

AGENDA

BERKELEY CITY COUNCIL MEETING

Tuesday, July 11, 2023

6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

TELECONFERENCE LOCATION - 1404 LE ROY AVE, BERKELEY, CA 94708

TELECONFERENCE LOCATION - 18315 RAY'S ROAD, CABIN 5, PHILO, CA 95466

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 – MARK HUMBERT

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. For in-person attendees, face coverings or masks that cover both the nose and the mouth are encouraged. If you are feeling sick, please do not attend the meeting in person.

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

*Remote participation by the public is available through Zoom. To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL: <https://cityofberkeley-info.zoomgov.com/j/1607533030>. 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 **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and enter Meeting ID: **160 753 3030**. 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 meeting will be recorded and all rules of procedure and decorum apply for in-person attendees and those participating by teleconference or videoconference.

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

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. 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:

Land Acknowledgement Statement: *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

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. Persons attending the meeting in-person and wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting. 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 or Information 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.

Consent 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. FY 2024 Tax Rate: Fund Fire Protection and Emergency Response and Preparedness (Measure GG)**
From: City Manager, City Manager
Recommendation: Adopt second reading of Ordinance No. 7,877-N.S. setting the FY 2024 tax rate for funding Fire Protection and Emergency Response and Preparedness in the City of Berkeley at the rate of \$0.06062 (6.062 cents) per square foot of improvements for dwelling units and setting the rate for all other property at \$0.09173 (9.173 cents) per square foot of improvements.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300, David Sprague, Fire, (510) 981-3473
- 2. FY 2024 Special Tax Rate: Fund the Provision of Library Services**
From: City Manager, City Manager
Recommendation: Adopt second reading of Ordinance No. 7,878-N.S. setting the FY 2024 tax rate for funding the provision of Library Services in the City of Berkeley at \$0.2698 (26.98 cents) per square foot for dwelling units and \$0.4080 (40.80 cents) per square foot for industrial, commercial, and institutional buildings.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300, Tess Mayer, Library, (510) 981-6100
- 3. FY 2024 Annual Appropriations Ordinance**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,879-N.S. adopting the FY 2024 Annual Appropriations Ordinance (AAO) in the amount of \$728,631,293 (gross appropriations) and \$621,229,929 (net appropriations).
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

Consent Calendar

- 4. Adopting a temporary exemption from the collection of taxes under BMC Chapter 9.04.136(D): Tax Rate for Non-Medical and Medical Cannabis Businesses**
From: Councilmember Bartlett (Author), Mayor Arreguin (Co-Sponsor), Councilmember Harrison (Co-Sponsor), Councilmember Humbert (Co-Sponsor)
Recommendation: Adopt second reading of Ordinance No. 7,880-N.S. adopting a temporary exemption (per 9.04.136(D)) on the collection of the taxes for all non-medical and medical cannabis businesses, retroactive to January 2023 and ending July 2025; Waive any late penalties that may have accrued since January 2023; any and all tax payments already made to the City for Q1 2023 will apply as a credit against a future tax or fee payment to the City.
First Reding Vote: All Ayes.
Financial Implications: Loss of tax revenue
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
- 5. Encampment Resolution Funding Grant Award**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to receive a \$4,931,058 Encampment Resolution Funding Round 2 grant award from the State of California, and to enter into contract and all necessary amendments with the State of California resulting from this funding.
Financial Implications: See report
Contact: Peter Radu, City Manager's Office, (510) 981-7000
- 6. Urgency Ordinance for Leasing the Real Property at 1619 University Avenue**
From: City Manager
Recommendation: Adopt an Urgency Ordinance to enter into a lease for the real property located at 1619 University Avenue, Berkeley for a term of 60 months.
Financial Implications: See report
Contact: Peter Radu, City Manager's Office, (510) 981-7000
- 7. Contract: Insight Housing (formerly Berkeley Food and Housing Project) to operate interim housing at the Super 8**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and all necessary amendments with Berkeley Food and Housing Project to operate an interim housing program at the Super 8 Motel (1619 University Ave.) in an amount not to exceed \$7,295,635 for the period of August 1, 2023 to July 31, 2028
Financial Implications: See report
Contact: Peter Radu, City Manager's Office, (510) 981-7000

Consent Calendar

8. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on July 11, 2023

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 - \$482,500

Contact: Henry Oyekanmi, Finance, (510) 981-7300

9. Contract: Strategic Economics and Street Level Advisors for Affordable Housing Requirements Economic Feasibility Analysis

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with Strategic Economics as a Contractor and Street Level Advisors as a subcontractor, to conduct an Economic Feasibility Analysis of the Affordable Housing Requirements for the Department of Health, Housing, and Community Services (HHCS) from July 15, 2023 to July 15, 2024 in an amount not to exceed \$150,000.

Financial Implications: See report

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

10. Contract No. 32300134 Amendment: Bonita House for Specialized Care Unit Provider

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to amend Contract No. 32300134 with Bonita House to add \$68,000 of Mental Health Services Act (MHSA) funding for the Specialized Care Unit for a not-to-exceed total of \$4,568,000.

Financial Implications: See report

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

11. Contract No. 321001100 Amendment: JotForm, Inc. for a HIPAA Compliant Platform to Support Clinical Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32100110 and any subsequent amendments or extensions with the JotForm, Inc. by adding \$53,424, bringing the contract total to an amount not to exceed \$109,218 and extending the end date through May 12, 2026.

Financial Implications: See report

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

Consent Calendar

- 12. California Department of Housing and Community Development (HCD) Prohousing Designation Program Application**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City of Berkeley's application to and participation in the California Department of Housing and Community Development (HCD) Prohousing Designation Program.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 13. Contract No. 32000226 Amendment: MidAmerica Administrative & Retirement Solutions, Third Party Administrator for SRIP I Disability, and Health Reimbursement Accounts for Retiree Health Premium Assistance Plan Reimbursements, and Police Employees Retiree Income Plan**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract amendment to Contract No. 32000226 with MidAmerica Administrative & Retirement Solutions for administration of the SRIP I Disability, Retiree Health Premium Assistance Plan (RHPAP) Health Reimbursement Account (HRA), and Police Employees Retiree Income Plans (PERIP) for the period covering January 1, 2021 through December 31, 2025, for a total cost not to exceed \$233,736.
Financial Implications: See report
Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800
- 14. Contract No. 32300158 Amendment: AppleOne Employment Services for Temporary Staffing Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32300158 with AppleOne Employment Services for temporary staffing services, to cover the period February 1, 2023 to June 30, 2025, for a total cost not to exceed \$750,000.
Financial Implications: Various Funds - \$750,000
Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800
- 15. Revisions to the Unrepresented Employee Manual**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute changes to the Unrepresented Employee Manual that (1) effectuates merit raises for employees on salary ranges on their anniversary date in their current classification; (2) aligns vacation accrual, longevity pay rates, vacation sell-back policies, and a certification differential for the Fire Chief, the Police Chief, and their deputies with the corresponding provisions of the Memoranda of Understanding with the Berkeley Fire Fighters Association and the Berkeley Police Association; and (3) includes Accounting Office Specialists III among the classifications that qualify for the City Manager Department Differential.
Financial Implications: See report
Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

Consent Calendar

16. Supplemental Military Leave Compensation Policy

From: City Manager

Recommendation: Adopt a Resolution extending Resolution No. 63,646-N.S. to offer the City's supplemental military leave compensation benefit retroactively from June 1, 2019 to June 30, 2025 to provide additional wages to supplement an employee's military pay and allowances for a period not to exceed two (2) years that must be taken within 36 months of the leave request for employees called up to involuntary active military service. To receive the retroactive payment the employee must have been employed with the City of Berkeley at the time of active duty and remained employed with the City of Berkeley at the time of payment.

Financial Implications: See report

Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

17. Accepting grant funds from the Alameda County Transportation Commission for the Berkeley Pier Water Transportation / Ferry Project

From: City Manager

Recommendation: Adopt a Resolution accepting the Alameda County Transportation Commission grant allocation for the Berkeley Pier Water Transportation/ Ferry Project in the amount of \$5,138,685, confirming the City's commitment to the Alameda County Transportation Commission grant requirements, and authorizing the City Manager to execute the associated grant agreement and amendments.

Financial Implications: Grant Revenue - \$5,138,685

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

18. Contract No. 32000188 Amendment: GSI Environmental Inc. for On-Call Environmental Consulting Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000188 with GSI Environmental Inc. for on-call environmental consulting services to increase the contract amount by \$75,000 for a new not to exceed amount of \$225,000 and extend the contract term from December 20, 2023 to June 30, 2025.

Financial Implications: See report

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

Consent Calendar

19. Contract No. 32300022 Amendment: Public Safety Family Counseling Group Inc. for Additional Critical Incident Stress Management (CISM), Education and Counseling Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32300022 with Public Safety Family Counseling Group Inc. to provide additional CISM Peer Support Team support, education and counselling services, for a total amount not to exceed \$150,000 for a total contract amount not to exceed \$200,000, and extending the term through June 30, 2026.

Financial Implications: See report

Contact: Jennifer Louis, Police, (510) 981-5900

20. Conduct a Study on the City's History of Discriminatory Actions in Housing Policies/Programs

From: Housing Advisory Commission

Recommendation: Conduct a study that is comprehensive of the following actions: - Document the city of Berkeley's past discriminatory actions in housing policies and programs that adversely impacted the Black community and its ability to remain and grow in the city, build inter-generational wealth, and fully realize the benefits of homeownership; -Inform future housing policy and program development and implementation to address these historic discriminatory practices; and -Provide data and information about historic discriminatory housing policies and programs in support of the city's on-going reparations work. -Select community organization(s) as partners in the study to ensure a comprehensive community engagement process that documents lived experiences and local history so that lessons learned from those experiences can inform future housing policies and programs.

Financial Implications: See report

Contact: Mike Uberti, Commission Secretary, (510) 981-7400

Council Consent Items

21. Berkeley Housing Authority Board of Commissioners Re-Appointments

From: Mayor Arreguin (Author)

Recommendation: Adopt a Resolution re-appointing Alexandria Thomas-Rodriguez, Max Levine and Ali Kashani to the Berkeley Housing Authority Board of Commissioners.

