also implement phone-based payment for a pilot project on residential streets adjacent to commercial areas, and assist City staff to create new decals and/or signage necessary to implement this pilot.</p>	\$300,000	<p>631-54-622-665-0000-000-472-612990-</p> <p>FY 22: \$18k</p> <p>FY 23: \$94k</p> <p>FY 24: \$94k</p> <p>FY 25: \$94k</p>	Public Works/Transportation	Gordon Hansen, 981-7064
Dept TOTAL					\$300,000			
DEPT. TOTAL					\$300,000			



Office of the City Manager

CONSENT CALENDAR
October 26, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Abraham Roman, Fire Chief
 Subject: Contract: Federal Engineering, Inc. for Prioritized Dispatch Consulting

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Federal Engineering, Inc. (Contractor) to provide prioritized dispatch consulting services from November 1, 2021 to October 30, 2022 in an amount not to exceed \$100,000 with an option to extend for two additional two-year terms, for a total contract amount not to exceed \$300,000.

FISCAL IMPACTS OF RECOMMENDATION

The term of this contract is from November 1, 2021 to October 30, 2022 in the amount of \$100,000 for the base term. There is an option to extend for two additional two-year terms for a total term of five years. Funding for the Prioritized Dispatch Consulting project is budgeted in 011-72-742-831-0000-000-422-612990.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley has issued an RFP to obtain consulting services to analyze the staffing, infrastructure, and technology needs of the Berkeley 9-1-1 Communication Center and create a project plan to implement an accredited prioritized emergency medical dispatch system. The project is broken into two phases; Phase I – Analysis: Analyze the current dispatch center including available hardware and software, current staffing model, current level of training, existing facility, accreditation status and accreditation options, and existing quality improvement practices. Then recommend a prioritized emergency fire & medical dispatch system for the Berkeley 9-1-1 Communication Center. Phase II - Implementation Plan: Create a detailed implementation plan including timelines and critical dependencies, a budget identifying one-time and on-going costs, staffing requirements, technology needs, start up and on-going training requirements, and physical/facility improvements.

The City conducted RFP Specification No. 21-11439 with proposals due no later than May 25, 2021. The City received six proposals in response to this RFP. The selection committee composed of subject matter experts including from the dispatch center and the fire department met and reviewed the proposals.

The criteria used to rate the proposals were References (30%), Price (20%), Past Performance: Analysis (40%), Past Performance: Implementation (20%). Four finalists Federal Engineering, Fitch & Associates, Matrix Consulting Group, and Priority Dispatch were invited to meet with the committee for more in depth presentations and Federal Engineering, Inc. was selected as the most responsive vendor. The Contractor has signed the City's Nuclear Free Zone Disclosure Form, Oppressive States Compliance Statement, Living Wage Certification Form, and the Sanctuary City Compliance Statement.

BACKGROUND

The City of Berkeley provides 24/7 dispatch services for police, fire, and emergency medical service (EMS). Currently, fire and EMS resources are dispatched to calls for service code 3 (with lights and sirens). Every EMS call for service receives a suppression company and paramedic ambulance. Suppression companies are dispatched because they are strategically located throughout the City to minimize response time and can arrive on scene first to begin lifesaving care. The City does not currently provide prioritized dispatching or emergency medical dispatching (EMD) in-house. Prioritized dispatching allows fire departments to triage calls for service using standardized questioning and call categorization and allows the right resource to be sent to the right call, in the right priority – not all calls need a fire engine and an ambulance responding code 3. EMD provides dispatchers the training and technology to provide life-saving instructions to callers for emergencies including but not limited to cardiac arrests, allergic reactions, drownings, stabbings, gunshot wounds and hemorrhaging while emergency resources are dispatched in the background.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

The City conducted a competitive bid process and Federal Engineering successfully met the bid requirements and ranked highest among all bidders. The pricing is deemed to be fair and reasonable.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Abraham Roman, Fire Chief, (510) 981-3473

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

Contract: Federal Engineering, Inc. for Prioritized Dispatch Consulting

WHEREAS, the City of Berkeley has issued an RFP to obtain consulting services to analyze the staffing, infrastructure, and technology needs of the Berkeley 9-1-1 Communication Center and create a project plan to implement an accredited prioritized emergency medical dispatch system, and

WHEREAS, the City conducted RFP Specification No. 21-11439 with proposals due no later than May 25, 202; and

WHEREAS, the City received six proposals in response to this RFP; and

WHEREAS, four finalists were invited to meet with the committee for more in depth presentations and Federal Engineering, Inc. was selected as the most responsive vendor.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Federal Engineering, Inc. to provide prioritized dispatch consulting services from November 1, 2021 to October 30, 2022 in an amount not to exceed \$100,000 with an option to extend for two additional two-year terms, for a total contract amount not to exceed \$300,000.



Office of the City Manager

CONSENT CALENDAR
October 26, 2021

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: Contract No. 31900009 Amendment: Building Opportunities for Self-Sufficiency (BOSS) for property management services at 2111 McKinley Ave

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 31900009 with Building Opportunities for Self-Sufficiency (BOSS) to fund property management services at 2111 McKinley Avenue in Berkeley, a supported housing site for mental health division clients, to increase the amount by \$287,712 for a total contract not to exceed \$657,712, and to extend the contract through November 1, 2023.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the scope of work in the amount of \$287,712 will be provided from ERMA GL Code 315-51-503-526-2017-000-451-612990. This ERMA GL Code utilizes Mental Health Services Act Community Services and Supports as its funding source. Funding is available in the FY 2022 budget.

CURRENT SITUATION AND ITS EFFECTS

The City has contracted with BOSS as the property manager for 2111 McKinley Avenue for several years and they have provided this vital service efficiently and reliably. The property houses six clients of the Mental Health Division's Full-Service Partnership (FSP) program, who without this support would likely be homeless, and this funding will be used to support the operating costs for BOSS. The Mental Health Division would like to extend the current contract by two years; allowing BOSS to continue to provide much needed housing support for some of our most vulnerable clients.

BACKGROUND

The City owns the parcel located at 2111 McKinley Avenue (Alameda County Assessor's Parcel No. 52-2017-16-1), which contains a seven-unit apartment building known as McKinley House. Six of the units are utilized as supportive housing units for FSP clients, and one unit is used for an onsite property manager. The City's Mental Health Division operates the Adult FSP which is the division's highest level of care, providing intensive services for adults age 18 and older who have been diagnosed with mental illness. The FSP Program is funded by Mental Health Services Act resources,

and utilizes a team approach to partner with clients with serious mental illness to achieve individualized, recovery-focused goals that enable them to live successfully in the community.

The Mental Health Division and BOSS wish to continue to collaborate to provide housing and supportive services at McKinley House to participants in the FSP Program referred by the Mental Health Division. The framework to achieve this objective consists of the City leasing the property to BOSS, who in turn subleases the individual dwelling units to eligible individuals referred by the Mental Health Division. BOSS provides property management services and the Mental Health Division provides services to residents through the FSP Program.

Prior to the program being instituted there was extensive community outreach. This program is an example of positive coexistence of people with severe mental illness and people without mental illness living in the same neighborhood.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

BOSS has been providing property management services at 2111 McKinley Avenue for many decades, most recently with the current population, and has done so satisfactorily.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Steven Grolnic-McClurg, Manager of Mental Health, HHCS, (510) 981-5249
Conor Murphy, Assistant Management Analyst, HHCS, (510) 981-7611

Attachments:

1: Resolution

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

CONTRACT NO. 31900009 AMENDMENT: BUILDING OPPORTUNITIES FOR SELF-SUFFICIENCY (BOSS) FOR MCKINLEY HOUSE

WHEREAS, vendor Building Opportunities for Self Sufficiency (BOSS) has operated McKinley House as transitional housing for homeless families for several decades; and

WHEREAS, the Master Lease and Property Management Agreement for McKinley House was approved by the Council of the City of Berkeley by Ordinance No. 7,619-N.S. on July 24, 2018; and

WHEREAS, a contract authorizing BOSS to provide property management services at McKinley House was approved by the Council of the City of Berkeley by Resolution No. 67,748-N.S. on November 29, 2016; and

WHEREAS, on December 15, 2020 by Resolution No. 69,651-N.S., City Council approved an amendment to Contract No. 31900009; and

WHEREAS, funding for these services and supports are available in the FY22 budget, subject to adoption of the Annual Appropriations Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute a contract and any amendments with Building Opportunities for Self-Sufficiency (BOSS) to provide property management services for McKinley House through November 1, 2023, adding \$287,712 for a total amount not to exceed \$657,712. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.



Office of the City Manager

CONSENT CALENDAR
October 26, 2021

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: Contract No. 32100019 Amendment: Sonya Dublin Consulting as the External Evaluator, Tobacco Prevention Program

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32100019 with Sonya Dublin Consulting as the External Evaluator for Health, Housing and Community Services Public Health Division's Tobacco Prevention Program, increasing the amount by \$9,900 for a total amount not to exceed \$103,500, and extending the contract through December 31, 2021.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the external evaluator is available through Local Lead Agency funding through the California Tobacco Control Program (CTCP). The original amended contract is currently in the amount of \$93,600 NTE and the amendment will increase the limit by \$9,900 (ERMA GL 157-51-506-559-2053-000-451-612990) for a total not to exceed amount of \$103,500. The contract end date will be extended to December 31, 2021.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley receives funding from the California Tobacco Program as a Local Lead Agency and is required to contract with an external evaluator as part of the program's contract deliverables.

BACKGROUND

As a Local Lead Agency receiving funding from the California Tobacco Program, the City of Berkeley is required to contract with an external evaluator that is responsible for designing the evaluation plan and providing consultation on the entire scope of work; developing data collection instruments, protocols, and methodology; analyzing data; and preparing evaluation reports. The external evaluator reports to the Tobacco Control Program Director, will work in partnership with the Internal Evaluator, and will execute a variety of evaluation-related tasks.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

Execution of this contract will allow the City of Berkeley's Tobacco Prevention Program to comply with the California Tobacco Control Program's external evaluator requirement as a Local Lead Agency awardee.

ALTERNATIVE ACTIONS CONSIDERED

Failure to contract with an external evaluator would render the City of Berkeley's Tobacco Prevention Program unable to complete program deliverables and would place the City of Berkeley out of compliance with its contract with the State.

CONTACT PERSON

Janice Chin, Public Health Division Manager, HHCS, (510) 981-5212

Attachments:

1: Resolution

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

Contract No. 32100019 AMENDMENT: SONYA DUBLIN CONSULTING AS THE EXTERNAL EVALUATOR, TOBACCO PREVENTION PROGRAM

WHEREAS, the Health, Housing & Community Services Department's Public Health Division Tobacco Prevention Program, as a State funded LLA grantee, fosters collaboration and engagement in grassroots community mobilization activities to support social norm change and education to reduce tobacco use and address the tobacco industry strategies through a comprehensive tobacco control plan; and

WHEREAS on December 3, 2019, two proposals were submitted and a review panel determined Sonya Dublin Consulting best matched the selection criteria; and

WHEREAS, on July 1, 2014, Contract 9709 was previously executed; and

WHEREAS, Local Lead Agency funding is available through the California Tobacco Control Program (CTCP) for FY21 in budget code 157-51-506-559-2053-000-451-612990 (\$103,500 total).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute a contract and any amendments with Sonya Dublin Consulting to provide external evaluation services for the Health, Housing & Community Services Department's Public Health Division Tobacco Prevention Program, adding \$9,900 for a total amount not to exceed \$103,500, and extending the contract through December 31, 2021. 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

October 26, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Donald E. Ellison, Interim Director of Human Resources

Subject: Contract: Discovery Health Services, Vendor for Citywide COVID-19 Testing

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract with Discovery Health Services for weekly onsite employee COVID-19 testing, for the period covering November 1, 2021 to November 1, 2022 for an amount not to exceed \$450,000.

FISCAL IMPACTS OF RECOMMENDATION

The total estimated cost for this contract is \$450,000 charged to the employee's department budget; an estimated \$7,800 for weekly onsite mobilization fees and \$442,200 in rapid 30-minute antigen testing. Costs are predicated on the number of employees that will need to undergo weekly testing. The City or Department will be reimbursed by FEMA Reimbursement and/or The American Rescue Fund as these expenses qualify underneath reimbursement. Following are the Discovery Health Services Fees.

Discovery Health Services Fees	
Rapid Antigen Test (Approx. 100 per week)	\$65-85 (Depending on group size)
Mobilization Fees	\$150 (25 employee minimum)
Nurse/Technician (Less than 25 tests per week)	\$520
First Year Total	\$450,000

CURRENT SITUATION AND ITS EFFECTS

Preventing the spread of COVID 19 is a primary objective of the City. On September 14, 2021, the City Council enacted Resolution 70,007 determining the need to immediately adopt a vaccination policy applicable to all City employees. The City adopted its vaccination mandate, Administration Regulation 2.25 on September 15, 2021. The vaccination mandate requires diagnostic screening at least once weekly for those employees who are unvaccinated or incompletely vaccinated. The best option for screening employees is Workplace-based testing for SARS-CoV-2. Testing will identify workers with an active SARS-CoV-2 infection, and thus help prevent or reduce the

possibility of viral spread within the workplace, and to comply with the applicable public health guidance. Incorporating testing for SARS-CoV-2 into workplace COVID 19 response, and control plans provides rapid identification of potential sources of infection and allows the City to maintain a safe workplace and protect its employees, contractors and visitors.

BACKGROUND

Since March 2020, the City has been vigorously responding to the COVID 19 pandemic by complying with State and Local COVID 19 Health Orders, Cal/OSHA workplace safety standards and CDC guidelines to reduce the spread of SARS CoV2. Cal OSHA's Workplace standards were updated on June 17, 20221 to include requirements for vaccinated and unvaccinated workers. Employee testing is now required due to the emergence of the Delta Variant and its transmissibility and verification of vaccination status. As such, COVID 19 vaccine mandate was adopted and diagnostic testing is a condition of the mandate.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT

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

RATIONALE FOR RECOMMENDATION

Under the City's recently adopted Administrative Regulation 2.25: Mandatory COVID-19 Employee Vaccination Policy, the City will need to contract with a vendor for ongoing weekly testing for those employees requesting a reasonable accommodation for medical or religious reasons, and for unvaccinated or incompletely vaccinated employee's in compliance with Administration Regulation 2.25, effective November 1, 2021.

ALTERNATIVE ACTIONS CONSIDERED

The City researched various options for COVID-19 testing including onsite and offsite locations. City staff considered a variety of factors in the process of making the decision regarding the best vendor for testing services including type of test (PCR or antigen), cost per test, daily onsite mobilization fees, and reporting methods. Accordingly, the best option would be to contract with Discovery Health Services.

CONTACT PERSON

Donald E. Ellison, Interim Director of Human Resources (510) 981-6807

Attachments:

1. Resolution

RESOLUTION NO. XX,XXX-N.S.

CONTRACT: DISCOVERY HEALTH SERVICES FOR COVID-19 TESTING

WHEREAS, the City of Berkeley adopted Administrative Regulation 2.25: Mandatory COVID-19 Employee Vaccination Policy requiring all employees to provide proof of vaccination or undergo weekly COVID-19 testing as an accommodation for individuals with a valid, City approved vaccination exemption for medical or religious reasons; and

WHEREAS, the City of Berkeley would like Discovery Health Services to provide COVID-19 testing for certain City employees effective November 1, 2021 in compliance with the City's new Administrative Regulation 2.25; and

WHEREAS, funds are available in various department budgets and will be budgeted in future years in an amount not to exceed \$450,000 through November 1, 2022; and

NOW THEREFORE, BE IT RESOLVED that the Council authorizes the City Manager to approve a new contract and any subsequent amendments with Discovery Health Services for provision of COVID-19 testing not to exceed \$450,000, for the period covering November 1, 2021 to November 1, 2022.

BE IT FURTHER RESOLVED that 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

October 26, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Donald E. Ellison, Interim Director of Human Resources

Subject: Contract: Voya for Third-Party Administrator for COBRA Administration and Retiree Health Premium Assistance Plan Administration

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract with Voya for COBRA Plan administration and administration of the Retiree Health Premium Assistance Plan for non-sworn retirees and other retiree medical programs for sworn Fire and Police, for the period covering November 1, 2021 to November 1, 2026 for an amount not to exceed \$112,000.

FISCAL IMPACTS OF RECOMMENDATION

The total estimated cost for this contract is \$112,000; an estimated \$28,000 for first year costs to transition from our current vendor BASIC pacific to an annual estimated annual cost of \$21,000 thereafter. Costs are predicated on the number of retirees.

Voya will administer the Plans at the following rates:

First-Year Fees

Annual Administration Fee	\$20,333
COBRA Takeover Fee (Approx. 40 COBRA Participants)	\$1,000
Retiree Billing Takeover Fee (Approx. 443 Retirees)	\$6,667
First-Year Total	\$28,000

Funding is available for this contract in estimated allocations from the following budget codes:

Budget Code	Retiree Medical Programs	Costs
731-99-900-900-0000-000-412-612990-	Berkeley Police Association	\$4,424
736-99-900-900-0000-000-412-612990-	Berkeley Fire Fighters Association	\$20,465
722-99-900-900-0000-000-412-612990-	International Brotherhood of Electrical Workers	\$1,382
723-99-900-900-0000-000-412-612990-	Public Employees Union, Local One	\$19,358
724-99-900-900-0000-000-412-612990-	Unrepresented Unit Z1 Department Head	\$3,595
725-99-900-900-0000-000-412-612990-	Unrepresented Unit Z2	\$9,126
726-99-900-900-0000-000-412-612990-	Service Employees International Union, Local 1021 Community Services Unit and Part-Time Recreation Leaders Association	\$24,059
727-99-900-900-0000-000-412-612990-	Service Employees International Union, Local 1021 Maintenance and Clerical Chapter	\$29,591
Total		\$112,000

CURRENT SITUATION AND ITS EFFECTS

The City is required by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to offer continuation coverage rights to its employees. The City also has contractual obligations under the various Memoranda of Understanding/Agreements with non-sworn employees and sworn Fire and Police Associations that specify the amount the City contributes towards post-employment retiree medical benefits. Therefore, the City has a contract with BASIC to assist with COBRA duties and responsibilities and to

administer the various post-employment retiree medical benefits. Responsibilities include: furnishing all required COBRA notifications, enrolling the eligible retirees into the City's retirement health plans, calculating and collecting the fees owed by each retiree through their CalPERS pension benefit, coordinating the benefit with the City's contribution on the employee's behalf, reconciling and paying the health carrier bills, and issuing 1099 tax forms to eligible retirees. BASIC also administers the annual Open Enrollment for participating retirees. Currently, there are 443 participating retirees. Recently, the City has experienced a failure to perform by BASIC pacific under their existing contract with the City, which poses a risk of termination from COBRA and post-employment retiree medical benefits.

BACKGROUND

As part of various union contract negotiations, the City agreed to provide assistance in the payment of retiree medical premiums for all sworn Police employees (1989), sworn Fire employees, (1997), and non-sworn employees (1998). In 1998, a joint union-management committee (Retiree Medical Committee) was formed consisting of representatives of each of the affected non-sworn unions and staff from the Human Resources and Finance Departments. An actuarial valuation was requested from the firm of Milliman Consultants and Actuaries to provide cost projections for various benefit scenarios. The Retiree Medical Committee reached mutual agreement on a benefit plan and named it the Retiree Health Premium Assistance Plan (RHPAP).

In 1999, the City issued a request for proposal (RFP) to administer the RHPAP. The Retiree Medical Committee reviewed five administrators and unanimously agreed to award the contract to The Lipman Company (TLC), who administered the RHPAP until December 2018, when the privately-owned company announced their closure due to retirement. BASIC had just been contracted by the City in October 2018 to administer COBRA benefits when they were approached to administer the RHPAP as well. BASIC agreed to take on the additional duties.

Earlier this year, the City began receiving inquiries from retiree and COBRA enrollees and associated vendors regarding issues with BASIC's service and timeliness. On August 11, 2021, the City delivered a Notice to Cure advising BASIC that their agreement was at risk of termination due to concerns regarding their failure to perform. To date, BASIC has taken modest steps to address the concerns, but the issues have continued. The City will be noticing BASIC of our intent to terminate effective November 30, 2021.

With the assistance of Keenan and Associates, the City's benefits broker, Keenan helped the City identify a new vendor that is better equipped to handle administration of direct billing duties for retiree and COBRA medical benefit. The City will enter into an agreement with Voya as the new vendor, and will be working to transition retiree and COBRA medical benefit enrollees to their platform effective November 1, 2021. Due to the urgency of this need to switch companies, the City did not have time to engage in a full Request for Proposal as retiree premiums will be impacted negatively without a faster transition to a new vendor. As such, we relied on our current benefits broker to provide us with an interim solution. In July 2023, the City will engage in an RFP process for these services to ensure

the City is able to identify the best long-term, cost-effective solution for administration of the City's COBRA and RHPAP benefits.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT

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

RATIONALE FOR RECOMMENDATION

COBRA continuation of coverage rights is required by Federal regulations, and The Retiree Health Premium Assistance Plan and sworn retiree benefits are employee benefits required under various collective bargaining agreements with the City. Contracting with the Third-Party Administrator, Voya, is the most efficient and cost-effective way to administer these benefits.

ALTERNATIVE ACTIONS CONSIDERED

The City sent out a request for proposals through its benefits broker, Keenan and Associates, and no companies are familiar enough with the unique benefits of the City RHPAP to handle it better than the current administrator. Accordingly, the best option would be to amend the contract with Voya.

CONTACT PERSON

Donald E. Ellison, Interim Director of Human Resources (510) 981-6807

Attachments:

1. Resolution

RESOLUTION NO. XX,XXX-N.S.

CONTRACT: VOYA FOR COBRA ADMINISTRATION AND THE ADMINISTRATION OF THE RETIREE HEALTH PREMIUM ASSISTANCE PLAN AND OTHER RETIREE MEDICAL PROGRAMS

WHEREAS, the City of Berkeley would like Voya to provide administrative services for COBRA and for the Retiree Health Premium Assistance Plan and other retiree medical programs; and

WHEREAS, funds are available and will be budgeted in future years in an amount not to \$112,000 through November 1, 2026 based on funds allocated for these expenses for the City's previous third-party administrator for COBRA administration and RHPAP administration.

NOW THEREFORE, BE IT RESOLVED that the Council authorizes the City Manager to approve a new contract and any subsequent amendments with Voya for administration of COBRA and of the Retiree Health Premium Assistance Plan for non-sworn retirees and other retiree medical programs for sworn Fire and Police not to exceed \$112,000, for the period covering November 1, 2021 to November 1, 2026.

BE IT FURTHER RESOLVED that a record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.

CONSENT CALENDAR

October 26, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Donald E. Ellison, Interim Director of Human Resources

Subject: Resolution Authorizing an Amendment to the Miscellaneous CalPERS Contract Pursuant to California Government Code 20516

RECOMMENDATION

Adopt one Resolution to initiate process to amend the contract between the Board of Administration, California Public Employees' Retirement System and the City Council for the City of Berkeley pursuant to California Government Code 20516 to effectuate changes to the cost sharing agreement between the City and Unrepresented PEPRA members in the following Units: Units X-1 (Unrepresented Hourly Non-Career); X-2 (Retired Annuitants); Z-1 (Confidential and Executive Management Employees); Z-2 (Confidential Professional Employees); Z-3 (Confidential Clerical Employees); Z-6 (Legislative Analysts); and Z-9 (Unrepresented at-will positions in the Rent Stabilization Program) (collectively referred to as "Unrepresented Group").

As part of the most recent negotiations regarding the memorandum of understanding between the City and SEIU Local 1021 Maintenance and Clerical (MC), the parties agreed to reduce the MC PEPRA members' employer cost share (Ramp Down) of eight percent (8%) over the term of the current MOUs. Although the Unrepresented Group is not represented by a labor group, they customarily receive the same negotiated benefits afforded to the MC chapters.

FISCAL IMPACTS OF RECOMMENDATION

The terms of the new MOU PEPRA ramp down is as follows:

SEIU MC and the Unrepresented Group:

- FY2021-22: 1% (to be effective as soon as administratively possible following adoption of successor contract by the City Council)
- FY2022-23: 1% effective July 1, 2022
- FY2023-24: 1% effective July 1, 2023
- FY2024-25: 2% effective July 1, 2024
- FY2025-26: 2% effective July 1, 2025
- FY2026-27: 1% effective July 1, 2026

The total cost to approve the ramp down for the Unrepresented PEPRA members is approximately \$98,896. There are approximately 51 PEPRA employees affected by this resolution. Funding for the Ramp Down comes from the General Fund and other special revenue funds. This cost of will be included in the fiscal years 2022 through 2024 budgets.

CURRENT SITUATION AND ITS EFFECTS

Although Council previously approved the terms of the Ramp Down for MC and the City's other employee organizations who negotiated similar Ramp Downs, the City must amend its contract with CalPERS to effectuate the Ramp Down terms for the Unrepresented Group. (See Cal. Gov. Code § 20516.) Council's approval of the Resolution will initiate the contract amendment process, which includes the following steps:

- The City shall provide CalPERS with the Resolution and a cover letter indicating the exact percentage of change, total cost-share percentage and who it is applicable to;
- CalPERS will contact the City to establish the Anticipated Schedule of Agency Actions and send the required documents;
- Over a time period specified by CalPERS, the City will:
 - Conduct an employee election whereby a simple majority of the affected PEPRA members in the Unrepresented Group must vote in favor of proposed cost-share terms;
 - The City shall adopt a Resolution of Intention;
 - The City shall approve the final reading of an ordinance or final resolution and complete certification forms.
- Once the documents are received and approved, the contract amendment becomes effective and is updated with the effective date in myCalPERS.
- CalPERS sends a fully executed contract to the City.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT

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

RATIONALE FOR RECOMMENDATION

Although Council previously approved the terms of the Ramp Down for MC and the City's other employee organizations who negotiated similar Ramp Downs, the City must amend its contract with CalPERS to effectuate the Ramp Down terms for the Unrepresented Group. (See Cal. Gov. Code § 20516.) Council's approval of the Resolution will initiate the contract amendment process

ALTERNATIVE ACTIONS CONSIDERED

None. The City is obligated under the existing labor agreements to complete the Ramp Downs in accordance with the MOUs.

CONTACT PERSON

Donald E. Ellison, Interim Director of Human Resources, (510) 981-6807

Attachments:

- 1: Resolution: Approving an Amendment to CalPERS Contract
- 2: CalPERS Employee Cost-Sharing Informational Page

RESOLUTION NO. –N.S.

RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION, CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE CITY COUNCIL FOR CITY OF BERKELEY PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 20516

WHEREAS, the Public Employees' Retirement Law establishes the Public Employees' Retirement System (CalPERS) for the purpose of providing pension benefits to specified public employees and is funded by investment returns and employer and employee contributions; and

WHEREAS, this law, including California Government Code Section 20516, authorizes a contracting agency and its employees to agree in writing to share the costs of the employer contributions with or without a change in benefits, as specified, and authorizes the cost sharing provided herein to also apply to unrepresented employees as approved by a resolution passed by the contracting agency; and

WHEREAS, the City of Berkeley (City) is authorized by Government Code Section 20516 to initiate an amendment to the contract between the City and California Public Employees' Retirement System (CalPERS) in order to reduce the employee contribution amount for its unrepresented employees by identifying the impacted employees, the exact percentage of cost-sharing change, the desired effective date (provided it is the first day of a pay period), and providing that a simple majority of the unrepresented impacted employees must sign in agreement to the change; and

WHEREAS, on July 20, 2021, the Council adopted Resolution No. 69,968-N.S., adopting the City of Berkeley Unrepresented Employee Manual, dated July 17, 2021, establishes new terms governing benefits and compensation for employees in Units X-1 (Unrepresented Hourly Non-Career); X-2 (Retired Annuitants); Z-1 (Confidential and Executive Management Employees); Z-2 (Confidential Professional Employees); Z-3 (Confidential Clerical Employees); Z-6 (Legislative Analysts); and Z-9 (Unrepresented at-will positions in the Rent Stabilization Program); and

WHEREAS, the City of Berkeley Unrepresented Employee Manual amended the employee contribution made by Miscellaneous New Members (as defined in the California Public Employees' Pension Reform Act of 2013 (PEPRA)) toward the City's CalPERS employer share of pension as follows: 1% contribution in FY 2021-22, effective as soon as administratively possible; 1% contribution in FY 2022-23, effective July 1, 2022; 1% contribution in FY 2023-24, effective July 1, 2023; 2% contribution in FY 2024-25, effective July 1, 2024; 2% contribution in FY 2025-26, effective July 1, 2025; and 1% contribution in FY 2026-27, effective July 1, 2026.

NOW THEREFORE, BE IT RESOLVED that the Council approves the following amendment to the City's contract with CalPERS to require the following employee contributions toward the City's CalPERS employer share of pension from unrepresented Miscellaneous New Member (PEPRA) employees in Units Z-1, Z-2, Z-3, Z-9, and X-1: 1% contribution in FY 2021-22, effective as soon as administratively possible; 1% contribution in FY 2022-23, effective July 1, 2022; 1% contribution in FY 2023-24, effective July 1, 2023; 2% contribution in FY 2024-25, effective July 1, 2024; 2% contribution in FY 2025-26, effective July 1, 2025; and 1% contribution in FY 2026-27, effective July 1, 2026;

BE IT FURTHER RESOLVED that the desired effective date of this contract amendment take place as of March 6, 2021, which is anticipated to be the first day of the relevant pay period during that period or in advance thereof, subject to CalPERS's approval of a date sooner;

BE IT FURTHER RESOLVED that, in advance of Council's approval of an amended contract with CalPERS, the City shall obtain approval by a simple majority of the unrepresented impacted employees (i.e., unrepresented Miscellaneous New Member (PEPRA) employees in Units Z-1, Z-2, Z-3, Z-9, and X-1) who must sign in agreement of the change.

Employee Cost-Sharing

Cost-sharing may provide your agency an opportunity to save money and help offset pension costs.

As a contracting agency, cost-sharing allows employees to share a portion of the employer costs through a written agreement with an employee group. Your employer contribution rate will be reduced by the agreed upon percentage of cost-sharing.

A contract amendment isn't required to change a cost-sharing agreement for public agency employers and employee groups who have previously added cost-sharing for their represented groups to their contract.

Requirements

The updated cost-sharing amount is reportable on payroll to CalPERS on the approved effective date.

Cost-sharing must be the same percentage for all, grouped by:

- All Miscellaneous or all Safety
- All Classic Members and/or all PEPRA members
- Benefit Level Tier, such as:
 - First Tier Classic
 - PEPRA Miscellaneous Formula
 - PEPRA Safety Formula

Get Started

Establish Cost-Sharing

To get started, contact your Pension Contracts Analyst or through email at pensioncontracts@calpers.ca.gov. An initial contract amendment is required to establish cost-sharing.

Change an Existing Cost-Sharing Amount

Represented Groups	
Provide CalPERS a side letter for each bargaining unit with changes 90 days prior to the effective date and a cover letter to request the change.	
Side letter must contain:	<ul style="list-style-type: none"> • The exact percentage of cost-sharing change must be specified. • Who it's specifically applicable to: tiers/classic/represented group name, etc. • The desired effective date. Note: must be the first day of a pay period.

Unrepresented Groups	
Step One: The Employer’s Board adopts a resolution to cost-share.	
Resolution must contain:	<ul style="list-style-type: none"> • Who it’s applicable to: tiers/classic/unrepresented group name, etc. • The exact percentage of cost-sharing change must be specified. • The desired effective date. Note: must be the first day of a pay period. • A simple majority of the unrepresented impacted employees need to sign in agreement.
Step Two: The employer provides CalPERS the resolution and a cover letter indicating the exact percentage of change, total cost-share percentage and who it is applicable to.	
To initiate the contract amendment:	<ul style="list-style-type: none"> • A CalPERS Pension Contract Analyst contacts the employer to establish the Anticipated Schedule of Agency Actions and sends the required documents.
	<ul style="list-style-type: none"> • Over a specified time period, the employer then: <ul style="list-style-type: none"> - Adopts the Resolution of Intention - Conducts an employee election - Approves the final reading of the ordinance or final resolution and completes certification forms.
	<ul style="list-style-type: none"> • Once the documents are received and approved, the amendment is updated with the effective date in my CalPERS.
	<ul style="list-style-type: none"> • A fully executed contract is sent to the employer.

A CalPERS Pension Contracts Analyst will provide the necessary documents for adoption by your agency's governing body. All requirements and procedures will be outlined in a cover letter sent with the documents.

We’re Here to Help

This document is intended to provide an overview of cost-sharing per Government Code section 20516. To learn more about cost-sharing requirements, contact your CalPERS Pension Contracts Analyst at **888 CalPERS** (or **888-225-7377**) or email pensioncontracts@calpers.ca.gov.



Office of the City Manager

CONSENT CALENDAR
October 26, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: LaTanya Bellow, Director of Human Resources
 Subject: Revise Housing Inspector Supervisor Classification

RECOMMENDATION

Adopt a Resolution amending Resolution No. 69,996-N.S. Memorandum of Understanding: Public Employees Union - Local 1, revising the Housing Inspector Supervisor Classification and Salary.

FISCAL IMPACTS OF RECOMMENDATION

The Human Resources Department contracted with Bryce Consulting to develop a base salary recommendation based on market data and internal equity. Bryce Consulting is an agency that provides a variety of human resource services to non-profit and public-sector clients.

Housing Inspector Supervisor

Salary Range	Step 1	Step 2	Step 3	Step 4	Step 5
Current	49.2496	51.6582	54.1834	56.7988	59.4769
Proposed	54.1472	56.4945	59.0610	61.5505	64.2348

CURRENT SITUATION AND ITS EFFECTS

The Department of Planning and Development would like to amend the Housing Inspector Supervisor classification and increase the salary for the position. Human Resources and the Planning Department is working to expand the Housing Inspector Series with entry level and senior positions that will enable the department to attract, develop and retain the necessary talent to expand Berkeley's housing inspection program. The new expanded Housing Inspector series causes compaction, which the proposed salary range will resolve.

The proposed amendments to the position are consistent with comparable agencies and operations and prepare for the oversight of additional entry level staff members. Additionally, these changes will help the City recruit and retain personnel, expand the Rental Housing Safety Program and increase operational flexibility in the Building and Safety Division. The creation of the Housing Inspector series (Assistant Inspector,

Housing Inspector I, Housing Inspector II and Senior Housing Inspector) requires the Housing Inspector Supervisor salary range to be adjusted.

The recommended modifications to the Housing Inspector classification series will enable the Planning & Development Department to implement outstanding City Council referrals to expand the Rental Housing Safety Program to include a regular proactive inspection schedule, and to establish a housing amnesty program.

BACKGROUND

The Personnel Board met on April 12, 2021 and approved the classification and salary range for Housing Inspector Supervisor.

Motion/Second:

Ayes: Lacey, Dixon, Bartlow, Karpinski, Gilbert, Wenk

Nays: none

Abstain: none

Absent: Franklin, Wilson

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

It has been the policy of the City to create the necessary classification and salary schedule to accommodate new duties and responsibilities, reflect programmatic changes, maintain competitive salaries and, when applicable, comply with regulatory requirements.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Don Colbert, Interim Director, Human Resources, 510-981-6807

Ravi Rangi, Employee Relations Manager, 510-981-6821 Attachments:

1. Resolution
2. Housing Inspector Supervisor Job Description

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

CLASSIFICATION AND SALARY RANGE: Housing Inspector Supervisor

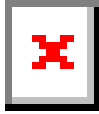
WHEREAS, the Human Resources Department maintains the Classification and Compensation plan for the City of Berkeley; and

WHEREAS, the Director, Planning and Development had recommended revising the salary and classification; and

WHEREAS, the Planning Department and Human Resources Department have completed a classification and salary review; and

WHEREAS, the Personnel Board voted on April 12, 2021 to approve the classification and salary range for the Housing Inspector Supervisor.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Resolution No. 69,996-N.S., Memorandum of Understanding: Public Employees Union - Local 1, be revised amending the Housing Inspector Supervisor Classification and Salary.

Class Code:
14580

Housing Inspector Supervisor

Bargaining Unit: Public Employees Union, Local One
 \$54.15-\$64.23 Hourly
 \$4,331.17 - \$5,138.7820 Bi-weekly
 \$9,395.52 - \$11,134.03 Monthly
 \$112,626.17 - \$133,608.38 Annually

DESCRIPTION:

DEFINITION

Under general management, supervises the operations of the assigned units of the Housing Inspection Section, supervises housing inspection staff; assists in developing and implementing programs and policies for assigned functional area and for the effective operation of the Housing Inspection Section of the Building & Safety Division; performs related work as assigned.

CLASS CHARACTERISTICS

This is the full supervisory classification in the Housing Inspection series. Incumbents are working supervisors, responsible for planning, organizing, assigning and evaluating the work of the assigned units of the Housing Inspection Section of the Building and Safety Division involving housing inspection services and rental housing safety programs. Incumbents perform a broad scope of inspection tasks, including the more difficult or complex inspections, while providing advice, guidance, and supervision to Housing Inspectors. Assignments are varied and allow for the exercise of considerable judgment and independence in the interpretation of codes and regulations for assigned areas.

Examples of Duties:

The following list of duties is intended only to describe the various types of work that may be performed and the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, or is similar or closely related to another duty statement.

1. Plans, organizes, assigns, directs, reviews and supervises the work of an assigned group of Housing Inspectors and administrative staff; assists in

- selection of staff; trains, evaluates and recommends promotion and disciplinary actions, as appropriate;
2. Identifies, develops and directs the implementation of goals, objectives, policies, procedures and work standards for the work unit; reviews the effectiveness and efficiency of delivery of services, work flow, and unit organization and identifies methods or systems to improve effectiveness and efficiency;
 3. Advises and assists inspectors with field problems, and evaluates inspectors for their consistency and effectiveness in enforcing codes and carrying out policy by reviewing their work and accompanying them in the field;
 4. Schedules, coordinates and conducts inspections and re-inspections of residential units including common areas and building exteriors for compliance with various housing-related codes and regulations in response to tenant complaints and/or as part of an ongoing housing inspection program;
 5. Performs inspections and re-inspections of residential and/or mixed use buildings involving emergency situations, complex cases, difficult property owners and/or tenants, or in response to complaints regarding an inspector's actions to determine compliance with city, state and federal standards of construction, maintenance and use;
 6. Works with property owners and tenants in the field to discuss violations and needed repairs, facilitate cooperation between owners and tenants, discuss responsibilities of each party, and negotiate completion of repairs; conducts follow-up inspections to ensure that repairs have been completed;
 7. Assists in the preparation of the Housing Inspection unit's budget; monitors budget and expenditures to ensure targeted budgetary goals are met, recommends adjustments to service delivery as necessary, and justifies all allocations and expenditures; Researches and provides information regarding departmental programs and requirements, code requirements, upcoming inspections, housing reports, fees assessed, housing authority, status of property, administrative hearings, jurisdictional issues, etc. to property owners, tenants, members of the public and representatives from City departments and outside agencies;
 8. Coordinates unit activities with other City departments and outside agencies, and participates in multi-disciplinary teams, including the Problem Properties team;
 9. Reviews and approves or denies requests for billing adjustments from property owners;
 10. Assists in the preparation of a variety of written material such as staff reports, memoranda and correspondence including City Council reports;
 11. Participates in Administrative Hearings with rental property owners;
 12. Reviews subpoenas and discusses case/court appearance with inspector involved, attends court hearings and provides testimony;

13. Oversees annual Special Assessment Lien project to ensure proper lien amounts are assessed and forwarded to the Finance Department for processing;
14. Attends Rent Stabilization Board hearings as needed to provide testimony; corresponds with Rent Stabilization Board;
15. Refers cases, provides information to and responds to questions from individuals in other City Departments, including Building Inspection, Finance, and the Health Department; and
16. Performs related duties as assigned.

Knowledge and Abilities:

Note: The level and scope of the knowledge, skills and abilities listed below are related to job duties as defined under Class Characteristics.

Knowledge of:

1. Principles and practices of effective employee supervision, including work assignment, employee selection, training and evaluation;
2. Housing inspection procedures;
3. Federal, state and local laws, ordinances, codes and standards regulating housing quality, residential housing, residential building construction, remodeling, repair, and maintenance, including but not limited to California Building Codes, California Electrical Codes, California Mechanical Codes, California Plumbing Code, California Housing Code, California Residential Building Code, U.S. Department of Housing and Urban Development Housing Quality Standards, and Berkeley Municipal Code and Zoning Ordinances;
4. Knowledge of laws related to space conversions;
5. Low and moderate income housing needs within a sizable urban setting;
6. Appropriate safety and fire prevention methods for a variety of assignments;
7. Principles and methods used in basic construction and a wide range of building construction trade areas, including plumbing, electrical, heating and ventilation, building construction and remodeling, and related areas;
8. Conflict resolution techniques; and
9. Research practices and techniques.

Ability to:

1. Plan, organize, assign and evaluate the work of housing inspectors and administrative support staff;
2. Train staff in work procedures and techniques and provide for their professional development;

3. Effectively lead and motivate employees to work together as a team;
4. Develop and implement goals, objectives, policies, procedures, and work standards; and identify methods and systems to improve service delivery, work flow and organization of assigned unit;
5. Interpret and apply municipal building, housing and zoning codes and ordinances;
6. Provide technical inspection assistance in hearings and cases and recommend appropriate solutions for a wide range of inspection issues and problems;
7. Establish and maintain effective working relationships with those contacted in the course of the work, including individual citizens, other City department personnel, members of citizen boards and commissions and others;
8. Prepare detailed written material, including reports and analyses of code enforcement policies, proposed amendments and changes to programs and policies; and
9. Review plans and specifications for building-related construction and determine practicability of plans, compliance and regulations and validity of permits;
10. Proficiently use work-related computer applications such as Microsoft Windows, Word, Excel, Outlook, database management, and internet communications; and
11. Use sound independent judgment within established guidelines.

Minimum Qualifications:

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS: Equivalent to graduation from high school and four years of increasingly responsible journey-level housing inspection experience. Lead or supervisory experience or training is desirable.

OTHER REQUIREMENTS

Must be able to travel to various locations within and outside the City of Berkeley to meet the program needs and to fulfill the job responsibilities. When driving on City business, the incumbent is required to maintain a valid California driver's license as well as a satisfactory driving record.

Must be willing to attend evening meetings as required. Must possess an International Code Council (ICC) or California (CA) certification in Residential Building or Housing Inspection or in Code Enforcement; and ICC Residential or Commercial certifications for Electrical Inspector, Mechanical Inspector and Plumbing Inspector, or equivalent ICC Legacy Certification for either Combination Inspector or Combination Dwelling Inspector.

CONSENT CALENDAR
October 26, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Donald E. Ellison, Interim Director of Human Resources
 Subject: Assistant Inspector, Housing Inspector I, Housing Inspector II, and Senior Housing Inspector

RECOMMENDATION

Adopt a Resolution amending Resolution No. 69,991-N.S. Classification and Salary Resolution for SEIU 1021 Community Services and Part-Time Recreation Activity Leaders Memorandum Agreement, Unit L (career and non-career, miscellaneous and administrative employees) adding Assistant Inspector, Housing Inspector I, Housing Inspector II and Senior Housing Inspector.

FISCAL IMPACTS OF RECOMMENDATION

The Human Resources Department contracted with Bryce Consulting to develop a base salary recommendation based on market data. Bryce Consulting is an agency that provides a variety of human resource services to non-profit and public-sector clients. After considering the internal relationships among classifications, staff is recommending the following salary ranges.

Classification	Step 1	Step 2	Step 3	Step 4	Step 5
Assistant Inspector	36.2473	37.8186	39.5367	41.2032	43.0022
Housing Inspector I	40.2749	42.0207	43.9297	45.7813	47.7802
Housing Inspector II	44.7498	46.6897	48.8108	50.8682	53.0891
Senior Housing Inspector	49.2247	51.3587	53.6918	55.9551	58.3980

CURRENT SITUATION AND ITS EFFECTS

The Department of Planning and Development would like to expand the Housing Inspector Series to include an Assistant Inspector, Housing Inspector I (Certified), Housing Inspector II (Certified) and Senior Housing Inspector (Certified) and to amend the classifications for Building Inspector I and II (Certified) in order to meet the organizational needs of the Planning Department.

Creating an expanded Housing Inspector Series with entry level and senior positions will enable the department to attract, develop and retain the necessary talent to expand Berkeley's housing inspection program. Recruitments for a single level Housing Inspector (Certified) classification have been difficult over the last five years due to the extremely limited pool of qualifying candidates applying for the position and the mandatory requirement that candidates hold three ICC certifications.

The broader minimum qualifications for the Assistant Inspector and Housing Inspector I classifications have been developed to increase the number of qualifying candidates, so the department may consider candidates with a wider range of construction and inspection-related technical experience, as well as customer service skills. This may also lead to higher numbers of women and people of color qualifying for positions on the housing inspection team.

The series will also create a career path for employees working in the Building and Safety Division in positions such as Permit Specialist and allow the division to retain and develop talent. In summary, the changes will enable a wider pool of potentially qualified candidates to be considered for positions in the Housing Inspection Section of the Building and Safety Division, including potential internal candidates, which supports the goal of career growth and development from within the City.

The recommended modifications to the Housing Inspector classification series will enable the Planning & Development Department to implement outstanding City Council referrals to expand the Rental Housing Safety Program to include a regular proactive inspection schedule, and to establish a housing amnesty program.

BACKGROUND

The Personnel Board met on September 7, 2021 and approved the classification and salary range for Assistant Inspector, Housing Inspector I, Housing Inspector II and Senior Housing Inspector.

Motion/Second: Barlow/Wenk

Ayes: Lacy, Dixon, Barlow, Karpinski, Wenk

Nays: none

Abstain: none

Absent: Gilbert, Franklin, Wilson

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

It has been the policy of the City to create the necessary classification and salary schedule to accommodate new duties and responsibilities, reflect programmatic changes, maintain competitive salaries and, when applicable, comply with regulatory requirements.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Don Ellison, Interim Director of Human Resources, (510) 981-6807

Ravi Rangi, Employee Relations Manager, (510) 981-6812.

Attachments:

1. Resolution
2. Assistant Inspector Job Description
3. Housing Inspector I Job Description
4. Housing Inspector II Job Description
5. Senior Housing Inspector Job Description

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

CLASSIFICATION AND SALARY RANGE: HOUSING INSPECTOR SERIES

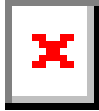
WHEREAS, the Human Resources Department maintains the Classification and Compensation plan for the City of Berkeley; and

WHEREAS, the Planning Director had recommended adding the Assistant Inspector, Housing Inspector I, Housing Inspector II and Senior Housing Inspector classifications; and

WHEREAS, the Planning Department and Human Resources Department have completed a classification and salary review; and

WHEREAS, the Personnel Board approved on September 7, 2021 to approve the classification and salary ranges of the Housing Inspector series.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Resolution No. 69,991-N.S., Classification and Salary Resolution for SEIU 1021 Community Services and Part-Time Recreation Activity Leaders Memorandum Agreement, Unit L (career and non-Career, miscellaneous and administrative employees) adding Assistant Inspector, Housing Inspector I, Housing Inspector II and Senior Housing Inspector.



Assistant Inspector

Bargaining Unit: SEIU CSU

Class Code:
00000

CITY OF BERKELEY
Established Date: MMM 00, 20XX
Revision Date: MMM 00, 20XX

SALARY RANGE

\$36.2473 - \$43.0022 Hourly
\$2,899.78 - \$3,440.18 Bi-Weekly
\$6,282.87 - \$7,453.71 Monthly
\$75,394.38 - \$89,444.58 Annually

DESCRIPTION:

DEFINITION

Under immediate supervision, performs the more routine inspections, reporting, research, data entry and customer service to gain compliance with housing, building, mechanical, plumbing, electrical, and related codes and regulations governing housing construction, rehabilitation, repair and use primarily of residential buildings; performs related work as assigned. This position may be assigned to either the housing or building inspection section or may support both.

CLASS CHARACTERISTICS

This class is the bridge level position into both the Housing and Building Inspector series. Positions assigned to this class perform the least complicated and standardized tasks. However, as experience is acquired, the incumbent will be assigned tasks of increasing responsibility. Assistant Inspectors perform the less complex reinspections and enforce inspection results to ensure compliance with various ordinances and codes within the City of Berkeley. Assistant Inspectors also assist with supplementary administrative tasks in the office, including but not limited to permit research, property owner verification, and report preparation. This class receives technical training and advice from more experienced inspectors and supervisors. This class is distinguished from the Housing Inspector I in that the latter is responsible for conducting initial inspections independently. It is further distinguished from the Building Inspector class in that the latter works primarily in the enforcement of building, mechanical, plumbing, electrical, and related codes and regulations applicable to both residential and commercial construction and performs inspections independently.

EXAMPLES OF DUTIES:

The following list of duties is intended only to describe the various types of work that may be performed, the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, is similar or closely related to another duty statement.

1. Receives training from journey- and senior-level building and housing inspectors in making inspections, learning inspection techniques and handling more complex tasks;
2. Learns to reinspect and conduct reinspections of residential units for compliance with housing codes and regulations on cases previously inspected by a housing inspector and recommends further action;
3. Prepares inspection reports, documenting remaining violations, using a mobile device and a computer;

4. Works with property owners, property managers, tenants, contractors and workers to discuss and explain code violations and needed repairs; responds to phone calls; conducts follow-up inspections to ensure that repairs have been completed;
5. Researches and provides information regarding departmental programs, permit and inspection requirements, assessed fees, etc. to property owners, tenants, contractors, members of the general public, internal and outside agencies;
6. Maintains accurate and professional documentation and files, including correspondence, inspection reports, returned mail, photos, permits, and property ownership records;
7. Learns to review and reviews and recommends approval or denial of billing adjustment requests submitted by property owners or property managers;
8. Attends Rent Stabilization Board hearings as needed to provide testimony; corresponds with Rent Stabilization Board;
9. Refers cases and provides information to and responds to questions from individuals in other City Departments;
10. Participates in administrative code enforcement for cases involving work without permits, unsafe work practices, the Exterior Elevated Elements program, mandatory seismic retrofit programs, and other related programs and ordinances;
11. Performs related duties as assigned.

KNOWLEDGE AND ABILITIES:

Note: The level and scope of the knowledge and skills listed below are related to job duties as defined under Class Characteristics.

Knowledge of:

1. Basic housing or building inspection procedures;
2. Learn and apply the building permit process and how the Building and Safety Division interrelates to other City departments and external organizations;
3. Basic principles and methods used in various building construction trade areas, including plumbing, electrical, heating and ventilation, building construction and remodeling, repair and maintenance;
4. Conflict resolution techniques; and
5. Research practices and techniques.

Ability to:

1. Learn and practice inspection techniques and procedures to enforce a wide range of building, housing and related codes and regulations;
2. Read, understand, explain and enforce a variety of housing and building related laws, codes, and ordinances;
3. Communicate courteously and effectively both verbally and in writing with a variety of individuals such as tenants, property owners, contractors, and citizens in the course of work, including individuals from a variety of socio-economic and cultural backgrounds, as well as irate and difficult customers;
4. Read and interpret drawings, plans, sketches, layouts and specifications and determine validity of permits;
5. Maintain accurate records and prepare clear and concise reports and documentation;
6. Read and follow maps;
7. Perform routine mathematical calculations;

8. Proficiently use work-related computer applications such as Microsoft Windows, Word, Excel, Outlook, database management, and internet communications; and
9. Make sound independent judgments within established guidelines.

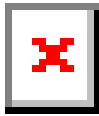
MINIMUM QUALIFICATIONS:

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS: Equivalent to graduation from high school and

1. Two years of full-time paid experience in one of the following:
 - a. Building, civil or architectural design drafting
 - b. Building, housing or home inspection
 - c. Code enforcement
 - d. Permit processing
 - e. Performing carpentry, electrical, heating and refrigeration, plumbing, or similar work; OR
2. Three years full-time experience in support of building inspections, housing inspections or code enforcement OR
3. Completion of two years of education in a recognized college or university with completion of 12 semester or 16 quarter units in any of the following or similar areas: civil or structural engineering, construction technology, design, inspection technology, architectural drafting, mechanical or, electrical engineering.

OTHER REQUIREMENTS

Must be able to travel to various locations within and outside the City of Berkeley to meet the program needs and to fulfill job responsibilities. When driving on City business, incumbent is required to maintain a valid California driver's license as well as a satisfactory driving record.



Housing Inspector I (Certified)

Bargaining Unit: SEIU CSU

Class Code:
00000

CITY OF BERKELEY
Established Date: MMM 00, 20XX
Revision Date: MMM 00, 20XX

SALARY RANGE

\$40,274.9 - \$47,780.2 Hourly
\$3,221.99 - \$3,822.42 Bi-Weekly
\$6,980.98 - \$8,281.90 Monthly
\$83,771.79 - \$99,382.82 Annually

DESCRIPTION:

DEFINITION

Under close supervision, performs skilled work in the investigation, reporting and follow-up of housing deficiencies to gain compliance with housing, building, zoning, fire, mechanical, plumbing, electrical, and related codes and regulations governing housing construction, rehabilitation, repair and use primarily for existing residential units; performs related work as assigned.

CLASS CHARACTERISTICS

This class is the first level in the Housing Inspection series. Housing Inspector I's perform inspections and enforce inspection results to ensure compliance with various ordinances and codes within the City of Berkeley. The work requires considerable independence and discretion in field inspections although more experienced Housing Inspector II's are available for advice and assistance on highly technical matters. This class differs from the Housing Inspector II class in that the latter performs more complex inspections and can perform building type combination residential inspections. It is further distinguished from the Building Inspector class in that the latter works primarily in the enforcement of building, mechanical, plumbing, electrical, and related codes and regulations applicable to both residential and commercial construction.

EXAMPLES OF DUTIES:

The following list of duties is intended only to describe the various types of work that may be performed, the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, is similar or closely related to another duty statement.

1. Schedules and conducts inspections and re-inspections of residential units including common areas and building exteriors for compliance with various codes and regulations in response to tenant complaints and/or as part of an ongoing housing inspection program;
2. Prepares inspection reports, documenting housing conditions and violations, using a mobile device and a computer and forwards reports to property owners;
3. Works with property owners and tenants in the field to discuss violations and needed repairs, facilitate cooperation between owners and tenants, discuss responsibilities of each party, and negotiate completion of repairs; conducts follow-up inspections to ensure that repairs have been completed;
4. Advises property owners on matters relevant to construction and repair methods and materials;
5. Researches and provides information regarding departmental programs and requirements, permit requirements, housing reports, fees assessed, status of property, etc. to property owners, tenants, members of the general public and other outside agencies;

6. Depending upon skill level, may conduct residential type building inspections to assist with building inspection volume during periods of high inspection demand;
7. Maintains documentation and files, including correspondence, inspection reports, returned mail, photos, permits, and property ownership records;
8. Reviews and approves or denies requests for billing adjustments submitted by property owners;
9. Attends Rent Stabilization Board hearings as needed to provide testimony; corresponds with Rent Stabilization Board;
10. Refers cases, provides information to and responds to questions from individuals in other City Departments;
11. Depending on assignment, reviews and approves scope of work for various projects associated with departmental programs; upon completion of project, reviews the completed work and project file to ensure project is completed appropriately and that permits have received final approval;
12. Depending on assignment, solicits participation of property owners in City housing programs, determines eligibility, and negotiates agreements; and
13. Performs related duties as assigned.

KNOWLEDGE AND ABILITIES:

Note: The level and scope of the knowledge and skills listed below are related to job duties as defined under Class Characteristics.

Knowledge of:

1. Housing inspection procedures;
2. Principles and methods used in various building construction craft areas, including plumbing, electrical, heating and ventilation, building construction and remodeling, repair and maintenance;
3. Federal, State and local laws, ordinances, codes and standards regulating housing quality, residential rental housing, building construction, repair and maintenance; California Housing Code, California Residential Building Code, U.S. Department of Housing and Urban Development Housing Quality Standards, and Berkeley Municipal Code;
4. Appropriate safety and fire prevention methods in construction;
5. Conflict resolution techniques; and
6. Research practices and techniques.

Ability to:

1. Inspect residential buildings in order to enforce a wide range of building, housing and related codes and regulations;
2. Read, understand, explain and enforce a variety of housing related laws, codes and ordinances;
3. Identify different materials, animals, chemicals, sounds, odors, and other conditions which could result in immediate or potential health, safety, or fire hazards;
4. Communicate courteously and effectively both verbally and in writing with a variety of individuals such as tenants, property owners, and citizens in the course of work, including individuals from a variety of socio-economic and cultural backgrounds, as well as irate and difficult customers;
5. Review plans and specifications for building and related construction and determine practicability of plans, compliance and regulations and validity of permits;
6. Maintain accurate records and prepare clear and concise reports and documentation;

7. Read and follow maps;
8. Perform routine mathematical calculations;
9. Proficiently use work-related computer applications such as Microsoft Windows, Word, Excel, Outlook, database management, and internet communications; and
10. Make sound independent judgments within established guidelines.

MINIMUM QUALIFICATIONS:

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS:

EDUCATION: Equivalent to graduation from high school.

EXPERIENCE: Applicants may qualify, based on alternative types of experience as listed below: Two (2) years of full time experience equivalent to an Assistant Inspector for a public agency, OR
One (1) year of experience equivalent to a building inspector or housing inspector or code enforcement inspector for a public agency, OR

Four (4) years of experience as a home inspector, journey level carpenter, electrician, plumber, building plans examiner, public works inspector, or permit specialist, OR

Three (3) years of experience in construction trades as a licensed general, plumbing, electrical or mechanical contractor, superintendent or supervisor of building construction, or any combination thereof.

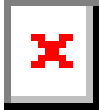
OTHER REQUIREMENTS

Must be able to travel to various locations within and outside the City of Berkeley to meet the program needs and to fulfill the job responsibilities. When driving on City business, incumbent is required to maintain a valid California driver's license as well as a satisfactory driving record.

CERTIFICATION: Must possess an International Code Council (ICC) or California (CA) certification in Residential Building or Housing Inspection or Code Enforcement; or equivalent ICC or CA Legacy Certification.

CITY OF BERKELEY
Established Date: MMM 00, 20XX

Class Code:
00000



Housing Inspector II (Certified)

Bargaining Unit: SEIU CSU

Revision Date: MMM 00, 20XX

SALARY RANGE

\$44,749.8 - \$53,089.1 Hourly
\$3,579.98 - \$4,247.13 Bi-Weekly
\$7,756.63 - \$9,202.11 Monthly
\$93,079.58 - \$110,425.33 Annually

DESCRIPTION:

DEFINITION

Under general supervision, independently performs the full scope of skilled work in the investigation, reporting and follow-up of housing deficiencies to gain compliance with housing, building, zoning, fire, mechanical, plumbing, electrical, and related codes and regulations governing housing construction, rehabilitation, repair and use primarily for existing residential units; performs related work as assigned.

CLASS CHARACTERISTICS

This class is the journey level classification in the Housing Inspection series. Housing Inspectors II's perform skilled inspection work and are considered fully competent to make inspections associated with City residential housing inspection programs.

Assignments are varied and generally require close interaction with the public, providing information and interpretation of applicable ordinances, codes and regulations. Incumbents exercise considerable independence and discretion in conducting housing or specialized inspections and are frequently expected to investigate and resolve complaints and enforce inspection results. This class differs from the Housing Inspector I class in that the latter works under closer supervision, seeking advice and guidance while continuing to learn the full scope of job tasks and gaining the required certifications. This class is further distinguished from the Building Inspector class in that the latter works primarily in the enforcement of building, mechanical, plumbing, electrical and related codes and regulations applicable to both residential and commercial construction.

The Housing Inspector II may be assigned to some operational, municipal code compliance duties on existing properties or may be assigned to assist with rehabilitation projects.

EXAMPLES OF DUTIES:

The following list of duties is intended only to describe the various types of work that may be performed, the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, is similar or closely related to another duty statement.

1. Schedules and conducts inspections and re-inspections of residential units including common areas and building exteriors for compliance with various codes and regulations in response to tenant complaints and/or as part of an ongoing housing inspection program;
2. Prepares inspection reports, documenting housing conditions and violations, using a mobile device and a computer and forwards reports to property owners;
3. Works with property owners and tenants in the field to discuss violations and needed repairs, facilitate

cooperation between owners and tenants, discuss responsibilities of each party, and negotiate completion of repairs; conducts follow-up inspections to ensure that repairs have been completed;

4. Advises property owners on matters relevant to construction and repair methods and materials;
5. Researches and provides information regarding departmental programs and requirements, permit requirements, housing reports, fees assessed, status of property, etc. to property owners, tenants, members of the general public and other outside agencies;
6. Maintains documentation and files, including correspondence, inspection reports, returned mail, photos, permits, and property ownership records;
8. Reviews and approves or denies requests for billing adjustments submitted by property owners;
9. Attends Rent Stabilization Board hearings as needed to provide testimony; corresponds with Rent Stabilization Board;
10. Refers cases, provides information to and responds to questions from individuals in other City Departments;
11. Depending on assignment, reviews and approves scope of work for various projects associated with departmental programs; upon completion of project, reviews the completed work and project file to ensure project is completed appropriately and that permits have received final approval;
12. May recommend improvements to procedures to help achieve performance measures;
13. May assist with the technical training of staff;
14. Depending on assignment, solicits participation of property owners in City housing programs, determines eligibility, and negotiates agreements; and
15. Performs related duties as assigned.

KNOWLEDGE AND ABILITIES:

Note: The level and scope of the knowledge and skills listed below are related to job duties as defined under Class Characteristics.

Knowledge of:

1. Housing inspection procedures;
2. Principles and methods used in various building construction craft areas, including plumbing, electrical, heating and ventilation, building construction and remodeling, repair and maintenance;
3. Federal, State and local laws, ordinances, codes and standards regulating housing quality, residential rental housing, residential building construction, repair and maintenance; including but not limited to building codes, electrical codes, mechanical codes, California Housing Code, California Residential Building Code, U.S. Department of Housing and Urban Development Housing Quality Standards, and Berkeley Municipal Code;
4. Appropriate safety and fire prevention methods in construction;
5. Advanced conflict resolution techniques; and
6. Research practices and techniques.

Ability to:

1. Inspect residential buildings and building sites in order to enforce a wide range of building, housing and related codes and regulations;
2. Read, understand, explain and enforce a variety of housing related laws, codes and ordinances;
3. Identify different materials, animals, chemicals, sounds, odors, and other conditions which could result in immediate or potential health, safety, or fire hazards;

4. Communicate courteously and effectively both verbally and in writing with a variety of individuals such as tenants, property owners, and citizens in the course of work, including individuals from a variety of socio-economic and cultural backgrounds, as well as irate and difficult customers;
5. Review plans and specifications for building and related construction and determine practicability of plans, compliance and regulations and validity of permits;
6. Maintain accurate records and prepare clear and concise reports and documentation;
7. Read and follow maps;
8. Perform routine mathematical calculations;
9. Proficiently use work-related computer applications such as Microsoft Windows, Word, Excel, Outlook, database management, and internet communications; and
10. Make sound independent judgments within established guidelines.

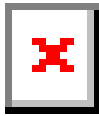
MINIMUM QUALIFICATIONS:

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS: Equivalent to graduation from high school and at least two years of full-time experience equivalent to Housing Inspector or Building Inspector or Code Enforcement Inspector for a public agency.

OTHER REQUIREMENTS

Must be able to travel to various locations within and outside the City of Berkeley to meet the program needs and to fulfill the job responsibilities. When driving on City business, incumbent is required to maintain a valid California driver's license as well as a satisfactory driving record.

CERTIFICATIONS: Must possess an International Code Council (ICC) OR California (CA) certification in Residential Building or Housing Inspection or in Code Enforcement; and ICC or CA Residential or Commercial Electrical Inspector certification and ICC or CA Residential or Commercial Plumbing Inspector certification, or equivalent ICC or CA Legacy Certification for either Combination Inspector or Combination Dwelling Inspector.



Senior Housing Inspector (Certified)

Bargaining Unit: SEIU CSU

Class Code:
00000

CITY OF BERKELEY
Established Date: MMM 00, 20XX
Revision Date: MMM 00, 20XX

SALARY RANGE

\$49,224.7 - \$58,398.0 Hourly
\$3,937.98 - \$4,671.84 Bi-Weekly
\$8,532.28 - \$10,122.32 Monthly
\$102,387.38 - \$121,467.84 Annually

DESCRIPTION:

DEFINITION

Under general supervision, performs highly skilled work in the investigation, reporting and follow-up of housing deficiencies to gain compliance with housing, building, zoning, fire, mechanical, plumbing, electrical, and related codes and regulations governing housing construction, rehabilitation, repair and use primarily for existing residential units; acts as the lead inspector; performs related work as assigned.

CLASS CHARACTERISTICS

This class is the lead class in the Housing Inspector series. Senior Housing Inspectors perform skilled inspections work and are considered fully competent to make inspections associated with City residential housing inspection programs. Assignments are varied and generally require close interaction with the public, providing information and interpretation of applicable ordinances, codes and regulations. Senior Housing Inspectors are expected to exercise considerable independence and discretion in assignments and provide lead direction and subject matter expertise in abating more difficult or complex violations. This class differs from the Housing Inspector II in that the latter works under closer supervision, seeking advice and guidance while performing job tasks. The class differs from the Housing Inspector Supervisor in that the latter is the full supervisory class in the Housing Inspector series. This class is further distinguished from the Building Inspector class in that the latter works primarily on the enforcement of building, mechanical, plumbing, electrical and related codes and regulations applicable to both residential and commercial construction.

EXAMPLES OF DUTIES:

The following list of duties is intended only to describe the various types of work that may be performed, and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, is similar or closely related to another duty statement.

1. Assigns, provides lead direction and reviews work of housing inspection staff;
2. Performs highly skilled and complex inspections to gain compliance with housing, building, zoning, fire, mechanical, plumbing, electrical, and related codes and regulations governing housing construction, rehabilitation, repair and use primarily for existing residential units;
3. Schedules and conducts inspections and re-inspections of residential units including common areas and building exteriors for compliance with various codes and regulations in response to tenant complaints and/or as part of an ongoing housing inspection program;

4. Prepares inspection reports, documenting housing conditions and violations, using a mobile device and a computer and forwards reports to property owners;
5. Works with property owners and tenants in the field to discuss violations and needed repairs, facilitate cooperation between owners and tenants, discuss responsibilities of each party, and negotiate completion of repairs; conducts follow-up inspections to ensure that repairs have been completed;
6. Advises property owners on matters relevant to construction and repair methods and materials;
7. Researches and provides information regarding departmental programs and requirements, permit requirements, housing reports, fees assessed, status of property, etc. to property owners, tenants, members of the general public and other outside agencies;
8. Performs residential inspections of plumbing fixtures, water heaters, space heating equipment, electrical wiring, fenestrations, or similar work, equivalent to inspections for permitted work;
9. May conduct residential building inspections to assist with building inspection volume during periods of high inspection demand;
10. Assists in selection and training of staff; provides advice and guidance to other inspectors;
11. Maintains documentation and files, including correspondence, inspection reports, returned mail, photos, permits, and property ownership records;
12. Reviews and approves or denies requests for billing adjustments submitted by property owners;
13. Attends Rent Stabilization Board hearings as needed to provide testimony; corresponds with Rent Stabilization Board;
14. Refers cases, provides information to and responds to questions from individuals in other City Departments;
15. Depending on assignment, reviews and approves scope of work for various projects associated with departmental programs; upon completion of project, reviews the completed work and project file to ensure project is completed appropriately and that permits have received final approval;
16. May recommend improvements to procedures to help achieve performance measures;
17. Depending on assignment, solicits participation of property owners in City housing programs, determines eligibility, and negotiates agreements; and
18. Performs related duties as assigned.

KNOWLEDGE AND ABILITIES:

Note: The level and scope of the knowledge and skills listed below are related to job duties as defined under Class Characteristics.

Knowledge of:

1. Housing inspection procedures;
2. Building inspection procedures;
3. Principles and methods used in various building construction craft areas, including plumbing, electrical, heating and ventilation, building construction and remodeling, repair and maintenance;
4. Federal, State and local laws, ordinances, codes and standards regulating housing quality, residential rental housing, residential and commercial building construction, repair and maintenance; including but not limited to building codes, electrical codes, mechanical codes, California Housing Code, California Residential Building Code, U.S. Department of Housing and Urban Development Housing Quality Standards, Berkeley Municipal Code;
5. Appropriate safety and fire prevention methods in construction;

6. Advanced conflict resolution techniques;
7. Research practices and techniques;
8. Knowledge of laws related to space conversions; and
9. Basic supervisory principles and practices Ability to:
 1. Inspect residential and commercial buildings and building sites in order to enforce a wide range of building, housing and related codes and regulations;
 2. Read, understand, explain and enforce a variety of housing related laws, codes and ordinances;
 3. Identify different materials, animals, chemicals, sounds, odors, and other conditions which could result in immediate or potential health, safety, or fire hazards;
 4. Communicate courteously and effectively both verbally and in writing with a variety of individuals such as tenants, property owners, and citizens in the course of work, including individuals from a variety of socio-economic and cultural backgrounds, as well as irate and difficult customers;
 5. Review plans and specifications for building and related construction and determine practicability of plans, compliance and regulations and validity of permits;
 6. Solve problems by identifying code compliance alternatives when appropriate;
 7. Maintain accurate records and prepare clear and concise reports and documentation;
 8. Read and follow maps;
 9. Perform routine mathematical calculations;
 10. Provide technical inspection expertise and assistance to other inspectors with their challenging cases and recommend appropriate solutions for a wide range of inspection issues and problems;
 11. Proficiently use work-related computer applications such as Microsoft Windows, Word, Excel, Outlook, database management, and internet communications; and
 12. Make sound independent judgments within established guidelines.

MINIMUM QUALIFICATIONS:

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS: Equivalent to graduation from high school and three years of full time experience equivalent to Housing Inspector, Building Inspector or Code Enforcement Inspector for a public agency.

OTHER REQUIREMENTS

Must be able to travel to various locations within and outside the City of Berkeley to meet the program needs and to fulfill the job responsibilities. When driving on City business, incumbent is required to maintain a valid California driver's license as well as a satisfactory driving record.

CERTIFICATIONS: Must possess an International Code Council (ICC) or California (CA) certification in Residential Building or Housing Inspection or in Code Enforcement; and ICC or CA Residential or Commercial Electrical Inspector, Plumbing Inspector and Mechanical Inspector certifications; or equivalent ICC or CA Legacy Certification for either Combination Inspector or Combination Dwelling Inspector.



Office of the City Manager

CONSENT CALENDAR
October 26, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: LaTanya Bellow, City Manager's Office
 Subject: Dell Computers, Inc.: Using National Association of State Procurement Officials (NASPO) ValuePoint Cooperative Purchasing Agreement for Computer Hardware and Software Purchases

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to increase spending authority with Dell Computers, Inc. for the purchase of computer and server hardware, software, and related services, utilizing pricing and contracts, amendments, and extensions from the National Association of State Procurement Officials (NASPO) ValuePoint for the period beginning October 26, 2021 through June 30, 2023 for an amount not-to-exceed (NTE) \$1,939,538 with \$1,019,769 in Fiscal Year 2022 and \$919,769 in Fiscal Year 2023.

FISCAL IMPACTS OF RECOMMENDATION

Council authority is requested for continued hardware and software purchases from Dell Computers, Inc. under NASPO ValuePoint's cooperative purchasing agreement to support citywide desktop replacement, laptops, servers, storage, network equipment, and software licensing for desktops, servers, and line-of-business applications.

Summary:

\$1,019,769	Total FY 2022 Spending
\$919,769	Total FY 2023 Spending
\$1,939,538	Total FY 2022 and 2023 Spending

FY 2022		
Spending	Budget Code	Description
\$188,369	680-35-363-384-6004-000-473-651110-	FY 2022 Desktop PC Replacement
\$481,400	680-35-363-384-6006-000-472-613130-	FY 2022 Server/Storage Replacement
\$100,000	503-35-362-376-0000-000-412-651110-	FY 2022 Purchase for erma Kiosks
\$250,000	To Be Determined/As Needed	FY 2022 Citywide spending as needed
\$1,019,769	Total FY 2022 Spending	

FY 2023

Spending	Budget Code	Description
\$188,369	680-35-363-384-6004-000-473-651110-	FY 2023 Desktop PC Replacement
\$481,400	680-35-363-384-6006-000-472-613130-	FY 2023 Server/Storage Replacement
\$250,000	To Be Determined/As Needed	FY 2023 Citywide spending as needed
\$919,769	Total FY 2023 Spending	

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley participates in a cooperative pricing agreement negotiated by NASPO ValuePoint to obtain hardware, software, and related services from Dell Computers, Inc. NASPO ValuePoint has awarded Dell Technologies, Inc the State of California contract number 15-70-34-003. Currently, Dell provides the City of Berkeley with standardized hardware and software which facilitates efficient troubleshooting, quick turnaround times for equipment replacement, and standardized desktop imaging.

Hardware for the City of Berkeley's PC-Replacement and Server/Storage Replacement programs, as well as all corresponding supporting software are purchased from Dell, Inc. The purpose of these programs are to maximize the value of the City's investment by adopting a citywide standard for desktops, desktop deployment, and centralized servers. Staff replace approximately 200 citywide desktops per fiscal year.

BACKGROUND

In 1993, WSCA was formed as the cooperative purchasing arm of NASPO by purchasing directors from fifteen western states to leverage combined purchasing power, achieve competitive pricing discounts, and streamline the acquisition of quality products and services from industry-leading vendors.

In 1994, the City of Berkeley began using the Western States Contracting Alliance (WSCA) cooperative purchasing agreement as a starting for hardware negotiations. In 2002, the City of Berkeley issued a Request for Proposal (RFP) for desktops, laptops, and servers, and the evaluation team unanimously recommended Dell Computers, Inc. as the City's principal supplier.

In 2013, NASPO consolidated WSCA and the NASPO Cooperative to form NASPO ValuePoint to meet the increasing needs for resource assistance in cooperative procurement among users.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The technology equipment purchased from Dell Technologies is energy efficient and meets the standards required by law. The purchase and subsequent disposal of equipment is done responsibly using e-waste vendors and community non-profit agencies that provide technology equipment back into local communities to address the digital divide.

Additionally, keeping the City's inventory updated helps achieve the purchase of most energy efficient hardware keeping up with changing standards and meets the City's goal

of reducing energy consumption City buildings and maintaining an environmentally sound information technology infrastructure.

RATIONALE FOR RECOMMENDATION

Using cooperative purchasing agreements significantly improves the quality of purchasing executed by the City, and participation in such agreements allows the City to gain greater efficiencies and economies of scale. NASPO ValuePoint is considered a 'pure' cooperative because the program is led by State Procurement Officers from public-sector member states whom are elected by their peers and subject matter experts.

Dell continues to provide excellent hardware and software to support the City's network infrastructure, servers, and desktop computers. Dell also continues to provide exemplary customer service and response times. The purchase of license upgrades enables the latest windows operating system which is the base for all other software applications installed that improve access to data regardless of location, thus increasing employee efficiencies. This keeps our operating system up to date with patches and other security requirements to make the equipment secure, thus improving employee productivity.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered issuing a specific bid for the City of Berkeley's computer hardware and software requirements, but at this time, doing so would not yield better pricing than that which is currently established through the NASPO ValuePoint cooperative purchasing agreement.

CONTACT PERSON

LaTanya Bellow, City Manager's Office, (510) 981-7000

Attachments:

1: Resolution

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

DELL COMPUTERS, INC.: USING NASPO VALUEPOINT FOR HARDWARE AND SOFTWARE PURCHASES

WHEREAS, the City of Berkeley relies upon a technically sound and efficient computer network; and

WHEREAS, by purchasing from cooperative purchasing agreements such as NASPO ValuePoint, the City of Berkeley is able to take advantage of pre-negotiated prices, economies of scale, and increased efficiencies; and

WHEREAS, hardware for the City of Berkeley's PC-Replacement and Server Replacement programs, as well as all corresponding supporting software are purchased from Dell, Inc. The purpose of these programs are to maximize the value of the City's investment by adopting a citywide standard for desktops, desktop deployment, and centralized servers; and

WEHEREAS, Dell Computers, Inc. continues to offer the best overall value, reliable hardware, and excellent customer service since 1994; and

WHEREAS, funding for the PC and Server Replacement Programs are funded by the Department of Information Technology's Internal Service Fund, and citywide purchases will be made as needed by Departments by multiple funds.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to increase the spending authority for purchase orders for computer hardware, software, and related services from Dell Computer, Inc., utilizing pricing from the cooperative purchasing agreement established by National Association of State Procurement Officials (NASPO) ValuePoint Cooperative for the period beginning October 26, 2021 through June 30, 2023 for an amount not-to-exceed (NTE) \$1,939,538 with \$1,019,769 in Fiscal Year 2022 and \$919,769 in Fiscal Year 2023.



Office of the City Manager

CONSENT CALENDAR
October 26, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Subject: Contract No. 122411-2 Amendment: Communication Strategies for Consulting Services for Voice over IP (VoIP) Extending Support and Maintenance and AT&T Phone Bill Audit

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 122411-2 with Communication Strategies for Consulting Services for Voice over IP (VoIP) extending Support and Maintenance and in order to conduct a phone billing audit of AT&T, increasing the contract amount by \$14,625 for a total not-to-exceed amount of \$97,436 from July 1, 2017 to June 30, 2023.

FISCAL IMPACTS OF RECOMMENDATION

Funding for these professional services is available in the Department of Information Technology's Fiscal Year (FY) 2022 VoIP Phone System Fund, as outlined below.

FY 2022: VoIP Phone System Fund
\$14,625 Budget Code: 502-35-363-380-0000-000-412-612990-
(Phone System Replacement, IT Department, Professional Services)

CURRENT SITUATION AND ITS EFFECTS

The City is upgrading its Voice over Internet Protocol (VoIP) phone system. With Communications Strategies' help, we have issued an RFP, selected and moved to several new vendors (including Integration Partners and TPx), added capabilities (such as e911 to come up to compliance with Kari's Law and Ray Baum's Act), in addition to improving our VoIP technology suite itself. Communication Strategies has assisted the City of Berkeley every step along the way.

At this juncture in the process, it is appropriate and prudent for the City of Berkeley to conduct an abbreviated AT&T line and circuit billing audit and clean-up effort in order to identify lines that may be able to be cancelled, thus producing cost savings over time. It is expected that the abbreviated audit will target "low hanging fruit" and uncover information on future targets for cleanup. Additionally, this funding will provide the City of Berkeley an additional fifty (50) hours for ongoing consulting and project manage-

ment services that can be flexibly allocated by the City throughout the life of the contract.

BACKGROUND

In July 2019, the City contracted with Communication Strategies to assist with developing the requirements for a Request for Proposals (RFP) for a new Voice Over IP (VoIP) support and maintenance vendor, and to assist with reviewing the proposals to help the City make a final selection.

As part of the RFP development process, recommendations (such as a converting to SIP-trunking technologies, new voicemail component, and evaluating how to and potentially move to supporting eFAX) and requirements (such as implementing Kari's Law and Ray Baum's Act e911 capabilities) were identified and then prioritized. And, subsequent contract amendments were made so that Communication Strategies could assist the City in implementing several of these recommendations and requirements.

This spending authorization provides funding to tidy up the deployment through an abbreviated phone billing audit of AT&T, and provide additional support and maintenance to the City of Berkeley as this project nears its completion.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Communication Strategies will be able to conduct the majority of their work remotely, limiting greenhouse gas emissions associated with travel time to and from City offices for on-site meetings.

RATIONALE FOR RECOMMENDATION

Communication Strategies has proven itself to the City of Berkeley and the Department of Information Technology (IT) to be knowledgeable and competent in the field of communications, throughout this VoIP upgrade. They were invaluable in developing the City's Request for Proposals (RFP) for a new VoIP support and maintenance vendor, assisted by reviewing the proposals to help the City make a final selection, and have been instrumental in managing and advising the City throughout the implementation of the upgrades and new capabilities. Finally, Communication Strategies has additionally presented themselves as a well-suited and considerably economical for this audit.

ALTERNATIVE ACTIONS CONSIDERED

The City considered conducting the AT&T line and circuit billing audit and clean-up effort ourselves, however, we do not have the resources with the expertise that Communications Strategies brings. We also do not have the resources to provide support and maintenance that match the complexity of remaining projects.

CONTACT PERSON

Tom Ray, Information Security Manager, Department of Information Technology, (510)
981-6525

Attachments:

1: Resolution

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

CONTRACT NO. 122411-2 AMENDMENT: COMMUNICATION STRATEGIES FOR CONSULTING SERVICES FOR VOICE OVER IP (VOIP) EXTENDING SUPPORT AND MAINTENANCE AND AT&T PHONE BILL AUDIT

WHEREAS, The City is upgrading its Voice over Internet Protocol (VoIP) phone system, and is nearing that point in the process where a phone billing audit is often conducted; and

WHEREAS, An additional fifty (50) hours of support and maintenance are anticipated by the Department of Information Technology (IT) as required to complete the upgrade; and

WHEREAS, The Department of IT has previously worked with Communication Strategies to develop the RFP for VoIP support contracts, to assess the responses, and to implement the upgrades and new capabilities of the project; and

WHEREAS, Funding for these professional services is available in the Department of Information Technology's Fiscal Year (FY) 2022 VoIP Phone System Fund.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend Contract No. 122411-2 with Communication Strategies for Consulting Services for Voice over IP (VoIP) Extending Support and Maintenance, and to Conduct AT&T Phone Billing Audit, increasing the contract amount by \$14,625 for a total not-to-exceed amount of \$97,436 from July 1, 2017 to June 30, 2023.



Office of the City Manager

CONSENT CALENDER
October 26, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront
 Subject: Grant Application: the San Francisco Restoration Authority Measure AA Grant Program for Pre-Construction documents for Potential Improvement Projects at Aquatic Park

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to: 1) submit a grant application in the amount of \$897,000 to the San Francisco Restoration Authority Measure AA Grant Program to prepare pre-construction technical documents for potential improvement projects at Aquatic Park, including a community engagement program; 2) accept any grants; 3) execute any resulting grant agreements and any amendments; and that Council authorize the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.

FISCAL IMPACTS OF RECOMMENDATION

The Measure AA grant program administered by the San Francisco Restoration Authority does not require local matching funds. If awarded, the City will assign City staff to manage the project as an in-kind match to the grant, at a value of \$129,950.

CURRENT SITUATION AND ITS EFFECTS

In July of 2021, the San Francisco Bay Restoration Authority opened the 2021 Measure AA Grant Round for project proposals. The Board seeks to fund projects that qualify as one or more of the following project types: a habitat project that aims to restore, protect, or enhance tidal wetlands, managed ponds, or natural habitats on the shoreline in the San Francisco Bay Area; a flood management project that is part of a habitat project; or a public access project that will provide or improve access or recreational amenities that are part of a habitat project. The Authority is particularly interested in supporting projects that address equity and include benefits to economically disadvantaged communities through meaningful community engagement. The City's Parks, Recreation & Waterfront identified Aquatic Park as a critical habitat site with projects that would best meet the goals of the Measure AA grant program. Based on the City's Aquatic Park Improvement Program (APIP) studies from 2010, there are a range of improvement projects to enhance habitat, water quality, and recreation and public access at Aquatic Park. The next step in the process involves the preparation of pre-construction technical documents, including a project description, CEQA environmental review, and a community process.

BACKGROUND

Completed in 1937, Aquatic Park was created when the state constructed the Bayside Freeway on a new levee that ran through the tidal waters of the Bay from Oakland to Richmond. Aquatic Park currently has three lagoons: the Main Lagoon (ML), the Model Yacht Basin (MYB), and the northern portion of the Radio Tower Pond (RTP). The entire park is 102 acres and includes: 68.0 acres of open water in the three lagoons, 0.7 acres of salt/brackish wetlands, 1.1 acres of freshwater wetlands, 11.0 acres of open space lawn, 7.0 acres of roads and trails, and 14.0 acres of buildings and uplands.

In terms of improving water quality, the lagoons are connected to the Bay by 24-inch diameter culverts (“tide tubes”). The five tide tubes in the Main Lagoon were cleaned in October 2020 after being clogged for several decades. While they currently provide full functionality, they show initial signs of the structural failure process and need to be re-sleeved in the next ten years. At the Model Yacht Basin, the tide tube to the Bay and the internal culverts to the Main Lagoon are significantly clogged, needing major rehabilitation. The most significant habitat in Aquatic Park is the shallow subtidal aquatic habitat in the waters of the lagoons. Shallow subtidal habitat in the SF Bay is a highly productive zone which supports a nursery for many marine crustaceans and fish. This project to improve the tide tube system will ensure that the water quality of this critical habitat remains at a high level for decades to come. In addition, the park contains a range of small wetland or mudflat habitats that should be enhanced to obtain higher habitat value. Finally, the park contains a range of recreation and public access features in need of improvement, including a perimeter pedestrian trail, a frisbee golf course, an outdoor exercise equipment site, multiple spots for wildlife viewing, and a connection to the pedestrian overcrossing bridge to the Bay Trail on the west side of Interstate 80.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

As a technical document project, there are no environmental impacts associated with this project.

RATIONALE FOR RECOMMENDATION

Funding of this phase of the project (the pre-construction technical documents, including CEQA review) will make the project more competitive for future funding opportunities that could cover the design and construction phases to improve the habitat, water quality, and recreation and public access at Aquatic Park.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Scott Ferris, Director, PRW, (510) 981-6700

Nelson Lam, Supervising Civil Engineer, PRW, (510) 981-6395

Attachments:

1: Resolution

RESOLUTION NO. -N.S

GRANT APPLICATION: THE SAN FRANCISCO RESTORATION AUTHORITY
MEASURE AA GRANT PROGRAM FOR PRE-CONSTRUCTION TECHNICAL
DOCUMENTS INCLUDING A COMMUNITY ENGAGEMENT PROGRAM FOR
POTENTIAL IMPROVEMENT PROJECTS AT AQUATIC PARK

WHEREAS, in July of 2021, the San Francisco Bay Restoration Authority opened the 2021 Measure AA Grant Round for project proposals; and

WHEREAS, the Board seeks to fund projects that qualify as one or more of the following project types: a habitat project that aims to restore, protect, or enhance tidal wetlands, managed ponds, or natural habitats on the shoreline in the San Francisco Bay Area; a flood management project that is part of a habitat project; or a public access project that will provide or improve access or recreational amenities that are part of a habitat project; and

WHEREAS, the Authority is particularly interested in supporting projects that address equity and include benefits to economically disadvantaged communities through meaningful community engagement; and

WHEREAS, the City's Parks, Recreation & Waterfront identified Aquatic Park as a critical site with projects that best meet the goals of the Measure AA grant program; and

WHEREAS, based on the City's Aquatic Park Improvement Program (APIP) studies from 2010, there are a range of improvement projects to enhance habitat, water quality, and recreation and public access at Aquatic Park. The next step in the process involves the preparation of pre-construction technical documents, including a project description, CEQA environmental review, and a community engagement program with an estimated cost of \$897,000; and

WHEREAS, the Measure AA grant program administered by the San Francisco Restoration Authority does not require local matching funds. If awarded, the City will assign City staff to manage the project as an in-kind match to the grant, at a value of \$129,950.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to: submit a grant application in the amount of \$897,000 to the San Francisco Restoration Authority Measure AA grant program for pre-construction technical documents including a community engagement program for potential improvement projects at Aquatic Park; accept any grants; execute any resulting grant agreements and any amendments; and that Council authorize the implementation of the project and appropriation of funding for related expenses, subject to securing the grant. A record signature copy of said agreements and any amendments to be on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR
October 26, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront
 Subject: Grant Application: Boating Safety and Enforcement Equipment (BSEE)
 grant program of the California Division of Boating & Waterways

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to 1) submit a grant application to the California Division of Boating and Waterways 2021 BSEE grant program for \$20,000; 2) accept any grants; and 3) execute any resulting grant agreements and any amendments; and the City Council authorizes the implementation of the projects and appropriation of funding for related expenses subject to securing the grant.