Financial Implications: None

Contact: Jesse Arreguin, Mayor, (510) 981-7100

Council Consent Items

- 22. Support Rooftop Solar and Battery Storage for Multifamily Housing and Schools**
From: Mayor Arreguin (Author), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution in support of viable Virtual Net Energy Metering (VNEM) and Net Energy Metering Aggregation (NEM-A) tariffs. Submit a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, Assemblymember Buffy Wicks, and members of the California Public Utilities Commission Board (CPUC).
Financial Implications: Staff time
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 23. Relinquishment of Council Office Budget Funds for Chavez/Huerta Tribute Site**
From: Mayor Arreguin (Author), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution approving the expenditure of up to \$5,000 from Mayor Arreguín, and any other Councilmembers, to the Kala Art Institute, the fiscal sponsor for the Chavez/Huerta Tribute Site, with funds relinquished from the City's General Fund for the purpose of hiring of grounds keepers and providing the resources needed for the maintenance of the Chavez/Huerta Tribute Site, from the discretionary Council Office Budgets of Mayor Arreguín and any other Councilmembers who would like to contribute.
Financial Implications: \$5,000 – Mayor's Discretionary Fund
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 24. Excused Absence for Vice Mayor Ben Bartlett**
From: Mayor Arreguin (Author)
Recommendation: Excuse Vice Mayor Ben Bartlett from the June 6, 2023 Council meeting as a result of an illness of a close family member who needed immediate care.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 25. Berkeley Humane: Bark (& Meow) Around the Block: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**
From: Councilmember Taplin (Author), Councilmember Hahn (Co-Sponsor), Councilmember Humbert (Co-Sponsor)
Recommendation: Adopt a Resolution approving the expenditure of council office budget funds, including \$500 from Councilmember Taplin, to support the Bark (& Meow) Around the Block adoption event hosted by Berkeley Humane, with funds relinquished to the City's general fund.
Financial Implications: \$500 – Councilmember's Discretionary Fund
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Council Consent Items

- 26. Berkeley High School All Class Reunion: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**
From: Councilmember Taplin (Author), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution approving the expenditure of council office budget funds, including \$500 from Councilmember Taplin, to support the Berkeley High School All Class Reunion Committee (BHS ACRC) by way of its fiscal sponsor, the Berkeley Public Schools Fund, with funds relinquished to the City's general fund.
Financial Implications: \$500 – Councilmember's Discretionary Fund
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 27. Resolution for unionized employees of REI**
From: Councilmember Bartlett (Author), Mayor Arreguin (Co-Sponsor), Councilmember Harrison (Co-Sponsor) Councilmember Kesarwani (Co-Sponsor)
Recommendation: Adopt a Resolution of Support for the unionized employees of Recreational Equipment, Inc. (REI) in Berkeley, California that instructs REI to live up to its values, by ceasing to withhold the 2022 "Summit Pay", and bargain in good faith.
Financial Implications: None
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
- 28. Relinquishment of Council Office Budget Funds and Co-Sponsorship of the César Chávez Dolores Huerta Tribute Site Curriculum Project**
From: Councilmember Harrison (Author), Mayor Arreguin (Author), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a resolution approving an expenditure of D13 funds and cosponsorship of the César Chávez/Dolores Huerta Tribute Site Curriculum Project, with \$250 relinquished to the City's general fund for this purpose each from Mayor Arreguín's and Councilmember Harrison's discretionary Council Office Budget Funds, and from any other Councilmembers who would like to contribute.
Financial Implications: \$250 – Councilmembers' Discretionary Fund
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 29. Resolution Opposing Tokyo Electric Power Company and the Government of Japan's Planned Discharge of Wastewater from Fukushima Daiichi Nuclear Power Plant into the Pacific Ocean**
From: Councilmember Harrison (Author)
Recommendation: Adopt a Resolution opposing Tokyo Electric Power Company (TEPCO) and the government of Japan's plan to discharge wastewater from Fukushima Daiichi Nuclear Power Plant into the Pacific Ocean and send copies of this resolution to Secretary Blinken, Senator Dianne Feinstein, Senator Alex Padilla, and Representative Barbara Lee.
Financial Implications: Staff time
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Action Calendar

The public may comment on each item listed on the agenda for action. 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 during one of the Action Calendar public comment periods on the item. Public comment will occur for each Action item (excluding public hearings, appeals, and/or quasi-judicial matters) in one of two comment periods, either 1) before the Action Calendar is discussed; or 2) when the item is taken up by the Council.

A member of the public may only speak at one of the two public comment periods for any single Action item.

The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, 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 – Scheduled Public Comment Period

During this public comment period, the Presiding Officer will open and close a comment period for each Action item on this agenda (excluding any public hearings, appeals, and/or quasi-judicial matters). The public may speak on each item. Those who speak on an item during this comment period may not speak a second time when the item is taken up by Council.

Action Calendar – Public Hearings

Staff shall introduce the public hearing item and present their comments. For certain hearings, this is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, 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.

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

Action Calendar – Public Hearings

30. Zoning Ordinance Amendments to Title 23 of the Berkeley Municipal Code to Conform to State Law, and Make Non-Substantive Technical Edits
From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt the first reading of an Ordinance amending the following sections of the Zoning Ordinance to match State law relating to special needs housing (including supportive and transitional housing, emergency shelter, navigation center), employment housing, and family day care, and to make technical edits, corrections and other non-substantive amendments:

- 23.202.020 Allowed Land Uses (Residential Districts)
- 23.202.110 R-4 Multi-Family Residential District
- 23.204.020 Allowed Land Uses (Commercial Districts)
- 23.204.040 Use Specific Regulations (Commercial Districts)
- 23.204.060 C-U University Commercial District
- 23.206.020 Allowed Land Uses and Permit Requirements (Manufacturing Districts)
- 23.206.040 Use Specific Regulations (Manufacturing Districts)
- 23.206.050 Protected Industrial Uses
- 23.206.080 MU-LI Mixed Use-Light Industrial District (Land Use Regulations)
- 23.302.070 Use-Specific Regulations (Supplemental Use Regulations)
- 23.304.030 Setbacks
- 23.304.040 Building Separation in Residential Districts
- 23.308.020 Applicability and Nonconformities (Emergency Shelters)
- 23.308.030 Standards for Emergency Shelters
- 23.324 Nonconforming Uses, Structures, and Buildings
- 23.324.010 Chapter Purpose
- 23.324.050 Nonconforming Structures and Buildings
- 23.502.020 Glossary

Financial Implications: None

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

Action Calendar – New Business

31. Staff Shortages: City Services Constrained by Staff Retention Challenges and Delayed Hiring

From: Auditor

Recommendation: We recommend City Council request that the City Manager report back by January 2024, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented. Some of our recommendations include: establish retention goals and conduct an analysis of staff needed for city operations and services; consider staff capacity around new legislation; take steps to improve employee satisfaction; identify opportunities for efficiency in the hiring process, and modernize its recruiting process; expand the telework policy to align with best practices; and regularly collect data on employee satisfaction and on diversity, equity, inclusion, and accessibility.

Financial Implications: See report

Contact: Jenny Wong, Auditor, (510) 981-6750

Action Calendar – New Business

**32. Referral Response: Affordable Housing Preference Policy for Rental Housing Created Through the Below Market Rate and Housing Trust Fund Programs
From: City Manager**

Recommendation: Adopt a Resolution to create an Affordable Housing Preference Policy applicable to new residential housing units created via the Below Market-Rate (BMR) and the Housing Trust Fund (HTF) programs consistent with Fair Housing law and government funder approvals, and direct the City Manager to adopt guidelines to administer the Housing Preference Policy.

Financial Implications: See report.

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

**33. Adoption - Civic Center Phase II - Design Concept
From: City Manager**

Recommendation: Adopt a Resolution approving Berkeley's Civic Center Design Concept Plan, and declaring Council's intention to support the preferred design concept and necessary future studies and projects articulated in the plan.

Financial Implications: See report.

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

Council Action Items

34. Dedicated Public Comment Time for City of Berkeley Unions

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

Recommendation: Adopt a Resolution (Attachment 3 + Exhibits A and B to the report) revising the City Council Rules of Procedure and Order: Section IV. Conduct of the Meeting to:

1. Create a period of public comment reserved for officially designated representatives of City of Berkeley employee unions, immediately following the existing initial ten-minute period of public comment on non-agenda items.
2. Rescind Resolution No. 70,725–N.S.

Financial Implications: None

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

Council Action Items

- 35. De-Prioritizing the enforcement of laws imposing criminal penalties for Entheogenic/Psychedelic plants and fungi for personal use** *(Reviewed by the Health, Life Enrichment, Equity, & Community Committee)*
From: Health, Life Enrichment, Equity & Community Committee
Recommendation: Approve the Resolution presented and passed with a qualified positive recommendation at the June 12, 2023 meeting of the Health, Life Enrichment, Equity & Community Committee (Attachment 1), in lieu of the Resolutions provided in the originally referred item and by the Community Health Commission.
Policy Committee Recommendation: to send the item to Council with a qualified positive recommendation to approve the Resolution in the form and as amended by the committee. There is no “mark-up” of the CHC resolution because what the Committee decided to pass is a full rewrite.
Financial Implications: None
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150, Ben Bartlett, Councilmember, District 3, (510) 981-7130, Mark Humbert, Councilmember, District 8, (510) 981-7180

Information Reports

- 36. Annual Report on Landmarks Preservation Commission (LPC) Actions**
From: Landmarks Preservation Commission
Contact: Fatema Crane, Commission Secretary, (510) 981-7400
- 37. City Auditor Fiscal Year 2024 Audit Plan**
From: Auditor
Contact: Jenny Wong, Auditor, (510) 981-6750

Public Comment – Items Not Listed on the Agenda

Adjournment

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

Archived indexed video streams are available at:

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

Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

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

any other contact information to be made public, you may deliver communications via U.S. Postal Service to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at <https://berkeleyca.gov/>.

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

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

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

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

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.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

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***I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on June 29, 2023.***

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

Mark Numainville, City Clerk

## Communications

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

**Item #18: Staff Shortages: City Services Constrained by Staff Retention Challenges and Delayed Hiring**

1. Steven Lipson
2. Councilmember Hahn

**Item #29: Adoption - Civic Center Phase II - Design Concept**

3. Jennifer Lovvron, Civic Arts Commission Secretary
4. Jack Kurzweil
5. Diana Bohn
6. Stephen Most
7. Juliet Lamont and Phil Price
8. Tom and Jane Kelly
9. Rachel Katz
10. Steven Finacom
11. Erin Biehm

**Hopkins Corridor – Repave and/or Bike Lanes**

12. Kester Allen
13. Janet Stromberg
14. David Brandon
15. Kathleen Haberer
16. Kevin Jones
17. David Sochowitzky
18. Ernesto
19. Kori Kody
20. Jose Arau
21. Marguerite Lee
22. Trarie Kottkamp
23. Lily Liang
24. Verna Winters
25. Constance Anderson
26. Jeffrey Kaplan
27. Susan Taylor
28. Matthew Skinner
29. Theresa Malki
30. David Coolidge
31. Shirley Kirsten
32. Amber Crowley
33. Barbara Gilbert
34. Meryl Siegal
35. Jennifer Winch
36. Jeanne Allan
37. Barbara Englis
38. Peggy Radel
39. Marguerite Tompkins
40. Sheridan Pauker
41. Michael Frantz
42. Rachel Bradley

43. Isabelle Gaston
44. Jan Woo
45. Dahlia Armon
46. Jean Weininger
47. Renate Crocker
48. Paul Elmore
49. Jacqueline Wilson
50. Susan DeMersseman
51. Justin Kao
52. Dan Alpert
53. Katherine de Runtz
54. Catherine Ryan
55. Steven and Judy Lipson
56. Ernie Mansfield
57. Kay Englund
58. Helen Toy
59. Eric
60. Melanie O'Hare
61. Ilyse Gordis
62. Constance Rivemale
63. Janice Murota
64. Rachel Hope Crossman
65. Stephen Wood
66. Ann Campbell
67. Janice Hamer
68. Jeanne Friedman
69. Zara Ortiz
70. Gar Smith
71. Joan Garvin
72. Richard Tamm
73. Grace Munakata
74. George and Wendy Draper
75. Friends of Hopkins Street
76. John Hitchen
77. Jessica Livingston
78. Timothy Ross
79. Kim Markison
80. Fiona Baker
81. Margret Leventhal
82. Pamela Zelnik
83. Shirley Kirsten
84. Bruce Chamberlain
85. Soleil Taylor
86. Jonah Gollub
87. Shirley Kirsten
88. AJ Romano

- 89. Bill Hackman
- 90. Cindi And Howard Goldberg

### **Fire Department Consultant Report**

- 91. Michael Wilson (2)
- 92. Liza Lutzker, on behalf of Walk Bike Berkeley
- 93. Stephen Dalton

### **Natural Gas Ban**

- 94. John Caner, on behalf of the Downtown Berkeley Association

### **Horse Deaths**

- 95. Nancy Veerhusenb
- 96. Christopher Kroll
- 97. Acacia Schmidt
- 98. TC Conrad

### **Celebrating Susan Felix**

- 99. Toby Furash

### **Unhoused Toileting Letter**

- 100. Friends of Five Creeks

### **Fully Fund African American Holistic Resource Center**

- 101. Boona Cheema

### **Kudo's for the Fire Department**

- 102. L.J. Cranmer

### **Rent Board Billing Errors**

- 103. Morris

### **Healthy 4 Change Health Conference**

- 104. Ayanna Davis, on behalf of Healthy Black Families

### **“Read Banned Books”**

- 105. Todd Andrew
- 106. Aimee Reeder, on behalf of the Berkeley Public Library

### **1740 San Pablo Multifamily Housing Program**

- 107. Rachel Durney, NorCal Development, BRIDGE

### **Overhead Utility Wires**

- 108. Maria Riddle



### **Automated License Plate Readers**

- 109. Elana Auerbach
- 110. Diana Bohn

### **Surveillance Cameras**

- 111. Toni Mester

### **City Dysfunction**

- 112. Bob Flasher

### **St. Paul AME Church and Ephesian Church of God Applying for Funding**

- 113. Norma Thompson, on behalf for Community Housing Development Corporation

### **Help Business' Get Off the Ground**

- 114. Geoff Lomax

### **Fireworks in South Berkeley**

- 115. Pamela Michaud (3)
- 116. Mike Kim

### **My Tenant's Rights Stolen by City of Berkeley**

- 117. Deborah Black

### **Transphobia in Berkeley and Albany**

- 118. Kirstyn Russell and Melissa Neal

### **Asking for Help from the Mayor and Council**

- 119. Benjamin Stein

### **URL's Only**

- 120. Vivian Warkentin (3)

### **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. 7,877-N.S.

SETTING THE FISCAL YEAR 2024 SPECIAL TAX RATE TO FUND FIRE PROTECTION AND EMERGENCY RESPONSE AND PREPAREDNESS (MEASURE GG) IN THE CITY OF BERKELEY

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

Section 1. The FY 2024 Tax Rate for the Fire Protection and Emergency Response and Preparedness (Measure GG) is set at:

- \$0.06062 per square foot of improvements for dwellings
- \$0.09173 per square foot of improvements for all other properties

Section 2. The cost to taxpayers during FY 2024 will be \$72.74 for a 1,200 square foot dwelling and \$181.86 for a 3,000 square foot dwelling.

Section 3. This tax rate will result in estimated total collections of \$5,631,795

Section 4. The tax imposed by this ordinance does not apply to any property owner whose total personal income, from all sources for the previous calendar year, does not exceed that level which shall constitute a very low income, as established by resolution of City Council.

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.

At a regular meeting of the Council of the City of Berkeley held on June 27, 2023, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.



ORDINANCE NO. 7,878-N.S.

SETTING THE FISCAL YEAR 2024 SPECIAL TAX RATE TO FUND LIBRARY SERVICES TAX IN THE CITY OF BERKELEY

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

Section 1. The FY 2024 Tax Rate to support usual and current expenses of operating library services is set at \$0.2698 per square foot for dwelling units and \$0.4080 per square foot for industrial, commercial and institutional buildings.

Section 2. The cost to taxpayers during FY 2024 will be \$404.71 for a 1,500 square foot dwelling and \$611.95 for all other property of similar size.

Section 3. This tax rate will result in estimated total collections of \$25,050,748.

Section 4. The tax imposed by this ordinance does not apply to any property owner whose total personal income, from all sources for the previous calendar year, does not exceed that level which shall constitute a very low income, as established by resolution of City Council.

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 Old City Hall, 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 June 27, 2023, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.



ORDINANCE NO. 7,879-N.S.

ADOPTING THE ANNUAL APPROPRIATIONS ORDINANCE BASED ON THE ADOPTED BUDGET FOR FISCAL YEAR 2024 AS PROPOSED BY THE CITY MANAGER AND PASSED BY THE CITY COUNCIL

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

Section 1. That the Annual Appropriations Ordinance based on the budget for FY 2024 submitted by the City Manager and passed by the City Council be adopted as follows and as summarized in Exhibit A:

|                                                |                    |
|------------------------------------------------|--------------------|
| A. General Fund (Funds 001-099)                | 283,576,217        |
| B. Special Funds (Funds 100-199)               | 116,996,863        |
| C. Grant Funds (Funds 300-399)                 | 48,558,865         |
| D. Capital Projects Funds (Funds 500-550)      | 51,452,605         |
| E. Debt Service Fund (Funds 551-599)           | 13,363,356         |
| F. Enterprise Funds (Funds 600-669)            | 153,517,230        |
| G. Internal Service Funds (Funds 146, 670-699) | 48,309,824         |
| H. Successor Agency (Funds 760-769)            | 57,120             |
| I. Agency Funds (Funds 771-799)                | 5,292,752          |
| J. Other Funds (Funds 800-899)                 | 7,506,460          |
| <u>K. Total</u>                                |                    |
| Total General Fund                             | 283,576,217        |
| Add: Total Other Than General Fund             | 445,055,076        |
| <b>Gross Revenue Appropriated</b>              | <b>728,631,293</b> |
| Less: Dual Appropriations                      | -58,350,511        |
| Less: Revolving/Internal Service Funds         | -49,050,853        |
| <b>Net Revenue Appropriated</b>                | <b>621,229,929</b> |

Section 2. The City Manager is hereby permitted, without further authority from the City Council, to make the following transfers by giving written notice to the Director of Finance:

- a. From the General Fund to the General Fund – Stability Reserve Fund; Catastrophic Reserve Fund; PERS Savings Fund; Health State Aid Realignment; Fair Election Fund; Capital Improvement Fund; Phone System Replacement; Equipment Replacement Fund; Public Liability Fund; Catastrophic Loss Fund; IT Cost Allocation Fund; Police Employee Retiree Health Assistance Plan; Safety Members Pension Fund; and Sick Leave Entitlement Fund.
- b. To the General Fund from the General Fund – Stability Reserves Fund; Catastrophic Reserves Fund; Community Development Block Grant Fund; Street Lighting Assessment District Fund; Zero Waste Fund; Marina Operations and Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Parking Meter Fund; Unified Program (CUPA); and Health State Aid Realignment Fund.
- c. To the First Source Fund from the Parks Tax Fund; Capital Improvement Fund; and the Marina Fund.
- d. From Measure FF – Public Safety Fund to Paramedic Tax Fund
- e. From the American Rescue Plan Fund to the General Fund; Marina Fund; Off-Street Parking Fund; and Parking Meter Fund.
- f. From Capital Improvement Fund to PERS Savings Fund; Berkeley Repertory Theater Fund; and 2010 COP (Animal Shelter) Fund.
- g. To the Public Art Fund from the Parks Tax Fund; Capital Improvement Fund; and the Marina Fund.
- h. To CFD#1 District Fire Protection Bond (Measure Q) from Special Tax Bonds CFD#1 ML-ROOS.
- i. To Private Sewer Lateral Fund from Sanitary Sewer Operation Fund.
- j. To Catastrophic Loss Fund from Permit Service Center Fund.
- k. To Catastrophic Loss Fund from Unified Program (CUPA) Fund.
- l. To the Building Purchases and Management Fund from General Fund; Health (General) Fund; Rental Housing Safety Program Fund; Measure B Local Streets & Road Fund; Employee Training Fund; Zero Waste Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Building Maintenance Fund; Central Services Fund; and Health State Aide Realignment Trust Fund.
- m. To Equipment Replacement Fund from General Fund; Mental Health Services Act Fund; Health (Short/Doyle) Fund; Vector Control Fund; Paramedic Tax Fund;



Playground Camp Fund; State Transportation Tax Fund; Rental Housing Safety Program Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Central Services Fund.

- n. To the Equipment Maintenance Fund from General Fund; Health (General) Fund; Mental Health Services Act Fund; Health (Short/Doyle) Fund; Vector Control Fund; Paramedic Tax Fund; Library - Discretionary Fund; Playground Camp Fund; State Transportation Tax Fund; Rental Housing Safety Program Fund; Rent Stabilization Board Fund; Parks Tax Fund; Street Light Assessment District Fund; FEMA Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Central Services Fund.
- o. To the Building Maintenance Fund from the General Fund; Health (General) Fund; Health (Short/Doyle) Fund; Measure B Local Street & Road Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Off Street Parking Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Mental Health State Aid Realignment Fund.
- p. To the Central Services Fund from the General Fund; First Source Fund; Health (Short/Doyle) Fund; Library-Discretionary Fund; Playground Camp Fund; Rent Stabilization Board Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation; Building Purchases & Management Fund; Building Maintenance Fund; Central Services Fund; and Mental Health State Aid Realignment Fund.
- q. To Information Technology Cost Allocation Plan Fund from General Fund; Target Case Management/Linkages Fund; Health (Short/Doyle); Library Fund; Playground Camp Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Rent Stabilization Board Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Equipment Maintenance Fund; Building Maintenance Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; and Mental Health State Aid Realignment Fund.
- r. To the Workers' Compensation Self-Insurance Fund from General Fund; Special Tax for Severely Disabled Measure E Fund; First Source Fund; HUD Fund; ESGP Fund; Health (General) Fund; Target Case Management/Linkages Fund; Mental

Health Service Act Fund; Health (Short/Doyle) Fund; EPSDT Expansion Proposal Fund; Senior Nutrition (Title III) Fund; C.F.P. Title X Fund; Fund Raising Activities Fund; Berkeley Unified School District Grant; Vector Control Fund; Paramedic Tax Fund; Alameda County Grants Fund; Senior Supportive Social Services Fund; Family Care Support Program Fund; Domestic Violence Prevention – Vital Statistics Fund; Affordable Housing Mitigation; Inclusionary Housing Program; Library – Discretionary Fund; Playground Camp Fund; Community Action Program Fund; State Proposition 172 Public Safety Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Measure B Local State & Road Fund; Measure B Bike & Pedestrian Fund; Measure B – Paratransit Fund; Measure F Alameda County Vehicle Registration Fee Streets & Roads Fund; Measure BB – Paratransit Fund; Fair Election Fund; Measure U1 Fund; One-Time Grant: No Cap Expense Fund; Rent Stabilization Board Fund; Parks Tax Fund; Measure GG – Fire Prep Tax Fund; Street Lighting Assessment District Fund; Employee Training Fund; Private Percent – Art Fund; Measure T1 – Infrastructure & Facilities Fund; FUND\$ Replacement Fund; Capital Improvement Fund; FEMA Fund; CFD #1 District Fire Protect Bond Fund; Special Tax Bonds CFD#1 ML-ROOS Fund; Shelter+Care HUD Fund; Shelter+Care County Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Private Sewer Lateral Fund; Permit Service Center Fund; Off-Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Equipment Replacement Fund; Equipment Maintenance Fund; Building Maintenance Fund; Central Services Fund; Workers’ Compensation Fund; Public Liability Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; Tobacco Control Trust Fund; Mental Health State Aid Realignment Fund; Alameda Abandoned Vehicle Abatement Authority; and Bio-Terrorism Grant Fund.