FISCAL IMPACTS OF RECOMMENDATION

The cost to purchase and replace the inflatable collar on Rescue One at the Berkeley Marina is estimated at \$20,000. No local match is required. The grant will be deposited in the Boating and Waterways Fund (Fund 607).

CURRENT SITUATION AND ITS EFFECTS

The City-owned patrol boat Rescue One has an inflatable collar used for protection during towing and for extra flotation. The inflatable collar has surpassed its life expectancy (10 years) and is badly worn, faded, and not holding air. A replacement collar is needed in order for the boat to continue providing towing and rescue operations at the Berkeley Marina.

BACKGROUND

For over 20 years, the Division of Boating and Waterways has provided grant funding assistance to public agencies throughout California, including the City of Berkeley, to replace boating-specific equipment and other support equipment used for boating safety. In 1998, the City purchased the Rescue One boat using a Division of Boating and Waterways BSEE grant. The City currently owns three boats used for rescue, towing, and other duties at the Berkeley Marina.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental impacts associated with the recommendation contained in this report.

RATIONALE FOR RECOMMENDATION

This BSEE Grant will cover the full replacement of the inflatable collar for the Rescue One boat at the Berkeley Marina and does not require matching funds from the City.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Alexandra Endress, Waterfront Manager, (510) 981-6737
Sean Crothers, Waterfront Supervisor, (510) 981-6744

Attachments:

1: Resolution

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

GRANT APPLICATION: BOATING SAFETY AND ENFORCEMENT EQUIPMENT
(BSEE) GRANT PROGRAM OF THE STATE DIVISION OF BOATING AND
WATERWAYS

WHEREAS, for over 20 years, the Division of Boating and Waterways has provided grant funding assistance to public agencies throughout California, including the City of Berkeley, to replace boating-specific equipment and other support equipment used for boating safety; and

WHEREAS, in 1998, the "Rescue One" boat at the Berkeley Marina was purchased using a Division of Boating and Waterways BSEE grant. At present, the City owns and operates three rescue boats used for rescue, towing, and other duties at the Berkeley Marina; and

WHEREAS, Rescue One has an inflatable collar used for protection during towing and for extra flotation. The inflatable collar has surpassed its life expectancy (10 years) and is badly worn, faded, and not holding air. A replacement collar is needed in order for the boat to continue providing towing and rescue operations at the Berkeley Marina; and

WHEREAS, the cost to replace the inflatable collar on Rescue One is estimated at \$20,000. If awarded, the grant funds will be deposited in the Boating and Waterways Fund (Fund 607).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to 1) submit a grant application to the California Division of Boating and Waterways 2021 BSEE grant program for \$20,000; 2) accept any grants; 3) execute any resulting grant agreements and any amendments; and the City Council authorizes the implementation of the projects and appropriation of funding for related expenses subject to securing the grant. A record signature copy of said agreements and any amendments to be on file in the Office of the City Clerk.



Elmwood BID Advisory Board

CONSENT CALENDAR

October 26, 2021

To: Honorable Mayor and Members of the City Council
 From: Elmwood Business Improvement District Advisory Board
 Submitted by: Claudia Hunka, Chair, Elmwood BID Advisory Board
 Subject: Renewal of the Elmwood Avenue BID for Calendar Year 2022

RECOMMENDATION

Adopt a Resolution approving the Elmwood Business Improvement District Advisory Board's (hereafter "Elmwood BID Advisory Board" or "the Advisory Board") recommendation that Council: 1) approve the 2021 Annual Report and preliminary budget for proposed improvements in the District for calendar year 2022; 2) declare its intent to levy an assessment to finance improvements in the District for calendar year 2022 and 3) direct the City Clerk to schedule a public hearing on the renewal of the assessment for November 16, 2021.

FISCAL IMPACTS OF RECOMMENDATION

Projected BID revenue of approximately \$30,000 will be deposited into the Elmwood BID Fund, and expensed from budget code 782-21-208-251-0000-000-446-636110. The BID constitutes an independent funding source that must be targeted to commercial revitalization efforts that are recommended by the Advisory Board. The City of Berkeley operates a parking lot within the district and will thus be assessed \$1,000 for 2022, paid through the Off-Street Parking Fund. To the extent that the work of the Elmwood BID enhances the development of the Elmwood commercial district and its business climate over the long term, the BID contributes towards improving City revenues through increased sales and property taxes.

CURRENT SITUATION AND ITS EFFECTS

Under the State of California Parking and Business Improvement Area law of 1989 (California Streets and Highways Code section 36500 et.seq.) the City Council must approve an Annual Report prepared by the BID Advisory Board with a proposed budget for the next year as a requirement to levy new assessments. Accordingly, at its meeting of September 10, 2021, the Elmwood BID Advisory Board voted to recommend that the City Council approve the Annual Report of 2021 and budget for 2022 and adopt a Resolution of Intention to renew the assessment (M/S-Hunka/Souza; Ayes: Hunka, Souza, Stepak; Nays: none). The Resolution of Intention also sets a public hearing date for November 16, 2021 where affected Elmwood businesses can express support or opposition to renewal of the BID for 2022. If written and/or oral protests are received

from businesses proposed to pay a majority of the assessment prior to or at the public hearing, Council cannot vote to levy assessments for 2022. If no majority protest is received, the Council may renew the assessment.

BACKGROUND

The Elmwood BID was established in November 2013 to provide the Elmwood Business Association with a sustainable, predictable source of funding for its activities to promote, maintain, and beautify the Elmwood commercial district. The Elmwood Business Association has used the funds raised through the BID to implement a variety of activities such as place-based marketing, events, and capital improvements.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

By maintaining and enhancing the district, the Elmwood BID creates shopping opportunities for residents and visitors alike while encouraging alternative forms of transportation. The environmental enhancements such as seasonal signage, window displays, parklets and holiday decorations contribute to making the Elmwood district a more pleasant walking and biking destination. Because the District is well served by public transportation and biking infrastructure, these services indirectly support environmental sustainability goals of encouraging alternative transportation modes and decreasing carbon emissions.

RATIONALE FOR RECOMMENDATION

State law requires that the City Council annually renew the Elmwood BID by first passing a resolution stating Council's intention to levy an annual assessment and scheduling a public hearing on the proposed renewed assessment for the coming year.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Kieron Slaughter, Secretary to the Elmwood BID Advisory Board, (510) 981-2490

Attachments:

1: Resolution

- Exhibit A: Elmwood BID Annual Report and proposed budget for 2022
- Exhibit A1: Map of the Elmwood BID
- Exhibit A2: Assessment Rates

RESOLUTION NO. -N.S.

APPROVING THE 2021 ANNUAL REPORT AND PROPOSED BUDGET OF THE ELMWOOD BUSINESS IMPROVEMENT DISTRICT FOR 2022; DECLARING COUNCIL'S INTENTION TO LEVY AN ASSESSMENT IN THE DISTRICT FOR 2022; AND DIRECTING THE CITY CLERK TO SCHEDULE A PUBLIC HEARING FOR NOVEMBER 16, 2021 REGARDING LEVYING OF A RENEWED ASSESSMENT FOR 2022

WHEREAS, the Parking and Business Improvement Area Law of 1989 (California Streets and Highway Code section 36500 et seq.) authorizes cities to establish parking and business improvement areas for the purpose of imposing assessments on businesses for certain purposes; and

WHEREAS, on November 19, 2013 the Berkeley City Council established such an area known as the Elmwood Business Improvement District (the "District"); and

WHEREAS, the City Council established a Elmwood Business Improvement District Advisory Board (Advisory Board) to act in compliance with State law to oversee the activities of the District; and

WHEREAS, the Advisory Board has submitted an Annual Report to the Berkeley City Council that outlines the activities of the District proposed for 2022 as required by the California Streets and Highways Code Section 36533; and

WHEREAS, the Annual Report is clear and complete and found to comply with the interests of Elmwood BID assessees; and

WHEREAS, the annual process for levying assessments in Business Improvement Districts requires that cities adopt a Resolution of Intent that declares their intent to levy such an assessment and then set a date for a public hearing where interested parties may be heard on the issue.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

Section 1. The City Council hereby approves the Elmwood Business Improvement District Annual Report for 2021-22 (Exhibit A) as submitted to the City Clerk by the Elmwood Business Improvement District Advisory Board.

Section 2. Pursuant to the provisions of Section 36500 et seq. of the California Streets and Highways Code (the "Act"), the City Council declares its intent to levy an annual assessment for the parking and business improvement area known as the Elmwood Business Improvement District.

Section 3. The boundaries of the District are set forth in Exhibit A1 to the 2021-22 Annual Report which is attached hereto and incorporated herein by reference.

Section 4. The improvements and activities proposed for the District are as described in the Report and budget (Exhibit A) and appended hereto.

Council intends that these funds be used for designated activities and improvements in the Elmwood commercial area. Council explicitly intends that funds generated through this BID shall not be used to pay for activities routinely paid for by the City.

Section 5. The City Council intends to levy assessments on businesses located within the boundaries of the District shown Exhibit A1 and according to the business classifications and rates set forth in Exhibit A2 which is attached hereto and incorporated herein by reference.

Section 6. A public hearing shall be held before the City Council on November 16, 2021, virtually on a publicly accessible video conference call. Following the hearing the Council will consider adoption of a resolution levying an assessment as recommended by the Elmwood Business Improvement Advisory Board. At this hearing the Council will hear all interested persons for or against the levying of such an assessment.

Formal protests against the levying of the District assessment must be made in writing. All written and oral protests should contain the following certification: "I certify that I am the owner of the business listed below, and that the business is located or operates within the boundaries of the Elmwood Business Improvement District." Protests should also contain the following information: business name (printed), business address (printed), City Business License Tax Registration number, name of protester (printed), signature of protester, date of protest and the reason(s) the protester is against the levying of the District assessment. Protests will not be considered valid unless signed and submitted by the owner of a business located within the boundaries of the proposed District. Written protests shall be filed with the City Clerk, First Floor, City Hall, at 2180 Milvia Street, Berkeley, California, 94704, at or before 3 pm on November 16, 2021 and shall contain a description of the business sufficient to identify the business, and if the person so protesting is not listed on City records as the owner of the business, the protest shall be accompanied by written evidence that the person subscribing the protest is the owner of the business. Any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made. If written protests are received from the owners of businesses in the District which will pay fifty percent (50%) or more of the assessment proposed to be levied, no further proceedings to levy the assessment shall be taken for a period of one year from the date of the finding of a majority protest by the City Council. If the majority protest is only against the furnishing of a specified type or types of improvements or activities within the District, those types of improvements or activities shall be eliminated.

Section 7. The City Clerk is directed to give notice of said public hearing by publishing the Resolution of Intention in a newspaper of general circulation.

Exhibits

- A: Annual Report for the Elmwood Business Improvement District for 2021-22
 - A1: Map of the Elmwood BID
 - A2: Assessment Rates

EXHIBIT A

Annual Report for the Elmwood Business Improvement District for 2021-22

August 31, 2021

To: Members of the Berkeley City Council
From: The Elmwood Business Improvement District Advisory Board
Re: 2022 Elmwood BID Renewal

We respectfully request that the Elmwood Business Improvement District be renewed for the 2022 fiscal year, without any changes to the assessment method or amount.

The Elmwood BID was established in November 2013 to promote, maintain and beautify the Elmwood commercial district. Revenues of roughly \$30,000 per year provide a regular, predictable source of funding for the activities of the Elmwood Business Association (EBA). The Elmwood BID has allowed the EBA to expand its activities into areas such as maintenance and capital improvements.

The Elmwood Business Association is continuing to be the catalyst for Elmwood Business District's on-going vitality. Here are some highlights of our projects:

- Maintenance of year-round lighting installation on district buildings
- Website: www.shoptheelmwood.com serves as one of the district's main marketing tool – District Events, Introducing New Businesses, and on-going marketing updates
- Hired a landscaping contractor to maintain 70 tree wells – currently on a bi-monthly maintenance schedule
- Quarterly weeding and cleaning of Russell St. parking lot partnering with UC Berkeley
- Installation and maintenance of security camera at Russell St. parking lot
- Maintaining a part-time Administrative Assistant to:
 - Post on social media
 - Manage merchant communications
 - Promote monthly happenings/specials among Elmwood Merchants
 - Updating the website to keep it current
- Sponsored the following events:
 - Due to Covid pandemic, EBA had to halt all in-person events that would bring people to the shopping district
- Held a Merchant Social in an outdoor setting along with our Annual Meeting
- Members of the board active in other Berkeley commercial and residential neighborhoods to promote harmony and cooperation
- Planned (but halted during pandemic) Elmwood District Shopping Guide/Map
- Halloween window scavenger hunt, Christmas holiday hunt

Below for your review is a summary of our current financial position and our proposed budget for 2020-2021

2021-22 Projected Expenditures Elmwood Business Association

Elmwood Business Association

2022 Budget

INCOME	2022 Budget	2021 Actual	2021 Budget
Operating Income			
BID Membership dues	\$ 22,000	\$ 30,000	\$ 30,000
<i>Other (Partial BID Payment, Wine Walk Income)</i>	\$ 9,700	\$ -	\$ 10,200
Total Operating Income	\$ 31,700	\$ 30,000	\$ 40,200
Non-Operating Income			
Other			
Total Non-Operating Income	\$ -	\$ -	\$ -
Total INCOME	\$ 31,700	\$ 30,000	\$ 40,200

EXPENSES			
Advertising & Marketing			
Banner maintenance	\$ 2,400	\$ -	\$ -
Wine Walk production	\$ 4,600	\$ -	\$ 5,500
Spring event production	\$ 1,100	\$ -	\$ -
Summer event production	\$ 2,200	\$ -	\$ -
<i>Special Event-Art & Music Week</i>	\$ -	\$ -	\$ 9,800
Web Hosting and Domains	\$ 750	\$ 693	\$ 750
General Marketing, Ads, Social media	\$ 300	\$ -	\$ -
Halloween event production	\$ 300	\$ -	\$ -
Holiday season event production (incl. tree lights)	\$ 600	\$ 6,966	\$ 3,000
Event planning	\$ 250	\$ -	\$ -
EBA Expansion research	\$ 100	\$ -	\$ -
Charity			
Wine Walk partner	\$ 1,500	\$ -	\$ 1,500
Consulting & Accounting			
Accounting S/W	\$ 100	\$ 73	\$ 120
Dues and Subscriptions			
Chamber of Commerce	\$ 300	\$ 3	\$ 900
Insurance			
Liability for EBA	\$ 550	\$ 500	\$ 500
Liability for Board members	\$ 750	\$ 711	\$ 1,200
License & Permits			
Taxes & Licenses	\$ 50	\$ 30	\$ 50
Lobbyist registration	\$ 500	\$ -	\$ -
Other: Office Supplies/Annual Mtg.			
Printing/copy	\$ 650	\$ 143	\$ 800

Postage & Delivery (PO Box)	\$ 150	\$ 150	\$ 150
Miscellaneous	\$ 200	\$ 134	\$ 1,200
Repairs and Maintenance			
Gardening (Tree wells)	\$ 700	\$ -	\$ 600
Professional Fees			
Legal and Professional Fees	\$ 200	\$ -	\$ 500
Security			
Surveillance System Installation	\$ 2,500	\$ -	\$ 2,500
Surveillance System Maintenance	\$ 400		
Holiday Private Security	\$ 5,500	\$ 4,000	\$ 6,500
Admin Support			
Wages	\$ 9,000	\$ 8,250	\$ 9,000
Total Operating Expenses	\$ 35,650	\$ 21,653	\$ 44,570
Retained Earnings	\$ (3,950.00)	\$ 8,347	\$ (4,370)

Thank you for your attention to this matter. We look forward to an equally productive year for the BID in 2022.

Exhibit A1: Elmwood Business Improvement District, Map

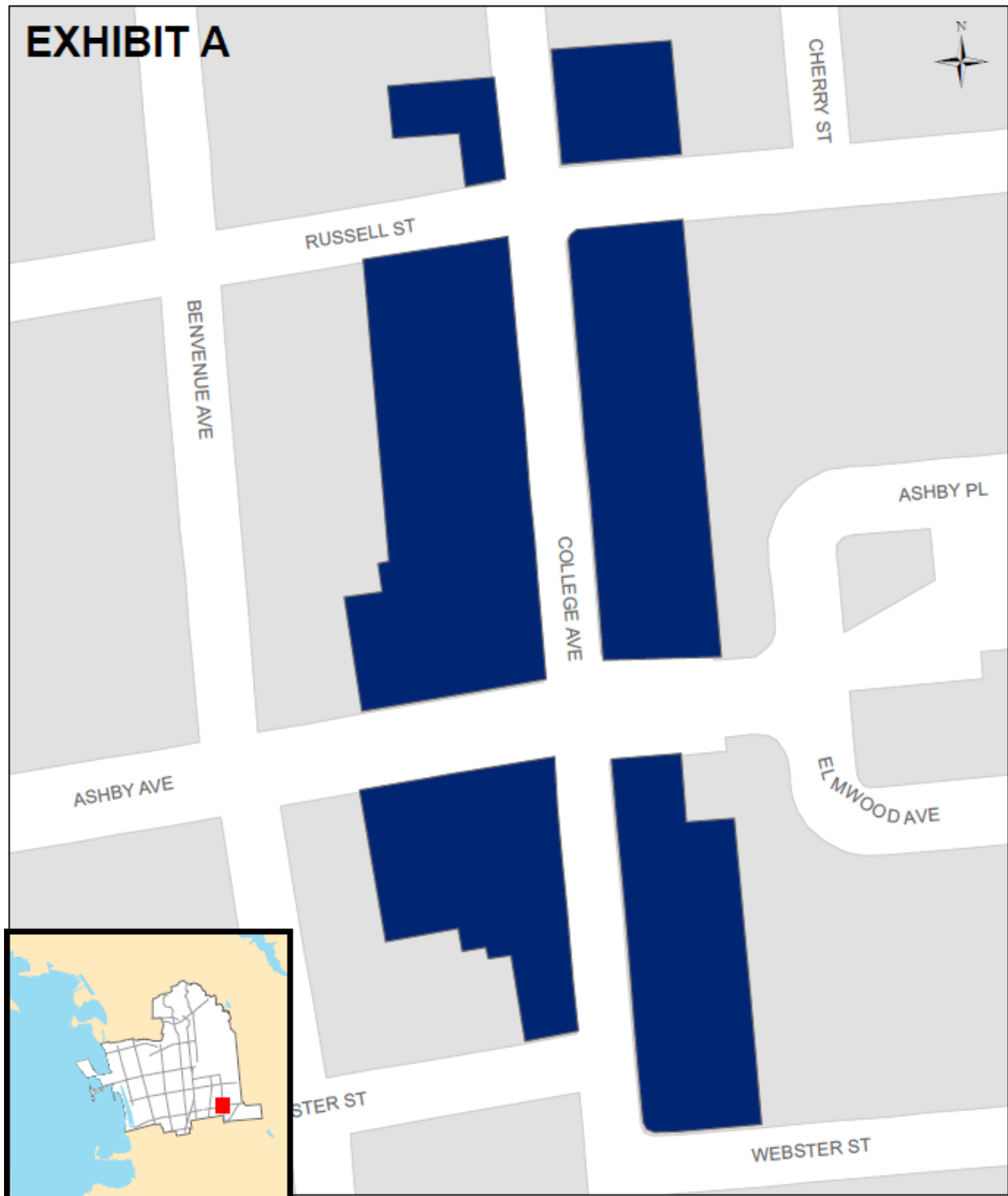


Exhibit A2: Elmwood Business Improvement District, Assessment Rates

Classifications	Rates
Retail including jewelers and groceries but not restaurants (Tax Codes R, M and G but without NAICS 722, Food Services and Drinking Places) <ul style="list-style-type: none"> Gross receipts under \$350,000 Gross receipts \$350,000=\$999,000 Gross receipts \$1,000,000 	\$250.00 per year \$350.00 per year \$500.00 per year
Restaurants, including all businesses that prepare and serve food at the request of customers (NAICS 722)	\$500.00 per year
Professionals including offices of real estate brokers (Tax Code P) <ul style="list-style-type: none"> Gross receipts under \$100,000 Gross receipts over \$100,000 	\$300.00 per year \$400.00 per year
Entertainment and Recreation (Tax Code E)	\$450.00 per year
Business, Personal and Repair Services (Tax Code B) except Hair, Nail and Skin Cares Services (NAICS 81211)	\$200.00 per year
Hair, Nail and Skin Care Services (NAICS 81211)	\$250.00 per year
Parking lot operators	\$1,000.00 per year
Financial Institutions	\$2,500.00 per year

Any business that is classified as a nonprofit (Tax Code N) for business license purposes shall nevertheless pay the assessment at the rate that corresponds to its North American Standard Industrial Classification if it is engaged in the sale of products or services and occupies a space zoned for commercial purposes.



Office of the City Manager

CONSENT CALENDAR

October 26, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Peggy Smith, Chair, Solano Avenue BID Advisory Board

Subject: Renewal of the Solano Avenue BID for Calendar Year 2022

RECOMMENDATION

Adopt a Resolution approving the Solano Avenue Business Improvement District Advisory Board's (hereafter "Solano BID Advisory Board" or "the Advisory Board") recommendation that Council: 1) approve the 2021 Annual Report and preliminary budget on proposed improvements in the District for calendar year 2022; 2) declare its intent to levy an assessment to finance improvements in the District for calendar year 2022; and 3) direct the City Clerk to schedule a public hearing on the renewal of the assessment for November 16, 2021.

FISCAL IMPACTS OF RECOMMENDATION

Projected BID revenue of approximately \$25,000 will be deposited into the Solano Avenue BID Fund, revenue budget code 783-21-208-251-0000-000-000-412110- and expensed from budget code 783-21-208-251-0000-000-446-636110-. The BID constitutes an independent funding source that must be targeted to commercial revitalization efforts that are recommended by the Solano BID Advisory Board. To the extent that the work of the Solano BID enhances the economic development of Solano Avenue and its business climate over the long term, the BID contributes towards improving City revenues through increased sales and property taxes.

CURRENT SITUATION AND ITS EFFECTS

Renewal of the Solano BID is a Strategic Plan Priority Project, advancing our goal to foster a dynamic, sustainable, and locally-based economy. Under the State of California Parking and Business Improvement Area law of 1989 (California Streets and Highways Code section 36500 et.seq.) the City Council must approve an Annual Report prepared by the Solano BID Advisory Board with a proposed budget for the next year as a requirement to levy new assessments. Accordingly, at its meeting of September 21, 2021, the Solano BID Advisory Board voted to recommend that the City Council approve the Report for the Solano Avenue Business Improvement District for 2021-22 and adopt a Resolution of Intention to renew the assessment for that year. The Resolution of Intention also sets a public hearing date for November 16, 2021 where affected Solano businesses can express support or opposition to renewal of the BID for calendar year 2022. If written and/or oral protests are received from businesses

proposed to pay a majority of the assessment, Council cannot vote to levy assessments for 2022. If no majority protest is received the Council may renew the assessment.

BACKGROUND

Since its revival in May 2012, the Solano BID Advisory Board has used Solano BID revenues to finance three programs: 1) a tree watering contract to ensure the health of 48 young street trees on Solano; 2) installing a program of 40 hanging planter baskets on light poles; and 3) sponsorship of events that attract customers to the district and improvements that enhance the pedestrian experience. In 2021, the BID program has focused on sponsoring activities and improvements intended to market and promote the Solano Avenue business district. In the wintertime, the BID in conjunction with the Solano Avenue Association (which represents both Albany and Berkeley businesses along Solano Avenue) pays a contractor to erect holiday lights and decorations on City street light poles. This will continue for the 2021-22 season. Although the BID will spend a good portion of its funds on the holiday décor program, in the remainder of 2021 it also plans to establish an expanded landscaping program for merchants to clean and level tree wells and water existing hanging flower baskets. BID expenditures are to be made through an established fiscal agency contract with Telegraph Property and Business Management Corporation (Telegraph PBMC).

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

By maintaining and enhancing the district, the Solano BID creates shopping opportunities for residents and visitors alike while encouraging alternative forms of transportation. The environmental enhancements such as the added street trees, hanging planters, parklet, and holiday decorations contribute to making Solano a more pleasant walking destination. Because the District is well served by public transportation and biking infrastructure, these services indirectly support environmental sustainability goals of encouraging alternative transportation modes and decreasing carbon emissions.

RATIONALE FOR RECOMMENDATION

State law requires that the City Council annually renew the Solano BID by first passing a resolution stating Council's intention to levy an annual assessment and scheduling a public hearing on the proposed renewed assessment for the coming year.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Eleanor Hollander, Secretary to the Solano BID Advisory Board, (510) 981-7536.

Attachments:
1: Resolution

Exhibit A: Report for the Solano Avenue Business Improvement District 2021-22

Exhibit A1: Map of the Solano BID

Exhibit A2: Assessment Rate

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

APPROVING THE ANNUAL REPORT AND PROPOSED BUDGET OF THE SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT FOR 2021-22; DECLARING COUNCIL'S INTENTION TO LEVY AN ASSESSMENT IN THE DISTRICT FOR 2022; AND DIRECTING THE CITY CLERK TO SCHEDULE A PUBLIC HEARING FOR NOVEMBER 16, 2021 TO CONSIDER LEVYING A RENEWED ASSESSMENT FOR 2022.

WHEREAS, the Parking and Business Improvement Area Law of 1989 (California Streets and Highway Code section 36500 et seq.) authorizes cities to establish parking and business improvement areas for the purpose of imposing assessments on businesses for certain purposes; and

WHEREAS, on December 9, 2003 the Berkeley City Council established such an area known as the Solano Avenue Business Improvement District (the "District"); and

WHEREAS, the City Council established a Solano Avenue Business Improvement District Advisory Board (Advisory Board) to act in compliance with State law to oversee the activities of the District; and

WHEREAS, the City Council established a Solano Avenue Business Improvement District Advisory Board (Advisory Board) to act in compliance with State law to oversee the activities of the District; and

WHEREAS, the Advisory Board has submitted an Annual Report to the Berkeley City Council that outlines the activities of the District proposed for 2022 as required by the California Streets and Highways Code Section 36533; and

WHEREAS, the Annual Report is clear and complete and found to comply with the interests of Solano Avenue assessees; and

WHEREAS, the annual process for levying assessments in Business Improvement Districts requires that cities adopt a Resolution of Intent that declares their intent to levy such an assessment and then set a date for a public hearing where interested parties may be heard on the issue.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

Section 1. The City Council hereby approves the Solano Avenue Business Improvement District Annual Report 2021 and Budget for the year 2022 (Exhibit A) as submitted to the City Clerk by the Solano Avenue Business Improvement District Advisory Board.

Section 2. Pursuant to the provisions of Section 36500 et seq. of the California Streets and Highways Code (the "Act"), the City Council declares its intent to levy an annual

assessment for the parking and business improvement area known as the Solano Avenue Business Improvement District.

Section 3. The boundaries of the District are set forth in Exhibit A1 to the 2021-22 Annual Report which is attached hereto and incorporated herein by reference.

Section 4. The improvements and activities proposed for the District are as described in the Report and budget (Exhibit A) and appended hereto.

Council intends that these funds be used for designated activities and improvements in the Solano Avenue commercial area. Council explicitly intends that funds generated through this BID shall not be used to pay for activities routinely paid for by the City.

Section 5. The City Council intends to levy assessments on businesses located within the boundaries of the District shown Exhibit A1 and according to the business classifications and rates set forth in Exhibit A2 which is attached hereto and incorporated herein by reference.

Section 6. A public hearing shall be held before the City Council on November 16, 2021 via accessible video teleconference. Following the hearing the Council will consider adoption of a resolution levying an assessment as recommended by the Solano Avenue Business Improvement Advisory Board. At this hearing the Council will hear all interested persons for or against the levying of such an assessment.

Formal protests against the levying of the District assessment must be made in writing. All written and oral protests should contain the following certification: "I certify that I am the owner of the business listed below, and that the business is located or operates within the boundaries of the Solano Avenue Business Improvement District." Protests should also contain the following information: business name (printed), business address (printed), City Business License Tax Registration number, name of protester (printed), signature of protester, date of protest and the reason(s) the protester is against the levying of the District assessment. Protests will not be considered valid unless signed and submitted by the owner of a business located within the boundaries of the proposed District. Written protests shall be filed with the City Clerk, First Floor, City Hall, at 2180 Milvia Street, Berkeley, California, 94704, at or before 3 pm on November 16, 2021 and shall contain a description of the business sufficient to identify the business, and if the person so protesting is not listed on City records as the owner of the business, the protest shall be accompanied by written evidence that the person subscribing the protest is the owner of the business. Any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made. If written protests are received from the owners of businesses in the District which will pay fifty percent (50%) or more of the assessment proposed to be levied, no further proceedings to levy the assessment shall be taken for a period of one year from the date of the finding of a majority protest by the City Council. If the majority protest is only against the furnishing of a specified type or types of improvements or activities within the District, those types of improvements or activities shall be eliminated.

Section 7. The City Clerk is directed to give notice of said public hearing by publishing the Resolution of Intention in a newspaper of general circulation seven days prior to the public hearing.

Exhibits

A: Report for the Solano Avenue Business Improvement District 2021-22

A1: Map of the Solano BID

A2: Assessment Rates

Exhibit A:

Report for the Solano Avenue Business Improvement District for 2021 and Budget for 2022**Background**

The first version of the Solano Business Improvement District (BID) operated from 2002-2007 with administration of the BID headed by the Solano Avenue Association. In 2012, the Council appointed the Solano BID Advisory Board to administer the Solano Avenue BID, to fund physical improvements to the street and dedicate marketing and promotion efforts towards the businesses on the portion of Solano Avenue that lies in Berkeley. This Annual report and budget updates the most recent year of operational programs of the Solano BID.

Landscape program

In 2013, the Solano BID financed a tree watering program for young street trees along upper Solano Avenue. In 2016, per the City of Berkeley arborist, the trees were mature enough to not require additional water services. In early 2016, the board voted to enhance Solano's landscape by installing a program of 41 hanging planter baskets on light poles distributed throughout the district; utilizing the Downtown Berkeley Association's (DBA) services. The DBA watered and maintained the baskets through the end of calendar year 2018. From 2019 to 2021, rainwater alone supported the baskets, and the Solano BID started a conversation with The Downtown Streets Team (DST) to supplement other efforts to clean, weed, and level the tree wells through the district, and to develop an ongoing watering and maintenance system for the hanging flower baskets. This work was challenging to get started because of the need to identify a storage place for DST's tools, and the ongoing impacts of COVID-19 since March 2020. A storage location is now established, and this program should be implemented in 2022.

In 2020, funds were approved and a selection process was conducted for a public realm plan study on Solano. The BID was supportive of the process and was deeply committed to involving both local merchants and local residents in the effort to re-imagine Solano Avenue in a way that brings more vitality to the Avenue in concert with the efforts of the City of Albany with the intention of strengthening the Solano Avenue 'brand' overall. The funding for this project was repurposed for the emergency response to the COVID-19 pandemic. The project was restored in the city's FY22 budget (adopted June 29, 2021) and will move forward in 2022.

Marketing and promotion of Solano

Marketing and promotion of Solano Avenue constitutes the second priority of the Solano BID. To promote the avenue during the holiday season, a holiday light display program was established by the Solano BID. In 2016 and 2017 the BID contracted with a vendor, the Christmas Light Pros of SF, to deploy decorative unlit multi-colored garlands. In 2018 and 2019, the board approved funding for a new vendor which, under direction of the Solano Avenue Association (SAA), covered more poles and provided greater decoration coordination opportunities with neighboring Albany, all at a lower cost than previous seasons. The intention for the holiday season in '21-'22 is to use the same vendor from the '20-'21 season and reimburse the SAA after the lights are installed. This partnership underscores the leverage that

the SAA organization has been able to provide to support BID efforts for the Berkeley portion of Solano Avenue.

In the remainder of 2021, the Advisory Board may again decide to participate in the development of virtual or otherwise safe holiday campaigns and activities (i.e. supporting the Solano Avenue Association in producing events 'Santa on Solano' event or similar). The details of the overall 2021 (and the future 2022) event and marketing program will be developed over the remainder of the year, with a possible coordinated launch party for the new Touchstone Oaks bouldering gym at the top of the Avenue once construction is complete. The party could include an unveiling of refreshed street banners (anticipated date summer 2022).

Expanded landscaping improvements (including porous pavement in tree wells and watering and maintenance of the hanging flower baskets) have yet to be determined by the board. It is presumed that provided a successful demonstration of landscaping maintenance this fall/winter season (2021-22), a multi-year contract could be extended accordingly in 2022.

Solano BID Administration

The Solano BID has one existing contract; a fiscal agent contract with the Telegraph Property and Business Management Corporation (Telegraph PBMC), who charges a 5% fee on new BID revenue annually (for example, the anticipated new Solano BID revenue for 2022 is \$25,000, so the fiscal agent for 2022 will be \$1,250).

FINANCIAL STATUS OF THE SOLANO BID, SEPTEMBER 2021

Solano BID Revenue, as of 9/15/2021	\$ 96,774.26
Less fiscal agent fee to Telegraph PBMC (5%) - of estimated new revenue	\$ (1,250.00)
Less funds allocated for Solano Ave Assn Events Contract (including 2021-22 holiday-related events)	\$ (20,000.00)
Less funds allocated for decorative holiday lights + Installation + Removal + Storage Nov '21 to Jan '22	\$ (10,300.00)
Unallocated as of 9/15/2021	\$ 65,224.26

BUDGET FOR THE SOLANO BID FOR 2022 (Calendar Year)

Estimated new revenue 2022	\$ 25,000.00
Carryover from 2021 (estimated)	\$ 65,224.26
Total available for expenditure in 2022	\$ 90,224.26

PROPOSED EXPENDITURES FOR 2022 (Calendar Year)

Landscaping installation/tree well porous pavement	\$ 15,000.00
Watering and Maintenance for hanging flower baskets	\$ 12,000.00
Installation, removal and storage of holiday decor 2022-23 season	\$ 11,000.00
Banners 2022 (Design and Install)	\$ 32,000.00
Marketing expenditure (branding/business/event support contract with SAA)	\$ 20,000.00
Total projected expenditure 2022	\$ 90,000.00

Recommendations

The Advisory Board recommends that the Council approve the Annual Report and Budget for 2022.

The Advisory Board recommends that the Council make no changes in the boundaries of the Solano Business Improvement District or in the two Benefit Zones, A & B.

The recommended improvements and activities for 2022 are those stated in the Report. The cost for providing them is stated in the Budget for 2022.

The method and basis for the assessment is as stated in Exhibit A2.

The estimate for surplus revenues to be carried over from 2021 is as stated in the Budget for 2022.

Exhibit A1

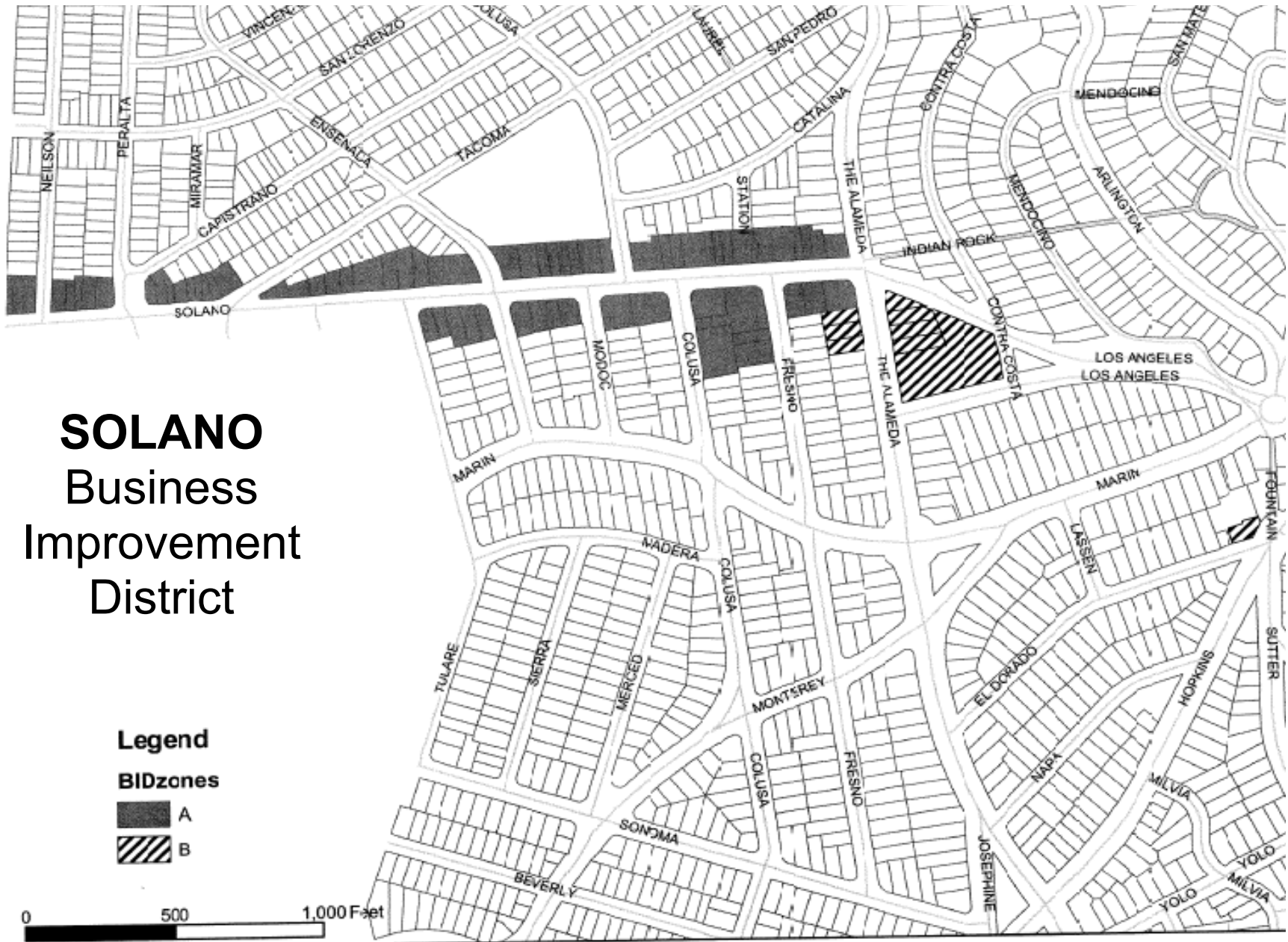


Exhibit A2

Berkeley Solano Avenue Business Improvement District Annual Assessment Formula

Type of Business		Annual Assessments	
		Zone A	Zone B
a. Retailers and Restaurants	1-5 employees	\$200	\$125
	6-9 employees	\$300	\$175
	10+ employees	\$400	\$225
b. Service Businesses		\$175	\$100
c. Professional Services		\$100	\$65
d. Financial Institutions		\$500	\$500

CONSENT CALENDAR

October 26, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin

Subject: Budget Referral: Reckless Driving and Sideshow Deterrence Improvements

RECOMMENDATION

That the City Council refers to the FY2023 budget process the funding of sideshow deterrence infrastructure, traffic circles or botts' dots, at the following intersections:

- Seventh Street and Addison Street
- Eighth Street and Channing Way
- Bonar Street and Allston Way
- Bonar Street and Bancroft Way
- Additional intersections to be determined by the Transportation Division of the Public Works Department

The Transportation Division shall determine which intersections best qualify for bott's dots and which qualify for traffic circles.

CURRENT SITUATION AND ITS EFFECTS

Sideshows, events where drivers take over street intersections to perform dangerous driving stunts, have been a common occurrence in the East Bay for decades. While these events often occur in large groups of vehicles with crowds of people gathering at intersections to observe, smaller groups of vehicles doing stunts in residential streets at night are just as common. These events present a safety threat to the drivers, active observers, and passersby when they are happening, with such reckless driving leading often to injuries among pedestrians and the drivers, as well as fights breaking out among the observing crowds.¹ Sideshows and smaller stunt driving events are constantly on the move between different intersections, and cities, on the evenings they occur, making deterrence by police officers difficult.

Due to the difficulties local police departments have experienced in enforcing traffic laws and shutting down sideshows, some cities have begun pursuing engineering solutions to deter sideshows before they can even begin. The City of Oakland, where sideshows are routine, has been at the forefront of experimenting with engineering solutions such as the use of "Bott's dots", which are circular tiles that raise pavement levels and specific points in the road. Botts's dots, commonly used on highways to mark lanes,

¹ <https://www.kqed.org/education/531891/oakland-sideshows-should-they-be-legal>

create a strong bump when driven over by vehicles and are now being explored in many cities as a possible deterrent for drivers seeking to drive recklessly in the middle of street intersections.² In the summer of 2021, the City of Oakland began installing botts' dots at intersections that are popular sideshow destinations in an effort to discourage unsafe sideshow driving activities.³



Close up of botts' dot.



Botts' dots installed at an intersection to deter sideshows.

² <https://www.oaklandca.gov/topics/sideshow-prevention-efforts>

³ <https://www.kron4.com/news/bay-area/oakland-installs-botts-dots-to-help-deter-illegal-sideshow/>

As the City of Berkeley studies an end to police involvement in traffic policing with its Reimagining Public Safety Task Force and the development of a Berkeley Department of Transportation, it is important that the City pursue as many engineering and infrastructural solutions as possible for the City's traffic and transportation issues. The use of traffic circles and Bott's dots are an opportunity to reduce sideshows and reckless driving without adding increased strains to our police budget by preventing these events from happening rather than by trying to enforce our traffic laws after they've already been broken. While there are a number of existing locations known for sideshow and stunt driving, the transient nature of these activities require further analysis to identify additional locations for the strategic placement of these deterrence measures.

FISCAL IMPACTS

Staff time for analysis of hotspot intersections and the implementation of improvements, an estimated \$50,000 per traffic circle⁴, and costs related to Bott's dots materials.

ENVIRONMENTAL IMPACTS

No environmental sustainability impact.

CONTACT

Terry Taplin, Councilmember, District 2, (510) 981-7120

⁴[https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley-Bicycle-Plan-2017_AppendixE_Project%20Recs%20Priorities\(1\).pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley-Bicycle-Plan-2017_AppendixE_Project%20Recs%20Priorities(1).pdf)

CONSENT CALENDAR

October 26, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin

Subject: Budget Referral: Sidewalk Repair on Arterial Streets

RECOMMENDATION

That the City Council refers to the FY2023 budget process an allocation of \$600,000 from the General Fund for the purpose of funding sidewalk repairs on major West and South Berkeley arterial streets including Sacramento Street, Alcatraz Avenue, and Dwight Avenue.

CURRENT SITUATION AND ITS EFFECTS

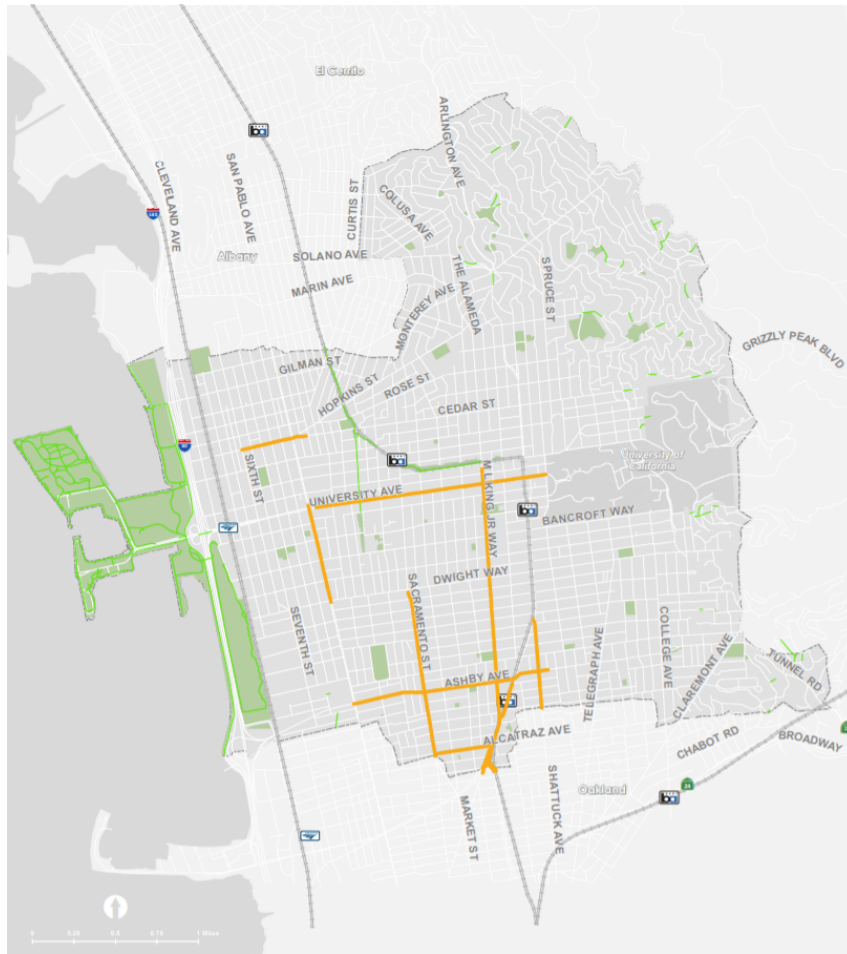
Berkeley's streets, from road pavement to sidewalks, are in chronic disrepair. According to Berkeley's 2018-2019 Capital Improvement Plan, an estimated 20-25 miles of the City's sidewalks need to be replaced, at a total cost of \$7 million.¹ Meanwhile, Berkeley's street pavement had a Pavement Condition Index (PCI) rating of 59 out of 100 in 2018 and will require an estimated \$27.3 million annual investment if the City wants to raise its PCI score in the coming years.² While recent Capital Improvement Plans and City audits have demonstrated the widespread degradation of the streets and sidewalks in Berkeley, the deterioration is not felt equally across the entire city.

Following decades of disinvestment and inattention from City officials, the neighborhoods of West and South Berkeley are the home to more eroded streets and sidewalks than the more historically white and affluent areas of Berkeley. With this in mind, Berkeley's Pedestrian Plan identified much of West and South Berkeley as "Historically Underserved Areas" in need of outsized future investment by the City.³ Furthermore, West and South Berkeley are home to an outsized number of "Prioritized High Injury Streets", where traffic injuries have been highly concentrated and require prioritized infrastructural interventions:

¹ <https://www.berkeleyside.org/wp-content/uploads/2018/12/FY-2018-2019-Adopted-CIP-Budget-Book.pdf>

² <https://www.berkeleyside.org/wp-content/uploads/2020/11/Berkeley-Streets-Audit-Nov.-2020.pdf>

³ https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/2020%20Pedestrian%20Plan%20FULL%20adopted.pdf



Map of Prioritized High Injury Streets from the Berkeley Pedestrian Plan.⁴

Through its 5-Year Paving Plan, the Pedestrian Plan, and Vision Zero Action Plan, the City has acknowledged and taken steps to rectify the historical disinvestment and notable street and sidewalk deterioration in West Berkeley by considering “equity” in its improvement plans. Despite these efforts, however, the state of West Berkeley’s streets and the regular stream of traffic injuries that occur in West Berkeley require escalated prioritization.

FISCAL IMPACTS

Staff time and an estimated \$600,000 from the General Fund for repairs.

ENVIRONMENTAL IMPACTS

No environmental sustainability impact.

CONTACT

Terry Taplin, Councilmember, District 2, (510) 981-7120

⁴https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/2020%20Pedestrian%20Plan%20FULL%20adopted.pdf

CONSENT CALENDAR

Oct. 26, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

Subject: CalVIP Grant Application Authorization

RECOMMENDATION

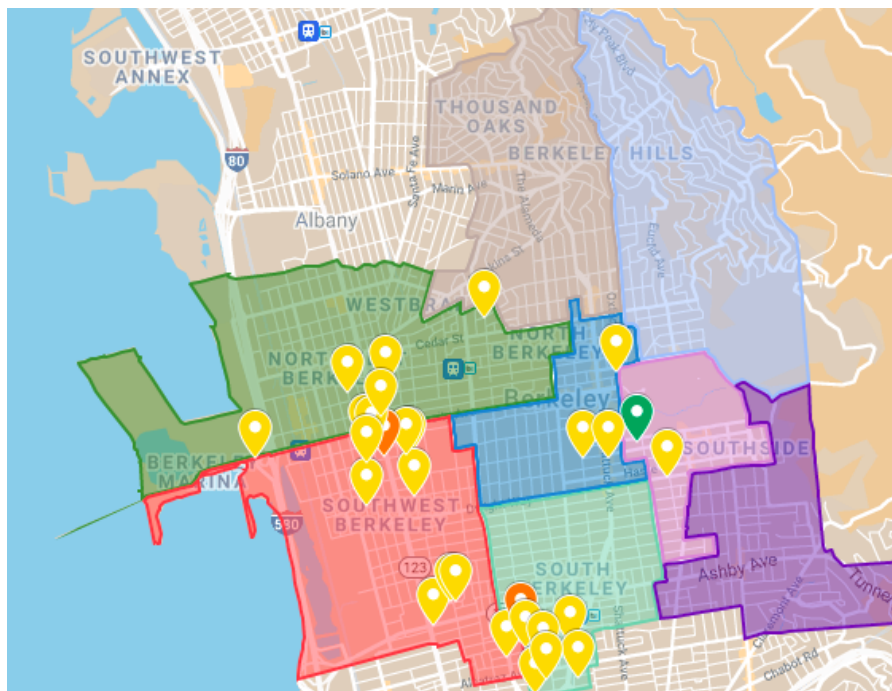
Authorize the City Manager to respond to Requests For Proposals (RFPs) and submit applications to the California Violence Intervention and Prevention (CalVIP) Grant Program in future funding cycles in order to provide resources for community safety initiatives.

FINANCIAL IMPLICATIONS

None.

CURRENT SITUATION AND ITS EFFECTS

According to the Berkeley Police Department, there were 29 shootings in 2021 as of September 6, compared to 22 shootings by the same date in 2020.

2021 Berkeley Gunfire Map¹

¹ Raguso, E. (2021). The 2021 Berkeley Gunfire Map. *Berkeleyside*. Retrieved Sept. 13, 2021 from <https://www.berkeleyside.org/2021/05/22/2021-berkeley-gunfire-map>

On July 14, 2020, the Berkeley City Council passed an omnibus resolution to Reimagine Public Safety, which included a referral to the City Manager to “identify the expertise needed for non-police responses to calls, taking into account comparable approaches including CAHOOTS and other existing programs that might be expanded...” On October 27, 2020, the Berkeley City Council referred the creation of an Interjurisdictional Group Violence Intervention (GVI) Program a.k.a. “Operation Ceasefire” to the Community Engagement Process for Reimagining Public Safety. On December 15, 2020, the City Council authorized the City Manager to enter into a contract with the National Institute of Criminal Justice Reform (NICJR) to conduct research, analysis, and use its expertise to develop reports and recommendations for community safety and police reform.

The City Manager’s office lacks sufficient staffing and resources to scale up its response to the ongoing increase in gun violence while implementing the community engagement process that the City Council has set forth in its omnibus Reimagining package. The City Manager has informed this office that there are insufficient resources to create an Operation Ceasefire program, a gun buyback program, or any other robust and community-based gun violence prevention program that has been recommended in the past. Even policies already under consideration will need additional funding to be implemented.

Funding community safety programs through CalVIP grants is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

BACKGROUND

The State Legislature established the California Violence Intervention and Prevention (CalVIP) Grant Program in Fiscal Year 2017-18 to replace the California Gang Reduction, Intervention and Prevention (CalGRIP) CalGRIP grant program. CalVIP provides funding for cities to reduce violence in the city and adjacent areas through community interventions.

In 2019, Governor Newsom signed Assembly Bill 1603 by Asm. Buffy Wicks (D-Oakland), which adds Section 14130 to the California Penal Code, codifying the establishment of the CalVIP Grant and the scope of administrative responsibilities for the California Board of State and Community Corrections (BSCC).

Pursuant to AB-1603, the purpose of CalVIP is to “improve public health and safety by supporting effective violence reduction initiatives in communities that are disproportionately impacted by violence, particularly group-member involved homicides, shootings, and aggravated assaults.” According to the BSCC, CalVIP grants shall be used to support, expand and replicate evidence-based violence reduction initiatives,

including but not limited to hospital-based violence intervention programs, evidence-based street outreach programs, and focused deterrence strategies.

Cities with populations of similar sizes to Berkeley, such as the City of Vallejo, have successfully applied for grants to fund violence prevention programs. The City of Vallejo received a \$1.5 million grant in Fiscal Year 2020 for Operation PEACE, in partnership with the local nonprofit Advance Peace for focused deterrence and street outreach “with the goal of reducing overall violent crime without relying on heavy handed policing tactics and mass incarceration.”

The City of Richmond received a \$1.5 million grant in the same year for its Office of Neighborhood Safety, which oversaw a 61% reduction in gun violence in the five years following its inception in 2007.² The City of Oakland also received a grant of approximately \$1.5 million in 2020 for its Department of Violence Prevention, in partnership with several community and faith groups, to implement Oakland Ceasefire, with \$1.74 million in matching funds from the City. Ceasefire is credited with the major drop in homicides Oakland saw over the previous decade.³

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Terry Taplin Council District 2 510-981-7120

² http://ci.richmond.ca.us/DocumentCenter/View/27569/Innovative-Government-Solution_ONS2013?bidId=

³ Harris, H. (2013, Dec. 31). Oakland sees biggest drop in homicides since 2004. *Mercury News*. Retrieved from <https://www.mercurynews.com/2013/12/31/oakland-sees-biggest-drop-in-homicides-since-2004/>



CONSENT CALENDAR
October 26, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett (Author) and Councilmember Harrison (Co-Sponsor)

Subject: Presentation Request: Study to Achieve Equity in City Contracting - "Berkeley Inclusion in Opportunity Index"

RECOMMENDATION:

Request for Mason Tillman Associates Ltd (MTA) to present their findings and recommendations from the "Berkeley Inclusion in Opportunity Index" study at the November 9th, 2021 City Council meeting.

The presentation should include an analysis of the City's use of local, small, emerging, and diverse enterprises. The study focuses on enterprises experiencing barriers to access in obtaining City contracts in construction, architecture, engineering, professional services, goods, and other services.

BACKGROUND:

The City of Berkeley and its residents have a longstanding commitment to diversity and advancing the development of local businesses. Part of this commitment is to ensure that the City's procurement activities allow for contracting opportunities to be accessible to the entire local business community. The purpose of a Barriers and Availability Study would therefore be to examine the City's procurement activities and identify disparities in the awarding of contracts affecting local, small, emerging business enterprises and other enterprises with barriers to access. To the extent that disparities exist, the City of Berkeley should undertake equity oriented remedies in its city contracting practices.

Alameda County and the City of Oakland have both performed Availability Studies, which allows these municipal entities to consider additional factors when awarding contracts and engage in more socially responsible contracting. The City of Berkeley must do the same to uphold its commitment to diversity as well.

On January 24, 2017, Berkeley City Council approved the "Berkeley Inclusion in Opportunity Index" . This Barriers and Availability Study was intended to critically examine the City's procurement activities.

On May 28th, 2019, the Council approved the 2019-2020 budget and allocated \$200,000 to fund the above-mentioned "Berkeley Inclusion in Opportunity Index" Barriers and Availability Study. Councilmember Bartlett worked with City staff to issue a Request for Proposal (RFP) to identify a qualified firm to perform a Barriers and Availability Study. The results ranked Mason Tillman Associates Ltd as the best firm to conduct this study as they are recognized as national leaders in the field.

By conducting a Barriers and Availability Study to identify discrimination in municipal contracting, the City will be able to identify specific disparities in the awarding of contracts and subsequently create a series of reparative measures.

More background on the “Berkeley Inclusion in Opportunity Index” is available in the attachments that include previous items.

CURRENT SITUATION

The study conducted by Mason Tillman Associates Ltd was completed at the end of September.

FISCAL IMPACTS OF RECOMMENDATION

Staff & Council Time

RATIONALE FOR RECOMMENDATION

Because the validity of scientific results is conditional based on time, it is critical that the study results be presented to Berkeley City Council during the month of October or November.

CONTACT PERSON

Councilmember Ben Bartlett
James Chang
Hillary Phan

bbartlett@cityofberkeley.info
jchang@cityofberkeley.info
510-981-7130

ATTACHMENT

1. [2017- Budget Referral: “Berkeley Inclusion in Opportunity Index” - Request Availability Study to Achieve Equity in City Contracting](#)
2. [2019 - Budget Referral: “Berkeley Inclusion in Opportunity Index” - Funding Firm to Perform Availability Study to Achieve Equity in City Contracting](#)



Councilmember Ben Bartlett
District 3

CONSENT CALENDAR

January 24, 2017

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett & Councilmember Kriss Worthington & Councilmember Cheryl Davila

Subject: Budget Referral: "Berkeley Inclusion in Opportunity Index" - Request Availability Study to Achieve Equity in City Contracting

RECOMMENDATION

Refer to the 2016-2017 budget an allocation to perform an Availability Study to analyze the City's use of local, small, emerging enterprises and other enterprises with barriers to access in City construction, architecture, engineering, professional services, goods and other services contracts.

FINANCIAL IMPLICATIONS

Minimal costs and staff time.

BACKGROUND

The City of Berkeley and its residents have a longstanding commitment to diversity and to advancing the development of local businesses. Part of this commitment is to ensure that the City's procurement activities allow for contracting opportunities to be accessible to the entire local business community.

The purpose of an Availability Study would therefore be to examine the City's procurement activities and identify disparities in the awarding of contracts affecting local, small, emerging business enterprises and other enterprises with barriers to access. To the extent that disparities in the awarding of contracts exist, the City of Berkeley should undertake equity oriented remedies in its contracting practices. Alameda County and the City of Oakland have both performed Availability Studies, which allows these municipal entities to consider additional factors when awarding contracts and engage in more socially responsible contracting.

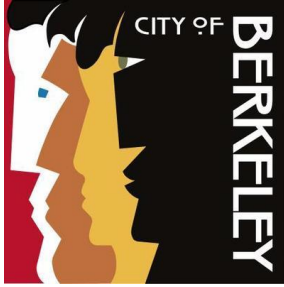
ENVIRONMENTAL SUSTAINABILITY

This proposal is aligned with the City's goal for Environmental Sustainability.

CONTACT PERSON

Councilmember Ben Bartlett, 510-981-7130
Councilmember Kriss Worthington, 510-981-7170

Councilmember Cheryl Davila, 510-981-7120



Councilmember Ben Bartlett
 City of Berkeley, District
 2180 Milvia Street, 5th Floor
 Berkeley, CA 94704
 PHONE: 510-981-7130
 EMAIL: bbartlett@cityofberkeley.info

CONSENT CALENDAR
 May 28th, 2019

To: Honorable Mayor and Members of the City Council
 From: Councilmember Ben Bartlett and Cheryl Davila
 Subject: Budget Referral: "Berkeley Inclusion in Opportunity Index" - Funding Firm to Perform Availability Study to Achieve Equity in City Contracting

RECOMMENDATION

That the Council refer to the 2019-2020 budget and allocate \$200,000 to fund Mason Tillman Associates Ltd (MTA) to perform an Availability Study to analyze the City's use of local, small, emerging enterprises and other enterprises with barriers to access in City construction, architecture, engineering, professional services, goods, and other services contracts.

CURRENT SITUATION

On January 24, 2017 Councilmembers Bartlett and Davila, along with former Councilmember Worthington, referred to the 2016-2017 budget and allocation to perform an Availability Study to analyze the City's use of local, small, emerging enterprises and other enterprises with barriers to access in City construction, architecture, engineering, professional services, goods and other services contracts.

Recommendations presented on June 13, 2017 included \$100,000 in FY 2018 for the Berkeley Inclusion in Opportunity Index, also referred to as the Availability Study.

On June 24, 2017, a FY 2018 and FY 2019 revised budget report was submitted to the City Council as agenda Item #47 by the Budget Manager. The report was revised to reflect the Mayor's Supplemental Budget.

Staff prepared Request for Proposal (RFP), Specification No. 18-11193-C, Availability Study for Affirmative Action in City Contracting which was released to the public in the spring of 2018. The RFP's intent was to identify and contract with a firm to conduct disparity and utilization analyses to assess the City's use of local, small, emerging, minority and women business enterprises in City construction, architecture, engineering, professional services, goods and other services contracts. Additionally, remediation recommendations to address any identified utilization gaps were requested as part of the scope of services. Specific outreach was made to 7 firms that participated in a similar request for proposal process with the City of Oakland. The RFP was posted on

the City's website and at the kiosk in front of Old City Hall. Six (6) firms submitted proposals in response to the RFP.

A panel comprised of City staff was convened to evaluate each proposal, conduct a rating and ranking process and identify the top ranked proposal. At the conclusion of the rating and ranking process the proposal submitted by Mason Tillman Associates Ltd (MTA) was deemed to provide the best overall value to the City, price and other factors considered. Particular strengths of the MTA proposal included:

- Extensive experience performing this type of work for states, cities and special districts and authorities, including the Cities of Oakland, Richmond and San Jose, San Francisco Bay Area Rapid Transit District, California High Speed Rail Authority, and Alameda County
- Clearly defined approach and proposed project plan with an estimated duration of 8 months from start to finish
- A detailing of data analysis tools and processes to be used, and
- Analysis of subcontractor awards.

BACKGROUND

The City of Berkeley and its residents have a longstanding commitment to diversity and to advancing the development of local businesses. Part of this commitment is to ensure that the City's procurement activities allow for contracting opportunities to be accessible to the entire local business community.

The purpose of an Availability Study would therefore be to examine the City's procurement activities and identify disparities in the awarding of contracts affecting local, small, emerging business enterprises and other enterprises with barriers to access. To the extent that disparities in the awarding of contracts exist, the City of Berkeley should undertake equity oriented remedies in its contracting practices. Alameda County and the City of Oakland have both performed Availability Studies, which allows these municipal entities to consider additional factors when awarding contracts and engage in more socially responsible contracting.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

To the extent disparities in the awarding of contracts exist, the City of Berkeley is barred by Proposition 209 from undertaking race conscious, gender-conscious and other affirmative action-related remedies without first conducting an Availability Study to identify discrimination. Such remedies may not be undertaken based on broad notions of equity or general allegations of discrimination, however, they are permitted if the City identifies specific disparities in the awarding of contracts.

Alameda County and the City of Oakland have both performed an Availability Study, which therefore allows them to consider additional factors and do more socially responsible contracting. The City of Berkeley must do the same to uphold its commitment to diversity.

OUTREACH OVERVIEW AND RESULTS

Councilmember Bartlett has reached out to City staff to conduct an RFP to determine which firm would be the most qualified to perform an Availability Study for affirmative action in city contracting. The results have ranked Mason Tillman Associates Ltd as the best firm to conduct the study for the City of Berkeley.

RATIONALE FOR RECOMMENDATION

The Availability Study will allow for contracting opportunities to be accessible to the entire local business community while empowering municipal entities to engage in more socially responsible contracting.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

To be determined.

FISCAL IMPACTS OF RECOMMENDATION

If passed, the financial resources necessary for funding the firm to conduct the Availability Study will be allocated from the FY2020 and FY2021 budget.

ENVIRONMENTAL SUSTAINABILITY

This proposal is aligned with the City's goal for Environmental Sustainability.

OUTCOMES AND EVALUATION

It is expected that the Council will maintain their longstanding commitment to diversity and to advancing the development of local businesses by referring to the 2019-2020 budget and allocate \$200,000 to fund a firm to conduct the Availability Study.

CONTACT PERSON

Councilmember Ben Bartlett	510-981-7130
Katie Ly	510-981-7131

https://www.cityofberkeley.info/uploadedFiles/Council_3/Level_3_-_General/BINDEX.pdf

City manager results: file:///C:/Users/bbartlett/Downloads/2019-05-14%20Item%2059%20Results%20of%20RFP%20for%20Availability%20Study.pdf



Sophie Hahn
Councilmember
District 5

CONSENT CALENDAR
October 26, 2021

To: Honorable Mayor and Members of the City Council

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

Subject: Support Net Energy Metering

RECOMMENDATION

Approve a Resolution in support of Net Energy Metering and transmit copies to Governor Gavin Newsom, State Senator Nancy Skinner, Assemblymember Buffy Wicks, and members of the California Public Utilities Commission Board (CPUC).

BACKGROUND

Customers who install small solar, wind, biogas, and fuel cell generation facilities to serve all or a portion of onsite electricity needs are eligible for the state's Net Energy Metering (NEM) program. NEM allows customers who generate their own energy to serve their energy needs directly onsite and to receive a financial credit on their electric bills for any surplus energy fed back to their utility.

The current NEM program was adopted by the California Public Utilities Commission (CPUC) in Decision (D.)16-01-044 on January 28, 2016. The program provides customer-generators rate credits for energy exported to the grid and requires them to pay charges that align NEM customer costs more closely with non-NEM customer costs. NEM is designed to support the installation of customer-sited renewable energy generation.

Recently, the CPUC launched a formal proceeding to update the current NEM structure. The new rulemaking is referred to as NEM 3.0 because this is the third iteration of the NEM program. Over 17 proposals have been submitted to the CPUC for consideration, including joint proposal from the state's big three investor-owned utilities (IOUs), Pacific

Gas & Electric, Southern California Edison and San Diego Gas & Electric. Opponents of the big three IOUs' joint proposal claim that it would hinder the state's highly successful rooftop solar market which is a key strategy in the state reaching its lofty clean energy and environmental goals.

NEM 3.0 is currently progressing through the necessary steps at the CPUC as part of the rulemaking proceeding. While it would be premature at this time to advocate for one particular proposal of the over 17 submitted, the Council should adopt the attached Resolution, which is general in nature but includes key goals and themes that are consistent with what the City has supported in the past.

These include:

- Protecting and expanding rooftop solar via a strong succeeding NEM tariff and expanding clean energy access by making it easier, not harder, for people to adopt rooftop solar and energy storage in order to meet California's ambitious clean energy targets and deploy solar in all communities and households, particularly those struggling to pay for electricity; and
- Expressing its support for the items as stated above, including urging the CPUC to:
 - (i) strengthen NEM to expand access to all households, particularly of low-and-moderate income;
 - (ii) expand access to other clean energy technologies that pair with solar, such as batteries;
 - (iii) ensure that the solar installations continue to grow in order to meet State and City climate goals; and
 - (iv) exclude provisions set forth in the IOU Proposal such as high monthly fixed fees and reducing or eliminating credits for sharing electricity with the power grid.

While the big three IOUs' plans and the solar and environmental advocates' plans are largely in opposition, a consensus is emerging that a fair and effective rooftop solar policy must share its benefits with low-income and disadvantaged communities that have previously been left out.

The investor-owned utilities' proposal before the CPUC threatens access to net energy metering and rooftop-scale solar and storage by homeowners and tenants alike, thus interfering with Berkeley's and California's climate action and equity goals.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

The passage of the IOUs' proposal will frustrate the deployment of rooftop-scale solar and storage in the City of Berkeley, which would interfere with a key strategy in the realization of Berkeley's Climate Action goals. This resolution proposes a path forward that supports our goals.

CONTACT PERSON

Councilmember Sophie Hahn 510-981-7150

Attachment:

1: Resolution

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

IN SUPPORT OF NET ENERGY METERING

WHEREAS, Net Energy Metering (NEM) is designed to support the installation of customer-sited renewable energy generation; and

WHEREAS, NEM allows customers to receive bill credits for power generated by their solar system and shared with the power grid and ultimately save money on their utility bills; and

WHEREAS, NEM is what has allowed solar to become increasingly accessible to low and moderate income households; and

WHEREAS, the California Public Utilities Commission (CPUC) has launched a formal proceeding to update the current NEM structure to be introduced in 2022 as NEM 3.0 and a number of parties have submitted their proposal for what they believe NEM 3.0 should look like; and

WHEREAS, the California Investor Owned Utilities (IOUs), Pacific Gas and Electric, San Diego Gas & Electric and Southern California Edison, have submitted a joint proposal (the "IOU Proposal") that calls for drastic changes to NEM that would make customer-sited renewable energy more expensive, increase the amount of time it takes for customers to pay off their systems, and ground to a halt the installation of distributed solar in California; and

WHEREAS, The IOU Proposal would make it impossible for customer-sited renewables to continue to grow sustainably as mandated by law as a result of high monthly fixed fees for all solar installations, and slashing credits customers receive for sharing their excess electricity with the power grid; and

WHEREAS, proposals submitted to CPUC by Protect Our Communities Foundation, California Solar & Storage Association, Vote Solar, GRID Alternatives, Solar Energy Industries Association, and others not only would encourage new solar adoption but also include additional subsidies for low income customers; and

WHEREAS, California cannot meet its clean energy targets in time with utility-scale solar alone and needs to triple the amount of rooftop solar, as reported by the California Energy Commission 2021 SB 100 Joint Agency Report Summary; and

WHEREAS, protecting rooftop solar and expanding access to rooftop solar in communities of concern will help California as well as our own city to move toward 100 percent clean energy, lessen the impacts of the climate crisis, and reduce climate injustices from dirty energy; and

WHEREAS, we are in a climate crisis and need to make the transition to clean energy more accessible.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley supports protection and expansion of rooftop solar via a strong Net Energy Metering (NEM) tariff and expansion of access to clean energy; and

BE IT FURTHER RESOLVED that, to help Berkeley and California meet their ambitious clean energy goals and to deploy solar energy in all communities and households, in particular those struggling to pay for electricity, the State of California should remove and not create new barriers to adoption of rooftop solar and local energy storage; and

BE IT FURTHER RESOLVED that the City of Berkeley urges the CPUC to:

- (i) Strengthen Net Energy Metering to expand access to all households, with programs to support access for low-and-moderate income households;
- (ii) Expand access to other clean energy technologies that pair with and support solar, including batteries;
- (iii) Ensure that solar installations continue to grow, to help meet State and City climate goals; and
- (iv) Exclude provisions set forth in the Investor Owned Utilities' Proposal such as high monthly fees and the reduction or elimination of credits for sharing electricity with the power grid; and

BE IT FURTHER RESOLVED that that copies of this Resolution shall be transmitted to Governor Gavin Newsom, State Senator Nancy Skinner, Assemblymember Buffy Wicks, and members of the California Public Utilities Commission Board.



CITY COUNCILMEMBER
RIGEL ROBINSON
 DISTRICT 7

CONSENT CALENDAR
 October 26, 2021

To: Honorable Mayor and Members of the City Council
 From: Councilmembers Rigel Robinson
 Subject: Amend City Council Rules of Procedure and Order to Allow Extension of Items in Committee in Writing

RECOMMENDATION

Adopt a Resolution revising the City Council Rules of Procedure and Order to amend Chapter III, Section G, Subsection 4 to allow the Chair of a Committee to accept a Primary Author's written request that their item remain in Committee past the 120 day deadline rather than requiring that extensions be approved by a full vote of the committee.

BACKGROUND

Under the Council Rules of Procedure and Order, when the Primary Author of an item wishes to extend the 120 day deadline for a Committee to send an item back to the Agenda Committee for scheduling, their request must be approved by the Committee. Because the end of the 120 day deadline often falls between Committee meetings, Committees have on more than one occasion scheduled meetings specifically to extend an item's time in committee. The attached resolution would amend the Rules of Procedure and Order to allow a Committee Chair to accept a request to extend in writing. The resolution would amend Chapter III, Section G, Subsection 4 as follows:

Within 120 days of the referral date, ~~the committee must vote to~~ either (1) the committee Chair may accept the Primary Author's request, either in writing, or in person at a meeting of the committee, that the item remain in committee until a date certain (more than one extension may be requested by the Primary Author); or (2) the committee may vote to send the item to the Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below. The Committee Chair shall report any extension granted outside of a meeting to the Committee by email or verbally at the next Committee meeting.

FINANCIAL IMPLICATIONS

Reduction in staff time to schedule and attend committee meetings solely for the purpose of extending item deadlines.

ENVIRONMENTAL SUSTAINABILITY

No identifiable environmental effects or opportunities associated with this report.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:
1: Resolution

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

RE-ADOPTING THE CITY COUNCIL RULES OF PROCEDURE AND ORDER

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council Rules of Procedure and Order incorporated by reference shall govern all proceedings of the City Council therein described, subject to the exception and deviations provided for in such rules.

BE IT FURTHER RESOLVED that violation of these rules shall not be construed as a penal offense, except as provided for by the adopted Rules of Procedure.

BE IT FURTHER RESOLVED that Chapter III, Section G, Subsection 4 is amended to include the language below.

Within 120 days of the referral date, either (1) the committee Chair may accept the Primary Author's request, either in writing, or in person at a meeting of the committee, that the item remain in committee until a date certain (more than one extension may be requested by the Primary Author); or (2) the committee may vote to send the item to the Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below. The Committee Chair shall report any extension granted outside of a meeting to the Committee by email or verbally at the next Committee meeting.

BE IT FURTHER RESOLVED that all preceding amendatory resolutions are hereby rescinded.

EXHIBITS

A: Chapter III, Section G Subsection 4 as Revised

4. Functions of the Committees

Committees shall have the following qualities/components:

- a. All committees are Brown Act bodies with noticed public meetings and public comment. Regular meeting agendas will be posted at least 72 hours in advance of the meeting.
- b. Minutes shall be available online.
- c. Committees shall adopt regular meeting schedules, generally meeting once or twice per month; special meetings may be called when necessary, in accordance with the Brown Act.
- d. Generally, meetings will be held at 2180 Milvia Street in publicly accessible meeting rooms that can accommodate the committee members, public attendees, and staff.
- e. Members are recommended by the Mayor and approved by the full Council no later than January 31 of each year. Members continue to serve until successors are appointed and approved.
- f. Chairs are elected by the Committee at the first regular meeting of the Committee after the annual approval of Committee members by the City Council. In the absence of the Chair, the committee member with the longest tenure on the Council will preside.
- g. The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.
- h. Committees will review items for completeness in accordance with Section III.B.2 of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.
- i. Reports leaving a Policy Committee must adequately include budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.
- j. Per Brown Act regulations, any revised or supplemental materials must be direct revisions or supplements to the item that was published in the agenda packet.

Items referred to a Policy Committee from the Agenda & Rules Committee or from the City Council must be agendized for a committee meeting within 60 days of the referral date.

Within 120 days of the referral date, ~~the committee must vote to~~ either (1) the committee Chair may accept the Primary Author's request, either in writing, or in person at a meeting of the committee, that the item remain in committee until a date certain (more than one extension may be requested by the Primary Author); or (2) the committee may vote to send the item to the Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below. The Committee Chair shall report any extension granted outside of a meeting to the Committee by email or verbally at the next Committee meeting.

1. Positive Recommendation (recommending Council pass the item as proposed),

2. Qualified Positive Recommendation (recommending Council pass the item with some changes),
3. Qualified Negative Recommendation (recommending Council reject the item unless certain changes are made) or
4. Negative Recommendation (recommending the item not be approved).

The Policy Committee's recommendation will be included in a separate section of the report template for that purpose.

A Policy Committee may not refer an item under its consideration to a city board or commission.

The Primary Author of an item referred to a Policy Committee is responsible for revisions and resubmission of the item back to the full Council. Items originating from the City Manager are revised and submitted by the appropriate city staff. Items from Commissions are revised and resubmitted by the members of the Policy Committee. Items and recommendations originating from the Policy Committee are submitted to the City Clerk by the members of the committee.

If a Policy Committee does not take final action by the 120-day deadline, the item is returned to the Agenda & Rules Committee and appears on the next available Council agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the next Council agenda. Items appearing on a City Council agenda due to lack of action by a Policy Committee may not be referred to a Policy Committee and must remain on the full Council agenda for consideration.

Policy Committees may add discussion topics that are within their purview to their agenda with the concurrence of a majority of the Committee. These items are not subject to the 120-day deadline for action.

Once the item is voted out of a Policy Committee, the final item will be resubmitted to the agenda process by the Primary Author, and it will return to the Agenda & Rules Committee on the next available agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the following Council agenda. Only items that receive a Positive Recommendation can be placed on the Consent Calendar.

The Primary Author may request expedited committee review for items referred to a committee. Criteria for expedited review is generally to meet a deadline for action (e.g. grant deadline, specific event date, etc.). If the committee agrees to the request, the deadline for final committee action is 45 days from the date the committee approves expedited review.



CITY COUNCILMEMBER
RIGEL ROBINSON
 DISTRICT 7

CONSENT CALENDAR

October 26, 2021

To: Honorable Mayor and Members of the City Council
 From: Councilmember Rigel Robinson (Author), Mayor Arreguin (Co-Sponsor),
 Councilmember Harrison (Co-Sponsor) and Councilmember Bartlett (Co-Sponsor)
 Subject: Budget Referral: Public Bank East Bay

RECOMMENDATION

Refer \$50,000 to the November 2021 AAO process for a contribution to the Friends of the Public Bank East Bay for the development of a business plan for the Public Bank East Bay.

BACKGROUND

Public Bank East Bay was founded by public banking advocates in August 2016 to advocate for a public bank for Alameda and West Contra Costa Counties.

In 2017 the City of Oakland led the exploration of creating a public bank in response to community advocacy. On June 27, 2017, the Council adopted a resolution in support of the City of Oakland's efforts to create a Public Bank and referred to the City Manager to investigate the possibility of forming a mutually beneficial partnership with any future Oakland public bank. Three months later, on September 12, 2017, the Council approved a contribution from the Finance Department towards the funding of a feasibility study for such a bank. Ultimately, four East Bay jurisdictions came together to fund the feasibility study; the City of Oakland contributed \$40,700, the City of Berkeley \$25,000, the County of Alameda \$25,000, and the City of Richmond \$5,000, with \$3,200 from other sources.

On October 2, 2019, Governor Newsom signed AB 857, enabling local public bank charters in California. The Council adopted a resolution in support of AB 857 on April 23, 2019. In response to its passage, Public Bank East Bay advocates incorporated as a 501(c)(3) nonprofit, Friends of the Public Bank East Bay.

Friends of the Public Bank East Bay's mission is to provide community oversight and stewardship in the formation and functioning of a Public Bank in the East Bay. They are currently working to produce a viability study to follow up on and fill the gaps in the 2017 feasibility study. That new study should be completed at the end of this month, in advance of the November budget process.

Friends of the Public Bank East Bay are seeking funding to create a business plan for the bank, as required by state law. They are working with Gary Findley, an attorney and banking expert of Gary Steven Findley & Associates, to complete the plan. Their

estimated cost for completion of the plan is \$250,000. This item recommends contributing \$50,000 towards that effort, representing one fifth of the estimated total cost.

Other local governments in California are also moving forward on creating public banks in response to the passage of AB 857. On June 15, 2021, the San Francisco Board of Supervisors adopted an ordinance creating a working group to create a business plan for a San Francisco Public Bank.¹ San Diego's council asked San Diego Mayor Todd Gloria to create a business plan for a San Diego bank in January of this year.² Most recently, the Los Angeles City Council authorized issuance of an RFP for a Los Angeles Public Bank business plan on October 5th.³

FINANCIAL IMPLICATIONS

\$50,000 from the General Fund.

ENVIRONMENTAL SUSTAINABILITY

A public bank may create an alternate institution that could hold the City's cash reserves, allowing the City of Berkeley to withdraw its savings from financial institutions like Wells Fargo that finance environmentally destructive infrastructure projects like oil pipelines.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
Soli Alpert, Legislative Assistant, (510) 981-7171

Attachments:

- 1: 2017 Resolution
- 2: 2017 Contribution to Feasibility Study
- 3: 2019 Resolution in Support of AB 857
- 4: San Francisco Ordinance
(<https://sfgov.legistar.com/View.ashx?M=F&ID=9596572&GUID=E3366761-048C-40AD-AF3D-FC352B6A33D7>)

¹ <https://sanfrancisco.cbslocal.com/2021/06/15/sf-supes-approve-plan-to-create-first-public-bank-in-u-s/>

² <https://www.sandiegouniontribune.com/news/politics/story/2021-01-23/san-diego-resumes-efforts-to-create-city-run-public-bank>

³ <https://www.dailynews.com/2021/10/05/la-city-council-to-consider-motion-aimed-at-developing-public-bank/>



Office of the Mayor

CONSENT CALENDAR

June 27, 2017

TO: Members of the City Council

FROM: Mayor Jesse Arreguin and Councilmembers Sophie Hahn, Linda Maio, and Cheryl Davila

SUBJECT: Support the City of Oakland's Efforts to Create a Public Bank and

RECOMMENDATION

Adopt a Resolution in support of the City of Oakland's efforts to create a Public Bank of Oakland and refer to the City Manager to investigate the possibility of forming a mutually beneficial partnership with any future Oakland public bank.

BACKGROUND

A public bank is a way to manage city funds in the public interest. Public banks collect deposits from government entities such as school districts, tax receipts and state infrastructure funds and use the money to issue loans that support public priorities. They operate in the public interest through institutions owned by the people and directed by their representative government. Additionally, they can have investment priorities that focus on the creation of local jobs that spur economic growth by providing affordable credit to small and medium-sized businesses that have been historically ignored by the larger, more established banks. Locally, a public bank can have investment priorities that center on providing loans for low and moderate income housing to help relieve the current housing crisis facing the Bay Area.

Public banking is not a new idea. North Dakota created the Bank of North Dakota in 1919. During the Great Recession, the Bank of North Dakota escaped the credit crisis and maintained budget surpluses with zero public debt and had the lowest foreclosure rates and unemployment rates in the nation, the lowest credit card defaults, and no bank failures. This is due in large part to the Bank of North Dakota's willingness to provide loans to keep the state economy functioning while credit had been frozen elsewhere.

The City of Oakland, led by council members Kaplan and Kalb, is currently investigating the possibility of establishing a Public Bank of Oakland. Currently, the City is evaluating two bids to do a study analyzing the feasibility and economic impact of establishing a Public Bank that includes the City of Oakland. The public bank could take a regional form that could include the Cities of Berkeley and Richmond. At a time when the City of Berkeley is actively looking to reinvest its city funds in ethical institutions with socially

responsible values, a public bank could represent an alternative that meets City's banking needs.

Oakland joins other cities like Philadelphia and Santa Fe that are exploring the possibility of forming a public bank at the city level.

ENVIRONMENTAL SUSTAINABILITY

Directs Berkeley toward investing our taxpayer dollars in a socially responsible manner, including with banks that are not engaged in oil pipeline projects

FINANCIAL IMPLICATIONS

Pending a positive outcome of the feasibility study conducted and funded by Oakland, Council will consider contributing to the cost of producing a business plan for a regional public bank, along with other jurisdictions in the region who are interested in partnering in this endeavor.

CONTACT PERSON

Mayor Jesse Arreguin

510-981-7100

Attachments:

1. Resolution

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

IN SUPPORT OF THE EFFORTS OF THE CITY OF OAKLAND TO CREATE A PUBLIC BANK OF OAKLAND AND TO INVESTIGATE THE POSSIBILITY OF FORMING A PARTNERSHIP WITH ANY FUTURE PUBLIC BANK OF OAKLAND OR REGIONAL PUBLIC BANK

WHEREAS, there is a desire for local funding solutions that reinvest public funds in the local community; and

WHEREAS, public banking operates in the public interest, through institutions owned by the people through their representative governments; and

WHEREAS, public banks are able to return revenue to the community and can provide low-cost financing in support of local communities; and

WHEREAS, a public bank can have investment priorities that focus on the creation of jobs that spur local economic growth by providing affordable credit to small and medium-sized businesses that have been historically ignored by the larger, more established banks; and

WHEREAS, a public bank can have investment priorities that center on providing loans for low and moderate income housing to help relieve the current housing crisis facing the Bay Area; and

WHEREAS, Wall Street banks seek short-term profits for their private shareholders by investing in stocks, derivatives, credit default swaps and other speculative financial instruments; and

WHEREAS, some Wall Street banks have broken criminal statutes and violated civil and regulatory rules with impunity; and on March 9th, 2016, the Wall Street Journal reported that Wall Street banks had paid in total more than \$100 billion in fines and penalties for mortgage-related fraud, and said Wall Street banks' criminal conduct and wrongful behavior should not be rewarded with future business dealings with local and state government bodies; and

WHEREAS, the state of North Dakota created a state publicly-owned bank (the Bank of North Dakota) in 1919 for the benefit of the people of North Dakota; and during the recent "Great Recession," escaped the credit crisis and maintained budget surpluses with zero public debt and had the lowest foreclosure rates and unemployment rates in the nation, the lowest credit card defaults, and no bank failures, due in large part to the Bank of North Dakota's willingness to provide loans to keep the state economy functioning while credit had been frozen elsewhere; and

WHEREAS, the Bank of North Dakota's total assets have increased seven-fold over the last two decades; and the Bank of North Dakota has returned \$385 million to the General

Fund of North Dakota over the last 20 years; and Community Banks in North Dakota, in large part due to their partnership with the Bank of North Dakota, averaged about \$12,000 in lending per capita compared to an average of \$3,000 for Community Banks in per capita lending nationwide; and

WHEREAS, the City of Philadelphia, by unanimous City Council Resolution, authorized the Council's Committee on Commerce and Economic Development to hold hearings regarding public banking; and

WHEREAS, a comprehensive feasibility study completed for the City of Santa Fe found that a public bank is feasible and has the potential to provide enhanced fiscal management, improved net interest rate margins, and a more robust local lending climate; and on April 26 a Resolution passed the Santa Fe City Council to appoint a Public Bank for Santa Fe Task Force that will convene and develop a product that will define the process, resources, information and timelines to be met in order to be prepared to submit an application for a New Mexico Bank Charter for a Public Bank for Santa Fe; and

WHEREAS, the City and County of San Francisco recently approved the establishment of a Task Force to determine the feasibility of a public bank of San Francisco; and

WHEREAS, the City of Oakland has chosen a contractor and is in the process of hiring them to do a Feasibility Study for the Public Bank of Oakland; and

WHEREAS, the City of Berkeley is tasked with holding and protecting the fundamental interest of the public as well as the financial wellbeing of the City;

NOW THEREFORE, BE IT RESOLVED that the City of Berkeley hereby declares that it is the policy of the City of Berkeley to endorse the efforts of the City of Oakland to create a public bank.

BE IT FURTHER RESOLVED that the City Manager, or designee, shall investigate the possibility of forming a mutually beneficial partnership with any future Oakland public bank.