- s. To the Sick Leave and Vacation Leave Accrual Fund from General Fund; Special Tax for Severely Disabled Measure E Fund; First Source Fund; HUD Fund; ESGP Fund; Health (General) Fund; Target Case Management/Linkages Fund; Mental Health Service Act Fund; Health (Short/Doyle) Fund; EPSDT Expansion Proposal Fund; Senior Nutrition (Title III) Fund; C.F.P. Title X Fund; Fund Raising Activities Fund; Berkeley Unified School District Grant; Vector Control Fund; Paramedic Tax Fund; Alameda County Grants Fund; Senior Supportive Social Services Fund; Family Care Support Program Fund; Domestic Violence Prevention – Vital Statistics Fund; Affordable Housing Mitigation; Inclusionary Housing Program; Library – Discretionary Fund; Playground Camp Fund; Community Action Program Fund; State Proposition 172 Public Safety Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Measure B Local State & Road Fund; Measure B Bike & Pedestrian Fund; Measure B – Paratransit Fund; Measure F Alameda County Vehicle Registration Fee Streets & Roads Fund; Measure BB – Paratransit Fund; Fair Election Fund; Measure U1 Fund; One-Time Grant: No Cap Expense Fund; Rent Stabilization Board Fund; Parks Tax Fund; Measure GG – Fire Prep Tax Fund; Street Lighting Assessment District Fund; Employee Training Fund; Private Percent – Art Fund; Measure T1 – Infrastructure & Facilities

Fund; FUND\$ Replacement Fund; Capital Improvement Fund; FEMA Fund; CFD #1 District Fire Protect Bond Fund; Special Tax Bonds CFD#1 ML-ROOS Fund; Shelter+Care HUD Fund; Shelter+Care County Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Private Sewer Lateral Fund; Permit Service Center Fund; Off-Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Equipment Replacement Fund; Equipment Maintenance Fund; Building Maintenance Fund; Central Services Fund; Workers' Compensation Fund; Public Liability Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; Tobacco Control Trust Fund; Mental Health State Aid Realignment Fund; Alameda Abandoned Vehicle Abatement Authority; and Bio-Terrorism Grant Fund.

- t. To the Payroll Deduction Trust Fund from General Fund; Special Tax for Severely Disabled Measure E Fund; First Source Fund; HUD Fund; ESGP Fund; Health (General) Fund; Target Case Management/Linkages Fund; Mental Health Service Act Fund; Health (Short/Doyle) Fund; EPSDT Expansion Proposal Fund; Senior Nutrition (Title III) Fund; C.F.P. Title X Fund; Fund Raising Activities Fund; Berkeley Unified School District Grant; Vector Control Fund; Paramedic Tax Fund; Alameda County Grants Fund; Senior Supportive Social Services Fund; Family Care Support Program Fund; Domestic Violence Prevention – Vital Statistics Fund; Affordable Housing Mitigation; Inclusionary Housing Program; Library – Discretionary Fund; Playground Camp Fund; Community Action Program Fund; State Proposition 172 Public Safety Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Measure B Local State & Road Fund; Measure B Bike & Pedestrian Fund; Measure B – Paratransit Fund; Measure F Alameda County Vehicle Registration Fee Streets & Roads Fund; Measure BB – Paratransit Fund; Fair Election Fund; Measure U1 Fund; One-Time Grant: No Cap Expense Fund; Rent Stabilization Board Fund; Parks Tax Fund; Measure GG – Fire Prep Tax Fund; Street Lighting Assessment District Fund; Employee Training Fund; Private Percent – Art Fund; Measure T1 – Infrastructure & Facilities Fund; FUND\$ Replacement Fund; Capital Improvement Fund; FEMA Fund; CFD #1 District Fire Protect Bond Fund; Special Tax Bonds CFD#1 ML-ROOS Fund; Shelter+Care HUD Fund; Shelter+Care County Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Private Sewer Lateral Fund; Permit Service Center Fund; Off-Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Equipment Replacement Fund; Equipment Maintenance Fund; Building Maintenance Fund; Central Services Fund; Workers' Compensation Fund; Public Liability Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; Tobacco Control Trust Fund; Mental Health State Aid Realignment Fund; Alameda Abandoned Vehicle Abatement Authority; and Bio-Terrorism Grant Fund.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on June 27, 2023, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.

**Attachment for Annual Appropriations Ordinance - Fiscal Year 2024**

**REVOLVING FUNDS/INTERNAL SERVICE FUNDS**

Appropriations are identified with revolving and internal service funds. Such funds derive revenue by virtue of payment from other fund sources as benefits are received by such funds, and the total is reflected in the "Less Revolving Funds and Internal Service Funds" in item I. The funds are:

**Revolving/Internal Service Funds**

|                                           |               |
|-------------------------------------------|---------------|
| Employee Training Fund                    | 851,401       |
| Equipment Replacement Fund                | 6,300,512     |
| Equipment Maintenance Fund                | 9,296,717     |
| Building Maintenance Fund                 | 4,627,672     |
| Central Services Fund                     | 392,741       |
| Workers' Compensation Fund                | 6,467,536     |
| Public Liability Fund                     | 3,802,945     |
| Information Technology Fund               | 17,311,329    |
| Subtotal Revolving/Internal Service Funds | \$ 49,050,853 |

**DUAL APPROPRIATIONS - WORKING BUDGET**

Dual appropriations are identified with revenues generated by one fund and transferred to another fund. Both funds are credited with the applicable revenue, and the total is reflected in the "Less Dual Appropriations" in item I. The dual appropriations are:

Transfers to the General Fund

|                                       |              |
|---------------------------------------|--------------|
| <u>Indirect Cost Reimbursement</u>    |              |
| CDBG Fund                             | 176,194      |
| Street Light Assessment District Fund | 164,811      |
| Zero Waste Fund                       | 2,827,863    |
| Marina Enterprise Fund                | 423,813      |
| Sanitary Sewer Fund                   | 1,335,826    |
| Clean Storm Water Fund                | 207,052      |
| Permit Service Center Fund            | 2,204,064    |
| Unified Program (CUPA) Fund           | 86,575       |
| Subtotal Transfers to General Fund:   | \$ 7,426,198 |

|                                                                              |                       |
|------------------------------------------------------------------------------|-----------------------|
| Transfer to Safety Members Pension Fund from General Fund                    | 551,804               |
| Transfer to Measure U1 Fund from General Fund                                | 4,900,000             |
| Transfer to PERS Savings Fund from General Fund                              | 2,000,000             |
| Transfer to Health State Aid Realignment from General Fund                   | 1,953,018             |
| Transfer to Fair Election Fund from General Fund                             | 612,210               |
| Transfer to Capital Improvement Fund (CIP) from General Fund                 | 18,370,905            |
| Transfer to Phone System Replacement - VOIP from General Fund                | 449,408               |
| Transfer to Equipment Replacement Fund from General Fund                     | 1,081,699             |
| Transfer to Public Liability Fund from General Fund                          | 3,895,888             |
| Transfer to Catastrophic Loss Fund from General Fund                         | 6,278,457             |
| Transfer to IT Cost Allocation Fund from General Fund                        | 71,335                |
| Transfer to Police Employee Retiree Health Assistance Plan from General Fund | 400,136               |
| Transfer to Sick Leave Entitlement Fund from General Fund                    | 201,501               |
| Transfer to General Fund from Health State Aid Realignment Fund              | 2,643,280             |
| Transfer to Paramedic Tax Fund from Measure FF - Public Safety Fund          | 757,925               |
| Transfer to General Fund from Amercian Rescue Plan Fund                      | 3,255,743             |
| Transfer from CIP Fund to PERS Savings Fund                                  | 151,632               |
| Transfer to Berkeley Repertory Theater Debt Service Fund from CIP Fund       | 499,802               |
| Transfer from CIP Fund to 2010 COP (Animal Shelter) Fund                     | 402,613               |
| Transfer to Private Sewer Lateral Fund from Sewer Fund                       | 90,501                |
| Transfer to Catastrophic Loss Fund from Permit Service Center Fund           | 50,555                |
| Transfer to Catastrophic Loss Fund from Unified Program (CUPA) Fund          | 5,082                 |
| Transfer to General Fund from Parking Meter Fund                             | 1,742,288             |
| Transfer to General Fund from IT Cost Allocation Fund                        | 450,613               |
| Transfer to First Source Fund from Parks Tax Fund                            | 6,675                 |
| Transfer to First Source Fund from Capital Improvement Fund                  | 29,943                |
| Transfer to First Source Fund from Marina Fund                               | 2,625                 |
| Transfer to Public Art Fund from Parks Tax Fund                              | 11,681                |
| Transfer to Public Art Fund from Capital Improvement Fund                    | 52,400                |
| Transfer to Public Art Fund from Marina Fund                                 | 4,594                 |
| Subtotal Transfers to Other Funds:                                           | <u>50,924,313</u>     |
| Sub-Total Dual Appropriations                                                | <u>\$ 58,350,511</u>  |
| <b>Grand Total Dual Appropriations</b>                                       | <b>\$ 107,401,364</b> |

## SUMMARY OF APPROPRIATIONS BY FUND

| ERMA<br>Fund # Fund                            | FY 2024<br>Adopted |
|------------------------------------------------|--------------------|
| 11 General Fund Discretionary                  | 276,548,969        |
| 16 Measure U1 - Housing                        | 7,027,248          |
| 101 Library - Tax                              | 24,642,865         |
| 103 Library - Grants                           | 67,526             |
| 104 Library - Friends & Gift                   | 150,000            |
| 105 Library - Foundation                       | 200,000            |
| 106 Asset Forfeiture                           | 201,000            |
| 107 Special Tax Measure E                      | 1,673,845          |
| 108 First Source Fund                          | 57,676             |
| 110 Sec 108 Loan Gty Asst.                     | 587,612            |
| 111 Fund Raising Activities                    | 64,048             |
| 113 Gilman Sports Field                        | 297,279            |
| 115 Animal Shelter                             | 52,480             |
| 116 Paramedic Tax                              | 4,981,166          |
| 119 Domestic Violence Prev - Vit Stat          | 26,635             |
| 120 Affordable Housing Mitigation              | 2,998,899          |
| 121 Affordable Child Care                      | 13,275             |
| 122 Inclusionary Housing Program               | 610,282            |
| 123 Condo Conversion                           | 122,348            |
| 125 Playground Camp                            | 3,614,269          |
| 126 State-Prop 172 Pub.Safety                  | 442,387            |
| 127 State Transportation Tax                   | 5,868,962          |
| 128 CDBG                                       | 4,792,214          |
| 129 Rental Housing Safety Program              | 2,356,542          |
| 130 Measure B - Local St & Road                | 21,958             |
| 132 Measure B - Paratransit                    | 36,797             |
| 133 Measure F Alameda County VRF St & Rd       | 968,796            |
| 134 Measure BB - Local St & Road               | 10,085,614         |
| 135 Measure BB - Bike & Pedestrian             | 1,484,882          |
| 136 Measure BB - Paratransit                   | 969,418            |
| 138 Parks Tax                                  | 15,963,245         |
| 139 Streets and Open Space Improvement (SOSIP) | 200,000            |
| 140 Measure GG - Fire Prep Tax                 | 5,898,307          |
| 142 Streetlight Assesment District             | 3,217,318          |
| 143 Berkeley Bus Ec Dev                        | 156,387            |
| 146 Employee Training                          | 851,401            |
| 147 UC Settlement                              | 4,931,696          |
| 148 Cultural Trust                             | 110,372            |
| 149 Private Party Sidewalks                    | 100,000            |
| 150 Public Art Fund                            | 118,718            |
| 152 Vital & Health Statistics Trust Fund       | 30,292             |
| 156 Hlth State Aid Realign Trust               | 3,947,649          |
| 157 Tobacco Cont.Trust                         | 300,243            |
| 158 Mental Health State Aid Realign            | 4,031,749          |
| 159 Citizens Option Public Safety Trust        | 272,292            |
| 161 Alameda Cty Abandoned Vehicle Abatement    | 128,168            |