BE IT FURTHER RESOLVED that pending a positive outcome of the feasibility study conducted and funded by Oakland, the City of Berkeley will consider contributing toward the cost of producing a draft business plan for a regional public bank, along with Oakland and other jurisdictions in the area who are interested in partnering in this endeavor.



Office of the Mayor

CONSENT CALENDAR
September 12, 2017

TO: Members of the City Council

FROM: Mayor Jesse Arreguin and Councilmembers Sophie Hahn, Kate Harrison, and Ben Bartlett

SUBJECT: Support the City of Oakland's Regional Public Bank Feasibility Study

RECOMMENDATION

Authorize \$25,000 from the Finance Department Banking Fees budget to the City of Oakland to support their feasibility study of a regional public bank.

BACKGROUND

The City of Oakland, led by Councilmembers Kaplan and Kalb, is currently investigating the possibility of establishing a Public Bank of Oakland, and has recommended a feasibility and economic impact analysis. This study could include the development of a regional institution that also serves the cities of Berkeley and Richmond.

Oakland has committed to covering \$75,000 of the \$100,000 total cost. Councilmember Kaplan reached out to the City of Berkeley through the Office of the Mayor to formally request a contribution in the amount of \$25,000. The request also included City of Oakland Ordinance No.12731 which provides for the receipt of such funds.

On June 27, 2017, the City Council voted to support Oakland's efforts to create a public bank, and considered funding a multi-jurisdictional publicly owned bank if Berkeley could participate. At a time when the City of Berkeley is actively looking to reinvest its city funds in ethical institutions with socially responsible values, a public bank could represent an alternative that meets City's banking needs.

ENVIRONMENTAL SUSTAINABILITY

Directs Berkeley toward banking in the public interest.

FINANCIAL IMPLICATIONS

\$25,000 from banking fees allocated in the Finance Department Budget.

ATTACHMENTS

1. Resolution
2. City of Oakland Ordinance No. 12731
3. City of Berkeley Resolution

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

CONTRIBUTE TO A FORMAL FEASIBILITY STUDY TO SUPPORT A FUTURE
PUBLIC BANK OF OAKLAND OR REGIONAL PUBLIC BANK

WHEREAS, there is a desire for local funding solutions that reinvest public funds in the local community; and

WHEREAS, public banking operates in the public interest, through institutions owned by the people through their representative governments; and

WHEREAS, a comprehensive feasibility study completed for the City of Santa Fe found that a public bank is feasible and has the potential to provide enhanced fiscal management, improved net interest rate margins, and a more robust local lending climate; and on April 26 a Resolution passed the Santa Fe City Council to appoint a Public Bank for Santa Fe Task Force that will convene and develop a product that will define the process, resources, information and timelines to be met in order to be prepared to submit an application for a New Mexico Bank Charter for a Public Bank for Santa Fe; and

WHEREAS, the City and County of San Francisco recently approved the establishment of a Task Force to determine the feasibility of a public bank of San Francisco; and

WHEREAS, the City of Oakland has chosen a contractor and is in the process of hiring them to do a Feasibility Study for the Public Bank of Oakland; and

WHEREAS, the City of Berkeley, passed a resolution on June 27, 2017 supporting Oakland's efforts to create a public bank and also considered funding the development of such a bank if Berkeley could be a part of a multi-jurisdictional publicly owned bank; and

WHEREAS, the City of Berkeley has been formally asked to contribute 25% of the overall costs of the Feasibility Study authorized by the City of Oakland.

NOW THEREFORE, BE IT RESOLVED that the City of Berkeley hereby declares that it will contribute \$25,000 toward a Feasibility Study commissioned by the City of Oakland to create a public bank.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately upon passage and funds will be distributed from the City of Berkeley Finance Department budget as requested by the City of Oakland.

OFFICE OF THE CITY CLERK
CLERK

2006 JAN 26 PM 5:19

APPROVED AS TO FORM AND LEGALITY

[Signature]
CITY ATTORNEY

ORDINANCE NO. 12731 C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE 2, CHAPTER 2.04, ARTICLE 2.04.160, EXPENDITURES FROM RESTRICTED GIFT PROCEEDS, TO DELEGATE LIMITED AUTHORITY TO THE CITY ADMINISTRATOR TO, WITHOUT CITY COUNCIL ACTION, ACCEPT GIFTS AND DONATIONS AND TO APPROPRIATE AND EXPEND MONIES DERIVED FROM GIFTS AND DONATIONS, AND REPEALING OAKLAND MUNICIPAL ORDINANCE NO. 8144 C.M.S., ADOPTED JUNE 9, 1970, WHICH CONTAINS CONFLICTING AND OBSOLETE PROVISIONS

WHEREAS, pursuant to Oakland Charter – Article XII, Section 1203, *Gifts and Trusts*, specifies the City Council is authorized to accept gifts and trust on behalf of the City and to control, manage, dispose of and otherwise administer the same in accordance with their terms; and

WHEREAS, Oakland Charter – Article VIII, Section 806, *Receipts and Expenditures*, specifies that:

All monies received by the City shall be deposited in the City Treasury, and no monies shall be disbursed from the treasury without the approval of the City Administrator or [his/her delegee]. No expenditure of City funds shall be made except for the purposes and in the manner specified by an appropriation of the Council . . .

WHEREAS, Council adopted Ordinance 8144 C.M.S., June 9, 1970, which authorized the City Manager and Directors of Museum, Parks and Recreation and Library to accept unrestricted gifts and donations for use by the respective department, but excluded authority to accept gifts and donations for construction of public improvements; and

WHEREAS, the City Council amended Section 2.04.160, *Expenditures from Restricted Gift Proceeds*, of the City's Purchasing Ordinance, Ordinance No. 7937 C.M.S., as amended, on October 4, 1973, authorizing the City Administrator to expend monies derived from gifts and donations to the City in accordance with any special conditions of the donor provided the City Council has accepted the gift/donation by resolution; and

WHEREAS, the City Council wishes to improve the City's efficiency in accepting, appropriating and utilizing gifts and donations in order to encourage the offering of such gifts and donations to the City and to facilitate their timely use by the City for the public's benefit; and

WHEREAS, to improve the City's efficiency in accepting, appropriating and utilizing gifts and donations, the City Council wishes to delegate authority to the City Administrator, within set dollar limits, to accept, appropriate and expend monies derived from restricted gifts and donations to the City of Oakland; and

WHEREAS, the City Administrator will comply with all Charter requirements for fiscal administration of such funds and otherwise apply proper and sufficient procedures and controls necessary to monitor and ensure fiscal and performance accountabilities;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Amendment to Title 2, Chapter 2.04, Section 2.04.160 of the Oakland Municipal Code. Oakland Municipal Code Title 2, Chapter 2.04, Section 2.04.160 is amended to authorize the City Administrator to accept, appropriate and expend monies derived from restricted gifts and donations as follows:

2.04.160 Acceptance, appropriation and expenditures from restricted gift proceeds.

Notwithstanding any other provision of this article, the City Administrator is delegated limited authority to accept restricted gifts and donations to the city up to fifty thousand dollars, including money gifts, and to appropriate and expend monies derived from such gifts/donations, without City Council action, provided that: 1) the gift/donation does not create unbudgeted costs for the City, 2) the gift/donation is for a program or project that has been approved by the Council in the biennial or mid-cycle operating or Capital Improvement Program (CIP) budget, or by City Council legislation during the fiscal year, and 3) the gift/donations or proceeds therefrom are used in accord with restrictions and/or special conditions of the donor.

Notwithstanding the above, the City Administrator is authorized to expend monies derived from restricted gifts/donations that exceed fifty thousand dollars (\$50,000.00) without City Council action when the gift has been approved, accepted and appropriated by City Council resolution provided such expenditure is in accord with any restrictions or special conditions of donor.

All funds accepted hereunder shall be deposited into the City Treasury. The City Administrator will provide an annual report to Council on all gifts and donations accepted hereunder during the previous year.

Section 2. Remaining Provisions Unchanged. Except as amended herein, all provisions, articles, sections, subsections, sentences, clauses or phrases of Oakland Municipal Code 2.04, shall remain unchanged and in full force and effect.

Section 3. Oakland Municipal Ordinance No. 8144 C.M.S. Repealed. Oakland Municipal Ordinance No. 8144 C.M.S., adopted June 9, 1970, which authorized the City Manager,

Director of Museums, Director of Parks and Recreation, and Director of Library to accept certain unrestricted gifts and donations on behalf of the City of Oakland is hereby repealed.

Section 4. Severability. If any article, section, subsection sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

Section 5. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise, it shall become effective upon the seventh day after final adoption.

352274

Introduction Date: FEB 7 2006

IN COUNCIL, OAKLAND, CALIFORNIA, FEB 21 2006, 2006

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID AND
PRESIDENT DE LA FUENTE — 8

NOES- 0
ABSENT- 0
ABSTENTION- 0

ATTEST: Latonda Simmons
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

OFFICE OF THE CITY CLERK
OAKLAND

Approved as to Form and Legality

2006 JAN 26 PM 5:19

Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. 79714 C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR, ON BEHALF OF THE CITY OF OAKLAND, TO ACCEPT AND APPROPRIATE RESTRICTED GRANTS WITH A MARKET OR MONETARY VALUE OF FIFTY THOUSAND DOLLARS (\$50,000.00) OR LESS, WITHOUT PRIOR CITY COUNCIL ACTION

WHEREAS, Oakland Charter -- Article VIII, Section 806, *Receipts and Expenditures*, specifies that all monies received by the City shall be deposited in the City Treasury, and no monies shall be disbursed from the treasury without the approval of the City Administrator or of another officer duly authorized by him/her; and no expenditure of City funds shall be made except for the purposes and in the manner specified by an appropriation of the Council, or made without proper accounting documentation and sufficient funds in the City Treasury and in proper accounts; and

WHEREAS, the City Council wishes to improve the City's efficiency in accepting, appropriating and utilizing grants in order to encourage the solicitation and offering of grants to the City and to facilitate their timely use by the City for the public's benefit; and

WHEREAS, to improve the City's efficiency in accepting, appropriating and utilizing grants, the City Council wishes to delegate authority to the City Administrator, within set dollar limits, to accept and appropriate monies derived from restricted grants to the City of Oakland; and

WHEREAS, the City Administrator will comply with all Oakland Charter requirements for fiscal administration and expenditure of such funds and otherwise apply proper and sufficient procedures and controls necessary to monitor and ensure fiscal and performance accountabilities; now, therefore, be it

RESOLVED: That the City Administrator, on behalf of the City Council, is hereby authorized to accept and appropriate, without prior City Council action, monies derived from any restricted grant with a market or monetary value of fifty thousand dollars (\$50,000.00) or less, provided that: 1) the grant is for programs and projects approved by the City Council in the biennial or mid-cycle operating or Capital Improvement Program (CIP) budget, or by City Council legislation during the fiscal year, 2) the grant does not create unbudgeted costs for the City, and 3) the grant does not require specific approval by the legislative body; and, be it

FURTHER RESOLVED: That all funds accepted hereunder shall be deposited into the City Treasury; and, be it

FURTHER RESOLVED: That expenditures of grant funds shall be in accordance with the requirements of the City of Oakland purchasing requirements codified in Oakland Municipal Code Title 2, Chapter 2.04; and, be it

FURTHER RESOLVED: That the City Administrator shall present a report annually to the City Council listing the grants accepted and appropriated on behalf of the City Council during the prior year.

356528

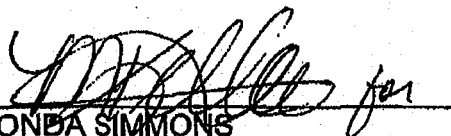
IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, [REDACTED], QUAN, REID AND PRESIDENT DE LA FUENTE -7

NOES - 0
ABSENT - NADEL - 1
ABSTENTION - 0

ATTEST:



LATONIA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California



INTER OFFICE MEMORANDUM

TO: City Administrator and Council Members **FROM:** Katano Kasaine
Director of Finance

SUBJECT: Public Bank Feasibility Study **DATE:** August 2, 2017
Donation Process

This memo outlines the process for accepting donations to apply toward the Public Bank Feasibility Study for Oakland and potential Multi-Jurisdictional publicly owned bank. Listed below is the process for the acceptance of donations:

- Donors should make checks payable to the City of Oakland. Any donations received in an amount greater than \$50,000 must be approved by the City Council.
- The signed Irrevocable Donation Agreement and check should be mailed or delivered in person to the following address:

City of Oakland
 Finance Department – Treasury Bureau
 Attention: David Jones, Interim Treasury Manager
 150 Frank H. Ogawa Plaza #5330
 Oakland, CA 94612
 510.238.6508

- All checks must be received by 5:00 p.m. (PST) Friday, September 15, 2017 in order to provide donation results to City Council on Tuesday, September 19, 2017. **However, the City will continue to accept donations after that date.**
- A receipt of the donation will be mailed to the Donor directly.
- For any tax related matters, the Donor should consult with their tax advisor.
- Donations cannot be refunded.

If you have any questions, please contact me at 510.238.2989.

KATANO KASAINÉ
Director of Finance

CITY OF OAKLAND

IRREVOCABLE DONATION AGREEMENT

This Agreement is made by and between _____ (the "Donor") and the City of Oakland, CA (the "City"). The Agreement shall be effective as of the date of execution by the parties hereto.

The Donor hereby voluntarily and irrevocably donates (1) the amount of \$ _____ ; and/or (2) the property (description): _____ ; and/or (3) the service (description): _____ to the City of Oakland for the following purpose:

- Research the legality and feasibility of establishing a multi-jurisdiction publicly owned bank to help finance community projects, reduce risk to public funds in existing financial markets, and provide better financial returns on public investments;
- Research the impacts of the legality and feasibility of providing banking services to the cannabis industry; and
- Contract to complete a feasibility study of a multi- jurisdiction public bank that includes the City of Oakland and at least three other East Bay jurisdictions.

The Donor hereby relinquishes all dominion and control over the donated funds and/or property contributed. Except as otherwise expressly stated herein, the Donor agrees that the City shall, at its sole discretion, have exclusive control over any property, projects, programs or other activities for which donated funds or property are used.

The City accepts the voluntary irrevocable donation from the Donor in accordance with Oakland City Council Ordinance No. 12731 and Resolution No. 79714.

This Agreement represents the full and complete agreement between the parties and supersedes all prior or contemporaneous understandings, communications or representations, whether oral or written, regarding the subject matter of the Agreement.

No amendment or modification to this Agreement shall be effective or binding unless the amendment or modification is in writing and duly executed by each of the parties hereto.

DONOR

CITY OF OAKLAND

By: _____

By: _____
Authorized Representative

Print Name: _____

Date: _____

Date: _____

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

IN SUPPORT OF THE EFFORTS OF THE CITY OF OAKLAND TO CREATE A PUBLIC BANK OF OAKLAND AND TO INVESTIGATE THE POSSIBILITY OF FORMING A PARTNERSHIP WITH ANY FUTURE PUBLIC BANK OF OAKLAND OR REGIONAL PUBLIC BANK

WHEREAS, there is a desire for local funding solutions that reinvest public funds in the local community; and

WHEREAS, public banking operates in the public interest, through institutions owned by the people through their representative governments; and

WHEREAS, public banks are able to return revenue to the community and can provide low-cost financing in support of local communities; and

WHEREAS, a public bank can have investment priorities that focus on the creation of jobs that spur local economic growth by providing affordable credit to small and medium-sized businesses that have been historically ignored by the larger, more established banks; and

WHEREAS, a public bank can have investment priorities that center on providing loans for low and moderate income housing to help relieve the current housing crisis facing the Bay Area; and

WHEREAS, Wall Street banks seek short-term profits for their private shareholders by investing in stocks, derivatives, credit default swaps and other speculative financial instruments; and

WHEREAS, some Wall Street banks have broken criminal statutes and violated civil and regulatory rules with impunity; and on March 9th, 2016, the Wall Street Journal reported that Wall Street banks had paid in total more than \$100 billion in fines and penalties for mortgage-related fraud, and said Wall Street banks' criminal conduct and wrongful behavior should not be rewarded with future business dealings with local and state government bodies; and

WHEREAS, the state of North Dakota created a state publicly-owned bank (the Bank of North Dakota) in 1919 for the benefit of the people of North Dakota; and during the recent "Great Recession," escaped the credit crisis and maintained budget surpluses with zero public debt and had the lowest foreclosure rates and unemployment rates in the nation, the lowest credit card defaults, and no bank failures, due in large part to the Bank of North Dakota's willingness to provide loans to keep the state economy functioning while credit had been frozen elsewhere; and

WHEREAS, the Bank of North Dakota's total assets have increased seven-fold over the last two decades; and the Bank of North Dakota has returned \$385 million to the General

Fund of North Dakota over the last 20 years; and Community Banks in North Dakota, in large part due to their partnership with the Bank of North Dakota, averaged about \$12,000 in lending per capita compared to an average of \$3,000 for Community Banks in per capita lending nationwide; and

WHEREAS, the City of Philadelphia, by unanimous City Council Resolution, authorized the Council's Committee on Commerce and Economic Development to hold hearings regarding public banking; and

WHEREAS, a comprehensive feasibility study completed for the City of Santa Fe found that a public bank is feasible and has the potential to provide enhanced fiscal management, improved net interest rate margins, and a more robust local lending climate; and on April 26 a Resolution passed the Santa Fe City Council to appoint a Public Bank for Santa Fe Task Force that will convene and develop a product that will define the process, resources, information and timelines to be met in order to be prepared to submit an application for a New Mexico Bank Charter for a Public Bank for Santa Fe; and

WHEREAS, the City and County of San Francisco recently approved the establishment of a Task Force to determine the feasibility of a public bank of San Francisco; and

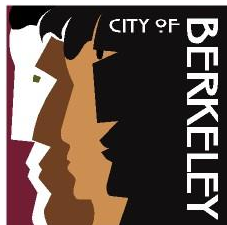
WHEREAS, the City of Oakland has chosen a contractor and is in the process of hiring them to do a Feasibility Study for the Public Bank of Oakland; and

WHEREAS, the City of Berkeley is tasked with holding and protecting the fundamental interest of the public as well as the financial wellbeing of the City;

NOW THEREFORE, BE IT RESOLVED that the City of Berkeley hereby declares that it is the policy of the City of Berkeley to endorse the efforts of the City of Oakland to create a public bank.

BE IT FURTHER RESOLVED that the City Manager, or designee, shall investigate the possibility of forming a mutually beneficial partnership with any future Oakland public bank.

BE IT FURTHER RESOLVED that pending a positive outcome of the feasibility study conducted and funded by Oakland, the City of Berkeley will consider contributing toward the cost of producing a draft business plan for a regional public bank, along with Oakland and other jurisdictions in the area who are interested in partnering in this endeavor.



Jesse Arreguín
Office of the Mayor

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: [April 23, 2019]

Item Number: 23

Item Description: Resolution in Support of a Public Bank

Submitted by: Mayor Arreguín

Minor edits were added to specify that the resolution is in support of AB 857, state legislation that enables public entities to apply for a public bank charter from the California Department of Business Oversight.

A letter from Mayor Arreguín to Assemblymember Wicks asking for her support of AB 857 is included as an additional attachment.



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
April 23rd, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Kate Harrison, [Rigel Robinson](#), [Cheryl Davila](#) and [Mayor Arreguin](#)

Subject: Resolution in Support of [the Public Banking Act AB 857](#)

RECOMMENDATION

Adopt a resolution affirming Berkeley's support for [public banking the Public Banking Act AB 857](#) and send that resolution to Governor Newsom, Senator Skinner, and Assemblymember Wicks urging state legislation to enable local agencies to create public banks.

BACKGROUND

Public banks offer a way for governmental agencies such as cities, counties and states, as well as some organizations such as pension funds, to invest their funds in an institution that allows the investing organizations to avoid the high financial costs of dealing with private sector for-profit banks. Because public banks are created in the public interest rather than to maximize profit, public banks also generate income from their investments that can be re-invested in public benefit projects such as affordable housing, public transportation, and social programs. A public bank could decide to have no investment in fossil fuels, weapons, or tobacco in line with the priorities set by the Peace and Justice Commission. It could adhere to principles of economic, racial and environmental justice.

Public banks are run by qualified bankers serving a public mission and these banks partner with and support rather than compete with local banks. The Bank of North Dakota, a public bank which was founded in 1919, successfully weathered the last recession without the bailouts that went to Wall Street banks, and has provided hundreds of millions of dollars to North Dakota's treasury over the years.

Public Bank of the East Bay (PBEB) is an organization founded in August 2016 to advocate for a public bank for Alameda and West Contra Costa Counties. In 2018, the City of Oakland spearheaded a study on the feasibility of an East Bay public bank, using contributions from the City of Berkeley and from Alameda County. The study deemed a public bank feasible, though still not legal under state law. [AB 857 will enable cities, counties or regions to apply for a bank license under a "public bank charter" clearing a regulatory hurdle in our efforts. This application would be evaluated and regulated by the Department of Business Oversight with the same, if not more, scrutiny as any other new](#)

[bank.](#) We urge our representatives and governor to support legislation to allow local jurisdictions to create public banks through charter processes.

FISCAL IMPACTS OF RECOMMENDATION

Because public banks invest according to common need, rather than private profit, the dividends from a public bank may reduce pressure on the General Fund.

ENVIRONMENTAL SUSTAINABILITY

Private banks often invest in fossil fuel capital projects such as the Dakota Access Pipeline. Public banking, through fossil fuel divestment, promote environmental sustainability.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

ATTACHMENTS

1: Resolution

2: [Letter from Mayor Arreguín](#)

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

RESOLUTION IN SUPPORT OF A PUBLIC BANK AB 857, THE PUBLIC BANKING ACT

WHEREAS, a public bank is defined as a financial institution owned by one or more public entities such as a state, city, or county; and

WHEREAS, public banks are created in the public interest rather than to maximize profit, and income from their investments can be re-invested in public benefit programs; and

WHEREAS, a public bank can decide to have no investments in industries that run contrary to Berkeley's values, such as fossil fuels, weapons, or tobacco; and

WHEREAS, a bank owned by the Cities of Oakland, Richmond, and Berkeley and the County of Alameda will allow those jurisdictions to have more local control, transparency, and self-determination, and allow us to invest in public goods such as affordable housing, loans to low-income households, public transit, infrastructure, and renewable energy; and

WHEREAS, public banks are run by qualified bankers serving a public mission and these banks partner with and support local banks and credit unions; and

WHEREAS, the Bank of North Dakota, a public bank founded in 1919, is extremely successful and avoided a foreclosure crisis in 2008 because it did not issue risky mortgages; and

WHEREAS, in September 2018, the Oakland City Council accepted the East Bay Public Bank's Feasibility Study; and

WHEREAS, the State of California's lack of a public-banking charter option imposes an obstacle to efforts to explore a public bank and prevents public banks from becoming operational; and

WHEREAS, Assemblymembers Chiu and Santiago, with the support of the California Public Banking Alliance, have introduced AB 857 in the state legislature creating a uniform regulatory framework for municipal and regional public banks, which would allow for public banking charters under the regulatory oversight of the California Department of Business Oversight;

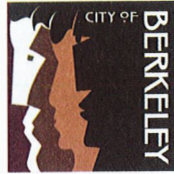
NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley supports the continued efforts to create and operationalize the East Bay Public Bank; and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley urges the California state legislature to enact legislation amending the Government Code to enable local agencies to create public banks regulated by the Department of Business Oversight; and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley hereby supports

| [AB 857](#)

BE IT FURTHER RESOLVED that copies of this Resolution will be sent to Governor Gavin Newsom, Senator Nancy Skinner, and Assemblymember Buffy Wicks.



Office of the Mayor

Jesse Arreguín
Mayor

April 9, 2019

Assemblymember Buffy Wicks
State Capitol, Room 5160
Sacramento, CA 95814

Dear Assemblymember Wicks,

I have been informed that on April 22nd, AB857 will be considered at the Banking Committee that you serve on. AB857 proposes to allow local governments to apply for a banking license from the state so that cities, counties or regions could establish their own public bank. I am writing to express my support for AB857 and share why I believe public banking could have great potential for the East Bay.

In 2017 I convened a City of Berkeley Task Force on Socially Responsible Banking, which has made me keenly aware of the challenges of the municipal banking industry. Competition is limited and municipal financial needs are quite complex. In May 2018, the Berkeley City Council opted in to the last two years of our contract with Wells Fargo because of these challenges, despite previously declaring our intention to sever ties within a year. Still, we are working diligently to find creative solutions that allow public funds to be banked with a socially responsible institution that is invested in the needs of our city and community.

A critical part of this work is the exploration of a multi-jurisdictional public bank. In September 2017, the Berkeley City Council contributed to the public bank feasibility study initiated by the City of Oakland. The report was imperfect, but taken with ongoing research through San Francisco's municipal bank task force, a path forward is more than possible. Since the potential of an East Bay Regional Public Bank is transformative our local leadership has committed to a prudent approach to exploring this mechanism to keep public money working for our local economy. While there are critical questions around capitalization, insurance, governance and possible lines of business, AB 857 simply clears a legal and regulatory hurdle. With this legislation in place our coalition could apply for a charter and be evaluated with the same, if not more scrutiny as any new bank would be.

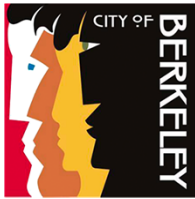
While a regional public bank is certainly a novel concept, my own work with East Bay Community Energy Authority clearly demonstrates that this community is capable of leading in powerful and innovative ways. Ten years after Wall Street banks brought the global economy to its knees, our local economy is still dominated by these very same institutions. A public bank would not only allow us to sever ties with Wall Street, but also provide an important new tool for publicly financing the critical needs of our region such as affordable housing, small business and sustainable infrastructure. Furthermore, based on the success of the Bank of North Dakota, AB857 requires partnerships between public banks and local banking institutions, serving as a bankers' bank to amplify the important services they already provide.

Given the inordinate power of Wall Street and big banks, the importance of maintaining momentum and multi-jurisdictional buy-in cannot be understated. By supporting AB857 you would be building upon the important momentum and potential that has already been demonstrated by our county, cities and communities.

Opportunities to work on a project of this scale and significance as a regional public bank are rare, and I would be grateful for your support on this effort.

Sincerely,

Mayor Jesse Arreguín



CITY COUNCILMEMBER
RIGEL ROBINSON
 DISTRICT 7

CONSENT CALENDAR
 October 26, 2021

To: Honorable Mayor and Members of the City Council
 From: Councilmember Robinson (Author) and Mayor Arreguin (Co-Sponsor)
 Subject: Budget Referral: Durant Parklet and Telegraph Plaza Improvements

RECOMMENDATION

Refer \$60,000 to the November 2021 AAO process for placemaking improvements in the Telegraph District, consisting of the installation of a public parklet on Durant Avenue and the closure of the right-turn slip lane at the Dwight Triangle to create a public plaza.

BACKGROUND

Durant Parklet

Durant Avenue on Southside is a hotspot for UC Berkeley students, home to many restaurants, take-out spots, and bars, including those in Durant Food Court. On weekend nights, students can be seen eating while standing on the sidewalk, as there is not enough seating in the food court or the parklet in front of Artichoke's to accommodate demand. This budget referral proposes the installation of a second public parklet in front of Durant Food Court, which would not only be highly utilized, but also revitalize the business district and assist in traffic calming. The parklet could house additional lighting and be designed to facilitate activities such as live music and small retail opportunities.

Durant is a one-way street with two travel lanes and two lanes of street parking. With the current street configuration, gig drivers working for Doordash or UberEats often decide to park in a travel lane to run inside and pick up orders. The congestion has been exacerbated by the pandemic because of the increase in take-out orders. Durant is a major bus corridor servicing many lines including the 51B, 79, 36, and 6, and the car traffic and illegal parking can cause serious delays in bus service.

In May 2021, AC Transit accepted an ACTC grant to install a quick-build bus lane on Durant Avenue and address the above concerns.¹ As that project begins to take shape, the timing is right for the City to consider revitalization projects such as a public parklet, so that the AC Transit planning process can take the improvements into consideration.

¹ <https://actransit.legistar.com/View.ashx?M=F&ID=9380793&GUID=0D09DB3F-6B48-427D-9627-E5F2460FC7A8>



Dwight Triangle/Telegraph Plaza

The traffic median on the intersection of Telegraph and Dwight, known as the Dwight Triangle, has long been a target for much-needed improvements. The 2016 Telegraph Public Realm Plan² lays out a vision for the Triangle that includes landscaping, improved lighting, and public art. In the November 2020 AAO, the City allocated \$100,000 to begin rehabilitating the Triangle, adding planter areas in partnership with the Telegraph Business Improvement District.

Currently, the pedestrian crossing is unsafe as the slip lane creates opportunities for conflict with drivers turning right onto Telegraph without slowing down. Slip lanes exist to allow drivers to take faster turns, often at the expense of pedestrian safety. In recognition of the impact of street design on road safety and collision rates, cities across the country are moving to replace dangerous slip lanes with pedestrian and bike infrastructure.³

The crosswalks around the Triangle can also be uninviting and confusing, which contributes to a tangible disconnect between the first four blocks of Telegraph and the southern part of the district. This proposal, supported by the TBID, would reactivate the space by using planters or bollards to close off the slip lane, creating a public plaza with seating and other amenities where people can eat, interact, and enjoy a day on Telegraph. Furthermore, the TBID and City staff can implement best practices, including those learned from the newly-renovated BART plaza in Downtown Berkeley, to create an inviting space with new programming and entertainment options for visitors of the Telegraph area and members of the Telegraph community.

² <https://www.berkeleyside.org/wp-content/uploads/2016/09/Telegraph-Public-Realm-Plan-Final-Low-Res.pdf> (page 26)

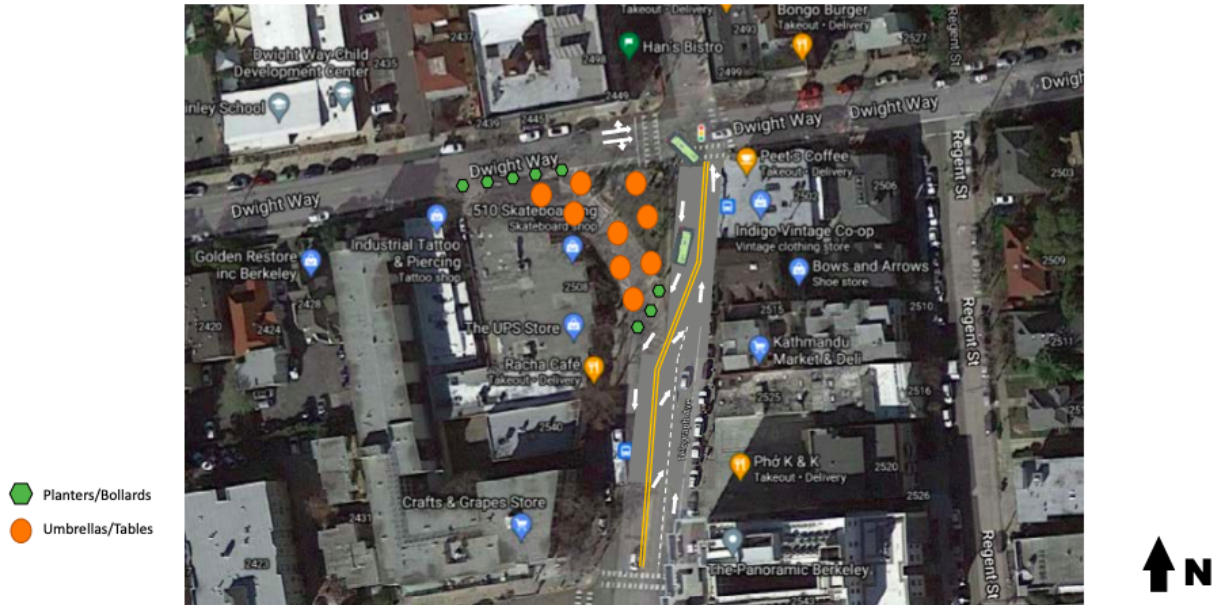
³ <https://usa.streetsblog.org/2018/07/13/cities-are-replacing-dangerous-slip-lanes-with-space-for-people/>

As this demonstration project moves forward, collaboration will continue between the TBID, the City of Berkeley, and AC Transit to determine the best way to accommodate the 6 bus route, which uses the slip lane to turn right from Durant onto Telegraph. One potential solution being explored is to restripe a portion of Telegraph south of Dwight to allow larger vehicles, such as fire trucks and buses, to make sufficiently wide turns.

“Telegraph Plaza” at Dwight Triangle concept

“Telegraph Plaza” concept v2

at the Dwight Triangle



FINANCIAL IMPLICATIONS

Approximately \$40,000 for a parklet and \$20,000 for enlarging and paint stripes around the Triangle, for a total of \$60,000.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
Angie Chen, Legislative Aide

Attachments:

- 1: TBID Support Letter



Telegraph Business Improvement District

2437 Durant Avenue #206, Berkeley, CA 94704

510-486-2366

alex@telegraphberkeley.org

July 23, 2021
Farid Javandel
Public Works Department
City of Berkeley

Re: Requested review of the “Telegraph Plaza” proposal

Mr. Javandel,

I am writing to present you with a proposed vision for the area known as the Dwight Triangle and to request your department’s partnership in reviewing the proposal’s feasibility. As you will see from the description below, a key factor in determining the feasibility involves testing a reconfiguration of the intersection to redirect the path of travel for vehicles while maintaining the existing circulation plan.

At their May 11, 2021 meeting the Telegraph Business Improvement District Board of Directors voted unanimously to move forward with exploring a new, safer vision for the Dwight Triangle median at Telegraph Ave. and Dwight Way. The “Telegraph Plaza” vision aims to establish a vibrant and inviting public space that enhances pedestrian safety and supports a variety of beneficial uses. Achieving the vision necessitates the complete closure of the existing right turn slip-lane to essentially conjoin the sidewalk with the Triangle. (see attachment)

We recognize that the slip-lane is an important path of travel for vehicles including busses, emergency vehicles, and other commercial traffic. There are also numerous examples from around the country where similar modifications to traffic patterns have improved both safety and economic development. With that in mind we feel that a variety of options should be explored to achieve this vision.

The TBID is specifically requesting that the City conduct an actual turn-radius test to determine how an alternative right-turn would be configured. This test would include different north bound travel lane configurations including using the existing bus stop lane (which is slated for removal) as a north bound travel lane. This would allow more space for a large vehicle to make the right turn from Dwight Way on to Telegraph Ave. The TBID is eager to help facilitate the test with the participation of the various public agency partners that need to be involved.

Our goal with conducting a turn-radius test is to determine the viability of closing the slip-turn and reconfiguring the Dwight/Telegraph intersection. If the outcome of the test supports this proposal, we would then take steps to implement a short-term trial of the “Telegraph Plaza” vision as a demonstration project. As part of your review of this proposal we respectfully request consideration of any other alternatives that would facilitate the closure of the slip-turn lane.



Telegraph Business Improvement District

2437 Durant Avenue #206, Berkeley, CA 94704

510-486-2366

alex@telegraphberkeley.org

This request is also being made with consideration of the current transportation planning initiatives that are underway including the Southside Complete Streets and AC Transit Rapid Corridors projects. We understand that the north bound bus stop at Dwight & Telegraph is proposed to be moved and there are other plans in motion which present a timely opportunity to consider a new vision for this important public space.

The TBID has identified the Dwight Triangle as a top public realm investment priority with exceptional potential to advance our economic development and place-making goals for the District. The TBID feels strongly that the “Telegraph Plaza” vision should be given serious consideration as part of the City’s transportation planning and capital improvement projects. We are pleased to have Councilmember Robinson’s support for the vision, which is also part of implementing the Telegraph Public Realm Plan and advances the Vision Zero traffic safety policy. Overall, the vision seeks to achieve the highest and best use of what is arguably our district’s most under-utilized public infrastructure resource.

I am prepared to assist as needed with conducting the review and test including coordination with district stakeholders and any additional support our organization can provide. We sincerely appreciate your attention to this matter and are excited to work with the City on advancing important public realm improvements.

In partnership,

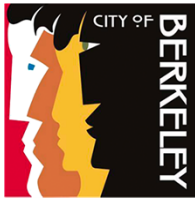
A handwritten signature in blue ink that reads "Alex Knox".

Alex Knox
Executive Director
Telegraph Business Improvement District

CC:

Councilmember Rigel Robinson, David White – Deputy City Manager, Liam Garland – Public Works Director, Ryan Lau – AC Transit External Affairs, Shallon Allen – Special Events Coordinator, Office of Economic Development

Attachment: “Telegraph Plaza” conceptual design



CITY COUNCILMEMBER RIGEL ROBINSON DISTRICT 7

CONSENT CALENDAR
October 26, 2021

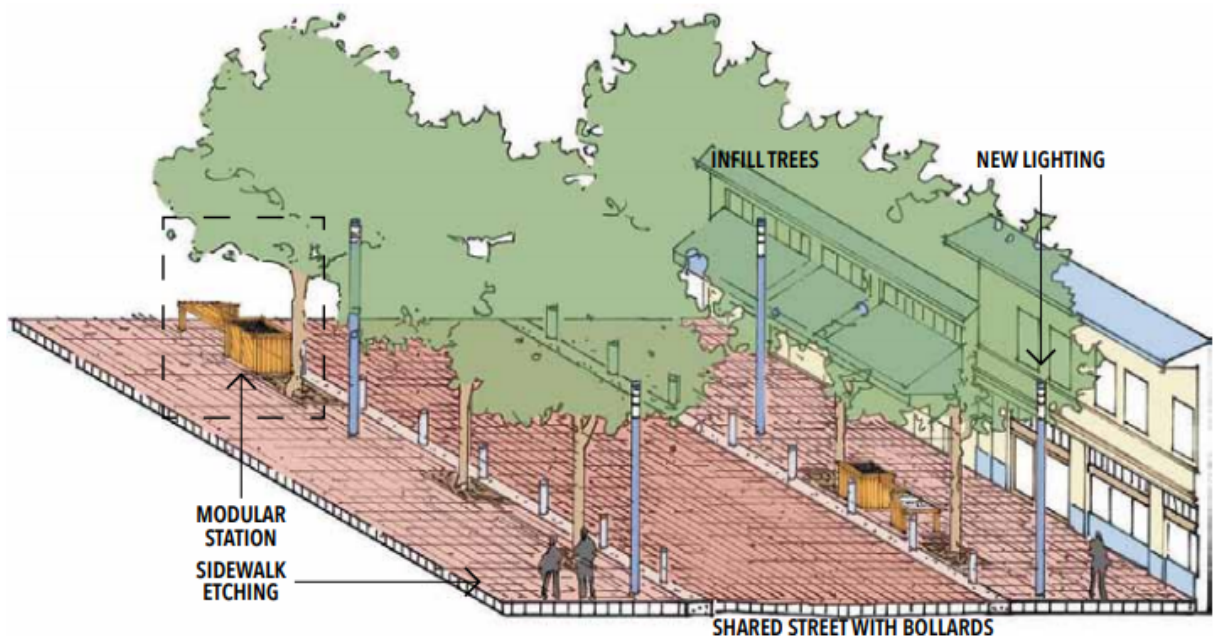
To: Honorable Mayor and Members of the City Council
From: Councilmember Robinson (Author) and Councilmember Hahn (Co-Sponsor) and Mayor Arreguin (Co-Sponsor)
Subject: Budget Referral: Telegraph Shared Streets Feasibility Study

RECOMMENDATION

Refer \$500,000 to the November 2021 AAO process for conducting a feasibility study of the Telegraph Shared Streets project.

BACKGROUND

The Telegraph Public Realm Plan (TPRP), approved by Council in 2016 after extensive input from community members including vendors, merchants, property owners, and representatives from UC Berkeley and AC Transit, establishes a vision and provides guidance for a shared street on the first four blocks of Telegraph Avenue.



Ultimate Condition. TRPR proposes a plaza-like shared street and new lighting as a final phase. Sidewalk etching may remain or, if necessary, sidewalks can be replaced.

In 2019, Council referred to staff to develop a plan to implement the shared streets proposal outlined in the Telegraph Public Realm Plan, including identification of potential funding sources for the project. In order to begin this process and open up opportunities for the City to apply for state and regional grants, it is critical for Council to approve funds for an initial feasibility study.

The \$82.6 million settlement agreement between UC Berkeley and the City of Berkeley, finalized in July of 2021, includes an annual payment of “\$1.3 million (increased by three percent per year) for capital projects and other services benefiting residents living within one-half mile of the University’s main campus boundaries and the Clark Kerr Campus.”¹ There is a potential opportunity to allocate a portion of these funds towards Telegraph Shared Streets. However, given the many pressing infrastructure investments and services that are needed near campus, it is important that Council also consider making a general fund investment through the AAO process to keep the project moving forward, even if settlement funds are allocated towards other purposes or to supplement a partial allocation from the settlement.

FINANCIAL IMPLICATIONS

\$500,000 to fund a feasibility study of Telegraph Shared Streets.

ENVIRONMENTAL SUSTAINABILITY

Implementing a shared street on Telegraph Avenue would be with the goal of increasing the number of people walking, biking, and using public transit to access and move through the Telegraph area. This is directly in line with the City’s environmental goals, and a main objective of this project.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
Angie Chen, Legislative Aide

Attachments:

1: Telegraph Public Realm Plan

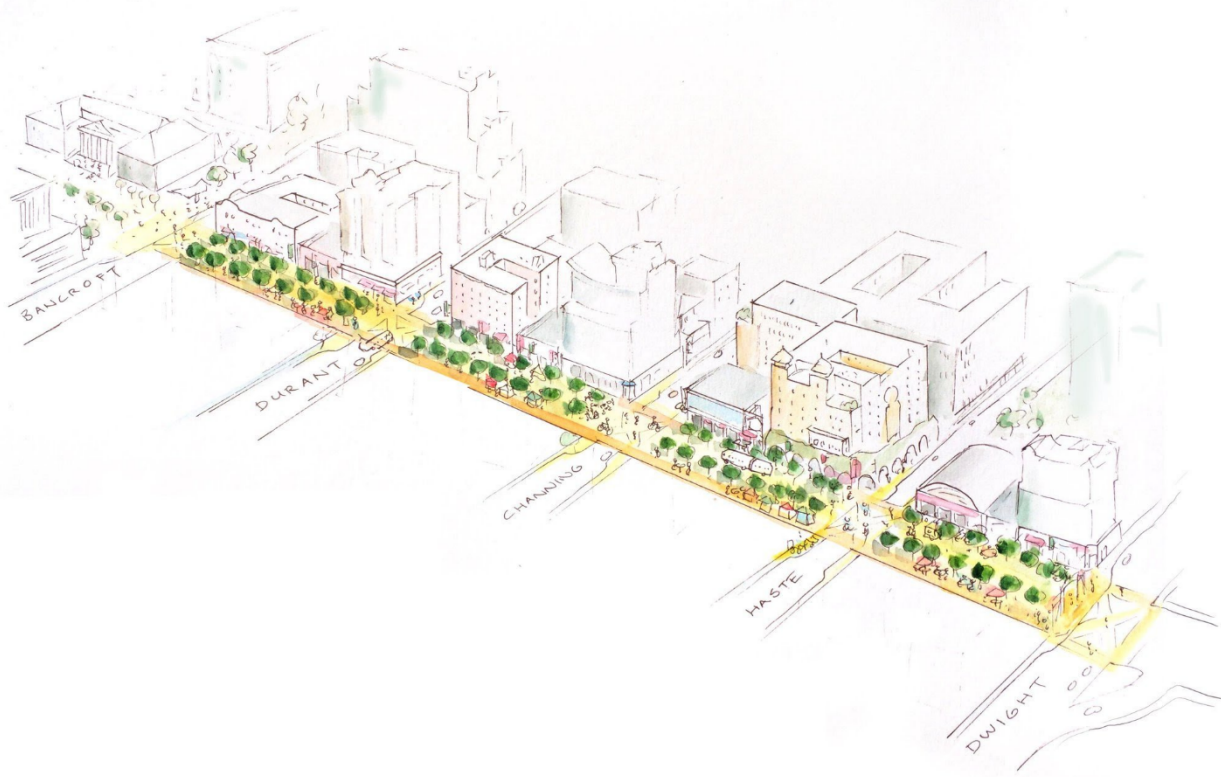
<https://www.berkeleyside.com/wpcontent/uploads/2016/09/Telegraph-Public-Realm-Plan-Final-Low-Res.pdf>

2: Referral: Telegraph Shared Streets

https://www.cityofberkeley.info/Clerk/City_Council/2019/10_Oct/Documents/2019-10-29_Item_30_Referral_Telegraph_Shared_Streets_-_Rev.aspx

3: Artist’s rendition of Telegraph as a shared street, by Alfred Twu

¹ <https://www.berkeleyside.org/wp-content/uploads/2021/07/SETTLEMENT-AGREEMENT-UCBBerkeley.pdf>





Kate Harrison
Councilmember
District 4

SUPPLEMENTAL 3 AGENDA MATERIAL

Meeting Date: October 12, 2021

Item Number: 28

Item Description: Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04

Submitted by: Harrison

“Good of the City” Analysis:

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

This supplemental makes only one clarifying edit to Subsection A of 23C.24.040 (Development Standards) regarding applicable state law.

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

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

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

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

ORDINANCE NO. -N.S.

ACCESSORY DWELLING UNIT ORDINANCE

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

Section 1. That Berkeley Municipal Code Chapter 23C.24 is amended to read as follows:

**Chapter 23C.24
Accessory Dwelling Units**

Sections:

- 23C.24.010 Applicability of Regulations
- 23C.24.020 Purposes
- 23C.24.030 Permit Procedures
- 23C.24.040 Development Standards
- 23C.24.050 Special Provisions

23C.24.010 Applicability of Regulations

- A. The provisions of this Chapter apply to all lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.
- B. ADUs and JADUs are allowed on lots as follows:
 - a. One ADU and/or one JADU is allowed on a lot with one Single Family Dwelling.
 - b. One ADU is allowed on a lot with multiple Single Family Dwellings.
 - c. For lots with a Duplex or Multiple Dwelling Uses, one of the following is allowed:
 - i. Up to two detached ADUs; or
 - ii. At least one ADU created from non-habitable portions of the existing dwelling structure (e.g. basement, attic, storage room). The maximum number of ADUs created from non-habitable portions of the existing dwelling structure shall not exceed 25% of the number of existing Dwelling Units on the lot.
 - d. One ADU is allowed on a lot with a Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.

23C.24.020 Purposes

The purposes of this Chapter are to:

- A. Implement California Government Code Section 65852.2 and 65852.22.
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of Accessory Dwelling Units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of Accessory Dwelling Units in zoning districts with compatible land uses and infrastructure.
- F. Reduce potential impacts of new development in high fire hazard severity areas.

23C.24.030 Permit Procedures

- A. An application for an ADU or JADU is subject to ministerial review. Review must be completed within 60 days of submission of a complete application.
- B. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a building permit shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.

23C.24.040 Development Standards

- A. Development Standards in Paragraphs B through G, below, apply as follows:
 - 1. Nothing in this Chapter shall preclude the application of Objective Development Standards, once adopted, to ADU's that do not fall under Gov. Code § 65852.2(e).
 - 2. Detached New Construction. A detached, new construction ADU is subject to Development Standards for ADUs. A detached, new construction ADU is defined as having a 3-foot separation from a Main Building per Section 23E.04.030.
 - 3. Converted or Rebuilt Entirely from an Existing Building or Structure. An ADU converted or rebuilt entirely from an existing building or structure, in the same location with the same dimensions and roof height, is not subject to Development Standards for ADUs. These include:
 - a. An ADU created entirely within an existing Single Family Dwelling.
 - b. An ADU created entirely within the existing non-habitable space of a Duplex or Multiple Dwelling Use.
 - c. An ADU created entirely within an existing detached Accessory Building or Accessory Structure.
 - d. An ADU created entirely within an existing Accessory Building or

Accessory Structure that is demolished and rebuilt.

4. Addition to an Existing or Rebuilt Building or Structure. An ADU, fully or partially created by an addition of square footage to or changes in roof height is subject to Development Standards for ADUs. Paragraph B applies to the ADU's maximum size and Paragraphs C through G apply to the added square footage and roof design. These include:
 - a. An ADU created by an addition or roof change to an existing Single Family Dwelling.
 - b. An ADU created by an addition or roof change to an existing detached Accessory Building or Accessory Structure.
 - c. And ADU created by an addition or roof change to an existing Accessory Building or Accessory Structure that is demolished and rebuilt.
5. Notwithstanding any other provision of this Chapter, no ADU is permitted to be built in the Hillside Overlay or Environmental Safety Residential (ES-R) districts unless it complies with the requirements of Government Code section 65852.2(e)(1).
6. A JADU is subject to applicable Development Standards in Paragraphs B and G.

B. Maximum Size

1. A detached, new construction ADU or an ADU fully or partially created by addition to an existing or proposed Single Family Dwelling is subject to the following maximum size limits:
 - a. 850 square feet for a studio or one-bedroom ADU.
 - b. 1000 square feet for an ADU with two or more bedrooms.
2. An ADU created from an existing Accessory Building or Accessory Structure or a portion of the existing building that does not conform to the Development Standards in Paragraphs C and D may extend beyond the physical dimensions of the existing building or structure as long as the new construction is outside the four-foot setback and conforms to all other conditions herein. Additions shall conform with the Development Standards in this Chapter
3. An ADU created from an existing Accessory Building or Accessory Structure that conforms to the Development Standards in Paragraphs C and D must comply with one of the following:
 - a. May include an expansion of not more than 150 square feet beyond the same physical dimensions of the existing building or structure; or
 - b. 850 square feet for a studio or one-bedroom ADU; or
 - c. 1000 square feet for an ADU with two or more bedrooms.
4. The maximum size of a JADU is 500 square feet.

Deleted: include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing building or structure

C. Maximum Height is applied to ADUs as follows. See Chapter 23F.04 for definition.

1. Maximum Height of a detached, new construction ADU is 18 feet.
2. Maximum Height of new square footage added to a Single Family Dwelling, Accessory Building or Accessory Structure to create an ADU is 18 feet.

D. Rear and Side Setbacks. The required rear and side setbacks for a detached, new construction ADU or addition to an existing building or structure are 4 feet,

unless a lesser setback is allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district.

- E. Front Yard Setback. The required front yard setback is the same as is established in the underlying zoning district.
- F. Parking
 - 1. Off-street parking is not required.
 - 2. Replacement parking is not required, but is allowed if in compliance with Chapter 23D.12 and/or Chapter 23E.28.
- G. Nothing in this Chapter shall preclude the issuance of Zoning Certificate for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code section 65852.2(e)(1). The City shall not apply the Development Standards in this Chapter to the extent they are inconsistent with the requirements of Government Code sections 65852.2 and 65852.22.
- H. A Zoning Certificate for the construction of an ADU or JADU may not be denied based on the failure of the applicant to correct a nonconforming zoning condition.

Deleted: Projections. Architectural features (Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment, Eaves, Cornices, Canopies, Awnings and Bay Window) may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines.¶

23C.24.050 Special Provisions

- A. A JADU must be owner-occupied. For purposes of this paragraph, "owner-occupied" means that a person with legal title to the property must reside in either the Single Family Dwelling or the JADU as their legal permanent residence.
- B. The property owner shall file a deed restriction with the County Recorder providing that:
 - 1. The ADU and/or JADU shall not be sold separately from the Dwelling Unit.
 - 2. The ADU and/or JADU shall not be rented for a term that is shorter than 30 days.

Deleted: <#>A rooftop deck may be established provided that the entire roof, deck and railing comply with Development Standards for ADUs in Section 23C.24.040 Paragraphs C through G.¶

3. The JADU or the Single Family Dwelling in which the JADU is located shall be owner-occupied per the definition in Section 23F.04.010

Section 2. That the definition for Accessory Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is amended to read as follows:

Accessory Dwelling Unit (ADU): A secondary Dwelling Unit that is located on a lot with a proposed or existing Single Family Dwelling, Duplex, Multiple Dwelling Use, or Group Living Accommodation, ~~which is occupied by one legally established Single Family Dwelling that conforms to the standards of Section 23C.24.~~ An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements unless the City is prohibited from applying such requirements by Government Code Section 65852.2 or 65852.22 and provide the following features independent of the Single Family Dwelling, Duplex, Multiple Dwelling Use, or Group Living Accommodation: 1) exterior or independent access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes the following:

- A. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
- B. A manufactured home, as defined in Section 18007 of the Health and Safety Code.

Section 3. That the definition for Primary Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is rescinded:

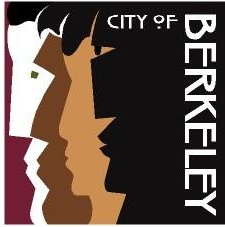
~~**Primary Dwelling Unit:** A legally established Single Family Dwelling that is on a lot with an Accessory Dwelling Unit.~~

Section 4. That the following two definitions are adopted into Berkeley Municipal Code Chapter 23F.04.010:

Efficiency Kitchen: A kitchen that includes a sink, a cooking facility with appliances (e.g. microwave, toaster, oven, hot plate), and food preparation counter space and cabinets.

Junior Accessory Dwelling Unit (JADU): A unit that is contained within the walls of a Single Family Dwelling and includes a separate exterior entrance. A JADU may not be located in an Accessory Building or an Accessory Structure. A JADU may include separate sanitation facilities, or may share sanitary facilities with a Single Family Dwelling. At a minimum, a JADU shall include an Efficiency Kitchen with a working refrigerator.

Section 5. 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.



Kate Harrison
Councilmember District 4

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: September 28, 2021

Item Number: 29

Item Description: Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04

Submitted by: Councilmember Kate Harrison

The attached revised document contains four revisions to the item's attached revisions to BMC Chapter 23C.24:

1. Rewrites 23C.24.040 (Development Standards) subsection B. 2. to remove the 150-ft² limit on extensions to ADUs created from existing building or structures, provided that the extensions still conform to all other conditions, to strengthen the financial feasibility of potential ADUs.
2. Adds to 23C.24.040 (Development Standards) section A.1. to reaffirm that Objective Design Standards will guide ADU development.
3. Removes 23C.24.040 (Development Standards) subsection F, which allowed for some protrusions into the four-foot setback by right. Many of the items named for the intrusion into the setback would create noise or privacy concerns. Any protrusion into the four-foot setback would remain eligible for a case-by-case approval.
4. Removes 23C.24.050 (Special Provisions) subsection A, which allowed for rooftop decks by right. Rooftop decks are still possible with case-by-case approval but a by-right approval creates many concerns with fire safety, noise, and privacy.

ORDINANCE NO. -N.S.

ACCESSORY DWELLING UNIT ORDINANCE

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Accessory Dwelling Units**

Sections:

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- 23C.24.020 Purposes
- 23C.24.030 Permit Procedures
- 23C.24.040 Development Standards
- 23C.24.050 Special Provisions

23C.24.010 Applicability of Regulations

- A. The provisions of this Chapter apply to all lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.
- B. ADUs and JADUs are allowed on lots as follows:
 - a. One ADU and/or one JADU is allowed on a lot with one Single Family Dwelling.
 - b. One ADU is allowed on a lot with multiple Single Family Dwellings.
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 - i. Up to two detached ADUs; or
 - ii. At least one ADU created from non-habitable portions of the existing dwelling structure (e.g. basement, attic, storage room). The maximum number of ADUs created from non-habitable portions of the existing dwelling structure shall not exceed 25% of the number of existing Dwelling Units on the lot.
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23C.24.020 Purposes

The purposes of this Chapter are to:

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- B. Increase overall supply and range of housing options in Berkeley.
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- D. Support Housing Element goals of facilitating construction of Accessory Dwelling Units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of Accessory Dwelling Units in zoning districts with compatible land uses and infrastructure.
- F. Reduce potential impacts of new development in high fire hazard severity areas.

23C.24.030 Permit Procedures

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- B. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a building permit shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.

23C.24.040 Development Standards

- A. Development Standards in Paragraphs B through G, below, apply as follows:
 1. Nothing in this Chapter shall preclude the application of Objective Development Standards, once adopted, to ADU's.
 - 1.2. Detached New Construction. A detached, new construction ADU is subject to Development Standards for ADUs. A detached, new construction ADU is defined as having a 3-foot separation from a Main Building per Section 23E.04.030.
 - 2.3. Converted or Rebuilt Entirely from an Existing Building or Structure. An ADU converted or rebuilt entirely from an existing building or structure, in the same location with the same dimensions and roof height, is not subject to Development Standards for ADUs. These include:
 - a. An ADU created entirely within an existing Single Family Dwelling.
 - b. An ADU created entirely within the existing non-habitable space of a Duplex or Multiple Dwelling Use.
 - c. An ADU created entirely within an existing detached Accessory Building or Accessory Structure.
 - d. An ADU created entirely within an existing Accessory Building or

Accessory Structure that is demolished and rebuilt.

~~3.4.~~ Addition to an Existing or Rebuilt Building or Structure. An ADU, fully or partially created by an addition of square footage to or changes in roof height is subject to Development Standards for ADUs. Paragraph B applies to the ADU's maximum size and Paragraphs C through G apply to the added square footage and roof design. These include:

- a. An ADU created by an addition or roof change to an existing Single Family Dwelling.
- b. An ADU created by an addition or roof change to an existing detached Accessory Building or Accessory Structure.
- c. An ADU created by an addition or roof change to an existing Accessory Building or Accessory Structure that is demolished and rebuilt.

~~4.5.~~ Notwithstanding any other provision of this Chapter, no ADU is permitted to be built in the Hillside Overlay or Environmental Safety Residential (ES-R) districts unless it complies with the requirements of Government Code section 65852.2(e)(1).

~~5.6.~~ A JADU is subject to applicable Development Standards in Paragraphs B and G.

B. Maximum Size

1. A detached, new construction ADU or an ADU fully or partially created by addition to an existing or proposed Single Family Dwelling is subject to the following maximum size limits:
 - a. 850 square feet for a studio or one-bedroom ADU.
 - b. 1000 square feet for an ADU with two or more bedrooms.
2. An ADU created from an existing Accessory Building or Accessory Structure or a portion of the existing building that does not conform to the Development Standards in Paragraphs C and D may ~~include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing building or structure~~ extend beyond the physical dimensions of the existing building or structure as long as the new construction is outside the four-foot setback and conforms to all other conditions herein. Additions shall conform with the Development Standards in this Chapter
3. An ADU created from an existing Accessory Building or Accessory Structure that conforms to the Development Standards in Paragraphs C and D must comply with one of the following:
 - a. May include an expansion of not more than 150 square feet beyond the same physical dimensions of the existing building or structure; or
 - b. 850 square feet for a studio or one-bedroom ADU; or
 - c. 1000 square feet for an ADU with two or more bedrooms.
4. The maximum size of a JADU is 500 square feet.

C. Maximum Height is applied to ADUs as follows. See Chapter 23F.04 for definition.

1. Maximum Height of a detached, new construction ADU is 18 feet.
2. Maximum Height of new square footage added to a Single Family Dwelling, Accessory Building or Accessory Structure to create an ADU is 18 feet.

D. Rear and Side Setbacks. The required rear and side setbacks for a detached,

new construction ADU or addition to an existing building or structure are 4 feet, unless a lesser setback is allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district.

- E. Front Yard Setback. The required front yard setback is the same as is established in the underlying zoning district.

~~Projections. Architectural features (Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment, Eaves, Cornices, Canopies, Awnings and Bay Window) may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines.~~

- F. Parking
 1. Off-street parking is not required.
 2. Replacement parking is not required, but is allowed if in compliance with Chapter 23D.12 and/or Chapter 23E.28.
- G. Nothing in this Chapter shall preclude the issuance of Zoning Certificate for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code section 65852.2(e)(1). The City shall not apply the Development Standards in this Chapter to the extent they are inconsistent with the requirements of Government Code sections 65852.2 and 65852.22.
- H. A Zoning Certificate for the construction of an ADU or JADU may not be denied based on the failure of the applicant to correct a nonconforming zoning condition.

23C.24.050 Special Provisions

~~A. A rooftop deck may be established provided that the entire roof, deck and railing comply with Development Standards for ADUs in Section 23C.24.040 Paragraphs C through G.~~

B.A. A JADU must be owner-occupied. For purposes of this paragraph, “owner-occupied” means that a person with legal title to the property must reside in either the Single Family Dwelling or the JADU as their legal permanent residence.

C.B. The property owner shall file a deed restriction with the County Recorder providing that:

1. The ADU and/or JADU shall not be sold separately from the Dwelling Unit.
2. The ADU and/or JADU shall not be rented for a term that is shorter than 30 days.

3. The JADU or the Single Family Dwelling in which the JADU is located shall be owner-occupied per the definition in Section 23F.04.010

Section 2. That the definition for Accessory Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is amended to read as follows:

Accessory Dwelling Unit (ADU): A secondary Dwelling Unit that is located on a lot with a proposed or existing Single Family Dwelling, Duplex, Multiple Dwelling Use, or Group Living Accommodation, ~~which is occupied by one legally established Single Family Dwelling that conforms to the standards of Section 23C.24.~~ An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements unless the City is prohibited from applying such requirements by Government Code Section 65852.2 or 65852.22 and provide the following features independent of the Single Family Dwelling, Duplex, Multiple Dwelling Use, or Group Living Accommodation: 1) exterior or independent access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes the following:

- A. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
- B. A manufactured home, as defined in Section 18007 of the Health and Safety Code.

Section 3. That the definition for Primary Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is rescinded:

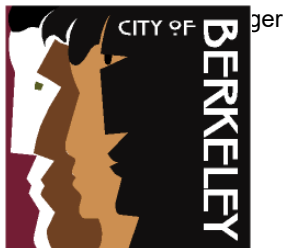
~~**Primary Dwelling Unit:** A legally established Single Family Dwelling that is on a lot with an Accessory Dwelling Unit.~~

Section 4. That the following two definitions are adopted into Berkeley Municipal Code Chapter 23F.04.010:

Efficiency Kitchen: A kitchen that includes a sink, a cooking facility with appliances (e.g. microwave, toaster, oven, hot plate), and food preparation counter space and cabinets.

Junior Accessory Dwelling Unit (JADU): A unit that is contained within the walls of a Single Family Dwelling and includes a separate exterior entrance. A JADU may not be located in an Accessory Building or an Accessory Structure. A JADU may include separate sanitation facilities, or may share sanitary facilities with a Single Family Dwelling. At a minimum, a JADU shall include an Efficiency Kitchen with a working refrigerator.

Section 5. 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.



REVISED AGENDA MATERIAL

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: Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns

SUMMARY

At its April 7, 2021 meeting, Planning Commission recommended that the maximum height of ADUs be increased to 18 feet. The Zoning Ordinance amendment initially submitted with this staff report would limit the maximum height of an ADU located in the Hillside Overlay or the Environmental Safety (ES-R) zoning districts to 16 feet. The supplemental material updates the draft Zoning Ordinance amendment (Attachment), permitting a maximum height of 18 feet for all new ADUs city-wide, to more accurately reflect the Planning Commission's recommendation.

ORDINANCE NO. -N.S.

ACCESSORY DWELLING UNIT ORDINANCE

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

Section 1. That Berkeley Municipal Code Chapter 23C.24 is amended to read as follows:

**Chapter 23C.24
Accessory Dwelling Units**

Sections:

[23C.24.010](#) Applicability of Regulations

[23C.24.020](#) Purposes

[23C.24.030](#) Permit Procedures

[23C.24.040](#) ~~Repealed by Ord. 7683-NS.~~

[23C.24.050](#) ~~Repealed by Ord. 7683-NS.~~

[23C.24.060](#) ~~Repealed by Ord. 7683-NS.~~

[23C.24.070](#) ~~Repealed by Ord. 7683-NS.~~

23C.24.010 Applicability of Regulations

~~The provisions of this Chapter apply to all lots that are zoned for residential use except 1) in the following zoning districts: Environmental Safety Residential (ES-R), Manufacturing (M), Mixed Manufacturing (MM), Mixed Use Light Industrial (MU-LI), and Unclassified (U); and 2) on a lot with frontage on a roadway with less than 26 feet in pavement width in the Hillside Overlay.~~

- A. ~~The provisions of this Chapter apply to all lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.~~
- B. ~~ADUs and JADUs are allowed on lots as follows:~~
- ~~1. One ADU and/or one JADU is allowed on a lot with one Single Family Dwelling.~~
 - ~~2. One ADU is allowed on a lot with multiple Single Family Dwellings.~~
 - ~~3. For lots with a Duplex or Multiple Dwelling Uses, one of the following is allowed:~~
 - ~~a. Up to two detached ADUs; or~~
 - ~~b. At least one ADU created from non-habitable portions of the existing dwelling structure (e.g. basement, attic, storage room). The maximum number of ADUs created from non-habitable portions of the existing dwelling structure shall not exceed 25% of the number of existing Dwelling Units on the lot.~~
 - ~~4. One ADU is allowed on a lot with a Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.~~

23C.24.020 Purposes

The purposes of this Chapter are to:

- A. Implement California Government Code Section [65852.2](#) and [65852.22](#).
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of Accessory Dwelling Units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of Accessory Dwelling Units in zoning districts with compatible land uses and infrastructure.
- F. Reduce potential impacts of new development in high fire hazard severity areas.

23C.24.030 Permit Procedures

~~Zoning Certificates will be issued for Accessory Dwelling Units and Junior Accessory Dwelling Units per California Government Code Section [65852.2](#) and [65852.22](#).~~

- A. An application for an ADU or JADU is subject to ministerial review. Review must be completed within 60 days of submission of a complete application.
- B. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a building permit shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.

23C.24.040 Special Provisions Development Standards

~~Repealed by Ord. 7683-NS.~~

- A. Development Standards in Paragraphs B through G, below, apply as follows:
 - 1. Detached New Construction. A detached, new construction ADU is subject to Development Standards for ADUs. A detached, new construction ADU is defined as having a 3-foot separation from a Main Building per Section [23E.04.030](#).
 - 2. Converted or Rebuilt Entirely from an Existing Building or Structure. An ADU converted or rebuilt entirely from an existing building or structure, in the same location with the same dimensions and roof height, is not subject to Development Standards for ADUs. These include:
 - a. An ADU created entirely within an existing Single Family Dwelling.
 - b. An ADU created entirely within the existing non-habitable space of a Duplex or Multiple Dwelling Use.
 - c. An ADU created entirely within an existing detached Accessory Building or Accessory Structure.
 - d. An ADU created entirely within an existing Accessory Building or

Accessory Structure that is demolished and rebuilt.

3. Addition to an Existing or Rebuilt Building or Structure. An ADU, fully or partially created by an addition of square footage to or changes in roof height is subject to Development Standards for ADUs. Paragraph B applies to the ADU's maximum size and Paragraphs C through G apply to the added square footage and roof design. These include:
 - a. An ADU created by an addition or roof change to an existing Single Family Dwelling.
 - b. An ADU created by an addition or roof change to an existing detached Accessory Building or Accessory Structure.
 - c. And ADU created by an addition or roof change to an existing Accessory Building or Accessory Structure that is demolished and rebuilt.
4. Notwithstanding any other provision of this Chapter, no ADU is permitted to be built in the Hillside Overlay or Environmental Safety Residential (ES-R) districts unless it complies with the **maximum size and setback** requirements of Government Code section 65852.2(e)(1).
5. A JADU is subject to applicable Development Standards in Paragraphs B and G.

B. Maximum Size

1. A detached, new construction ADU or an ADU fully or partially created by addition to an existing or proposed Single Family Dwelling is subject to the following maximum size limits:
 - a. 850 square feet for a studio or one-bedroom ADU.
 - b. 1000 square feet for an ADU with two or more bedrooms.
2. An ADU created from an existing Accessory Building or Accessory Structure that does not conform to the Development Standards in Paragraphs C and D may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing building or structure. Additions shall conform with the Development Standards in this Chapter
3. An ADU created from an existing Accessory Building or Accessory Structure that conforms to the Development Standards in Paragraphs C and D must comply with one of the following:
 - a. May include an expansion of not more than 150 square feet beyond the same physical dimensions of the existing building or structure; or
 - b. 850 square feet for a studio or one-bedroom ADU; or
 - c. 1000 square feet for an ADU with two or more bedrooms.
4. The maximum size of a JADU is 500 square feet.

C. Maximum Height is applied to ADUs as follows. See Chapter 23F.04 for definition.

1. Maximum Height of a detached, new construction ADU is 18 feet.
2. Maximum Height of new square footage added to a Single Family Dwelling, Accessory Building or Accessory Structure to create an ADU is 18 feet.

- D. Rear and Side Setbacks. The required rear and side setbacks for a detached, new construction ADU or addition to an existing building or structure are 4 feet, unless a lesser setback is allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district.
- E. Front Yard Setback. The required front yard setback is the same as is established in the underlying zoning district.
- F. Projections. Architectural features (Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment, Eaves, Cornices, Canopies, Awnings and Bay Window) may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines.
- G. Parking
 - 1. Off-street parking is not required.
 - 2. Replacement parking is not required, but is allowed if in compliance with Chapter 23D.12 and/or Chapter 23E.28.
- H. Nothing in this Chapter shall preclude the issuance of Zoning Certificate for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code section 65852.2(e)(1). The City shall not apply the Development Standards in this Chapter to the extent they are inconsistent with the requirements of Government Code sections 65852.2 and 65852.22.
- I. A Zoning Certificate for the construction of an ADU or JADU may not be denied based on the failure of the applicant to correct a nonconforming zoning condition.

23C.24.050 Development Standards Special Provisions

~~Repealed by Ord. 7683-NS.~~

- A. A rooftop deck may be established provided that the entire roof, deck and railing comply with Development Standards for ADUs in Section 23C.24.040 Paragraphs C through G.
- B. A JADU must be owner-occupied. For purposes of this paragraph, "owner-occupied" means that a person with legal title to the property must reside in either the Single Family Dwelling or the JADU as their legal permanent residence.
- C. The property owner shall file a deed restriction with the County Recorder providing that:
 - 1. The ADU and/or JADU shall not be sold separately from the Dwelling Unit.
 - 2. The ADU and/or JADU shall not be rented for a term that is shorter than 30 days.

3. The JADU or the Single Family Dwelling in which the JADU is located shall be owner-occupied per the definition in Section 23F.04.010

~~**23C.24.060 Modification of Development Standards with an Administrative Use Permit**~~

~~Repealed by Ord. 7683-NS.~~

~~**23C.24.070 Findings**~~

~~Repealed by Ord. 7683-NS.~~

Section 2. That the definition for Accessory Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is amended to read as follows:

Accessory Dwelling Unit (ADU): A secondary Dwelling Unit that is located on a lot ~~with a proposed or existing Single Family Dwelling, Duplex, Multiple Dwelling Use, or Group Living Accommodation, which is occupied by one legally established Single Family Dwelling that conforms to the standards of Section 23C.24.~~ An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements ~~unless the City is prohibited from applying such requirements by Government Code Section 65852.2 or 65852.22~~ and provide the following features independent of the Single Family Dwelling, ~~Duplex, Multiple Dwelling Use, or Group Living Accommodation~~: 1) exterior ~~or independent~~ access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes the following:

- A. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
- B. A manufactured home, as defined in Section 18007 of the Health and Safety Code.

Section 3. That the definition for Primary Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is rescinded:

~~**Primary Dwelling Unit:** A legally established Single Family Dwelling that is on a lot with an Accessory Dwelling Unit.~~

Section 4. That the following two definitions are adopted into Berkeley Municipal Code Chapter 23F.04.010:

~~**Efficiency Kitchen:** A kitchen that includes a sink, a cooking facility with appliances (e.g. microwave, toaster, oven, hot plate), and food preparation counter space and cabinets.~~

~~**Junior Accessory Dwelling Unit (JADU):** A unit that is contained within the walls of a Single Family Dwelling and includes a separate exterior entrance. A JADU may not be located in an Accessory Building or an Accessory Structure. A JADU may include separate sanitation facilities, or may share sanitary facilities with a Single Family Dwelling. At a minimum, a JADU shall include an Efficiency Kitchen with a working refrigerator.~~

Section 5. 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

PUBLIC HEARING

October 26, 2021

(Continued from October 12, 2021)

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: Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt the first reading of a local Accessory Dwelling Unit (ADU) Ordinance [Berkeley Municipal Code (BMC) Chapter 23C.24] and amendments to relevant Definitions [BMC Chapter 23F.04] in the Zoning Ordinance.

SUMMARY

This report responds to a City Council referral from January 26, 2021, which requested a new local ADU Ordinance to provide public safety measures as allowed by State ADU law [Government Code Sections 65852.2 and 65852.22]. This report also provides background on State ADU regulations, explains where jurisdictions have flexibility to adopt local ordinances, and outlines the proposed Zoning Ordinance amendments recommended by Planning Commission for adoption by Council.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

A local ADU Ordinance is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city. Over the past five years, Berkeley has adopted three comprehensive ADU Ordinance amendments in order to maintain compliance with changing State ADU law. The most recent round of State regulations, which came into effect on January 1, 2020, replaced Berkeley's ADU Ordinance and significantly reduced jurisdictions' abilities to regulate ADU development.

State ADU Law

ADUs are recognized as low cost, low impact, infill development. As such, they provide much needed housing to the community. State law mandates a streamlined, ministerial permit process that removes barriers to ADU development. State law requires all

jurisdictions to issue ministerial or “by-right” building permits for ADUs in accordance with the regulations listed below. Jurisdictions can develop more lenient local ordinances to encourage ADU development but they cannot be more restrictive nor limit ADU development.

- Issue over-the-counter building permits for ADUs that comply with State regulations.
- Apply the following development standards:
 - Maximum size of no less than 800 to 1200 square feet (allowable scenarios are discussed below);
 - Maximum height of no less than 16 feet; and
 - Rear and side setbacks of no more than 4 feet.
- Allow at least one ADU on every lot that has an existing or proposed dwelling unit. More specifically, allow:
 - One ADU and one JADU on a lot with a Single Family Dwelling.
 - One ADU on a lot with multiple Single Family Dwellings.
 - At least two detached or at least one interior ADU on a lot with a Duplex or a Multifamily Dwelling or a mixed-use project.
- Allow ADUs created by conversions or re-construction of existing buildings or structures (such as garages and sheds) on a lot, even if existing structures don't conform to maximum size, maximum height and required setback (mentioned above) for ADUs.
- Require fire sprinklers only if the primary dwelling unit(s) has or requires fire sprinklers.
- Do not require off-street parking for the ADU if within a half-mile of public transit.
- Do not require off-street parking for the primary dwelling unit if the proposed ADU requires removal of existing off-street parking.
- Do not require owner occupancy of ADUs or associated primary dwelling units except in the case of a JADU, where an owner must live in either the primary unit or the JADU.
- Do not allow short term rentals of ADUs.

There are additional regulations in State law that dictate how ADUs can be created (e.g., by conversion, by new construction, by addition to existing structures), where they can be created (e.g., attached to primary dwelling units, within the walls of an existing structure, free-standing on a lot), and when and how fees can be assessed. In order to communicate the nuances of State ADU law, the Planning Department prepared a table of State ADU regulations (see Attachment 2). In the absence of a local ADU Ordinance, Berkeley has been and will continue to issue building permits for ADUs according to the State's regulations.

Public Safety

In previous versions of Berkeley's ADU Ordinance, the City took steps to ensure public safety in fire-prone areas such as the Environmental Safety Residential district (Berkeley's Fire Zone 3) and lots with frontage on narrow roads in the Hillside Overlay district (Berkeley's Fire Zone 2). See Attachment 3 for a map of Berkeley's Fire Zones.

In previous iterations of the ADU Ordinance, the City addressed safety concerns by requiring an Administrative Use Permit (AUP) in Fire Zones 2 and 3 with required findings for minimum fire safety requirements. An AUP is a discretionary permit that allows public review and evaluations by staff in the Planning Department. This involves consultation with other departments, including the Fire Department, to identify detrimental impacts of projects and require mitigation measures, such as requiring fire sprinklers, adjusting the location of the ADU on the lot, and/or requiring off-street parking.

New State ADU regulations require the City to issue over-the-counter building permits for ADUs, removing the City's authority to require discretionary permits, such as AUPs. Recognizing public safety issues in Berkeley's most severe fire hazard districts, the City prohibited ADUs in Fire Zones 2 and 3 via an Urgency Ordinance adopted in December 2019 and extended in January 2020. This prohibition was rescinded in September 2020, when the California Department of Housing and Community Development (HCD) published guidance on State ADU law (see Attachment 4) stating that geographic prohibitions for public safety reasons could not be exercised through land use regulation. Guidance from the State clarified that public safety measures are only available through local amendments to the Fire Code, which limits the range of measures that can be utilized, particularly regarding the location of the unit and the provision of off-street parking.

To address this, City Council referred to the City Manager amendments to the Zoning Ordinance and the Fire Code aimed at reducing impacts of additional density in Fire Zones 2 and 3. The Disaster and Fire Safety Commission (DFSC) made separate recommendations to City Council in a Memorandum submitted on March 24, 2021 that addresses emergency access and egress impacts of on-street parking and fire sprinkler requirement. The Planning Commission is recommending modifications to development standards to limit ADU size and ADU placement in these areas.

Options for a Local ADU Ordinance

State law establishes a maximum size for all ADUs at 1,200 square feet, which can be reduced in a local ordinance to 850 square feet if designed as a studio or one-bedroom and 1,000 square feet if designed with two or more bedrooms¹.

¹ ADUs created by conversion of an existing building or structure (e.g. conversion of an attic or basement, conversion of a detached garage) can exceed maximum size requirements per State law. ADUs created in this manner are allowed no more than a 150 square foot addition, intended for ingress and egress.

State law also provides that the local development standards of underlying zoning districts do not apply to ADUs unless explicitly codified in a local ADU ordinance, and only for particular elements such as usable open space, lot coverage, front yard setbacks and design criteria, as long as these standards do not make ADU development “infeasible.” In other words, local ordinances must allow for an ADU of 800 square feet, with a height of 16 feet and side and rear setbacks of 4 feet, on all lots zoned for residential use with at least one proposed or existing dwelling unit, even if the project does not comply with objective development standards in the local ADU ordinance.

Planning Commission Recommendation

On January 26, 2021 City Council referred to the City Manager development of Zoning Ordinance amendments and Fire Code amendments that address emergency access and egress challenges created by new State ADU laws (see Attachment 5). Requested amendments to the Zoning Ordinance involve limitations on the base maximum size of an ADU and required compliance with objective development standards such as front yard setbacks, open space and/or lot coverage.

On April 7, 2021, Planning Commission discussed amendments that responded to Council’s short-term referral. At that meeting, Planning Commission discussed State ADU regulations and focused on allowable modifications to ADU size and height limits. Planning Commission unanimously voted to recommend a set of Zoning Ordinance amendments that update BMC Chapter 23C.24 [Accessory Dwelling Units] and related definitions in BMC Chapter 23F.04 [Definitions] (see Attachment 1). The proposed Zoning Ordinance amendments provide a new ADU Ordinance that is intuitive and written with language that is clear and easy to understand. The bullets below provide rationale where elements of the proposed ordinance are more lenient than State ADU law or involve a level of complexity that benefits from explanation:

- ***The Maximum Size:*** The referral asks that Berkeley implement size restrictions on ADUs. With no local ordinance, ADUs with a maximum size of 1200 square feet are allowed by State law. **The proposed ADU Ordinance allows a maximum size of 850 square feet for studio and one-bedroom ADUs and 1000 square feet for ADUs with two or more bedrooms. Maximum size is further limited to 800 square feet if a project is located in Fire Zones 2 or 3 or if a project cannot meet front yard setbacks.**
- ***Maximum Height:*** State law allows a maximum height of 16 feet for ADUs. **The proposed ADU Ordinance allows an 18-foot maximum height** to allow flexibility in ADU design. An 18-foot structure can accommodate two stories, thereby resulting in a possible 50% reduction in building footprint. Planning Commission’s recommendation helps achieve the referral’s goals of preserving open space and minimizing lot coverage, and providing flexibility in design.

- ***Objective Development Standards:*** The referral asks that Berkeley introduce objective standards for open space and lot coverage to control the maximum size of ADUs. Size controls were requested to ensure lots with ADUs maintain space for emergency access and egress in the event of a disaster. Instead of using open space and lot coverage as metrics, **the proposed ADU Ordinance uses a limit in the number of bedrooms (as explained above) and the location of the lot in Fire Zones 2 and 3 to control ADU size.** The proposal to use the location of lots in State-designated fire-prone area as an objective standard is a simple and intuitive way to limit ADU size for public safety reasons. This eliminates the need to calculate open space and/or lot coverage for proposed projects and provides a direct connection between fire-safety concerns and infill development.
- ***Setbacks:*** The referral asks that Berkeley introduce objective standards to provide guidance on setbacks. State law explicitly states that side and rear setback requirements can be no more than 4 feet and is silent on front yard setbacks. **The proposed ADU Ordinance utilizes setbacks of the underlying zoning district as an objective standard.**
 - The proposed ADU Ordinance is more lenient than the State if the underlying zoning district has a rear or side setback of less than four feet, such as in some mixed-use districts, where comparable accessory buildings may have a reduced setback requirement.
 - Front yard setbacks are applied in the draft ordinance as they would be in the underlying zoning district. These standards will not limit the ability for a property owner to build an ADU; instead they require objective standards for placement of the ADU. If there is no other location suited to placement of the ADU, then the maximum ADU size will be limited to minimize the impacts to the front yard.
- ***ADUs on lots with Group Living Accommodations:*** **The draft Zoning Ordinance amendments allow one ADU on lots with GLAs.** The State is silent on whether or not ADU Law applies to GLAs. Over the past year, the Zoning Officer interpreted State ADU law to extend to GLAs (excluding Fraternity Houses, Sorority Houses or Dormitories) by allowing one ADU per lot with a GLA, similar to the regulations for multifamily properties. GLAs are a common residential use in Berkeley and this interpretation is consistent with the State's direction to encourage ADU development. ADUs on lots with GLAs must not be offered for rent as an extension of the GLA, but rented as an independent unit, per State ADU law.

In addition to the items listed above, the proposed amendments include modifications to the ADU and JADU definitions to comply with State law and maintain consistency with the BMC. BMC Chapter 23C.24 is re-written to reflect the requirements of Government

Code Section 65852.2 and 65852.22 in as clear and concise a manner as possible. The proposed ADU Ordinance has been developed with feedback from members of the public, the ADU Task Force, Berkeley Planning staff, and colleagues from other jurisdictions. If City Council adopts the new ADU Ordinance, Planning staff will publish updated documentation, such as FAQs, a flow chart and a table of regulations. These will explain in non-technical language the regulations in Berkeley’s local ADU Ordinance.

BACKGROUND

In the past six years, Berkeley’s ADU Ordinance has been modified multiple times to conform to State law and to facilitate the construction of ADUs. Prior to the latest revisions to the State’s ADU regulations, Planning Commission was considering other amendments to the local ADU Ordinance to facilitate the construction of ADUs. However, State law that came into effect on January 1, 2020 requires increased flexibility, has rescinded the AUP process for ADUs, and streamlined the ADU permitting process significantly. In addition, the number of building permits issued for ADUs in Berkeley has increased steadily over the past five years, as illustrated in Table 1. For these reasons, and because of the short-term nature of this referral, the focus of this referral response is narrow and the need for additional amendments will be assessed (and implemented) as part of the Housing Element update.

Table 1. City of Berkeley ADU Building Permits Issued, 2016-2020

Year	2016	2017	2018	2019	2020
#	16	74	80	96	119

ENVIRONMENTAL SUSTAINABILITY

ADUs are generally low impact infill development that have the potential to decrease vehicles miles traveled and greenhouse gas emissions and increase availability of housing near various community amenities, the university campus, transit services and employment opportunities.

RATIONALE FOR RECOMMENDATION

State ADU law restricts the City from utilizing discretionary processes that mitigate public safety concerns associated with infill development. Ordinance amendments reduce ADU footprints, which will increase the possibility of better ingress, egress and emergency access in the event of a disaster.

ALTERNATIVE ACTIONS CONSIDERED

Council could take no action and continue to utilize State ADU regulations, with no local modifications.

CONTACT PERSON

Alene Pearson, Principal Planner, Planning & Development Department, (510) 981-7489

Katrina Lapira, Assistant Planner, Planning & Development Department, (510) 981-7488

Attachments:

- 1: Ordinance
- 2: Table of State ADU Regulations
- 3: Map of Berkeley's Fire Zones
- 4: HCD's ADU Guidance Document
- 5: Council Referral from January 26, 2021
- 6: April 7, 2021 Planning Commission Meeting Final Minutes
- 7: Public Hearing Notice

ORDINANCE NO. -N.S.

ACCESSORY DWELLING UNIT ORDINANCE

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

Section 1. That Berkeley Municipal Code Chapter 23C.24 is amended to read as follows:

**Chapter 23C.24
Accessory Dwelling Units**

Sections:

[23C.24.010](#) Applicability of Regulations

[23C.24.020](#) Purposes

[23C.24.030](#) Permit Procedures

[23C.24.040](#) ~~Repealed by Ord. 7683-NS.~~

[23C.24.050](#) ~~Repealed by Ord. 7683-NS.~~

[23C.24.060](#) ~~Repealed by Ord. 7683-NS.~~

[23C.24.070](#) ~~Repealed by Ord. 7683-NS.~~

23C.24.010 Applicability of Regulations

~~The provisions of this Chapter apply to all lots that are zoned for residential use except 1) in the following zoning districts: Environmental Safety-Residential (ES-R), Manufacturing (M), Mixed Manufacturing (MM), Mixed Use-Light Industrial (MU-LI), and Unclassified (U); and 2) on a lot with frontage on a roadway with less than 26 feet in pavement width in the Hillside Overlay.~~

- A. ~~The provisions of this Chapter apply to all lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.~~
- B. ~~ADUs and JADUs are allowed on lots as follows:~~
- ~~1. One ADU and/or one JADU is allowed on a lot with one Single Family Dwelling.~~
 - ~~2. One ADU is allowed on a lot with multiple Single Family Dwellings.~~
 - ~~3. For lots with a Duplex or Multiple Dwelling Uses, one of the following is allowed:~~
 - ~~a. Up to two detached ADUs; or~~
 - ~~b. At least one ADU created from non-habitable portions of the existing dwelling structure (e.g. basement, attic, storage room). The maximum number of ADUs created from non-habitable portions of the existing dwelling structure shall not exceed 25% of the number of existing Dwelling Units on the lot.~~
 - ~~4. One ADU is allowed on a lot with a Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.~~

23C.24.020 Purposes

The purposes of this Chapter are to:

- A. Implement California Government Code Section [65852.2](#) and [65852.22](#).
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of Accessory Dwelling Units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of Accessory Dwelling Units in zoning districts with compatible land uses and infrastructure.
- F. Reduce potential impacts of new development in high fire hazard severity areas.

23C.24.030 Permit Procedures

~~Zoning Certificates will be issued for Accessory Dwelling Units and Junior Accessory Dwelling Units per California Government Code Section [65852.2](#) and [65852.22](#).~~

- A. An application for an ADU or JADU is subject to ministerial review. Review must be completed within 60 days of submission of a complete application.
- B. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a building permit shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.