## SUMMARY OF APPROPRIATIONS BY FUND

| ERMA<br>Fund # Fund                    | FY 2024<br>Adopted |
|----------------------------------------|--------------------|
| 164 Measure FF                         | 8,848,412          |
| 165 Fair Elections                     | 612,210            |
| 301 Operating Grants - Federal         | 130,186            |
| 302 Operating Grants - State           | 976,688            |
| 306 Capital Grants - State             | 750,000            |
| 307 Capital Grants - Local             | 100,000            |
| 309 OTS DUI Enforcement Education Prg. | 137,060            |
| 310 HUD/Home                           | 819,770            |
| 311 ESGP                               | 273,659            |
| 312 Health (General)                   | 2,216,057          |
| 313 Target Case Management Linkages    | 1,046,552          |
| 314 Alameda County Tay Tip             | 35,812             |
| 315 Mental Health Service Act          | 10,792,336         |
| 316 Health (Short/Doyle)               | 6,504,323          |
| 317 EPSDT Expansion Proposal           | 459,456            |
| 318 Alcoholic Bev Ctr OTS/UC           | 55,639             |
| 319 Youth Lunch                        | 69,820             |
| 320 Sr. Nutrition Title III            | 178,189            |
| 321 CFP Title X                        | 160,967            |
| 324 BUSD Grant                         | 363,548            |
| 325 Vector Control                     | 246,781            |
| 326 Alameda County Grants              | 777,675            |
| 327 Senior Supportive Social Services  | 124,403            |
| 328 Family Care Support Program        | 88,321             |
| 329 CA Integrated Waste Management     | 5,244              |
| 331 Housing Mitigation                 | 1,126,763          |
| 333 CALHOME                            | 363,100            |
| 334 Community Action                   | 281,777            |
| 336 One-Time Grant: No Cap Exp         | 6,999,778          |
| 339 MTC                                | 752,827            |
| 340 FEMA                               | 959,325            |
| 341 Alameda Cty Waste Mgt.             | 345,000            |
| 343 State Dept Conserv/Recylg          | 32,000             |
| 347 Shelter+Care HUD                   | 6,461,774          |
| 348 Shelter+Care County                | 906,212            |
| 349 JAG Grant                          | 55,650             |
| 350 Bioterrorism Grant                 | 315,162            |
| 354 ARPA - Local Fiscal Recovery Fund  | 3,647,011          |
| 501 Capital Improvement Fund           | 22,993,379         |
| 502 Phone System Replacement           | 449,408            |
| 503 FUND\$ Replacement                 | 3,372,446          |
| 504 PEG-Public, Education & Government | 100,000            |
| 511 Measure T1 - Infra & Facil.        | 18,091,805         |
| 512 Measure O                          | 6,445,567          |
| 552 09 Measure FF Debt Service         | 1,337,638          |
| 553 2015 GORBS                         | 2,047,259          |



## SUMMARY OF APPROPRIATIONS BY FUND

| ERMA<br>Fund # Fund                           | FY 2024<br>Adopted |
|-----------------------------------------------|--------------------|
| 554 2012 Lease Revenue Bonds BJPFA            | 499,820            |
| 555 2015 GORBS - 2002 G.O. Refunding Bonds    | 378,696            |
| 556 2015 GORBS (2007, Series A)               | 142,540            |
| 557 2015 GORBS (2008 Measure I)               | 480,184            |
| 558 2010 COP (Animal Shelter)                 | 140,085            |
| 559 Measure M GO Street & Water Imps          | 1,630,863          |
| 560 Infrastructure & Facilities Measure T1    | 4,699,006          |
| 561 Measure O - Housing Bonds                 | 2,007,265          |
| 601 Zero Waste                                | 59,489,630         |
| 608 Marina Operation                          | 8,027,559          |
| 611 Sewer                                     | 32,561,256         |
| 612 Private Sewer Lateral FD                  | 80,417             |
| 616 Clean Storm Water                         | 6,111,869          |
| 621 Permit Service Center                     | 25,508,236         |
| 622 Unified Program (CUPA)                    | 849,669            |
| 627 Off Street Parking                        | 6,940,920          |
| 631 Parking Meter                             | 10,250,256         |
| 636 Building Purchases and Management         | 3,697,419          |
| 671 Equipment Replacement                     | 6,300,512          |
| 672 Equipment Maintenance                     | 9,296,717          |
| 673 Building Maintenance Fund                 | 4,627,672          |
| 674 Central Services                          | 392,741            |
| 676 Workers Compensation                      | 6,467,536          |
| 678 Public Liability                          | 3,802,945          |
| 680 Information Technology                    | 17,311,329         |
| 762 Successor Agency - Savo DSF               | 57,120             |
| 776 Thousand Oaks Underground                 | 98,448             |
| 777 Measure H - School Tax                    | 500,000            |
| 778 Measure Q - CFD#1 Dis. Fire Protect Bond  | 988,982            |
| 779 Spl Tax Bds. CFD#1 ML-ROOS                | 775,623            |
| 781 Berkeley Tourism BID                      | 697,882            |
| 782 Elmwood Business Improvement District     | 30,000             |
| 783 Solano Ave BID                            | 25,000             |
| 784 Telegraph Avenue Bus. Imp. District       | 583,315            |
| 785 North Shattuck BID                        | 210,363            |
| 786 Downtown Berkeley Prop & Improv. District | 1,383,139          |
| 801 Rent Board                                | 7,506,460          |
| GROSS EXPENDITURE:                            | 728,631,293        |
| Dual Appropriations                           | (58,350,511)       |
| Revolving & Internal Service Funds            | (49,050,853)       |
| NET EXPENDITURE:                              | 621,229,929        |



## ORDINANCE NO. 7,880-N.S.

ORDINANCE AMENDING SECTION 9.04.136 OF THE BERKELEY MUNICIPAL CODE TO TEMPORARILY SUSPEND TAXATION OF CANNABIS BUSINESSES ABOVE THE RATES CHARGED FOR NON-CANNABIS BUSINESSES OF THE SAME TYPE

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

Section 1. That Berkeley Municipal Code Section 9.04.136 is amended to read as follows:

**9.04.136 Cannabis businesses.**

A.

1. Every Medical Cannabis Business that is not a Nonprofit Organization as defined in Section 9.04.305, and every Non-Medical Cannabis Business, shall pay an annual tax for each thousand dollars of gross receipts as provided in Section 9.04.240. If the "Regulate, Control and Tax Cannabis Act of 2010" on the November 2010 state ballot passes and takes effect, the maximum gross receipts rate that may be applied to medical cannabis businesses shall be reduced to 1.8%, or \$18 per \$1000.

2. Except as provided in paragraph 1 of this subdivision, the tax on Medical Cannabis Businesses that is imposed by this Section shall be phased in as follows:

(a) The tax payable in 2011 shall be \$18 per \$1000 of gross receipts after June 30, 2010.

(b) The tax payable in 2012 shall be \$25 per \$1000 of gross receipts after January 1, 2011.

(c) The tax payable in subsequent years shall be \$25 per \$1000 of gross receipts during the preceding calendar year.

3. Temporary Exemption

(a) Every Medical Cannabis Business and every Non-Medical Cannabis Business shall be temporarily exempt from the tax rates provided in this section and Section 9.04.020 for the period beginning January 1, 2023 and ending July 1, 2025. This temporary exemption shall apply retroactively beginning January 1, 2023. Payment of taxes due for calendar year 2022 will still be applicable.

(b) For the period beginning January 1, 2023 and ending July 1, 2025, in lieu of paying the Medical Cannabis Business and Non-Medical Cannabis Business tax

rates provided for in this section and Section 9.04.020, each cannabis business will pay the business license tax rate for the business type that most closely represents the nature of its current operations, e.g. retail trade (Section 9.04.145), manufacturing (Section 9.04.185), and wholesale trade (9.04.150).

(c) Any late penalties levied between the period of January 1, 2023 and enactment of this amendment including but not limited to penalties provided for in Section 9.04.110 and 9.04.115 shall be waived. Any interest on late penalties accrued pursuant to Section 9.04.120 during this same period shall also be waived.

(d) Any tax payments already made for the first quarter (January 1, 2023 to March 31, 2023) of the 2023 fiscal year shall be applied as a credit against the payment of future taxes or fee payments made pursuant to this Section, including payments due under subsection 9.04.136.A.3.b.

B. For purposes of this Chapter:

1. "Medical Cannabis Business" means any activity regulated or permitted by Chapter 12.26 or Title 23 that involves 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, pursuant to Health & Safety Code sections 11362.5 and 11362.7-11362.83.

2. "Non-Medical Cannabis Business" means any of the activities described in the preceding paragraph that are not conducted pursuant to Health & Safety Code sections 11362.5 and 11362.7-11362.83, but are otherwise authorized by state law.

3. "Cannabis Business" includes both Medical Cannabis Businesses and Non-Medical Cannabis Businesses.

4. A Cannabis Business shall be deemed a "Business" under Section 9.04.010 and as that term is used in this Chapter.

C. For purposes of this Section and Section 9.04.305.A.2, "gross receipts" includes any monetary consideration for medical cannabis whatsoever, including but not limited to: membership dues; reimbursement pursuant to Health & Safety Code sections 11362.5 and 11362.7-11362.83; and any money received for wholesale or retail sales.

D.

1. The annual tax rate imposed by Section 9.04.240 on Non-Medical Cannabis Businesses shall apply to the sum of gross receipts as defined in Section 9.04.025 and this Section.

2. The City Council may impose the tax authorized by this Section at a lower rate, and may establish an exemption for Cannabis Businesses whose gross receipts are below a specified amount. The Council may adopt different rates and exemption

levels for Medical and Non-Medical Cannabis Businesses. No action by the Council under this paragraph shall prevent it from subsequently increasing the tax rate for any type of Cannabis Business to the maximum specified in this Section and Section 9.04.240 or from modifying or eliminating any exemption.

E. In order to aid in the City's collection of taxes due under this Chapter and ensure that all Cannabis Businesses are taxed consistently to the best of the City's ability, beginning January 1, 2011, in any Cannabis Business, that obtains any product containing Cannabis sativa L. or any of its derivatives for monetary consideration that constitutes gross receipts under subdivision (C) for the provider of that Cannabis sativa, shall either:

1. Report quarterly to the City all such transactions, the monetary consideration involved, and the identity and contact information of the person or entity to whom or to which monetary consideration was provided; or
2. Collect the tax that would be payable as a result of the transaction from the person or entity to whom monetary consideration was provided and remit it to the City.

F. The City Manager may promulgate regulations to implement and administer this Section, including allowing Medical Cannabis Businesses to remit taxes more frequently than annually. (Ord. 7160-NS § 1, 2010)

Section 2. Severability

If any section, subsection, sentence, clause, phrase, or word of this Ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Ordinance. The Council of the City of Berkeley hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Ordinance or application thereof would be subsequently declared invalid or unconstitutional.

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 June 27, 2023, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.



Office of the City Manager

CONSENT CALENDAR

July 11, 2023

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: Encampment Resolution Funding Grant Award

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to receive a \$4,931,058.30 Encampment Resolution Funding Round 2 grant award from the State of California, and to enter into contract and all necessary amendments with the State of California resulting from this funding.

FISCAL IMPACTS OF RECOMMENDATION

It is anticipated that the \$4,931,058.30 state grant will fully fund two years of operations (i.e., master leasing a motel and contracting with a service provider for the provision of interim housing for persons experiencing homelessness). Extending beyond the first two years will require additional funding. Consistent with the guidance from the Budget and Finance Policy Committee on February 9, 2023, years 3-4 would need to be covered by Measure P. The total anticipated yearly expenses for the program are as follows:

- Year 1 (August 1, 2023 – July 31, 2024) - \$2,445,706.91M (funding source: State ERF)
- Year 2 (August 1, 2024 – July 31, 2025) - \$2,462,504.31M (funding source: State ERF)
- Year 3 (August 1, 2025 – July 31, 2026) - \$2,496,456.31M (potential funding source: Measure P)
- Year 4 (August 1, 2026 – July 31, 2027) - \$2,527,538.05M (potential funding source: Measure P)
- Year 5 (August 1, 2027 – July 31, 2028) - \$2,559,551.29M (potential funding source: Measure P)

CURRENT SITUATION AND ITS EFFECTS

Despite significant work from the City of Berkeley, there are still a considerable number of people living outside in Berkeley. To help move at least 23 homeless people into

noncongregate temporary housing for two years, staff completed and submitted an application on February 28, 2023 for \$4.9M in funding to support two years of operations and services to master lease the Super 8, a 23-room motel located on University Avenue in West Berkeley.