23C.24.040 Special Provisions Development Standards

~~Repealed by Ord. 7683-NS.~~

- A. Development Standards in Paragraphs B through G, below, apply as follows:
 1. Detached New Construction. A detached, new construction ADU is subject to Development Standards for ADUs. A detached, new construction ADU is defined as having a 3-foot separation from a Main Building per Section [23E.04.030](#).
 2. Converted or Rebuilt Entirely from an Existing Building or Structure. An ADU converted or rebuilt entirely from an existing building or structure, in the same location with the same dimensions and roof height, is not subject to Development Standards for ADUs. These include:
 - a. An ADU created entirely within an existing Single Family Dwelling.
 - b. An ADU created entirely within the existing non-habitable space of a Duplex or Multiple Dwelling Use.
 - c. An ADU created entirely within an existing detached Accessory Building or Accessory Structure.
 - d. An ADU created entirely within an existing Accessory Building or

Accessory Structure that is demolished and rebuilt.

3. Addition to an Existing or Rebuilt Building or Structure. An ADU, fully or partially created by an addition of square footage to or changes in roof height is subject to Development Standards for ADUs. Paragraph B applies to the ADU's maximum size and Paragraphs C through G apply to the added square footage and roof design. These include:
 - a. An ADU created by an addition or roof change to an existing Single Family Dwelling.
 - b. An ADU created by an addition or roof change to an existing detached Accessory Building or Accessory Structure.
 - c. And ADU created by an addition or roof change to an existing Accessory Building or Accessory Structure that is demolished and rebuilt.
4. Notwithstanding any other provision of this Chapter, no ADU is permitted to be built in the Hillside Overlay or Environmental Safety Residential (ES-R) districts unless it complies with the requirements of Government Code section 65852.2(e)(1).
5. A JADU is subject to applicable Development Standards in Paragraphs B and G.

B. Maximum Size

1. A detached, new construction ADU or an ADU fully or partially created by addition to an existing or proposed Single Family Dwelling is subject to the following maximum size limits:
 - a. 850 square feet for a studio or one-bedroom ADU.
 - b. 1000 square feet for an ADU with two or more bedrooms.
2. An ADU created from an existing Accessory Building or Accessory Structure that does not conform to the Development Standards in Paragraphs C and D may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing building or structure. Additions shall conform with the Development Standards in this Chapter
3. An ADU created from an existing Accessory Building or Accessory Structure that conforms to the Development Standards in Paragraphs C and D must comply with one of the following:
 - a. May include an expansion of not more than 150 square feet beyond the same physical dimensions of the existing building or structure; or
 - b. 850 square feet for a studio or one-bedroom ADU; or
 - c. 1000 square feet for an ADU with two or more bedrooms.
4. The maximum size of a JADU is 500 square feet.

C. Maximum Height is applied to ADUs as follows. See Chapter 23F.04 for definition.

1. Maximum Height of a detached, new construction ADU is 18 feet.
2. Maximum Height of new square footage added to a Single Family Dwelling, Accessory Building or Accessory Structure to create an ADU is 18 feet.

- D. Rear and Side Setbacks. The required rear and side setbacks for a detached, new construction ADU or addition to an existing building or structure are 4 feet, unless a lesser setback is allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district.
- E. Front Yard Setback. The required front yard setback is the same as is established in the underlying zoning district.
- F. Projections. Architectural features (Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment, Eaves, Cornices, Canopies, Awnings and Bay Window) may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines.
- G. Parking
 - 1. Off-street parking is not required.
 - 2. Replacement parking is not required, but is allowed if in compliance with Chapter 23D.12 and/or Chapter 23E.28.
- H. Nothing in this Chapter shall preclude the issuance of Zoning Certificate for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code section 65852.2(e)(1). The City shall not apply the Development Standards in this Chapter to the extent they are inconsistent with the requirements of Government Code sections 65852.2 and 65852.22.
- I. A Zoning Certificate for the construction of an ADU or JADU may not be denied based on the failure of the applicant to correct a nonconforming zoning condition.

23C.24.050 Development Standards Special Provisions

~~*Repealed by Ord. 7683-NS.*~~

- A. A rooftop deck may be established provided that the entire roof, deck and railing comply with Development Standards for ADUs in Section 23C.24.040 Paragraphs C through G.
- B. A JADU must be owner-occupied. For purposes of this paragraph, "owner-occupied" means that a person with legal title to the property must reside in either the Single Family Dwelling or the JADU as their legal permanent residence.
- C. The property owner shall file a deed restriction with the County Recorder providing that:
 - 1. The ADU and/or JADU shall not be sold separately from the Dwelling Unit.
 - 2. The ADU and/or JADU shall not be rented for a term that is shorter than 30 days.

3. The JADU or the Single Family Dwelling in which the JADU is located shall be owner-occupied per the definition in Section 23F.04.010

~~**23C.24.060 Modification of Development Standards with an Administrative Use Permit**~~

~~Repealed by Ord. 7683-NS.~~

~~**23C.24.070 Findings**~~

~~Repealed by Ord. 7683-NS.~~

Section 2. That the definition for Accessory Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is amended to read as follows:

Accessory Dwelling Unit (ADU): A secondary Dwelling Unit that is located on a lot ~~with a proposed or existing Single Family Dwelling, Duplex, Multiple Dwelling Use, or Group Living Accommodation, which is occupied by one legally established Single Family Dwelling that conforms to the standards of Section 23C.24.~~ An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements ~~unless the City is prohibited from applying such requirements by Government Code Section 65852.2 or 65852.22~~ and provide the following features independent of the Single Family Dwelling, ~~Duplex, Multiple Dwelling Use, or Group Living Accommodation~~: 1) exterior ~~or independent~~ access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes the following:

- A. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
- B. A manufactured home, as defined in Section 18007 of the Health and Safety Code.

Section 3. That the definition for Primary Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is rescinded:

~~**Primary Dwelling Unit:** A legally established Single Family Dwelling that is on a lot with an Accessory Dwelling Unit.~~

Section 4. That the following two definitions are adopted into Berkeley Municipal Code Chapter 23F.04.010:

~~**Efficiency Kitchen:** A kitchen that includes a sink, a cooking facility with appliances (e.g. microwave, toaster, oven, hot plate), and food preparation counter space and cabinets.~~

~~**Junior Accessory Dwelling Unit (JADU):** A unit that is contained within the walls of a Single Family Dwelling and includes a separate exterior entrance. A JADU may not be located in an Accessory Building or an Accessory Structure. A JADU may include separate sanitation facilities, or may share sanitary facilities with a Single Family Dwelling. At a minimum, a JADU shall include an Efficiency Kitchen with a working refrigerator.~~

Section 5. 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.









ACCESSORY DWELLING UNIT ORDINANCE SUMMARY

Effective December 20, 2020

Processing + Land Use Development Standards

Ministerial land use approval for ADUs will be issued within **60-days** of receiving a **complete** building permit application.

	JADU ¹	ADU on LOT WITH SINGLE FAMILY DWELLING(S)			ADU on LOT WITH MULTI-FAMILY DWELLING(S)	
ADU Type	 Conversion JADU² <i>[interior conversion of some portion of a single-family dwelling]</i>	 Conversion ADU^{2&3} <i>[interior conversion of existing habitable or non-habitable area within a single-family dwelling, or conversion of a legally built detached accessory structure or accessory building]</i>	 Detached ADUs <i>[new construction]</i>	 Attached ADU <i>[addition/new construction]</i>	 Conversion ADU² <i>[interior conversion of existing non-habitable area of multifamily structures]</i>	 Detached ADUs <i>[new construction]</i>
Lot	A JADU may be established on a lot with one single family dwelling.	An ADU may be established on a lot that has an existing or proposed single-family or multi-family dwelling.				
Number of Accessory Units	1 ⁴	1 ⁵			Interior Conversion ADU: At least one and no more than 25% of the existing unit count in multifamily building. ⁶ OR Detached ADU: 2	
Maximum Size (Square Feet²)	500	N/A	1,200	1,200	N/A	1,200
Maximum Height (Feet)	N/A	N/A	16		N/A	16
Side Setbacks (Feet)	N/A	N/A	4		N/A	4
Rear Setbacks (Feet)	N/A	N/A	4		N/A	4
Entrance(s)	Exterior entrance required.	Exterior entrance required.			Independent entrance required. ⁷	
Kitchen	Efficiency kitchen required. ⁸	Full kitchen required. ⁹				
Parking Requirements	JADUs created in the attached garage are not subject to the same parking protections as ADUs.	No parking required for ADUs. Replacement parking for existing dwelling unit(s) not required when a garage, carport, covered parking structure, or designated uncovered parking area is physically replaced by an accessory dwelling unit.				
Deed Restrictions	The owner of the property must record a deed restriction to include the requirements listed in Government Sections 65852.2 and 658582.22.	The owner of the property must record a deed restriction with Alameda County that restricts the sale of the ADU from the existing dwelling unit(s) and prohibits Short Term Rentals.				
Owner Occupancy	Required for either single-family dwelling or JADU.	Not required for ADUs permitted between January 1, 2020 and January 1, 2025.				
Natural Gas Prohibition	Does not Apply	May Apply ¹⁰	Applies	Does not Apply	Does not Apply	Applies
Short Term Rentals	Prohibited					
Impact Fees	None	ADUs Less than 750 SF- None ADUs Equal to or Greater than 750 SF- Impact fees collected must be proportional to square footage of existing dwelling unit(s).				
Utility Fees and Connections	No connection fee or capacity charge and no direct line required between ADU or JADU and utility unless in conjunction with a new single-family dwelling.	Connection fee or capacity charge "proportionate to the burden" of the ADU and may require new or separate utility connections.				

¹ A Junior ADU (JADU) is a small dwelling unit created from some portion of a single family dwelling. These units can have their own bathroom facilities or share with the single family dwelling.

² Conversions do not allow modifications to building footprint/ dimensions of legally built structures or buildings, except where sufficient egress and ingress requires modifications -- in which case, an expansion of up to 150 square feet is allowed for ADUs on lots with single family dwellings.

³ A Conversion ADU is permitted in an existing accessory structure on both single/multi-family lot.

⁴ Lots with multiple detached single-family dwellings may only have one ADU.

⁵ Both a JADU and an ADU may exist on a lot zoned with one single-family dwelling.

⁶ When calculating, round up to the nearest integer.

⁷ Exterior entrance not required, but independent entrance (e.g. off hallway, stairwell or other common space) is required.

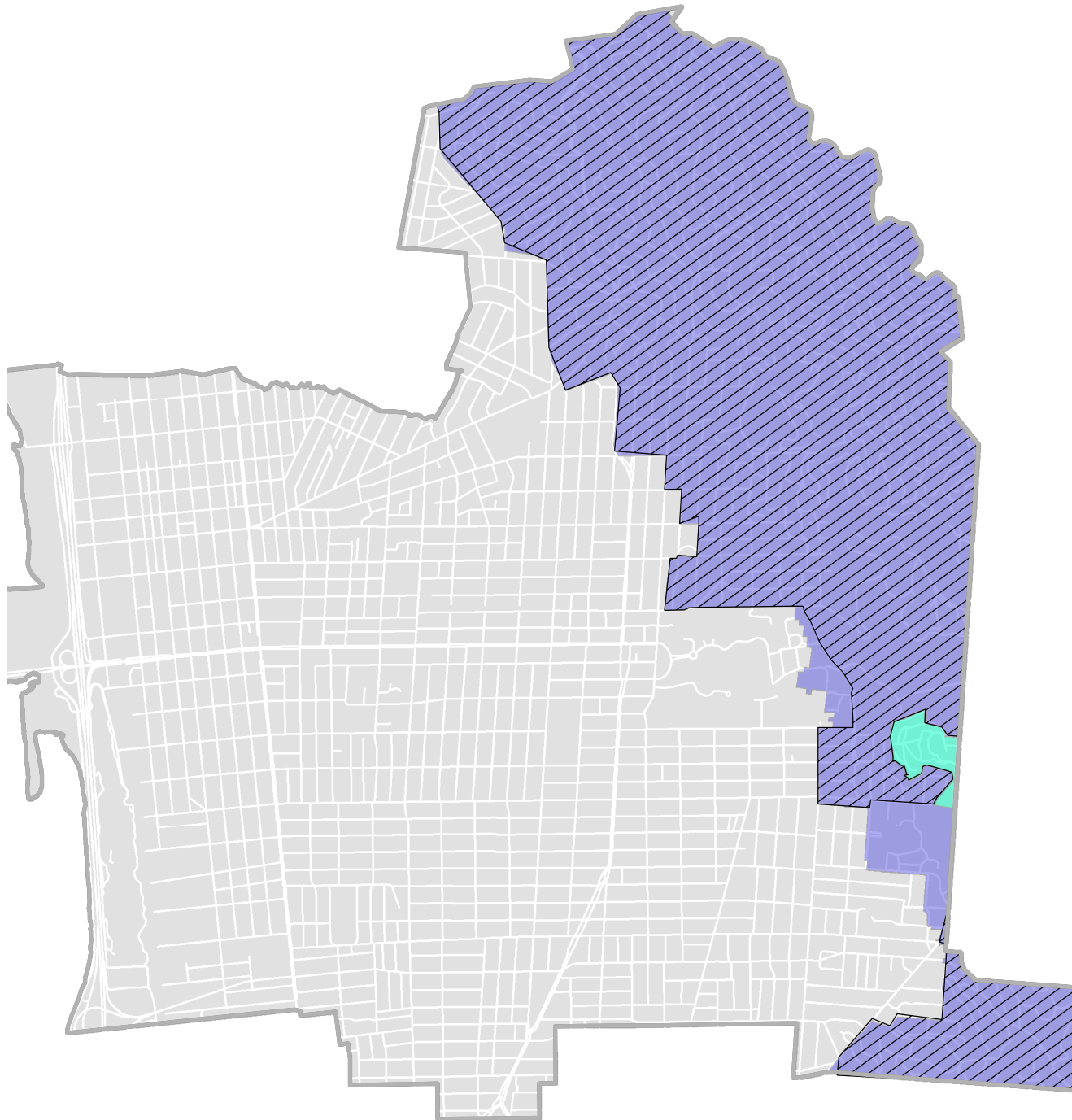
⁸ An efficiency kitchen includes 1) a sink; 2) a cooking facility with appliances; and 3) food preparation counter and storage cabinets.

⁹ A full kitchen requires habitable space used for preparation of food that contains at least a sink, a refrigerator of no less than 10 cubic feet, and either a cooktop and an oven, or a range.




¹⁰ Conversions of detached Accessory Buildings or Accessory Structures that involve Demolition are subject to the Natural Gas Prohibition.

N/A = not applicable SF = square feet

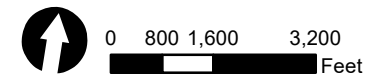
Hillside Overlay and Fire Zones 2 and 3




Legend

-  Hillside Overlay
-  Berkeley Fire Zone 2
-  Berkeley Fire Zone 3

Updated:
November 14, 2019



 **CITY OF BERKELEY**
Land Use Planning Division
Dep.t of Planning & Development
2120 Milvia Street, 2nd Floor
Berkeley, CA 94704



California Department of Housing and
Community Development

Accessory Dwelling Unit Handbook



Where foundations begin

Updated December 2020



California Department of Housing and
Community Development

Accessory Dwelling Unit Handbook

December 2020



Where foundations begin

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Understanding Accessory Dwelling Units (ADUs) and Their Importance



California's housing production is not keeping pace with demand. In the last decade, less than half of the homes needed to keep up with the population growth were built. Additionally, new homes are often constructed away from job-rich areas. This lack of housing that meets people's needs is impacting affordability and causing average housing costs, particularly for renters in California, to rise significantly. As affordable housing becomes less accessible, people drive longer distances between housing they can afford and their workplace or pack themselves into smaller shared spaces, both of which reduce quality of life and produce negative environmental impacts.

Beyond traditional construction, widening the range of housing types can increase the housing supply and help more low-income Californians thrive. Examples of some of these housing types are Accessory Dwelling Units (ADUs - also referred to as second units, in-law units, casitas, or granny flats) and Junior Accessory Dwelling Units (JADUs).

What is an ADU?

An ADU is an accessory dwelling unit with complete independent living facilities for one or more persons and has a few variations:

- Detached: The unit is separated from the primary structure.
- Attached: The unit is attached to the primary structure.
- Converted Existing Space: Space (e.g., master bedroom, attached garage, storage area, or similar use, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit.
- Junior Accessory Dwelling Unit (JADU): A specific type of conversion of existing space that is contained entirely within an existing or proposed single-family residence.

ADUs tend to be significantly less expensive to build and offer benefits that address common development barriers such as affordability and environmental quality. Because ADUs must be built on lots with existing or proposed housing, they do not require paying for new land, dedicated parking or other costly infrastructure required to build a new single-family home. Because they are contained inside existing single-family homes, JADUs require relatively

modest renovations and are much more affordable to complete. ADUs are often built with cost-effective one or two-story wood frames, which are also cheaper than other new homes. Additionally, prefabricated ADUs can be directly purchased and save much of the time and money that comes with new construction. ADUs can provide as much living space as apartments and condominiums and work well for couples, small families, friends, young people, and seniors.

Much of California's housing crisis comes from job-rich, high-opportunity areas where the total housing stock is insufficient to meet demand and exclusionary practices have limited housing choice and inclusion. Professionals and students often prefer living closer to jobs and amenities rather than spending hours commuting. Parents often want better access to schools and do not necessarily require single-family homes to meet their needs. There is a shortage of affordable units, and the units that are available can be out of reach for many people. To address our state's needs, homeowners can construct an ADU on their lot or convert an underutilized part of their home into a JADU. This flexibility benefits both renters and homeowners who can receive extra monthly rent income.

ADUs also give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place as they require more care, thus helping extended families stay together while maintaining privacy. The space can be used for a variety of reasons, including adult children who can pay off debt and save up for living on their own.

New policies are making ADUs even more affordable to build, in part by limiting the development impact fees and relaxing zoning requirements. A 2019 study from the Turner Center on Housing Innovation noted that one unit of affordable housing in the Bay Area costs about \$450,000. ADUs and JADUs can often be built at a fraction of that price and homeowners may use their existing lot to create additional housing, without being required to provide additional infrastructure. Often the rent generated from the ADU can pay for the entire project in a matter of years.

ADUs and JADUs are a flexible form of housing that can help Californians more easily access job-rich, high-opportunity areas. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education, and services for many Californians.

Summary of Recent Changes to Accessory Dwelling Unit Laws



In Government Code Section 65852.150, the California Legislature found and declared that, among other things, allowing accessory dwelling units (ADUs) in zones that allow single-family and multifamily uses provides additional rental housing, and is an essential component in addressing California's housing needs. Over the years, ADU law has been revised to improve its effectiveness at creating more housing units. Changes to ADU laws effective January 1, 2021, further reduce barriers, better streamline approval processes, and expand capacity to accommodate the development of ADUs and junior accessory dwelling units (JADUs).

ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing

options for family members, friends, students, the elderly, in-home health care providers, people with disabilities, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Within this context, the California Department of Housing and Community Development (HCD) has prepared this guidance to assist local governments, homeowners, architects, and the general public in encouraging the development of ADUs. The following is a summary of recent legislation that amended ADU law: AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019). Please see Attachment 1 for the complete statutory changes for AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019).

AB 3182 (Ting)

Chapter 198, Statutes of 2020 (Assembly Bill 3182) builds upon recent changes to ADU law (Gov. Code, § 65852.2 and Civil Code Sections 4740 and 4741) to further address barriers to the development and use of ADUs and JADUs.

This recent legislation, among other changes, addresses the following:

- States that an application for the creation of an ADU or JADU shall be *deemed approved* (not just subject to ministerial approval) if the local agency has not acted on the completed application within 60 days.
- Requires ministerial approval of an application for a building permit within a residential or mixed-use zone to create one ADU *and* one JADU per lot (not one or the other), within the proposed or existing single-family dwelling, if certain conditions are met.
- Provides for the rental or leasing of a separate interest ADU or JADU in a common interest development, notwithstanding governing documents that otherwise appear to prohibit renting or leasing of a unit, *and* without regard to the date of the governing documents.

- Provides for not less than 25 percent of the separate interest units within a common interest development be allowed as rental or leasable units.

AB 68 (Ting), AB 881 (Bloom), and SB 13 (Wieckowski)

Chapter 653, Statutes of 2019 (Senate Bill 13, Section 3), Chapter 655, Statutes of 2019 (Assembly Bill 68, Section 2) and Chapter 659 (Assembly Bill 881, Section 1.5 and 2.5) build upon recent changes to ADU and JADU law (Gov. Code § 65852.2, 65852.22) and further address barriers to the development of ADUs and JADUs.

This legislation, among other changes, addresses the following:

- Prohibits local agencies from including in development standards for ADUs requirements on minimum lot size (Gov. Code, § 65852.2, subd. (a)(1)(B)(i)).
- Clarifies areas designated by local agencies for ADUs may be based on the adequacy of water and sewer services as well as impacts on traffic flow and public safety (Gov. Code, § 65852.2, subd. (a)(1)(A)).
- Eliminates all owner-occupancy requirements by local agencies for ADUs approved between January 1, 2020, and January 1, 2025 (Gov. Code, § 65852.2, subd. (a)(6)).
- Prohibits a local agency from establishing a maximum size of an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom and requires approval of a permit to build an ADU of up to 800 square feet (Gov. Code, § 65852.2, subds. (c)(2)(B) & (C)).
- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement of offstreet parking spaces cannot be required by the local agency (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi)).
- Reduces the maximum ADU and JADU application review time from 120 days to 60 days (Gov. Code, § 65852.2, subd. (a)(3) and (b)).
- Clarifies that “public transit” includes various means of transportation that charge set fees, run on fixed routes and are available to the public (Gov. Code, § 65852.2, subd. (j)(10)).
- Establishes impact fee exemptions and limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees (Gov. Code § 65852.2, subd. (f)(3)); ADUs that are 750 square feet or larger may be charged impact fees but only such fees that are proportional in size (by square foot) to those for the primary dwelling unit (Gov. Code, § 65852.2, subd. (f)(3)).
- Defines an “accessory structure” to mean a structure that is accessory or incidental to a dwelling on the same lot as the ADU (Gov. Code, § 65852.2, subd. (j)(2)).
- Authorizes HCD to notify the local agency if HCD finds that their ADU ordinance is not in compliance with state law (Gov. Code, § 65852.2, subd. (h)(2)).
- Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy Regional Housing Needs Allocation (RHNA) housing needs (Gov. Code, §§ 65583.1, subd. (a), and 65852.2, subd. (m)).
- Permits JADUs even where a local agency has not adopted an ordinance expressly authorizing them (Gov. Code, § 65852.2, subds. (a)(3), (b), and (e)).

- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom or an interior entry into the single-family residence (Gov. Code § 65852.22, subd. (a)(4); former Gov. Code § 65852.22, subd. (a)(5)).
- Requires, upon application and approval, a local agency to delay enforcement against a qualifying substandard ADU for five (5) years to allow the owner to correct the violation, so long as the violation is not a health and safety issue, as determined by the enforcement agency (Gov. Code, § 65852.2, subd. (n); Health & Safety Code, § 17980.12).

AB 587 (Friedman), AB 670 (Friedman), and AB 671 (Friedman)

In addition to the legislation listed above, AB 587 (Chapter 657, Statutes of 2019), AB 670 (Chapter 178, Statutes of 2019), and AB 671 (Chapter 658, Statutes of 2019) also have an impact on state ADU law, particularly through Health and Safety Code Section 17980.12. These pieces of legislation, among other changes, address the following:

- AB 587 creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separately from the primary dwelling by allowing deed-restricted sales to occur if the local agency adopts an ordinance. To qualify, the primary dwelling and the ADU are to be built by a qualified nonprofit corporation whose mission is to provide units to low-income households (Gov. Code, § 65852.26).
- AB 670 provides that covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable (Civ. Code, § 4751).
- AB 671 requires local agencies' housing elements to include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs (Gov. Code, § 65583; Health & Safety Code, § 50504.5).

Frequently Asked Questions: Accessory Dwelling Units¹

1. Legislative Intent

a. Should a local ordinance encourage the development of accessory dwelling units?

Yes. Pursuant to Government Code Section 65852.150, the California Legislature found and declared that, among other things, California is facing a severe housing crisis and ADUs are a valuable form of housing that meets the needs of family members, students, the elderly, in-home health care providers, people with disabilities and others. Therefore, ADUs are an essential component of California's housing supply.

ADU law and recent changes intend to address barriers, streamline approval,

Government Code 65852.150:

(a) *The Legislature finds and declares all of the following:*

(1) *Accessory dwelling units are a valuable form of housing in California.*

(2) *Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.*

(3) *Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.*

(4) *Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.*

(5) *California faces a severe housing crisis.*

(6) *The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.*

(7) *Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.*

(8) *Accessory dwelling units are, therefore, an essential component of California's housing supply.*

(b) *It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.*

¹ Note: Unless otherwise noted, the Government Code section referenced is 65852.2.

and expand potential capacity for ADUs, recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment, and implementation of local ADU ordinances must be carried out consistent with Government Code, Section 65852.150 and must not unduly constrain the creation of ADUs. Local governments adopting ADU ordinances should carefully weigh the adoption of zoning, development standards, and other provisions for impacts on the development of ADUs.

In addition, ADU law is the statutory minimum requirement. Local governments may elect to go beyond this statutory minimum and further the creation of ADUs. Many local governments have embraced the importance of ADUs as an important part of their overall housing policies and have pursued innovative strategies. (Gov. Code, § 65852.2, subd. (g)).

2. Zoning, Development and Other Standards

A) Zoning and Development Standards

- **Are ADUs allowed jurisdiction wide?**

No. ADUs proposed pursuant to subdivision (e) must be considered in any residential or mixed-use zone. For other ADUs, local governments may, by ordinance, designate areas in zones where residential uses are permitted that will also permit ADUs. However, any limits on where ADUs are permitted may only be based on the adequacy of water and sewer service, and the impacts on traffic flow and public safety. Further, local governments may not preclude the creation of ADUs altogether, and any limitation should be accompanied by detailed findings of fact explaining why ADU limitations are required and consistent with these factors.

Examples of public safety include severe fire hazard areas and inadequate water and sewer service and includes cease and desist orders. Impacts on traffic flow should consider factors like lesser car ownership rates for ADUs and the potential for ADUs to be proposed pursuant to Government Code section 65852.2, subdivision (e). Finally, local governments may develop alternative procedures, standards, or special conditions with mitigations for allowing ADUs in areas with potential health and safety concerns. (Gov. Code, § 65852.2, subd. (e))

Residential or mixed-use zone should be construed broadly to mean any zone where residential uses are permitted by-right or by conditional use.

- **Can a local government apply design and development standards?**

Yes. A local government may apply development and design standards that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards shall be sufficiently objective to allow ministerial review of an ADU. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i))

ADUs created under subdivision (e) of Government Code 65852.2 shall not be subject to design and development standards except for those that are noted in the subdivision.

What does objective mean?

“objective zoning standards” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Gov Code § 65913.4, subd. (a)(5)

ADUs that do not meet objective and ministerial development and design standards may still be permitted through an ancillary discretionary process if the applicant chooses to do so. Some jurisdictions with compliant ADU ordinances apply additional processes to further the creation of ADUs that do not otherwise comply with the minimum standards necessary for ministerial review. Importantly, these processes are intended to provide additional opportunities to create ADUs that would not otherwise be permitted, and a discretionary process may not be used to review ADUs that are fully compliant with ADU law. Examples of these processes include areas where additional health and safety concerns must be considered, such as fire risk.

- **Can ADUs exceed general plan and zoning densities?**

Yes. An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning that does not count toward the allowable density. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Further, local governments could elect to allow more than one ADU on a lot, and ADUs are automatically a residential use deemed consistent with the general plan and zoning. (Gov. Code, § 65852.2, subd. (a)(1)(C).)

- **Are ADUs permitted ministerially?**

Yes. ADUs must be considered, approved, and permitted ministerially, without discretionary action. Development and other decision-making standards must be sufficiently objective to allow for ministerial review. Examples include numeric and fixed standards such as heights or setbacks, or design standards such as colors or materials. Subjective standards require judgement and can be interpreted in multiple ways such as privacy, compatibility with neighboring properties or promoting harmony and balance in the community; subjective standards shall not be imposed for ADU development. Further, ADUs must not be subject to a hearing or any ordinance regulating the issuance of variances or special use permits and must be considered ministerially. (Gov. Code, § 65852.2, subd. (a)(3).)

- **Can I create an ADU if I have multiple detached dwellings on a lot?**

Yes. A lot where there are currently multiple detached single-family dwellings is eligible for creation of one ADU per lot by converting space within the proposed or existing space of a single-family dwelling or existing structure or a new construction detached ADU subject to certain development standards.

- **Can I build an ADU in a historic district, or if the primary residence is subject to historic preservation?**

Yes. ADUs are allowed within a historic district, and on lots where the primary residence is subject to historic preservation. State ADU law allows for a local agency to impose standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards do not apply to ADUs proposed pursuant to Government Code section 65852.2, subdivision (e).

As with non-historic resources, a jurisdiction may impose objective and ministerial standards that are sufficiently objective to be reviewed ministerially and do not unduly burden the creation of ADUs. Jurisdictions are encouraged to incorporate these standards into their ordinance and submit these standards along with their ordinance to HCD. (Gov. Code, § 65852.2, subs. (a)(1)(B)(i) & (a)(5).)

B) Size Requirements

- **Is there a minimum lot size requirement?**

No. While local governments may impose standards on ADUs, these standards shall not include minimum lot size requirements. Further, lot coverage requirements cannot preclude the creation of a statewide exemption ADU (800 square feet ADU with a height limitation of 16 feet and 4 feet side and rear yard setbacks). If lot coverage requirements do not allow such an ADU, an automatic exception or waiver should be given to appropriate development standards such as lot coverage, floor area or open space requirements. Local governments may continue to enforce building and health and safety standards and may consider design, landscape, and other standards to facilitate compatibility.

What is a statewide exemption ADU?

A statewide exemption ADU is an ADU of up to 800 square feet, 16 feet in height, as potentially limited by a local agency, and with 4 feet side and rear yard setbacks. ADU law requires that no lot coverage, floor area ratio, open space, or minimum lot size will preclude the construction of a statewide exemption ADU. Further, ADU law allows the construction of a detached new construction statewide exemption ADU to be combined on the same lot with a JADU in a single-family residential zone. In addition, ADUs are allowed in any residential or mixed uses regardless of zoning and development standards imposed in an ordinance. See more discussion below.

- **Can minimum and maximum unit sizes be established for ADUs?**

Yes. A local government may, by ordinance, establish minimum and maximum unit size requirements for both attached and detached ADUs. However, maximum unit size requirements must be at least 850 square feet and 1,000 square feet for ADUs with more than one bedroom. For local agencies without an ordinance, maximum unit sizes are 1,200 square feet for a new detached ADU and up to 50 percent of the floor area of the existing primary dwelling for an attached ADU (at least 800 square feet). Finally, the local agency must not establish by ordinance a minimum square footage requirement that prohibits an efficiency unit, as defined in Health and Safety Code section 17958.1.

The conversion of an existing accessory structure or a portion of the existing primary residence to an ADU is not subject to size requirements. For example, an existing 3,000 square foot barn converted to an ADU would not be subject to the size requirements, regardless if a local government has an adopted ordinance. Should an applicant want to expand an accessory structure to create an ADU beyond 150 square feet, this ADU would be subject to the size maximums outlined in state ADU law, or the local agency's adopted ordinance.

- **Can a percentage of the primary dwelling be used for a maximum unit size?**

Yes. Local agencies may utilize a percentage (e.g., 50 percent) of the primary dwelling as a maximum unit size for attached or detached ADUs but only if it does not restrict an ADU's size to less than the standard of at least 850 square feet (or at least 1000 square feet for ADUs with more than one bedroom). Local agencies must not, by ordinance, establish any other minimum or maximum unit sizes, including based on

a percentage of the primary dwelling, that precludes a statewide exemption ADU. Local agencies utilizing percentages of the primary dwelling as maximum unit sizes could consider multi-pronged standards to help navigate these requirements (e.g., shall not exceed 50 percent of the dwelling or 1,000 square feet, whichever is greater).

- **Can maximum unit sizes exceed 1,200 square feet for ADUs?**

Yes. Maximum unit sizes, by ordinance, can exceed 1,200 square feet for ADUs. ADU law does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs (Gov. Code, § 65852.2, subd. (g)).

Larger unit sizes can be appropriate in a rural context or jurisdictions with larger lot sizes and is an important approach to creating a full spectrum of ADU housing choices.

C) Parking Requirements

- **Can parking requirements exceed one space per unit or bedroom?**

No. Parking requirements for ADUs shall not exceed one parking space per unit or bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. Guest parking spaces shall not be required for ADUs under any circumstances.

What is Tandem Parking?

Tandem parking means two or more automobiles that are parked on a driveway or in any other location on a lot, lined up behind one another. (Gov. Code, § 65852.2, subs. (a)(1)(D)(x)(l) and (j)(11).)

Local agencies may choose to eliminate or reduce parking requirements for ADUs such as requiring zero or half a parking space per each ADU.

- **Is flexibility for siting parking required?**

Yes. Local agencies should consider flexibility when siting parking for ADUs. Offstreet parking spaces for the ADU shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made. Specific findings must be based on specific site or regional topographical or fire and life safety conditions.

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU, or converted to an ADU, the local agency shall not require that those offstreet parking spaces for the primary unit be replaced. (Gov. Code, § 65852.2, subd. (a)(D)(xi).)

- **Can ADUs be exempt from parking?**

Yes. A local agency shall not impose ADU parking standards for any of the following, pursuant to Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10).

(1) Accessory dwelling unit is located within one-half mile walking distance of public transit.

- (2) Accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) Accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

Note: For the purposes of state ADU law, a jurisdiction may use the designated areas where a car share vehicle may be accessed. Public transit is any location where an individual may access buses, trains, subways and other forms of transportation that charge set fares, run on fixed routes and are available to the general public. Walking distance is defined as the pedestrian shed to reach public transit. Additional parking requirements to avoid impacts to public access may be required in the coastal zone.

D) Setbacks

- **Can setbacks be required for ADUs?**

Yes. A local agency may impose development standards, such as setbacks, for the creation of ADUs. Setbacks may include front, corner, street, and alley setbacks. Additional setback requirements may be required in the coastal zone if required by a local coastal program. Setbacks may also account for utility easements or recorded setbacks. However, setbacks must not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to subdivision (e). Further, a setback of no more than four feet from the side and rear lot lines shall be required for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).)

A local agency may also allow the expansion of a detached structure being converted into an ADU when the existing structure does not have four-foot rear and side setbacks. A local agency may also allow the expansion area of a detached structure being converted into an ADU to have no setbacks, or setbacks of less than four feet, if the existing structure has no setbacks, or has setbacks of less than four feet. A local agency shall not require setbacks of more than four feet for the expanded area of a detached structure being converted into an ADU.

A local agency may still apply front yard setbacks for ADUs, but front yard setbacks cannot preclude a statewide exemption ADU and must not unduly constrain the creation of all types of ADUs. (Gov. Code, § 65852.2, subd. (c).)

E) Height Requirements

- **Is there a limit on the height of an ADU or number of stories?**

Not in state ADU law, but local agencies may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).)

F) Bedrooms

- **Is there a limit on the number of bedrooms?**

State ADU law does not allow for the limitation on the number of bedrooms of an ADU. A limit on the number of bedrooms could be construed as a discriminatory practice towards protected classes, such as familial status, and would be considered a constraint on the development of ADUs.

G) Impact Fees

- **Can impact fees be charged for an ADU less than 750 square feet?**

No. An ADU is exempt from incurring impact fees from local agencies, special districts, and water corporations if less than 750 square feet. Should an ADU be 750 square feet or larger, impact fees shall be charged proportionately in relation to the square footage of the ADU to the square footage of the primary dwelling unit.

What is “Proportionately”?

“Proportionately” is some amount that corresponds to a total amount, in this case, an impact fee for a single-family dwelling. For example, a 2,000 square foot primary dwelling with a proposed 1,000 square foot ADU could result in 50 percent of the impact fee that would be charged for a new primary dwelling on the same site. In all cases, the impact fee for the ADU must be less than the primary dwelling. Otherwise, the fee is not calculated proportionately. When utilizing proportions, careful consideration should be given to the impacts on costs, feasibility, and ultimately, the creation of ADUs. In the case of the example above, anything greater than 50 percent of the primary dwelling could be considered a constraint on the development of ADUs.

For purposes of calculating the fees for an ADU on a lot with a multifamily dwelling, the proportionality shall be based on the average square footage of the units within that multifamily dwelling structure. For ADUs converting existing space with a 150 square foot expansion, a total ADU square footage over 750 square feet could trigger the proportionate fee requirement. (Gov. Code, § 65852.2, subd. (f)(3)(A).)

- **Can local agencies, special districts or water corporations waive impact fees?**

Yes. Agencies can waive impact and any other fees for ADUs. Also, local agencies may also use fee deferrals for applicants.

- **Can school districts charge impact fees?**

Yes. School districts are authorized but do not have to levy impact fees for ADUs greater than 500 square feet pursuant to Section 17620 of the Education Code. ADUs less than 500 square feet are not subject to school impact fees. Local agencies are encouraged to coordinate with school districts to carefully weigh the importance of promoting ADUs, ensuring appropriate nexus studies and appropriate fees to facilitate construction or reconstruction of adequate school facilities.

- **What types of fees are considered impact fees?**

Impact fees charged for the construction of ADUs must be determined in accordance with the Mitigation Fee Act and generally include any monetary exaction that is charged by a local agency in connection with the approval of an ADU, including impact fees, for the purpose of defraying all or a portion of the cost of public facilities relating to the ADU. A local agency, special district or water corporation shall not consider ADUs as a new residential use for the purposes of calculating connection fees or capacity charges for

utilities, including water and sewer services. However, these provisions do not apply to ADUs that are constructed concurrently with a new single-family home. (Gov. Code, §§ 65852.2, subd. (f), and 66000)

- **Can I still be charged water and sewer connection fees?**

ADUs converted from existing space and JADUs shall not be considered by a local agency, special district or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, unless constructed with a new single-family dwelling. The connection fee or capacity charge shall be proportionate to the burden of the proposed ADU, based on its square footage or plumbing fixtures as compared to the primary dwelling. State ADU law does not cover monthly charge fees. (Gov. Code, § 65852.2, subd. (f)(2)(A).)

H) Conversion of Existing Space in Single Family, Accessory and Multifamily Structures and Other Statewide Permissible ADUs (Subdivision (e))

- **Are local agencies required to comply with subdivision (e)?**

Yes. All local agencies must comply with subdivision (e). This subdivision requires the ministerial approval of ADUs within a residential or mixed-use zone. The subdivision creates four categories of ADUs that should not be subject to other specified areas of ADU law, most notably zoning and development standards. For example, ADUs under this subdivision should not have to comply with lot coverage, setbacks, heights, and unit sizes. However, ADUs under this subdivision must meet the building code and health and safety requirements. The four categories of ADUs under subdivision (e) are:

- b. One ADU and one JADU are permitted per lot within the existing or proposed space of a single-family dwelling, or a JADU within the walls of the single family residence, or an ADU within an existing accessory structure, that meets specified requirements such as exterior access and setbacks for fire and safety.**
- c. One detached new construction ADU that does not exceed four-foot side and rear yard setbacks. This ADU may be combined on the same lot with a JADU and may be required to meet a maximum unit size requirement of 800 square feet and a height limitation of 16 feet.**
- d. Multiple ADUs within the portions of multifamily structures that are not used as livable space. Local agencies must allow at least one of these types of ADUs and up to 25 percent of the existing multifamily structures.**
- e. Up to two detached ADUs on a lot that has existing multifamily dwellings that are subject to height limits of 16 feet and 4-foot rear and side yard setbacks.**

The above four categories are not required to be combined. For example, local governments are not required to allow (a) and (b) together or (c) and (d) together. However, local agencies may elect to allow these ADU types together.

Local agencies shall allow at least one ADU to be created within the non-livable space within multifamily dwelling structures, or up to 25 percent of the existing multifamily dwelling units within a structure and may also allow not more than two ADUs on the lot detached from the multifamily dwelling structure. New detached units are subject to height limits of 16 feet and shall not be required to have side and rear setbacks of more than four feet.

The most common ADU that can be created under subdivision (e) is a conversion of proposed or existing space of a single-family dwelling or accessory structure into an ADU, without any prescribed size limitations, height, setback, lot coverage, architectural review, landscape, or other development standards. This would enable the conversion of an accessory structure, such as a 2,000 square foot garage, to an ADU without any additional requirements other than compliance with building standards for dwellings. These types of ADUs are also eligible for a 150 square foot expansion (see discussion below).

ADUs created under subdivision (e) shall not be required to provide replacement or additional parking. Moreover, these units shall not, as a condition for ministerial approval, be required to correct any existing or created nonconformity. Subdivision (e) ADUs shall be required to be rented for terms longer than 30 days, and only require fire sprinklers if fire sprinklers are required for the primary residence. These ADUs shall not be counted as units when calculating density for the general plan and are not subject to owner-occupancy.

- **Can I convert my accessory structure into an ADU?**

Yes. The conversion of garages, sheds, barns, and other existing accessory structures, either attached or detached from the primary dwelling, into ADUs is permitted and promoted through the state ADU law. These conversions of accessory structures are not subject to any additional development standard, such as unit size, height, and lot coverage requirements, and shall be from existing space that can be made safe under building and safety codes. A local agency should not set limits on when the structure was created, and the structure must meet standards for health and safety. Finally, local governments may also consider the conversion of illegal existing space and could consider alternative building standards to facilitate the conversion of existing illegal space to minimum life and safety standards.

- **Can an ADU converting existing space be expanded?**

Yes. An ADU created within the existing or proposed space of a single-family dwelling or accessory structure can be expanded beyond the physical dimensions of the structure. In addition, an ADU created within an existing accessory structure may be expanded up to 150 square feet without application of local development standards, but this expansion shall be limited to accommodating ingress and egress. An example of where this expansion could be applicable is for the creation of a staircase to reach a second story ADU. These types of ADUs shall conform to setbacks sufficient for fire and safety.

A local agency may allow for an expansion beyond 150 square feet, though the ADU would have to comply with the size maximums as per state ADU law, or a local agency's adopted ordinance.

As a JADU is limited to being created within the walls of a primary residence, this expansion of up to 150 square feet does not pertain to JADUs.

I) Nonconforming Zoning Standards

- **Does the creation of an ADU require the applicant to carry out public improvements?**

No physical improvements shall be required for the creation or conversion of an ADU. Any requirement to carry out public improvements is beyond what is required for the creation of an ADU, as per state law. For example, an applicant shall not be required to improve sidewalks, carry out street improvements, or access improvements to create an ADU. Additionally, as a condition for ministerial approval of an ADU, an applicant shall not be required to correct nonconforming zoning conditions. (Gov. Code, § 65852.2, subd. (e)(2).)

J) Renter and Owner-occupancy

- **Are rental terms required?**

Yes. Local agencies may require that the property be used for rentals of terms longer than 30 days. ADUs permitted ministerially, under subdivision (e), shall be rented for terms longer than 30 days. (Gov. Code, § 65852.2, subs. (a)(6) & (e)(4).)

- **Are there any owner-occupancy requirements for ADUs?**

No. Prior to recent legislation, ADU laws allowed local agencies to elect whether the primary dwelling or ADU was required to be occupied by an owner. The updates to state ADU law removed the owner-occupancy allowance for newly created ADUs effective January 1, 2020. The new owner-occupancy exclusion is set to expire on December 31, 2024. Local agencies may not retroactively require owner occupancy for ADUs permitted between January 1, 2020, and December 31, 2024.

However, should a property have both an ADU and JADU, JADU law requires owner-occupancy of either the newly created JADU, or the single-family residence. Under this specific circumstance, a lot with an ADU would be subject to owner-occupancy requirements. (Gov. Code, § 65852.2, subd. (a)(2).)

K) Fire Sprinkler Requirements

- **Are fire sprinklers required for ADUs?**

No. Installation of fire sprinklers may not be required in an ADU if sprinklers are not required for the primary residence. For example, a residence built decades ago would not have been required to have fire sprinklers installed under the applicable building code at the time. Therefore, an ADU created on this lot cannot be required to install fire sprinklers. However, if the same primary dwelling recently undergoes significant remodeling and is now required to have fire sprinklers, any ADU created after that remodel must likewise install fire sprinklers. (Gov. Code, § 65852.2, subs. (a)(1)(D)(xii) and (e)(3).)

Please note, for ADUs created on lots with multifamily residential structures, the entire residential structure shall serve as the “primary residence” for the purposes of this analysis. Therefore, if the multifamily structure is served by fire sprinklers, the ADU can be required to install fire sprinklers.

L) Solar Panel Requirements

- **Are solar panels required for new construction ADUs?**

Yes, newly constructed ADUs are subject to the Energy Code requirement to provide solar panels if the unit(s) is a newly constructed, non-manufactured, detached ADU. Per the California Energy Commission (CEC), the panels can be installed on the ADU or on the primary dwelling unit. ADUs that are constructed within existing space, or as an addition to existing homes, including detached additions where an existing detached building is converted from non-residential to residential space, are not subject to the Energy Code requirement to provide solar panels.

Please refer to the CEC on this matter. For more information, see the CEC's website www.energy.ca.gov. You may email your questions to: title24@energy.ca.gov, or contact the Energy Standards Hotline at 800-772-3300. CEC memos can also be found on HCD's website at <https://www.hcd.ca.gov/policy-research/AccessoryDwellingUnits.shtml>.

3. Junior Accessory Dwelling Units (JADUs) – Government Code Section 65852.22

- **Are two JADUs allowed on a lot?**

No. A JADU may be created on a lot zoned for single-family residences with one primary dwelling. The JADU may be created within the walls of the proposed or existing single-family residence, including attached garages, as attached garages are considered within the walls of the existing single-family residence. Please note that JADUs created in the attached garage are not subject to the same parking protections as ADUs and could be required by the local agency to provide replacement parking.

JADUs are limited to one per residential lot with a single-family residence. Lots with multiple detached single-family dwellings are not eligible to have JADUs. (Gov. Code, § 65852.22, subd. (a)(1).)

- **Are JADUs allowed in detached accessory structures?**

No, JADUs are not allowed in accessory structures. The creation of a JADU must be within the single-family residence. As noted above, attached garages are eligible for JADU creation. The maximum size for a JADU is 500 square feet. (Gov. Code, § 65852.22, subs. (a)(1), (a)(4), and (h)(1).)

- **Are JADUs allowed to be increased up to 150 square feet when created within an existing structure?**

No. Only ADUs are allowed to add up to 150 square feet “beyond the physical dimensions of the existing accessory structure” to provide for ingress. (Gov. Code, § 65852.2, subd. (e)(1)(A)(i).)

This provision extends only to ADUs and excludes JADUs. A JADU is required to be created within the single-family residence.

- **Are there any owner-occupancy requirements for JADUs?**

Yes. There are owner-occupancy requirements for JADUs. The owner must reside in either the remaining portion of the primary residence, or in the newly created JADU. (Gov. Code, § 65852.22, subd. (a)(2).)

4. Manufactured Homes and ADUs

- **Are manufactured homes considered to be an ADU?**

Yes. An ADU is any residential dwelling unit with independent facilities and permanent provisions for living, sleeping, eating, cooking and sanitation. An ADU includes a manufactured home (Health & Saf. Code, § 18007).

Health and Safety Code section 18007, subdivision (a): **“Manufactured home,”** for the purposes of this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. “Manufactured home” includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

5. ADUs and the Housing Element

- **Do ADUs and JADUs count toward a local agency’s Regional Housing Needs Allocation?**

Yes. Pursuant to Government Code section 65852.2 subdivision (m), and section 65583.1, ADUs and JADUs may be utilized towards the Regional Housing Need Allocation (RHNA) and Annual Progress Report (APR) pursuant to Government Code section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, an ADU, and a JADU with shared sanitation facilities, and any other unit that meets the census definition, and is reported to DOF as part of the DOF annual City and County Housing Unit Change Survey, can be credited toward the RHNA based on the appropriate income level. The housing element or APR must include a reasonable methodology to demonstrate the level of affordability. Local governments can track actual or anticipated affordability to assure ADUs and JADUs are counted towards the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit or other applications.

- **Is analysis required to count ADUs toward the RHNA in the housing element?**

Yes. To calculate ADUs in the housing element, local agencies must generally use a three-part approach: (1) development trends, (2) anticipated affordability and (3) resources and incentives. Development trends must consider ADUs permitted in the prior planning period and may also consider more recent trends. Anticipated affordability can use a variety of methods to estimate the affordability by income group. Common approaches include rent surveys of ADUs, using rent surveys and square footage assumptions and data available through the APR pursuant to Government Code section 65400. Resources and incentives include policies and programs to encourage ADUs, such as prototype plans, fee waivers, expedited procedures and affordability monitoring programs.

- **Are ADUs required to be addressed in the housing element?**

Yes. The housing element must include a description of zoning available to permit ADUs, including development standards and analysis of potential constraints on the development of ADUs. The element must include programs as appropriate to address identified constraints. In addition, housing elements must

include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs. (Gov. Code, § 65583 and Health & Saf. Code, § 50504.5.)

6. Homeowners Association

- **Can my local Homeowners Association (HOA) prohibit the construction of an ADU or JADU?**

No. Assembly Bill 670 (2019) and AB 3182 (2020) amended Section 4751, 4740, and 4741 of the Civil Code to preclude common interest developments from prohibiting or unreasonably restricting the construction or use, including the renting or leasing of, an ADU on a lot zoned for single-family residential use. Covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on such lots are void and unenforceable or may be liable for actual damages and payment of a civil penalty. Applicants who encounter issues with creating ADUs or JADUs within CC&Rs are encouraged to reach out to HCD for additional guidance.

7. Enforcement

- **Does HCD have enforcement authority over ADU ordinances?**

Yes. After adoption of the ordinance, HCD may review and submit written findings to the local agency as to whether the ordinance complies with state ADU law. If the local agency's ordinance does not comply, HCD must provide a reasonable time, no longer than 30 days, for the local agency to respond, and the local agency shall consider HCD's findings to amend the ordinance to become compliant. If a local agency does not make changes and implements an ordinance that is not compliant with state law, HCD may refer the matter to the Attorney General.

In addition, HCD may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify ADU law.

8. Other

- **Are ADU ordinances existing prior to new 2020 laws null and void?**

No. Ordinances existing prior to the new 2020 laws are only null and void to the extent that existing ADU ordinances conflict with state law. Subdivision (a)(4) of Government Code Section 65852.2 states an ordinance that fails to meet the requirements of subdivision (a) shall be null and void and shall apply the state standards (see Attachment 3) until a compliant ordinance is adopted. However, ordinances that substantially comply with ADU law may continue to enforce the existing ordinance to the extent it complies with state law. For example, local governments may continue the compliant provisions of an ordinance and apply the state standards where pertinent until the ordinance is amended or replaced to fully comply with ADU law. At the same time, ordinances that are fundamentally incapable of being enforced because key provisions are invalid -- meaning there is not a reasonable way to sever conflicting provisions and apply the remainder of an ordinance in a way that is consistent with state law -- would be fully null and void and must follow all state standards until a compliant ordinance is adopted.

- **Do local agencies have to adopt an ADU ordinance?**

No. Local governments may choose not to adopt an ADU ordinance. Should a local government choose to not adopt an ADU ordinance, any proposed ADU development would be only subject to standards set in state ADU law. If a local agency adopts an ADU ordinance, it may impose zoning, development, design, and other standards in compliance with state ADU law. (See Attachment 4 for a state standards checklist.)

- **Is a local government required to send an ADU ordinance to the California Department of Housing and Community Development (HCD)?**

Yes. A local government, upon adoption of an ADU ordinance, must submit a copy of the adopted ordinance to HCD within 60 days after adoption. After the adoption of an ordinance, the Department may review and submit written findings to the local agency as to whether the ordinance complies with this section. (Gov. Code, § 65852.2, subd. (h)(1).)

Local governments may also submit a draft ADU ordinance for preliminary review by HCD. This provides local agencies the opportunity to receive feedback on their ordinance and helps to ensure compliance with the new state ADU law.

- **Are charter cities and counties subject to the new ADU laws?**

Yes. ADU law applies to a local agency which is defined as a city, county, or city and county, whether general law or chartered. (Gov. Code, § 65852.2, subd. (j)(5)).

Further, pursuant to Chapter 659, Statutes of 2019 (AB 881), the Legislature found and declared ADU law as “...a matter of statewide concern rather than a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution” and concluded that ADU law applies to all cities, including charter cities.

- **Do the new ADU laws apply to jurisdictions located in the Coastal Zone?**

Yes. ADU laws apply to jurisdictions in the Coastal Zone, but do not necessarily alter or lessen the effect or application of Coastal Act resource protection policies. (Gov. Code, § 65852.22, subd. (l)).

Coastal localities should seek to harmonize the goals of protecting coastal resources and addressing housing needs of Californians. For example, where appropriate, localities should amend Local Coastal Programs for California Coastal Commission review to comply with the California Coastal Act and new ADU laws. For more information, see the [California Coastal Commission 2020 Memo](#) and reach out to the locality’s local Coastal Commission district office.

- **What is considered a multifamily dwelling?**

For the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multifamily dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of state ADU law.

Resources



Attachment 1: Statutory Changes (Strikeout/Italics and Underline)

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2

**Combined changes from (AB 3182 Accessory Dwelling Units)
and (AB 881, AB 68 and SB 13 Accessory Dwelling Units)**

(Changes noted in ~~strikeout~~, underline/*italics*)

Effective January 1, 2021, Section 65852.2 of the Government Code is amended to read:

65852.2.

- (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
- (A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
- (B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
- (ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
- (C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.
- (D) Require the accessory dwelling units to comply with all of the following:
- (i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.
- (ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
- (iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
- (iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.
- (v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
- (vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
- (vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
- (viii) Local building code requirements that apply to detached dwellings, as appropriate.
- (ix) Approval by the local health officer where a private sewage disposal system is being used, if required.
- (x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.
- (II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.
- (III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).
- (xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.
- (xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit ~~or~~ *and* one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

- (f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).
- (2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.
- (3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.
- (B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.
- (4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.
- (5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
- (g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.
- (h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.
- (2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.
- (B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:
- (i) Amend the ordinance to comply with this section.
- (ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.
- (3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.
- (B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.
- (i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.
- (j) As used in this section, the following terms mean:
- (1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:
- (A) An efficiency unit.
- (B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

- (2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
- (3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.
- (4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
- (5) "Local agency" means a city, county, or city and county, whether general law or chartered.
- (6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.
- (7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
- (8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
- (9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
- (10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
- (k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.
- (l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.
- (m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.
- (n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:
 - (1) The accessory dwelling unit was built before January 1, 2020.
 - (2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
- (o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.
(Becomes operative on January 1, 2025)

Section 65852.2 of the Government Code is amended to read (changes from January 1, 2021 statute noted in underline/italic):

65852.2.

- (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
 - (A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
 - (B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
 - (ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
 - (C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

- (i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.
 - (ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
 - (iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
 - (iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.
 - (v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
 - (vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
 - (vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
 - (viii) Local building code requirements that apply to detached dwellings, as appropriate.
 - (ix) Approval by the local health officer where a private sewage disposal system is being used, if required.
 - (x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.
(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.
(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).
 - (xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.
 - (xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.
- (2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
- (3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. *If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.* A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.
- (4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.
- (5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.
- (6) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed

accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or ~~imposed, including any owner-occupant requirement, except that~~ imposed except that, subject to subparagraph (B), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit ~~or~~ and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not

more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (6) of subdivision (a).

~~(4)~~ (5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

~~(5)~~ (6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

~~(6)~~ (7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision

(b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family ~~home-~~ dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the

Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit

applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(o) This section shall ~~remain in effect only until January 1, 2025, and as of that date is repealed.~~ *become operative on January 1, 2025.*

Effective January 1, 2021, Section 4740 of the Civil Code is amended to read (changes noted in ~~strikeout~~, underline/italics) (AB 3182 (Ting)):

4740.

(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in that common interest development to a renter, lessee, or tenant unless that governing document, or amendment thereto, was effective prior to the date the owner acquired title to ~~his or~~ *her* ~~their~~ separate interest.

~~(b) Notwithstanding the provisions of this section, an owner of a separate interest in a common interest development may expressly consent to be subject to a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant.~~

~~(c)~~ *(b)* For purposes of this section, the right to rent or lease the separate interest of an owner shall not be deemed to have terminated if the transfer by the owner of all or part of the separate interest meets at least one of the following conditions:

(1) Pursuant to Section 62 or 480.3 of the Revenue and Taxation Code, the transfer is exempt, for purposes of reassessment by the county tax assessor.

(2) Pursuant to subdivision (b) of, solely with respect to probate transfers, or subdivision (e), (f), or (g) of, Section 1102.2, the transfer is exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement, as set forth in Section 1102.6.

~~(d)~~ *(c)* Prior to renting or leasing ~~his or her~~ *their* separate interest as provided by this section, an owner shall provide the association verification of the date the owner acquired title to the separate interest and the name and contact information of the prospective tenant or lessee or the prospective tenant's or lessee's representative.

~~(e)~~ *(d)* Nothing in this section shall be deemed to revise, alter, or otherwise affect the voting process by which a common interest development adopts or amends its governing documents.

~~(f) This section shall apply only to a provision in a governing document or a provision in an amendment to a governing document that becomes effective on or after January 1, 2012.~~

Effective January 1, 2021 of the *Section 4741 is added to the Civil Code, to read (AB 3182 (Ting)):*

4741.

(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests, accessory dwelling units, or junior accessory dwelling units in that common interest development to a renter, lessee, or tenant.

(b) A common interest development shall not adopt or enforce a provision in a governing document or amendment to a governing document that restricts the rental or lease of separate interests within a common interest to less than 25 percent of the separate interests. Nothing in this subdivision prohibits a common interest development from adopting or enforcing a provision authorizing a higher percentage of separate interests to be rented or leased.

(c) This section does not prohibit a common interest development from adopting and enforcing a provision in a

governing document that prohibits transient or short-term rental of a separate property interest for a period of 30 days or less.

(d) For purposes of this section, an accessory dwelling unit or junior accessory dwelling unit shall not be construed as a separate interest.

(e) For purposes of this section, a separate interest shall not be counted as occupied by a renter if the separate interest, or the accessory dwelling unit or junior accessory dwelling unit of the separate interest, is occupied by the owner.

(f) A common interest development shall comply with the prohibition on rental restrictions specified in this section on and after January 1, 2021, regardless of whether the common interest development has revised their governing documents to comply with this section. However, a common interest development shall amend their governing documents to conform to the requirements of this section no later than December 31, 2021.

(g) A common interest development that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(h) In accordance with Section 4740, this section does not change the right of an owner of a separate interest who acquired title to their separate interest before the effective date of this section to rent or lease their property.

Effective January 1, 2020, Section 65852.22 of the Government Code is was amended to read (AB 68 (Ting)):
65852.22.

(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the walls of proposed or existing single-family residence.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the proposed or existing single-family residence.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

(A) A cooking facility with appliances.

(B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine if the junior accessory dwelling unit complies with applicable building standards.

(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. The permitting agency shall act on the application to create a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family dwelling on the lot. If the permit application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(e) For purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(g) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.

(h) For purposes of this section, the following terms have the following meanings:

(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Effective January 1, 2020 Section 17980.12 is was added to the Health and Safety Code, immediately following Section 17980.11, to read (SB 13 (Wieckowski)):

17980.12.

(a) (1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:

(A) The accessory dwelling unit was built before January 1, 2020.

(B) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(2) The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.

(3) The enforcement agency shall grant an application described in paragraph (2) if the enforcement determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Section 13146.

(4) The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (3).

(b) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in Section 65852.2.

(c) This section shall remain in effect only until January 1, 2035, and as of that date is repealed.

**GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2
AB 587 Accessory Dwelling Units**

Effective January 1, 2020 Section 65852.26 is was added to the Government Code, immediately following Section 65852.25, to read (AB 587 (Friedman)):

65852.26.

(a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency may, by ordinance, allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

- (1) The property was built or developed by a qualified nonprofit corporation.
- (2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.
- (3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:
 - (A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies.
 - (B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property.
 - (C) A requirement that the qualified buyer occupy the property as the buyer's principal residence.
 - (D) Affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
- (4) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.
- (5) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.

(b) For purposes of this section, the following definitions apply:

- (1) "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.
- (2) "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

**CIVIL CODE: DIVISION 4, PART 5, CHAPTER 5, ARTICLE 1
AB 670 Accessory Dwelling Units**

Effective January 1, 2020, Section 4751 is was added to the Civil Code, to read (AB 670 (Friedman)):

4751.

- (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code, is void and unenforceable.
- (b) This section does not apply to provisions that impose reasonable restrictions on accessory dwelling units or junior accessory dwelling units. For purposes of this subdivision, "reasonable restrictions" means restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability

to otherwise construct, an accessory dwelling unit or junior accessory dwelling unit consistent with the provisions of Section 65852.2 or 65852.22 of the Government Code.

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 3, ARTICLE 10.6

AB 671 Accessory Dwelling Units

Effective January 1, 2020, Section 65583(c)(7) of the Government Code is was added to read (sections of housing element law omitted for conciseness) (AB 671 (Friedman)):

65583(c)(7).

Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "accessory dwelling units" has the same meaning as "accessory dwelling unit" as defined in paragraph (4) of subdivision (i) of Section 65852.2.

Effective January 1, 2020, Section 50504.5 is was added to the Health and Safety Code, to read (AB 671 (Friedman)):

50504.5.

(a) The department shall develop by December 31, 2020, a list of existing state grants and financial incentives for operating, administrative, and other expenses in connection with the planning, construction, and operation of an accessory dwelling unit with affordable rent, as defined in Section 50053, for very low, low-, and moderate-income households.

(b) The list shall be posted on the department's internet website by December 31, 2020.

(c) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in paragraph (4) of subdivision (i) of Section 65852.2 of the Government Code.

Attachment 2: State Standards Checklist

YES/NO	STATE STANDARD*	GOVERNMENT CODE SECTION
	Unit is not intended for sale separate from the primary residence and may be rented.	65852.2(a)(1)(D)(i)
	Lot is zoned for single-family or multifamily use and contains a proposed, or existing, dwelling.	65852.2(a)(1)(D)(ii)
	The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure, or detached from the proposed or existing dwelling and located on the same lot as the proposed or existing primary dwelling.	65852.2(a)(1)(D)(iii)
	Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing primary dwelling but shall be allowed to be at least 800/850/1000 square feet.	65852.2(a)(1)(D)(iv), (c)(2)(B) & C
	Total area of floor area for a detached accessory dwelling unit does not exceed 1,200 square feet.	65852.2(a)(1)(D)(v)
	Passageways are not required in conjunction with the construction of an accessory dwelling unit.	65852.2(a)(1)(D)(vi)
	Setbacks are not required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.	65852.2(a)(1)(D)(vii)
	Local building code requirements that apply to detached dwellings are met, as appropriate.	65852.2(a)(1)(D)(viii)
	Local health officer approval where a private sewage disposal system is being used, if required.	65852.2(a)(1)(D)(ix)
	Parking requirements do not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on an existing driveway.	65852.2(a)(1)(D)(x)(I)

Attachment 3: Bibliography

[ACCESSORY DWELLING UNITS: CASE STUDY](#) (26 pp.)

By the United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

[THE MACRO VIEW ON MICRO UNITS](#) (46 pp.)

By Bill Whitlow, et al. – Urban Land Institute (2014)
Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013 to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

[SECONDARY UNITS AND URBAN INFILL: A Literature Review](#) (12 pp.)

By Jake Wegmann and Alison Nemirow (2011)
UC Berkeley: IURD
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

[RETHINKING PRIVATE ACCESSORY DWELLINGS](#) (5 pp.)

By William P. Macht. Urbanland online. (March 6, 2015)
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

One of the large impacts of single-use, single-family detached zoning has been to severely shrink the supply of accessory dwellings, which often were created in or near primary houses. Detached single-family dwelling zones—the largest housing zoning category—typically preclude more than one dwelling per lot except under stringent regulation, and then only in some jurisdictions. Bureaucratically termed “accessory dwelling units” that are allowed by some jurisdictions may encompass market-derived names such as granny flats, granny cottages, mother-in-law suites, secondary suites, backyard cottages, casitas, carriage flats, sidekick houses, basement apartments, attic apartments, laneway houses, multigenerational homes, or home-within-a-home.

[Regulating ADUs in California: Local Approaches & Outcomes](#) (44 pp.)

By Deidra Pfeiffer
Terner Center for Housing and Innovation, UC Berkeley

Accessory dwelling units (ADU) are often mentioned as a key strategy in solving the nation's housing problems, including housing affordability and challenges associated with aging in place. However, we know little about whether formal ADU practices—such as adopting an ordinance, establishing regulations, and permitting—contribute to these goals. This research helps to fill this gap by using data from the Terner California Residential Land Use Survey and the U.S. Census Bureau to understand the types of communities engaging in different kinds of formal ADU practices in California, and whether localities with adopted ordinances and less restrictive regulations have more frequent applications to build ADUs and increasing housing affordability and aging in place. Findings suggest that three distinct approaches to ADUs are occurring in California: 1) a more restrictive approach in disadvantaged communities of color, 2) a moderately restrictive approach in highly advantaged, predominately White and Asian communities, and 3) a less restrictive approach in diverse and moderately advantaged communities. Communities with adopted ordinances and less restrictive regulations receive more frequent applications to build ADUs but have not yet experienced greater improvements in housing affordability and aging in place. Overall, these findings imply that 1) context-specific technical support and advocacy may be needed to help align formal ADU practices with statewide goals, and 2) ADUs should be treated as one tool among many to manage local housing problems.

[ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes](#) (8 p.)

By David Garcia (2017)
Terner Center for Housing and Innovation, UC Berkeley

As California's housing crisis deepens, innovative strategies for creating new housing units for all income levels are needed. One such strategy is building Accessory Dwelling Units (ADUs) by private homeowners. While large scale construction of new market rate and affordable homes is needed to alleviate demand-driven rent increases and displacement pressures, ADUs present a unique opportunity for individual homeowners to create more housing as well. In particular, ADUs can increase the supply of housing in areas where there are fewer opportunities for larger-scale developments, such as neighborhoods that are predominantly zoned for and occupied by single-family homes. In two of California's major metropolitan areas -- Los Angeles and San Francisco -- well over three quarters of the total land area is comprised of neighborhoods where single-family homes make up at least 60 percent of the community's housing stock. Across the state, single-family detached units make up 56.4 percent of the overall housing stock. Given their prevalence in the state's residential land use patterns, increasing the number of single-family homes that have an ADU could contribute meaningfully to California's housing shortage.

[Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle and Vancouver](#) (29 pp.)

By Karen Chapple et al (2017)
Terner Center for Housing and Innovation, UC Berkeley

Despite government attempts to reduce barriers, a widespread surge of ADU construction has not materialized. The ADU market remains stalled. To find out why, this study looks at three cities in the Pacific Northwest of the United States and Canada that have seen a spike in construction in recent years: Portland, Seattle, and Vancouver. Each city has adopted a set of zoning reforms, sometimes in combination with financial incentives and outreach programs, to spur ADU construction. Due to these changes, as well as the acceleration of the housing crisis in each city, ADUs have begun blossoming.

[Accessory Dwelling Units as Low-Income Housing: California's Faustian Bargain](#) (37 pp.)

By Darrel Ramsey-Musolf (2018)

University of Massachusetts Amherst, ScholarWorks@UMass Amherst

In 2003, California allowed cities to count accessory dwelling units (ADU) towards low-income housing needs. Unless a city's zoning code regulates the ADU's maximum rent, occupancy income, and/or effective period, then the city may be unable to enforce low-income occupancy. After examining a stratified random sample of 57 low-, moderate-, and high-income cities, the high-income cities must proportionately accommodate more low-income needs than low-income cities. By contrast, low-income cities must quantitatively accommodate three times the low-income needs of high-income cities. The sample counted 750 potential ADUs as low-income housing. Even though 759 were constructed, no units were identified as available low-income housing. In addition, none of the cities' zoning codes enforced low-income occupancy. Inferential tests determined that cities with colleges and high incomes were more probable to count ADUs towards overall and low-income housing needs. Furthermore, a city's count of potential ADUs and cities with high proportions of renters maintained positive associations with ADU production, whereas a city's density and prior compliance with state housing laws maintained negative associations. In summary, ADUs did increase local housing inventory and potential ADUs were positively associated with ADU production, but ADUs as low-income housing remained a paper calculation.

ANNOTATED AGENDA
BERKELEY CITY COUNCIL MEETING
Tuesday, January 26, 2021
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 Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/87354849181>. 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: 873 5484 9181. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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

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

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

Council Consent Items

10. **Budget Referral to Reinstate Partial Funding for the Gun Buyback Program Previously Authorized by City Council** (*Continued from November 10, 2020*)
From: Councilmember Kesarwani (Author), Mayor Arreguin (Co-Sponsor), Councilmember Davila (Co-Sponsor)
Recommendation: Refer to the FY 2020-21 November Amendment to the Annual Appropriations Ordinance (AAO #1) \$40,000 to reinstate partial funding for the Gun Buyback Program—originally proposed by Councilmember Cheryl Davila and authorized by the City Council on Nov. 27, 2018.
Financial Implications: \$40,000
 Contact: Rashi Kesarwani, Councilmember, District 1 (510) 981-7110
Action: Approved recommendation revised to be a referral to the FY 2022 budget process.
11. **Short Term Referral to City Manager, Disaster and Fire Safety Commission and Planning Commission to Amend Local Accessory Dwelling Unit (ADU) Zoning Ordinance and Berkeley's Fire Code**
From: Councilmember Wengraf (Author), Councilmember Hahn (Co-Sponsor)
Recommendation: Refer to the City Manager, the Disaster and Fire Safety Commission and the Planning Commission to evaluate and recommend to Council within 90 days, a set of ordinance amendments and implementation programs to address emergency access and egress, parking and objective development standards to address the constraints presented by high fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3. (Attachment 1 to the report). Recommendations to Additional Objective Development Standards in Zones 2 and 3:
 -Zone 2 and 3 - limit the base maximum size of newly constructed, detached ADUs to 850 sq. feet. -Zone 2 and 3 – require compliance with front yard, side yard and open space and coverage requirements of the applicable zoning district.
 Recommendations to amend the Fire Code: -Prohibit parking on streets where egress and ingress will be adversely impacted by additional vehicles and increased population. -Require sprinklers in new construction, consistent with local Fire Code. - Explore their authority under California Health and Safety Code Sec. 13869.7 to mitigate the adverse impacts of ADU creation in requiring safe and adequate ingress and egress routes and sufficient off-street parking.
Financial Implications: Staff time
 Contact: Susan Wengraf, Councilmember, District 6 (510) 981-7160
Action: Approved recommendation revised to add the underlined phrase, “...and objective development standards for ADUs in all districts with expedited consideration to address the constraints presented by high fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3.”



Planning Commission

**FINAL MINUTES OF THE REGULAR PLANNING COMMISSION MEETING
APRIL 7, 2021**

The meeting was called to order at 7:02 p.m.

Location: Virtual meeting via Zoom

1. ROLL CALL:

Commissioners Present: Janis Ching, Barnali Ghosh, Savlan Hauser, Robb Kapla, Shane Krpata, Christine Schildt, Jeff Vincent, and Brad Wiblin.

Commissioners Absent: Benjamin Beach and Mary Kay Lacey.

Staff Present: Secretary Alene Pearson, Katrina Lapira, Steve Buckley, Chris Jensen, Paola Boylan, and Kieron Slaughter.

2. ORDER OF AGENDA: No changes.

3. PUBLIC COMMENT PERIOD: 1

4. PLANNING STAFF REPORT:

- Please refer to information items.

Information Items:

- City Council – Objective Standards Recommendations for Density, Design and Shadows
- City Council – Initiation of Public Process and Zoning Concepts for 2023-2031 Housing Element

Communications:

- March 30 – CA Department of Food and Agriculture – Cannabis Appellations Program
- March 31 – Business Owner – Berkeley Marina Kosher Market

Late Communications: *See agenda for links.*

- Supplemental Packet One
- Supplemental Packet Two
- Supplemental Packet Three

5. CHAIR REPORT:

- None.

6. COMMITTEE REPORT: Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

- BART Community Advisory Group (CAG) – Held a meeting on March 22 to further the discussion about the vision and priorities document. A draft zoning document is now available for public review on the CAG website. The next meeting will be about access planning to the respective BART sites.

7. APPROVAL OF MINUTES:

Motion/Second/Carried (Wiblin/Krpata) to approve the Planning Commission Meeting Minutes from March 17, 2021, with incorporated amendments to lines 82 and 90.

Ayes: Ghosh, Hauser, Kapla, Krpata, Schildt, and Wiblin. Noes: None. Abstain: Vincent and Ching. Absent: Beach. (6-0-2-1)

8. FUTURE AGENDA ITEMS AND OTHER PLANNING:

- May 5
 - Re-zone of Parcels to Commercial Adeline Corridor (C-AC)
 - Presentation on City-Wide Affordable Housing Requirements by Rick Jacobus

AGENDA ITEMS

9. Action: Response to Short Term Referral for Amendments to the ADU Ordinance and Related Definitions to Address Public Safety Concerns

Staff shared the proposed amendments to the local ADU Ordinance in response to the Council's Short Term referral. The proposed amendments focused on codifying State ADU regulations and modifications to ADU size and front yard setbacks to address public safety concerns. Commission discussion focused primarily on clarification of State ADU law and options for local changes to ADU size, setbacks, height and neighbor noticing. An additional two feet of height was incorporated into the final motion for Council consideration to allow design flexibility. The rationale for a Maximum Height of 18 feet -- without an increase in Maximum Size -- is that two-story ADUs reduce the ADU footprint, increasing Open Space, decreasing Lot Coverage and allowing flexible configurations on smaller lots.

Motion/Second/Carried (Barnali/Vincent) to close the public hearing on the Response to Short Term Referral for Amendments to the ADU Ordinance and Related Definitions to Address Public Safety at 8:55pm.

Ayes: Ching, Ghosh, Hauser, Kapla, Krpata, Schildt, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Beach. (8-0-0-1)

Motion/Second/Carried (Kapla/Schildt) to adopt staff's recommendation with the following edits and a request to add neighbor notification of Building Permit issuance to the administrative process of application approval:

- Amend 23C.24.010.B.1 to read: *One ADU and/or one JADU is allowed on a lot with one Single Family Dwelling.*
- Delete 23C.24.010.B.5: *One JADU is allowed on a lot with one Single Family Dwelling.*
- Add 23C.24.040.A.6 to read: *A JADU is subject to the Development Standards in paragraph B and G.*
- Amend 23C.24.040.C to read:
 1. *Maximum Height of a ~~free-standing detached~~, new construction ADU is 16-18 feet.*
 2. *Maximum Height of new square footage added to a Single Family Dwelling, Accessory Building or Accessory Structure to create an ADU is 16 18 feet.*

Ayes: Ching, Ghosh, Hauser, Kapla, Krpata, Schildt, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Beach. (8-0-0-1)

Public Comments: 10

10. Action: Response to Support Small Businesses Referral: Amendments to the Sign Ordinance to Establish a Master Sign Program

Staff presented proposed modifications to the Sign Ordinance, which included establishing a Master Sign Program, clarifying ordinance language, and exempting in-kind replacement of signs. The Commission discussed minor amendments the Zoning Ordinance to maintain consistency with the Sign Ordinance. Corresponding references to the Zoning Ordinance were highlighted by staffs and commission discussion centered on clarifying ordinance language to improve readability.

Motion/Second/Carried (Wiblin/Krpata) to adopt staff's recommendations with suggested edits to 23E.08.020.C [Applicability] as follows:

C. Permits Zoning Certificates, Administrative Use Permits, Use Permits, and Variances for projects that are subject to design review ~~may not be issued without design review approval, except that they may be issued~~ may be approved conditional upon final design review such approval occurring before the issuance a building permit or for a permit for a sign permit (as set forth in BMC Chapter 20.12.010 ~~(of the Sign Ordinance)~~).

Ayes: Ching, Ghosh, Hauser, Kapla, Krpata, Schildt, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Beach (8-0-0-1)

Public Comments: 1

Motion/Second/Carried (Kapla/Ghosh) to adjourn the Planning Commission meeting at 10:10pm.

Ayes: Ching, Ghosh, Hauser, Kapla, Krpata, Schildt, Vincent, and Wiblin. Noes: None.
Abstain: None. Absent: Beach (8-0-0-1)

Members in the public in attendance: 23

Public Speakers: 11 speakers

Length of the meeting: 3hr 8 minutes

**NOTICE OF PUBLIC HEARING - BERKELEY CITY COUNCIL
AMENDMENTS TO ACCESSORY DWELLING UNIT (ADU) ORDINANCE TO ADDRESS
PUBLIC SAFETY CONCERNS**

The Department of Planning and Development is proposing that the City Council adopt a local Accessory Dwelling Unit (ADU) Ordinance that complies with State ADU law. The proposed Zoning Ordinance amendments are consistent with Government Code Sections 65852.2 and 65852.22 and include local regulations for the size, location, and other development standards for ADUs. The proposed Zoning Ordinance amendments also address public safety measures to the extent they are allowable by State law.

Public Hearing Information

The hearing will be held on September 28, 2021 at 6:00 p.m. The hearing will be held via videoconference pursuant to Governor’s Executive Order N-29-20.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of **September 16, 2021**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

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.

For further information, please contact Alene Pearson, Principal Planner, Planning and Development Department at (510) 981-7489.