The City's Homeless Response Team, managed by the Neighborhood Services Division in the City Manager's Office, proposes to work with Insight Housing (formerly Berkeley Food and Housing Project) to assist those living in Northwest Berkeley encampments into noncongregate interim housing at the Super 8. The purpose of this funding is specifically to address and resolve encampments, and staff were required to identify encampments of focus in the grant application to the State. Super 8 will be available to other homeless people in Berkeley should there be rooms open after focusing on Northwest Berkeley and should adequate funding remain.

The City's application was awarded \$4,931,058.30 by the State on June 14, and must be fully expended by June 30, 2026. To meet this deadline and in order to lease the Super 8 and contract with Insight Housing for services, it is important to have the City Council adopt a resolution authorizing receipt of these funds for this purpose as quickly as possible. Creating this temporary homeless housing aligns with the City of Berkeley's strategic plan priorities.

### BACKGROUND

On December 1, 2022, the State of California's Interagency Council on Homelessness (Cal ICH) released a Notice of Funding Availability (RFA) for the Encampment Resolution Funding Program, Round 2, Second Disbursement (ERF-2-R), a \$300M statewide competitive grant opportunity to fund local demonstration projects that assist people living in encampments to safe, low-barrier, and stable housing pathways. The Cal ICH awarded those applications that were deemed to not only be consistent with this mission, but to also be scalable and replicable across the State, furthering our collective understanding of best practices that effectively and compassionately bring people off the streets and under a roof.

On February 1, 2023 the Homeless Services Panel of Experts voted to support the City of Berkeley's application for Encampment Resolution Funding to enter into a lease agreement with the Super 8 at 1619 University Ave for four years.

On February 9, 2023 City staff presented a plan, including the proposed priority encampment areas and a request for local Measure P match funding to extend the program beyond two years, to the Budget and Finance Policy Committee of the Council; the Committee voted unanimously to approve staff's application and to include a 1:1 Measure P match commitment in the application. (Given the short time between Council's return from Winter recess and the deadline for the grant application on February 28, there was no time to bring this item before the full City Council for consideration.) Staff



successfully completed and submitted the application on February 28, 2023, and were awarded the full amount on June 14, 2023.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Helping unhoused people currently living in West Berkeley transition into interim and permanent housing placement will minimize the detrimental environmental impacts associated with encampment homelessness over the long run, including vector and fire hazards, accumulation of trash and waste, and impacts on sensitive waterways. It will also reduce the impact of these environmental elements on the health and safety of people with no shelter.

RATIONALE FOR RECOMMENDATION

Supporting homeless people living in Northwest Berkeley and elsewhere by providing them rooms at the Super 8 as well as services to help transition to permanent housing will be possible through accepting this state funding. The city has no other resources to address the encampments in Northwest Berkeley, which continue to pose serious health and safety threats to the residents of the encampment and immediate neighbors, and broader economic and operational challenges to the broader Berkeley community.

ALTERNATIVE ACTIONS CONSIDERED

Alternate city funding could be considered, and/or the resolution of these encampments could be suspended.

CONTACT PERSON

Josh Jacobs, Homeless Services Coordinator, 510 225-8035

Attachments:

- 1: Resolution
- 2: Award Letter from Cal-ICH

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

ACCEPTING THE STATE OF CALIFORNIA'S ENCAMPMENT  
RESOLUTION ROUND 2 FUNDING GRANT AWARD

WHEREAS, on December 1, 2022, the State of California released a Notice of Funding Availability (NOFA) for the Encampment Resolution Funding Round 2 (ERF-2-R) Program, a Statewide, competitive \$300M funding opportunity to further the State's understanding of best practices to compassionately resolve encampments by assisting their residents into safe and stable pathways to housing; and

WHEREAS, on February 9, 2023, the Budget and Finance Policy Committee of the City Council unanimously voted to approve city staff's grant application and the inclusion of a local Measure P match commitment in that application; and

WHEREAS, on February 28, 2023, staff submitted a grant application to the ERF requesting \$4,931,058 to fund two years of operations at the Super 8 on University Avenue in Berkeley; and

WHEREAS, staff propose the use of the Super 8 as noncongregate interim housing for individuals currently residing in Northwest Berkeley encampments; and

WHEREAS, the City's Homeless Response Team will partner with Alameda County as well as LifeLong Medical Care, Homeless Action Center, Bay Area Community Resources, and other nonprofit organizations to assist those individuals living in Northwest Berkeley encampments into the Super 8 and onto pathways to stable housing; and

WHEREAS, the City Manager was notified on June 14, 2023 that the City's ERF-2 application will be funded at the full amount, supporting two years of operations and services for the shelter program at the Super 8.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to accept and receive an award from the State of California, and to enter into contract and all necessary amendments with the State, for \$4,931,058.30 in Encampment Resolution Funding grant funding, with funds to be appropriated in the First Amendment to the FY 2024 Annual Appropriations Ordinance.



**California  
Interagency Council  
on Homelessness**

June 2023

City of Berkeley  
Attn: Josh Jacobs  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704

**RE: ERF-2-R Award Announcement – City of Berkeley**  
**Award Amount: \$4,931,058.30**

Dear Josh Jacobs:

The Business, Consumer Services and Housing Agency's (BCSH) California Interagency Council on Homelessness (Cal ICH) is pleased to announce that the City of Berkeley has been awarded an Encampment Resolution Funding Rolling (ERF-2-R) grant in the amount of \$4,931,058.30. This letter constitutes notice of the award of ERF-2-R funds for use in the City of Berkeley.

The City of Berkeley will receive its full disbursement of funds after the Standard Agreement is fully executed. Please be advised that this award is subject to the terms and conditions of the Standard Agreement. Failure to sign and return the Standard Agreement within 30 days of receipt from BCSH may result in a delay of disbursement of funds.

Congratulations on your successful application. For further information or if you have any questions, please contact me at [Jeannie.McKendry@bcsh.ca.gov](mailto:Jeannie.McKendry@bcsh.ca.gov) or [calichgrants@bcsh.ca.gov](mailto:calichgrants@bcsh.ca.gov).

Sincerely,

*Jeannie McKendry*

Jeannie McKendry,  
Grants Development Section Chief, Cal ICH

**BUSINESS, CONSUMER  
SERVICES AND  
HOUSING AGENCY**

---

Gavin Newsom,  
*Governor*

Lourdes M.  
Castro Ramirez,  
*Secretary*

---

801 Capitol Mall  
Suite 601  
Sacramento, CA 95814

(916) 651-2820  
[bcsh.ca.gov/calich](http://bcsh.ca.gov/calich)





Office of the City Manager

CONSENT CALENDAR

July 11, 2023

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: Urgency Ordinance for Leasing the Real Property at 1619 University Avenue

RECOMMENDATION

Adopt an Urgency Ordinance to enter into a lease for the real property located at 1619 University Avenue, Berkeley for a term of 60 months.

FISCAL IMPACTS OF RECOMMENDATION

Total costs for this lease are not to exceed \$110 per room per night for 23 rooms, plus a \$2,200 yearly damage deposit per room, for a total \$976,580 for the first year and escalating 3% year-over-year for each year of the term, such that lease and yearly damage deposit costs in year 2 (August 1, 2024 – July 31, 2025) are estimated not to exceed \$1,005,877.40; in Year 3 (August 1, 2025 – July 31, 2026) are estimated not to exceed \$1,036,053.86; in year 4 (August 1, 2026 – July 30, 2027) are estimated not to exceed \$1,067,135.60; and in year 5 (August 1, 2027 – July 31, 2028) are estimated not to exceed \$1,099,148.84. The costs will be paid for using State of California Encampment Resolution Funding grant funds for the first two years (August 1, 2023-July 31, 2025). Extending beyond the first two years will require additional funding. Consistent with the guidance from the Budget and Finance committee on February 9, 2023, years 3-4 would need to be covered by Measure P.

These funds will be appropriated in the First Amendment to the FY 2024 Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

Pursuant to Article XIV of the City Charter, this urgency ordinance is needed for the “immediate preservation of the public peace, health or safety” in light of the current shelter crisis in the encampments of Northwest Berkeley. By adopting this agreement through an Urgency Ordinance, it will be possible to execute a lease with an effective date of August 1, 2023, thus allowing sufficient time to ensure those who are currently living in the encampment have a safe, indoor destination—as well as to meet the aggressive expenditure deadlines of the ERF-2 grant, which require 50 percent of the allocated grant award to be expended and 100 percent of the allocated grant award to be obligated by July 31, 2024 and 100 percent of the allocated grant award to be expended by July 31, 2026.

On the July 11, 2023 agenda, Council will consider a recommendation to adopt a resolution authorizing the City Manager to contract with the State of California for just over \$4.9M in funding from the Encampment Resolution Funding grant program. Staff submitted an application to this grant opportunity on February 28, 2023, proposing to use the funds, along with local match funding provided by Measure P, to operate noncongregate interim housing at the Super 8 for the cohort of individuals currently living in the encampments in Northwest Berkeley.

Staff have secured an agreement with the Super 8's ownership to lease all 23 rooms at the Super 8 for this purpose. The proposed lease, as specified in Exhibit A attached to this report, covers 23 rooms at a flat price of \$110 per room per night, as well as a yearly damage deposit not to exceed \$2,200/room per room, for a total amount not to exceed \$976,580 and escalating by 3% annually for five years. The lease contains exit clauses after year 2, when State funds will be expended, if funding becomes unavailable. Staff propose to contract with Berkeley Food and Housing Project to provide the social services component of the program and are bringing that to Council in a separate report on July 11, 2023.

Increasing access to interim housing for persons experiencing homelessness is consistent with the City's strategic priorities.

#### BACKGROUND

On February 1, 2023 the Homeless Services Panel of Experts voted to support the City of Berkeley's application for Encampment Resolution Funding to enter into a lease agreement with the Super 8 at 1619 University Ave for four years.

On February 9, 2023 City staff presented a plan, including the proposed priority encampment areas and a request for local Measure P match funding to extend the program beyond two years, to the Budget and Finance Policy Committee of the Council; the Committee voted unanimously to approve staff's application and to include a 1:1 Measure P match commitment in the application. (Given the short time between Council's return from Winter recess and the deadline for the grant application on February 28, there was no time to bring this item before the full City Council for consideration.) Staff successfully completed and submitted the application on February 28, 2023 and were awarded the full amount on June 14, 2023.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental impacts associated with this lease. Providing noncongregate interim housing for those currently living in encampments will reduce the overall negative impact of encampments on Berkeley's environment and waterways, as well as the negative impacts of environmental elements on the health and safety of those living in encampments.

RATIONALE FOR RECOMMENDATION

If adopted, this lease agreement will bring about the opportunity to shelter at least 23 individuals who are currently living in encampments. Adopting the agreement by Urgency Ordinance is appropriate in light of the current shelter crisis. By adopting this agreement through an Urgency Ordinance, it will be possible to execute a lease with an effective date of August 1, 2023, helping meet the ERF-2 expenditure deadline of June 30, 2024.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Josh Jacobs, Homeless Services Coordinator, 510-225-8035.