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 3, 2021 – The Berkeley Voice

City Clerk shall publish a notice at least 10 days prior to the date of the public hearing with the date, hour, and place of the public hearing for annual levy and collection of assessments in accordance with Streets and Highway Code Sections 22625, 22626, 22552, and 22553 and Section 6061 of the Government Code.

~~~~~  
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 16, 2021.

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



Public Hearing  
October 26, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Abe Roman, Interim Fire Chief, Department of Fire and Emergency Services

Subject: Proposed Ordinance Amending Paragraph 'NN' of Berkeley Municipal Code Section 19.48.020 ("Amendments to the California Fire Code") to Require Fire Sprinkler Installation in All New Structures and Retrofit of Existing Structures in Berkeley Fire Zones 2 and 3 – Second Reading

### RECOMMENDATION

Conduct a public hearing and upon conclusion adopt the second reading of Ordinance No. 7,788-N.S. which modifies the language of Paragraph 'NN.' of Berkeley Municipal Code Section 19.48.020 ("Amendments to the California Fire Code) by adopting a building standard which is more restrictive than that standard currently contained in the California Fire Code and which will expand the existing local code amendment that requires the installation of fire sprinklers in new structures and the retrofit fire sprinklers into existing structures that currently exists in Fire Zone 3 to include structures located in Berkeley Fire Zone 2.

### SUMMARY

Long term fire trends and wildfire events within the past five years demonstrate that the wildfire problem in California has become progressively worse and constitutes a major threat to the City of Berkeley and it's residents. Since 2007 an existing amendment within the Berkeley Fire Code has required the installation of fire sprinklers in new and retrofit of fire sprinklers within existing single-family and duplex residences in the "Environmental Safety- Residential" land use district when certain conditions are met. This geographic land use district is now also known as Fire Zone 3 in the Berkeley Fire Code. This requirement was instituted in response to the disastrous 1991 Tunnel Fire which affected Berkeley and Oakland.

This ordinance proposes to extend this requirement for the installation and retrofit of fire sprinklers within single-family and two-family dwellings that currently exist within Fire Zone 3 to include properties within Fire Zone 2 and to expand the application of this requirement to alteration projects when certain conditions are met. Fire sprinkler installation and retrofit would be required whenever new structures with habitable space are constructed, when structures or portions of structures are converted to habitable space when such structures did not previously contain formally approved habitable space, or when the valuation of permitted work exceeds a specified threshold. Some limited exceptions to the requirement are proposed. Fire sprinklers would limit the development of fire within a residence and prevent the spread of fire to surrounding vegetation. This requirement is a reasonable response to the increased threat of wildfires since the majority of wildfires are caused by human activity, and in

predominantly residential areas most fires are related to normal activities associated with human habitation and living.

#### FISCAL IMPACTS OF RECOMMENDATION

The fiscal impact to the City of Berkeley will be negligible. The staff required to review additional fire sprinkler permit submittals and inspect the installation of any fire sprinkler systems initiated by the proposed amendment are already budgeted by the City. The overall workload associated with potential fire sprinkler retrofit installations of primarily residential fire sprinkler systems is not expected to exceed staff's capacity to support the added workload. Also, permit fees associated with the installation of fire sprinkler systems are designed to offset staff costs which may be incurred in the review and inspection of those installations.

#### CURRENT SITUATION AND ITS EFFECTS

The wildland fire problem throughout the State of California and the western region of the United States has become progressively worse over the past 30-40 years. The duration of what was once considered a 'wildfire season' has extended to the point that wildfire events occur throughout most of the calendar year. This tends to blur any distinct lines between adjacent fire seasons. As a result, wildfire activity has become more of a cycle and less of a 'season'. Recent wildfire incidents since 2017 have consistently set records for fire size, intensity and rate of spread. Scientific evidence suggests that our current extreme drought conditions that make vegetation more susceptible to ignition and the fire weather conditions which lead to extreme fire behavior and make fire control difficult are due in large part to global climate change.

Berkeley is placed at great risk by the historic trends of deteriorating wildfire conditions and increasing fire severity throughout the state, by decades of accumulated vegetation fuel loading in the hills and by the steadily increasing human population within Berkeley's vulnerable wildfire zones. We believe that the community must act now to decrease the potential for a catastrophic wildfire developing in Berkeley's wildfire zones. We are therefore recommending the expansion of the current Fire Zone 3 fire sprinkler installation and retrofit requirements to include properties and structures within Fire Zone 2.

#### BACKGROUND

During its adoption of the 2007 California Fire Code, the Berkeley Fire Department added a local amendment to Berkeley's code adoption. Paragraph 'NN' of Section 19.48.020 of the Berkeley Municipal Code ("Amendments to the California Fire Code") required the installation of fire sprinkler systems in any new construction having a permit valuation of \$100,000 or more in the "Environmental Safety- Residential District" (also known as the Panoramic Hill District). The amendment also required the retrofitting of existing structures with fire sprinklers in the same District whenever new additions to existing structures with a permit valuation of \$100,000 or more were made. This area of the City is now also known as Fire Zone 3 in the Berkeley Fire Code. The fire sprinkler installation and retrofit requirements have been in force in Fire Zone 3 since this amendment was first adopted on December 27, 2007, and went into effect as part of Berkeley Ordinance 7,003-N.S.

This ordinance provision was adopted as part of Berkeley's response to the October 20, 1991 Oakland-Berkeley firestorm (known officially as the Tunnel-Oakland Hills fire). At the time it was believed that the risk of fire and the accompanying potential for the loss of life and property represented by fires like the Oakland-Berkeley firestorm justified the additional precaution of an aggressive fire sprinkler ordinance with retrofit requirements. The goal in providing aggressive fire sprinkler requirements for structures in Fire Zone 3 was to interrupt a potential chain of events where a routine structure fire could spread to adjacent vegetation and result in the ignition of a catastrophic wildfire.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Fire protection sprinkler systems (including residential fire sprinkler systems in one- and two-family dwellings) are environmentally friendly and contribute to the sustainability of our society. A 2021 study which continued earlier work to quantify the benefits of fire protection sprinkler systems reinforced earlier findings that on a per-fire basis where fire sprinklers were involved, fire sprinklers reduced greenhouse gas emissions by 97.8%, reduced water usage to extinguish the fire by 50%-91%, and reduced water pollution and the amount of materials committed to landfills when compared to the manual extinguishment of fires. This analysis does not include the additional benefits gained in energy savings and reduced carbon dioxide emissions when a destroyed building or building materials represented by the 98% reduction in fire property losses do not need replacement.

The Factory Mutual Insurance Company (a major leading insurance company in the Highly Protected Risk insurance market) published studies which attempt to quantify the environmental impact of fire sprinklers. The latest study estimated that in the eleven years between the publication of the 2010 and 2021 studies that residential fire sprinklers in the United States (specifically sprinklers in one- and two-family dwellings) could have prevented the emission of over 1.7 billion pounds of carbon dioxide into the atmosphere if residential fire sprinklers were universally installed.

#### RATIONALE FOR RECOMMENDATION

Formal studies confirm that the overall severity of the wildfire problem in the state has steadily increased over the past 30-40 years and recent wildfire incidents in California since 2017 have consistently set records for fire size, intensity and rate of spread. The difficulty of controlling recent wildfires is evidenced by the number of structures being lost in wildfires despite the record expenditure of public funds on fire control efforts and in the anecdotal reports of experienced firefighters.

In 2007, the amendment requiring the installation and retrofit of fire sprinklers in Fire Zone 3 was one of the few mitigations available to help address the fire potential in that area. Today, the same conditions that originally motivated the 2007 Panoramic Hill District fire sprinkler amendment remain in effect in Fire Zone 3. The Berkeley Fire Department believes that based on deteriorating wildfire conditions throughout the state that the wildland fire problem in Fire Zone 2 is now very similar to the wildland fire problem in Fire Zone 3.

The geographic area designated as Fire Zone 2 shares most of the wildfire characteristics present within Fire Zone 3. Both areas are recognized by the City and the Director of the California Department of Forestry and Fire Protection as Very High Fire Hazard Severity Zones (VHFHSZ) and share similar fire weather. Both areas have narrow, winding and steeply graded roads and streets. Both areas have abundant vegetation intermixed with structures. The topography of both areas is steep which creates the potential for rapidly advancing slope-driven fires. The original parcel subdivisions created narrow but deep lots in both Fire Zones. This tends to crowd adjacent structures and greatly reduces the amount of defensible space available to provide for wildfire safety. The main factor that the two areas do not share is the condition of a single means of evacuation and access by road that exists in Fire Zone 3. The majority of street segments in Fire Zone 2 have access to more than one evacuation and access route. However, given the dramatic increase in the severity of the wildfire problem it is believed that the availability of a second or additional access routes, which is typical in Fire Zone 2, cannot mitigate all of the factors previously listed that may contribute to a catastrophic wildfire.

Human activity has been a major cause of fires throughout human history. A National Fire Protection Association study which examined the causes of wildfires nationally from 2011-2015 found that approximately 54% of wildfires were due to human activity other than intentionally set fires (which accounted for another 19%). Only 4% of fires were attributed to natural causes such as lightning. In residential areas, activities associated with human habitation pose the greatest potential for ignition of a fire. In residential areas where ignitable vegetation is closely intermixed with dwellings (such as in Fire Zones 2 and 3), it is a reasonable precaution to attempt to extinguish fires related to human habitation before those fires can spread to surrounding vegetation.

Typical residential structure fires that may occur in Fire Zones 2 and 3 pose much greater risks to neighboring structures and the broader community when they take place during periods conducive to wildfires in areas with the wildfire characteristics present in these fire zones. Detailed studies of a number of significant wildfires by the federal government's National Institute of Standards and Technology (NIST) indicate that once a structure is ignited, structure-to-structure fire spread is an important consideration in the Wildland Urban Interface fire environment.

An NIST study<sup>1</sup> on the November 8, 2018 'Camp Fire' that destroyed the community of Paradise, California and other communities characterized fire behavior across and within residential parcels. The report observed that fire exposures to structures from large flames in high exposure areas were often due to "*...high vegetative fuel loading or the proximity of nearby burning structures*". The report continues, stating that "*[t]he historic growth of Paradise and surrounding communities, going back over a century, resulted in many structures on smaller lots, with small structure separation distances. Combined with the vegetative fuel loading, this enabled rapid structure-to-structure fire spread*". This characterization of the community of Paradise as containing many structures on smaller lots with small separation distances and heavy vegetative fuel

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<sup>1</sup> "NIST Technical Note 2135", National Institute of Standards and Technology, January 2021



loading applies equally to Berkeley parcels in Fire Zones 2 and 3. We need to learn from the experience of Paradise, California and anticipate similar types of fire behavior within our community. The community of Paradise was lost due to a wildfire spreading into the community. However once structures ignite for any reason, experience has shown that both adjacent vegetation and structures may quickly become involved. As a community we need to take steps to ensure that a routine structure fire in a residence in Fire Zones 2 or 3 cannot spread to adjacent vegetation and structures and result in a catastrophic wildfire.

In addition to preventing the transition of residential fires to surrounding vegetation, the life safety benefits of residential fire sprinklers are well established and documented. These life safety benefits are evidenced by the fact that the California Building Code has mandated fire sprinklers throughout buildings containing new residential fire areas since the 2010 edition of that code. The proposed addition of fire sprinklers to existing and new residential properties will not only reduce the risk of a catastrophic wildfire incident but will have substantial, long-term safety benefits to the occupants of these structures.

This proposed ordinance amendment will greatly expand the use of fire sprinklers in our wildfire vulnerable areas, enhance the safety of building occupants and reduce the potential for fire spread from a structure to vegetation. However, it is not a panacea for the city's wildfire problem. Additional, substantial wildfire problems exist. Major problems include an inadequate road network for evacuation and emergency access, the need for more effective notification of citizens of developing emergencies, the need to coordinate citizen evacuations, the need for more and better vegetation management and defensible space, and the need to make fire-hardening of structures more universal. These problems have all been identified and can be addressed through other measures.

Given the potential financial impacts to property owners in the community, the subject of financial costs to the regulated community must be examined. For home owners subject to the requirement to install or retrofit fire sprinklers in their homes installation costs can vary substantially. A 2013 cost study for fire sprinkler installation in new residences by the National Fire Protection Association included multiple installations in projects in various areas of California and around the country. At that time the total cost for fire sprinkler installation in new construction (on cost-per square foot of sprinklered space) ranged from \$0.94 in Fresno to \$1.11 per square foot in Elk Grove, \$1.29 per square foot in Bakersfield and \$1.44 per square foot in Irvine, California. Nationwide, the NFPA study found an average installed cost of \$1.35 per sq. ft. and also found that in the two states having statewide installation requirements (California being one of those states) that the costs of installed systems are significantly and consistently lower. It also found that average fire sprinkler installation costs actually decreased between 2008 and 2013.

In the case of a retrofit in existing structures, the costs tend to be considerably higher and are greatly affected by the style of system installation (exposed vs. concealed pipe), the materials used and the source of water supply. A 2016 study by the City of San Francisco estimated fire sprinkler retrofit costs for exposed piping systems as

approximately \$515 per installed fire sprinkler head. This estimate included costs such as water meter upgrade, backflow prevention device, and material and installation costs. The San Francisco study used a conservative assumed coverage of 80 sq. ft per sprinkler which would equate to a cost-per square foot of coverage of \$6.44. This 80 sq. ft. per sprinkler coverage estimate is considered conservative from a cost estimating standpoint because standard residential fire sprinklers are actually rated for coverage areas of 144 sq. to 440 sq. ft. of coverage. If fire sprinklers were able to consistently cover their full rated area this would drive the report's average installation costs down to \$1.17 to \$3.58 per square foot. As a practical matter the constraints of smaller home spaces such as hallways, entry foyers and smaller bedrooms tend to drive the average coverage area down and the 80 sq. ft. of coverage per installed sprinkler is realistic in many installations. In cases where piping is concealed within walls, the San Francisco report estimated that installation costs would at least double, which would equate to \$12.88 per square foot.

As intended, the proposed revised ordinance language achieves the following goals:

1. It expands the scope and applicability of the existing fire code adoptive ordinance paragraph 'NN' from a requirement applicable only in Fire Zone 3 to a requirement applicable in both Fire Zones 2 and 3. The existing reference to "Environmental Safety- Residential District" (which is a land use planning designation) is replaced with "Fire Zones 2 and 3". These Fire Zone areas are defined in the Berkeley Fire Code as Very High Fire Hazard Severity Zones. As such, the fire sprinkler requirement would be directly linked to the wildland fire hazard present in those areas and not to a Land Use designation. This may become an important distinction as CalFire updates wildfire hazard maps. It is important that our local wildfire mitigation provisions evolve with our technical understanding of the State's wildfire problem.
2. The amended language specifies that the provisions of paragraph 'NN' apply to "any parcel zoned for single-family or duplex dwelling use". This specific language was chosen to mirror language used in State statutes which establish the rights of property owners to develop Accessory Dwelling Units (ADUs) on these properties. ADUs are a major source of new development within Berkeley's built-out neighborhoods in Fire Zones 2 and 3. However, the language is broad enough to capture not only ADU development but a significant percentage of substantial building alterations. Given that most properties within Fire Zone 3 are typically single-family, duplex or in some cases multiple single-family residences such a specification was previously unnecessary in earlier amendment language. The process of expanding paragraph 'NN' provisions to include all of Fire Zone 2 will necessarily capture parcels zoned for other uses. While there is utility in having structures on these other types of properties sprinkler protected in addition to the traditional dwelling units captured in the current paragraph 'NN' language, doing so creates significant obstacles in implementing and administering such a provision for larger campus-style or commercial properties having multiple buildings. In addition, larger residential properties are often captured by other fire code provisions which enhance fire safety such as our

local fire alarm retrofit requirement or, in the case of larger congregate residences, an existing retrofit requirement for fire sprinklers. Also, other property types may not have the same fire hazards associated with daily residential living activities such as cooking.

3. The language of the paragraph 'NN' amendment is altered to clarify that it is intended to apply to new construction, to the conversion of buildings or parts of buildings to habitable space when no formally approved habitable space previously existed, and to building alterations when permit valuations exceed the \$100k threshold. 'Alterations' are formally defined in the building code as construction work other than repair work or additions to existing structures or the construction of entirely new structures. The Berkeley Fire Department's historic interpretation of the current paragraph 'NN' language has always included non-repair work and additions in the application of the permit valuation threshold.
4. For the purpose of fire sprinkler system requirements, the permit valuation is the aggregate of all alterations and/or additions over a 3-year period. Some building owners may attempt to perform a series of smaller, separately permitted alterations or additions to an existing residential building in order to avoid having to provide a sprinkler system retrofit. To address this possible "loop-hole", the language of the paragraph NN amendment has a provision for aggregation, which involves adding together the costs of all alterations or additions to the same residential building over a three-year period to determine the sprinkler system obligation.
5. The revised paragraph 'NN' language makes it clear that whenever fire sprinklers are triggered in one building by construction of a new structure or alterations to an existing structure that all structures on the property having habitable space and associated with the new work are affected by the retrofit requirement. This feature of the ordinance language is essential because:
  - a. A retrofit requirement which only applies to the specific structure that is undergoing significant alterations will result in an extended delay in sprinkler adoption as many structures may never experience a substantial remodel.
  - b. As currently written, State statutes addressing the construction of Accessory Dwelling Units limit fire sprinkler requirements to properties where the main structure is also equipped with fire sprinklers.
6. The \$100,000 permit valuation trigger threshold from the original paragraph 'NN' amendment is retained. This allows for reasonable building alterations without triggering fire sprinkler installation while still capturing larger alteration, renovation and construction projects.

The exceptions included in the new paragraph 'NN' language include:

'Exception 1' exempts smaller accessory structures of less than 120 sq. ft. in size that would not normally require a building permit.

'Exception 2' exempts work classified as repairs to existing structures. There would be no permit valuation threshold associated with repair work. This will allow even extensive needed repairs such as reroofs, foundation retrofits, termite/pest repairs and similar work to be completed without the risk of triggering a fire sprinkler installation. This provision also exempts repair or alteration work specifically intended to bring a structure into compliance with ignition resistance construction standards for Wildland Urban Interface fire areas as recognized in the Building Code.

'Exception 3' allows the creation or addition of small utility or mechanical spaces to serve the needs of the structure. This is intended to allow for the incorporation of new energy generation, storage or energy saving features into existing buildings such as 'off-grid' or solar battery power installations, newer space or water heating technologies, etc.

'Exception 4' is intended to provide some relief to sprinkler retrofit requirements in situations where multiple, free-standing primary dwellings may exist on a property and where separate households may have no control over the construction activities of others on the property.

#### ALTERNATIVE ACTIONS CONSIDERED

Various adjustments to the proposed ordinance language were considered, as were different permit valuation thresholds for triggering sprinkler installation. Staff's belief is that the original \$100,000 permit valuation threshold used in Fire Zone 3 will strike a balance between allowing some significant updates and upgrades of living spaces and structures while still capturing many substantial remodel projects. As a result the \$100k figure is still considered to be a valid trigger threshold for fire sprinkler installation.

#### CONTACT PERSON

Steven Riggs, Fire Marshal, Department of Fire and Emergency Services, (510) 981-3473

#### Attachments:

- 1: Ordinance No. 7,788-N.S.
- 2: Public Hearing Notice

ORDINANCE NO. 7,788-N.S.

AMENDMENT OF PARAGRAPH 'NN.' OF SECTION 19.48.020 OF THE BERKELEY MUNICIPAL CODE TO REQUIRE FIRE SPRINKLER INSTALLATION IN AND RETROFIT OF STRUCTURES IN BERKELEY FIRE ZONES 2 AND 3

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

Section 1. That Paragraph NN. of Section 19.48.020 of the Berkeley Municipal Code ("Amendments to the California Fire Code") is amended to read as follows:

**NN. Section 903.2.23 Environmental Safety--Residential District Fire Zones 2 and 3 [Additional subsection]** ~~Any new construction requiring a permit determined to be \$100,000 or more in construction costs or new additions to existing structures shall be required to install automatic fire sprinklers throughout the structure. For the purpose of this subsection "Environmental Safety--Residential District" shall mean those areas designated as such on the Official Zoning Map of the City of Berkeley Fire Code, as it may be amended from time to time. On any parcel zoned to allow single-family or duplex dwelling residential use, any of the following conditions shall trigger the installation of fire sprinklers throughout any new and existing primary and related accessory structures containing habitable space:~~

A. The construction of a new structure containing habitable space, or

B. The conversion of existing structures or portions of existing structures to habitable space when such structures did not previously contain formally approved habitable space, or

C. Any alterations or additions requiring permit(s) determined to be \$100,000 or more in aggregate construction costs over a 36-month period from the date of permit issuance

For the purpose of this subsection Fire Zones 2 and 3 shall mean those areas designated as such in the Berkeley Fire Code, as it may be amended from time to time.

Exceptions: 1. Detached accessory structures of Group 'U' Occupancy with a floor area not greater than 120 square feet.

2. Construction or portions of construction defined as repairs for maintenance purposes or construction alterations intended to bring a structure into compliance with ignition resistant construction standards for wildfire exposure of the structure as set forth in the Berkeley Building Code.

3. Additions of new space that total not more than 250 square feet in area and which are used solely for mechanical or utility service of a building.

4. Where multiple, primary, free-standing dwellings exist on a given property the fire sprinkler installation requirements of this section shall be applicable to an individual primary structure and any qualified accessory structures on the property associated with the affected primary dwelling structure. Other free-standing dwelling structures on the property and their accessory structures need not retrofit fire sprinklers at that time.

Section 2. This amendment shall become effective 90 days after adoption of this ordinance.

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.

At a regular meeting of the Council of the City of Berkeley held on October 12, 2021, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**PROPOSED ORDINANCE AMENDING PARAGRAPH 'NN' OF  
BERKELEY MUNICIPAL CODE SECTION 19.48.020 ("AMENDMENTS  
TO THE CALIFORNIA FIRE CODE") TO REQUIRE FIRE SPRINKLER  
INSTALLATION IN ALL NEW STRUCTURES AND RETROFIT OF  
EXISTING STRUCTURES IN BERKELEY FIRE ZONES 2 AND 3**

The Department of Fire and Emergency Services is proposing ...

Conduct a public hearing and, upon conclusion, adopt the second reading of Ordinance No. 7,788-N.S. which modifies the language of Paragraph 'NN.' of Berkeley Municipal Code Section 19.48.020 ("Amendments to the California Fire Code) by adopting a building standard which is more restrictive than that standard currently contained in the California Fire Code and which will expand the existing local code amendment that requires the installation of fire sprinklers in new structures and the retrofit fire sprinklers into existing structures that currently exists in Fire Zone 3 to include structures located in Berkeley Fire Zone 2.

The hearing will be held on, OCTOBER 26, 2021 at 6:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **October 14, 2021**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Fire Marshal Steven Riggs at (510) 981-3473.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, 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 or in person to the City Clerk. 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](mailto:clerk@cityofberkeley.info) for further information.

**Published:** The Daily Californian - October 18, 2021 and October 25, 2021  
In accordance with California Government Code, Section 50022.3

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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 October 14, 2021.

Mark Numainville, City Clerk



Office of the City Manager

ACTION CALENDAR

October 26, 2021

(Continued from October 12, 2021)

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Dee Williams-Ridley, City Manager
 Subject: Identifying City Council Referrals for Removal

RECOMMENDATION

1. Review the referrals marked as rescinded by the sponsoring Councilmember or District; 2. Consider the referrals identified by Councilmembers for further discussion; and 3. Approve the removal of referrals that have been marked as rescinded by the sponsoring Councilmember or District.

FISCAL IMPACTS OF RECOMMENDATION

There are no direct financial implications related to the review and approval of the referrals for removal.

CURRENT SITUATION AND ITS EFFECTS

Currently there are over 200 active City Council referrals pending. These referrals have been adopted over several years, some dating back five years or more. After the onset of the COVID-19 pandemic, there have been many changes and shifts that occurred locally, nationally, and globally, including City Council and community priorities. In order to ensure that the work of the City best reflects those shifts, staff suggested a review of outstanding referrals.

During July and August 2021, Councilmembers had the opportunity to review outstanding referrals with the option to mark the referrals sponsored by their District to indicate that the referral should be removed. In total, the Mayor and Council identified 61 referrals that should be removed from the referrals list (see attachment 1). In addition to 61 marked for removal, there were 24 referrals where Councilmembers had questions or comments that may affect whether they wish to consider these referrals for removal (see attachment 2). The full Council will have an opportunity to vote to remove or retain the referrals that were marked for removal.

BACKGROUND

As stated above, changing conditions and priorities may result in certain referrals being outdated, superseded, or resolved through other programs and projects. This review by

(Continued from October 12, 2021)

the Mayor and Council supports the Strategic Plan goal to provide an efficient and financially-healthy government and to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

The City Manager provides a quarterly update to the Council regarding the status of short term referrals through an Information Report on the Council agenda. In addition, during the spring 2021 budget process, staff provided a memo to both the Budget and Finance and the Agenda and Rules Policy Committees updating progress on referrals, projects, and responses to audits. Staff continues to work through the existing open referrals and has completed 86 since the start of the pandemic in March 2020.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

This recommendation will assist staff in focusing on Council priorities as well as decreasing efforts spent on items that are no longer as pressing or which have been superseded.

ALTERNATIVE ACTIONS CONSIDERED

Council may decide to forgo removing referrals that have been marked as rescinded.

CONTACT PERSON

Melissa McDonough, Senior Management Analyst, City Manager's Office, 510-833-3588

Attachments:

- 1: Referrals Marked for Removal
- 2: Responses to Councilmember Questions

Attachment 1 - Referrals Marked for Removal

Number	Name	Description	Meeting Date	Referral District	Referral Member	Sponsor	Lead City Department	Status	Funded?
DMND0002606	Farmers' Markets Investments	Refer to the City Manager to initiate improvements and changes to support the Berkeley Farmers' Markets that would address growing public safety and access concerns while enhancing the shopping experience and benefit the markets.	2018-09-25	1		Linda Maio, Kate Harrison, Sophie Hahn, Jesse Arreguin	Public Works	Not Started	Information unavailable at time of preparation
PRJ0016259	Managing RV Parking Via Permit Process	Refer to the City Manager to look into how other cities use permitting to manage RV parking and suggest a permit process that Council can consider to enable RV parking but place some sensible limits.	2018-09-25	1		Linda Maio, Sophie Hahn, Jesse Arreguin	CITY MANAGER'S OFFICE	Work in Progress	Information unavailable at time of preparation
DMND0002541	Referral to Planning Commission: Guiding Development on San Pablo Avenue	Refer to the Planning Commission the development of a Plan to guide development on San Pablo Avenue.	2015-07-14	1	Linda Maio	Linda Maio	PLANNING & DEVELOPMENT	Not Started	No
PRJ0012416	Replacement Mural for Center for Independent Living (CIL)	Request the Arts Commission to consider, with CIL representatives, potential locations and suggestions for a new mural to replace that which was at the CIL Telegraph site.	2017-06-13	1	Maiao, Davila		Office of Economic Development	Not Started	No
PRJ0012436	Restricting the Number of Vehicles Being Parked on Our Streets	Refer to the Transportation Commission to establish an ordinance that would prevent the parking of many multiples of vehicles on any given Berkeley street, or contiguous streets, by an individual owner.	2018-02-27	1		Linda Maio, Kate Harrison	Public Works	On hold, pending scheduling by the Transportation Commission	Information unavailable at time of preparation
PRJ0013071	Special RPP Designation, Grant Street between Ohlone Park and Delaware Street	Request the City Manager to designate a special "no 2-hour parking grace period" residential permit parking zone for the one cul-de-sac block of Grant Street between Ohlone Park and Delaware Street. Also, request to provide Council with an Info Report on the process and perform increased enforcement.	2017-01-24	1	Linda Maio	Linda Maio	Public Works	On hold, no solution found that does not privatize the street or which does not prohibit parking in	Information unavailable at time of preparation
PRJ0013083	Treatment of women in custody at Santa Rita Jail	Refer to the Commission on the Status of Women the alleged offensive treatment of women in custody at Santa Rita Jail, as reported below with the aim of ensuring that searches of women not be conducted in the presence of men (be they male officers or inmates) and any other changes in protocol that might be needed to ensure appropriate policies are followed during searches of women in custody.	2012-01-17	1	Linda Maio	Linda Maio	CITY MANAGER'S OFFICE	Work in Progress	No
DMND0002499	Vitality of University Avenue	Refer to the City Manager and Economic Development to analyze storefront vacancies on University Avenue and make recommendations on how to create a more vibrant streetscape on our main boulevard.	2017-07-11	1		Linda Maio, Cheryl Davila, Kate Harrison	Office of Economic Development	Not Started	No
PRJ0017865	Budget Referral: Remediation of Lawn Bowling, North Green and Santa Fe Right-of-Way, FY2020-2021	Refer to the November 2019 AAO consideration of at least \$150,000 and up to remediate the Lawn Bowlers, North Green and Santa Fe Right-of-Way in advance of Request for Proposal (RFP) for these areas that potentially could provide much needed affordable alternative housing. Refer to the Homeless Services Panel of Experts to consider Measure P funds for remediation purposes for these properties.	2019-06-25	2		Cheryl Davila	HEALTH, HSG & COMMUNITY SVC	Not Started	Information unavailable at time of preparation
DMND0002960	Budget Referral: Increasing Safety at San Pablo Park	3. Re-initiate classes for daycare providers who use San Pablo Park out of the Frances Albrier Community Center: Historically, the City provided a variety of classes on safety and recreation for daycare providers who use San Pablo Park. This referral includes re-establishing a series of courses that daycare providers find useful based on gathering their input. One such course requested was sheltering in place in the situation of an active shooter.	2018-11-13	2		Cheryl Davila	Parks, Recreation & Waterfront	Not Started	No

Attachment 1 - Referrals Marked for Removal

Number	Name	Description	Meeting Date	Referral District	Referral Member	Sponsor	Lead City Department	Status	Funded?
DMND0002444	Budget Referral: Youth Listening Campaign & Citywide Master Plan	Amended to include Youth Commission. In support of the 2020 Vision process and as part of the larger commitment of the City of Berkeley to its young people, we are proposing a planning process that centers the voices and needs of young people, their families and the people who support them day-in and day-out. The process would include: 1) A Listening Campaign that would include focus groups, surveys and one-on-one interviews to identify the experiences of, perspectives of, needs of and barriers	2017-05-30	2		Cheryl Davila, Jesse Arreguin	CITY MANAGER'S OFFICE	Not Started	Information unavailable at time of preparation
DMND0003923	Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley	City Council to take the following action: 1. Make the following statement:	2021-01-19	2		Cheryl Davila	CITY MANAGER'S OFFICE	Not Started	Information unavailable at
DMND0003922	Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025	1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle	2021-01-19	2		Cheryl Davila	PLANNING & DEVELOPMENT	Not Started	No
DMND0002969	Item E - Short-Term Referral to the Planning Commission and Design Review Committee to Research and Draft an Urban Forestry Ordinance Requiring Tree Planting Upon Completion of New Residential Construction and Certain Alterations	Six-month referral to the Planning Commission to research and draft an Urban Forestry Ordinance requiring tree planting upon completion of new construction, excluding single-family homes and ADUs, as well as construction in High Hazard Fire Zones. The Planning Commission should consider the following: • Appropriate tree planting requirements for new construction, with the goal of increasing the tree canopy in Berkeley. • Appropriate species requirements.	2018-12-11	2		Cheryl Davila, Kate Harrison	PLANNING & DEVELOPMENT	Not Started	No
PRJ0013095	Private Parking Lot Regulations	Refer to the City Manager the development of an ordinance that would allow parking lot operators to manage their parking facilities so as to meet the needs of local businesses and their customers.	2015-10-27	2	Cheryl Davila	Cheryl Davila	City Attorney	Not Started	No
PRJ0027028	Providing our Unhoused Community in the City of Berkeley with Menstrual Products	3. Direct the City Manager to use existing homeless services funding to develop and deploy a program to provide a broad spectrum of menstrual products, including but not limited to, feminine hygiene, pads, tampons, underwear, and other related products, both through the City's outreach direct services, as well as through the community based homeless services providers. Additionally, require some elements of this program be deployed immediately, with a full program deployment within six months.	2020-07-28	2		Cheryl Davila, Ben Bartlett, Lori Droste	HEALTH, HSG & COMMUNITY SVC	Not Started	No
DMND0003939	Recognize the Rights of Nature	Adopt a resolution to recognize that the natural living world has a right to exist, thrive, regenerate and evolve its life cycles; to protect the ecosystems upon which our own vitality depends; and to transform our human relationship with nature from a property-based to a legal rights-bearing entity. Referred Item 31 to the Peace and Justice Commission for further analysis, and that the Commission is to return to Council with the results of its analysis.	2021-03-30	2		Cheryl Davila	CITY MANAGER'S OFFICE	Not Started	Information unavailable at time of preparation
PRJ0019829	Refer to the Planning Commission and Housing Advisory Commission to Research and Recommend Policies to Prevent Displacement and Referral Response: Expanding community engagement within work to address Climate Impacts	Refer to the Planning Commission and Housing Advisory Commission to research and recommend policies to prevent displacement and gentrification of Berkeley residents of color. Recommended policies should include real solutions. The Commission should do the following: - Develop a policy to address the erosion of People of Color (POC), including the African	2019-04-30	2	Cheryl Davila	Cheryl Davila, Ben Bartlett, Kate Harrison	Health, Housing and Community Services	Work in Progress	No
DMND0003875	Refer to the City Manager to continually advance engagement around community-driven, equitable climate solutions, and to seek external resources to enable increased community engagement of impacted communities around equitable climate solutions	Refer to the City Manager to continually advance engagement around community-driven, equitable climate solutions, and to seek external resources to enable increased community engagement of impacted communities around equitable climate solutions	2020-07-21	2	Davila, Bartlett		PLANNING & DEVELOPMENT	Work in Progress	No
PRJ0013209	Referral to the City Manager: Adopt Section 8 Landlord Incentives [Housing Action Plan]	Refer to the City Manager the adoption of the following measures to encourage landlords to accept Section 8 and Shelter + Care vouchers: 1. Create a list of qualified, efficient and affordable contractors vetted by the City, and a discount or waiver of	2017-04-25	2	Cheryl Davila	Cheryl Davila	HEALTH, HSG & COMMUNITY SVC	Not Started	No
DMND0003935	Support Vision 2025 for Sustainable for Sustainable Food Policies	Adopt Vision 2025 for establishing sustainable food systems and sign the Milan Urban Food Policy Pact (MUFPP) 2. Refer aspects of the original item to the Community Health Commission (or future commission addressing public health) to take the following actions: a) Consult with appropriate City staff to evaluate the feasibility of altering food sources within the City's	2021-03-09	2	Davila		HEALTH, HSG & COMMUNITY SVC	Not Started	No
DMND0003744	Berkeley Opportunity Zone Displacement Mitigation Zoning Overlay	Direct the City Manager and refer to the Planning Commission to create one or several zoning overlays, and/or recommend any mechanism, which protects Berkeley residents living in one or all of Berkeley's Federal Opportunity Zones from gentrification and displacement. Overlays and/or recommendations may also confer community benefits, including but not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job	2019-06-11	3	Ben Bartlett	Ben Bartlett, Jesse Arreguin, Kate Harrison, Sophie Hahn	PLANNING & DEVELOPMENT	Not Started	No
PRJ0012337	Develop Ordinance Prohibiting Companies Participating in the Construction of a Border Wall	Direct the City Manager to develop an ordinance prohibiting companies involved in the construction of a border wall from contracting with the City of Berkeley. Return to Council with the proposed ordinance within 90 days.	2017-12-19	3		Ben Bartlett, Sophie Hahn, Cheryl Davila	Finance	Pending Not On Schedule	Staff time
PRJ0016099	Dynamex Decision Impact and Compliance on Minimum Wage Ordinance and Paid Sick Leave	That the City Council refers to the City Manager and the Labor Commission to ensure the Berkeley Minimum Wage Ordinance (MWO) and Paid Sick Leave Ordinance are interpreted and enforced in a manner consistent with the holdings in Dynamex	2019-03-26	3		Ben Bartlett	City Attorney	Work in Progress	Information unavailable at

Attachment 1 - Referrals Marked for Removal

Number	Name	Description	Meeting Date	Referral District	Referral Member	Sponsor	Lead City Department	Status	Funded?
PRJ0012428	Homeless Youth Policy	Refer to the City Manager, the Homelessness Commission, and the Labor Commission to develop a Homeless Youth Policy for the City of Berkeley.	2017-10-31	3		Ben Bartlett, Sophie Hahn, Kate Harrison	HEALTH, HSG & COMMUNITY SVC	Not Started	No
DMND0003731	Paid Family Leave Policy in Berkeley to Supplement California Paid Family Leave Program	That the City Council adopt this policy and refer to the City Manager and City Attorney to amend the proposed ordinance based on the recommendations of the Paid Family Leave (PFL) Subcommittee and to conform to legal and code consistency requirements.	2019-04-23	3		Ben Bartlett, Sophie Hahn, Kate Harrison, Cheryl Davila	Human Resources	Not Started	Information unavailable at time of preparation
DMND0002587	Personal Delivery Service Franchise Agreements	Referral to the City Manager's Office to develop a program that would enable the City to consider franchise applications for personal delivery service companies involving personal delivery devices.	2017-12-19	3	Ben Bartlett	Ben Bartlett	CITY MANAGER'S OFFICE	Not Started	No
PRJ0012330	Public Toilet Policy	Refer to the City Manager to develop the following "Neighborhood Public Toilet Policy": Develop a process in which residents can obtain a permit for a neighborhood public toilet via an official petition; Residents should contact the City via 311 to obtain an official petition form to apply for a permit; In order to obtain the permit, the petition should be signed by at least 51% of residential addresses and business owners within the nearest two block radius of the proposed public toilet site; The City shall	2017-07-25	3	Bartlett		CITY MANAGER'S OFFICE	Work in Progress	No
PRJ0012429	Referral to Peace and Justice Commission to Further Protections for Immigrants and Religious Minorities	Adopt a Resolution referring to the Peace and Justice Commission to: 1. Identify entities involved in attempts to create databases and registries used to target immigrants and religious minorities, and make recommendations to the City Council on divesting from such entities; and 2. Identify all service providers to US Immigration and Customs Enforcement, and make recommendations to the City Council on prohibiting city investment in such service providers.	2017-10-31	3		Ben Bartlett, Kate Harrison	CITY MANAGER'S OFFICE	Not Started	Information unavailable at time of preparation
DMND0002726	Adopt a Resolution in Support of Appropriate City Enforcement Measures to Mitigate Damages	Amended to be a referral to the City Manager regarding enforcement of measures to mitigate damage to the general welfare of the City and neighborhood resulting from the damage and subsequently-required removal of trees at 1698 University Avenue.	2018-09-13	4	Kate Harrison	Kate Harrison	PLANNING & DEVELOPMENT	Work in Progress	Staff time
PRJ0012426	Ban on Receipts Made with BPA and Other Phenols	Refer to the Health Commission and the Community Environmental Advisory Commission to consider an Ordinance to ban the manufacture, distribution, sale, or use of receipt paper that contains BPA or other phenols, and request that the commissions conduct at least one public hearing that includes invitations to local business associations.	2017-10-17	4	Harrison, Davila, Bartlett		PLANNING & DEVELOPMENT	Work in Progress	No
PRJ0012442	Referral to the Health Commission to Consider a "Deemed Approved Ordinance"	Refer to the Health Commission to consider a Concurrent Sales of Gasoline and Alcoholic Beverages Law regulating the concurrent sales of gasoline and alcoholic beverages. Deem such establishments approved, subject to their adherence to	2018-04-03	4		Kate Harrison, Linda Maio	HEALTH, HSG & COMMUNITY SVC	Not Started	No
PRJ0013189	Administrative Changes Related to Taxicabs	Request the City Manager consider the following administrative changes, in order to increase the competitiveness of the taxi industry: 1. Reduce the annual vehicle inspection fee from \$88 to \$45 and the re-inspection fee from \$45 to \$25.; 2. Increase the maximum amount of free taxi scrip that drivers are able to redeem each week from the current limit of \$400 to \$800 (if taxi scrip is redeemed twice per week, the maximum amount redeemed at once should be raised to \$400 from \$200).; 3.	2017-10-17	7		Kriss Worthington, Kate Harrison	CITY MANAGER'S OFFICE	Work in Progress	No
DMND0002599	Campus-City National Night Out. Revised to be a Referral with no specific date - Revised materials	Adopting a Resolution to refer the campus-city National Night Out event to the City Manager to help reduce crime in the campus area.	2018-07-24	7	Kriss Worthington	Kriss Worthington	Police	Not Started	Information unavailable at
PRJ0013215	City Manager Referral: Facilitate the Local Implementation of Senate Bill 1413 and Expedite the Development of Teacher and School Employee	Refer to the City Manager to work with the Planning Department to facilitate the local implementation of Senate Bill 1413 in an effort to expedite the development of housing for teacher and school employees in Berkeley.	2016-09-27	7	Kriss Worthington	Kriss Worthington	PLANNING & DEVELOPMENT	Not Started	No
DMND0002688	City Manager Referral: Increasing Transparency in City Public Record Act Responses	Approved revised recommendation to request a report from the City Manager on how the City is using the permitted exemptions in compliance with the Public Records Act.	2016-11-01	7	Kriss Worthington	Kriss Worthington	City Attorney	Incomplete	No
DMND0002589	City Manager Referral: Updating Graffiti Ordinance and Policies Based on a Review of San Francisco's New Ordinance	Refer to the City Manager and the Public Works and Parks and Recreation Commissions to create an ordinance that revises Berkeley's policies regarding graffiti, focusing on prevention and enforcement of regulations.	2014-07-01	7	Kriss Worthington		Public Works	Submitted	Information unavailable at time of preparation
DMND0002954	Construct Additional Taxi Stands and Relocate One Stand Within the City	That the Council refer to the City Manager the construction of seven taxi stands in total and the relocation of one stand in the City to improve accessibility for pedestrians, create visibility, and increase profits for taxi drivers. These taxi stands should be constructed at the following sites: Two stands at Hotel Shattuck; Two stands at the Doubletree Hotel; Two stands at Telegraph & Bancroft or Durant & Telegraph; and One stand at Bancroft Hotel. In addition, the Ashby BART taxi stand shall be relocated closer to the station entrance on MLK Jr. Way.	2018-11-13	7		Kriss Worthington, Cheryl Davila, Sophie Hahn	CITY MANAGER'S OFFICE	Not Started	No

Attachment 1 - Referrals Marked for Removal

Number	Name	Description	Meeting Date	Referral District	Referral Member	Sponsor	Lead City Department	Status	Funded?
DMND0002953	Create and Implement Additional Sensitivity Training Options for Taxi Drivers	That the Council refer to the City Manager the creation and implementation of one of the following two additional options for sensitivity trainings to allow for more accessibility for new and continuous taxi drivers. Firstly, an online sensitivity training course should be created and implemented in the City's current taxi checklist. Secondly, there should be a designated sensitivity training site readily accessible within the City.	2018-11-13	7		Kriss Worthington, Cheryl Davila, Kate Harrison	CITY MANAGER'S OFFICE	Not Started	No
DMND0002676	Modify the Proposed Early Mitigation Fee Discount and Preserve Revenue Towards Units At Or Below 50% AMI and Add Sunset Clause (Continued from February 23, 2016)	That the City of Berkeley amend Council Item 10a to remove the option of paying a substantially-reduced mitigation fee at the issuance of a permit, and to preserve revenue from the mitigation fees to maintain or increase the funds designated towards units for incomes at or below 50% AMI, and add a sunset clause.	2016-04-05	7	Kriss Worthington	Kriss Worthington	HEALTH, HSG & COMMUNITY SVC	Not Started	Yes
PRJ0012410	Non-Citizen Voting in Berkeley Elections Refer to Peace and Justice Commission	Refer to the Peace and Justice Commission to consider preparation of an amendment to the Berkeley City Charter to be presented to the voters in Berkeley that would allow a non-citizen resident the right to vote in Berkeley city elections.	2017-03-14	7			CITY MANAGER'S OFFICE	Not Started	No
PRJ0019700	Refer the Transportation Commission to consider incentives for the public to use sustainable modes of transportation similar to Bologna, Italy	Refer to the Transportation Commission to create incentives for members of the public to cycle, walk and take public transport as opposed to driving.		7	Kriss Worthington	Sophie Hahn, Kate Harrison, Kriss Worthington	Public Works	On hold	Information unavailable at time of preparation
DMND0002910	Refer to the City Manager to add a condition to Zoning Board Approved permits to bring attention to the Pay Transparency policy to project applicants, and consider these Pay Transparency Ordinance amendments	That the Council refer to the City Manager to add a condition to Zoning Board Approved permits in order to bring attention to the Pay Transparency policy to project applicants, and consideration of amendments to the Pay Transparency Ordinance.	2018-11-27	7		Kriss Worthington, Jesse Arreguin	PLANNING & DEVELOPMENT	Not Started	No
DMND0002479	Referral to the City Manager and the Housing Commission to Consider Creating a Dedicated Revenue Stream from Campus Area Projects to	Refer to the City Manager and Housing Commission to consider in partnership with the proposed density bonus in the campus area and other policies directed at increasing student housing, creating a dedicated revenue stream to fund housing for homeless and extremely low income students using methods of identifying eligible students based on one or more of the	2018-01-30	7		Kriss Worthington, Ben Bartlett	HEALTH, HSG & COMMUNITY SVC	Not Started	No
DMND0003849	Referral: Electric Moped Ride-Share Franchise Agreement	Refer to the City Manager to rename the existing One-Way Car Share Program as the One-Way Vehicle Share Program and to amend the Program to include administrative requirements and parking permit fees for motorized bicycles that are affixed with license plates and require a driver's license for individuals to operate them (mopeds), in coordination with the City of Oakland.	2020-02-11	7	Rigel Robinson	Rigel Robinson, Ben Bartlett, Kate Harrison, Sophie Hahn	Public Works	Not Started	Information unavailable at time of preparation
PRJ0013155	Expanding the Downtown Arts District	1. Request the Planning Commission examine expanding the boundaries of the current Downtown Arts District Overlay as well as the allowable active ground-floor uses. 2. Request the City Manager consider the Downtown Arts District as part of the update to the Berkeley Arts and Culture Plan.	2016-10-18	8	Lori Droste	Lori Droste	Office of Economic Development	Work in Progress	No
PRJ0013067	Potential Recreational Opportunities at Willard Park and Pool	Refer the issue of recreational opportunities in the vicinity of Willard Park to the City Manager, Parks and Waterfront Commission and the 2X2 Committee of the City Council and the Board of Education to determine the best course of action for increased recreational equity in South Berkeley, including but not limited to the re-opening of Willard Pool. Authorize staff to develop cost estimates for a minimal level of repairs to get Willard Pool operational.	2017-03-14	8	Lori Droste	Lori Droste	Parks, Recreation & Waterfront	Work in Progress	No
PRJ0012440	Street Sweeping Improvement Plan	Refer to the City Manager, Public Works commission, and Zero Waste commission to develop a new strategy to ensure that street sweeping is not obstructed by waste/recycling pick-up. In addition to being unsightly, without proper street sweeping,	2018-03-27	8		Lori Droste, Jesse Arreguin	Public Works	On hold, pending new financial	Information unavailable at
PRJ0019780	Traffic Circle Vegetation Maintenance Policy	Refer to Parks and Waterfront Commission and the Transportation Commission to establish a city/community task force to: a) Evaluate the City's current traffic circle vegetation policy and b) Conduct a community led process to update that policy to ensure pedestrian/bicycle/vehicle safety and preserve community efforts to beautify traffic circles.	2018-09-25	8	Lori Droste	Lori Droste, Ben Bartlett, Cheryl Davila, Jesse Arreguin	Parks Recreation & Waterfront	Work in Progress (Parks and Waterfront Commission on a subcommittee)	Information unavailable at time of preparation
PRJ0013090	Multi-Departmental Homelessness Working Group	1. Establish a Multi-Departmental Homelessness Working Group (modeled after the City Sustainability Working Group) 2. Initiate a public process to develop a comprehensive plan to address homelessness in Berkeley, taking into consideration all of the ideas put forward by the Homeless Commission and Homeless Task Force, with the goal of creating more transitional and permanent housing for our city homeless population.	2016-03-29	Mayor	Jesse Arreguin	Jesse Arreguin	CITY MANAGER'S OFFICE	Work in Progress	Information unavailable at time of preparation

Attachment 1 - Referrals Marked for Removal

Number	Name	Description	Meeting Date	Referral District	Referral Member	Sponsor	Lead City Department	Status	Funded?
PRJ0016267	Referral Responses: Managing Recreational Vehicle (RV) Parking	The City of Berkeley seeks to implement all laws and ordinances in a fair and humane manner.	2019-03-26	Mayor		Jesse Arreguin, Rashi Kesarwani, Sophie Hahn	CITY MANAGER'S OFFICE	Work in Progress	No
PRJ0019058	Housing for a Diverse, Equitable and Creative Berkeley: Proposing a Framework for Berkeley's Affordable Housing	To that end, we refer to the City Manager for consideration the following guidelines to help ensure enforcement of revised RV Refer to the Housing Advisory Commission, the Measure O Bond Oversight Committee, and the Homeless Services Panel of Experts to consider the proposed Housing for a Diverse, Equitable and Creative Berkeley framework (the "Framework") and return comments for consideration at a Special Meeting of the City Council in September, to inform a final version the City Council will adopt to govern Berkeley's affordable housing policies, programs and projects through 2030.	2019-07-16	Mayor		Jesse Arreguin, Sophie Hahn, Kate Harrison, Rigel Robinson	Health, Housing and Community Services	Not Started	Information unavailable at time of preparation
PRJ0012433	Amending BMC Chapter 9.04: Tax Rate for Non-Medical Cannabis Businesses	2) refer to the Community Health Commission to study the health effects of cannabis and possible funding recommendations for allocating the tax revenue;	2018-02-13	Mayor		Jesse Arreguin	HEALTH, HSG & COMMUNITY SVC	Not Started	No
DMND0002677	Creation of 311 Mobile Application	Refer to the City Manager to create a mobile application for the 311 system and improve the 311 Online Service Center.	2016-04-26	Mayor	Jesse Arreguin	Jesse Arreguin	Information Technology	Not Started	No
PRJ0013100	Mandatory Green Stormwater Infrastructure in New Developments	Refer to the City Manager and Planning and Community Environmental Advisory Commissions to develop an ordinance requiring large residential developments of 100 units or more or commercial developments that result in 5,000 square feet of new or replaced impervious surface, to incorporate Green Stormwater Infrastructure (GSI) and water conservation features into new projects.	2015-09-15	Mayor	Jesse Arreguin	Jesse Arreguin	PLANNING & DEVELOPMENT	Work in Progress	No
DMND0002665	Prohibit Sales of Tobacco Products to Persons Under the Age of 21	Direct the City Manager and Community Health Commission to draft an ordinance amending Berkeley Municipal Code Chapter 9.80 "Tobacco Retailers" to prohibit the sales of tobacco products and smoking paraphernalia to persons under the age of 21.	2015-09-15	Mayor	Jesse Arreguin	Jesse Arreguin	HEALTH, HSG & COMMUNITY SVC	Not Started	No
PRJ0013099	Housing Accountability Act	Refer to the City Manager, Planning Commission, Zoning Adjustments Board, and Design Review Committee to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion: 1. Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable "objective general plan and zoning standards" that would establish known maximum densities. This could be done across the board or for specified districts. 2. Devise and adopt "objective, identified written public health or safety standards" applicable to new housing development projects. 3. Adopt "design review standards that are part of 'applicable, objective general plan and zoning standards and criteria'. 4. Quantify and set objective zooming standards and criteria under the first sentence of Government Code Section 65589.5(j) for views, shadows, and other impacts that often	2017-07-11	Mayor	Jesse Arreguin	Jesse Arreguin	PLANNING & DEVELOPMENT	Work in Progress	Information unavailable at time of preparation
DMND0003928	Refer to the City Manager the review and redesign of the RPP program.	Refer to the City Manager the review and redesign of the RPP program.	2021-01-26	Mayor	Mayor, Droste		Public Works	Work in Progress	Information unavailable at time of preparation
PRJ0013093	Permit Service Center Improvements	Refer to the City Manager to include in current efforts to improve the Land Use Permitting process the following proposals to increase the efficiency and outreach of the Permit Service Center, making the permitting process easier for staff and applicants alike. Specific proposals to consider include: 1. Website improvements for tracking of permits, calculating permit fees, and applying online; 2. Case Managers for coordinated intake of permit applications and materials; 3. Informational materials including an improved user guide and infographics modeled after BizGrid; 4. Customer service improvements at the Center	2016-07-19	Mayor	Jesse Arreguin	Jesse Arreguin	PLANNING & DEVELOPMENT	Work in Progress	Staff time
DMND0003927	Refer to the City Manager and appropriate commissions updates to the TDM program to reflect evolving mobility and disability needs, including electric mobility options	Refer to the City Manager and appropriate commissions updates to the TDM program to reflect evolving mobility and disability needs, including electric mobility options	2021-01-26	Mayor	Mayor, Droste		PLANNING & DEVELOPMENT	Not Started	Staff time
DMND0002675	Prioritize Installation of Bicycle Lane on Fulton Street	Direct the City Manager and Transportation staff to prioritize and expedite the installation of a bicycle lane on Fulton Street between Bancroft Way and Channing Way.	2016-03-15	Mayor	Jesse Arreguin	Jesse Arreguin	Public Works	Not Started	Information unavailable at

Attachment 2 - Responses to Councilmember Questions

Number	Name	Description	Meeting Date	Referral District	Referral Member	Sponsor	Lead City Department	Status	Funded?	Additional Context/Information
PRJ0013213	Adding Threat of Displacement of a Berkeley Resident to the Current Income Qualification Guidelines Which Would Place an Applicant in Priority Status for BMR (Below Market Rate) Units [Housing Action Plan]	Refer to the City Manager adding to income qualification the status of pending displacement of a Berkeley resident or family, for priority eligibility for BMR units.	2017-06-13	1		Linda Maio, Kate Harrison, Hahn, Ben Bartlett	HEALTH, HSG & COMMUNITY SVC	Work in Progress	No	Staff are currently working on a response to this referral, and the questions asked here, with the City's Partnership for the Bay's Future Policy Fellow and the City Attorney's Office. The Housing Trust Fund and BMR programs have separate State/Federal requirements that may affect the applicability of preferences differently for each program. State/Federal Fair Housing laws, in particular, may affect how preferences are applied to the BMR program, and staff are exploring this subject now with the CAO. Staff's report for the Council's consideration will include quantifiers for displacement and the threat of displacement if they are found to be compatible with State/Federal law. This is anticipated to come to Council in early 2022.
DMND0002537	Enable Internal Renovation of a Residence That Does Not Increase the Footprint As an AUP if the Building is an Historic Non-Conforming Use in the Percent of Lot Coverage	Refer to the Planning Commission to enable an AUP for the renovation of an existing residence, rather than a Use Permit, in the following circumstances: 1. The renovation does not increase the percentage of lot coverage; 2. The residence is an pre-existing non-conforming use in the percentage of lot coverage; 3. The renovation does not appear to create an intensification of use; 4. No change to the building envelope.	2018-02-27	1		Linda Maio, Susan Wengraf, Lori Droste, Kate Harrison	PLANNING & DEVELOPMENT	Not Started	No	No, this is not related to ADU law or any new state legislation that we're aware of. It's a relatively simple policy change that we can address either through the Housing Element Update or through ZORP Phase 2.

Attachment 2 - Responses to Councilmember Questions

Number	Name	Description	Meeting Date	Referral District	Referral Member	Sponsor	Lead City Department	Status	Funded?	Additional Context/Information
DMND0002887	Encouraging Long-Term Tenant Stability	Facilitate the ability of long-term tenants to purchase their residence by referring to the City Manager to amend BMC 21.28.080 as it pertains to the Affordable Housing Mitigation fee as follows: If the property contains 4 units or fewer, the affordable housing mitigation fee for a unit that is and has been occupied by an owner as his or her principal place of residence for at least 5 consecutive years immediately prior to the date of conversion or sale, including as a tenant in that unit immediately prior to ownership, shall be reduced by 50 percent.	2018-11-27	1		Linda Maio, Lori Droste, Kate Harrison, Sophie Hahn	PLANNING & DEVELOPMENT	Work in Progress	Yes	The referenced fee is the affordable housing mitigation fee associated with condo conversions (rather than the Affordable Housing Mitigation Fee associated with new housing development), which is not limited to buildings of five or more units. Work on this referral is currently underway as part of the development of a unified affordable housing ordinance.
PRJ0020542	Open Doors Initiative: City Worker and First Time Affordable Homebuyer Program	That the City Council refer the City Manager and Housing Advisory Committee to explore mechanisms to support homeownership by City of Berkeley employees and further refer to City Manager to prepare a report detailing available first-time homeownership and low-income homeowner programs that might be available for implementation in the City of Berkeley. Analysis to include the new Self-Help Housing Program and the provisions of AB 101.	2019-09-10	3	Bartlett, Robinson, Arreguin		Health, Housing and Community Services	Not Started	No	Yes. The Missing Middle report calls for "Evaluating methods for promoting first time home ownership of these units (e.g., Open Doors Initiative) and/or providing assistance to first time homebuyers so that the benefits of the additional housing are equitably distributed." This encompasses the charge of the listed referral.
DMND0003936	Budget Referral: Establish Parking Benefit Districts in the Adeline Corridor and Gilman District and Refer Funding to the Fiscal Year 2022 Budget Process	Refer to the City Manager to establish Parking Benefit Districts (PBDs) in the (1) Adeline Corridor and (2) Gilman District in order to finance and support neighborhood improvements--such as landscaping; enhanced lighting; security ambassadors; enhanced street sweeping and sidewalk cleaning; bike, pedestrian, micromobility, and public transit infrastructure; marketing and promotion of the commercial areas, and other potential enhancements to be determined -- in South and West Berkeley. Further, refer to the Fiscal Year 2022 budget process \$75,000 for city staff to seek consulting services to assist in the formation and establishment of the PBDs.	2021-03-23	3		Ben Bartlett, Rashi Kesarwani, Jesse Arreguin, Terry Taplin	Office of Economic Development	Work in Progress	Yes \$75,000 Fiscal Year 2022	Since June 2021, the Office of Economic Development (OED) (with the assistance of an U.C. Berkeley City Planning graduate student) has researched case studies and reported best practices related to establishing parking districts in California. The report recommends a path forward for implementing two parking Business Improvement Districts (BIDs) in Berkeley, in the Lorin and Gilman commercial districts. Next steps include possibly securing the help of a paid consultant, to meet with relevant City departments, conduct relevant stakeholder outreach, and to craft ordinances (for council review and approval) to establish two new BIDs (including Public Hearing materials).

Attachment 2 - Responses to Councilmember Questions

Number	Name	Description	Meeting Date	Referral District	Referral Member	Sponsor	Lead City Department	Status	Funded?	Additional Context/Information
PRJ0019647	Accessory Dwelling Unit Ordinance Updates	<p>Action: M/S/Carried (Hahn/Wengraf) to adopt the item as written in Supplemental Reports Packet #1 and including the following changes.</p> <ul style="list-style-type: none"> Remove the language regarding view protections. Add new #9 on hillside heights measurements where no previous structure exists. Add "and any other solutions" to #5 regarding parking. Include the referral from Item 15 with this referral. <p>01/14/21 (SM for DB) Restricted allowances due to state law. Solution may be incorporated into Safe Passages.</p>	2018-09-13	5	Sophie Hahn	Sophie Hahn, Susan Wengraf, Kate Harrison	FIRE & EMERGENCY SERVICES	Not Started	No	Superseded by State action which prohibited local jurisdictions from requiring off-street parking in locations that are within a certain specified distance of public transit. Accessory Dwelling Unit issues are currently being reviewed by multiple departments and there is a scheduled follow-up for the October 12 City Council Meeting. For the aforementioned reasons, staff concur that it is now moot.
PRJ0012447	Accessory Dwelling Unit Ordinance Updates	<p>Refer to the Planning Commission to consider additional elements for Berkeley's Accessory Dwelling Unit Ordinance (BMC 23C.24), on an expedited basis, and refer to the Disaster and Fire Safety Commission bullet point #5, relating to potential obstruction of emergency vehicles, and request that their recommendations be sent directly to the Planning Commission to inform the Planning Commission's review and recommendations. Amendments: Remove the language regarding view protections; Add new #9 on hillside heights measurements where no previous structure exists; Add "and any other solutions" to #5 regarding parking; Include the referral from Item 15 with this referral.</p>	2018-09-13	5	Sophie Hahn	Sophie Hahn, Susan Wengraf, Kate Harrison	FIRE & EMERGENCY SERVICES	Not Started	No	This referral was to the Planning Commission and, to date, staff have been unable to determine the exact nature of the Disaster and Fire Safety Commission's recommendation was, and thus can't determine what the recommendation's status may be. Nonetheless, Accessory Dwelling Unit issues are currently being reviewed by multiple departments and there is a scheduled follow-up for the October 12 City Council Meeting. Staff believe that this item now may be moot.

Attachment 2 - Responses to Councilmember Questions

Number	Name	Description	Meeting Date	Referral District	Referral Member	Sponsor	Lead City Department	Status	Funded?	Additional Context/ Information
PRJ0013204	Immediate Measures to Address Fire Safety and Prevention [Non-RRV Prioritization Process]	Refer to the City Manager to study and evaluate, in consultation with relevant Commissions, the following fire safety and prevention measures on a priority basis. After study and evaluation, implement or, where additional resources may be required, recommend implementation and sources of funding. 1. Complete the Berkeley Fire Department's comprehensive Evacuation Plan and publicize evacuation routes and protocols on a priority basis. 2. Increase outreach efforts to sign up residents for the Alameda County Emergency Alert program. 3. Review and update the City's existing Fire Safety ordinances, including BMC 12.50 Fire Inspection Program. 4. Consider implementation of a siren warning system, similar to Oakland's Emergency Siren system. 5. Review and, as necessary, strengthen coordination and communication with Oakland, East Bay Regional Parks (EBRP), Alameda County, Contra Costa and other neighboring Fire Department and emergency response service providers. 6. Expand programs and practices to reduce fire hazards and fuel loads and ensure clearance for utility lines on both public and private property as outlined in the report. 01/14/21 - Programs to be funded by FF (SM for DB).	2018-01-30	5		Sophie Hahn, Susan Wengraf, Kate Harrison	FIRE & EMERGENCY SERVICES	Work in Progress	Yes	Initial work is completed and all six projects are well on their way. Most importantly funding has been secured through Measure FF.
DMND0002500	Solano Avenue Economic Development Study	Refer to the City Manager to undertake a comprehensive study of the Solano Avenue Commercial District, to provide baseline information for future strategic planning and business development and initiatives that will result in increased tax revenues for the City of Berkeley, and to report to the Council on a priority basis, at an upcoming worksession.	2017-04-25	5	Sophie Hahn	Sophie Hahn	Office of Economic Development	Not Started	Yes (previous budget)	See memo <i>Solano Avenue Economic Conditions</i> (2017) that responds to this referral. This item can be considered completed and may be removed.
PRJ0012427	Referral to the City Manager and Parks and Waterfront Commission to Create a Policy to Establish a Commemorative Tree Program	Refer to the City Manager and the Parks and Waterfront Commission the creation of a policy establishing a Commemorative Tree Program, similar to the City's Park Bench Donation Policy.	2017-10-17	5		Sophie Hahn, Kate Harrison, Susan Wengraf, Cheryl Davila	Parks, Recreation & Waterfront	Work in Progress	Partial	The Commission, after careful consideration, including consultation with other municipalities, advised against pursuing a commemorative tree program.

Attachment 2 - Responses to Councilmember Questions

Number	Name	Description	Meeting Date	Referral District	Referral Member	Sponsor	Lead City Department	Status	Funded?	Additional Context/ Information
DMND0002913	Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (Beer/Wine in M Dist)	Refer to staff and the Planning Commission to consider amendments related to beer and wine sales in the M District.	2018-12-04	5	Hahn, Planning Commission		PLANNING & DEVELOPMENT	Not Started	No	The Planning and Development Department does not currently have staff capacity to launch this project.
DMND0002595	Creation and Adoption of a Transit Streets Cooperative Agreement with the Alameda-Contra Costa (AC) Transit District	Refer to the City Manager the Creation and Adoption of a Transit Streets Cooperative Agreement with the Alameda-Contra Costa (AC) Transit District.	2017-04-04	5		Sophie Hahn	Public Works	On hold	Information unavailable at time of preparation	On hold pending staff capacity at AC Transit and the City. This is likely to be initiated in fiscal 2024 following completion of current joint efforts such as the Southside Complete Streets and bus lanes for Dana and Durant Streets, as well as transit access enhancements on San Pablo Avenue as part of the Alameda CTC San Pablo Corridor Improvement projects spanning multiple jurisdictions in Alameda and Contra Costa Counties.
DMND0002824	Referral to the City Manager and Planning Commission: Update BMC Chapter 22.16 Development Agreement Procedures	Refer to the City Manager and Planning Commission to review and update the Berkeley Municipal Code Chapter 22.16 Development Agreement Procedures to create a streamlined process that maximizes community benefits and conforms to State law.	2018-10-30	5		Sophie Hahn, Lori Droste, Kate Harrison	PLANNING & DEVELOPMENT	Not Started	No	The Planning and Development Department does not currently have staff capacity to launch this project.
PRJ0027891	Referral: Commission Low-Income Stipend Reform	Refer to the City Manager to develop and return to Council with a plan to improve equity, accessibility, and representation in City of Berkeley commissions by modernizing the low-income stipend program, and in doing so consider: 1. Increasing the annual household income cap for stipend eligibility from \$20,000 to align with the 50% Area Median Income (AMI) guidelines for Alameda County and reflect household size, and updating it annually with the latest HUD data. 2. Increasing the low-income stipend from \$40 to \$78 per meeting, and updating it annually with the City of Berkeley minimum wage to correspond to compensation for 2.5 hours of work.	2020-12-01	7		Rigel Robinson	City Clerk	Work in Progress	Yes	100% Complete
PRJ0012396	Cigarette and Tobacco Litter Ordinance; Referral to Community Health Commission	Referral to the Community Health Commission to establish an ordinance that would diminish pollution from cigarettes waste similarly to San Francisco's Cigarette Abatement Fee Ordinance.	2016-03-08	7	Kriss Worthington		HEALTH, HSG & COMMUNITY SVC	Work in Progress	No	HHCS concurs with closing. Notes: M/S/C (Stein/Chen) Motion to support the recommendation to Council from the Community Environmental Advisory Commission regarding the pilot project to address cigarette butt litter and smoking in commercial zones. (6/23/16).

Attachment 2 - Responses to Councilmember Questions

Number	Name	Description	Meeting Date	Referral District	Referral Member	Sponsor	Lead City Department	Status	Funded?	Additional Context/ Information
PRJ0019767	Referral to the Civic Arts Commission to create interactive family-friendly art attractions	Refer to the Civic Arts Commission to create interactive family-friendly art attractions in the City of Berkeley.	2018-10-30	7	Kriss Worthington	Kriss Worthington, Ben Bartlett	Office of Economic Development	Completed	No	The installed wildflower benches at the recently re-opened San Pablo park playground are a great example of family-friendly, functional art that has been implemented in response to this 2018 referral. This item can be considered completed and removed.
PRJ0030946	Refer the City Manager to Improve the Current Tree Ordinance and Seek Funding Opportunities to Plant More Trees in the City	That the Council refer the City Manager to improve the current tree ordinance to protect more trees, develop policy on street tree/hardscape conflicts, encourage more community initiative and participation in the maintenance and care of our street trees and seek potential funding opportunities to plant more trees in Berkeley and funds to maintain new and existing trees on public property.	2018-11-27	7		Kriss Worthington, Kate Harrison, Cheryl Davila	Parks, Recreation & Waterfront	Work in Progress	Partial	We are in the process of seeking funding. To date, we've received a \$750,000 grant, which will enable us to address the referral's request to encourage more community initiative and participation in the maintenance and care of our street trees. Additionally, we are in the process of applying for two other grants.
DMND0002949	City Manager Short-Term Referral: To Change Telegraph Avenue Parking Signs to Allow Parking All	That the Council refer to the City Manager to eliminate the no parking signs on Telegraph Avenue between Bancroft and Dwight.	2018-11-13	7		Kriss Worthington	Public Works	Not Started	Information unavailable at time of preparation	A work order has been issued to modify signs to indicate that in addition to morning loading and 9 am to 6 pm meter hours already posted, parking is allowed at all other times.
PRJ0020060	Referral to the Transportation Commission: Explore Possibilities for Initiating Equitable Exchange with Transportation Network Companies (TNCs)	Request that the Transportation Commission initiate research into an effective means of equitable exchange with TNCs. In order to compensate the City of Berkeley for traffic congestion, air pollution, and infrastructure damage, the Council recommends that TNCs participate in the payment of taxes and the exchange of data. Recommendation revised to add the proposed ballot measure item in Supplemental Reports Packet #2.	2018-11-27	7	Kriss Worthington	Kriss Worthington, Jesse Arreguin, Sophie Hahn, Cheryl Davila	Public Works	On hold	Information unavailable at time of preparation	Berkeley voters approved Measure GG in November 2020 to tax TNC's 50 cents per private trip and 25 cents per pooled trip, substantially addressing the intent of this item. However, the data exchange element is not addressed in the measure. Staff would like Council direction on whether that element of the original referral should still be pursued by the merged Transportation and Public Works Commission in the future.
DMND0003734	Referral: Report on Public Realm Pedestrianization Opportunities [Transportation Commission]	Refer to the Transportation Commission to generate a report on potential public realm pedestrianization opportunities in Berkeley.	2019-04-30	7	Rigel Robinson	Rigel Robinson, Sophie Hahn	Public Works	On hold	Information unavailable at time of preparation	The two items are duplicates. One will be deleted. Please note that the item is on hold--while it's in the Transportation Commission's docket, it is not part of this year's Transportation Commission plan.
PRJ0019832	Report on Public Realm Pedestrianization Opportunities	Refer to the Transportation Commission to generate a report on potential public realm pedestrianization opportunities in Berkeley.	2019-04-30	7	Rigel Robinson	Rigel Robinson, Sophie Hahn, Ben Bartlett	Public Works	Not Started	Information unavailable at time of preparation	The two items are duplicates. One will be deleted. Please note that the item is on hold--while it's in the Transportation Commission's docket, it is not part of this year's Transportation Commission plan.

Attachment 2 - Responses to Councilmember Questions

Number	Name	Description	Meeting Date	Referral District	Referral Member	Sponsor	Lead City Department	Status	Funded?	Additional Context/Information
DMND0003859	Ronald V. Dellums Fair Chance Access to Housing Ordinance; Adding BMC Chapter 13.106	1. Adopt a first reading of the Ronald V. Dellums Fair Chance Access to Housing Ordinance and; 2. Direct the City Manager to take all necessary steps to implement this chapter including but not limited to developing administrative regulations in consultation with all relevant City Departments including the Rent Stabilization Board, preparing an annual implementation budget, designating hearing officers and other necessary staffing for administrative complaint, exploring the development of a compliance testing program similar to that used by the Seattle Office of Civil Rights, developing timelines and procedures for complaints, conducting outreach and education in partnership with the Alameda County Fair Chance Housing Coalition, and referring program costs to the June budget process.	2020-03-10	Mayor		Jesse Arreguin, Cheryl Davila, Kate Harrison, Ben Bartlett	CITY MANAGER'S OFFICE	Work in Progress	Yes	The Rent Board, City Manager's Office, the Health Housing & Community Services Department, and the City Attorney's Office developed and agreed to an Administrative Regulation (A.R) and a Memorandum of Understanding (MOU) and the work is happening. Staff will bring the MOU to City Council in November 2021 for adoption. There is also a contract in place with Just Cities.
PRJ0028365	Non-Criminal Options for Enforcement of Sidewalk Regulations	Refer to the City Manager the development of non-criminal options for the enforcement of Berkeley laws and regulations related to use of public space that: Reduce, delay or, if possible, eliminate criminal penalties; Offer positive alternatives; and Ensure that the City has effective tools for enforcement of laws and regulations. While ensuring effective enforcement, options should delay or avoid pursuing infractions and misdemeanors and provide options to cure violations through positive actions such as mandated and verified community service, education, or participation in social service programs.	2018-10-16	Mayor		Jess Arreguin, Sophie Hahn, Linda Maio, Susan Wengraf	CITY MANAGER'S OFFICE	Work in Progress	No	Staff currently seeks to gain compliance through non-criminal options and generally succeeds. All of the recent actions have been achieved without any arrests. Creating a broader program for community services or a referral pathway via research is not feasible at this time unless staff pause enforcement and redirect staff time.
DMND0003741	Development of the West Berkeley Service Center, 1900 6th Street, for Senior Housing with Supportive Services. [Parts a and b]	State the intent of the City Council that the West Berkeley Service Center property, 1900 6th Street, will be used for senior housing with on-site services consistent with Age Friendly Berkeley Plan recommendations, maximizing the number of affordable units. The Berkeley Way Project, 2012 Berkeley Way, is the City's top affordable housing priority. The West Berkeley Service Center, as a City-owned property, to be developed for affordable housing falls under the "High Priority" on the list of housing initiatives passed by Council on November 28, 2017. In light of the above, refer to the City Manager to take the following actions to initiate the process of developing senior housing at the West Berkeley Service Center: a. Refer to the City Manager to conduct a basic analysis of the development potential for the West Berkeley Service Center site including build-out scenarios for a three-, four-, five-, six- and seven-story building at the site, using Mixed-Use Residential	2019-05-28	Mayor	Jesse Arreguin	Jesse Arreguin, Rashi Kesarwani, Susan Wengraf, Ben Bartlett	PLANNING & DEVELOPMENT	Not Started	No	The Planning and Development Department does not currently have staff capacity to launch this project.



Agenda & Rules Committee

ACTION CALENDAR

October 26, 2021

(Continued from October 12, 2021)

To: Honorable Members of the City Council
 From: Agenda & Rules Policy Committee: Mayor Jesse Arreguin and Councilmembers Sophie Hahn and Susan Wengraf
 Subject: Amending the Berkeley Election Reform Act (BERA) Relating to Officeholder Accounts

RECOMMENDATION

Take one of the following actions:

1. Refer a proposal to the Fair Campaign Practices Commission (FCPC) amending the Berkeley Election Reform Act (BERA), BMC Chapter 2.12, and Lobbyist Registration Act, BMC Chapter 2.09, to enact “a reasonable set of limitations and rules” to regulate the maintenance of officeholder accounts, as developed and referred for consideration by the Agenda and Rules Committee; or
2. Refer a proposal to the FCPC amending BERA, BMC Chapter 2.12, to prohibit Officeholder Accounts, as originally proposed by the Fair Campaign Practices Commission.

Pursuant to BMC Section 2.12.051.A, BERA may be amended by the “double green light” process. This process requires that the amendment first be adopted by a two-thirds vote of the FCPC and then adopted by a two-thirds vote of the City Council, following a public hearing. This item would submit a proposal to the FCPC for its consideration. If adopted by a two-thirds vote of the FCPC, the item would return to the Council for final adoption.