Attachments:

1. Ordinance  
Exhibit A: Lease Agreement

ORDINANCE NO. X,XXX N.S.

URGENCY ORDINANCE AUTHORIZING THE CITY MANAGER OR HER DESIGNEE TO EXECUTE A LEASE AND ANY NECESSARY AMENDMENTS WITH CAMPUS MOTEL, LLC, FOR REAL PROPERTY LOCATED AT 1619 UNIVERSITY AVENUE, BERKELEY, CA.

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

Section 1. The City Council finds as follows:

- a. The City of Berkeley is facing an ongoing crisis of street homelessness: while overall homelessness declined in Berkeley by 5% from 2019 to 2022, unsheltered homelessness stayed roughly the same during this period, declining only 1%.
- b. To help address this crisis, on February 9, 2023, the Budget and Finance Policy Committee of the City Council passed a motion authorizing staff to apply to the State of California for an Encampment Resolution Funding program grant which, if funded, would provide the City with funding to master lease the Super 8 motel at 1619 University Ave for two years for the purposes of providing non-congregate shelter; and
- c. In the same Feb 9, 2023 motion, the Budget and Finance Policy Committee authorized staff to include two years of match funding from Measure P in the grant application; and
- d. City staff successfully submitted this grant in February 2023, and the City was awarded \$4,931,058.30 on June 14, 2023; and
- e. City staff have previously partnered with the owners of the Super 8 Motel to serve high-needs residents of dangerous Berkeley encampments, demonstrating that the use of this property for non-congregate shelter is viable and feasible; and
- f. Providing low-barrier, non-congregate interim housing options will be critical to end the unsheltered status of those currently living in dangerous Berkeley encampments; and
- g. The property owner, Campus Motel, LLC, has offered to lease the entire property (providing 23 guest rooms) at 1619 University Avenue to the City for purposes of establishing a homeless shelter for five years.

Section 2. The City Manager or her designee is hereby authorized to enter into a lease and necessary amendments starting August 1, 2023 with Campus Motel, LLC for real property located at 1619 University Avenue on substantially the same terms as set forth in Exhibit A. The rent will be \$3,355 per room per month, including \$2,200 per room in damage funds annually, escalating 3% year-over-year for each year of the term. Lease costs will be paid for by a State of California Encampment Resolution Fund-2 grant.



Section 3. This Ordinance is adopted as an urgency ordinance pursuant to the Charter of the City of Berkeley, Article XIV, Section 93 and shall be effective immediately. The City Council finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City of Berkeley.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way within fifteen calendar 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.

CITY OF BERKELEY

**EMERGENCY OCCUPANCY AGREEMENT**

|                                                                                                                             |
|-----------------------------------------------------------------------------------------------------------------------------|
| <u>OCCUPANCY AGREEMENT COVERING PREMISES</u><br><u>LOCATED AT:</u><br>Super 8 Motel<br>1619 University Avenue, Berkeley, CA |
| <u>OWNER'S FED. TAX. I.D., NO. OR SOCIAL SECURITY NO.:</u><br>87-0751947                                                    |
| <u>TENANT:</u><br>City of Berkeley                                                                                          |

**File No:**

**Preamble**

**THIS OCCUPANCY AGREEMENT ("OCCUPANCY AGREEMENT"), is MADE AND ENTERED INTO THIS 1<sup>st</sup> DAY OF August, 2023 BY AND BETWEEN CAMPUS MOTEL, LLC, a California limited liability company (hereinafter, the "Owner"), without distinction as to number or gender, and the City of Berkeley (hereinafter called the "City.") This Occupancy Agreement is entered into for the purposes of providing interim housing for persons experiencing homelessness in Berkeley, California.**

Owner is the record owner of or authorized party to grant such rights concerning certain real property defined as the Premises herein situated in the County of Alameda, State of California and has the authority to grant the rights to the City contained in this Occupancy Agreement. The Owner and its manager(s), members, agents, successors and assigns are referred to individually as an "Owner Party" and collectively as "**Owner Parties.**" The City and its employees, agents, contractors, invitees, licensees, successors and assigns are referred to as the "**City Parties.**" The "**Operator**" and the "**Program Guests**", as defined below, and their respective agents, invitees and licensees of any of them, are also "**City Parties**" for purposes of this Occupancy Agreement.

**WITNESSETH**

**Description**

1. The Owner hereby authorizes the City and the City hereby hires from the Owner those certain premises with appurtenances situated on improved real property at 1619 University Avenue, Berkeley, CA (APN 57-2070-9-1) ("Property") in the City of Berkeley, County of Alameda, State of California, and more particularly described as follows:

All twenty-three (23) guest rooms within the Berkeley Inn hotel ("**Hotel**") located at (each individually a "**Room**" and collectively, the "**Rooms**"), and including all parking spaces contiguous to the Hotel building, and unlimited use of the building's common facilities as shown on **Exhibit A** (collectively, the "**Premises**"). The Premises do not include rights of access to or use of the roof.

The Premises are operated as a hotel accommodation. The City has inspected the Premises and deems them appropriate for its intended uses, and acknowledges that Owner will deliver the Premises to the City in their "AS IS, WHERE IS AND WITH ALL FAULTS" condition and also acknowledges that Owner has no obligation to prepare the Premises for occupancy in any manner. Subject to casualty events, condemnation, or emergency conditions stated below, and subject to Owner's needs to access the Premises for repair work or periodic inspection, as described below, Owner grants to the City exclusive access to and use of the Premises on a

continual basis (i.e., twenty-four (24) hours per day, seven (7) days per week) for purposes of providing interim housing for persons experiencing homelessness under a specialized housing program ("**Program**") administered by the City (each such occupant or invitee through that Program is referred to herein as a "**Program Guest**"), either directly or through a Program operator under the City's control ("**Operator**"). The City will not (i) allow any nuisance conditions to exist on the Premises, and (ii) shall use diligent efforts to promptly eliminate any Program Guest from accessing the Premises if such Program Guest has engaged in activity that causes material damages to the Premises.

Owner acknowledges that during the Term, Owner shall not rent or allow occupancy of any Room or facilities in the Premises to any person other than City, and City agrees that it will use the Premises exclusively for the implementation of the Program and the housing of Program Guests (together with any administrative or management function required on site at the Premises for the Program). Under no circumstances shall the City engage in any conduct that would jeopardize (i) Owner's existing permits for the Hotel; or (ii) its ability to surrender the Premises at the end of the Term vacant, and in the condition required by this Occupancy Agreement. Owner shall have no obligation to manage any Program Guest or monitor or control any of the operations on the Premises; all such operations and control shall be the sole responsibility of the City. Owner represents that Owner has not received a notice of violation of any permit condition with respect to the Premises, and, to Owner's knowledge, that the Premises comply with all laws.

The City acknowledges that there is a storage room in which the Owner stores tools, parts and supplies to make repairs to improvements and equipment, and that Owner is reserving its use of such storage room for that purpose in order to more efficiently undertake any repairs required at the Premises. The City shall not permit others to gain access to such storage room which shall remain locked when not in use by Owner or its agents.

**Term; Early Termination; Option**

2. The term of this Occupancy Agreement shall commence on August 1, 2023 ("**Commencement Date**"), with the City taking physical occupancy on August 1, 2023. The term of this Occupancy Agreement ("**Term**") and the City's rights to possession of the Premises shall end on the earlier of: (i) five (5) years after the Commencement Date (expected to be July 31, 2028) unless the parties negotiate an extension under the "Option" described below; (ii) on the effective date of termination under any election of a party to terminate the Occupancy Agreement upon an "Event of Default" (defined below); (iii) on the effective date of any termination by the City for convenience (in the City's sole discretion) that is based on a notice of termination given at any time after August 1, 2024, if the City elects to so terminate the Term ("**City's Termination Right**"); (iv) on the effective date of any termination by Owner for convenience (in the Owner's sole discretion) that is based on a notice of termination that takes effect at any time after August 1, 2025, if Owner elects to so terminate the Term ("**Owner's Termination Right**"); and (v) on the effective date of termination that takes effect under the exercise of the "Casualty Termination Right" under Section 10, below, or pursuant to the "Special Termination Right", as specified in **Exhibit C** of this Occupancy Agreement.

Any exercise of City's Termination Right or of Owner's Termination Right referenced in the prior paragraph, sections (iii) and (iv), shall be made by written notice, which shall become effective and end the Term on the day that is One Hundred Eighty (180) days after such termination notice is provided to the counterparty. Thus, an election by the City to terminate the Term under the City's Termination Right that is given 190 days before July 31, 2024 will be effective as of July 31, 2024, but one given 120 days before that date will mean that the Term will end on September 30, 2024. Similarly, an election by the Owner to terminate the Term under the Owner's Termination Right that is given 190 days before July 31, 2025 will be effective as July 31, 2025, but one given 120 days before that date will mean that the Term will end on September

30, 2025. During any such period through the end of the Term the parties are bound by all of the terms of this Occupancy Agreement.

If mutually agreeable to City and Owner, the parties may extend the Term for an additional five (5) years ("**Option**"), so long (i) this Occupancy Agreement has not terminated and there is no pending default by the party invoking the Option, (ii) notice of the intention to extend the Term is given by written notice to the counterparty at least four (4) months prior to the then pending expiration date for the Term, and (iii) the terms and conditions of such an extension, including the amount of Monthly Rent, will be negotiated and must be agreed to and reduced to writing and signed by both parties to be effective.

**Rent and Invoicing**

3. Monthly Rent payments ("**Monthly Rent**") shall be paid by the City in advance and without deduction or offset (except as allowed in Section 6), on the first day of each month during the Term, regardless of whether each Room is occupied for the full month or not, as follows:

| <b>TIME PERIOD</b>        | <b>MONTHLY RENT RATE PER ROOM</b> |
|---------------------------|-----------------------------------|
| <b>8/1/2023-7/31/2024</b> | <b>\$3,355.00</b>                 |
| <b>8/1/2024-7/31/2025</b> | <b>\$3,455.65</b>                 |
| <b>8/1/2025-7/31/2026</b> | <b>\$3,559.32</b>                 |
| <b>8/1/2026-7/31/2027</b> | <b>\$3,666.10</b>                 |
| <b>8/1/2027-7/31/2028</b> | <b>\$3,776.08</b>                 |

Monthly Rent and all other payment obligations under this Occupancy Agreement are referred to collectively as "**Rent.**" All payments of Rent are due and payable thirty (30) days after Owner has provided a demand for payment. For payments other than Monthly Rent, Owner shall submit an invoice with reasonably sufficient detail to permit the City to reference and confirm the obligation to pay under the Occupancy Agreement. Rent shall be paid to Owner at the address specified in Section 4 or to such other address as the Owner may designate by a notice in writing.

Rent payments shall be paid from any source of legally available funds of the City, and so long as the Premises is available for the City's use, the City covenants to take such action as may be necessary to include all Rent payments due under this Occupancy Agreement in its budgets and to maintain such items to the extent unpaid for that fiscal year in its budgets, and to make the necessary appropriations and supplemental appropriations to the extent necessary, for all such Rent payments; which covenants of the City shall be deemed to be, and shall be, ministerial duties imposed by law, and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants made by the City in this Occupancy Agreement.

**Notices**

4. All notices and correspondence herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and when addressed as shown below, and one of the following applies: 1) two business days (i.e. not a Saturday, Sunday or a national or state holiday where the courts are closed) after it is deposited in the United States Mail, with certified first class postage prepaid; 2) on the day it is received if delivered by personal service, or if sent via a reputable commercial overnight delivery service (i.e.