POLICY COMMITTEE RECOMMENDATION

On March 29, 2021, the Agenda & Rules Policy Committee adopted the following action:¹ M/S/C (Wengraf/Arreguin) to send the item to Council with two proposed alternatives: 1) Councilmember Hahn’s proposal to regulate officeholder accounts [with modifications brought forward by Committee members], and 2) the Fair Campaign Practices Commission proposal to prohibit officeholder accounts; and to include the Commission’s analysis of regulating officeholder accounts in the item that goes to the full Council. Vote: All Ayes.

¹ https://www.cityofberkeley.info/uploadedFiles/Clerk/City_Council/2021/03_Mar/Documents/03-29%20Minutes%20-%20Agenda%20Committee.pdf

BACKGROUND

On February 4, 2020, the Fair Campaign Practices Commission (FCPC) submitted a recommendation to Council to adopt an ordinance amending the Berkeley Election Reform Act (BERA), BMC Chapter 2.12, to prohibit Officeholder Accounts.² Council took action to refer a discussion on Officeholder Accounts and Council District (D-13) Accounts to the Agenda & Rules Committee, to “consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the FCPC.”³

The Agenda & Rules Committee considered this referral with input from FCPC commissioners. The FCPC and Open Government Commission (OGC)⁴ also submitted subsequent recommendations to Council related to this process, which were included as part of the discussion regarding officeholder and D-13 accounts. The OGC submitted a recommendation that a special temporary joint advisory committee be created consisting of members of the OGC and Council to review the practice of councilmembers making donations to community organizations from their D-13 accounts. This proposal was referred directly to the Agenda & Rules Committee on August 31, 2020. On January 11, 2021, the FCPC and OGC jointly submitted a proposal to the Council clarifying the desire to create a joint subcommittee of FCPC-OGC members and members of the Council to consider both regulation of officeholder accounts as well as D-13 account grant practices and expressing willingness to consider either prohibition or regulation of officeholder accounts. D-13 account grant practices have since been addressed separately by Council.⁵

The Agenda & Rules Committee discussed the question of officeholder accounts at multiple meetings in early 2021 with input from three FCPC-OGC commissioners (Chair Brad Smith, Vice Chair Jedidiah Tsang and Commissioner Patrick O’Donnell). On March 29, 2021, the Agenda & Rules Committee took action to send this item to Council with two proposed alternatives: 1) a proposal to regulate officeholder accounts in a manner based on existing regulation of campaign committees, and 2) the Fair

² https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/2020-02-04_Special_Item_02_Amendments_to_the_Berkeley_pdf.aspx

³ https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/02-04_Special_Annotated_Agenda_pdf.aspx

⁴ The OGC is composed of the same membership as the FCPC and the two bodies meet concurrently. The FCPC has jurisdiction over BERA while the OGC has broad authority to make recommendations to Council regarding “open and effective government.” (BMC § 2.06.190.A.2.) Therefore, proposals regarding the prohibition or regulation of officeholder accounts in BERA have been presented by the FCPC, while recommendations regarding D-13 accounts have been offered by the OGC.

⁵ On February 8, 2021, the Agenda & Rules Committee took action to make a positive recommendation to the City Council on part two of the Commission recommendation to prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members. The Council approved this recommendation on March 9, 2021.

Campaign Practices Commission proposal to prohibit officeholder accounts. The Committee's action also required the Commission's analysis of regulating officeholder accounts to be included in the item that goes to the full Council.⁶

Officeholder accounts are currently allowed in the City of Berkeley, subject only to limitations provided in State Law. The Agenda & Rules Committee's proposal to regulate officeholder accounts would establish local rules that mirror and adapt Berkeley's existing, voter-approved regulations for campaign committees, including regulation of donations and reporting requirements, and narrow the uses for which officeholder account funds can be used.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.⁷ They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses officeholder accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, and similar expenses. Cities can place limits on officeholder accounts, as Oakland has done.⁸ Under State law, officeholder accounts must be registered as official committees, and adhere to strict public reporting requirements, like campaign accounts. These reporting requirements provide full transparency to the public about sources and uses of funds in officeholder accounts.

The FCPC's recommendation to outlaw officeholder accounts in Berkeley was set aside by the City Council on when it referred on February 4, 2020 to the Agenda & Rules Committee to "consider a reasonable set of limitations and rules for such [officeholder] accounts and bring back recommendations to the full Council."⁹ Some members of the FCPC who participated in the Agenda & Rules Committee discussion continued to advocate for the original proposal to outlaw Officeholder Accounts, so the Committee acted to send both the Council-requested "reasonable set of limitations" and the FCPC's original recommendation back to the Council for consideration.

FISCAL IMPACTS

Regulating the maintenance of officeholder accounts by councilmembers and the Mayor would have a moderate impact on staff time.

CONTACT INFORMATION

Agenda & Rules Policy Committee: Jesse Arreguin, Mayor, (510) 981-7100;
Councilmember Sophie Hahn, District 5, 510-682-5905 (cell); and Susan Wengraf,
Councilmember, District 6, (510) 981-7160.

⁶ https://www.cityofberkeley.info/uploadedFiles/Clerk/City_Council/2021/03_Mar/Documents/03-29%20Minutes%20-%20Agenda%20Committee.pdf

⁷ <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

⁸ <http://www2.oaklandnet.com/w/OAK052051>

⁹ https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/02-04_Special_Annotated_Agenda_pdf.aspx

ATTACHMENTS

1. Officeholder Accounts Proposal As Forwarded to the City Council by the Agenda Committee on March 29, 2021
2. Proposed Ordinance Amending the Berkeley Election Reform Act and Lobbyist Registration Act to Regulate Officeholder Committees
3. Fair Campaign Practices Commission Proposal to Prohibit Officeholder Accounts,
https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/03-29_Agenda_Committee_Agenda_Packet.aspx

Officeholder Accounts As Forwarded to the City Council by the Agenda Committee on March 29, 2021

This set of terms is presented as a basis to discuss a potential amendments to the Berkeley Election Reform Act (“BERA”) (BMC Ch. 2.12) to regulate the maintenance of officeholder accounts by elected officials in Berkeley. The proposal following elements are proposed for discussion by the Agenda Committee:

General Requirements and Donation Limits

1. **Amend BERA to expressly permit the creation of officeholder accounts** by elected officials in Berkeley
2. Officeholder accounts would **be subject to the same donor requirements as campaign accounts under BERA:**
 - a. May only receive donations from natural persons.
 - b. Per-person donation limit set the same as the contribution limit under BERA (currently \$250; if BERA changes, so would these limits – idea is for them to always be parallel)
 - c. Etc. – All requirements and limitations on who can give, how much, and how donations can be made would be “by reference” to BERA and thus identical over time.
3. Officeholder accounts would be **subject to the same registration and reporting regime as campaign accounts under BERA**. State law currently requires Officeholder Accounts to report using the same forms as campaign accounts; this proposal would also incorporate the reporting requirements of BERA – for example lower thresholds for initial reporting, lower amounts reported, etc.
4. **Cumulative annual donations, not including an officeholder’s own donations to their officeholder account would be capped at fixed amounts**. Suggest the amount be set at the approximate cost of producing and mailing one newsletter to constituents, although use of funds would not be limited to that use (see below). Amount should be indexed.
5. As with campaign accounts, **an officeholder’s own donations to their officeholder account would not be subject to any limits** but would be reported. An officeholder would also still be allowed to spend their own money on officeholder expenses without using an officeholder account. This is a First Amendment issue that can’t be infringed upon.

Complete Separation from Campaign Accounts and Expenditures

1. An officeholder would **not be allowed to simultaneously maintain an officeholder account and a campaign account of any kind:**
 - a. A winning candidate taking office would be required to close their campaign account before opening an officeholder account.

- b. An incumbent officeholder running for re-election or running for any other elected position – local, state, or federal – would be required to close their officeholder account before opening a campaign account.
- 2. An officeholder could not redesignate their officeholder account as a campaign account or use any officeholder funds to pay campaign expenses, ever.
- 3. Officeholder account funds could not be transferred to or from a candidate committee account for any elective office, local, state or federal.
- 4. “Extra” funds in an officeholder account could be used only for a legitimate officeholder expense, refunded to donors on a pro rata basis, or donated to the City’s General Fund.

Impermissible and Permissible Uses of Officeholder Funds

- 5. **Officeholder accounts would not be used for the following** expenditures:
 - a. Expenditures in connection with an election for any city, county, regional, state, or federal elective office or ballot measure
 - b. Campaign consulting, research, polling, and similar expenditures related to any campaign
 - c. Membership in athletic, social, fraternal, veteran, or religious organizations
 - d. Supplemental compensation for employees for performance of their ordinary duties
 - e. Any expenditure that would violate BERA or state law
- 6. **Officeholder accounts would only be used for the following** expenditures (list likely needs to be honed/expanded – this list reflects narrowing and adaptation of the Oakland ordinance, which is overly broad):
 - f. Office equipment, furnishings, and office supplies
 - g. Officeholder communications not related to a campaign, including but not limited to:
 - i. Mailings, newsletters, and other communications, whether by electronic or traditional media
 - ii. Websites and communications by all media including email, publication, and social media
 - iii. Email and address management
 - iv. Professional/consulting services and/or staff time related to communications.
 - h. Registration, travel, lodging, meals, and related expenses for attending an activity which supports a legislative or governmental purpose, including activities which involve international travel, including but not limited to:
 - i. Conferences, meetings, receptions, sister-city visits, and other events
 - ii. Membership and participation in programs for civic, service, or professional organizations
 - iii. Educational, training, and professional development courses and events

when incurred by the officeholder, their staff, or a community representative of the officeholder (but not a family member or an individual whose organization or who themselves is subject to registration under the City's Lobbyist Ordinance)

- i. Fundraising for the officeholder account.
- j. Consulting, research, surveys, photographic or similar services not related to a campaign.
- k. Expressions of congratulations, appreciation or condolences to constituents or other persons the officeholder communicates/works with in their official capacity.
- l. Salaries or other compensation for consultants/staff working on officeholder activities, including for time spent by regular staff on officeholder activities separate/different from their ordinary duties.
- m. Tax liabilities and other official fees/costs incurred by the officeholder account.
- n. Accounting, legal, and other professional services provided to the officeholder account.
- o. Attorneys' fees and other costs related to administrative procedures, litigation, or other processes arising from the officeholder's activities, duties, or status as an elected officer.

Termination of Account on Leaving Office (+ Not running for any office)

- 1. An officeholder would be **required to terminate their account within 90 days after leaving office.**
- 2. An officeholder **could not make expenditures after their last day in office** except to pay outstanding officeholder debts, repay donations on a pro rata basis, or donate remaining funds to the City's general fund.
- 3. Officeholders running for another office, local, state, or federal, would be required to close their officeholder account before opening a campaign account (see above).

Enforcement

- 1. Violations of the officeholder account rules **would be subject to all enforcement provisions under BERA**, including enforcement by the Fair Campaign Practices Commission ("FCPC").

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT AND
LOBBYIST REGISTRATION ACT TO REGULATE OFFICEHOLDER
COMMITTEES

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

Section 1. That Berkeley Municipal Code section 2.09.220 is amended to read as follows:

2.09.220 Restrictions on payments and expenses benefiting local public officials.

A. No local government lobbyist or a registered client shall make any payment or incur any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds \$240 during any calendar year. This \$240 limit may be adjusted every four years by the OGC to account for inflation. The payments and expenses specified in subsections 2.09.220(A)-(D) include gifts, honoraria and any other form of compensation but do not include:

1. gifts of food or refreshment worth \$25 or less per occasion, if the local governmental lobbyist is a 501 (c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501 (c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event;
2. payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed;
3. gifts of food or beverage worth \$25 or less per occasion, if said gift is provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present;
4. a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
5. informational material;
6. campaign or officeholder contributions not to exceed the limits imposed by the Berkeley Election Reform Act or state law, as applicable; and
7. salaries, consulting fees or other payments for services rendered or bargained

for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section.

For purposes of the gift limits imposed by subsections (A)-(C), gifts shall be aggregated set forth in California Code of Regulations, Title 2, Section 18945.1, as it may hereafter be amended.

B. No lobbyist or a lobbyist's registered client shall make any payment to a third-party for the purpose of making any payment or incurring any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals.

C. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from any lobbyist for the individual's personal benefit or for the personal benefit of a member of the immediate family of one of these individuals.

D. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third-party if the officer knows or has reason to know that the third-party is providing the payment or expense on behalf of a lobbyist.

Section 2. That Berkeley Municipal Code section 2.12.100 is amended to read as follows:

Section 2.12.100 Contribution.

A. "Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or voter approval of one or more measures. The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; a candidate's own money or property used on behalf of his or her candidacy; the granting to a candidate or committee of discounts or rebates not available to the general public; and payments for the services of any person serving on behalf of a candidate or committee, when such payments are not made from contributions the candidate or committee must otherwise report under the terms of this chapter. The term "contribution" further includes any transfer, gift, loan, advance, deposit, forgiveness of indebtedness, payment of a debt by a third party, pledge, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, received directly or indirectly by a

committee from another committee. The term "contribution" shall not include a gift of service or labor, but shall include service or labor for which a payment is made, nor shall the term "contribution" include a gift of the use of personal or real property where the value of such use is not in excess of fifty dollars, nor shall it include food and beverages the value of which for any one event is no more than fifty dollars.

B. In the case of an officeholder committee, "contribution" means a monetary payment to an officeholder committee to be used for expenses associated with holding City office as provided in Article 9 of this Chapter.

Section 3. That Berkeley Municipal Code section 2.12.130 is amended to read as follows:

Section 2.12.130 Expenditure.

A. "Expenditure" means a payment, pledge or promise of payment of money or anything of value or other obligation, whether or not legally enforceable, for goods, materials, services or facilities in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or adoption of one or more measures. The term "expenditure" includes any transfer, payment, gift, loan, advance, deposit, pledge, contract, agreement or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly by one committee to another committee. "Expenditure" also includes the forgiving of a loan or the repayment of a loan by a third party.

B. In the case of an officeholder committee, "expenditure" means payment of money by an officeholder committee for expenses associated with holding elective office in the City of Berkeley as provided in Article 9 of this Chapter.

Section 4. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

Section 2.12.157 Officeholder committee.

"Officeholder committee" means a committee established by an Elective Officer of the City of Berkeley, as defined in Article V Section 8 of the Charter of the City of Berkeley, to receive contributions and make expenditures associated with holding elective office in the City of Berkeley as provided in Article 9 of this chapter.

Section 5. That Berkeley Municipal Code Section 2.12.545 is amended to read as follows:

Section 2.12.545 Cost of living adjustments.

The Commission shall adjust the dollar amounts specified in Sections 2.12.167, 2.12.500.A.3, 2.12.505.B and 2.12.530.B.3.b and 2.12.602 for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year following Council implementation. Such adjustments shall be rounded to the nearest ten dollars (\$10) with respect to Sections 2.12.167, 2.12.500.A.3 and 2.12.530.B.3.b and one thousand dollars (\$1,000) with respect to Sections 2.12.505.B and 2.12.602.

Section 6. That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as follows

Article 9. Officeholder Committees

Section. 2.12.600 Regulation of officeholder committees.

- A. Elective Officers (the “officeholder” or “officeholders”) shall each be permitted to establish one officeholder committee, as defined in Section 2.12.157.
- B. Nothing in this section shall require an officeholder to open an officeholder committee or, if they have established an officeholder committee, to contribute to their officeholder committee to spend personal funds on their own officeholder expenses.
- C. Expenditures of an officeholder’s personal funds for their own officeholder expenses which are not contributed to an officeholder committee are not reportable under this chapter.

Section 2.12.602 Cumulative contribution limits

- A. For each Elected Officer representing a district within the City of Berkeley, total contributions to an officeholder committee from all contributors other than the officeholder shall not exceed five thousand dollars (\$5,000) in the aggregate per calendar year.
- B. For citywide Elected Officers, total contributions to an officeholder committee from all contributors other than the officeholder shall not exceed in the aggregate per calendar year an amount equal to four times the maximum allowed for elected officers representing districts, as provided in Section 2.12.602.A

Section 2.12.604 Prohibited officeholder expenditures

An officeholder committee shall not make expenditures for the following purposes:

- A. Expenditures in connection with an election for any city, county, regional, state or federal elective office or in connection with a ballot measure.
- B. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office.
- C. Membership in any athletic, social, fraternal, veterans or religious organization.
- D. Supplemental compensation for officeholder staff for performance of duties required or expected of the person in the regular course or hours of their employment as a City official or employee.
- E. Any expenditure that would violate any provision of the Berkeley Election Reform Act (BMC Chapter 2.12.) or the California Political Reform Act (Cal. Gov. Code § 81000 et seq.), including but not limited to the gift laws pertaining to travel payments, advancements and reimbursements under Government Code section 89506 and provisions related to permissible expenditures which serve legislative or governmental purposes under Government Code sections 89512 through 89519.

Section 2.12.606 Permissible officeholder expenditures

An officeholder committee may make expenditures only for the following purposes:

- A. Expenditures for fundraising for the officeholder committee.
- B. Expenditures for office equipment, furnishings and office supplies used for governmental or legislative purposes.
- C. Expenditures for compensation of staff, consultants, or other persons employed by the officeholder for time spent on officeholder activities, provided that such expenditures are not prohibited by Section 2.12.604.D.
- D. Expenditures for research, surveys, photographic, or similar services, provided such services are only for officeholder purposes.
- E. Expenditures for attendance, travel, lodging, meals and other related expenses which serve a legislative or governmental purpose by the officeholder and members of the officeholder's City staff or others employed by the officeholder to perform duties related to officeholder activities. Such permissible expenditures shall include but not be limited to:
 - 1. Expenditures for attendance at conferences, meetings, receptions, and other events occurring within or outside of the United States, including but not limited to registration or other attendance fees, travel, lodging, food, and

incidentals;

2. Expenditures for membership and participation in programs for civic, service, or professional organizations, if such membership bears a reasonable relationship to a governmental or legislative purpose; and
 3. Expenditures for educational courses or events reasonably related to a governmental or legislative purpose.
- F. Expenditures for constituent and community communications, including but not limited to:
1. Mailings, newsletters and other paper, electronic, or other communications which provide information related to community events, an officeholder's governmental duties, an officeholder's position on a particular matter, or any other matter of public concern or interest;
 2. An officeholder's website and social media;
 3. Email and address list management.
- G. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in their official capacity.
- H. Expenditures for payment of tax liabilities incurred as a result of permissible officeholder committee transactions.
- I. Expenditures for accounting, legal, professional, administrative, and similar services provided to the officeholder committee.
- J. Expenditures for attorneys' fees and other costs related to litigation, administrative procedures, or other processes arising directly from the officeholder committee's activities or the officeholder's activities, duties, or status as an elected officer.

Section 2.12.608 Prohibitions on transfer or reallocation of funds

The following restrictions apply to the transfer or reallocation of officeholder funds:

- A. No funds may be contributed, redesignated, or transferred to an officeholder committee from any campaign committee for any city, county, regional, state, or federal elective office or ballot measure, or any other political committee.
- B. No funds may be contributed, redesignated, or transferred from an officeholder

committee to any candidate or campaign committee for any city, county, regional, state, or federal elective office or ballot measure, or any other political committee.

- C. No officeholder committee may be redesignated as a campaign committee for any city, county, regional, state, or federal elective office or ballot measure.
- D. No campaign committee for any city, county, regional, state, or federal elective office or ballot measure may be redesignated as an officeholder committee.

Section 2.12.610 Prohibition on simultaneously maintaining officeholder and campaign committees

- A. An officeholder may not simultaneously maintain an officeholder committee and a campaign committee for any city, county, regional, state or federal elective office.
- B. A candidate who is elected to any elective office in Berkeley must terminate their campaign committee before opening an officeholder committee.
- C. An officeholder must terminate any open officeholder committee prior to filing a Statement of Organization or equivalent initial filing for a campaign committee for any city, county, regional, state, or federal elective office.

For officeholders filing a Statement of Organization with the City Clerk to form a campaign committee for a City of Berkeley office, the Clerk shall provide notice of the need to close any open officeholder committee prior to accepting the campaign committee Statement of Organization.

Section 2.12.612 Termination of officeholder committees upon leaving office

- A. An officeholder who does not file a Statement of Organization or equivalent initial filing to seek a subsequent city, county, regional, state, or federal elective office shall terminate their officeholder committee within 90 days of leaving office.
- B. Following the date of leaving office, an officeholder shall not make any new expenditures from their officeholder committee except for the following purposes:
 - 1. Paying for legitimate, outstanding officeholder expenses accrued on or prior to the date of leaving office.
 - 2. Repaying contributions to contributors to the officeholder committee on a pro rata basis.
 - 3. Donating funds to the City's general fund.

2.12.615 Limits and requirements for contributions and expenditures

- A. The limit on cumulative contributions to an officeholder committee by a person other than the officeholder in a calendar year shall be the same as the limit on contributions to a candidate with respect to a single election under Section 2.12.415. Contributions to a candidate shall not be counted against the limit on contributions to an officeholder committee in the same calendar year.
- B. Officeholder committees shall be subject to the limits on contributions from organizations and entities to candidates and committees under Section 2.12.440.
- C. Nothing in this Article shall limit the amount an officeholder may contribute to their own officeholder committee or spend on officeholder expenses either through or not through an officeholder committee.
- D. All requirements and prohibitions for campaign contributions and expenditures under Sections 2.12.300, 2.12.305, 2.12.310, 2.12.315, and 2.12.320 shall apply to officeholder committees.

2.12.645 Officeholder Committee Treasurer

Each officeholder committee shall appoint a committee treasurer and shall comply with all requirements for campaign committee treasurers under section 2.12.245.

2.12.650 Officeholder expenditure and contribution account – Establishment required – Procedure for use

An officeholder committee treasurer shall establish and manage a checking account. All provisions of Section 2.12.250 regarding the establishment and use of campaign accounts shall also apply to the establishment and use of officeholder committee checking accounts, unless otherwise provided in this Article.

2.12.655 Statement of organization – Committee required to file.

- A. Every officeholder committee shall file with the City Clerk a statement of organization before accepting contributions.
- B. The date on which an officeholder committee is formed by filing a statement of organization shall determine the officeholder committee's obligation to file statements and reports required by this chapter.

2.12.660 Statement of organization – information required

The statement of organization required by Section 2.12.655 shall include:

- A. The name, street address and telephone number of the officeholder committee;
- B. The name of the officeholder;
- C. The full name, street address and telephone number of the treasurer and other principal officers;
- D. The elected office held by the officeholder;
- E. The account number and name of the bank at which the checking account, required by Section 2.12.650, is maintained; if the information required by this section is unavailable at the time of filing the statement of organization, the filer shall promptly submit an amended statement after such information becomes available;
- F. The cash on hand at the time of filing the statement of organization;
- G. Such other information as shall be required by the rules or regulations of the commission consistent with the purposes and provisions of this chapter.

Section 2.12.665 Statement of organization--Change of information--Amendment required.

Whenever there is a change in any of the information contained in the statement of organization, an amendment shall be filed within ten days to reflect the change.

Section 2.12.670 Officeholder statements – filing requirements

- A. Each officeholder committee statement shall be filed in accordance with the filing dates prescribed by state law for campaign committee statements. If state law does not establish the filing dates for campaign statements, the commission shall set the necessary filing dates.

Section 2.12.675 Officeholder statements - Verification

- A. Reports and statements required by this Article shall be subject to the filing requirement of Sections 2.12.025, 2.12.030, 2.12.032, 2.12.033, 2.12.035, 2.12.040, 2.12.045 and 2.12.050.
- B. An officeholder shall verify his or her officeholder statement. The verification shall be in accordance with the provisions of Section 2.12.025 except that it shall state that they have made reasonable inquiry into the truthfulness and completeness of such officeholder statement and that to the best of their knowledge, the treasurer of the officeholder committee used all reasonable diligence in the preparation of the committee's statement. This section does not relieve the treasurer of any officeholder committee from the obligation to verify each officeholder statement filed pursuant to Section 2.12.025.

Section 2.12.680 Officeholder Statement – Information required

Officeholder committee statements required by this article shall include all applicable information required for campaign committee statements by Section 2.12.280.

Section 2.12.685 Enforcement

Violations of this article involving the unlawful use of officeholder committees are subject to the enforcement procedures and penalties in Article 7 of this chapter.

MEMORANDUM

DATE: March 29, 2021

TO: Mayor Jesse Arreguin and Councilmembers Sophie Hahn and Susan Weingraf, Members of the Council Agenda and Rules Committee

FROM: Brad Smith, Patrick O'Donnell and Jedidiah Tsang, Delegation from the Fair Campaign Practices and Open Government Commissions

SUBJECT: Officeholder Accounts

Two main approaches have been considered regarding local Officeholder Accounts in California. The first, adopted by the City of San Jose, would prohibit these accounts. The second, adopted by the city of Oakland, would permit these accounts but regulate them.

For the reasons discussed below, the FCPC previously recommended that Officeholder Accounts be prohibited (Exhibit 3). However, the Council decided in February 2020 not to approve the FCPC's recommendation and referred the issue of Officeholder Accounts, along with concomitant issues related to D-13 accounts, to the Council's Agenda and Rules Committee.

The Fair Campaign Practices and Open Government Commissions have been studying Officeholder and D-13 Accounts since 2019. At its regular meeting on November 21, 2019, the FCPC voted without opposition to recommend amendments to the Berkeley Election Reform Act (BERA) that would prohibit Officeholder Accounts. The FCPC's recommendation was presented to the City Council at a February 4, 2020 special meeting. (A copy of the Report to Council is attached as Exhibit 3.)

Although the Council did not approve the FCPC's recommendations at that time and is considering alternatives that would allow for regulated Officeholder Accounts, a discussion in which the FCPC is glad to participate, the FCPC continues to believe that the prohibition of such accounts may ultimately be the preferable solution.

Briefly, our reasons for recommending prohibiting Officeholder Accounts are as follows:

1. Donations to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.
2. The City of San Jose has prohibited Officeholder Accounts (Section 12.06.810) since January 2008, providing as a rationale "to prevent the perception by the public that such contributions may give rise to undue or improper influence over elected officials" (Section 12.06.1100).

3. There are a number of permissible expenditures that could be made from Officeholder Accounts, now made from the Councilmember's discretionary council office budget (D-13 account), that put the elected official in a favorable light. Such expenditures include contributions to nonprofit organizations and newsletters mailed to constituents related to events, information or an officeholder's position on matters before the Council. We are not arguing these expenditures should be prohibited, only not paid for by funds collected in Officeholder Accounts.

4. As evidenced by contributions to nonprofit organizations from the Councilmember's D-13 accounts, which in total increased from \$50,938 in FY 2017 to \$113,526 in FY2018, enough funds are now available to Councilmembers to cover office expenses. It stretches the imagination to see donations to nonprofit organizations as an "office expense." If not enough funds are available for office expenses, the allocation to the D-13 accounts should be increased by the Council rather than relying on funds solicited from donors for an Officeholder Account.

5. Members of the FCPC are concerned about the amount of staff time required to track paperwork required for the administration of Officeholder Accounts and to assist in the enforcement process.

6. Members of the FCPC have discussed concerns that Councilmembers from wealthier areas of the City will have an easier time of raising funds for Officeholder Accounts.

7. Finally, we note the Officeholder Account has been rarely used in Berkeley, only once in the last several years that we are aware of.

While we look forward to a good, frank discussions and careful consideration of the alternative of permitting and regulating Officeholder Accounts, we respectfully request that Council members continue to consider that a prohibition of these accounts may, in the end, be the preferable approach.

Exhibit 1. Although the FCPC continues to support prohibition, it has prepared a draft version of an ordinance that would allow for regulated Officeholder Accounts. This draft identifies the issues that a regulated approach, if pursued, would need to address.

Exhibit 2. RESOLUTION NO. 67,992-N.S. (City Council Expenditures and Reimbursement Policies), referred to in the proposed language for changes to BERA to regulate Officeholder Accounts.

Exhibit 3. Language for amending the Berkeley Election Reform Act to prohibit Officeholder Accounts included in the FCPC submission to the City Council of February 4, 2020.

[DRAFT]

[Annotations are in RED. These include ISSUES for discussion and RECOMMENDATIONS of the three FCPC members participating in the joint meetings.]

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT TO REGULATE OFFICEHOLDER ACCOUNTS

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

Section 1. That the Berkeley Municipal Code section 2.12.157 is added to read as follows:

Section 2.12.157 Officeholder Account.

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as follows

Article 9. Officeholder Accounts

Section. 2.12.600 Regulation of Officeholder Accounts.

A. The Mayor and Council members (the “officeholder” or “office holders”) shall each be permitted to establish one Officeholder Account, as defined in section 2.12.157.

ISSUE: What limitations should be placed on which public officials may be authorized to open Officeholder Accounts? Currently, Berkeley law is silent on this issue, as it is generally with respect to matters relating to Officeholder Accounts. Should the authorization to have Officeholder Accounts be limited to the Mayor and Council members?

State law applies to “elected state officeholder[s],” which includes the Governor, members of the state senate and assembly, and “other statewide elected official[s] other than the Governor.” (Gov. Code sec.85316(b)(1).)

RECOMMENDATION: Amendments to BERA authorizing Officeholder Accounts should be limited to the offices of Mayor and members of the City Council. Extending the authorization more broadly appears to other city officeholders at this time appears to be fiscally unnecessary and would impose significant burdens on the clerk’s office and the FCPC, which would be responsible for compliance with reporting requirements and the enforcement of the laws relating to Officeholder Accounts. If Berkeley’s experience with Officeholder Accounts proves to be positive, BERA could be amended in the future to expand the categories of elected officials authorized to establish Officeholder Accounts.

B. All donations deposited into an Officeholder Account shall be deemed to be held in trust solely for expenses associated with holding the office currently held by the elected city

officer. For the purpose of this section, “donation” means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, in support of the office currently held by an elected official.

ISSUE: This draft uses the term “donation” throughout new section 2.12.600 instead of “contribution.” The use of the term “donation” in the proposed new section of the BERA reflects that funds made for Officeholder Accounts are different from campaign contributions; prevents making all the legal provisions applicable to campaign fund arguably applicable to officeholder donations; and avoids confusion in how the funds for this specific purpose are treated.

RECOMMENDATION: Include the new definition of “donation” in this section and use it – and related terms such as “donor” – consistently throughout, instead of using the term “contribution” in the new section on Officeholder Accounts.

C. Only a natural person who is a resident of the City may make a donation to an Officeholder Account.

ISSUE: To prevent undue influence in election campaigns, BERA currently contains limitations on who may make contributions to such campaigns. Proposed new paragraph C. would provide a similar limitation for donations to Officeholder Accounts. Specifically, like the limitation similar in the Berkeley Elections Reform Act (BERA sec. 2.12.167.), it would limit donations to Officeholder Accounts to natural persons residing in Berkeley.

There is a need for an express provision on this subject to be included in the proposed amendments. As currently written, neither of the BERA limitations relating to campaign contributions would apply by their own terms to donations to Officeholder Accounts nor would a cross-reference work.

The limitation in the Berkeley Election Reform Act to natural person residing in Berkeley is part of the definition of “qualifying contribution” to be eligible for public financing (BERA sec. 2.12.167); and so would not apply to Officeholder Accounts. The limitation in BERA section 2.12.440 prohibits “contributions” by any “proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, including non-profit corporations, or labor union”; but such contributions are prohibited only to “any candidate or committee (supporting or opposing any candidate)” and so would not apply to Officeholder Accounts. Cross-references to these sections would be confusing since by their own terms the referenced sections apply only to campaign contributions, and not to donations to Officeholder Accounts.

RECOMMENDATION: The proposed language that would expressly limit the persons eligible to make donations to “natural persons who are residents of the City of Berkeley” should be adopted. This will avoid undue influence by entities and persons outside Berkeley whose donations might improperly influence officeholders.

D. Donations to an Officeholder Account must be made by a separate check or other separate written instrument. Single donations may not be divided between the Officeholder Account and any candidate committee or other entity.

E. No donor shall make, and no elected officer shall receive from a donor, a donation or donations under this section totaling more than fifty [or two-hundred and fifty] dollars (\$50.00 [or \$250.00]) per person for the calendar year. "Donor" means a natural person who is a resident of the City who makes a donation as defined in paragraph B.

ISSUE: Any regulated scheme for Officeholder Accounts should include a limit on the amount of that each individual is permitted to donate each year. The amount of the individual donations permitted each year is an issue that the Council and the FCPC need to decide, as well as the manner in which this limit is prescribed.

The California state statute on Officeholder Accounts provides explicit limits on the amount that a person is permitted to make for each officeholder per calendar year (e.g., \$3,000 for Senate and Assembly members and \$20,000 for Governor). (Gov. Code sec. 85316(b)(1)(A)-(B).)

The proposed draft amendments to the BERA, above, currently provide for a limit on donations in the range of \$50-\$250; the exact amount is an issue to be determined. Assuming the amount chosen is \$250, this amount could be explicitly placed in the ordinance, as the draft does. Alternatively, the amount might be specified by cross-reference to the maximum campaign amount permitted under BERA (e.g., by a cross-reference stating the amounts of any individual annual donation shall not exceed the amount of a campaign contribution permitted for a single election under BERA section 2.12.415).]

RECOMMENDATION: An explicit amount should be included in the new section of BERA on Officeholder Accounts. This will make the officeholder section—including the exact amount of the donation limit—clear and easy to understand. If in the future the campaign limits under BERA are increased and it makes sense also to increase the amount of the permitted annual individual donations to Officeholder Accounts to a similar (or other) amount, the permissible amount of the donations can be revised at that time.

F. For the office of Mayor, total donations to an Officeholder Account from all donors shall not exceed ten thousand dollars (\$10,000.00) in the aggregate per calendar year. For each member of the City Council, total donations to an Officeholder Account from all donors shall not exceed five thousand dollars (\$5,000.00) in the aggregate per calendar year.

ISSUE: Any regulated scheme for Officeholder Accounts should also include a limit on the total amount of donations from all donors that can be contributed to an officeholder each year. The amount of the total "cap" is an issue that the Council and the FCPC need to decide.

RECOMMENDATION: The total aggregate donations permitted to be made to specific officeholders in Berkeley should be proportional to their offices' size, scope, and needs.

G. All donations received for, and expenditures made from, an Officeholder Account during a calendar year shall be reported at least annually on the date or dates prescribed by the FCPC and the report shall be made available to the public promptly thereafter. The FCPC shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's Officeholder Account. The forms shall be filed electronically. The information on the form or forms shall be verified by the officeholder. The information that shall be included in the Officeholder Account report shall include the following:

1. The name of the officeholder and the office held;
2. The reporting period covered by the report;
3. A description of all receipts and expenditures.
4. The full name of each donor from whom a donation or donations has been received together with their street address, occupation, and the name of their employer, if any, or the principal place of business if they are self-employed; the amount which they donated; the date on which the each donation was received during the period covered by the report; and the cumulative amount that the donor donated. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated with regard to each lender, together with the date and amount of the loan, and if the loan has been repaid, the date of the payment and by whom paid;
5. The full name and street address of each person to whom an expenditure or expenditures have been made, together with the amount of each separate expenditure to each person during the period covered by the report; a description of the purpose for which the expenditure was made; and the full name and street address of the person receiving the expenditure.
6. Under the heading "receipts," the total amount of donations received, and under the heading "expenditures," the total amount of expenditures made during the reporting period and cumulative amount of such totals;
7. The balance of cash and cash equivalents, including the amounts in the officeholder bank account, at the beginning and end of each period covered by the report.

ISSUE: The amended BERA provisions on Officeholder Accounts (Section 2.12.600.G.1-7, above), like those for campaign statements (see BERA sec. 2.12.200 A.-K.), would specify the information that must be disclosed. In new section 2.12.600, the provisions have been tailored to address donations, donors, donors' names and addresses, and so forth. Having these requirements specified in the ordinance will provide the legal foundation for the information requested about Officeholder Accounts on statements or forms. Also, having these requirements in the ordinance will make it possible for the City more easily to add or modify the information required on statements.

Subsection G. also provides that the FCPC shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's Officeholder Account. This would permit, but not require, the City to require officeholders to use California Form 460 or 470 to comply with the reporting requirements. This flexibility is important so that the City will be able to exercise its discretion as to what information needs to be reported about donations to, and expenditures from, Officeholder Accounts.

Finally, this section provides that the commission shall prescribe the time for filing the forms and that the forms shall be verified and filed electronically. These provisions will improve the effectiveness of the reporting on Officeholder Accounts.

RECOMMENDATION: Section G. should be adopted as proposed for the reasons stated above.

H. Expenditures from an Officeholder Account may be made only for lawful officeholder

purposes, and may not be used for any of the purposes prohibited in subsections J. and K. of this section.

ISSUE: This provision clarifies the intent of these amendments—that they authorize “true” Officeholder Accounts whose purpose is strictly limited to lawful officeholder purposes—and are not intended for any other broader purposes. This approach should help officeholders avoid the pitfalls of running afoul of campaign finance laws (as warned against in past opinions by the Berkeley City Attorney).

RECOMMENDATION: Section H. should be adopted as proposed for the reasons stated above.

I. Allowable expenses from an Officeholder Account are limited to expenses for travel, meals, and lodging incurred in connection with the following types of activities:

1. Communicating with representatives of local, regional, state and national governments on City policy positions;
2. Attending educational seminars designed to improve officials’ skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City’s interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of normal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City’s interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies; and
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum set forth in city, state, and federal standards for when meal reimbursement may be allowed.

J. Expenditures from an Officeholder Account shall not be used for any of the following types of activities:

- 1 The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner’s expenses when accompanying the official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage, and or golf related expenses); or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic, citations, insurance or gasoline; and
7. Personal losses incurred while on City Business.

RECOMMENDATION: Sections I. and J. should be based on the list of Authorized Activities and Unauthorized Expenses in Sections IIA. and B. of the City Council Expenditure and Reimbursement Policies, Resolution No. 67,992—N.S. (“Policies”). The lists identified in the Policies are thoughtful, carefully prepared lists of which expenses are permissible or impermissible for officeholders under current law. The policies were unanimously adopted

by the Berkeley City Council on May 30, 2017. For the purposes of the proposed ordinance on Officeholder Accounts, the lists in the Policies are more appropriate for adoption than the lists developed by the Oakland City Council that appear to be based largely on state laws relating to on campaign expenditures.

I. Prohibitions:

1. No funds may be contributed or transferred from an Officeholder Account to any candidate or committee, as defined in sections 2.12.085 and 2.12.095 of this chapter, including to any committee in which the officeholder is a candidate. An officeholder may not redesignate his or her Officeholder Account as a committee for a future term of the same office or redesignate his or her Officeholder Account funds to be used as campaign funds by his or her committee for a future term of the same office.

2. No funds may be used from an Officeholder Account to pay any campaign expenses.

3. An officeholder may not transfer or contribute funds from any other committee he or she controls to the Officeholder Account.

ISSUE: These prohibitions make it clear that funds from an Officeholder Account may never be used for any type of campaign purposes. This is consistent with the ordinance's intent that Officeholder Accounts be strictly limited to officeholder purposes. The provision also makes it explicit that these strictly officeholder funds cannot be redesignated as funds for a future campaign.

L. Once an officeholder's term of office ends or she or he leaves that office, whichever is earlier, the former officeholder may use his or her Officeholder Account funds only for the following purposes:

1. Paying for legitimate, outstanding officeholder expenses.

2. Repaying contributions to donors to the Officeholder Accounts.

3. Making a donation to a bona fide charitable, educational, civic, religious or similar tax-exempt, non-profit organization if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

M. The officeholder shall terminate the Officeholder Account within 90 days of the date that the officeholder's term of office ends or he or she leaves that office, whichever is earlier. The FCPC may for good cause extend the termination date. The disposition of all funds from the closed Officeholder Account, including the identification of all persons and entities that have received funds from the account and the amounts distributed, shall be described on a form prescribed by the FCPC. The officeholder must verify and file the form electronically no later the date prescribed for the termination of the Officeholder Account or an approved extension thereof.

N. All funds from a closed Officeholder Account not properly disposed of within the 90 day period prescribed above, or an approved extension thereof, shall be deposited in the City's General Fund.

ISSUES: Several issues exist with respect to the termination of Officeholder Accounts.

Draft sections 2.12.600 L.-N., above, propose procedures for terminating Officeholder Accounts in Berkeley based, in large part, on the state regulations on terminating Officeholder Accounts and committees (see Regulations of the Fair Political Practices Commission, Cal. Code of Reg., sec. 18531.63(g)).

The proposed provisions include the main options for disposing of Officeholder Account funds listed in the regulations (i.e., paying legitimate expenses, returning funds to donors, and making donations to bona fide organizations). However, the provision in the state regulations (sec. 18531.63(g)(2)) allowing for redesignation of Officeholder Accounts as accounts for a future campaign has been omitted because the Berkeley ordinance would authorize only strict Officeholder Accounts, prohibit the use of those accounts for any campaign purposes, and prohibit the redesignation of those accounts for use by campaign committees.

The proposed provisions, though, are incomplete: they do not address what should happen to an Officeholder Account if an incumbent wins re-election? Maybe it would be appropriate, under certain circumstances, for an incumbent who is elected to a new term of office, to redesignate a previous Officeholder Account for use in the officeholder's new term of office (as envisaged in the state regulations (see sec. 18531.63(g)(3)). Alternatively, as suggested at a previous joint meeting, perhaps it might be better for incumbents to terminate their Officeholder Accounts completely by a certain time before an election; and, if successful, they could open up a new Officeholder Account after their re-election.

The issues around the termination of Officeholder Accounts should be discussed by the joint committee and decisions made about what additions or modifications to the proposed ordinance are warranted.

M. Violations of this article involving the unlawful use of Officeholder Accounts are subject to the procedures of, and the penalties in, Article 7 of this chapter.

ISSUE: Are there any other issues on enforcement besides this general provision that need to be addressed?

* * *

OTHER ISSUES TO BE CONSIDERED:

Some of the other issues not yet incorporated into the draft, but which merit consideration, include:

1. Establishment of an Officeholder Committee. State law requires an officeholder to create an Officeholder Controlled Committee if the officeholder receives more than \$2,000; and it provides guidance on the procedures for establishing such a committee, the committee's name, and other requirements. (Cal. Code of Reg., sec. 18531.63(c).) The Berkeley ordinance should probably include similar provisions.

2. Return of Excess Contributions/Donations. State law requires that an excess contribution to an officeholder be returned. (Gov. Code sec.85316(b)(3).) The regulations prescribe that the officeholder return the contribution within 14 days. (Cal. Code of Reg., sec. 18531.63(f).) The Berkeley ordinance should probably include similar provisions.

3. Conforming Amendments to BERA. A BERA section on the disposition of excess

campaign funds will probably need to be amended to be consistent with the new section 2.12.600 on Officeholder Accounts (see BERA sec. 2.12.245.C.). There may be other sections to BERA that require similar conforming changes.

RESOLUTION NO. 67,992-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, adopted in 2005 and codified as Government Code Sections 53232, et. seq., requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses; and

WHEREAS, on July 25, 2006, the City Council adopted Resolution No. 63,412-N.S. to establish the expenditure and reimbursement policy required by state law; and

WHEREAS, on September 10, 2103, the City Council rescinded Resolution No. 63,412-N.S. and replaced it with Resolution No. 66,295-N.S., which revised the expenditure and reimbursement policy required by state law.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A is incorporated by reference into the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

BE IT FURTHER RESOLVED that Resolution No. 66,295-N.S. and any amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that the policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS

I. City Expenditures for Mayor and Council

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product, good, or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.

II. Reimbursement of Actual and Necessary Expense of Office

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under "Authorized Activities."

A. Authorized Activities.

Travel, meals and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulated municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure. Most frequently, prior approval by the City Council is given in items to authorize relinquishment of Council office budget fund to general fund and grant of such funds for charitable events, which would be unauthorized expenses if not pre-approved by Council. The policy for relinquishments and grants from Councilmember office budgets is enumerated in Exhibit A.

B. Unauthorized Expenses

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;

4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the California Department of General Services (DGS) Statewide Travel Program offered through the League of California Cities, www.dgs.ca.gov/travel¹, are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. If DGS rates are not available, reimbursement for airfare must not exceed 110% of either the state DGS rates or the Federal rates published by the U.S. General Services Administration (GSA) rates, www.gsa.gov², whichever is greater. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred.

¹ California Department of General Services Statewide Travel Program (DGS): www.dgs.ca.gov/travel

² U.S. General Services Administration (GSA): www.gsa.gov

4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services (DGS) Statewide Travel Program available through the League of California Cities shall be considered the most economical and reasonable for purposes of reimbursement under this policy. If DGS rates are not available, reimbursement for car rental must not exceed 110% of either the state DGS rates or the Federal GSA rates, whichever is greater. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred.
6. **Taxis/Ride Shares/Shuttles.** Taxis, ride shares, or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.
7. ~~7.~~ **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference or activity sponsor, provided that lodging at the group rate is available to the Council member at the time of booking. If lodging at the group rate is not available, or if travel is not in connection with a conference, rates that are equal to or less than those available through the California Department of General Services (DGS) Statewide Travel Program offered through the League of California Cities, are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. If DGS rates are not available, reimbursement for lodging must not exceed 120% of the state DGS rates or 100% of the Federal rates published by the GSA, whichever is greater. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred. **Meals.** Meal expenses and associated gratuities will be reimbursed at the rate set forth in Administrative Regulation 3.9. "Meals which are served at regular meetings of associations to which the city belongs (i.e. Alameda County Mayors' Conference, league of California Cities, or ABAG) shall be exempt from this policy.
8. **Telephone/Fax/Cellular.** Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus

long-distances charges for those calls.

9. **Airport Parking.** Short-term airport parking may not be used for travel exceeding 24-hours.
10. **Other Travel Related Expenses.** Reasonable baggage fees given the duration of the travel will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.
11. **Miscellaneous Office Products.** Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. In accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds, the City may reimburse such purchases.

D. Cash Advance Policy for Airfare and Hotel Only (per A.R. 3.9)

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity;
3. The benefit to the residents of the City;
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).

Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

E. Expense Report Content and Submission Deadline

1. A statement of expense must be completed, signed and submitted to the City Auditor for review and forwarded to the Finance Department for payment. The statement of expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.
2. Officials must submit their statement of expense reports to the Auditor's Office within 60 days of an expense being incurred, accompanied by receipts documenting each expense. Itemized restaurant receipts, including number of individuals served, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under \$5 are not required.
3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

ITEM 14
ATTACHMENT 2

EXHIBIT A

F. Audits of Expense Reports

All expenses are subject to verification by the City Auditor of compliance with this policy.

G. Reports

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

H. Compliance with Laws

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

I. Violation of This Policy

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

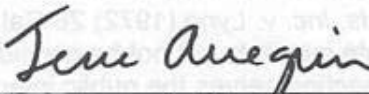
1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for misuse of public resources.

The foregoing Resolution was adopted by the Berkeley City Council on May 30, 2017 by the following vote:

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

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numalville, City Clerk

Exhibit A

Councilmember Office Budget Relinquishment and Grant PolicyIntroduction – Limitations on the Expenditure of Public Funds

The basic purpose of the City as an entity is to exist and function as a *municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.

(*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose:

The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.

(*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

Criteria for Grants of City Funds from Councilmember Office Budgets

Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be "pre-approved" each fiscal year by Council resolution.

Table 1.

Recipient	Purpose
The City (e.g., the Berkeley Public Library, the Berkeley Animal Shelter)	Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
BUSD and other public agencies operating in Berkeley	Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
Entities with which the City is co-sponsoring a public event in Berkeley (e.g., Earth Day, Solano Stroll).	City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed.
Entities in Berkeley to which the City already contributes funds for municipal purposes (e.g., affordable housing or social service nonprofits)	To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.



Fair Campaign Practices Commission

PUBLIC HEARING

February 4, 2020

To: Honorable Mayor and Members of the City Council
 From: Fair Campaign Practices Commission
 Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission
 Subject: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

Action: M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

Vote: Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

Definition of an Officeholder Account

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's Public Access Portal.) If, however, a complaint is filed that an Officeholder Account is used for

campaign contributions or to pay “campaign expenses,” BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda’s conclusions remain valid and are still controlling guidance.

Contributions to Officeholder Accounts

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official’s Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

Expenditures from Officeholder Accounts

Except for the restriction that Officeholder Account funds cannot be used for “campaign expenses,” BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a “campaign expense,” would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder’s position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent’s name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not “campaign expenses,” also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.¹ Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

Recommendation

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

Part 8 - OFFICEHOLDER ACCOUNTS

12.06.810 - Officeholder account prohibited.

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

2.12.157 Officeholder Account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

¹ Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

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

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

BMC 2.12.157 Officeholder account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

BMC 2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

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


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GOVERNMENT CODE - GOV

TITLE 9. POLITICAL REFORM [81000 - 91014] (Title 9 added June 4, 1974, by initiative Proposition 9.)

CHAPTER 5. Limitations on Contributions [85100 - 85802] (Chapter 5 added June 7, 1988, by initiative Proposition 73.)

ARTICLE 3. Contribution Limitations [85300 - 85321]

(Article 3 added June 7, 1988, by initiative Proposition 73.)

85316. (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18531.62. Elected State Officeholder Bank Accounts.

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

- (1) "Officeholder" means an elected state officer.
- (2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.
- (3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).
- (4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office.

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees.

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision (e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

- (A) Paying outstanding officeholder expenses.
- (B) Repaying contributions to contributors to the officeholder account.
- (C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

HISTORY

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

FROM: MANUELA ALBUQUERQUE, City Attorney *MA*
By: CAMILLE COUREY, Deputy City Attorney

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.¹ For similar reasons, the BERA does not

¹ However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert
Re: Application of Berkeley Election Reform Act To Officeholder Accounts
December 28, 1999
Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.² Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE 1. and IILG.

CCM

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² Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, 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 or in person to the City Clerk. 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: January 24, 2020 – The Berkeley Voice
Pursuant to Berkeley Municipal Code Section 2.12.051

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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 January 30, 2020.

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



Fair Campaign Practices Commission

Date: September 17, 2020

To: Fair Campaign Practices Commission and Open Government Commission

From: Commissioner Patrick O'Donnell

Subject: Amendments to the Berkeley Election Reform Act (BERA) to Regulate Officeholder Accounts and Proposed Changes to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

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This memorandum to the Fair Campaign Practices Commission (FCPC) and the Open Government Commission (OGC) substitutes for the one previously posted, mailed to members of the FCPC, and appearing as Item 7 on the agenda of the FCPC. The key difference is that this memorandum addresses not only officeholder accounts, but also proposed changes to City Council Expenditure and Reimbursement Policies (so-called D-13 Accounts). These two proposals are closely linked and should be considered together. Because the proposal relating to officeholder accounts falls under the jurisdiction of the FCPC and that relating to D-13 accounts falls under the jurisdiction of the OGC, the FCPC and OGC should act jointly in considering the proposed changes to BERA and the Reimbursement Policies.

The memorandum also makes the following recommendation:

Form a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

The preceding recommendations are consistent with previous discussions and the annual workplans of the FCPC and the OGC.

To implement the recommendations in this memorandum, a revised report to the Council is attached.

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. It agreed that the Council Committee would work collaboratively with the FCPC and OGC on matters relating to officeholder accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, I propose that the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

PUBLIC HEARING  
XXXXX XX, XXXX

To: Honorable Mayor and Members of the City Council

From: Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions

Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices and Open Government Commissions

Subject: Amendments to the Berkeley Election Reform Act (BERA) and Change to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

RECOMMENDATION

Form a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Officeholder accounts are not expressly regulated by BERA. However, under existing law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements.

Donations to nonprofit organizations from Councilmember’s discretionary council budgets (D-13 accounts) are allowed by the authority of City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.).

Action:

Vote:

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the “double green light” process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Changes to the City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) can be made by a majority vote of the Council.

## BACKGROUND

### *Officeholder Accounts*

During 2019, the Fair Campaign Practices Commission (FCPC) discussed whether there is a need to amend the law relating to these accounts. These accounts are not expressly regulated by BERA, but under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.”

In the course of its review of the issue of officeholder accounts, the FPPC considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met several times in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission’s proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: “Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016.” (Report, page 1.)

At the February 4, 2020 meeting, the Council had a lengthy discussion about their D-13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder accounts. The City Council referred the issues relating to officeholder and D-13 accounts to its Agenda and Rules Committee for further consideration.

***Proposed Changes to City Council Expenditure and Reimbursement Policies***

At the April 23, 2020 meeting of the Open Government Committee (OGC), a motion to direct staff to develop a proposal recommending Council change City policy to remove councilmember names from donations to nonprofit organizations from D-13 accounts was approved unanimously.

Donations to nonprofit organizations from the Councilmember's discretionary council budget (D-13 accounts) puts that elected official in a favorable light with Berkeley citizens at no cost to the Councilmember, an option not available to a challenger for that office. A look at the Consent Calendar of City Council Meeting Agendas will often contain one or more items from one or more Councilmembers making a donation to a nonprofit organization "from the discretionary council budget" of the Councilmember. This line item ("Services and Materials") from the General Fund was increased from \$50,938 in FY 2017 to \$113,526 in FY 2018 (approximately \$40,000 for the Mayor, the balance evenly divided among the Councilmembers; see Attachment 1 – Council Office Budget Summaries). While not technically a "campaign contribution," those individuals in the organization as well as individuals favorably disposed to the nonprofit organization receiving the funds would certainly see it favorably. A person running against this incumbent would have to draw on their own resources to match a Councilmember's contribution from public funds and without the public notice of the contribution the Councilmember receives.

In addition to favoring incumbents, the use of public moneys for contributions to nonprofit organizations from the discretionary council budgets of individual Council members is arguably improper and certainly bad optics. The commissioners of the OGC have no argument with contributions being made to nonprofit organizations from the City of Berkeley, but believe they should be made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley, not from individual Council members. Perhaps a nonprofit fund could be set up from which the donations could be made from recommendations made to one of the Council's Policy Commissions. This would free funds for other purposes now being directed to nonprofit organizations from individual Councilmember's D-13 accounts.

**Proposed Action:**

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee agreed to work collaboratively with the FCPC and OGC on matters relating to officeholder

accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to:

(1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and

(2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

#### RATIONALE FOR RECOMMENDATION

The “double green light” process requires that the FCPC adopt an amendment by a two-thirds vote, and that the City Council hold a public hearing and also adopt an amendment by a two-thirds vote. Evidence to date suggests there are differences of perspective regarding this matter between the City Council and the FCPC regarding the D-13 accounts. It would seem to be a rational step to discuss and come to agreement and possibly compromise prior to the “double green light” process.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

#### CONTACT PERSON

Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions,  
(510) 981-6998

Samuel Harvey, Commission Secretary, Fair Campaign Practices and Open  
Government Commissions, (510) 981-6998



Fair Campaign Practices Commission

Date: September 17, 2020

To: Fair Campaign Practices Commission

From: Commissioner Patrick O'Donnell

Subject: Amendments to the Berkeley Election Reform Act to regulate officeholder accounts

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In 2019, the FCPC approved an amendment to the Berkeley Election Reform Act (“BERA”) prohibiting officeholder accounts. That proposal was submitted to Council. However, some councilmembers have expressed opposition to an outright ban on officeholder accounts and a preference for developing regulations for those accounts. This report contains a new alternative proposal to regulate – rather than prohibit – officeholder accounts. At its July 16, 2020 meeting, the Commission voted to direct Commissioner O’Donnell to return at the Commission’s September 17, 2020 meeting with a version of the proposal drafted as an amendment to BERA that can be voted on and presented to Council.

## Background

During 2019, the Commission discussed whether there is a need to amend the law relating to the use of officeholder accounts. These accounts are not expressly regulated by BERA. But under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.” (Report, page 14.)

In the course of its review of the issue of officeholder accounts, the Commission considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or



(3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission's proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: "Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016." (Report, page 1.) At the February 4 meeting, the Council had a lengthy discussion about their D13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder Accounts. (See Memorandum to FCPC dated February 12, 2020, a copy of which is attached.)

The City Council, however, referred both the issues relating to D13 accounts and those relating to officeholder accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. At that meeting, it was agreed that the Council Committee would work collaboratively with the FCPC on matters relating to D13 accounts and officeholder accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

### **Alternative Proposal for Legislation on Officeholder Accounts**

Given the Council's opposition to accepting an outright prohibition of officeholder accounts, the FCPC should at least explore some alternatives, including the option of amending the BERA to allow for officeholder accounts that would be subject to limitations, as the City of Oakland has done. The subcommittee which examined officeholder accounts briefly discussed this option but, given that there was unanimous support for prohibiting officeholder accounts entirely, it never developed a detailed proposal for this kind of alternative. However, now that the FCPC/OGC will be in conversation with the council about the options going forward, it seems to make good sense to examine in more detail what the alternative might look like.

For discussion purposes, a draft proposal to amend the BERA is attached (Attachment 1). It is based generally on the Oakland ordinance but differs in important ways from that statute. The basic concept behind this alternative is to allow officeholders to have *true* officeholder accounts, but to insure that the funds in these accounts are

used *strictly* for officeholder purposes and may not be used for political campaigns or other non-officeholder purposes. The proposal would also include limitations on the amount each donor may contribute and the total amount of donations to each officeholder account permitted annually. The amendments would require disclosures of the sources and amounts of all donations and expenditures. And they would specify how officeholder accounts are to be terminated.

Although not as fully effective as the complete prohibition of officeholder accounts previously recommended by the FCPC, this approach would allow officeholders to create regulated accounts for proper officeholder purposes. At the same time, these true officeholder accounts would be subject to public scrutiny and express limitations that would prevent serious abuses. Finally, the strict prohibitions in the proposed legislation against using any funds from officeholder accounts for campaign purposes would greatly simplify the management and oversight of these accounts. Current state law, which permits certain officeholder funds to be redesignated for campaign purposes under certain circumstances and subject to various disclosure and notice requirements, creates a nightmare of administrative and reporting requirements. It has made it difficult for officeholders to comply with the law and has established traps for the unwary. Thus, it is hardly surprising that most candidates elected to public office do not even attempt to set up officeholder accounts.

In the end, it may well be that the alternative presented here—or any other—may be unable to carry the day. Because of the double-green light requirements of BERA, no proposal may be able to garner the 2/3 votes of both the Council and Commission required to change the law. But for the purposes of collaborating with the Council on ways of improving the officeholder account process, the Commission should review the attached proposal which offers at least one possible scenario for addressing the problems and pitfalls involved with officeholder accounts.

Prior to approving this item, the Commission will need to make a determination regarding the dollar amounts for limits on donations to officeholder accounts. These amounts are highlighted in the attached Proposal in Section 2.12.600.E & F.

**Attachments:**

1. New draft proposed amendments to BERA to allow for officeholder accounts, to limit such accounts to being used strictly for officeholder purposes, and to subject these accounts to various other limitations and disclosure requirements (“Proposal”)
2. Report to the City Council from the Fair Campaign Practices Commission entitled “Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts: Amending BMC Chapter 2.12” (for Public Hearing on February 4, 2020) (with Attachments) (“Report”)
3. Memorandum from Dean Metzger, Chair, to FCPC dated February 12, 2020 (with Attachments) (“Memorandum”)



Fair Campaign Practices Commission

PUBLIC HEARING  
XXXXX XX, XXXX

To: Honorable Mayor and Members of the City Council  
From: Brad Smith, Chair, Open Government Commission  
Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices Commission  
Subject: Amendments to the Berkeley Election Reform Act

RECOMMENDATION

Adopt an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to regulate officeholder accounts.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

These recommended amendments to the Berkeley Lobbyist Registration Act were approved by the Open Government Commission at its regular meeting of XXXXX XX, XXXX.

**Action:**

**Vote:**

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the “double green light” process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

BACKGROUND

In 2019, the FCPC approved an amendment to the Berkeley Election Reform Act (“BERA”) prohibiting officeholder accounts. That proposal was submitted to Council. However, some councilmembers have expressed opposition to an outright ban on officeholder accounts and a preference for developing regulations for those accounts. This report contains a new alternative proposal to regulate – rather than prohibit – officeholder accounts.

During 2019, the Commission discussed whether there is a need to amend the law relating to the use of officeholder accounts. These accounts are not expressly regulated

by BERA. But under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.” (Report, page 14.)

In the course of its review of the issue of officeholder accounts, the Commission considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission’s proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: “Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016.” (Report, page 1.) At the February 4 meeting, the Council had a lengthy discussion about their D13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder Accounts. (See Memorandum to FCPC dated February 12, 2020, a copy of which is attached.)

The City Council, however, referred both the issues relating to D13 accounts and those relating to officeholder accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. At that meeting, it was agreed that the Council Committee would work collaboratively with the FCPC on matters relating to D13 accounts and officeholder accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

### **Alternative Proposal for Legislation on Officeholder Accounts**

At its September 17, 2020 meeting, the FCPC passed the attached proposal to amend the BERA (Attachment 1). It is based generally on the Oakland ordinance but differs in important ways from that statute. The basic concept behind this alternative is to allow officeholders to have *true* officeholder accounts, but to insure that the funds in these accounts are used *strictly* for officeholder purposes and may not be used for political

campaigns or other non-officeholder purposes. The proposal also includes limitations on the amount each donor may contribute and the total amount of donations to each officeholder account permitted annually. The amendments would require disclosures of the sources and amounts of all donations and expenditures, and specify how officeholder accounts are to be terminated.

This approach would allow officeholders to create regulated accounts for proper officeholder purposes. At the same time, these true officeholder accounts would be subject to public scrutiny and express limitations that would prevent serious abuses. Finally, the strict prohibitions in the proposed legislation against using any funds from officeholder accounts for campaign purposes would greatly simplify the management and oversight of these accounts. Current state law, which permits certain officeholder funds to be redesignated for campaign purposes under certain circumstances and subject to various disclosure and notice requirements, creates a nightmare of administrative and reporting requirements. It has made it difficult for officeholders to comply with the law and has established traps for the unwary. Thus, it is hardly surprising that most candidates elected to public office do not even attempt to set up officeholder accounts.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

#### RATIONALE FOR RECOMMENDATION

This proposal is offered as an alternative to the proposed ban on officeholder accounts previously submitted to Council by the FCPC. This proposal would regulate – rather than prohibit – officeholder accounts.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

#### CONTACT PERSON

Brad Smith, Chair, Open Government Commission, (510) 981-6998

Samuel Harvey, Commission Secretary, Open Government Commission (510) 981-6998

#### Attachments:

1. Proposed ordinance amending BERA to allow and regulate officeholder accounts
2. Report to the City Council from the Fair Campaign Practices Commission entitled “Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts: Amending BMC Chapter 2.12” (for Public Hearing on February 4, 2020) (with Attachments) (“Report”)
3. Memorandum from Dean Metzger, Chair, to FCPC dated February 12, 2020 (with Attachments) (“Memorandum”)

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT TO REGULATE  
OFFICEHOLDER ACCOUNTS

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

Section 1. That the Berkeley Municipal Code section 2.12.157 is added to read as follows:**Section 2.12.157 Officeholder account.**“Officeholder account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.Section 2. That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as followsArticle 9. Officeholder Accounts**Section. 2.12.600 Regulation of officeholder accounts.**A. The mayor and council members (the “officeholder” or “office holders”) shall each be permitted to establish one officeholder account, as defined in section 2.12.157.B. All donations deposited into an officeholder account shall be deemed to be held in trust solely for expenses associated with holding the office currently held by the elected city officer. For the purpose of this section, “donation” means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, in support of the office currently held by an elected official.C. Only a natural person who is a resident of the City may make a donation to an officeholder account.D. Donations to an officeholder account must be made by a separate check or other separate written instrument. Single donations may not be divided between the officeholder account and any candidate committee or other entity.E. No donor shall make, and no elected officer shall receive from a donor, a donation or donations under this section totaling more than fifty [or two-hundred and fifty] dollars (\$50.00 [or \$250.00]) per person for the calendar year. “Donor” means a natural person who is a resident of the City who makes a donation as defined in paragraph B.F. For the office of mayor, total donations to an officeholder account from all donors shall not exceed ten thousand dollars (\$10,000.00) in the aggregate per calendar year. For each member of the city council, total donations to an officeholder account from all donors shall not exceed five thousand dollars (\$5,000.00) in the aggregate per calendar year.



G. All donations received for, and expenditures made from, an officeholder account during a calendar year shall be reported at least annually on the date or dates prescribed by the commission and the report shall be made available to the public promptly thereafter. The commission shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's officeholder account. The forms shall be filed electronically. The information on the form or forms shall be verified by the officeholder. The information that shall be included in the officeholder account report shall include the following:

1. The name of the officeholder and the office held;
2. The reporting period covered by the report;
3. A description of all receipts and expenditures.
4. The full name of each donor from whom a donation or donations has been received together with his or her street address, occupation, and the name of his or her employer, if any, or the principal place of business if he or she is self-employed; the amount which he or she donated; the date on which the each donation was received during the period covered by the report; and the cumulative amount that the donor donated. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated with regard to each lender, together with the date and amount of the loan, and if the loan has been repaid, the date of the payment and by whom paid;
5. The full name and street address of each person to whom an expenditure or expenditures have been made, together with the amount of each separate expenditure to each person during the period covered by the report; a description of the purpose for which the expenditure was made; and the full name and street address of the person receiving the expenditure.
6. Under the heading "receipts," the total amount of donations received, and under the heading "expenditures," the total amount of expenditures made during the reporting period and cumulative amount of such totals;
7. The balance of cash and cash equivalents, including the amounts in the officeholder bank account, at the beginning and end of each period covered by the report.

H. Expenditures from an officeholder account may be made only for lawful officeholder purposes, and may not be used for any of the purposes prohibited in subsections J. and K. of this section.

I. Allowable expenditures from an officeholder account include the following:

1. Expenditures for fundraising (including solicitations by mail) for the officeholder account;
2. Expenditures for office equipment, furnishings and office supplies;

3. Expenditures for office rent;

4. Expenditures for salaries of part-time or full-time staff employed by the officeholder for officeholder activities;

5. Expenditures for consulting, research, polling, photographic or similar services except for campaign expenditures for any city, county, regional, state or federal elective office;

6. Expenditures for conferences, meetings, receptions, and events attended in the performance of government duties by (1) the officeholder (2) a member of the officeholder's staff; or (3) such other person designated by the officeholder who is authorized to perform such government duties;

7. Expenditures for travel, including lodging, meals and other related disbursements, incurred in the performance of governmental duties by (1) the officeholder, (2) a member of the officeholder's staff, (3) or such other person designated by the officeholder who is authorized to perform such government duties;

8. Expenditures for memberships to civic, service or professional organizations, if such membership bears a reasonable relationship to a governmental, legislative or political purpose;

9. Expenditures for an educational course or educational seminar if the course or seminar maintains or improves skills which are employed by the officeholder or a member of the officeholder's staff in the performance of his or her governmental responsibilities;

10. Expenditures for mailing to persons within the city which provide information related to city-sponsored events, an official's governmental duties or an official's position on a particular matter pending before the Council or Mayor;

11. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in his or her official capacity;

12. Expenditures for payment of tax liabilities incurred as a result of authorized officeholder expense fund transactions; and

13. Expenditures for accounting, professional and administrative services provided to the officeholder account.

J. Officeholder expense funds shall not be used for the following:

1. Expenditures in connection with a future election for any city, county, regional, state or federal elective office or in connection with a ballot measure;



2. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office;

3. Membership in any athletic, social, fraternal, veteran or religious organization;

4. Supplemental compensation for employees for performance of an act which would be required or expected of the person in the regular course or hours of his or her duties as a city official or employee;

5. Any expenditure that would violate the provisions the California State Political Reform Act, including Government Code Sections 89506 and 89512 through 89519, and any provisions of the BERA.

K. Prohibitions:

1. No funds may be contributed or transferred from an officeholder account to any candidate or committee, as defined in sections 2.12.085 and 2.12.095 of this chapter, including to any committee in which the officeholder is a candidate. An officeholder may not redesignate his or her officeholder account as a committee for a future term of the same office or redesignate his or her officeholder funds to be used as campaign funds by his or her committee for a future term of the same office.

2. No funds may be used from an officeholder account to pay any campaign expenses.

3. An officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account.

L. Once an officeholder's term of office ends or she or he leaves that office, whichever is earlier, the former officeholder may use his or her officeholder funds only for the following purposes:

1. Paying for legitimate, outstanding officeholder expenses.

2. Repaying contributions to contributors to the officeholder accounts.

3. Making a donation to a bona fide charitable, educational, civic, religious or similar tax-exempt, non-profit organization if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

M. The officeholder shall terminate the officeholder account within 90 days of the date that the officeholder's term of office ends or he or she leaves that office, whichever is earlier. The Commission may for good cause extend the termination date. The disposition of all funds from the closed officeholder account, including the identification of all persons and entities that have received funds from the account and the amounts distributed, shall be described on a form prescribed by the Commission. The officeholder must verify and file the form electronically no later the date prescribed for the termination of the officeholder account or an approved extension thereof.

N. All funds from a closed officeholder account not properly disposed of within the 90 day period prescribed above, or an approved extension thereof, shall be deposited in the City's general fund.

O. Violations of this article involving the unlawful use of officeholder accounts are subject to the procedures of, and the penalties in, Article 7 of this chapter.

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the regulation of officeholder accounts.

The hearing will be held on, [date of hearing] at [6:00 p.m.] in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of [date of agenda posting].

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

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

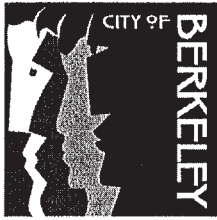
Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication 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 or in person to the City Clerk. 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](mailto:clerk@cityofberkeley.info) for further information.

**Published:** [Publication Date in Newspaper]

Pursuant to Berkeley Municipal Code section 2.12.051

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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 [Enter Date].

Mark Numainville, City Clerk



Fair Campaign Practices Commission

PUBLIC HEARING
February 4, 2020

To: Honorable Mayor and Members of the City Council
 From: Fair Campaign Practices Commission
 Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission
 Subject: Amendments to the Berkeley Election Reform Act to prohibit
 Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

Action: M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

Vote: Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder AccountsPUBLIC HEARING
February 4, 2020BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

Definition of an Officeholder Account

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's Public Access Portal.) If, however, a complaint is filed that an Officeholder Account is used for

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder AccountsPUBLIC HEARING
February 4, 2020

campaign contributions or to pay "campaign expenses," BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda's conclusions remain valid and are still controlling guidance.

Contributions to Officeholder Accounts

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

Expenditures from Officeholder Accounts

Except for the restriction that Officeholder Account funds cannot be used for "campaign expenses," BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a "campaign expense," would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder's position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent's name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not "campaign expenses," also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder Accounts

PUBLIC HEARING
February 4, 2020

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.¹ Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

Recommendation

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

Part 8 - OFFICEHOLDER ACCOUNTS

12.06.810 - Officeholder account prohibited.

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

2.12.157 Officeholder Account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

¹Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder Accounts

PUBLIC HEARING
January 21, 2020

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

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

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

BMC 2.12.157 Officeholder account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

BMC 2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

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

10/8/2019

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California
LEGISLATIVE INFORMATION[Home](#)[Bill Information](#)[California Law](#)[Publications](#)[Other Resources](#)[My Subscriptions](#)[My Favorites](#)Code: Section: [Up^](#) [<< Previous](#) [Next >>](#)[cross-reference chaptered bills](#)[PDF](#) | [Add To My Favorites](#)Search Phrase: **GOVERNMENT CODE - GOV****TITLE 9. POLITICAL REFORM [81000 - 91014]** (Title 9 added June 4, 1974, by initiative Proposition 9.)**CHAPTER 5. Limitations on Contributions [85100 - 85802]** (Chapter 5 added June 7, 1988, by initiative Proposition 73.)**ARTICLE 3. Contribution Limitations [85300 - 85321]** (Article 3 added June 7, 1988, by initiative Proposition 73.)

85316. (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18531.62. Elected State Officeholder Bank Accounts.

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office.”

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees:

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision

(e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

HISTORY

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

FROM: MANUELA ALBUQUERQUE, City Attorney *MA*
By: CAMILLE COUREY, Deputy City Attorney

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.¹ For similar reasons, the BERA does not

¹ However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert
Re: Application of Berkeley Election Reform Act To Officeholder Accounts
December 28, 1999
Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.² Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinions Index: H.E.I. and H.L.G.

CCM

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² Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso,  Secretary & Staff CounselSUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSESBACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Ioni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

FCPC COMMISSIONERS
December 9, 1991
Page 2

in opposition to the nomination or election of one or more candidates (Emphasis added.)

Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.^{1/} (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

^{1/}I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

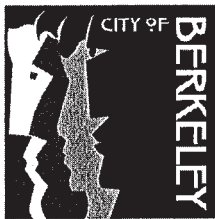
Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

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 or in person to the City Clerk. 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: January 24, 2020 – The Berkeley Voice
Pursuant to Berkeley Municipal Code Section 2.12.051

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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 January 30, 2020.

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



[First Last name]  
Councilmember District [District No.]

## SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2

**Meeting Date:** February 4, 2020

**Item Number:** 2

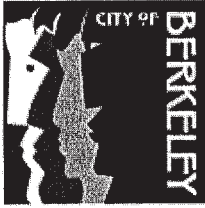
**Item Description:** Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

**Submitted by:** Councilmember Hahn

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.



**SOPHIE HAHN**

Berkeley City Council, District 5  
 2180 Milvia Street, 5th Floor  
 Berkeley, CA 94704  
 (510) 981-7150  
 shahn@cityofberkeley.info

ACTION CALENDAR

February 4, 2020

To: Honorable Mayor and Members of the City Council  
 From: Vice Mayor Sophie Hahn  
 Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.<sup>1</sup> They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.<sup>2</sup> Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

<sup>1</sup> <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

<sup>2</sup> <http://www2.oaklandnet.com/w/OAK052051>

always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, "such as a newsletter or brochure, [ ] delivered, by any means [ ] to a person's residence, place of employment or business, or post office box."<sup>3</sup> Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.<sup>4</sup> Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or "Officeholder") funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

<sup>3</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

<sup>4</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>



Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.<sup>5</sup> For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

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<sup>5</sup> Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.<sup>5</sup>

*members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.*

Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to “speak” and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

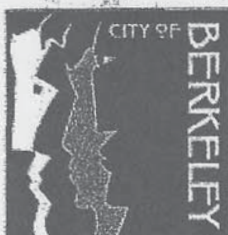
By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State’s restrictions, to ensure funds are not used for things like family members’ travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.<sup>6</sup>

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

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

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<sup>6</sup> <http://www2.oaklandnet.com/w/OAK052051>



Fair Campaign Practices Commission

**Date:** February 12, 2020  
**To:** FAIR CAMPAIGN PRACTICES COMMISSION  
**From:** Dean Metzger, Commission Chair  
**Subject:** Council discussion and action with regards to the Officeholder Accounts FCPC proposal.

---

At the Special City Council meeting of Tuesday February 4, 2020, the City Council had a lengthy discussion about their D13 accounts, and the lack of discretionary funds Council Members have to spend. They then decided not to approve the FCPC recommendation to prohibit Officeholder Accounts.

To remedy this concern the FCPC should request from the City Manager the amount each Council Member receives in their D13 accounts and after some discussion make a recommendation to Council. If the D13 account is large enough to allow Council members to make the expenditures they feel will keep their constituents informed of their activities, travel to local meetings, provide transportation expenses and meals - there would be no need for Officeholders Accounts.

A search of the City's Budget documents did not reveal the amounts allocated to the Council D13 accounts. Once the information is available the FCPC can make its recommendations to City Council.

**Attachments:**

1. Mayor and City Council Financial Summary
2. Draft request to City Manager for budget details of the Mayor and each individual Council Member



**MAYOR AND CITY COUNCIL FINA**

|                        | FY 2015<br>Actual | FY 2016<br>Actual | FY 2017<br>Adopted | FY 2018<br>Proposed | FY 2019<br>Proposed |
|------------------------|-------------------|-------------------|--------------------|---------------------|---------------------|
| <b>EXPENDITURES</b>    |                   |                   |                    |                     |                     |
| <b>By Type:</b>        |                   |                   |                    |                     |                     |
| Salaries and Benefits  | 1,660,661         | 1,760,619         | 1,723,617          | 1,833,734           | 1,880,031           |
| Services and Materials | 36,942            | 43,407            | 113,526            | 113,526             | 113,526             |
| Capital Outlay         | 1,953             | 7,674             |                    |                     |                     |
| Internal Services      | 89,100            | 81,181            | 81,181             | 81,181              | 81,181              |
| Indirect Cost Transfer |                   |                   |                    |                     |                     |
|                        | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |
| <b>By Division:</b>    |                   |                   |                    |                     |                     |
| Mayor's Office         | 515,095           | 558,137           | 584,877            | 554,389             | 566,917             |
| Council Offices        | 1,273,561         | 1,334,744         | 1,333,447          | 1,474,052           | 1,507,821           |
| Exiting Officials      |                   |                   |                    |                     |                     |
|                        | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |
| <b>By Fund:</b>        |                   |                   |                    |                     |                     |
| General Fund           | 1,788,656         | 1,892,881         | 1,918,324          | 2,028,441           | 2,074,738           |
|                        | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |

|                         |       |       |       |       |       |
|-------------------------|-------|-------|-------|-------|-------|
| <b>General Fund FTE</b> | 12.00 | 12.00 | 12.00 | 12.00 | 12.00 |
| <b>Total FTE</b>        | 12.00 | 12.00 | 12.00 | 12.00 | 12.00 |

**DRAFT**

**DRAFT**

**DRAFT**

**Date:** February 20, 2020

**To:** Dee Williams-Riley  
City Manager

**From:** Fair Campaign Practices Commission

**Subject:** Request for budget details of the Mayor and each individual Council Member.

---

At the Special Council meeting of Tuesday, February 4, 2020 the Council heard and took action on the FCPC recommendation to amend the Berkeley Municipal Code to prohibit Officeholder Accounts. The Council discussion went to great lengths about why they needed the Officeholder Account before declining to approve the FCPC recommendation.

The FCPC needs to understand why the Council took the action it did.

To help the Commission determine if any further action on its part would be helpful, the Commission requests that your office provide the FCPC with the detailed budgets of the Mayor and each Council Member. The Commission has the budget summaries of the Mayor and City Council but it is of little use for the discussion.

Please provide the requested information in time for the FCPC meeting on March 19, 2020.

Thank you,

**Fair Campaign Practices Commission**



Fair Campaign Practices Commission  
Open Government Commission

ACTION CALENDAR  
January 26, 2021

To: Honorable Mayor and Members of the City Council

From: Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions

Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices and Open Government Commissions

Subject: Amendments to the Berkeley Election Reform Act (BERA) and Change to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

RECOMMENDATION

Form a joint subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Officeholder accounts are not expressly regulated by BERA. However, under existing law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements.

Donations to nonprofit organizations from Councilmember's discretionary council budgets (D-13 accounts) are allowed by the authority of City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.).

*Action: Motion to submit report to City Council recommending creation of a subcommittee of members of the Council, FCPC and OGC to (1) prepare an ordinance prohibiting or regulating officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies*

Vote: M/S/C: Blome/Metzger; Ayes: O'Donnell, Ching, Blome, Tsang, Smith; Noes: Metzger, Sheahan; Abstain: none; Absent: McLean.

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Changes to the City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) can be made by a majority vote of the Council.

## BACKGROUND

### ***Officeholder Accounts***

During 2019, the Fair Campaign Practices Commission (FCPC) discussed whether there is a need to amend the law relating to these accounts. These accounts are not expressly regulated by BERA, but under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: "[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws."

In the course of its review of the issue of officeholder accounts, the FCPC considered three options:

- (1) leaving the law on officeholder accounts unchanged;
- (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or
- (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met several times in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission's proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: "Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016." (Report, page 1.)



At the February 4, 2020 meeting, the Council had a lengthy discussion about their D- 13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder accounts. The City Council referred the issues relating to officeholder and D-13 accounts to its Agenda and Rules Committee for further consideration.

***Proposed Changes to City Council Expenditure and Reimbursement Policies***

At the April 23, 2020 meeting of the Open Government Committee (OGC), a motion to direct staff to develop a proposal recommending Council change City policy to remove councilmember names from donations to nonprofit organizations from D- 13 accounts was approved unanimously.

Donations to nonprofit organizations from the Councilmember’s discretionary council budget (D-13 accounts) puts that elected official in a favorable light with Berkeley citizens at no cost to the Councilmember, an option not available to a challenger for that office. A look at the Consent Calendar of City Council Meeting Agendas will often contain one or more items from one or more Councilmembers making a donation to a nonprofit organization “from the discretionary council budget” of the Councilmember. This line item (“Services and Materials”) from the General Fund was increased from \$50,938 in FY 2017 to \$113,526 in FY 2018 (approximately \$40,000 for the Mayor, the balance evenly divided among the Councilmembers; see Attachment – Council Office Budget Summaries). While not technically a “campaign contribution,” those individuals in the organization as well as individuals favorably disposed to the nonprofit organization receiving the funds would certainly see it favorably. A person running against this incumbent would have to draw on their own resources to match a Councilmember’s contribution from public funds and without the public notice of the contribution the Councilmember receives.

In addition to favoring incumbents, the use of public moneys for contributions to nonprofit organizations from the discretionary council budgets of individual Council members is arguably improper and certainly bad optics. The commissioners of the OGC have no argument with contributions being made to nonprofit organizations from the City of Berkeley, but believe they should be made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley, not from individual Council members. Perhaps a nonprofit fund could be set up from which the donations could be made from recommendations made to one of the Council’s Policy Commissions. This would free funds for other purposes now being directed to nonprofit organizations from individual Councilmember’s D-13 accounts.

Proposed Action:

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee agreed to work collaboratively with the FCPC and OGC on matters relating to officeholder accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to:



(1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and

(2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

The “double green light” process requires that the FCPC adopt an amendment by a two-thirds vote, and that the City Council hold a public hearing and also adopt an amendment by a two-thirds vote. Evidence to date suggests there are differences of perspective regarding this matter between the City Council and the FCPC regarding the D-13 accounts. It would seem to be a rational step to discuss and come to agreement and possibly compromise prior to the “double green light” process.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

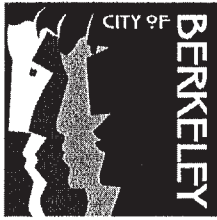
CONTACT PERSON

Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions, (510) 981-6998

Samuel Harvey, Commission Secretary, Fair Campaign Practices and Open Government Commissions, (510) 981-6998

Attachments:

1. FCPC February 4, 2020 report to Council and attachments
2. Mayor and City Council Financial Summary



Fair Campaign Practices Commission

PUBLIC HEARING  
February 4, 2020

To: Honorable Mayor and Members of the City Council

From: Fair Campaign Practices Commission

Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission

Subject: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

**Action:** M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

**Vote:** Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
February 4, 2020

BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

**Definition of an Officeholder Account**

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's Public Access Portal.) If, however, a complaint is filed that an Officeholder Account is used for

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
February 4, 2020

campaign contributions or to pay "campaign expenses," BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda's conclusions remain valid and are still controlling guidance.

### **Contributions to Officeholder Accounts**

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

### **Expenditures from Officeholder Accounts**

Except for the restriction that Officeholder Account funds cannot be used for "campaign expenses," BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a "campaign expense," would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder's position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent's name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not "campaign expenses," also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
February 4, 2020

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.<sup>1</sup> Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

**Recommendation**

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

**Part 8 - OFFICEHOLDER ACCOUNTS**

**12.06.810 - Officeholder account prohibited.**

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

**2.12.157 Officeholder Account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

**2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

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<sup>1</sup> Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)



Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
January 21, 2020

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

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

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE  
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

**BMC 2.12.157 Officeholder account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

**BMC 2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

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



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**GOVERNMENT CODE - GOV**

**TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )

**CHAPTER 5. Limitations on Contributions [85100 - 85802]** ( Chapter 5 added June 7, 1988, by initiative Proposition 73. )

**ARTICLE 3. Contribution Limitations [85300 - 85321]** ( Article 3 added June 7, 1988, by initiative Proposition 73. )

**85316.** (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)



(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18531.62. Elected State Officeholder Bank Accounts.**

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office."

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees:

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision

(e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

**HISTORY**

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.

2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).





Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

**FROM:** MANUELA ALBUQUERQUE, City Attorney *MA*  
By: CAMILLE COUREY, Deputy City Attorney

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert  
Re: Application of Berkeley Election Reform Act To Officeholder Accounts  
December 28, 1999  
Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinions Index: H.E.I. and H.L.G.

CCM

PAUSERS\BBL2\ofhldr.mem.doc

<sup>2</sup> Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)



CITY OF BERKELEY

DATE: December 9, 1991 Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso, Secretary & Staff Counsel

SUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSES

BACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Ioni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

FCPC COMMISSIONERS

December 9, 1991

Page 2

in opposition to the nomination or election of one or more candidates . . . . (Emphasis added.)

Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.<sup>1/</sup> (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

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<sup>1/</sup>I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

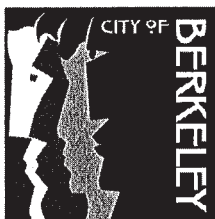
Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

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 or in person to the City Clerk. 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](mailto:clerk@cityofberkeley.info) for further information.

**Published:** January 24, 2020 – The Berkeley Voice  
Pursuant to Berkeley Municipal Code Section 2.12.051

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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 January 30, 2020.

Mark Numainville, City Clerk



[First Last name]
Councilmember District [District No.]

SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: February 4, 2020

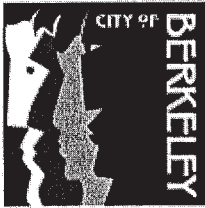
Item Number: 2

Item Description: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

Submitted by: Councilmember Hahn

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.



SOPHIE HAHN

Berkeley City Council, District 5
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
(510) 981-7150
shahn@cityofberkeley.info

ACTION CALENDAR

February 4, 2020

To: Honorable Mayor and Members of the City Council
From: Vice Mayor Sophie Hahn
Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.¹ They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.² Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

¹ <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

² <http://www2.oaklandnet.com/w/OAK052051>

always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, "such as a newsletter or brochure, [] delivered, by any means [] to a person's residence, place of employment or business, or post office box."³ Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.⁴ Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or "Officeholder") funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

³ <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

⁴ <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.⁵ For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

⁵ Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.⁵

members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.

Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to “speak” and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State’s restrictions, to ensure funds are not used for things like family members’ travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.⁶

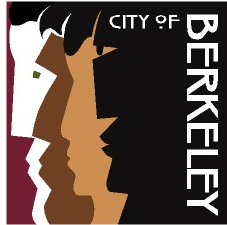
I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

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

⁶ <http://www2.oaklandnet.com/w/OAK052051>

MAYOR AND CITY COUNCIL FINANCIAL SUMMARY

	FY 2015 Actual	FY 2016 Actual	FY 2017 Adopted	FY 2018 Proposed	FY 2019 Proposed
EXPENDITURES					
By Type:					
Salaries and Benefits	1,660,661	1,760,619	1,723,617	1,833,734	1,880,031
Services and Materials	36,942	43,407	113,526	113,526	113,526
Capital Outlay	1,953	7,674			
Internal Services	89,100	81,181	81,181	81,181	81,181
Indirect Cost Transfer					
	<u>1,788,656</u>	<u>1,892,881</u>	<u>1,918,324</u>	<u>2,028,441</u>	<u>2,074,738</u>
By Division:					
Mayor's Office	515,095	558,137	584,877	554,389	566,917
Council Offices	1,273,561	1,334,744	1,333,447	1,474,052	1,507,821
Exiting Officials					
	<u>1,788,656</u>	<u>1,892,881</u>	<u>1,918,324</u>	<u>2,028,441</u>	<u>2,074,738</u>
By Fund:					
General Fund	1,788,656	1,892,881	1,918,324	2,028,441	2,074,738
	<u>1,788,656</u>	<u>1,892,881</u>	<u>1,918,324</u>	<u>2,028,441</u>	<u>2,074,738</u>
General Fund FTE	12.00	12.00	12.00	12.00	12.00
Total FTE	12.00	12.00	12.00	12.00	12.00



Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: March 23, 2021

Item Number: 17

Item Description: Objective Standard Recommendations for Density, Design and Shadows

Supplemental/Revision Submitted By: Alene Pearson, Secretary, Joint Subcommittee for the Implementation of State Housing Laws (JSISHL)

“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.

JSISHL’s recommendation for objective design standards references a set of proposed standards for review by other City Commissions. This supplemental communication provides the matrix of proposed objective design standards, for benefit of Council and public while discussing this item.

[from page two of the staff report]

*To aid JSISHL in making a recommendation, staff created a matrix of design guidelines to identify design goals, introduced objective language to reflect desired design outcomes, and test-fit approved projects to double-check objective language. JSISHL recommended the **proposed objective design standards** be reviewed by the Design Review Committee and further refined by Planning Commission.*

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

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

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

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

Objective Standards for Design Guidelines				Row #
Section	Subsection	Proposed Objective Design Standards	Definitions	
1. Neighborhood Context	<p>Massing</p> <p>Goal: Promote harmony in scale and massing.</p>	<p>Differentiate the base. A base shall visually carry the weight of the building. A base <i>is defined as a plane or material change between the ground floor and the upper floors</i> and can be made by thickening the walls or a change in material and color and <i>shall extend</i> at least 75% of <i>each individual</i> building facade.</p> <p>Buildings over three stories tall shall have major massing breaks at least every 100 feet <i>along every building frontage</i> through the use of varying setbacks, building entries, and recesses, courtyards or structural bays. Major breaks shall be a minimum of 5 feet deep and 10 feet wide and shall extend at least two-thirds of the height of the building.</p>	Base - a plane or material change between the ground floor and the upper floors	1
	<p>Materials</p> <p>Goal: Provide texture and visual interest while minimizing glare.</p>	<p>At least two materials shall be used on any building face visible from the street or adjacent parcel in addition to glazing and railings. Any one material must comprise at least 20% of <i>street facing building facade</i>.</p> <p>Materials shall not cause glare on the public right of way or adjacent parcels.</p>		2
2. Building Design	<p>Rooflines</p> <p>Goal: Vertically break up building mass at the roofline.</p>	Rooflines shall be <i>articulated at least every 50 feet along the street frontage, through the use of architectural elements such as cornices, clerestory windows, canopies, or varying roof height and/or form</i> .	Roofline - Top termination of the massing.	3
	<p>Façade Design</p> <p>Goal: Give depth to the building façade.</p>	<p>Provide balconies or upper facade projections or recesses every 25 to 30 feet.</p> <p>Blank walls on side and rear facades shall not exceed 30 ft in length.</p>	<p>Upper façade projection or recess - Any balcony, window box, window articulation that either creates a recess in or projects out from the building face.</p> <p>Blank wall - A length of uninterrupted wall space that does not include a window, door, material change, or plane change.</p>	4
	<p>Windows</p> <p>Goal: Give depth to the building façade.</p>	<p>Windows <i>shall not exceed 75% of upper facades</i>.</p> <p>Windows set in wall surfaces shall be recessed a minimum of 2 inches <i>unless in a contiguous vertical bay, in which case the recess may be substituted with a vertical fin or projection</i>.</p>		5
3. Ground Floor Design	<p>Residential Lobbies</p> <p>Goal: Create a focal point for residents and pedestrians.</p>	<p>A primary building entrance shall be visible from the street. Direct pedestrian access shall be provided between the public sidewalk and such primary entrance.</p> <p><i>A primary building entrance</i> must have a roofed projection <i>in the form of either a canopy or the extension of a vertical bay</i>, or recess with a minimum depth of 5 feet and a minimum area of 60 sq. feet. <i>Entrances to upper floors shall be distinguished with either plane changes, material transitions, or building signage</i>.</p>		6
	<p>Ground Floor Height</p> <p>Goal: Enhance ground floor experience.</p>	Ground floor <i>commercial spaces</i> shall have a minimum interior height of <i>13 feet</i> .		7
	<p>Storefronts</p> <p>Goal: Enhance pedestrian experience and provide visual cues that distinguish between retail and residential entries.</p>	<p>Retail spaces shall be accessed directly from the sidewalk, rather than through lobbies or other internal spaces. Clear glass shall comprise at least 60% of the street facing façade where it is between 3 feet and 8 feet above elevation of adjacent sidewalk.</p> <p>Maintain the typical rhythm of 15-30 foot storefronts at ground level. Provide at least one of the following architectural features to protect pedestrians from inclement weather:</p> <p>A) awnings B) canopies C) recessed entries</p> <p>Except for recessed entries, a majority of storefront glazing shall be at the property line.</p>		8

Objective Standards for Design Guidelines				Row #
Section	Subsection	Proposed Objective Design Standards	Definitions	
3. Ground Floor Design	<p>Public Service Street Frontages</p> <p>Goal: Activate the public street.</p>	<p>At least one publicly-accessible street-level entrance shall be provided for every 40 feet along a streetfacing property line. Any remainder exceeding 30 feet shall also have a publicly-accessible street-level entrance. No two entrances shall be separated by more than 50 feet.</p> <p>~ <i>Downtown only</i></p> <p>*reference Figure 43: Public Serving Frontages on page 61 of the Downtown Design Guidelines for applicability.</p>		9
4. Parking Lots, Garages and Driveways	<p>General Guidelines</p> <p>Goal: Reduce visual impact of parking on the street frontage.</p>	Locate parking structures underground or behind buildings or provide either landscape or architectural elements to screen view of parking from the street.		10
	<p>Surface Lots</p> <p>Goal: Screen surface lots from view of the street while providing shade and landscaping.</p>	Perimeter landscaping shall include trees and shrubs. In addition to required screening, parking area shall have trees which achieve a canopy coverage of at least 50% within seven years.		11
	<p>Garage Lighting and Ventilation</p> <p>Goal: Reduce impact of garages on neighboring parcels.</p>	All parking garage lighting shall be shielded so that light does not shine through vents at night and headlights are not visible from the street and adjacent parcels. If forced venting is required for the garage, air shall not vent directly onto the sidewalk or podium courtyards.		12
5. Building Accessories	<p>Lighting</p> <p>Goal: Prevent glare on public right of way.</p>	All lighting shall be downcast and not cause glare on the public right of way or neighboring parcels.		13
	<p>Security and Fences</p> <p>Goal: Reduce visual impact.</p>	<p>Security devices and grillwork visible from the street shall be integrated into the overall building design.</p> <p>Perimeter fencing utilized along public street shall be constructed of decorative iron, pre-painted welded steel, or wood picket material.</p>		14
	<p>Trash Service, Mechanical and Utilities</p> <p>Goal: Reduce visual impact.</p>	Garbage receptacles, utility meters and mechanical and electrical equipment at rooftop and ground shall be screened from the view of pedestrians.		15
6. Street Trees	<p>Goal: Preserve and/or add street trees.</p>	Existing street trees shall be retained and protected <i>if determined to be healthy by the Urban Forester</i> . Work with Berkeley's Urban Forestry Department and Public Works to determine preferred locations for new street trees.		16
7. Signs and Awnings	<p>Goal: Cohesive sign program that is in keeping with the building design</p>	<p>Coordinate the design and alignment of signs and awnings on buildings with multiple storefronts in order to achieve a cohesive appearance to the base of the building.</p> <p>Signs and awnings shall not obscure architectural elements such as clerestory windows or columns.</p> <p>All front faces shall be opaque.</p>		17



Joint Subcommittee for the Implementation of State Housing Laws

ACTION CALENDAR

October 26, 2021

(Continued from October 12, 2021)

To: Honorable Mayor and Members of the City Council

From: Joint Subcommittee for the Implementation of State Housing Laws
(JSISHL)

Submitted by: Igor Tregub, Chairperson

Subject: Objective Standards Recommendations for Density, Design and Shadows

RECOMMENDATION

Refer to the Planning Commission and Design Review Committee to review the recommendations from the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) for objective standards for density, design and shadows and draft Zoning Ordinance amendments for City Council consideration.

FISCAL IMPACTS OF RECOMMENDATION

This project will involve staff and consultant time that will total approximately \$200,000. Budget for the consultant time was previously allocated from the General Fund in the 2021-2022 fiscal year budget (\$115,000). Additional staff time amounting to \$100,000 would have to be covered by re-arranging staff priorities within existing resources to support the effort.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's Zoning Ordinance and permitting process for residential and mixed use projects relies heavily on discretion and subjective development standards. State laws, such as Senate Bill (SB) 35, limit interpretation of zoning regulations and require a streamlined permit approval process for many housing projects. JSISHL was tasked with reviewing approaches to objective standards for density, design, shadows and views. Between April 2018 and July 2020 JSISHL, including representatives of the Planning Commission, Zoning Adjustments Board, and Housing Advisory Commission, met eleven times to discuss these topics and ultimately prepared the recommendations summarized below.

Objective Standards for Density (Building Intensity)

The referral specifically requested that JSISHL consider dwelling units per acre as an objective measurement of density. JSISHL also considered a form-based code method and floor area ratio (FAR) as approaches to objectively regulate lot buildout and development proportions. No unanimous agreement could be reached as to the best

path forward. In the end, a recommendation was made using FAR as the primary density standard in residential and commercial districts and form-based code¹, which emphasizes standards with predictable physical outcome such as build-to lines and frontage and setback requirements, as a secondary approach. There was also an interest in a units/acre approach that assumed average unit sizes and bedroom counts; however, this approach was not adopted. See Attachment 1 (July 22, 2020 Final Minutes) for the text of these options. **JSISHL recommended developing an objective standard for density using FAR and potentially form-based code.**

Objective Standards for Design

Berkeley's design review process relies heavily on four sets of design guidelines:

1. Design Review Guidelines (applied citywide);
2. Downtown Design Guidelines;
3. Southside Strategic Plan Design Guidelines; and
4. University Strategic Plan Design Guidelines.

This process heavily relies on the discretion of staff and the Design Review Committee; however, recent State laws require that cities develop objective standards for streamlined and ministerial approval processes for qualified projects. To aid JSISHL in making a recommendation, staff created a matrix of design guidelines to identify design goals, introduced objective language to reflect desired design outcomes, and test-fit approved projects to double-check objective language. **JSISHL recommended the proposed objective design standards be reviewed by the Design Review Committee and further refined by Planning Commission.**

Objective Standards for Shadows

The Berkeley Municipal Code (BMC) addresses shadows as follows:

- Section 23E.36.070(C)(1)(a): Projects on the north side of University Avenue within the University Avenue Strategic Plan Overlay area must meet a Solar Rear Yard Setback (subject to override by Density Bonus waivers). Required daylight plane analysis is incorporated directly into the development standards: “...*shall not cast a shadow at noon more than 20 feet onto any lot in a residential zone as calculated when the sun is at a 29 degree angle above the horizon (winter solstice).*”
- Section 23B.34.070(C): Green Pathway Projects² within the Downtown Mixed-Use District (C-DMU) that are between 60 and 75 feet tall. Shadow analysis for these projects must show that:

¹ <https://formbasedcodes.org/standards-of-practice/>

² As defined in in Chapter 23B.34 of the municipal code, the “Green Pathway” is a streamlined permit process for buildings that exceed the Green Building requirements applicable to the C-DMU district and confer extraordinary public benefits.

1. *The extent of shading on public sidewalks and open spaces within a radius of 75 feet of the closest building wall that would be cast at two (2) hours after sunrise, 12 p.m., and two (2) hours before sunset, on March 21, June 21, December 21, and September 21, by a building 60 feet in height that complies with all applicable setback requirements; and*
2. *Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will reduce the extent of shadowing of the proposed building to no more than 75 percent of the shadowing projected in paragraph 1 above.*

Otherwise, shading impacts are evaluated on a discretionary basis during Use Permit review and are permissible provided they are not “unreasonable” or provided they will not result in a “significant reduction in sunlight.” Although the review of shadow studies is somewhat objective – administrative guidelines establish methods for analyzing impacts by time of day and time of year on living area windows and yards - the ultimate finding is subjective. Therefore, while shadow studies provide accurate information on shading due to proposed projects, the amount of shading from new development that is deemed “reasonable” depends on the context.

JSISHL discussed many aspects of shadow impacts, including shading of solar panels and roofs, windows, yards and gardens. The recommendation is fairly detailed, including five applicability considerations and four methods of measuring shadow impacts that depend on project elements. **JSISHL recommended that the proposal for objective shadow standards be reviewed and further refined by staff and the Planning Commission.**

BACKGROUND

On July 17, 2017, the City Council adopted a referral to address the State Housing Accountability Act (Government Code Section 65589.5) and to preserve local land use discretion (see Attachment 2). The referral requested research into a set of objective zoning standards for new development projects in the following four topic areas:

- Density and/or building intensity;
- Public health and safety standards;
- Design review standards; and
- Views, shadows, and other impacts that often underlie detriment findings.

In the time since the referral was adopted by City Council in 2017, the State adopted several bills to streamline the approval process for housing developments. Legislation facilitates housing production for projects that comply with a jurisdiction’s objective standards and prohibits localities from adopting standards what would reduce the number of residential units allowed (i.e. downzones a property or area). As a result of

these legislative actions, jurisdictions benefit from adopting objective planning standards that can guide the development process and reflect goals of the local community.

JSISHL's first few meetings in 2018 were focused on understanding and analyzing 2017 State housing laws and associated City Council referrals. At its fourth meeting, in January 2019, JSISHL adopted a work plan (see Attachment 3) to direct efforts towards researching approaches to objective standards for density, design, shadows and views. In March and May of 2019, JSISHL examined existing conditions at the City of Berkeley and implementation of the Zoning Ordinance and of State law (i.e. Density Bonus, SB-35, the Housing Accountability Act). Since September 2019, JSISHL has evaluated objective standards for density, design and shadows in order to develop a recommendation to City Council. At its final meeting on July 22, 2020, JSISHL recommended approaches to objective standards for design, density and shadows to City Council for consideration. JSISHL was not able to address objective standards for views.

ENVIRONMENTAL SUSTAINABILITY

Adoption of objective standards will streamline the permitting process for housing projects, encouraging infill development and density, creating opportunities to live and work within close proximity and reduce reliance on private vehicle use and/or vehicles miles traveled.

RATIONALE FOR RECOMMENDATION

State law requires that jurisdictions adopt objective standards in order to ministerially approved projects.

ALTERNATIVE ACTIONS CONSIDERED

The city can choose to not adopt objective standards, in which case projects will be ministerially approved without meeting certain standards.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

Alene Pearson, Subcommittee Secretary, Planning and Development Department, 510-981-7489

Attachments:

- 1: Meeting Minutes (July 22, 2020)
- 2: City Council Referral (July 17, 2017)
- 3: Work Plan (January 17, 2019)



Planning Commission

**DRAFT MINUTES OF THE REGULAR MEETING OF THE JSISHL
(JOINT SUBCOMMITTEE FOR IMPLEMENTATION OF STATE HOUSING LAWS)**

July 22, 2020

The meeting was called to order at 7:02 p.m.

Location: N/A (This meeting was conducted exclusively through videoconference and teleconference)

Commissioners Present: Teresa Clarke, Dohee Kim, Thomas Lord, Shoshana O’Keefe, Igor Tregub, Alfred Twu, Jeff Vincent, Marian Wolfe (left at 9:29), Rob Wrenn

Commissioners Absent: None

Staff Present: Alene Pearson, Nilu Karimzadegan, Anne Burns and Desiree Dougherty

ORDER OF AGENDA: No Change

CONSENT CALENDAR: N/A

PUBLIC COMMENT: 1 speaker

PLANNING STAFF REPORT: Staff announced that three supplemental communications were sent out via email prior to the meeting and are posted on the online agenda. Communications received “At the Meeting” will be posted by the end of Friday.

COMMUNICATIONS IN PACKET:

- Email from Cantor Lois on 10/24/19 re: BART apartments
- Email from Vicki Sommer on 10/24/19 re: Objective Standards for Sunlight Detriment
- Email from Alene Pearson on 11/15/19 to JSISHL re: JSISHL October follow up and December supplemental material request
- Letter from Toni Mester on 12/2/19 re: density and solar recommendation
- Letter from David Ushijima on 12/2/19 re: Objective Standards for Shadow and Sunlight
- Email from Commissioner Wolfe on 12/2/19 re: JSISHL October follow up and December supplemental material request

COMMISSIONER ATTACHMENTS IN PACKET:

- Email from Alene Pearson to JSISHL on June 26, 2020 re: JSISHL Meeting scheduled for July 22
- Email from Alene Pearson to JSISHL on May 15, 2020 re: JSISHL Meeting via Zoom

- Email from Timothy Burroughs, Planning Director on April 23, 2020 re: Update on status of board and commission meetings
- Email from Commissioner Lord on April 13, 2020 re: “The Constitution.....”
- Email from Commissioner Lord on March 30, 2020 re: Objectifying and Modernizing Study Standards
- Email from Commissioner Kim on March 30, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Commissioner Wolfe on March 28, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Commissioner Wright on March 12, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Alene Pearson to JSISHL on March 6, 2020 re: Follow Up to February 26 JSISHL Meeting

LATE COMMUNICATIONS (Received after the Packet deadline):

- Supplemental Communication 1
- Supplemental Communication 2
- Supplemental Communication 3

LATE COMMUNICATIONS (Received and distributed at the meeting):

- Supplemental Communication 4

CHAIR REPORT: None

COMMITTEE REPORT: None

7. APPROVAL OF MINUTES:

Motion/Second/Carried (Wolfe/Clarke) to approve the JSISHL Meeting Minutes from February 26, 2020. Ayes: Clarke, Kim, Lord, Tregub, Vincent, Wolfe, Wrenn. Noes: None. Abstain: O’Keefe, Twu. Absent: None (7-0-2-0)

8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS: None

AGENDA ITEMS

9. Action: Objective Standards for Density

PUBLIC COMMENT: 4 speakers

Primary Motion/Second/No Action Taken (O’Keefe/Wrenn) to recommend that the City Council refer to staff and Planning Commission development of a dwelling units per acre standard in all commercial districts and in the MULI and MUR districts with consideration of a cap on average number of bedrooms. Take into consideration size of parcel and develop an average bedroom/unit (to be determined) for multi-unit buildings. Develop Floor Area Ratios (FARs) for residentially zoned (“R” prefix) districts such as R-2, R-2A, and R-3, to help clarify and make more objective what is permitted in these districts.

Substitute Motion/Second/Carried (Kim/Clarke) to recommend using FAR as a density standard with a secondary form-based approach in Residential and Commercial districts. Ayes: Clarke, Kim, Wolfe, Twu, Vincent. Noes: Lord, O’Keefe, Tregub, Wrenn. Abstain: None
Absent: None
(5-4-0-0)

10. Action: Objective Standards for Design

PUBLIC COMMENT: 1 speakers

Primary Motion/Second/Carried (Wolfe/Clarke) to recommend to City Council the proposed design standards be reviewed and further developed by the Design Review Committee and Planning Commission. These standards were included in JSISHL’s July 22, 2020 packet. Ayes: Clarke, Kim, O’Keefe, Tregub, Vincent, Wolfe, Wrenn. Noes: None. Abstain: Lord, Twu. Absent: None
(7-0-2-0)

Substitute Motion/Second/Not Carried (Twu/O’Keefe) to recommend to City Council the proposed design standards -- minus the first four design standards (massing, material, rooflines, facades) -- be reviewed and further developed by the Design Review Committee and Planning Commission. These standards were included in JSISHL’s July 22, 2020 packet. Ayes: O’Keefe, Twu. Noes: Clarke, Kim, Lord, Tregub, Vincent, Wolfe, Wrenn. Abstain: None. Absent: None
(2-7-0-0)

11. Action: Objective Standards for Shadows

PUBLIC COMMENT: 2 speakers

Motion/Second/Not Carried (Wrenn/Tregub) to recommend to City Council the following:

In developing draft objective standards, staff should start with existing daylight plane standards, including the standards for San Pablo Avenue in El Cerrito, and with the City’s own standard in effect for University Avenue.

Shadowing standards would only apply if the proposed project was asking for a Use Permit, AUP, waiver or density bonus to exceed the “base” residential and commercial zoning district development standards that are in effect as of 7/1/20.

Where there is a lot coverage limit, adjustments to the location and orientation of the massing can be required in order to minimize shadowing impacts.

In the development of shadowing standards, impacts on light and air and existing windows and door openings of the applicable adjacent buildings will be taken into consideration.

JSISHL should recommend that the City Council direct staff to go forward with drafting of an objective standard to protect existing rooftop solar panels from shadowing by new development on adjacent and nearby parcels.

JSISHL should recommend that the City Council direct staff to go forward with drafting objective shadowing standards to limit shadowing of residential buildings by new development on adjacent or nearby parcels.

Standards should apply in residentially zoned (“R” prefix) districts and to properties in commercially zoned (“C” prefix) districts that are adjacent to residential properties, where new development could cause shadowing impacts on residential properties. Staff could present to Council a range of options with draft language for each.

JSISHL should recommend that the City Council direct staff to work on standards to protect open, currently unshadowed areas of public parks, and open currently unshadowed areas of school grounds that are used for student recreation.

Ayes: O’Keefe, Tregub, Vincent, Wrenn. Noes: Lord, Abstain: Clarke, Kim, Twu. Absent: Wolfe (4-1-3-1)

Motion/Second/Carried (Clarke/Vincent) to recommend to City Council the following proposed shadow standards be reviewed and further developed by the staff and Planning Commission.

1. Applicability of Shadow Impacts:
 - a. Shadow impacts would not be considered when a proposed new building or new construction meets all base development standards.
 - b. Shadow impacts on an adjacent property would only be considered when a side or rear yard setback reduction or an increase in height is requested by use permit or by state density bonus over the allowable standard. Shadow impacts for Front or Street yard setback reductions would not be included or considered.
 - c. The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.
 - d. Adjustments would seek to limit reductions in overall building envelope and could compensate with increases in height in another portion of the building, or reduced setback in another portion of the site, or some other mutually agreed adjustment to a development standard or mitigation. Adjustments may require, if no other solution can be proposed to mitigate the impact, a reduction in the overall total building envelope proposed. However, for state density bonus projects, adjustments to a proposed new residential construction shall not require a reduction in the overall total building envelope, habitable area, or cause the number of bedrooms or units to be reduced.
 - e. If the adjacent building being affected has a reduced building setback on the adjacent side or rear yard, a light and air impact would not be applicable, except in those cases where the building has a historic designation or was built prior to the implementation of the zoning code.

2. Elements of consideration for Shadow Impact:

- a. Light & Air for Building Openings of Applicable adjacent buildings: The light and air shadow impact shall consider impact to light and air access only of the existing windows and door openings of the applicable adjacent buildings. The new construction would be required to adjust its setback such that a minimum 3 foot perpendicular distance was achieved and a 6 foot width, with minimum 1 foot on either side of the window or door for 2 stories (min. 6 foot for courts with openings on both sides) and 1 foot additional setback for each additional story up to 14 stories, or a total maximum setback of 15 feet from the adjacent building. For instance if the building is 3 feet away from the property line, a 12 foot maximum from the property line for the new building.
- b. Minimum Required Open Space of Adjacent properties: An increase in shadow impact caused by the additional height or reduced setback on the minimum required open space of the adjacent impacted property shall not be more than a 50% increase in direct shade averaged over the entire year. If the affected property has more than the required open space, the calculation would be made on the open space that is least impacted by the shadow. The setback or height shall be adjusted to result in a net shadow increase of no more than 50% (or suggest alternate per staff research) as limited in Section 1 above. The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.
- c. Solar Access: An increase for the additional impact only of more than 50% of direct shading on existing solar panels averaged over the entire year and over the entire area of solar array would require that an adjustment to the requested height or setback be made, or other mutually agreed adjustment to a development standard or mitigation be made. If a mitigation such as moving the solar panels or re-orienting the solar panels has been mutually agreed upon in lieu of a development standard adjustment, this mitigation should be completed prior to building permit issuance, if possible.

The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.

Ayes: Clarke, Kim, O’Keefe, Twu, Vincent. Noes: Lord, Wrenn. Abstain: Tregub. Absent: Wolfe. (5-2-1-1)

The meeting was adjourned at 11: 01 p.m.

Commissioners in attendance: 9 of 9

Members in the public in attendance: 7

Public Speakers: 7

Length of the meeting: 2 hours and 59 minutes

APPROVED:

Alene Pearson

Page 6 of 6

Secretary to the JSISHL

DRAFT

RESOLUTION NO. 69,159-N.S.

EXTENSION OF THE JOINT SUBCOMMITTEE FOR THE IMPLEMENTATION OF
STATE HOUSING LAWS

WHEREAS, the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) was established under Resolution No. 68,308-N.S. in January 2018; and

WHEREAS, the mission of JSISHL is to advise Council regarding issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining to attain compliance with state law and take advantage of new opportunities for the development of affordable housing; and

WHEREAS, under its enabling legislation, JSISHL is tasked with completing its work by January 2020, reporting to Council by March 2020; and

WHEREAS, in order to fulfill its mission an extension is needed to provide adequate time to review recently passed State housing laws, and to provide adequate feedback on recommendations on units per acre density standards, Floor to Area Ratios (FARs) and daylight plane shadowing standards, along with anything else such as an objective definition of detriment.


NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby extends the timeline for the Joint Subcommittee for the Implementation of State Housing Laws to complete its work by July 2020, with the recommendations being brought to the City Council for consideration by the end of September 2020.

The foregoing Resolution was adopted by the Berkeley City Council on October 29, 2019 by the following vote:

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

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk

RESOLUTION NO. 68,308–N.S.

ESTABLISHING A JOINT SUBCOMMITTEE FOR THE IMPLEMENTATION OF STATE HOUSING LAWS.

WHEREAS, Berkeley and California is facing an unprecedented housing affordability crisis; and

WHEREAS, rents for a two bedroom apartment in Berkeley have risen by 62.5% over the past five years; and

WHEREAS, Berkeley has so far achieved 48% of its housing allocation goals for 2014-2022 set out by the Association of Bay Area Governments, including 0% for extremely low income and moderate income; and

WHEREAS, many residential developments that have received zoning approval have yet to receive a building permit; and

WHEREAS, to address the rising crisis of housing in the State of California, 15 state bills were signed into law, with many dealing with how local municipalities respond to the development of new units; and

WHEREAS, issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining need to be addressed by the City to be compliant with state law and to take advantage of new opportunities for the development of affordable housing; and

WHEREAS, because the Zoning Adjustments Board, Housing Advisory Commission, and Planning Commission have policy and quasi-judicial powers around housing, it would be beneficial for representatives of these commissions to meet jointly to develop policies for consideration by the Planning Commission and City Council; and

WHEREAS, community input is of vital importance in the review and implementation of these housing policies, and such input can be encouraged by regular publicly-noticed meetings of the Task Force; and

WHEREAS, the Joint Subcommittee should be comprised of nine voting members, with representatives from each commission.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley does hereby establish a Joint Subcommittee composed of members from the Zoning Adjustments Board, Housing Advisory Commission, and Planning Commission.

BE IT FURTHER RESOLVED that the Joint Subcommittee members shall be appointed from the membership of the Zoning Adjustments Board, Planning Commission or Housing Advisory Commission. Any Commissioner on any of those commissions is eligible for appointment to the Joint Subcommittee, as long as there is representation from each commission on the Joint Subcommittee.


BE IT FUTHER RESOLVED that the Joint Subcommittee shall complete its work by January 2020. Staff shall forward the Joint Subcommittee's recommendations to each parent Commission for comment, and bring the Joint Subcommittee's recommendations to the City Council for consideration by the end of March 2020, along with comments by any parent commissions.

The foregoing Resolution was adopted by the Berkeley City Council on January 23, 2018 by the following vote:

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

Noes: None.

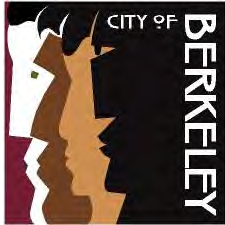
Absent: Bartlett.



Jesse Arreguin, Mayor

Attest: 

Mark Numalville, City Clerk



Mayor Jesse Arreguin
Councilmember Sophie Hahn, District 5

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: June 13, 2017

Item Number: # 59

Item Description: Housing Accountability Act

Submitted by: Mayor Jesse Arreguin and Councilmember Sophie Hahn

The revision removes the idea that staff and the Planning Commission consider as one of several options downzoning and then upzoning by increasing development standards on a discretionary basis.

These ideas largely reflect those originally proposed by the City Attorney and Planning staff.

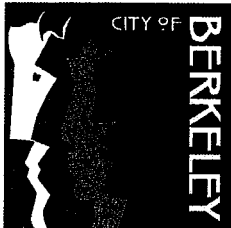


Mayor Jesse Arreguin
Councilmember Sophie Hahn, District 5

Motion, Item # 59: Housing Accountability Act

Refer to the City Manager and Planning Commission to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

- Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
- Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
- Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
- ~~Downzone & increase the number and amount of additional height, setback, and other elements available on a discretionary basis.~~
- Quantify and set standards for views, shadows, and other impacts that often underlie detriment findings.



Office of the Mayor

RECEIVED AT
COUNCIL MEETING OF:

MAY 30 2017

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

Motion, Item # 46: Housing Accountability Act

Refer to the City Manager and Planning Commission to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

- Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
- Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
- Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
- Downzone & increase the number and amount of additional height, setback, and other elements available on a discretionary basis.
- Quantify and set standards for views, shadows, and other impacts that often underlie detriment findings.

Meeting Date: January 17, 2019

To: Joint Subcommittee for the Implementation of State Housing Law (JSISHL)

From: Chris Schildt, Chairperson

Subject: JSISHL background, mission, objectives, and developing 2019 Workplan

Background

JSISHL held three meetings last year in April, May, and July, and had two meetings cancelled in September and November. Due to the long gap since our last meeting, I thought it'd be helpful to revisit the mission and objectives of this subcommittee, as background to a discussion of our workplan for the coming year.

At our April 17, 2018 meeting, we reviewed the mission and objectives of this subcommittee (from April 17, 2018 staff presentation to JSISHL):

Mission: Assist the City of Berkeley to effectively implement new State housing laws and advance City Council priorities that are designed to increase affordable housing.

Objectives:

- Learn about the new State housing law package and its implications for our community
- Assist the City to incorporate new practices designed to enable implementation of new State housing laws
- Based on City Council priorities and referrals, assist with development of new policies for consideration by parent commissions and City Council.

At our subsequent meetings, we heard information about and discussed new state housing laws and a range of related issues, including developing objective standards, streamlining affordable housing, density bonus, and inclusionary zoning.

Developing a 2019 Workplan

While we heard information and had a lot of discussion last year, my aim for this coming year is for this body to move forward on a finite number of items that will best position the City to implement State housing laws. To that aim, I recommend we develop a workplan with agreed upon priorities that we will work on in the coming year. This would not preclude commissioners from submitting agenda items on other topics for JSISHL to consider, but would help to align our efforts and focus.

The workplan should build off of our existing work and discussion. In last year's meetings, we discussed the following areas that relate to implementation of new State housing laws:

- Developing objective standards
- Streamlining affordable housing
- Density bonus
- Inclusionary housing

Proposal:

Numerous state laws, including the Housing Accountability Act, SB 35, and other potential future state legislation (e.g. SB 50) have made it difficult to implement our local laws, which were developed to be flexible with local discretion. The City has recently undertaken a review of the applicable standards that can be enforced under these laws in the light of three recent projects that have applied for approval under SB 35. For an example of how the City applied objective standards for one of the projects, 1601 Oxford Street, see:

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2018-12-21_Attachment%20C_SB35_Objective%20Standards_1601%20Oxford.pdf

One outcome of the recent reviews has been the clear identification of those areas where the City does not have objective standards, including design review and use permit findings, which are by necessity discretionary and flexible to address unique circumstances. Developing objective standards in areas such as view, sunlight, density, and detriment could help to ensure local needs and goals are included in the development review process for all projects. These objective standards would also help address some of the other topics that have come up on this commission, such as facilitating streamlined review of affordable housing projects and improving the density bonus process.

As a proposed workplan, we could decide as a commission to use each of the next several meetings to do research and discussion on a separate topic within objective standards, and develop a set of recommendations for the City Council and/or our parent commissions. For each topic, commissioners and members of the public would be encouraged to submit information and research to this commission related to the topic to inform discussion. Attached is an example of research provided by a member of public, David Ushijima, on providing objective standards for sunlight detriment.

For example, we could dedicate one of each of these topics for each upcoming meeting:

- Daylight.
- Views.
- Density standards (Note: The city has hired a consultant, Opticos Design, to develop density standards this year. They will be presenting to this commission in 2019, date TBD).
- Detriments to health, comfort, and general welfare.

We could also agendaize for a future meeting to review the City's existing objective standards table.

At the end of the year, we can compile our research and discussion and develop a set of recommendations to send to the City Council and/or our parent bodies.

Questions for discussion:

- Do the members of the commission agree to develop a workplan for 2019?
- If yes, what should our priorities be for 2019?



Planning Commission

1 **DRAFT MINUTES OF THE REGULAR MEETING OF THE JSISHL**
2 **(JOINT SUBCOMMITTEE FOR IMPLEMENTATION OF STATE HOUSING LAWS)**

3
4 **January 17, 2019**

5 The meeting was called to order at 7:05 p.m.

6 **Location:** 2180 Milvia Street 1st Floor, Cypress Conference Room

7 **Commissioners Present:** Thomas Lord, Shoshana O'Keefe (arrived at 7:16), Christine Schildt
8 Igor Tregub, Marian Wolfe, Rob Wrenn.

9 **Commissioners Absent:** None

10 **Staff Present:** Alene Pearson, Nilu Karimzadegan and Beth Greene

11 **ORDER OF AGENDA:** Order of Agenda was changed to:

12 Discussion Item 9 (Adopt 2019 JSISHL Work Plan), Discussion Item 10 (Renewing
13 Democratized Planning in Berkeley), Action Item 11 (Approve 2019 JSISHL Meetings Calendar)
14 and Action Item 12 (Elections: Elect 2019 JSISHL Chair and Vice Chair).

15 Motion/Second/Carried (Lord/ Tregub) to move Agenda Item 12 to Agenda Item 10 and vote
16 on the 2019 JSISHL Work Plan after Agenda Item 10. Ayes: Lord, O'Keefe, Schildt, Tregub,
17 Wolfe, Wrenn. Noes: None. Abstain: None. Absent: None (6-0-0-0)

18
19 **CONSENT CALENDAR:** N/A.

20 **PUBLIC COMMENT:** 1 speaker

21 **PLANNING STAFF REPORT:**

22 Staff announced that 2019 meeting dates will be decided tonight with Agenda Item 11 and future
23 meeting location will depend upon room availability.

24 **COMMUNICATIONS IN PACKET:**

- 25 • White Paper on Sunlight Impacts by David Ushijima (October 15, 2018).
26 • 2019-01-08_Communication_BNC_Support of White Paper by Dean Metzger (January 8,
27 2019)

28
29 **LATE COMMUNICATIONS** (Received after the Packet deadline): None

31 **LATE COMMUNICATIONS** (Received and distributed at the meeting): None

32 **CHAIR REPORT:** None

33 **COMMITTEE REPORT:** None

34 **7. APPROVAL OF MINUTES:**

35 Motion/Second/Carried (Tregub/Wrenn) to approve the JSISHL Meeting Minutes from July 17,
36 2018. Ayes: Lord, O’Keefe, Schildt, Tregub, Wrenn. Noes: None. Abstain: Wolfe. Absent:
37 None (5-0-1-0)

38
39 **8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** None.

40 **AGENDA ITEMS**

41 **9. Discussion:** Adopt 2019 JSISHL Work Plan:

42 The Commission discussed a work plan for 2019 and developed a proposed schedule with
43 meeting dates and topics that focus on objective standards for the implementation of State
44 Housing Law. Below is a summary of that discussion:

45 January 17: Work Plan Development

46 March 27: Existing Objective Standard Framework

47 May 22: Density Standards and Density Bonus

48 September 25: Daylight, shadowing, and solar access

49 October 23: Views and other objective standards

50 December 12: Report out.

51 The Commissioners and the members of the public were encouraged to submit information and
52 research related to future meeting topics. This work plan will result in a set of recommendations
53 to parent commissions and/or City Council.

54 **PUBLIC COMMENT:** 1 speaker

55 **10. Discussion:** Renewing Democratized Planning in Berkeley

56 Commissioner Lord explained his memo and suggested modifications to the work plan
57 developed during discussion of Agenda Item 9. The Commission added the topic of local
58 overlay zones to the September and October meetings.

59 **PUBLIC COMMENT:** 1 speaker

60 Motion/Second/Carried (O’Keefe/Wolfe) to adopt the proposed 2019 workplan. Ayes: O’Keefe,
61 Schildt, Tregub, Wolfe, Wrenn. Noes: Lord. Abstain: None. Absent: None (5-1-0-0)

62
63 **11. Action:** Approve 2019 JSISHL Meetings Calendar:

64 The Commission discussed their availability and agreed on the following 2019 calendar:

65 January 17, 2019 (Wednesday)

66 March 27, 2019 (Wednesday)

67 May 22, 2019 (Wednesday)

68 September 25, 2019 (Wednesday)

69 October 23, 2019 (Wednesday)

70 December 12, 2019 (Thursday)

71 Motion/Second/Carried (O’Keefe/Tregub) to adopt the proposed 2019 calendar. Ayes: Lord,
72 O’Keefe, Schildt, Tregub, Wolfe, Wrenn. Noes: None. Abstain: None. Absent: None
73 (6-0-0-0)

74
75 **12. Elections:** Elect 2019 JSISHL Chair and Vice Chair:

76 Motion/Second/Carried (Wolfe/O’Keefe) to Elect Chris Schildt as Chair and Igor Tregub as
77 Vice Chair for 2019 JSISHL. Ayes: Lord, O’Keefe, Schildt, Tregub, Wolfe, Wrenn. Noes: None.
78 Abstain: None. Absent: None (6-0-0-0)

79
80 **The meeting was adjourned at 9: 03 p.m.**

81 **Commissioners in attendance: 6 of 6**

82 **Members in the public in attendance: 2**

83 **Public Speakers: 2**

84 **Length of the meeting: 1 hour and 58 minutes**



CONSENT CALENDAR
Oct. 26, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin, Mayor Arreguín (co-sponsor), Councilmember Robinson (co-sponsor), Councilmember Kesarwani (co-sponsor)

Subject: Letter to Senate Budget Committee Chair Sen. Skinner Regarding Berkeley Pier

RECOMMENDATION

Send a letter to State Senator Nancy Skinner (D-Berkeley), Chair of the Senate Budget Committee, requesting state budget allocations for urgent infrastructure needs at the Berkeley Municipal Pier.

FINANCIAL IMPLICATIONS

None.

CURRENT SITUATION AND ITS EFFECTS

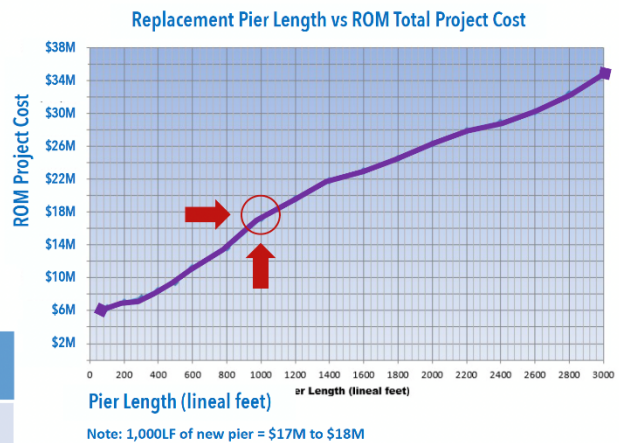
The Marina Fund is projected to exhaust all reserves in FY2022, and its operating deficit will increase to an annual \$800,000. The Berkeley Marina contains over \$200 million in infrastructure assets, with an estimated \$113 million needed in repairs, including a severely dilapidated pier. The Marina Fund has never had a permanent revenue source for capital improvements, and significant deficits have been documented as early as 1999.¹ Funding for infrastructure replacement has been provided in piecemeal fashion through an assortment of grants, loans, the Marina Fund when possible, and more recently, Measure T1 funds. The Berkeley Marina Area Specific Plan (BMASP) project is now underway to plan a revitalization of the area.

The City of Berkeley and Water Emergency Transportation Authority (WETA)'s Pier & Ferry Feasibility Study² estimates a \$32-44 million replacement cost of the pier for a full 70-year lifespan. Currently, proposed concepts in the Berkeley Municipal Pier-Ferry Project include a replacement pier of only one-third to one-half of the full 3000 lineal foot length of the existing pier. The currently recommended \$17.5 million covers the cost of 1,000 feet, but \$35 million would cover the cost of the full 3000 lineal feet.

¹ https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Marina%20Fund%20Update%20041218.pdf

² https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Public%202021-08-010-Pier-Ferry_W2.pdf

Pier Structural Assessment – Project History



Renovation Options	Estimated Project Costs* (3,000 LF Pier)	Repair Interval Longevity	Life Cycle Costs
1. Rehabilitation	\$22–\$48M	10 yrs 10–15 yrs	\$2M/yr
2. Seismic Strengthening	\$41–\$65M	10–15 yrs 30–50 yrs	\$1M/yr
3. Replacement	\$32–\$44M	20+ yrs 70 yrs	\$0.5M/yr

* Escalated to Year 2023

← Recommended Option



Source: Berkeley/WETA Pier & Ferry Feasibility Study – Community Workshop #2 slides

According to Parks and Waterfront Commission Chairperson Gordon Wozniak, there is a desperate need for \$8 million to dredge the entrance to the main harbor, where boats often run aground at low tide; and the South Sailing Basin, which turns into a mud flat at low tide. With a total funding of \$35 million, the City would have two options: (1) replace the entire 3,000 ft pier, or (2) replace 2,000 ft of the existing pier and dredge both the entrance to the main harbor and the South Sailing Basin.

Funding capital improvements at the Marina Pier is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

In May 2021, Governor Gavin Newsom announced a historic \$76 billion state budget surplus, and paired it with federal aid in the SB 129 budget revision, dubbed the “California Comeback Plan.”³ The budget bill, brought by Senate Budget Committee Chair Sen. Nancy Skinner, received only one line-item veto.⁴ It contained major capital expenditures, such as \$6 billion to expand hotel acquisition through Project Homekey.

California’s large budget surplus was the result of its progressive tax structure and strong economic conditions in the face of the COVID-19 pandemic. As vaccination increases and local businesses begin reopening, it is not unreasonable to presume that

³ <https://www.gov.ca.gov/2021/07/12/california-roars-back-governor-newsom-signs-100-billion-california-comeback-plan-to-accelerate-states-recovery-and-tackle-persistent-challenges/>

⁴ <https://www.gov.ca.gov/wp-content/uploads/2021/07/SB-129-Line-Item-Veto.pdf>

this pattern may repeat itself next year. Given the Berkeley Marina's central location in the Bay Area metropolitan area, near-future plans for ferry service, and the City's many critical infrastructure needs—including an estimated \$1 billion in unfunded liabilities—the State of California must commit to allocating surplus revenues to meet one-time infrastructure replacement costs while the City develops long-term plans for operating revenues.

Replacing the full 3,000-foot pier will also ensure that the Marina can be a major source of revenue from recreational activities.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Terry Taplin Council District 2 510-981-7120

Attachments:

1: Letter

The Honorable Nancy Skinner, Chair
Standing Committee on Budget and Fiscal Review
State Capitol, Room 5019
Sacramento, CA 95814

October 12, 2021

Dear Senator Skinner:

As you may know, the City of Berkeley's Municipal Pier urgently needs replacement. However, the City and the Water Emergency Transportation Authority (WETA) lack sufficient funds for a full replacement to accommodate all recreational activities as well as plans for a new ferry. Therefore, we humbly request that the California State Senate consider an appropriation of at least \$17.5 million in the next budget to match the City's recommendation and fund a full replacement of the Marina Pier.

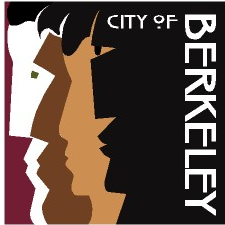
The City of Berkeley and WETA's Pier & Ferry Feasibility Study estimates a \$32-44 million replacement cost of the pier for a full 70-year lifespan. Currently, proposed concepts in the Berkeley Municipal Pier-Ferry Project include a replacement pier of only one-third to one-half of the full 3000 lineal foot length of the existing pier. \$17.5 million covers the cost of 1,000 feet, but \$35 million would cover the cost of the full 3,000 lineal feet.

Additionally, there is a desperate need for \$8 million to dredge the entrance to the main harbor, where boats often run aground at low tide, and the South Sailing Basin, which turns into a mud flat at low tide. Even a State contribution of \$8 million would allow a 2,000 ft long replacement pier to be built, which would accommodate substantially more recreation and pedestrian usage. A longer pier that enables more recreational uses also increases potential revenue for the City.

In your capacity as Chair of the State Senate's Standing Committee on Budget and Fiscal Review, we ask you to consider allocating state funds for infrastructure replacement at the Berkeley Pier. This would go a long way toward restoring a vital public resource in our community, while also guaranteeing future revenue potential and stability for the City's Marina Fund. Thank you very much for your tireless service for the people of Senate District 9.

Respectfully yours,

City Council, City of Berkeley
2180 Milvia St
Berkeley, CA 94704



Kate Harrison
Councilmember District 4

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: October 12, 2021

Item Number: 33

Item Description: Budget Referral: Allocate General Fund Revenues to Support Pilot Program Offering Free AC Transit on Sundays in Berkeley

Submitted by: Councilmember Harrison

The budget referral has been updated to:

- Add Councilmember Bartlett as a cosponsor.
- Consider potential restoration of Line 80 service, serving some of Berkeley's lowest income neighborhoods, in consultation with the AC Transit Board and staff;
- Provide updates based on feedback from Berkeley's AC Transit Board Directors, Amalgamated Transit Union 192 transit workers, and note that the AC Transit Board will hold a preliminary discussion about the concept of a Berkeley Free Transit Pilot at its October 13, 2021 Board of Directors meeting;
- Attach AC Transit Board Staff Report No. 21-473 and AC Transit Board of Directors Resolution 21-040;
- Consider the benefits of such a pilot with respect to expanding usage of the Clipper Card system.



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
October 12, 2021

To: Honorable Mayor and Members of the City Council
From: Councilmember Harrison (Author) and Councilmember Bartlett (Co-sponsor)
Subject: Budget Referral: Allocate General Fund Revenues to Support Pilot Program Offering Free AC Transit on Sundays in Berkeley

RECOMMENDATION

Refer to the November 2021 budget process approximately \$500,000 in General Fund Revenue toward fully subsidizing AC Transit fares originating from Berkeley on Sundays for at least one calendar year and possible restoration of the suspended Line 80 serving some of Berkeley's lowest income neighborhoods.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Reliable and low-cost shared mobility is necessary to reach the city's equity and climate goals. Fundamental social interactions and services, including but not limited to education, healthcare, commerce, socializing, recreation, and entertainment, require the conveyance of humans from one location to another. Berkeley is equipped with a robust, relatively low-cost, low-carbon, and unionized public bus transit system (AC Transit), connecting to many urban hubs through a larger system of regional public transit infrastructure. AC Transit also provides Berkeley with a ready-made means of accelerating its carbon emissions reduction strategy through mode shifting away from passenger vehicles. Even when powered by diesel, bus trips are significantly less carbon-intensive than gasoline-powered passenger vehicles; even greater climate benefits will be realized as zero-emission busses come on line.

The City has an opportunity to increase use of busses, particularly amongst those that do not commonly ride the bus, by working with AC Transit leadership to pilot fareless Sunday bus trips originating in Berkeley, and thereby encouraging new riders to become familiar with the bus system. Berkeley fully subsidizes passenger vehicle parking on Sundays and transit should not be placed at a disadvantage.

This proposal follows AC Transit's successful promotion of the American Rescue Plan Act (ARPA) funded 'Fare-Free Fridays' program during September 2021, and would support public transportation and local businesses which have faced steep declines in utilization and patrons amidst the COVID-19 pandemic. Both East Bay residents and AC

Transit workers have suffered immensely due to pandemic-related service cuts and related uncertainty regarding dependability and scheduling. The details of the program are part of ongoing discussions and coordination with Alameda-Contra Costa Transit District (AC Transit) staff and leadership. Thanks to the leadership of AC Transit Board Director Jovanka Beckles, the AC Transit Board of Directors are set to preliminarily consider a resolution in support of the concept of municipally funded transit trips, including the Berkeley Free AC Transit Pilot proposal, at its October 13, 2021 Board of Directors meeting (see attachment).

The staff report prepared by Michael A. Hursh, AC Transit General Manager, and Chris Andrichak, Chief Financial Officer, at the request of Director Beckles states:

“Staff is in support of this resolution and the closer partnerships it could bring with the cities in the District’s service area...[t]he main advantage to approving the resolution is that it could encourage Berkeley or other cities to fund transit programs, which would increase ridership and benefit the District... [i]n general, the concept of municipally funded transit trips should be financially positive for the District, with the specific impacts depending on how any program is structured.”¹

In response to the pandemic, AC Transit also indefinitely suspended Berkeley’s critical Line 80 during the pandemic which ran along Ashby Avenue, Sixth Street and Pierce Street. Restoration of this line is a critical matter of equity as it served some of Berkeley’s lowest-income and diverse populations in an area that is not easily BART accessible. In April 2021, the Berkeley City Council sent the AC Transit board a letter, sponsored by Councilmembers Taplin, Bartlett and Harrison urging the Board to restore the line.² The line also connects seniors to the South Berkeley Senior Center, and the Berkeley Pines Care Center, to Ashby BART, and the Alta Bates Medical Center. In June, AC Transit agreed to pilot a Line 79 which would restore service on Ashby, but would not run along Sixth Street.³ It is therefore critical that as part of any discussion or funding of a Sunday Free AC Transit Pilot, the City should work with AC Transit and potentially provide resources as appropriate to facilitate the expeditious restoration of service along Sixth Street.

¹ Michael A. Hursh, General Manager “Support of Municipally Funded Transit Trips,” AC Transit Board of Directors, Staff Report No. 21-473, <https://actransit.legistar.com/LegislationDetail.aspx?ID=5164251&GUID=9E4A4EDC-91ED-44B8-9394-84A3FDA978F5>.

² “Urge the AC Transit Board of Directors to Restore the 80-Ashby/Sixth Street Bus Line,” Berkeley City Council, April 20, 2021, https://www.cityofberkeley.info/Clerk/City_Council/2021/04_Apr/Documents/2021-04-20_Item_26_Letter_in_Support_of_AB_816.aspx.

³ Theresa Harrington, “More buses returning to Ashby Avenue; other Berkeley transit cuts likely to linger,” Berkeleyside, June 2, 2021, <https://www.berkeleyside.org/2021/06/02/more-buses-returning-to-ashby-avenue-other-berkeley-transit-cuts-likely-to-linger>.

AC Transit busses reduce air pollution, frequent key urban locations, are relatively accessible to disabled persons, observe COVID-19 safety protocols, support commerce, and are outfitted with bicycle storage. Any Free Transit pilot would likely interface with the Clipper Card system, which provides riders with additional discounts regardless of income, including a discounted Day Pass that tops out at \$5, and additional discounts for low-income riders through the Clipper START pilot and disabled people via the RTC Clipper program.⁴ It also facilitates easier onboarding for bus drivers and passengers. Expanding usage of the Clipper system is a top priority for the AC Transit Board and the City of Berkeley. The City is also actively considering providing free transit passes to low-income residents through its Climate Equity Action Fund pilot program.⁵

The federal government has empowered Berkeley to transfer ARPA funds to local agencies such as AC Transit. It is in the public interest for the City of Berkeley to support AC Transit and the Berkeley community by exploring and funding increased accessibility and utilization of public transit amidst the COVID-19 pandemic and the climate emergency through a year-long pilot of free Sunday bus rides and possible restoration of Line 80.

BACKGROUND

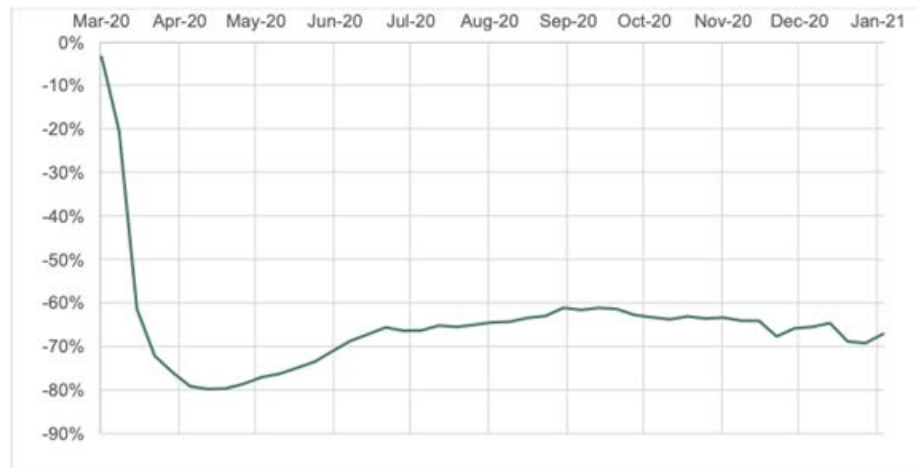
According to data from the National Transit Database, monthly public transit ridership is 65% lower than before the pandemic.⁶ Because of the COVID-19 pandemic, public transit has been forced to reduce its hours and accessibility, and many people shifted to driving personal vehicles as their main mode of transportation. Even as schools and businesses begin to reopen following increased vaccination and masking policies, public transit ridership remains extremely low.

⁴ Clipper START, Metropolitan Transportation Commission, <https://www.clipperstartcard.com/s/>.

⁵ "Climate Equity Action Fund - Committee Discussion Pursuant to Resolution No. 69,984 Regarding Eligible Categories of Fund Expenditures to Maximize Equitable Emissions Reductions and Impacts for Eligible Households," FITES Committee, https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/2021-10-06%20Agenda%20Packet%20-%20Facilities.pdf.

⁶ "The Impact of the COVID-19 Pandemic on Public Transit Funding Needs in the U.S." Evidence-Based Practice (EBP), January 2021, <https://www.apta.com/research-technical-resources/research-reports/the-impact-of-the-covid-19-pandemic-on-public-transit-funding-needs-in-the-u-s/>.

Figure 2 Public Transit Ridership Losses and Projections



Source: APTA Ridership Trends Dashboard powered by Transit, January 2021.⁷

More generally, transit ridership in the U.S. has been steadily declining since 2014.⁸ The COVID crisis both demands and provides an opportunity for bringing the community back to public transport systems. Implementing free public transit on Sundays can help change the trajectory of Berkeley's ridership levels.

A pilot free transit program will have a positive environmental impact. We are facing a grave climate emergency, requiring municipalities to rapidly transition to a zero-carbon economy by 2030.⁹ Berkeley has struggled to rein in its transportation emissions, which as of 2018 accounted for 59% of greenhouse gas emissions and only fell 6% below 2000 levels.¹⁰

Even when powered by diesel fuel, public bus transit trips are significantly less carbon intensive than passenger vehicle miles, and will continue to fall each year as AC Transit

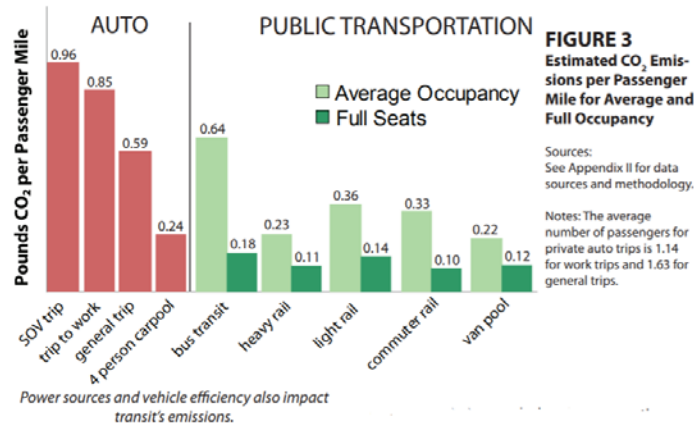
⁷ <https://transitapp.com/APTA>.

⁸ National Academies of Sciences, Engineering, and Medicine 2020. Analysis of Recent Public Transit Ridership Trends. Washington, DC: The National Academies Press. <https://doi.org/10.17226/25635>.

⁹ The City of Berkeley has historically shown its commitment to tackling climate change through the 2006 Berkeley ballot Measure G, 2009 Climate Action Plan, and the 2018 Climate Emergency Declaration. See also, "Endorsing the Declaration of a Climate Emergency", Resolution No. 68,486-N.S., June 2018 https://www.cityofberkeley.info/uploadedFiles/Council_2/Level_3_-_General/Climate%20Emergency%20Declaration%20-%20Adopted%2012%20June%202018%20-%20BCC.pdf

¹⁰ 2020 Climate Action Plan and Resilience Update, Office of Energy and Sustainability, July 21, 2020, https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_05_Climate_Action_Plan_pdf.aspx.

completes its Zero Emissions Bus Rollout Plan by 2040 with 100 percent of all transit new bus purchases being zero emissions by 2029.¹¹ According to national data from 2010, a single occupancy vehicle trip generates 0.96 pounds of carbon dioxide per passenger mile whereas a bus generates only 0.18 when fully occupied and 0.64 at average occupancy, representing a 33 to 81% decrease in carbon intensity per mile.¹²



Source: Public Transportation’s Role in Responding to Climate Change, 2010.¹³

Scientists and researchers have warned that recovery and “stimulus” funds distributed by governments in the wake of the COVID-19 pandemic must be expended on climate mitigation efforts in order to meet the extremely small carbon budgets agreed to as part of the 2015 Paris Agreement to limit global warming to “well below” 2 degrees.¹⁴

Across the nation cities are taking action through the implementation of free transit systems. The goal of these transit services is affordable mobility for all, whether through free bus systems, shuttles, railways, etc. In particular the establishment of pilot programs and COVID-19 recovery efforts across the country have demonstrated the need for a push to free public transit. In March 2021, Connecticut Governor Ned Lamont directed CTtransit to provide free, statewide bus service to the public every weekend in order to combat the

¹¹ Zero-Emissions Bus Rollout Plan, AC Transit, Version 1, 2021, https://www.actransit.org/sites/default/files/2021-03/AC%20Transit%20ZEB%20Rollout%20Plan_06102020.pdf.

¹² Public Transportation’s Role in Responding to Climate Change, U.S. Dept. of Transportation, January 2010, <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/PublicTransportationsRoleInRespondingToClimateChange2010.pdf>.

¹³ *Id.*

¹⁴ H. Damon Matthews, and Kasia Tokarska, “New Research Suggests 1.5C Climate Target Will Be out of Reach without Greener COVID-19 Recovery Plans.” *The Conversation*, 10 Aug. 2021, theconversation.com/new-research-suggests-1-5c-climate-target-will-be-out-of-reach-without-greener-covid-19-recovery-plans-151527.

economic losses incurred during the ongoing pandemic.¹⁵ Similarly, thanks to the leadership of grassroots movements and Supervisor Dean Preston, during the pandemic the San Francisco Mayor agreed to adopt free transit for youth under 19 years old across MUNI for a minimum of one year.¹⁶ Programs such as this aim to not only boost ridership but also to increase the accessibility of transportation to youth, low-income commuters, and seniors with disabilities. Before the pandemic, Lawrence Massachusetts launched a two-year free bus transit pilot program daily on its three primary bus routes in September 2019 and saw an impressive 24% increase in ridership. Other cities have seen an increase as high as 60%. Similar experiments are underway in Kansas City, Olympia Washington, and Boston. According to the New York Times, 100 cities worldwide provide free public transit.¹⁷

According to a Health Affairs study, certain groups, including “women, young adults (those ages 25–29), Black workers, and low-income workers,” disproportionately rely on public transportation for commuting and mobility, and public transportation has clear benefits for public health and health equity. At the same time “[l]ack of access to public transportation can disproportionately harm older people and people with disabilities... [and] can also contribute to existing racial and economic disparities by decreasing mobility and forcing individuals to depend on costly car ownership.”¹⁸

Currently, U.C. Berkeley students and Berkeley City employees enjoy unlimited AC Transit EasyPasses, incentivizing ridership on public transit.

Notably, the City of Berkeley does not charge for parking on Sundays, which encourages use of single-occupancy vehicles. Offering free public transit within Berkeley on Sundays can stimulate positive and COVID-safe social interactions by providing access to local businesses, open space and other public venues. It is also good for the economy. Figure ES-2 suggests that transport policies which make alternative modes of transportation such as public transit more accessible strongly correlate with enhanced commercial activity.¹⁹

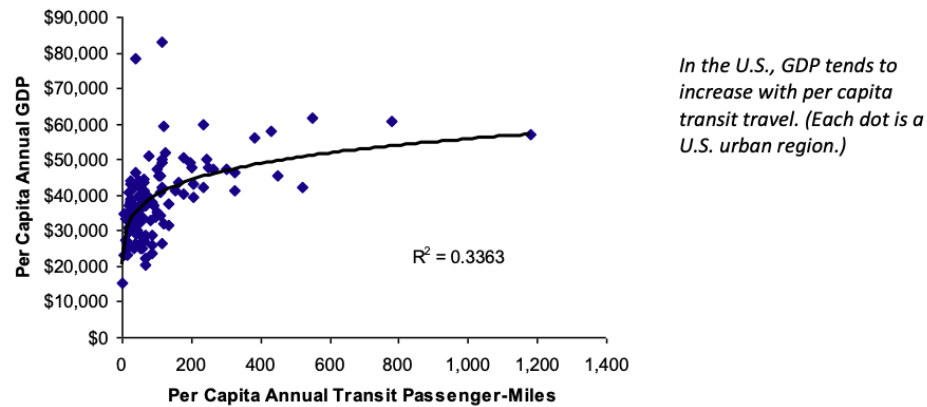
¹⁵ “Governor Lamont Implements Free Weekend Bus Service During Summer Months in Connecticut as Part of Ongoing COVID-19 Recovery Efforts”, State of Connecticut, March 2021 <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2021/03-2021/Governor-Lamont-Implements-Free-Weekend-Bus-Service-During-Summer-Months>

¹⁶ Mayor London Breed and Supervisor Myrna Melgar Announce Expansion of Free Muni for All Youth Program, Monday, July 12, 2021, <https://sfmayor.org/article/mayor-london-breed-and-supervisor-myrna-melgar-announce-expansion-free-muni-all-youth>.

¹⁷ Barry, Ellen, and Greta Rybus, “Should Public Transit Be Free? More Cities Say, Why Not?” The New York Times, The New York Times, 14 Jan. 2020, www.nytimes.com/2020/01/14/us/free-public-transit.html.

¹⁸ Public Transportation in the US: A Driver of Health and Equity, Wendy Heaps, Erin Abramsohn, Elizabeth Skillen, July 29, 2021, <https://www.healthaffairs.org/doi/10.1377/hpb20210630.810356/full/>.

¹⁹ In a study conducted by the American Public Transport Association, researchers examined three cities: Silicon Beach, CA; Austin, TX; and Durham, NC, to analyze the impact of increased public

Figure ES-2 Per Capita GDP and Transit Ridership (VTPI 2009)

Source: "Evaluating Transportation Economic Development Impacts", 2018 ²⁰

The City also receives sales and business license revenue from such commerce. However, consistent with its climate goals, the City's aim in expanding transit *must not* be to increase economic growth for growth's sake, but to enhance community access to the provision of basic human needs.

Supporting AC Transit operations also means supporting an "essential" and unionized transit workforce as well as the local maintenance and local manufacturing/assembly of busses.

Ahead of submission of this item, Councilmember Harrison's office and AC Transit have discussed some potential preliminary logistical and fiscal aspects of launching such a pilot program, as well as discussed strategies to prioritize increasing transit ridership. Fortunately, AC Transit received significant funding from the Coronavirus Aid, Relief, and Economic Security (CARES) and ARPA to help stabilize massive fare losses, but ultimately these funds are temporary.

Meanwhile, the City of Berkeley has received approximately \$66 million over two years from the American Rescue Plan Act. It must expend these funds no later than

transportation on local economic growth. The study found that "public transportation investments will yield a 2 to 1 return while helping to generate income for local businesses, its workers and their neighborhoods" APTA also stated that "87% of trips on transit directly benefit the local economy".

"Public Transportation Supports Knowledge and Innovation Districts", American Public Transportation Association <https://www.apta.com/research-technical-resources/research-reports/public-transit-knowledge/>; "2021 PUBLIC TRANSPORTATION FACT BOOK", American Public Transportation Association, 2021

<https://www.apta.com/wp-content/uploads/APTA-2021-Fact-Book.pdf>.

²⁰ "Evaluating Transportation Economic Development Impacts", Victoria Transport Policy Institute, 2018 https://vtpi.org/econ_dev.pdf

December, 2024. Section 603(c)(3) of the American Rescue Plan Act allows local governments to transfer funds to other agencies such as AC Transit to assist with the recovery from the COVID-19 pandemic and to improve equity measures including access to transportation:

“TRANSFER AUTHORITY. — A metropolitan city... receiving a payment from funds made available under this section may transfer funds to ... a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government.”²¹

The City of Berkeley is considered a metropolitan city and AC Transit likely qualifies as a special-purpose unit of local government.²² Alternatively, the Council could fund the program through excess equity. While the Transportation Network Company tax may provide funding in subsequent years, the Council has already indicated support in this first year for using these funds for priority protected bikeways and quick-build transit projects.²³ AC Transit leadership has repeatedly expressed the significance of Berkeley’s interest in funding such quick-build improvements.

It is in the public interest to allocate General Funds towards the AC Transit pilot program in order to boost ridership rates, expand access to local goods and services, and to reduce transportation-based carbon emissions. This item proposes an allocation of \$500,000 to support this program and to support possible increased demand resulting from COVID-19 recovery efforts or demand stimulated as a result of this pilot. Implementation of any Berkeley pilot would be subject to approval by the AC Transit Board.

A successful pilot initiative could inspire potential subsequent efforts to expand free transit on a more permanent and frequent basis and thereby further reduce emissions and expand mobility equity.

ATTACHMENTS

1. AC Transit Board Staff Report No. 21-473

²¹ American Rescue Plan Act, U.S. Congress, January 3, 2021, <https://www.congress.gov/117/bills/hr1319/BILLS-117hr1319enr.pdf>.

²² 41 CFR § 105-50.001-4 Special-purpose unit of local government. Special-purpose unit of local government means any special district, public-purpose corporation, or other strictly limited-purpose political subdivision of a State, but shall not include a school district.

²³ Budget Referral: Allocate Transportation Network Companies User’s Tax Proceeds and other General Fund Revenues to Support Tier 1 Protected Bicycle Lanes, Crossings, Demonstration Paving Projects, and/or Quick-build Public Transit Projects Under the Street Repair Program, Councilmember Harrison, March 9, 2021, https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Supp_1_Reports_Item_21_Rev_Harrison_pdf.aspx.

Budget Referral: Allocate General Fund Revenues to Support Pilot Program Offering Free AC Transit on Sundays in Berkeley

CONSENT CALENDAR
October 12, 2021

2. AC Transit Board of Directors Resolution 21-040

FINANCIAL IMPLICATIONS

The item would have a net \$500,000 impact on the General Fund.

ENVIRONMENTAL SUSTAINABILITY

Reducing carbon emissions at an emergency and equitable pace is a necessary step to meet the goals of the Climate Action Plan and Climate Emergency Declaration.

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT



STAFF REPORT

MEETING DATE: 10/13/2021

Staff Report No. 21-473

TO: AC Transit Board of Directors
FROM: Michael A. Hursh, General Manager
SUBJECT: Support of Municipally Funded Transit Trips

ACTION ITEM

RECOMMENDED ACTION(S):

Consider adoption of Resolution 21-040 in Support of the Concept of Municipally Funded Transit Trips [Requested by Director Beckles - 9/22/2021].

STRATEGIC IMPORTANCE:

Goal - Financial Stability and Resiliency
Initiative - Financial Efficiency and Revenue Maximization

Municipally funded transit trips would provide the District with guaranteed fare revenue and encourage more ridership.

BUDGETARY/FISCAL IMPACT:

There is no fiscal impact from approving the attached resolution.

BACKGROUND/RATIONALE:

The District implemented fare-free Fridays in September as part of a larger group of regional fare discount promotions to encourage riders to return to transit. This program spurred a discussion initiated by Berkeley Councilmember Kate Harrison to assess if AC Transit could implement something similar for the City of Berkeley with funding to backfill fare losses coming from the City. Initial discussions have focused on fare-free Sundays to match or counter the free parking available in Berkeley. Councilmember Harrison has since proposed adding \$500,000 to the City's budget to fund this effort.

At the September 22, 2021 Board meeting, Director Beckles requested an agenda item with a resolution in support of Berkeley's efforts. The attached resolution from Director Beckles is more general and supports municipally funded transit trips in general along with Berkeley's efforts. Staff is in support of this resolution and the closer partnerships it could bring with the cities in the District's service area.

In general, the concept of municipally funded transit trips should be financially positive for the District, with the specific impacts depending on how any program is structured. The municipally funded free or discount rides encourage more ridership, and AC Transit gets funded either up front if a pass model is used, or

reimbursed for trips if a per-trip model is used. In addition, any program would incentivize ridership.

ADVANTAGES/DISADVANTAGES:

The main advantage to approving the resolution is that it could encourage Berkeley or other cities to fund transit programs, which would increase ridership and benefit the District.

Though there are no disadvantages staff can identify, additional fare revenue from fare-free programs does not fully fund increased service coverage or frequency. Much of the revenue generated from such programs would transfer the cost of fares from the user to the municipality, and fare revenue is only a small portion of AC Transit's operating revenues.

ALTERNATIVES ANALYSIS:

There were no alternatives considered to the resolution.

PRIOR RELEVANT BOARD ACTION/POLICIES:

Board Policy 333 - Fare Policy Goals and Methodology

ATTACHMENTS:

1. Resolution 21-040

Prepared by:

Chris Andrichak, Chief Financial Officer

Approved/Reviewed by:

Chris Andrichak, Chief Financial Officer

Beverly Greene, Executive Director of External Affairs, Marketing & Communications

Robert del Rosario, Director of Service Development and Planning

Jill A. Sprague, General Counsel

**ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
RESOLUTION NO. 21-040****A RESOLUTION SUPPORT OF THE CONCEPT OF MUNICIPALLY FUNDED TRANSIT TRIPS**

WHEREAS, reliable and low-cost public transportation is a fundamental human need and supports climate, economic, health, mobility, and racial equity; and

WHEREAS, public bus-based transportation is significantly less carbon intensive per mile than single occupancy internal combustion vehicles and even greater climate benefits will be realized as zero-emission buses come online as part of the Alameda-Contra Costa Transit District's ("District") Zero Emissions Bus Rollout Plan; and

WHEREAS, the District provides municipalities within the region with a vital means of meeting their climate, economic, health, mobility, and racial equity goals and obligations; and

WHEREAS, in recent years some municipalities across the country have successfully funded pilot programs in partnership with local transit agencies to provide free transit trips on a system, citywide, or route-based basis; and

WHEREAS, as a result of such pilot programs, some agencies have seen significant increases in demand for public transit; and

WHEREAS, the District and local municipalities have a shared interest in safely restoring public transit ridership levels following sharp reductions resulting from the COVID-19 pandemic; and

WHEREAS, in September 2021, the District successfully conducted a monthlong Fare-Free Fridays program across its service area, including paratransit services; and

WHEREAS, representatives of the City of Berkeley are exploring and have begun preliminary discussions with the District about whether and how a broader free transit pilot on a given day of the week could operate; and

WHEREAS, like other municipalities, the City of Berkeley has received funding from the American Rescue Plan Act that could support such free transit pilot programs; and

WHEREAS, in order for interested municipalities to consider funding potential pilot programs, they need to adopt budget allocations on defined timelines; and

WHEREAS, budget allocations occur twice annually in the City of Berkeley, once in November and once in June, and a proposal to consider funding from the November budget process has been drafted; and

WHEREAS, a funding allocation for a pilot by the City of Berkeley or any other municipality does not in any way commit the District to approve any particular free transit pilot program or other modification of service, but may facilitate staff coordination between municipalities and

the District that could lead to the further evaluation and potential approval of such programs by the District Board.

NOW THEREFORE, the Board of Directors of the Alameda-Contra Costa Transit District does resolve as follows:

Section 1. To generally support the concept of municipally funded free transit pilots or other programs.

Section 2. The establishment of any such program shall be ultimately subject to operational and administrative evaluation and approval by the Board of Directors.

Section 3. This resolution shall become effective immediately upon its passage by four affirmative votes of the Board of Directors.

PASSED AND ADOPTED this 13th day of October 2021.

Elsa Ortiz, President

Attest:

Linda A. Nemeroff, District Secretary

I, Linda A. Nemeroff, District Secretary for the Alameda-Contra Costa Transit District, do hereby certify that the foregoing Resolution was passed and adopted at a regular meeting of the Board of Directors held on the 13th day of October, 2021, by the following roll call vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Linda A. Nemeroff, District Secretary

Approved as to Form and Content:

Jill A. Sprague, General Counsel



Kate Harrison
Councilmember District 4

ACTION CALENDAR

October 26, 2021

(Continued from October 12, 2021)

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Budget Referral: Allocate General Fund Revenues to Support Pilot Program Offering Free AC Transit on Sundays in Berkeley

RECOMMENDATION

Refer to the November 2021 budget process approximately \$500,000 in General Fund Revenue toward fully subsidizing AC Transit fares originating from Berkeley on Sundays for at least one calendar year.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Reliable and low-cost shared mobility is necessary to reach the city's equity and climate goals. Fundamental social interactions and services, including but not limited to education, healthcare, commerce, socializing, recreation, and entertainment, require the conveyance of humans from one location to another. Berkeley is equipped with a robust, relatively low-cost, low-carbon, and unionized public bus transit system (AC Transit), connecting to many urban hubs through a larger system of regional public transit infrastructure. AC Transit also provides Berkeley with a ready-made means of accelerating its carbon emissions reduction strategy through mode shifting away from passenger vehicles. Even when powered by diesel, bus trips are significantly less carbon-intensive than gasoline-powered passenger vehicles; even greater climate benefits will be realized as zero-emission busses come on line.

The City has an opportunity to increase use of busses, particularly amongst those that do not commonly ride the bus, by working with AC Transit leadership to pilot fareless Sunday bus trips originating in Berkeley. Berkeley fully subsidizes passenger vehicle parking on Sundays and transit should not be placed at a disadvantage.

This proposal follows AC Transit's successful promotion of the American Rescue Plan Act (ARPA) funded 'Fare-Free Fridays' program during September 2021, and would support public transportation and local businesses which have faced steep declines in utilization and patrons amidst the COVID-19 pandemic. The details of the program are

part of ongoing discussions and coordination with Alameda-Contra Costa Transit District (AC Transit) staff and leadership.

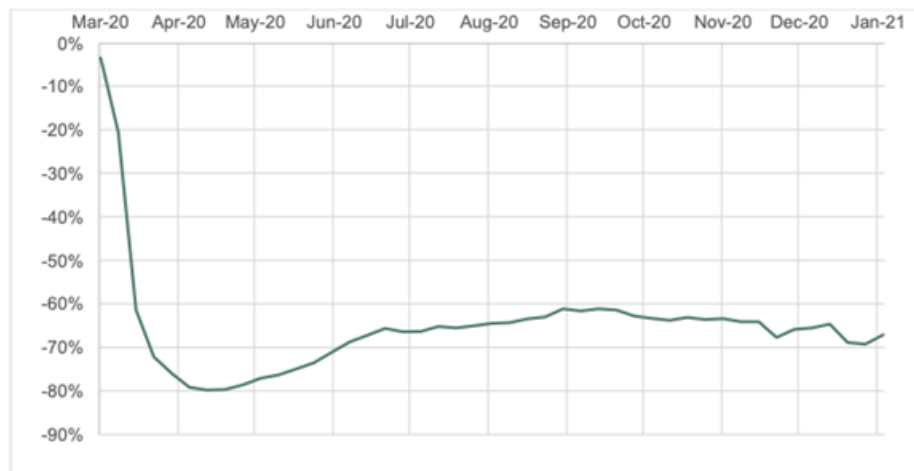
AC Transit busses reduce air pollution, frequent key urban locations, are relatively accessible to disabled persons, observe COVID-19 safety protocols, support commerce, and are outfitted with bicycle storage.

The federal government has empowered Berkeley to transfer ARPA funds to local agencies such as AC Transit. It is in the public interest for the City of Berkeley to support AC Transit and the Berkeley community by exploring and funding increased accessibility and utilization of public transit amidst the COVID-19 pandemic and the climate emergency through a year-long pilot of free Sunday bus rides.

BACKGROUND

According to data from the National Transit Database, monthly public transit ridership is 65% lower than before the pandemic.¹ Because of the COVID-19 pandemic, public transit has been forced to reduce its hours and accessibility, and many people shifted to driving personal vehicles as their main mode of transportation. Even as schools and businesses begin to reopen following increased vaccination and masking policies, public transit ridership remains extremely low.

Figure 2 Public Transit Ridership Losses and Projections



Source: APTA Ridership Trends Dashboard powered by Transit, January 2021.²

¹“The Impact of the COVID-19 Pandemic on Public Transit Funding Needs in the U.S.” Evidence-Based Practice (EBP), January 2021, <https://www.apta.com/research-technical-resources/research-reports/the-impact-of-the-covid-19-pandemic-on-public-transit-funding-needs-in-the-u-s/>.

² <https://transitapp.com/APTA>.

More generally, transit ridership in the U.S. has been steadily declining since 2014.³ The COVID crisis both demands and provides an opportunity for bringing the community back to public transport systems. Implementing free public transit on Sundays can help change the trajectory of Berkeley's ridership levels.

A pilot free transit program will have a positive environmental impact. We are facing a grave climate emergency, requiring municipalities to rapidly transition to a zero-carbon economy by 2030.⁴ Berkeley has struggled to rein in its transportation emissions, which as of 2018 accounted for 59% of greenhouse gas emissions and only fell 6% below 2000 levels.⁵

Even when powered by diesel fuel, public bus transit trips are significantly less carbon intensive than passenger vehicle miles, and will continue to fall each year as AC Transit completes its Zero Emissions Bus Rollout Plan by 2040 with 100 percent of all transit new bus purchases being zero emissions by 2029.⁶ According to national data from 2010, a single occupancy vehicle trip generates 0.96 pounds of carbon dioxide per passenger mile whereas a bus generates only 0.18 when fully occupied and 0.64 at average occupancy, representing a 33 to 81% decrease in carbon intensity per mile.⁷

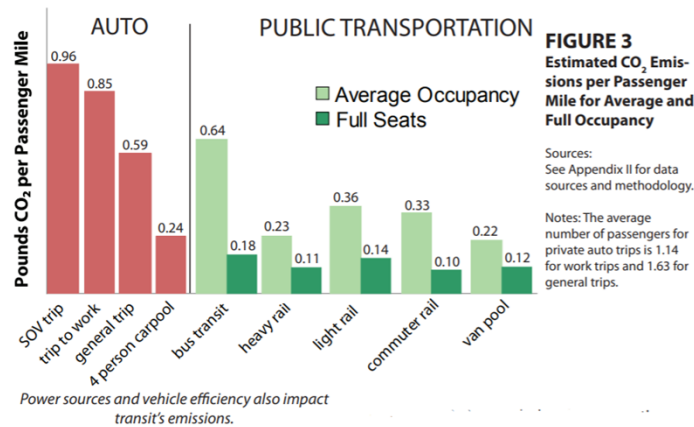
³ National Academies of Sciences, Engineering, and Medicine 2020. Analysis of Recent Public Transit Ridership Trends. Washington, DC: The National Academies Press. <https://doi.org/10.17226/25635>.

⁴ The City of Berkeley has historically shown its commitment to tackling climate change through the 2006 Berkeley ballot Measure G, 2009 Climate Action Plan, and the 2018 Climate Emergency Declaration. See also, "Endorsing the Declaration of a Climate Emergency", Resolution No. 68,486-N.S., June 2018 https://www.cityofberkeley.info/uploadedFiles/Council_2/Level_3_-_General/Climate%20Emergency%20Declaration%20-%20Adopted%2012%20June%202018%20-%20BCC.pdf

⁵ 2020 Climate Action Plan and Resilience Update, Office of Energy and Sustainability, July 21, 2020, https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_05_Climate_Action_Plan_pdf.aspx.

⁶ Zero-Emissions Bus Rollout Plan, AC Transit, Version 1, 2021, https://www.actransit.org/sites/default/files/2021-03/AC%20Transit%20ZEB%20Rollout%20Plan_06102020.pdf.

⁷ Public Transportation's Role in Responding to Climate Change, U.S. Dept. of Transportation, January 2010, <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/PublicTransportationsRoleInRespondingToClimateChange2010.pdf>.



Source: Public Transportation’s Role in Responding to Climate Change, 2010.⁸

Scientists and researchers have warned that recovery and “stimulus” funds distributed by governments in the wake of the COVID-19 pandemic must be expended on climate mitigation efforts in order to meet the extremely small carbon budgets agreed to as part of the 2015 Paris Agreement to limit global warming to “well below” 2 degrees.⁹

Across the nation cities are taking action through the implementation of free transit systems. The goal of these transit services is affordable mobility for all, whether through free bus systems, shuttles, railways, etc. In particular the establishment of pilot programs and COVID-19 recovery efforts across the country have demonstrated the need for a push to free public transit. In March 2021, Connecticut Governor Ned Lamont directed CTtransit to provide free, statewide bus service to the public every weekend in order to combat the economic losses incurred during the ongoing pandemic.¹⁰ Similarly, thanks to the leadership of grassroots movements and Supervisor Dean Preston, during the pandemic the San Francisco Mayor agreed to adopt free transit for youth under 19 years old across MUNI for a minimum of one year.¹¹ Programs such as this aim to not only boost ridership but also to increase the accessibility of transportation to youth, low-income commuters, and

⁸ *Id.*

⁹ H. Damon Matthews, and Kasia Tokarska, “New Research Suggests 1.5C Climate Target Will Be out of Reach without Greener COVID-19 Recovery Plans.” *The Conversation*, 10 Aug. 2021, theconversation.com/new-research-suggests-1-5c-climate-target-will-be-out-of-reach-without-greener-covid-19-recovery-plans-151527.

¹⁰ “Governor Lamont Implements Free Weekend Bus Service During Summer Months in Connecticut as Part of Ongoing COVID-19 Recovery Efforts”, State of Connecticut, March 2021 <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2021/03-2021/Governor-Lamont-Implements-Free-Weekend-Bus-Service-During-Summer-Months>

¹¹ Mayor London Breed and Supervisor Myrna Melgar Announce Expansion of Free Muni for All Youth Program, Monday, July 12, 2021, <https://sfmayor.org/article/mayor-london-breed-and-supervisor-myrna-melgar-announce-expansion-free-muni-all-youth>.

seniors with disabilities. Before the pandemic, Lawrence Massachusetts launched a two-year free bus transit pilot program daily on its three primary bus routes in September 2019 and saw an impressive 24% increase in ridership. Other cities have seen an increase as high as 60%. Similar experiments are underway in Kansas City, Olympia Washington, and Boston. According to the New York Times, 100 cities worldwide provide free public transit.¹²

According to a Health Affairs study, certain groups, including “women, young adults (those ages 25–29), Black workers, and low-income workers,” disproportionately rely on public transportation for commuting and mobility, and public transportation has clear benefits for public health and health equity. At the same time “[l]ack of access to public transportation can disproportionately harm older people and people with disabilities... [and] can also contribute to existing racial and economic disparities by decreasing mobility and forcing individuals to depend on costly car ownership.”¹³

Currently, U.C. Berkeley students and Berkeley City employees enjoy unlimited AC Transit EasyPasses, incentivizing ridership on public transit.

Notably, the City of Berkeley does not charge for parking on Sundays, which encourages use of single-occupancy vehicles. Offering free public transit within Berkeley on Sundays can stimulate positive and COVID-safe social interactions by providing access to local businesses, open space and other public venues. It is also good for the economy. Figure ES-2 suggests that transport policies which make alternative modes of transportation such as public transit more accessible strongly correlate with enhanced commercial activity.¹⁴

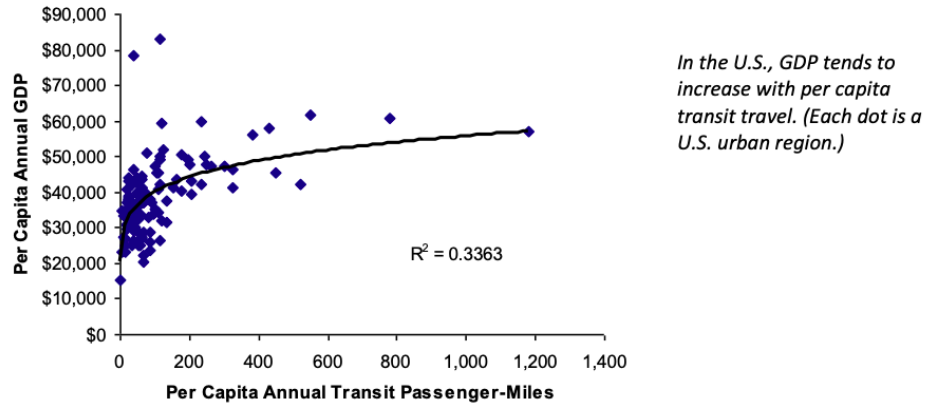
¹² Barry, Ellen, and Greta Rybus, “Should Public Transit Be Free? More Cities Say, Why Not?” The New York Times, The New York Times, 14 Jan. 2020, www.nytimes.com/2020/01/14/us/free-public-transit.html.

¹³ Public Transportation in the US: A Driver of Health and Equity, Wendy Heaps, Erin Abramsohn, Elizabeth Skillen, July 29, 2021, <https://www.healthaffairs.org/doi/10.1377/hpb20210630.810356/full/>.

¹⁴ In a study conducted by the American Public Transport Association, researchers examined three cities: Silicon Beach, CA; Austin, TX; and Durham, NC, to analyze the impact of increased public transportation on local economic growth. The study found that “public transportation investments will yield a 2 to 1 return while helping to generate income for local businesses, its workers and their neighborhoods” APTA also stated that “87% of trips on transit directly benefit the local economy”. “Public Transportation Supports Knowledge and Innovation Districts”, American Public Transportation Association <https://www.apta.com/research-technical-resources/research-reports/public-transit-knowledge/>; “2021 PUBLIC TRANSPORTATION FACT BOOK”, American Public Transportation Association, 2021

<https://www.apta.com/wp-content/uploads/APTA-2021-Fact-Book.pdf>.

Figure ES-2 Per Capita GDP and Transit Ridership (VTPI 2009)



Source: "Evaluating Transportation Economic Development Impacts", 2018 ¹⁵

The City also receives sales and business license revenue from such commerce. However, consistent with its climate goals, the City's aim in expanding transit *must not* be to increase economic growth for growth's sake, but to enhance community access to the provision of basic human needs.

Supporting AC Transit operations also means supporting an "essential" and unionized transit workforce as well as the local maintenance and local manufacturing/assembly of busses.

Ahead of submission of this item, Councilmember Harrison's office and AC Transit have discussed some potential preliminary logistical and fiscal aspects of launching such a pilot program, as well as discussed strategies to prioritize increasing transit ridership. Fortunately, AC Transit received significant funding from the Coronavirus Aid, Relief, and Economic Security (CARES) and ARPA to help stabilize massive fare losses, but ultimately these funds are temporary.

Meanwhile, the City of Berkeley has received approximately \$66 million over two years from the American Rescue Plan Act. It must expend these funds no later than December, 2024. Section 603(c)(3) of the American Rescue Plan Act allows local governments to transfer funds to other agencies such as AC Transit to assist with the recovery from the COVID-19 pandemic and to improve equity measures including access to transportation:

"TRANSFER AUTHORITY. — A metropolitan city... receiving a payment from funds made available under this section may transfer funds to ... a public benefit corporation involved in

¹⁵ "Evaluating Transportation Economic Development Impacts", Victoria Transport Policy Institute, 2018 https://vtpi.org/econ_dev.pdf

the transportation of passengers or cargo, or a special-purpose unit of State or local government.”¹⁶

The City of Berkeley is considered a metropolitan city and AC Transit likely qualifies as a special-purpose unit of local government.¹⁷ Alternatively, the Council could fund the program through excess equity. While the Transportation Network Company tax may provide funding in subsequent years, the Council has already indicated support in this first year for using these funds for priority protected bikeways and quick-build transit projects.¹⁸ AC Transit leadership has repeatedly expressed the significance of Berkeley’s interest in funding such quick-build improvements.

It is in the public interest to allocate General Funds towards the AC Transit pilot program in order to boost ridership rates, expand access to local goods and services, and to reduce transportation-based carbon emissions. This item proposes an allocation of \$500,000 to support this program and to support possible increased demand resulting from COVID-19 recovery efforts or demand stimulated as a result of this pilot. Implementation of any Berkeley pilot would be subject to approval by the AC Transit Board.

A successful pilot initiative could inspire potential subsequent efforts to expand free transit on a more permanent and frequent basis and thereby further reduce emissions and expand mobility equity.

FINANCIAL IMPLICATIONS

The item would have a net \$500,000 impact on the General Fund.

ENVIRONMENTAL SUSTAINABILITY

Reducing carbon emissions at an emergency and equitable pace is a necessary step to meet the goals of the Climate Action Plan and Climate Emergency Declaration.

¹⁶ American Rescue Plan Act, U.S. Congress, January 3, 2021, <https://www.congress.gov/117/bills/hr1319/BILLS-117hr1319enr.pdf>.

¹⁷ 41 CFR § 105-50.001-4 Special-purpose unit of local government. Special-purpose unit of local government means any special district, public-purpose corporation, or other strictly limited-purpose political subdivision of a State, but shall not include a school district.

¹⁸ Budget Referral: Allocate Transportation Network Companies User’s Tax Proceeds and other General Fund Revenues to Support Tier 1 Protected Bicycle Lanes, Crossings, Demonstration Paving Projects, and/or Quick-build Public Transit Projects Under the Street Repair Program, Councilmember Harrison, March 9, 2021, https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Supp_1_Reports_Item_21_Rev_Harrison_pdf.aspx.

Budget Referral: Allocate General Fund Revenues to Support Pilot
Program Offering Free AC Transit on Sundays in Berkeley

ACTION CALENDAR
October 12, 2021

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140



Parks and Waterfront Commission

ACTION CALENDAR
October 26, 2021

To: Honorable Mayor and Members of the City Council

From: Parks and Waterfront Commission

Submitted by: Gordon Wozniak, Chairperson

Subject: Proposal to allocate revenues generated by the Transient Occupancy Tax in the Waterfront Area to the Marina Fund to avoid insolvency, rebuild its fund balance and to stabilize its finances

RECOMMENDATION

That Council adopt a resolution adopting a policy that all Transient Occupancy Taxes (TOT hotel tax) generated at the Berkeley Waterfront be allocated to the City's Marina Enterprise Fund. All other property, sales, utility users, and parking taxes, as well as business license and franchise fees, would continue to be allocated to the City's General Fund.

POLICY COMMITTEE RECOMMENDATION

On September 23, 2021, the Budget & Finance Policy Committee took the following action: M/S/C (Harrison/Arreguin) to send the item to Council with a negative recommendation. Additionally, the committee would like to request a referral to the Budget & Finance Policy Committee to discuss and develop alternative revenue streams for the Marina Fund including a dedicated reserve.

Vote: All Ayes.

FINANCIAL IMPLICATIONS

Allocating funding from the Transient Occupancy Tax annually, generated at the Waterfront, will create a healthy Marina Fund that is able to operate, maintain, and keep safe the existing assets. The sizeable past and ongoing contributions from Waterfront-generated revenues to the City's General Fund should be taken into consideration when assessing the financial implications.

CURRENT SITUATION AND ITS EFFECTS

The area now comprising the Berkeley Waterfront was granted to the City by the State of California in 1913, as a grant of state tidelands. In 1962, the City obtained a state loan to develop the current marina with 1,000 slips, parking lots, launch ramps, restrooms, parks, and several commercial plots for lease.

- By 1966, 15 boat dock systems were constructed.
- By 1970, two restaurants, a hotel, and an office building were developed.

- By 1980, the two sailing clubs and sailing docks, the boat yard, and a third restaurant were developed.
- By 1991, the City landfill at the marina was capped and graded to become North Waterfront Park. In 1996, it was renamed Cesar Chavez Park.

The total area under City management includes the entrance to the Marina (University Avenue and the Bay Trail, from Frontage Road to Marina Blvd) and all the infrastructure and Marina waters west of Marina Blvd. In all, there are:

- 100 acres of open space and parks,
- over 1,000 berths in the Berkeley Marina,
- a large hotel, 4 restaurants,
- the Adventure Playground,
- Shorebird Nature Center,
- the Berkeley Marine Center boat yard,
- a two-story office building,
- a 4-lane public launch ramp,
- 9 restroom buildings, and
- 11 parking lots.

The Waterfront requires the daily administration of what essentially is a “small city”.

Marina Fund

A requirement of the State Tidelands Grant is that revenue generated at the Waterfront be spent at the Waterfront. The Marina Enterprise Fund was set up to comply with this requirement for managing revenue and expenditures at the Berkeley Waterfront. Marina Revenues come primarily from boat slip rental fees and business leases, and a number of smaller sources. Community users of the open space and amenities at the Berkeley Waterfront such as independent fishermen, windsurfers, small boat users, tourists, walkers, runners, dogwalkers, and other park users do not provide direct income to the Marina Fund.

By FY2019, one-third of the total revenue generated annually at the Waterfront was being transferred to the General fund as follows:

- \$10.9 Million in Total Waterfront Revenue
- \$6.9 Million allocated to the Marina Fund
- \$4 Million allocated to the General Fund

In addition, \$0.59 Million was being transferred annually from the Marina Fund to the City’s internal service funds.

In FY2020, the Covid Pandemic decimated the hospitality industry and the lease portion of the Marina revenue. While revenues have plummeted during the pandemic, community use of recreation and open space at the Waterfront has soared.

Marina Fund Financial Sustainability

From FY18-20, the Marina Fund contributed ~\$11 Million to the General Fund. Now, the Marina Fund needs help from the General Fund to survive this pandemic-induced fiscal crisis.

To immediately avoid the eminent insolvency of the Marina Fund, the TOT tax generated in the Waterfront should be allocated to the Marina Fund.

Waterfront Capital Fund

The estimated \$87.5 M - \$131 M in future infrastructure costs are too large to be solved by stabilizing the Marina operations budget. To fund such large capital costs, a Reserve Fund needs to be created with new revenues developed as a result of the BMASP process that is underway.

Commission

At a regular meeting on March 10, 2021, the Parks and Waterfront Commission M/S/C to send this action to Council for consideration: (McGrath/Kamen/U). Ayes: Cox; Diehm; Kamen; Kawczynska; Landoni; McGrath; Skjerping; Srioudom; Wozniak; Noes: None; Absent: None; Leave of Absence: None.

ENVIRONMENTAL SUSTAINABILITY

No environmental impacts or opportunities were identified as a result of this recommendation.

RATIONALE FOR RECOMMENDATION

See body of report

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER

The City Manager recommends referring the contents of this commission report to the budget process because this action will potentially impact revenue available to the General Fund. The Marina Fund revenue losses associated with Covid-19 are projected to exceed \$3.6M from FY20-23 in comparison to FY 19 and a potential funding source to offset actual and projected revenue losses is the American Rescue Plan. Additionally, City Council may want to explore other long-term revenue sources to stabilize the Marina Fund, as discussed during February 16, 2021 work session presentation on the Berkeley Marina Area Specific Plan.

CONTACT PERSON

Roger Miller, Secretary, Parks and Waterfront Commission, (510) 981-6704
Gordon Wozniak, Chairperson, (510) 654-4103

Allocate Transient Occupancy Tax (TOT) generated at the Waterfront
back to the Marina Fund

ACTION CALENDAR
October 26, 2021

Attachments
1: Resolution

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

ALLOCATE REVENUES GENERATED BY THE TRANSIENT OCCUPANCY TAX IN THE WATERFRONT AREA TO THE MARINA FUND TO AVOID INSOLVENCY, REBUILD ITS FUND BALANCE, AND STABILIZE ITS FINANCES

WHEREAS, the Parks and Waterfront Commission reviews the policies, projects, programs, planning efforts, activities, funding and the physical condition of parks, pools, camps, recreation centers, the Marina, and public greenery, and advises the City Council on these matters; and

WHEREAS, a requirement of the State Tidelands Grant is that revenue generated in the Waterfront be spent at the Waterfront; and

WHEREAS, in FY2019, one-third of the total revenue (\$10.9 million) generated annually at the Waterfront was transferred to the General Fund (GF) and an additional \$0.58 million was transferred to the City's Internal Service Funds; and

WHEREAS, in FY2020, Waterfront revenues have plummeted due the shutdown of the hospitality industry by the Covid Pandemic; and

WHEREAS, the Marina Fund is projected to be insolvent in FY2022 and beyond; and

WHEREAS, over the last three years, the revenues generated in the Waterfront Area contributed ~\$11 million to the City's General Fund; and

WHEREAS, Transient Occupancy Tax (TOT) was generated annually at the Waterfront during pre-pandemic times, and

WHEREAS, by allocating the TOT revenue generated at the Waterfront to the Marina fund, it could be made solvent; and

WHEREAS the Marina Fund is facing an unprecedented financial crisis, with more than \$100M of unfunded capital need and an annual structural deficit of \$1 million.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley hereby adopts a policy that all Transient Occupancy Taxes (TOT hotel tax) generated at the Berkeley Waterfront be allocated to the City's Marina Enterprise Fund. All other property, sales, utility users, and parking taxes, as well as business license and franchise fees, would continue to be allocated to the City's General Fund.

NOW THEREFORE, BE IT FURTHER RESOLVED that all other property, sales, utility users, and parking taxes, as well as business license and franchise fees, would continue to be allocated to the General Fund.



City Clerk Department

INFORMATION CALENDAR

October 26, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Mark Numainville, City Clerk
 Subject: Annual Commission Attendance and Meeting Frequency Report

RECOMMENDATION

Review and accept the annual commission attendance and meeting frequency report.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Each year, Berkeley's commissions prepare an annual attendance report for submittal to Council. These reports include the number of meetings, meeting cancellations, commissioners in attendance, length of meetings, number of speakers, and members of the public present. The reports also reflect the number of vacant positions on the commission as of August 31, 2021.

Due to the Shelter-in-Place order necessitated by the COVID-19 pandemic, most commissions ceased or greatly scaled back their activities in March of 2020. During the pandemic, commissions met virtually and only if they had time-sensitive, legally-mandated business to complete. This policy was adopted March 17, 2020, by Resolution No. 69,331-N.S., ratifying the City Manager's direction limiting the meetings of city legislative bodies in order to maintain staff resources to address the pandemic. For this reason, several of the City's 40 commissions have not submitted an annual report for the reporting period of September 1, 2020, through August 31, 2021.

On June 15, 2021, the City Council directed staff to begin the reorganization of Berkeley commissions. As staff moves forward to implement those changes, and as the COVID-19 emergency is still ongoing, meeting frequency for boards and commissions will continue to be evaluated on a case by case basis by the City Manager. Therefore, staff is not presenting a fixed 2021 meeting frequency schedule to Council for approval at this time.

Resolution No. 69,331-N.S. divided commissions into two categories, depending on their meeting the criteria of having time-sensitive, legally mandated business to complete. Several commissions not initially included in category A have subsequently been allowed

to meet upon approval from the City Manager's Office, assuming available staff support. Three new commissions, the Independent Redistricting Commission, the Police Accountability Board, and Reimagining Public Safety, also began meeting regularly in 2021.

The meeting activity for the reporting period of September 2020 through August 2021 has been broken down by category below.

Category A

These commissions resumed or began meeting virtually after the initial Shelter-in-Place in order to meet their legal obligations.

Commission	# Meetings Held	Cancellations due to COVID-19	Cancellations due to other reasons
Board of Library Trustees	17	0	1 (scheduling issues)
Design Review Committee	12	0	0
Fair Campaign Practices Commission	11	0	1 (no urgent action items)
Housing Advisory Commission (for quasi-judicial matters only)	5	3	0
Independent Redistricting Commission (began meeting January 2021)	15	0	1 (lack of business)
Landmarks Preservation Commission	11	0	1 (no agenda items)
Open Government Commission	9	0	(no urgent action items)
Personnel Board	5	6	1 (agenda not timely posted)
Planning Commission	14	0	3 (rescheduled to special meetings)
Police Review Commission (ceased meeting June 2021)	23	0	0
Police Accountability Board (successor to the Police Review Commission; began meeting July 2021)	2	0	0
Zoning Adjustments Board	21	0	0

Category B

Requests by these commissions to meet during the pandemic were accommodated on a case-by-case basis by the City Manager.

Commission	# Meetings Held	Cancellations due to COVID-19	Cancellations due to other reasons
Animal Care Commission	4	2	0
Cannabis Commission	0	0	0
Children, Youth, and Recreation Commission	10	2	0
Civic Arts Commission	9	1	0
Commission on Aging	3	2	0
Commission on Disability	4	3	1 (lack of quorum)
Commission on Labor	2	2	0
Commission on the Status of Women	5	3	1 (lack of quorum)
Community Environmental Advisory Commission	1	3	0
Community Health Commission	2	6	0
Disaster and Fire Safety Commission	11	0	0
Elmwood BID Advisory Board	1	0	1 (No Quorum)
Energy Commission	7	3	0
Homeless Commission	8	2	1 (no agenda from chair)
Homeless Services Panel of Experts	10	0	1(election) 1(administrative error)
Human Welfare and Community Action Commission	7	4	0
Loan Administration Board	6	0	0
Measure O Bond Oversight Committee	2	2	0
Mental Health Commission	10	0	0
Parks and Waterfront Commission	10	0	0
Peace and Justice Commission	1	0	0
Public Works Commission	13	0	0

Commission	# Meetings Held	Cancellations due to COVID-19	Cancellations due to other reasons
Reimagining Public Safety Task Force	10	0	0
Solano Avenue BID Advisory Board	6	0	0
Sugar-Sweetened Beverage Product Panel of Experts	8	1	2 (no quorum)
Transportation Commission	5	0	0
Youth Commission	8	2	0
Zero Waste Commission	6	4	0

BACKGROUND

On June 14, 2005, the City Council discussed the reduction of commission meetings as a cost-savings measure, and adopted a proposal which created three categories of commission meeting schedules, a process for requesting Council approval of any extra meetings, direction to commission secretaries to submit an information report whenever a commission cancels two consecutive meetings for lack of quorum, and an annual attendance report. Council adopted Resolution No. 63,949–N.S. on January 15, 2008, which updated the commission meeting frequency schedule to include a fourth category of meeting frequency. On December 11, 2018, Council adopted Resolution No. 68,705–N.S., which changed the reporting period from November through October to September through August to allow commissions sufficient time to set their schedules for the following year.

On March 17, 2020, Resolution No. 69,331-N.S. ratified the City Manager’s direction limiting the meetings of city legislative bodies in order to maintain staff resources to address the pandemic. Most of those commissions meeting the criteria set by Resolution No. 69,331-N.S. began meeting again on a regular basis in the summer of 2020. On October 13, 2020, the Agenda & Rules Committee endorsed the City Manager’s policy to allow all commissions to meet up to two times only for the purpose of developing their 2021 work plan and to address any COVID-related referrals from the City Council. A commission frequency report was submitted to Council on January 19, 2021, evaluating staff availability for commission support and summarizing the effects of the COVID-19 pandemic on boards and commission meetings.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

POSSIBLE FUTURE ACTION

Staff availability for board and commission support during the ongoing emergency may be periodically reassessed by the City Manager, the Health Officer, and department heads.

CONTACT PERSON

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

Attachments:

- 1: 2021 Annual Commission Attendance Reports
- 2: 2021 Approved Leaves of Absence by Commission Report

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Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u> 0 </u> (as of August 31, 2021)

Commission: Board of Library Trustees

Commission Secretary: Tess Mayer

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/2/2020		5 of 5	7	1	1 hr
9/14/2020		4 of 5		1	1 hr 15 min
9/14/2020		4 of 5	0	0	6 min
10/14/2020		5 of 5	7	1	1 hr 21 min
11/18/2020		5 of 5	3	1	1 hr 35 min
12/2/2020		4 of 5	4	0	1 hr 47 min
1/6/2021		5 of 5	0	0	1 hr 21 min
1/6/2021		5 of 5	3	0	50 min
1/20/2021		4 of 5	0	0	18 min
2/3/2021		5 of 5	2	1	1 hr 20 min
3/3/2021		5 of 5	3	1	1 hr 30 min
4/7/2021		4 of 4	6	1	2 hr 9 min
5/5/2021		4 of 4	8	0	1 hr 40 min
5/26/2021		4 of 4	0	0	1 hr 4 min
6/2/2021	<i>Cancelled- held special meeting on 5/26/2021 instead</i>				
6/14/2021		4 of 4	18	1	2 hr 28 min
6/21/2021		4 of 4	14	1	1 hr 22 min
7/7/2021		4 of 4	5	0	1 hr 2 min

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Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u> 4 </u> (as of August 31, 2021)

Commission: Children, Youth and Recreation

Commission Secretary: Basil Lecky

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/28/21	Yes – COVID				
10/26/21	Yes – COVID				
11/16/20		5	1	1	1 hour, 25 minutes
12/14/20 (Special)		5	0	0	1 hour, 2 minutes
1/25/21		6	0	0	1 hour, 53 minutes
2/1/21 (Special)		6	2	2	44 minutes
2/22/21		6	0	0	1 Hour, 46 minutes
3/22/21		4	0	0	2 hours
4/26/21		6	0	0	1 hour, 55 minutes
5/24/21		6	0	0	1 hour, 16 minutes
6/28/21		4	0	0	57 minutes
8/23/21		4	0	0	1 hours, 24 minutes

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u> 2 </u> (as of August 31, 2021)

Commission: Commission on Labor

Commission Secretary: Nathan Dahl

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
<i>9/16/20</i>	<i>Canceled due to COVID</i>				
<i>11/18/20</i>	<i>Canceled due to COVID</i>				
<i>1/20/21</i>		<i>7</i>	<i>0</i>	<i>0</i>	<i>40 Minutes</i>
<i>2/1/21</i>		<i>7</i>	<i>8</i>	<i>5</i>	<i>1 Hour and 20 Min.</i>

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u>4</u> (as of August 31, 2021)

Commission: Commission on the Status of Women

Commission Secretary: Shallon Allen

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
Sep 16, 2020	Cancelled, due to covid				
Oct 21, 2020	Cancelled, due to covid				
Nov 18, 2020	Cancelled, due to covid				
March 3, 2021		5 of 7	0	0	1h 24min
March 22, 2021		7 of 7	0	0	1hr 29min
April 26, 2021		7 of 7	1	1	52min
May 19, 2021		6 of 7	0	0	1hr 15min
June 16, 2021		5 of 6	0	0	47min
August 18, 2021	Cancelled, lack of quorum				

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u>4</u> (as of August 31, 2021)

Commission: Community Health Commission

Commission Secretary: Roberto Terrones

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
09/23/20	Yes- City Council Resolution; meeting limitations				
10/28/20	Yes- City Council Resolution; meeting limitations				
11/19/20	No	12 of 13	0	0	2 hours and 35 minutes
12/10/20	No	10 of 13	0	0	2 hours and 25 minutes
01/28/21	Yes- City Council Resolution; meeting limitations				
02/25/21	Yes- City Council Resolution; meeting limitations				
03/25/21	Yes- City Council Resolution; meeting limitations				
04/22/21	Yes- City Council Resolution; meeting limitations				
05/27/21	Yes- City Council Resolution; meeting limitations				
06/24/21	Yes- City Council Resolution; meeting limitations				
07/22/21	Yes- City Council Resolution; meeting limitations				

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2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: _____ (as of August 31, 2021)
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Commission: Design Review Committee

Commission Secretary: Anne Burns

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/17/20		6 of 6	21	10	4.25 hrs
10/15/20		5 of 6	27	17	5 hrs
11/19/20		6 of 6	29	10	3.25 hrs
12/17/20		6 of 6	21	15	3 hrs
1/21/21		5 of 6	32	5	2.75 hrs
2/18/20		6 of 6	11	3	2 hrs
3/18/21		7 of 7	40	13	3.5 hrs
4/15/21		7 of 7	23	5	3.25 hrs
5/21/21		6 of 7	23	9	3.5 hrs
6/17/21		6 of 7	9	2	1.5 hrs
7/15/21		7 of 7	29	15	4.5 hrs
8/19/21		7 of 7	16	3	2.0 hrs

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u> 1 </u> (as of August 31, 2021)

Commission: Berkeley Energy Commission

Commission Secretary: Billi Romain

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/23/20	Yes - Covid				
10/28/20	Yes - Covid				
12/2/20	Yes - Covid				
1/27/21		8	4	1	2 hrs
2/24/21		7	3	1	2 hrs
3/24/21		7	3	3	2 hrs
4/28/21		8	11	4	2 hrs
5/26/21		8	4	1	2 hrs
6/23/21		8	2	2	2 hrs
7/28/21		8	3	1	2 hrs

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Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u> 0 </u> (as of August 31, 2021)

Commission: Fair Campaign Practices Commission

Commission Secretary: Samuel Harvey

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/17/20		8 of 9	1	1	3 hrs
10/15/20		7 of 9	3	3	2.5 hrs
11/19/20		8 of 8	15	15	4 hrs
1/21/21		6 of 8	3	3	1 hr
1/21/21		7 of 8	2	2	3 hrs
2/18/21		7 of 7	1	1	0.5 hrs
2/18/21		7 of 7	4	4	2.25 hrs
3/18/21		8 of 8	3	3	2.5 hrs
4/15/21		9 of 9	4	4	3.75 hrs
5/20/21		9 of 9	3	3	1.5 hrs
6/17/21		9 of 9	3	3	1.25 hrs
7/15/21	Yes – no urgent action items				

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Yes -

Commission: Homeless Commission

Vacant seats: <u>4</u> (as of August 31, 2021)

Commission Secretary: Josh Jacobs

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/9/20	Yes - COVID				
10/19/20	Yes - COVID				
11/12/20		7 of 8	3	0	2.5 hrs
1/27/21		6 of 6	0	0	2 hrs
2/10/21		7 of 7	2	0	2 hrs
3/10/21	Yes-no agenda from chair				
3/31/21		4 of 4	0	0	2 hrs
4/14/21		5 of 5	3	0	2 hrs
5/12/21		4 of 5	0	0	2 hrs
6/9/21		4 of 5	2	0	2 hrs
7/14/21		5 of 5	2	0	2 hrs

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Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u>4</u> (as of August 31, 2021)

Commission: Homeless Services Panel of Experts

Commission Secretary: Josh Jacobs

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
09/02/20		6 of 7	7	0	2 hrs
10/07/20		6 of 7	4	0	2 hrs
11/04/20	Yes - Election				
02/03/21		8 of 8	2	0	2 hrs
03/03/21	Yes-admin error				
03/22/21		4 of 5	2	0	2.25 hrs
04/07/21		5 of 5	2	0	2 hrs
04/21/21		4 of 5	5	0	2.25 hrs
04/28/21		6 of 6	4	0	3 hrs
05/05/21	Yes-special meeting week before				
05/19/21		5 of 5	2	0	2 hrs
06/02/21		5 of 5	2	0	2 hrs
07/07/21		4 of 5	1	0	2 hrs

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u>5</u> (as of August 31, 2021)

Commission: Human Welfare and Community Action

Commission Secretary: Mary-Claire Katz

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/16/20	Yes, COVID-19	-	-	-	-
10/21/20	Yes, COVID-19	-	-	-	-
11/18/20	Yes, COVID-19	-	-	-	-
12/9/20	No	8 of 9	2	0	2 hrs
Jan. 2021	Yes, COVID-19	-	-	-	-
2/24/21	No	10 of 11	1	0	2 hrs
3/17/21	No	10 of 11	2	1	2 hrs
4/21/21	No	11 of 11	5	0	2 hrs 30 mins
5/19/21	No	8 of 11	3	1	2 hrs
6/16/21	No	7 of 11	6	3	2 hrs 15 mins
7/21/21	No	8 of 11	0	0	2 hrs
No Aug. Mtg.	-	-	-	-	-

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u> 0 </u> (as of August 31, 2021)

Commission: Independent Redistricting Commission

Commission Secretary: Mark Numainville

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
1/20/21		8 of 8	18	3	3.25 hrs
2/10/21		8 of 8	7	0	3 hrs
2/24/21		8 of 8	7	2	2
3/17/21		13 of 13	12	0	3.5 hrs
4/1/21		13 of 13	12	1	2.25
4/15/21		13 of 13	10	1	3 hrs
5/6/21		13 of 13	8	3	3.5 hrs
5/19/21		13 of 13	8	2	3.75 hrs
6/9/21		11 of 13	8	1	3.5 hrs
6/23/21		10 of 13	2	0	2.5 hrs
6/30/21	Yes – lack of business				
7/10/21		12 of 13	22	2	1 hr
7/21/21		11 of 13	6	0	2.25 hrs
8/4/21		11 of 13	0	0	2 hrs
8/18/21		11 of 13	4	0	1.25 hrs
8/30/21		12 of 13	5	0	1.25 hrs

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u> 0 </u> (as of August 31, 2021)

Commission: Landmarks Preservation Commission (LPC)

Commission Secretary: Fatema Crane, Senior Planner

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/3/20		8 of 9	10	2	2.75 hrs
10/1/20		8 of 9	39	10	3.75 hrs
11/5/20		8 of 9	30	18	4.5 hrs
12/3/20		8 of 9	14	8	2.5 hrs
1/7/21		8 of 9	8	3	1.5 hrs
2/4/21	Yes – no agenda items				
3/4/21		8 of 9	10	3	3 hrs
4/1/21		8 of 9	12	11	3.5 hrs
5/6/21		8 of 9	6	2	1.5 hrs
6/3/21		9 of 9	9	3	1 hr
7/1/21		9 of 9	8	0	2 hrs
8/5/21		6 of 9	9	4	2 hrs

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u> 0 </u> (as of August 31, 2021)

Commission: Open Government Commission

Commission Secretary: Samuel Harvey

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/17/20		8 of 9	1	1	3 hrs
10/15/20		7 of 9	3	3	2.5 hrs
11/19/20		8 of 8	15	15	4 hrs
1/21/21		7 of 8	2	2	3 hrs
2/18/21		7 of 7	4	4	2.25 hrs
3/18/21		8 of 8	3	3	2.5 hrs
4/15/21		9 of 9	4	4	3.75 hrs
5/20/21		9 of 9	3	3	1.5 hrs
6/17/21		9 of 9	3	3	1.25 hrs
7/15/21	Yes – no urgent action items				

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: _____ (as of August 31, 2021)
--

Commission: Parks and Waterfront

Commission Secretary: Roger Miller

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
09/09/2020		8 of 8	7	2	2.75 hrs
10/14/2020		9 of 9	11	6	3.25 hrs
11/11/2020		9 of 9	13	7	3.00 hrs
12/09/2020		9 of 9	16	2	2.25 hrs
02/10/2021		9 of 9	23	1	3.75 hrs
03/10/2021		9 of 9	8	0	3.00 hrs
04/14/2021		9 of 9	7	2	3.75 hrs
05/12/2021		8 of 8	8	2	3.75 hrs
06/09/2021		8 of 8	21	2	3.50 hrs
08/11/2021		8 of 8	20	7	2.25 hrs

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u> 2 </u> (as of August 31, 2021)

Commission: PERSONNEL BOARD

Commission Secretary: LATANYA BELLOW

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/8/20		6 of 7	0	0	1.5 hrs
10/5/20	Yes - COVID				
11/2/20	Yes - COVID				
12/7/20	Yes - COVID				
1/4/21	Yes – COVID				
1/20/21		6 of 7	1	0	1 hr
2/1/21		6 of 7	0	0	0.5 hr
3/1/21		7 of 8	4	0	0.75 hr
4/5/21	Yes – Agenda not posted 72 hours in advance				
4/12/21		6 of 8	1	1	1.25 hr
5/3/21	Yes – COVID				
6/7/21	Yes – COVID				

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u> 0 </u> (as of August 31, 2021)

Commission: Planning Commission

Commission Secretary: Alene Pearson

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/2/20	No	9 of 9	18	12	4hrs 3 mins
9/30/20	No	9 of 9	67	29	4 hrs 49 mins
10/7/20	No	9 of 9	2	1	1 hr 13 mins
11/4/20	Yes- regular meeting replaced by special meeting to accommodate schedules.	n/a	n/a	n/a	n/a
11/18/20	No	9 of 9	51	20	4 hrs 7 mins
12/02/20	No	9 of 9	32	11	2 hrs 45 mins
12/16/20	No	9 of 9	28	11	3 hrs 41 mins
1/6/2021	No	9 of 9	11	5	3 hrs 6 mins
1/20/2021	No	9 of 9	14	5	3 hrs 3 mins
2/3/2021	No	9 of 9	5	1	58 mins
3/3/2021	Yes- regular meeting replaced by special meeting to accommodate schedules.	n/a	n/a	n/a	n/a
3/17/2021	No	8 of 9	3	1	1 hr 10 mins
4/7/2021	No	8 of 9	23	11	3 hrs 8 mins
5/5/2021	No	9 of 9	33	22	3 hrs 30 mins
6/2/2021	No	9 of 9	44	25	4 hrs 1 min
7/7/2021	Yes- regular meeting replaced by special meeting	n/a	n/a	n/a	n/a

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u> 0 </u> (as of August 31, 2021)

Board: Police Accountability Board
Board Secretary: Katherine J. Lee

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Board Members Present	Public Present	Public Speakers	Meeting Length
7/7/21*		9 of 9	29	5	2.1
8/4/21*		9 of 9	32	16	4.1

*Special Meetings

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u> </u> n/a (as of August 31, 2021)
--

Commission: Police Review Commission
Commission Secretary: Katherine J. Lee

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/9/20		7 of 8	9	0	2.1
9/23/20		8 of 8	13	6	3.1
9/30/20*		7 of 8	22	12	4.0
10/14/20		6 of 8	11	1	1.5
10/28/20*		7 of 8	2	0	.8
10/28/20		8 of 8	21	10	4.2
11/18/20		9 of 9	28	5	3.7
12/9/20*		6 of 8	3	0	.8
12/9/20		8 of 9	18	3	1.7
1/13/21		9 of 9	18	9	3.6
1/27/21		9 of 9	18	7	2.9
2/10/21		9 of 9	10	1	1.5
2/24/21		8 of 9	7	3	2.1
3/2/21*		7 of 9	1	1	.3
3/10/21		9 of 9	2	1	1.9
3/13/21*		9 of 9	50	7	1.5
3/24/21		8 of 9	7	1	1.4
4/14/21		9 of 9	7	4	2.0
4/28/21		9 of 9	9	3	2.1
5/13/21		7 of 8	7	3	2.9
5/26/21		6 of 8	4	2	1.9
6/9/21		8 of 8	4	3	2.5
6/23/21		8 of 8	9	5	1.5

*Special Meetings

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u>1</u> (as of August 31, 2021)

Commission: Public Works

Commission Secretary: Joe Enke

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/3/20		8 of 9	11	2	2:59
10/1/20		9 of 9	4	2	2:25
10/14/20		8 of 9	4	1	3:11
11/4/20*		8 of 9	16	16	2:19
11/12/20*		8 of 9	26	2	3:01
11/19/20*		9 of 9	26	11	3:00
1/7/21		8 of 8	4	0	2:46
2/4/21		9 of 9	3	2	2:15
3/4/21		9 of 9	29	13	2:28
4/1/21		8 of 8	7	4	2:39
5/6/21		7 of 8	4	0	1:48
6/3/21		7 of 8	4	4	2:10
7/1/21		8 of 8	8	4	2:28
*special mtg.					

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u>1</u> (as of August 31, 2021)

Commission: Sugar-Sweetened Beverage Product Panel of Experts

Commission Secretary: Dechen Tsering

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
09/17/2020	Yes – mtg. moratorium				
10/22/2020		8	5	3	2 hrs 30 mins
11/19/2020		8	4	1	2hrs
12/10/2020*		7	0	0	2 hrs 30 mins
01/21/2021		8	5	2	2 hrs
02/18/2021		6	2	0	2 hrs 15 mins
03/18/2021*		7	0	0	2 hrs 6 mins
03/27/2021	Yes - No quorum				
04/15/2021	Yes - No quorum				
5/20/2021		7	0	0	2hrs. 17 mins
06/17/2021		7	0	0	1 hr. 55 mins
08/12/2021	Yes – moved to 3/27/2021				

Page 48 of 44 2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: <u> 1 </u> (as of August 31, 2021)

Commission: Transportation Commission

Commission Secretary: Farid Javandel

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/17/20		8	2	0	3.25
1/21/21		6	0	0	3.25 hours
2/18/21		7	3	1	3 hours
4/15/21		7	7	2	2.25 hours
6/17/21		8	8	5	2.5 hours

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: _____ (as of August 31, 2021)
--

Commission: Youth Commission

Commission Secretary: Ginsi K. Bryant

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/14/20	Cancelled -Covid				
10/13/20	Cancelled -Covid				
11/9/20		8 of 10	0	0	1.5
12/14/20		8 of 10	0	0	1hr 23min
1/11/21		10 of 10	0	0	2hr 13min
1/19/21		11 of 11	2	0	12min
2/8/21		12 of 12	3	0	1hr 51min
3/8/21		13 of 13	2	0	1hr 41min
4/12/21		16 of 17	0	0	2hr 23min
5/10/21		13 of 18	4	0	2hr 25min
June-no meeting					
July -no meeting					
Aug- no meeting					

2021 Annual Commission Attendance Report

Reporting Period: September 1, 2020 through August 31, 2021

Vacant seats: _____ (as of August 31, 2021)
--

Commission: Zoning Adjustments Board

Commission Secretary: Samantha Updegrave, Shannon Allen

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/20		8 of 9	5	3	2.5 hrs
2/1/21	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/10/20		9 of 9	48	21	4 hrs
9/24/20		9 of 9	17	14	3 hrs
10/8/20		8 of 9	15	11	1.5 hrs
10/22/20		9 of 9	23	14	3 hrs
11/12/20		8 of 9	32	10	1.75 hrs
12/10/20		9 of 9	3	0	0.5 hr
1/14/21		9 of 9	22	7	1.25 hrs
1/28/21		9 of 9	22	9	3 hrs
2/11/21		8 of 9	7	0	0.5 hr
2/25/21		9 of 9	64	21	4 hra
3/11/21		9 of 9	26	6	1.5 hrs
3/25/21		8 of 9	22	7	1.5 hrs
4/8/21		7 of 9	26	18	2.5 hrs
4/22/21		8 of 9	20	12	1.5 hrs
5/13/21		8 of 9	10	2	0.5 hr
5/27/21		9 of 9	40	15	2.75 hrs
6/10/20		6 of 9	7	1	0.5 hr
6/24/21		9 of 9	26	20	2 hrs
7/8/21		8 of 9	29	17	2.5 hrs
7/22/21		6 of 9	8	0	0.25 hr
8/26/21		9 of 9	22	10	1.75 hrs

Approved Leaves of Absence Granted During the Period September 1, 2020 - August 31, 2021	
Commission	# Leaves granted
Animal Care Commission	0
Board of Library Trustees	0
Cannabis Commission	0
Children, Youth, and Recreation Commission	1
Civic Arts Commission	2
Commission on Aging	0
Commission on Disability	1
Commission on Labor	0
Commission on the Status of Women	3
Community Environmental Advisory Commission	0
Community Health Commission	0
Design Review Committee	0
Disaster and Fire Safety Commission	1
Elmwood BID Advisory Board	1
Energy Commission	0
Fair Campaign Practices Commission	1
Homeless Commission	1
Homeless Services Panel of Experts	1
Housing Advisory Commission	0
Human Welfare and Community Action Commission	1
Independent Redistricting Commission	8
Landmarks Preservation Commission	5
Loan Administration Board	1
Measure O Bond Oversight Committee	0
Mental Health Commission	0
Open Government Commission	1
Parks and Waterfront Commission	0
Peace and Justice Commission	0
Personnel Board	1
Planning Commission	4
Police Accountability Board (Began meeting 7/7/2021)	0
Police Review Commission (Ceased meeting after 6/23/2021)	8
Public Works Commission	4
Reimagining Public Safety (Began meeting 2/18/2021)	1
Solano Avenue BID Advisory Board	0
Sugar-Sweetened Beverage Product Panel of Experts	0
Transportation Commission	1
Youth Commission	1
Zero Waste Commission	5
Zoning Adjustments Board	14



Office of the City Manager

INFORMATION CALENDAR

October 26, 2021

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: Senior Center Survey Results – Fiscal Year 2021

INTRODUCTION

This report provides information on the results of a senior center satisfaction survey conducted by the Aging Services Division in January 2021 to measure satisfaction with senior center services both prior to, and during, the COVID-19 pandemic.

CURRENT SITUATION AND ITS EFFECTS

The Aging Services Division enhances the well-being and independence of older adults age 55 and older by offering social connections, activities, and lifelong learning. The Division operates two vibrant senior centers offering thousands of classes, events, workshops, and day trips. The senior centers also offer a nutritious weekday lunch for our older community members through our senior nutrition program.

During the COVID-19 pandemic, the Aging Services Division shifted its senior center operations to provide weekday lunches using a home-delivery model and complementary grab & go option for more mobile older adults who could pick up their food. The Division also conducted well checks by phone and Information and Assistance appointments by phone and internet.

Aging Services staff worked closely with the Office of the HHCS Director to develop performance measures using a Results-Based Accountability Framework. These performance measures will help staff measure the impact of senior center services in the Berkeley older adult community. The following are highlighted findings from the survey:

Satisfaction Before the COVID-19 pandemic:

- 93% of 314 total respondents are satisfied or very satisfied with overall experience at senior centers
- 92% of 314 total respondents are satisfied or very satisfied with recreational programs offered at senior centers

- 90% of total respondents are satisfied or very satisfied with food programs offered at senior centers
- 87% of total respondents are satisfied or very satisfied with transportation programs offered at senior centers

Impact of Services:

- 84% agreed or strongly agreed that, as a direct result of the senior centers, they feel more engaged in their community
- 92% agreed or strongly agreed that, as a direct result of the senior centers, they have improved health
- 82% agreed or strongly agreed that, as a direct result of the senior centers, they know where to find resources in the community

Satisfaction After Onset of the COVID-19 pandemic:

- 80% are satisfied or very satisfied with overall experience at senior centers
- 85% are satisfied with wellness checks by phone conducted by senior center staff, since senior centers were closed
- 77% are satisfied with Information and Assistance from staff, since senior centers were closed

On June 15, 2021 the South Berkeley Senior Center reopened to provide Information and Assistance services in-person. In July, in-person lunch dining service was added twice a week. Aging Services staff have collaborated closely with the Berkeley Adult School and volunteer instructors to re-introduce activities and exercise classes to the senior center, while simultaneously ensuring that masking and physical distancing protocols are followed. In-person participants are required to show proof that they are fully vaccinated against COVID-19 per current City of Berkeley Health Officer Order. Aging Services continues to maintain its Grab & Go option for lunches for those older adults not yet ready to participate in in-person dining. Grocery shopping trips on the senior center shuttle bus are also being offered 2-3 times weekly.

BACKGROUND

The Aging Services Division is one of five divisions in the Health, Housing, & Community Services Department. It consists of 27 FTE staff with a budget of approximately \$4.9 million. Approximately 47% of Aging Services Division staff are senior center staff.

In addition to the senior centers, the Aging Services Division also operates a case management unit, a nutrition program for older adults, and a transportation subsidy program. Case managers within the Division's Social Services Unit provide consultation, referral and linkage to community resources. The Division provides nutritious meals to home-bound seniors through the Meals on Wheels program. Taxi and van vouchers are offered to older adults and disabled Berkeley residents through the Division's Berkeley Rides paratransit services program to improve quality of life and access to community resources.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The food programs operating out of Berkeley's two senior centers use compostable food packaging containers.

POSSIBLE FUTURE ACTION

The Aging Services Division will continue to survey senior center members on an annual basis, to assess quality of our services and identify service gaps. Receiving ongoing input from our senior center members will enable Aging Services staff to allocate staffing and financial resources appropriately and efficiently.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Senior center activities and staffing are funded by both General Fund and grants from the Alameda County Area on Aging. If there are specific and important resources that are identified in the future as a result of service gaps and program needs, then Aging Services will attempt to procure these resources using Alameda County Area on Aging funding.

CONTACT PERSON

Tanya Bustamante, Aging Services Manager, HHCS, (510) 981-5178

Attachments:

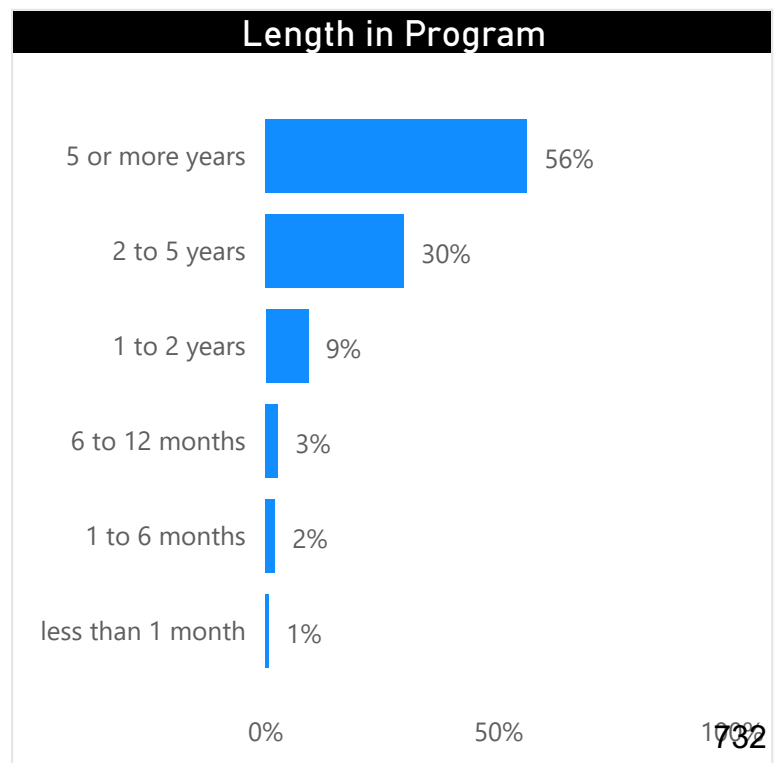
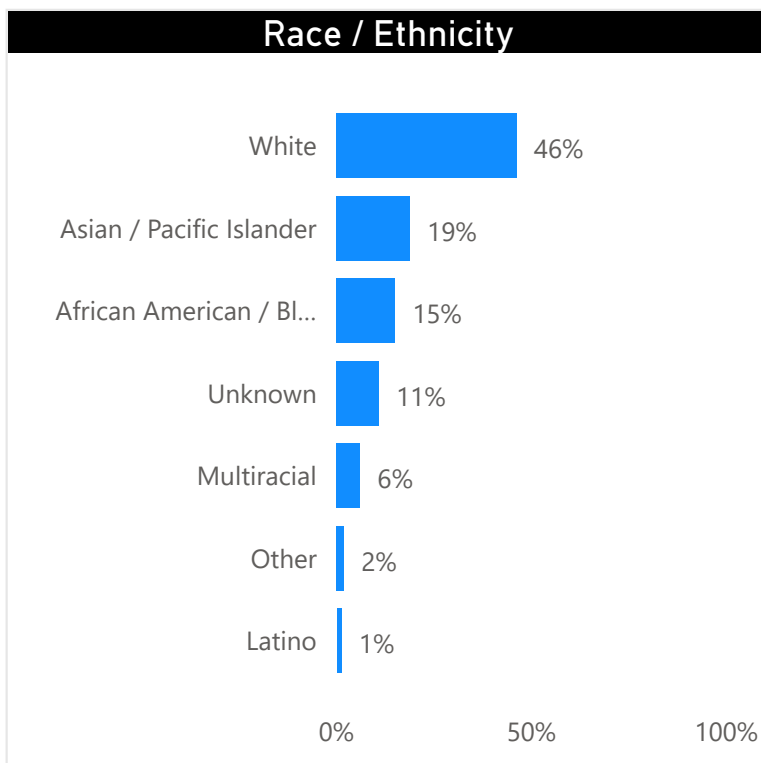
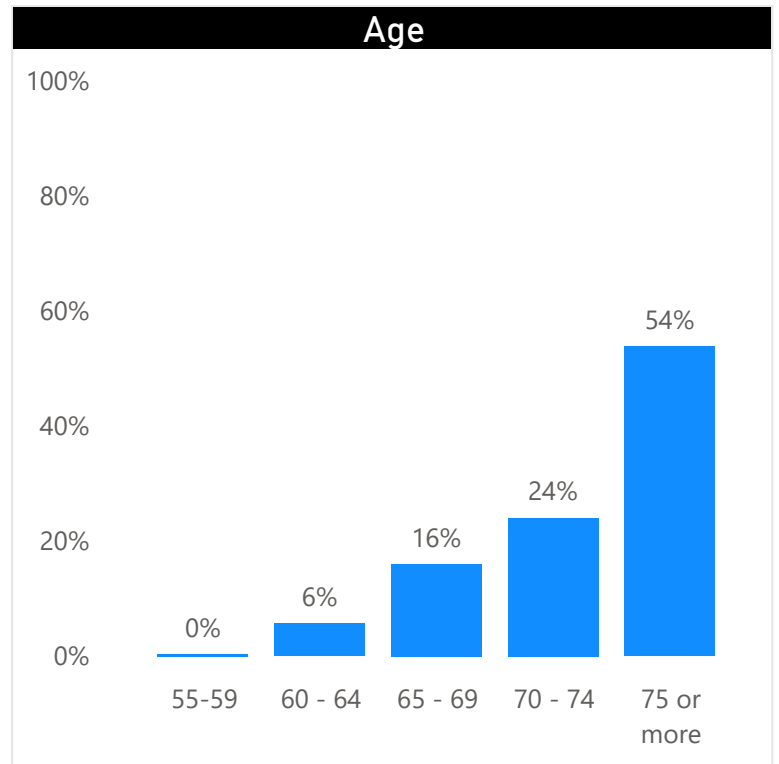
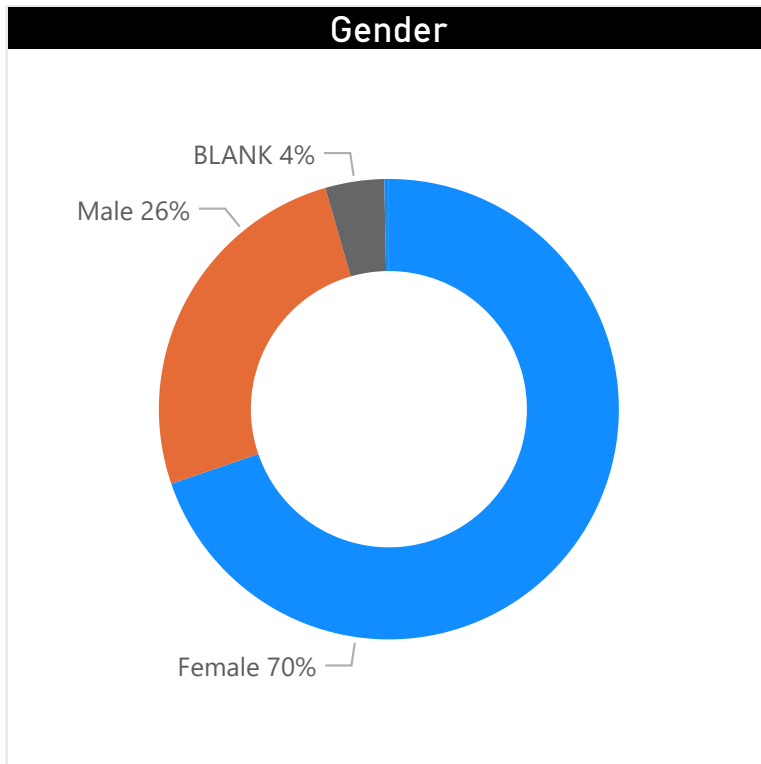
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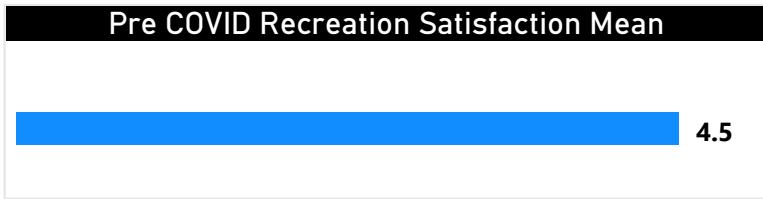
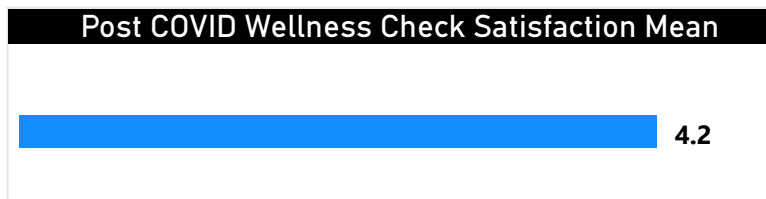
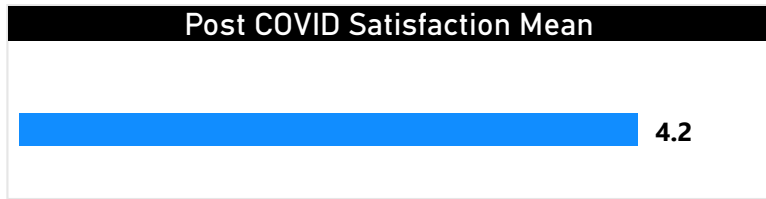
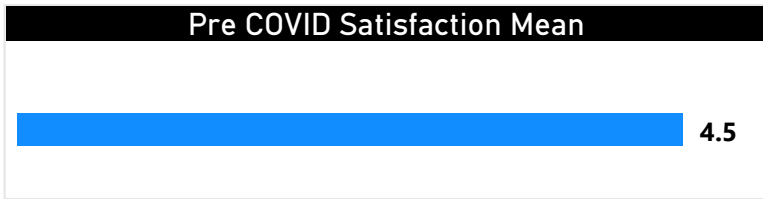
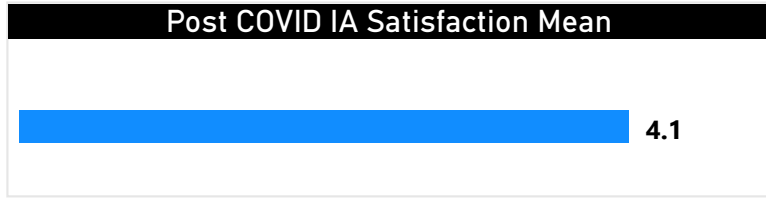
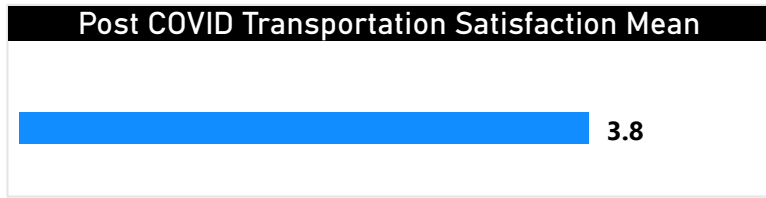
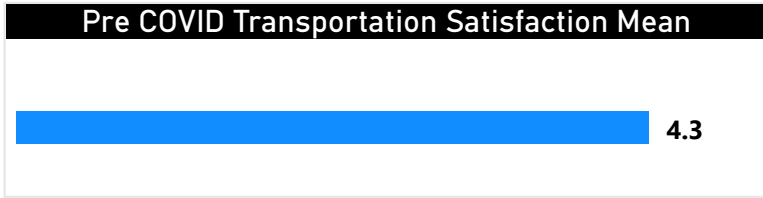
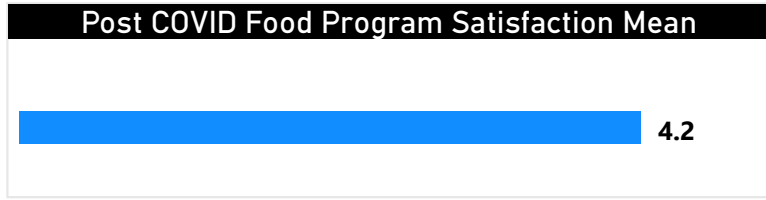
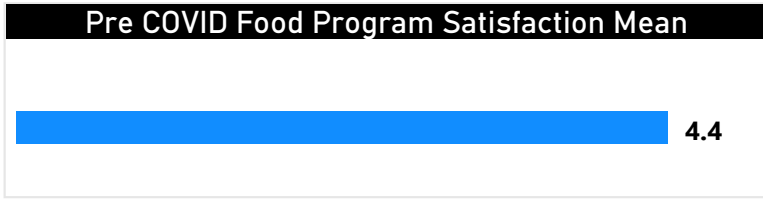
text here on survey

Number of Respondents

314

Survey Respondents



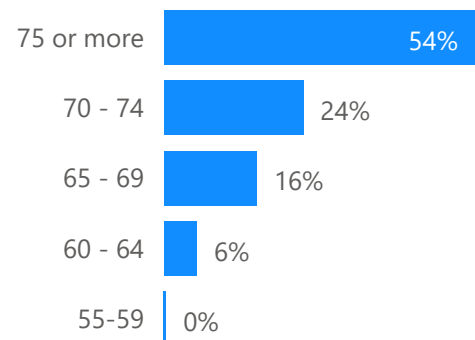
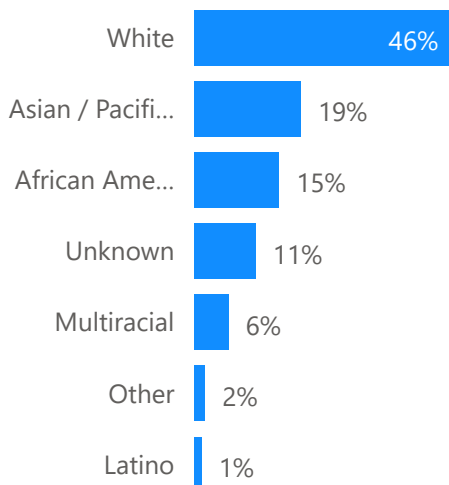
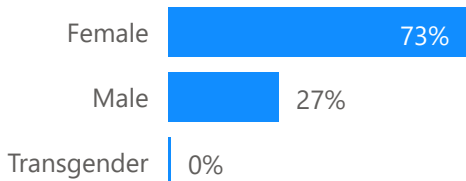


FILTER RESULTS ON PAGE BY GENDER, RACE/ETHNICITY, OR AGE

Gender

Race / Ethnicity

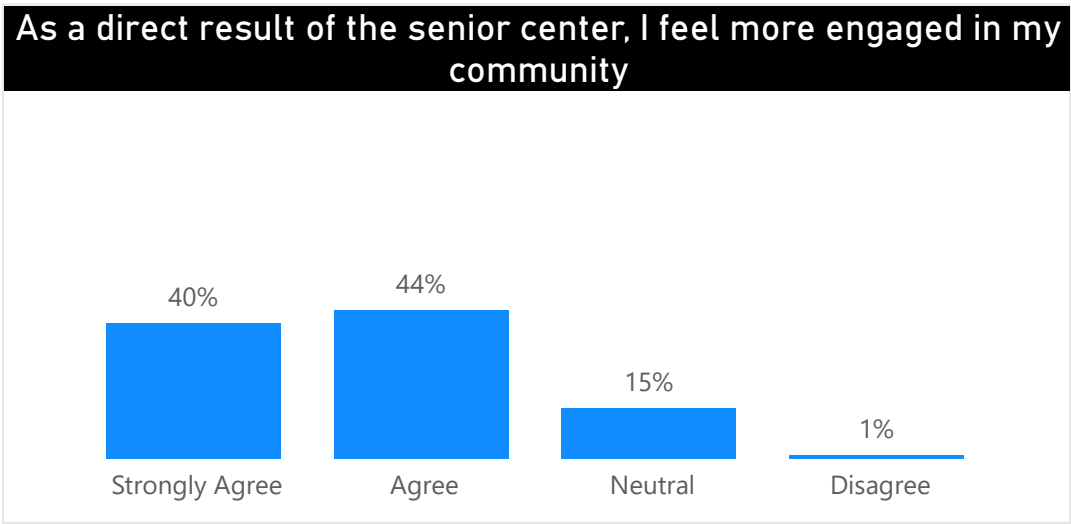
Age



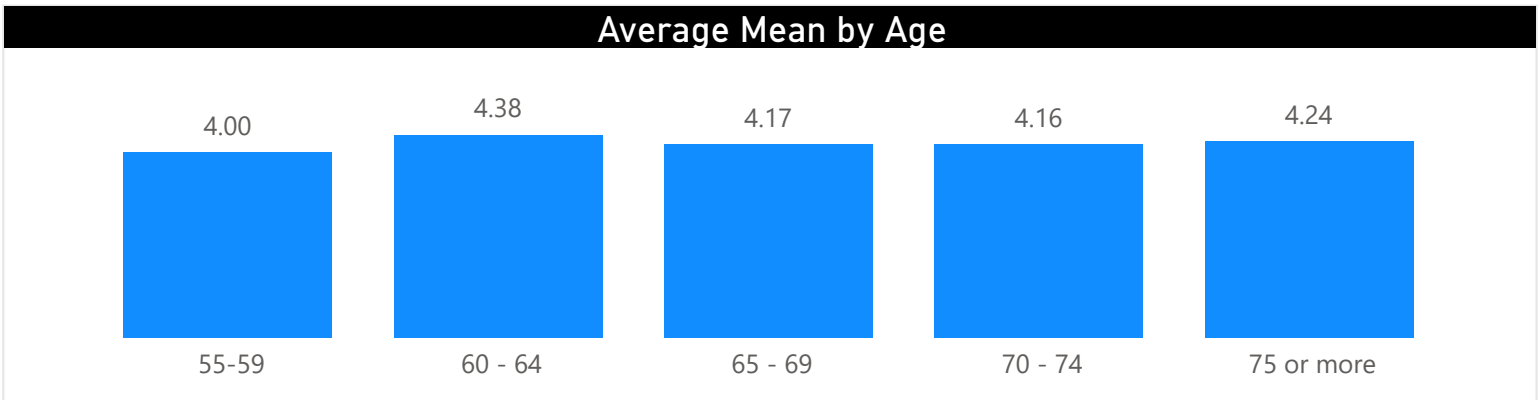
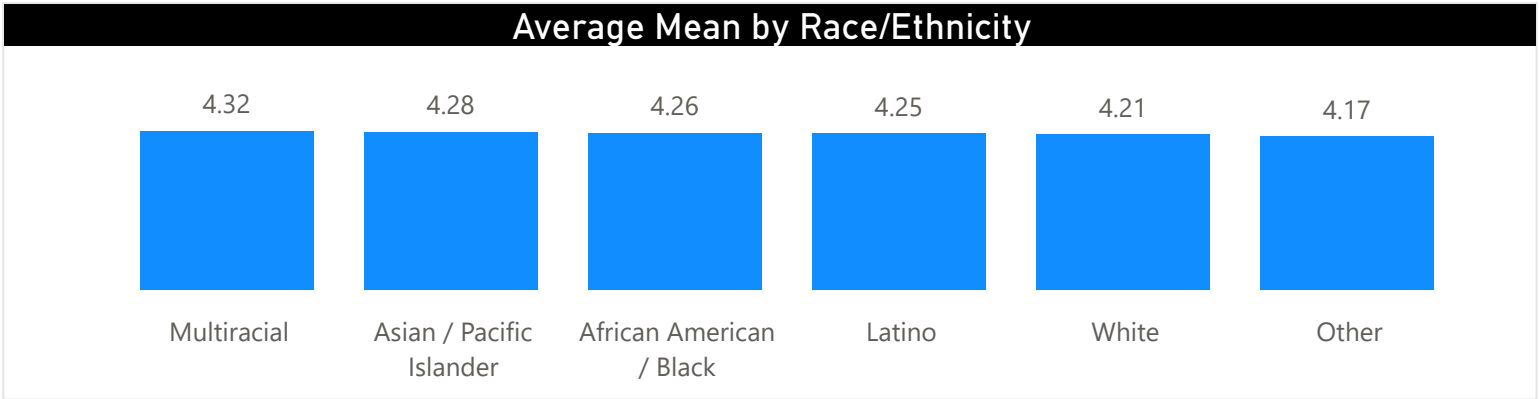
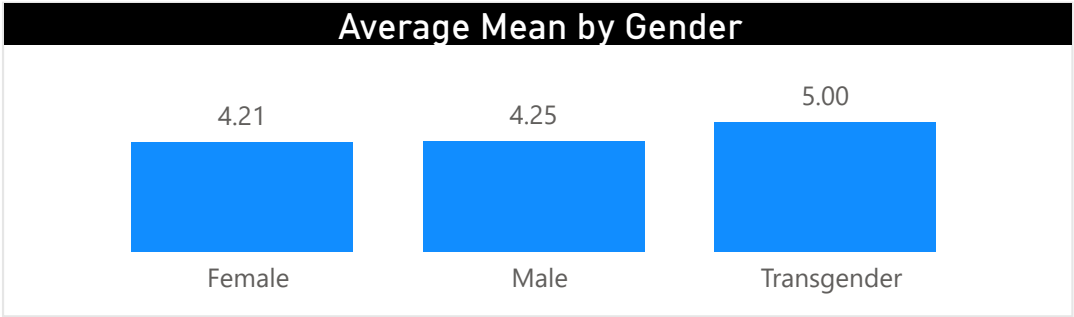
* You can filter results by particular gender, race/ethnicity, and age group. Click on the bar to see the results filtered for that group

Number of Respondents
301

Average Mean Response
4.23

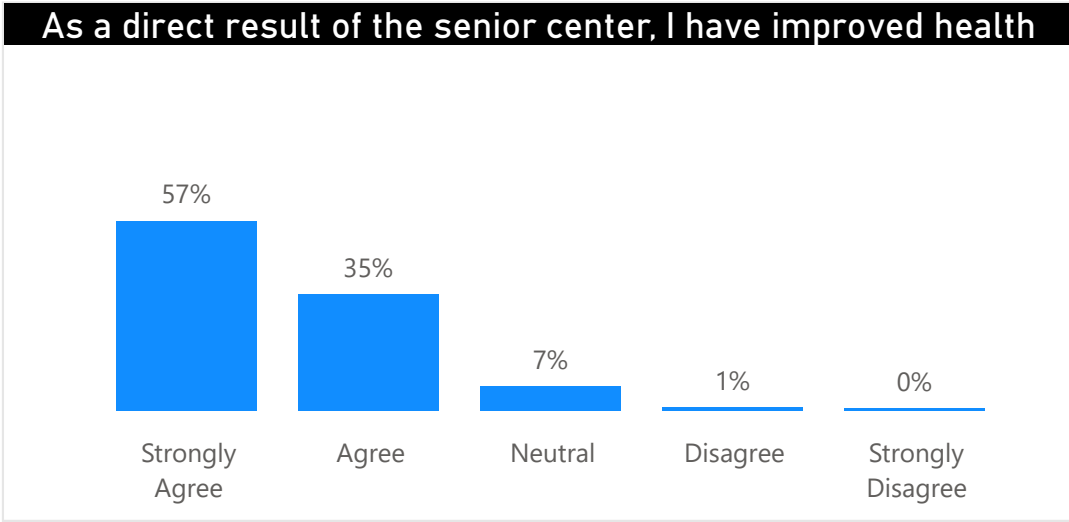


RESULTS DISAGGREGATED BY GENDER, RACE/ETHNICITY, AND AGE
click on any category to further filter results

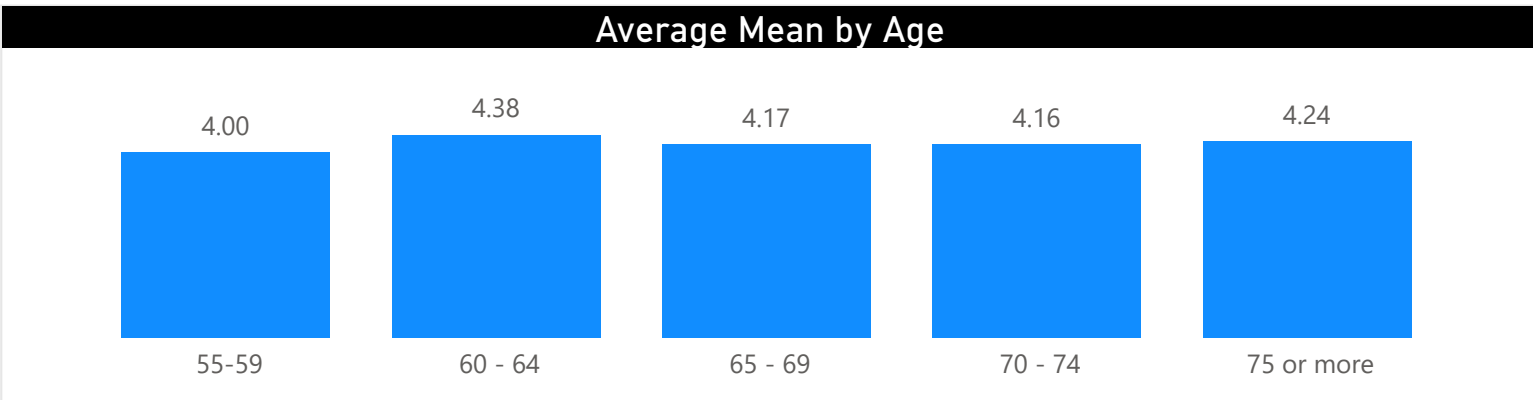
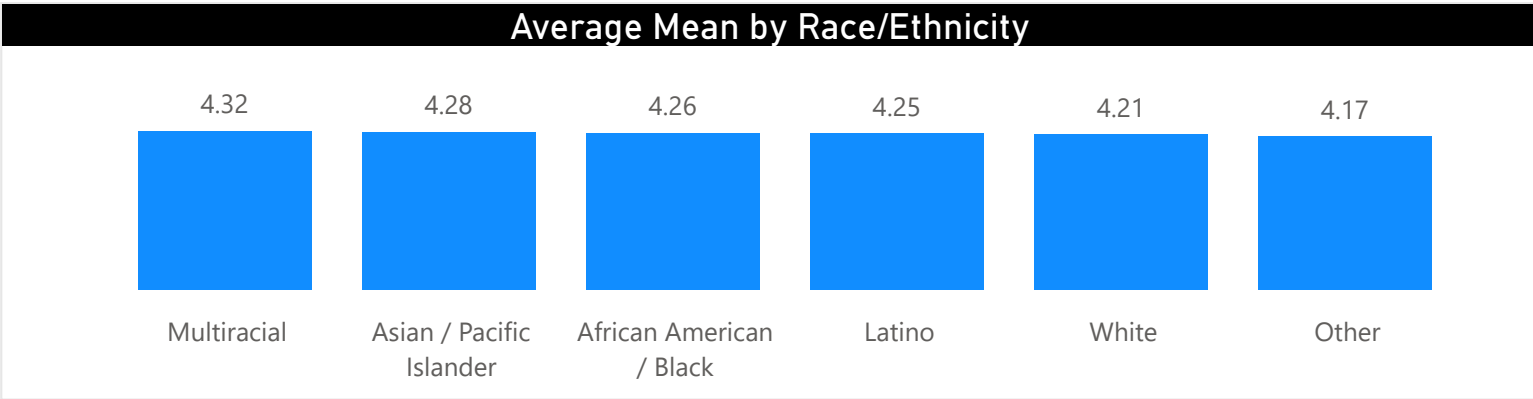
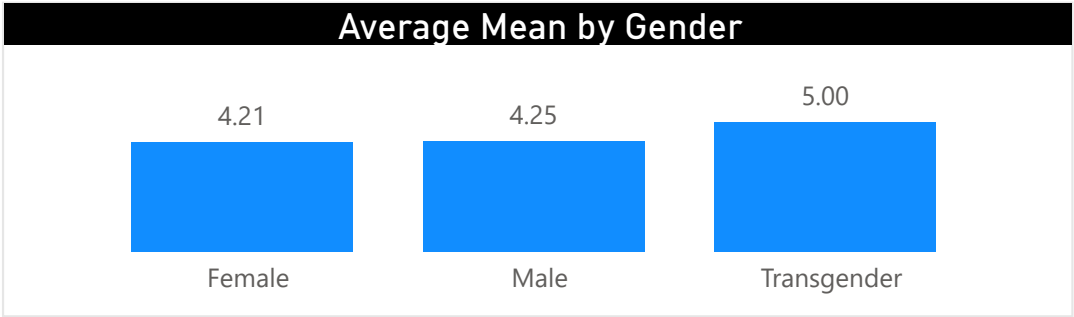


Number of Respondents
302

Average Mean Response
4.46

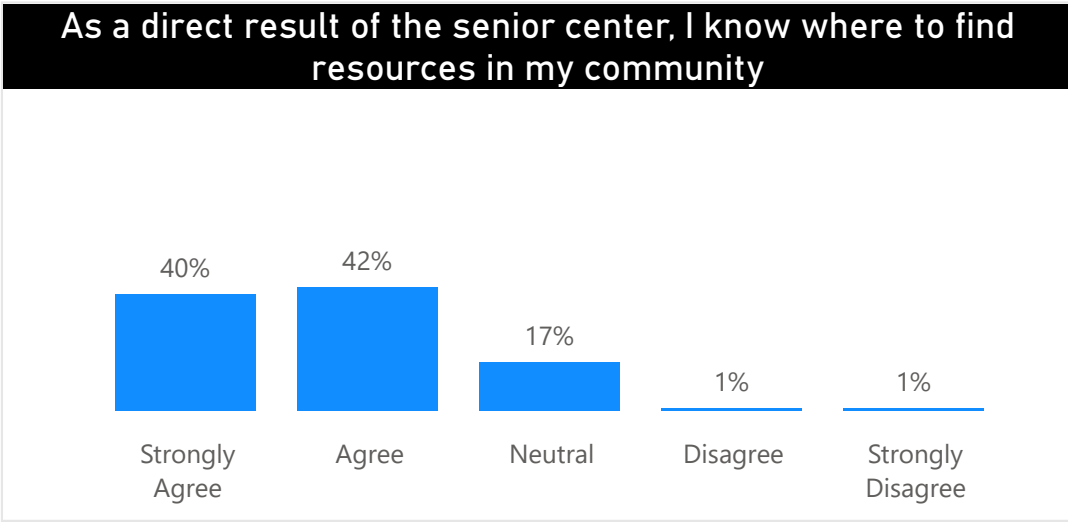


RESULTS DISAGGREGATED BY GENDER, RACE/ETHNICITY, AND AGE
click on any category to further filter results

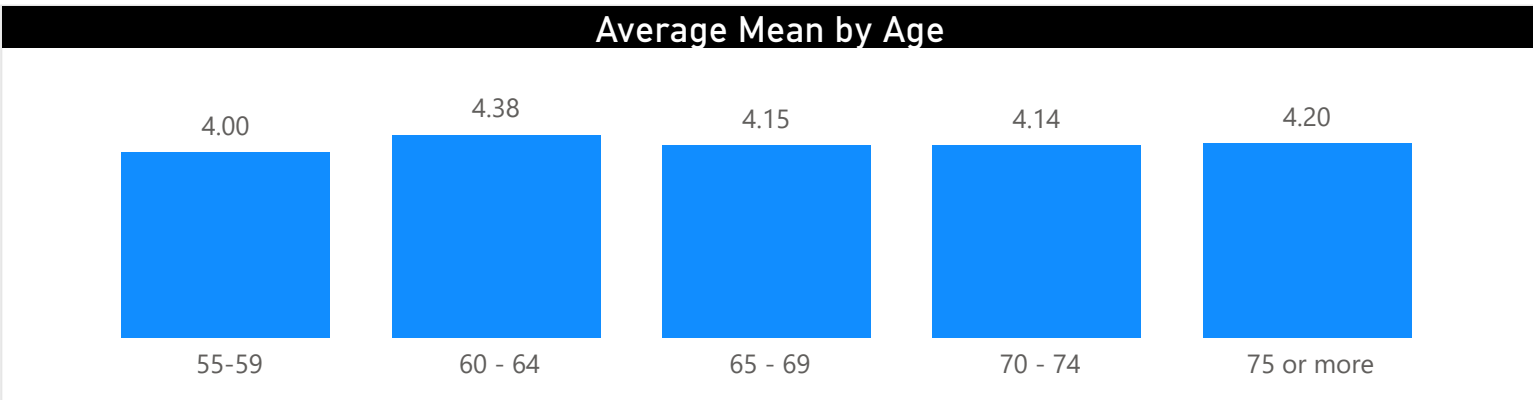
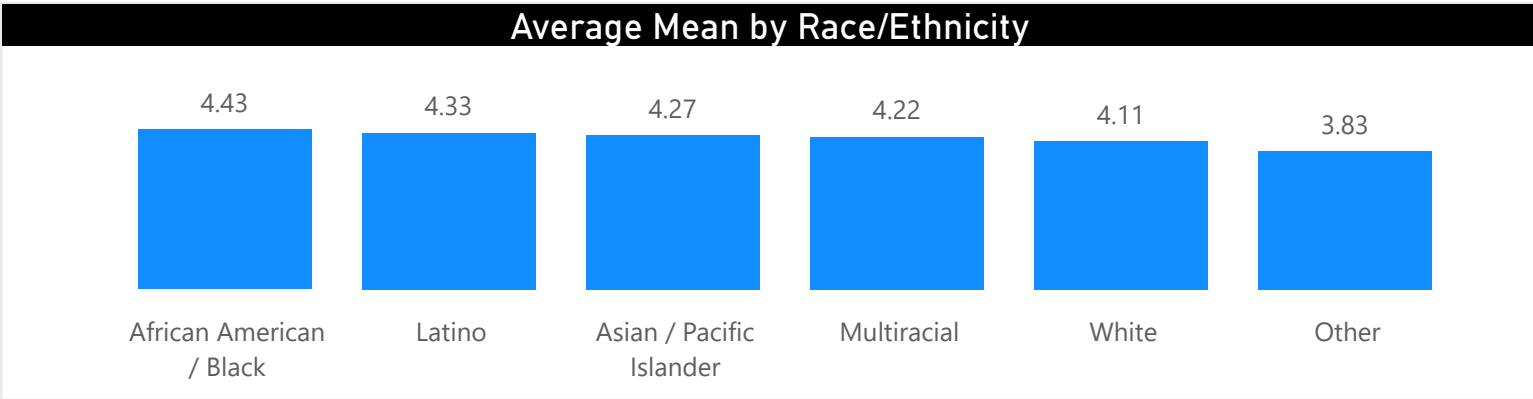
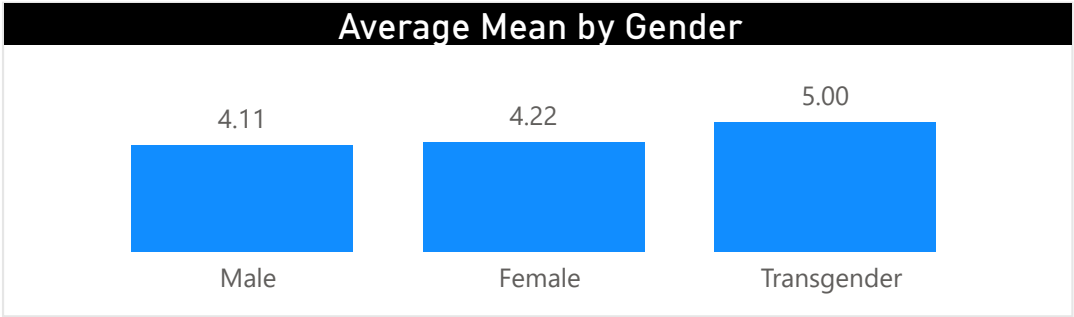


Number of Respondents
289

Average Mean Response
4.20

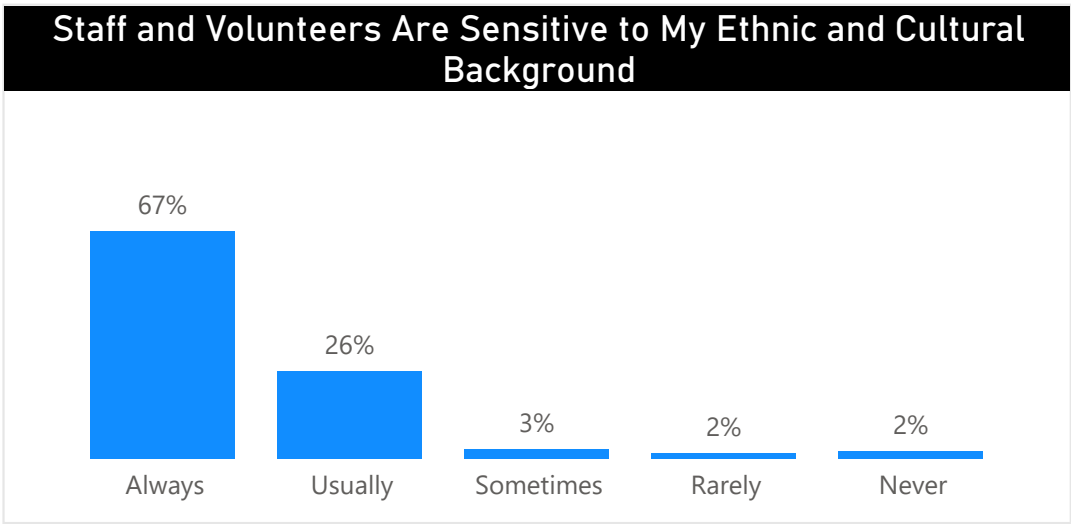


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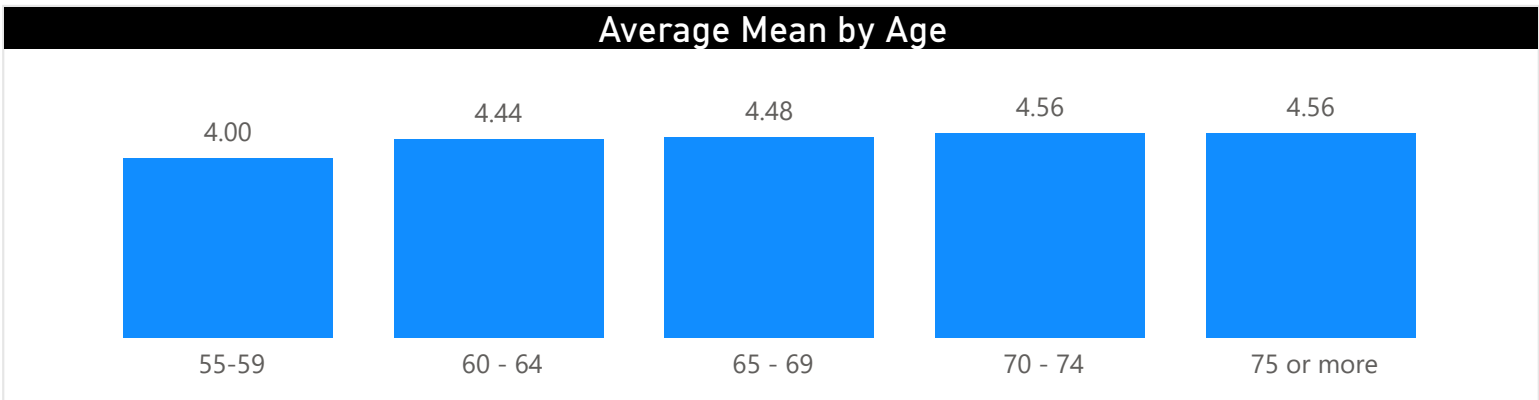
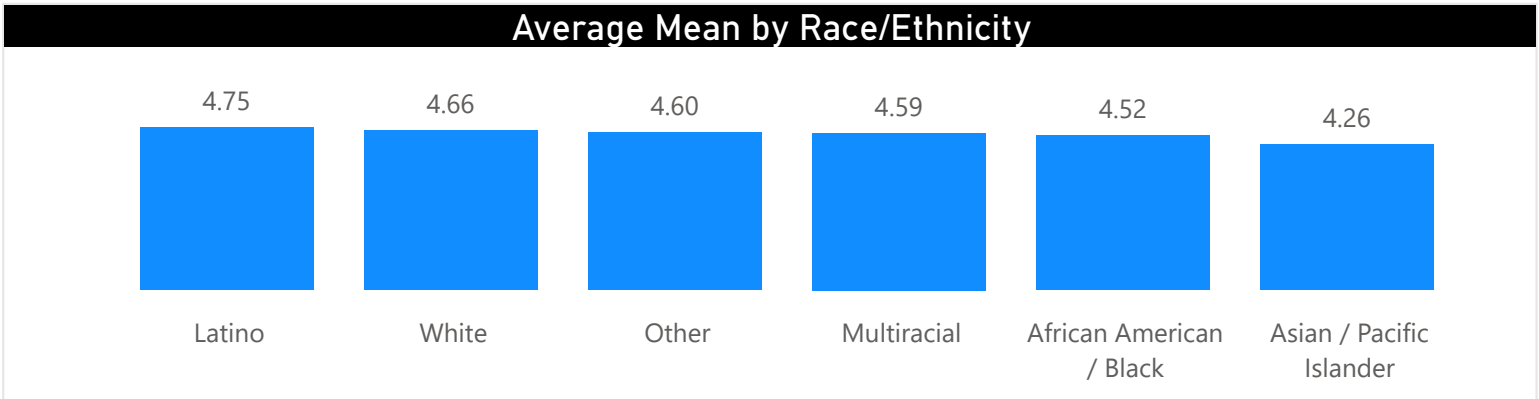
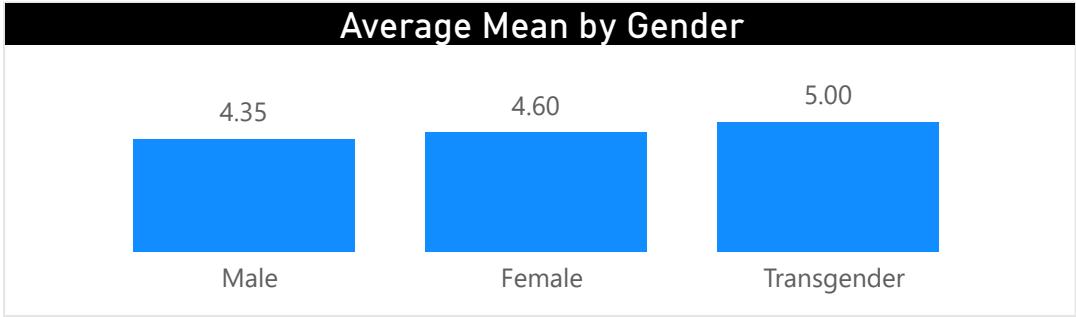


Number of Respondents
286

Average Mean Response
4.55

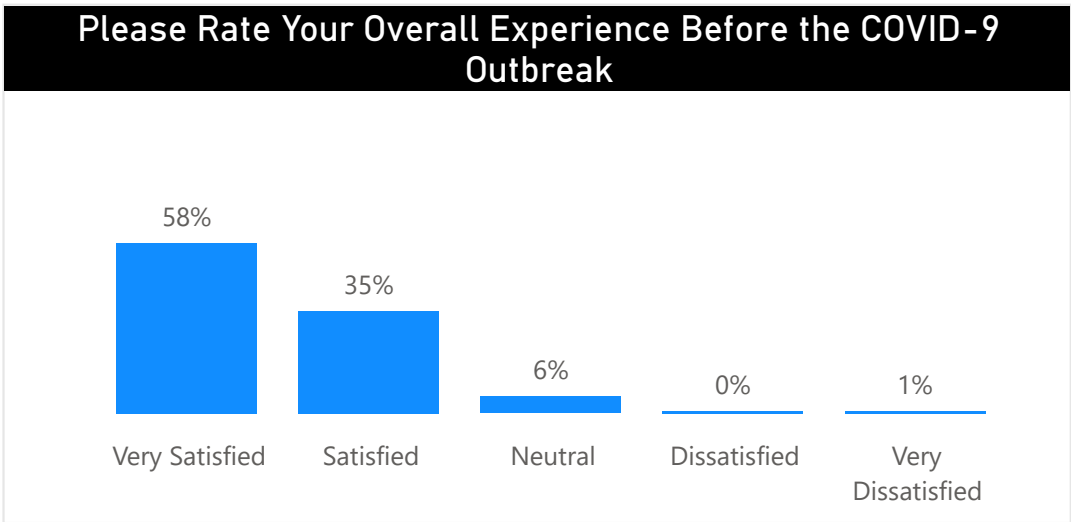


RESULTS DISAGGREGATED BY GENDER, RACE/ETHNICITY, AND AGE
click on any category to further filter results

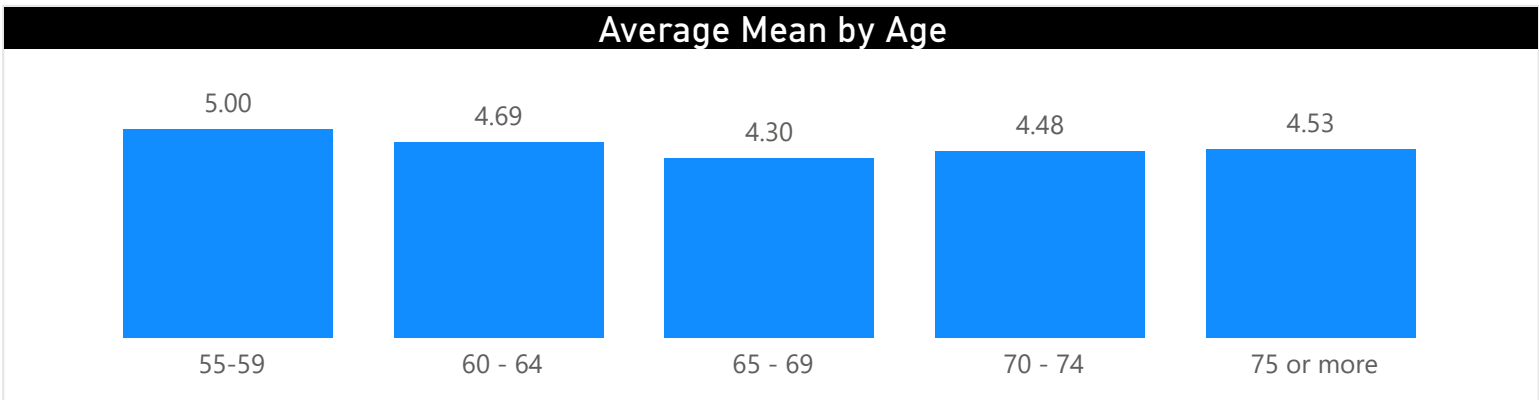
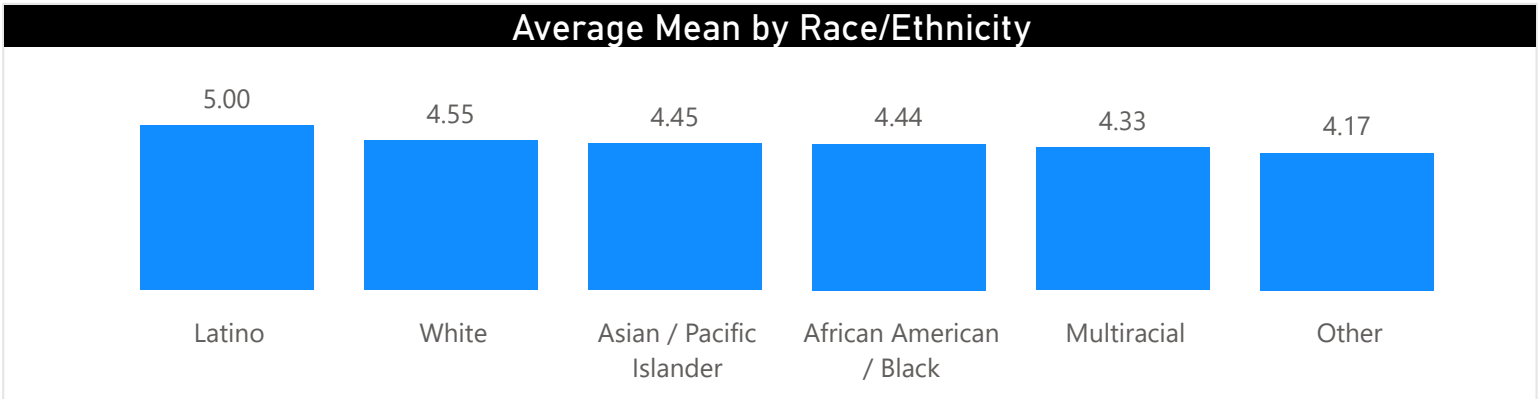
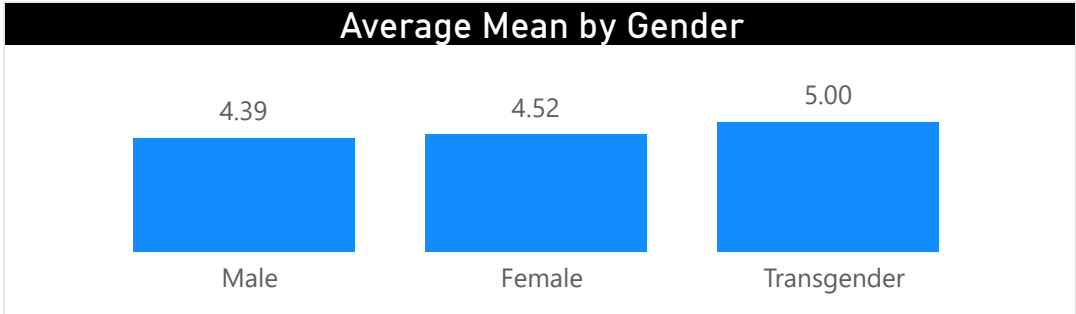


Number of Respondents
280

Average Mean Response
4.50

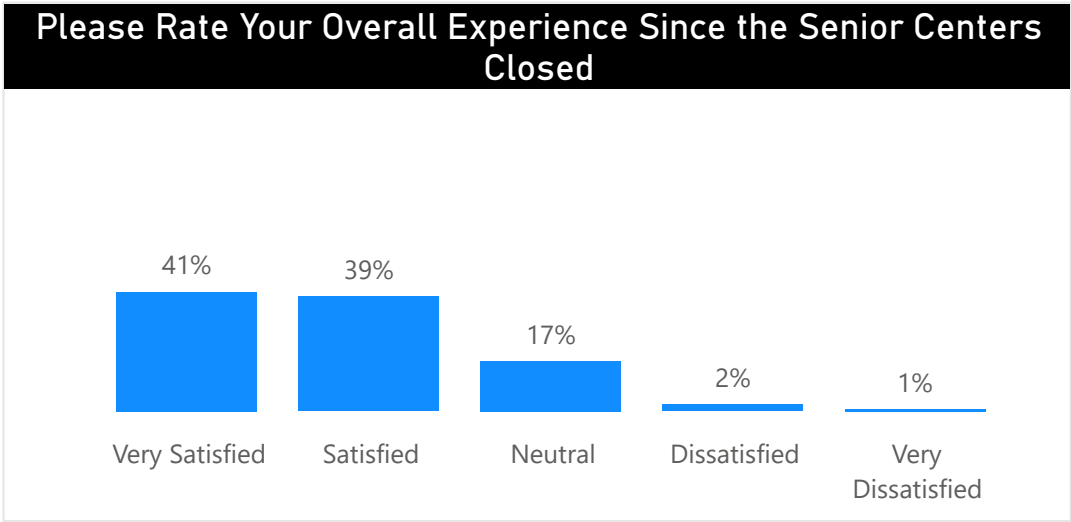


RESULTS DISAGGREGATED BY GENDER, RACE/ETHNICITY, AND AGE
click on any category to further filter results

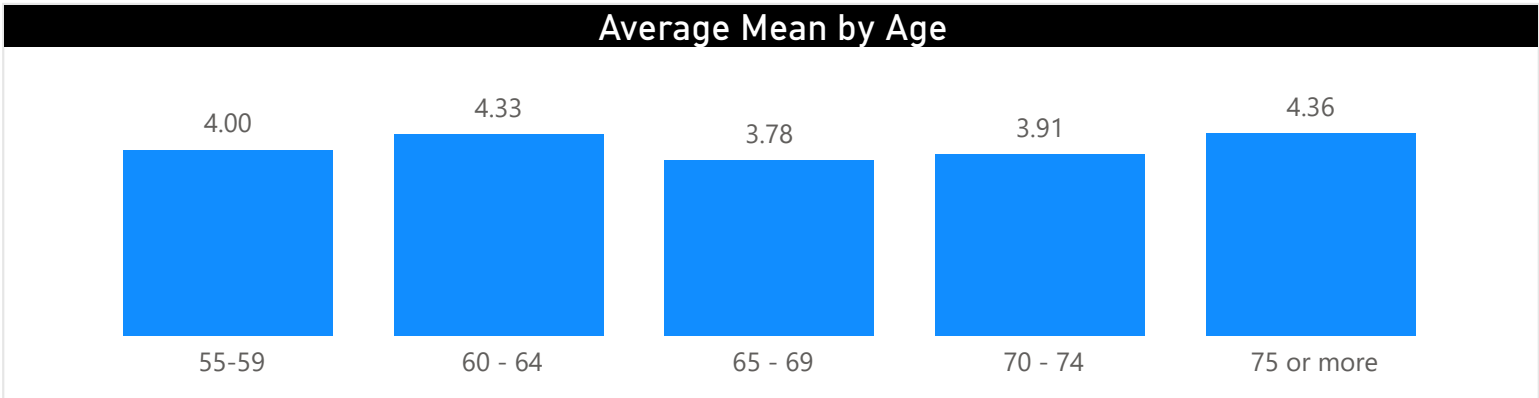
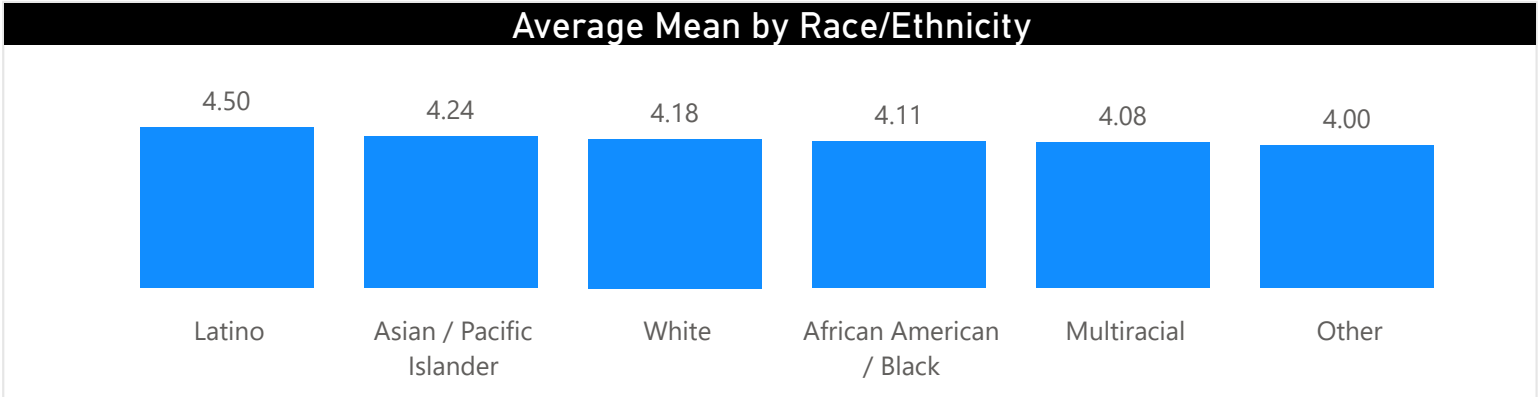
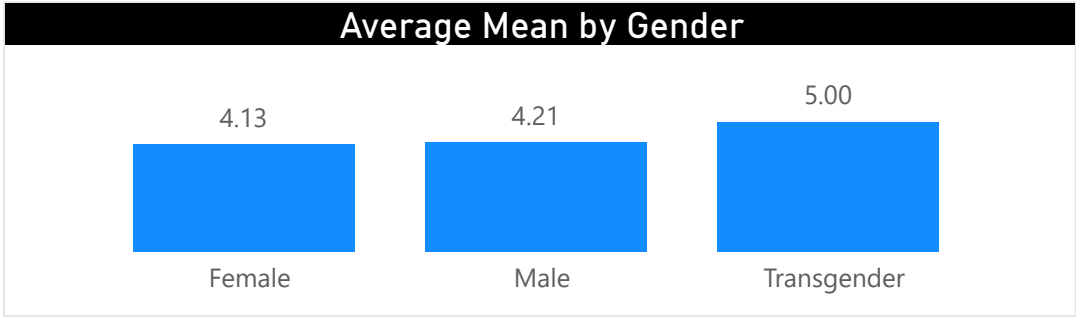


Number of Respondents
181

Average Mean Response
4.18



RESULTS DISAGGREGATED BY GENDER, RACE/ETHNICITY, AND AGE
click on any category to further filter results





Parks and Waterfront
Commission

INFORMATION CALENDAR

October 26, 2021

To: Honorable Mayor and Members of the City Council
 From: Parks and Waterfront Commission
 Submitted by: Gordon Wozniak, Chair, Parks & Waterfront Commission
 Subject: Parks and Waterfront Commission Work Plan for 2021-2022

INTRODUCTION

The Parks and Waterfront (P&W) Commission is responsible for reviewing and advising the City Council on the policies, projects, planning efforts, activities, funding, and the physical condition of parks, pools, camps, recreation centers, the Marina, and public greenery.

CURRENT SITUATION AND ITS EFFECTS

During the past year, the major task of the Parks and Waterfront Commission was to work with staff and the Public Works Commission to develop recommendations for Phase 2 Measure T1 project funding. These recommendations were completed in December 2020 and submitted to the City Council.

The attached work plan outlines the specific activities and deliverables the Parks and Waterfront Commission will work on over the next year. The members of the Commission developed this work plan in consultation with City staff.

At its meeting on September 8, 2021 the Parks and Waterfront Commission voted to approve the attached workplan and send it to the City Council as follows: M/S/C: McGrath/Kamen/U) Ayes: Cox; Diehm; Kamen; Kawczynska; Landoni; McGrath; Srioudom; Wozniak; Noes: None; Abstain: None; Absent: None.

BACKGROUND

In 2016, the City Council directed all commissions to submit annual work plans to the City Council at the beginning of each fiscal year.

ENVIRONMENTAL SUSTAINABILITY

Recently, the Parks Department replaced its manually operated irrigations system in City Parks with a computer-controlled system, which reduced water usage by 40%. Recent renovations of park buildings have incorporated energy efficiency improvements and where feasible solar panels.

POSSIBLE FUTURE ACTION

The projects contemplated in the attached work plan could result in recommended actions which, if subsequently adopted by the City Council, would entail a variety of costs and benefits.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

To be determined.

CONTACT PERSON

Roger Miller, Commission Secretary, (510) 981-6704

Attachments:

1: Parks and Waterfront Commission's 2021-22 Work Plan

Parks and Waterfront Commission 2021-2022 Work Plan

MISSION

The Parks and Waterfront Commission advises the City Council on the policies, projects, planning efforts, activities, and funding that impact the physical condition of parks, pools, camps, recreation centers, the Marina, and public greenery. A major goal is to ensure that marginalized and underrepresented communities have equitable access to Parks, Camps, and Recreational facilities

STRATEGIC OBJECTIVES

The Parks and Waterfront Commission will work on the following Objectives over the next year:

- I. Create a vision and explore funding options for park and waterfront improvements that could not be funded under T1: such as a more vibrant park and habitat at Aquatic Park, restoration or replacement of the fishing pier, improvements at San Pablo Park, and a more resilient shoreline.
- II. Maintain and improve parks, recreation, and camp facilities, and associated programming, so that they can be enjoyed by all residents. Phase 2 of Measure T1 funded projects are crucial to this effort.
- III. Refresh the Berkeley Waterfront by addressing its unfunded capital and operating needs. Increase recreational opportunities and improve ADA accessibility at all parks.
- IV. Develop a resilient vision that protects our waterfront parks from sea level rise.

ACTIVITIES

To advance each of these objectives, the Commission will focus on the following specific activities.

Objective A. To maintain and improve park, recreation, and camp facilities.

1. Monitor the design and construction of Phase 2 Measure T1 Projects

- *Deliverables:*
 - Review designs and monitor construction progress
 - Participate in public outreach

2. Monitor the progress in rebuilding and reopening Tuolumne Camp

- *Deliverables:*
 - Regularly review progress at Commission meetings

3. Civic Center Park Group

- *Deliverables:*
 - *Appoint a liaison from Commission*
 - *Participate in discussions and report back to Commission*
- Lead Commissioner: Diehm

4. Promote Greening Berkeley

- *Deliverables:*
 - Develop ideas for softening the city's hardscape
- *Lead Commissioners:* Landon and Diehm

5. Adopt a Spot

- Deliverable:
 - Advocate for creating and financing an Adopt a Spot program in parks
- *Lead Commissioners:* Diehm and Srioudon

Objective B. To refresh the Berkeley Waterfront by addressing its unfunded capital and operating needs, to increase recreational opportunities, to achieve financial sustainability for the Marina Fund.

1. BMASP Process

- *Deliverables:*
 - Develop a vision for the Waterfront that preserves open space, recreational, and waterfront activities. Continue to support nonprofits that provide low-cost access to waterfront recreation.
 - Evaluate proposed developments for impact on existing programs and progress towards the goal of achieving a sustainable Marina Fund.
- *Lead Commissioners:* McGrath, Brennan, Kamen, and Landoni

2. Pier/Ferry Process

- *Deliverables:*
 - Evaluate siting options and the impacts on traffic, parking, recreation, and revenues.
 - Evaluate the impact of new uses at the Waterfront and the potential to create new recreational opportunities, while protecting existing access and uses.
- *Lead Commissioners:* Kamen, McGrath, and Wozniak

3. Cesar Chavez Park

- *Deliverables*
 - Establish land uses and accessible trails for the undeveloped portion of the Cesar Chavez Park.
- *Lead Commissioners:* Kawczynska, Diehm, and Srioudon.

Objective C. Develop a resilient vision that protects our waterfront parks from sea level rise.

1. Develop a regional vision for resilience from the Albany Bulb to the Bay Bridge in cooperation with Albany, Emeryville, East Bay Regional Park District, and Caltrans.

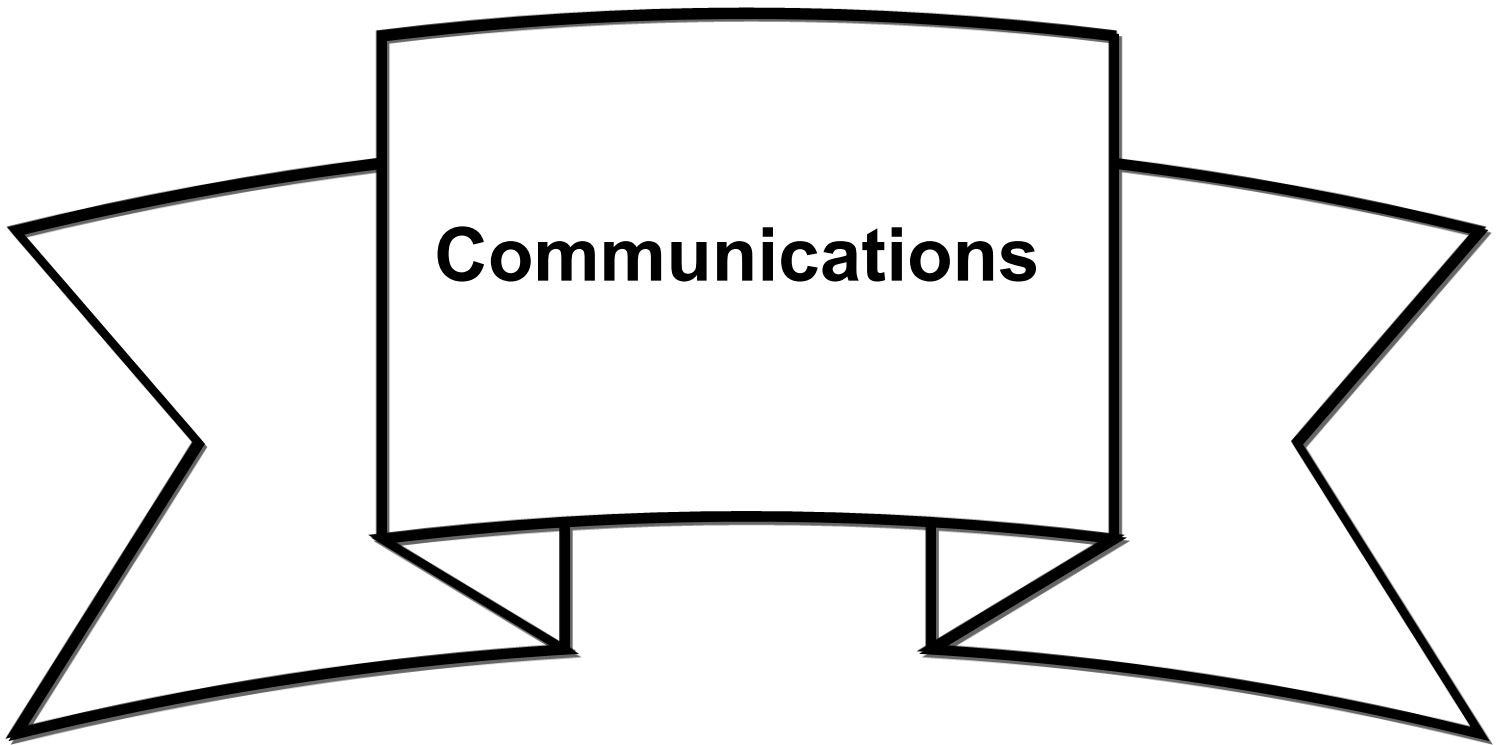
- *Deliverables:*
 - One or more meetings and a graphic for a resilient shoreline
- *Lead Commissioners:* McGrath, Landoni, and Kawczynska

2. Develop a Plan for further restoration of Aquatic Park that takes advantage of the closure of the Potter Street on-ramp and includes a hydraulic analysis that balances flood control, habitat enhancement, and recreation.

- *Deliverables*
 - Grant application for funding by the San Francisco Bay Restoration Authority
- *Lead Commissioners:* McGrath, Diehm, and Kawczynska

3. Identify areas along the Berkeley Waterfront, where swimming can safely be encouraged, and enhanced by measures such as restoration of sandy beaches.

- *Deliverables*
 - Mapping of beach enhancement opportunities in the update to the Marina Plan and in any updates to the East Shore State Park Plan.
- *Lead Commissioners:* Landoni and Srioudon



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Berkeley, CA 94704
(510) 981-6900

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