UPS, FedEx or similar) with receiver’s signature required; and (3) on the next business day after it is by email to the address shown below and receipt has been electronically confirmed:

**To the Owner:** Campus Motel, LLC  
Attention: Feroz Amin

\_\_\_\_\_, CA \_\_\_\_\_  
Phone No.: (415) 297-8758  
Email: ferozmamin@gmail.com

**To the City:** City Manager’s Office  
City of Berkeley  
2180 Milvia St, 5<sup>th</sup> Floor  
Berkeley, CA 94704  
Attn: Peter Radu  
Phone No. (510) 981-7045  
Email: [pradu@cityofberkeley.info](mailto:pradu@cityofberkeley.info)

ALL NOTICES AND CORRESPONDENCE MUST REFERENCE PREMISES ADDRESS.

Rent warrants shall be made payable to:

Campus Motel, LLC  
ATTN: Feroz Amin

and mailed to:

\_\_\_\_\_  
\_\_\_\_\_, CA \_\_\_\_\_

The address to which notices and correspondence shall be mailed to either party may be changed on not less than five (5) days prior notice, by giving written notice to the other party as required above.

**Parking**

5. Subject to the provisions of Section 2, parking spaces shown on **Exhibit A**, are to be available for City’s use and that of its Program Guests during the Term; however, the Owner is not obligated to enforce any parking use. The City's obligations to hold harmless, defend and indemnify the Owner and Owner Parties extends to any use made by it or its Program Guests (or their invitees or licensees) in the Premises or the parking areas. Owner shall ensure that no Owner Party nor any of its agents use these parking spaces unless separately authorized by the City. The on-site parking spaces shall be provided at no additional charge.

**Services, Utilities, and Supplies**

6. Owner, at Owner’s sole cost and expense, shall contract for and facilitate the delivery to the Premises of the following public utilities and public services: electricity and gas for heating, ventilating, air-conditioning as the City needs for its operations at the Hotel, plus sewer, trash disposal (of up to 3 yards per week), and internet services (as it currently operates at the Hotel). In addition, Owner shall provide and maintain security cameras, and hot and cold water service for the reasonable needs of the Hotel.

The City and Owner shall mutually determine baseline usage for these utilities and services, based on 100% occupancy of the Hotel, and the City shall be responsible for reimbursing the Owner for any usage costs that exceed 110% of the baseline costs for the utilities and services, per billing cycle used by the utility or service provider.

If Owner breaches its obligation to pay for and facilitate the delivery of the foregoing services, utilities or equipment, upon not less than one (1) business days' notice, City may furnish the same and deduct the cost, plus City's administrative expenses of 10%, of furnishing those services, utilities or equipment from the Rent.

## Repair and Maintenance

7. During the Term, the Owner shall maintain the Premises substantially in its existing condition as of the Commencement Date and in tenantable condition, subject, however, to Casualty (defined in Section 10) and condemnation. Owner's obligation to pursue repairs is limited to the obligations set out in this Section 7; such obligations arise upon prior notice of disrepair from the City ("**Repair Notice**"). Upon any Repair Notice, Owner shall immediately respond to a Repair Notice if there is an emergency involving life safety issues; otherwise Owner shall respond with the required maintenance or repair with reasonable diligence, consistent with common property management practices. For Casualty and other events beyond the Owner's control, notice of the damage shall be promptly provided by the City and the obligations to repair and pay for any such repairs shall be governed by this Section 7, Schedule 7 and Section 10, below.

(a) Owner warrants and represents the common facilities of the Premises and at least one (1) Room shall be readily accessible to and usable by individuals with disabilities in compliance with Title III of the Americans with Disabilities Act of 1990 and California Title 24 ("Disability Laws"), as amended from time to time and regulations issued pursuant thereto and in effect from time to time. Any and all costs incurred to cause the Premises to comply with the Disability Laws shall be borne by Owner unless caused by alterations to the Premises pursued by the City. See also Schedule 7.

(b) The City shall promptly notify Owner of damage to the Premises, and/or Owner's fixtures, furnishings and equipment ("**FF&E**") and mattresses ("**Mattresses**") provided by Owner on the Commencement Date or replaced by Owner. Owner's actual out-of-pocket costs of repairing or replacing any damage to (i) the Property, (ii) the FF&E, and/or (iii) Mattresses and (iv) any required deep cleaning including pest control and heat treatments for any Room are herein collectively referred to as the ("**Repair Costs**"). The City's obligation to reimburse the Owner for such Repair Costs in any "Year", as defined below, is limited to the amount of the Yearly Damage Deposit applicable to the Year in which the Repair Costs are incurred, plus any additional Repair Costs in that Year caused by the gross negligence or willful misconduct of a City Party. In so calculating the applicable Repair Costs for such Year, the parties agree to offset from such Repair Costs any net amount recovered by Owner as insurance proceeds for such loss or damages pursuant to the insurance coverage required by this Occupancy Agreement. The sum of all such Repair Costs, less any applicable net insurance proceeds received, less any available balance of that Year's Yearly Damage Deposit as of the date of such loss or damage is herein referred to as "**Excess Costs**." The City shall be responsible to Owner for all Excess Costs incurred by Owner and must pay such Excess Costs within sixty (60) days of demand from Owner.

For the avoidance of doubt, Repair Costs are to first be satisfied from the aggregate "**Yearly Damage Deposit**" (see right column, below), which shall be equal to the "Damage Deposit per Room" set forth below for each applicable "Year" (defined below) of the Term multiplied by 27 Rooms (e.g. for the first Year the Yearly Damage Deposit is \$2,200 x 27 Rooms = \$59,400.00). City shall pay any Excess Costs within 60 days of City's receipt of Owner's reasonable proof of payment for actual costs of good, services and labor.

The Yearly Damage Deposit may be used to address damage or destruction from a "Casualty" (defined in Section 10, below) if it was caused by the negligence, gross negligence, or the willful

misconduct of a City Party. In such Casualty events, the cost allocations (including rights to insurance proceeds) shall be governed by Section 10 and Exhibit C.

Each 12-month time period noted below shall be referred to as a “Year.”

| TIME PERIOD        | "YEARLY DAMAGE DEPOSIT" PER ROOM |
|--------------------|----------------------------------|
| 8/1/2023-7/31/2024 | \$2,200.00                       |
| 8/1/2024-7/31/2025 | \$2,266.00                       |
| 8/1/2025-7/31/2026 | \$2,333.98                       |
| 8/1/2026-7/31/2027 | \$2,404.00                       |
| 8/1/2027-7/31/2028 | \$2,476.12                       |

(c) The City shall pay the first Year's Yearly Damage Deposit to the Owner within fifteen (15) days of the Commencement Date and receipt of demand for payment. If the Yearly Damage Deposit is not exhausted during the course of each such Year, Owner may retain the balance. If the Term continues beyond the first Year, then on the first anniversary of the Commencement Date, and after receipt of demand for payment, the City will remit that Year's Yearly Damage Deposit to the Owner. The City will follow this for each succeeding anniversary of the Commencement Date during the Term to ensure the Yearly Damage Deposit has been paid to Owner at the start of each Year in the Term. If either Owner or City exercises the Option to extend the Term, the parties shall attempt to resolve the amount and disposition of the Yearly Damage Deposit during any such extended Term.

(d) If any Room(s) are made uninhabitable due to the negligence or willful misconduct of an Occupant, the City shall not be entitled to Rent abatement for the affected Room(s) during the duration of rehabilitation.

(e) Laundry FF&E. Only staff supervised by the Operator may have access to the laundry room area. If any damage is caused to the laundry equipment during the Term by any City Party, and such damages ultimately aggregate to more than \$2,000.00 (Two Thousand Dollars), Owner may, in its discretion remove the existing laundry equipment and install a coin operated laundry serviced by a vendor.

The City further agrees that the City will ensure that every Program Guest agrees in writing – and as a condition of such person's occupancy - to refrain from engaging in damage to the Property, the FF&E or the Mattresses. See Schedule 7.

**Assignment**

8. The City shall have the right to assign this Occupancy Agreement with Owner's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. No such assignment shall relieve the City of any liability or responsibility under this Occupancy Agreement, unless the assignee agrees in writing to assume all of City's obligations under this Occupancy Agreement and is equally capable of performing them.

**Quiet Possession**

9. Subject to the terms of this Occupancy Agreement, the Owner agrees that the City, while keeping and performing the covenants herein contained, shall at all times during the existence of this Occupancy Agreement, peaceably and quietly have, hold, and enjoy the Premises without suit, trouble, or hindrance from the Owner or any person claiming a superior title under the Owner. City acknowledges that the Owner may access the Premises on not less than twenty-four (24) hours prior written notice to the City (except in case of an emergency, or where Owner is

undertaking repair of a Casualty event and it is part of a continuum of work days, in which case no notice is required) in order to (i) perform required repairs, (ii) address any failure of the utilities or services required under Section 6, or (iii) inspect the Premises. Owner's inspection of the Premises shall be limited as follows: (i) absent cause, an inspection to determine compliance with the Occupancy Agreement will not be more often than once per month; (ii) to complete an appraisal or due diligence analysis for any financing, sale or other bona fide valuation need; (iii) to show the Premises to a prospective lender or purchaser; (iv) access to a Program Guest's Room shall only occur if damage is being inspected or repaired, or the cause of a Casualty is being assessed, and then only with a person assigned by the City to accompany the Owner or its agent in completing such inspection. Absent an emergency, in which case access shall be provided immediately, any access by Owner shall only occur during regular 9 a.m. to 5 p.m. business hours. The City will reasonably cooperate in coordinating this access.

## Casualty and Destruction

10. If the Premises are damaged by fire, accident or other casualty (collectively, "**Casualty**"), and if the cost to repair such damage exceeds more than 20% of the Rent due for the remainder of the Term, or such damage is not fully covered by insurance proceeds made available to Owner, Owner may elect to terminate this Occupancy Agreement ("**Casualty Termination Right**"). Such election shall be made within twenty (20) days of the date of Casualty. Calculating the "remainder of the Term" shall be based on the shortest available Term if either party exercises an available Termination Right, If the Casualty does not provide Owner with such an election to terminate this Occupancy Agreement, or Owner does not timely elect to terminate, whether under a Casualty Termination Right, or a "Special Termination Right" under the provisions of Exhibit C, then Owner shall diligently pursue the repair and restoration of the Premises in a commercially diligent manner. Pending such repairs, Rent shall abate proportional to the number of Rooms that are untenable during the repair efforts unless the Casualty was due to the gross negligence or willful misconduct of a City Party.

If a Casualty occurs and the Occupancy is not terminated, Owner shall tell the City the estimated number of days required to repair such Casualty within thirty (30) days of its occurrence ("**Owner's Notice**"), as the repair period may be determined in Owner's reasonable judgment. If the Owner's Notice specifies that more than fifty percent (50%) of the remainder of the Term, or more than two hundred ten (210) days, will be required to complete the repairs, whichever is less, City may at its option terminate this Occupancy Agreement by written notice to Owner within thirty (30) days of Owner's Notice ("**City's Notice**"). The "remaining Term" shall only include that portion of the Term that is not at the time of the Casualty susceptible to any early termination rights under this Occupancy Agreement. If the Premises are totally destroyed by a Casualty, this Occupancy Agreement shall terminate.

If the Premises are to be repaired after a Casualty, Owner shall diligently prosecute to completion the repair of said Premises, and the parties shall cooperate in obtaining all available insurance coverage to pay for such repairs and make these available to the Owner for such purposes including the recovery of any Rents. Except for circumstances wherein an act of the City or Program Guest(s) unduly delay the completion, if Owner does not complete the repairs within 120% of the time noted in the Owner's Notice, the City shall have the option to terminate this Occupancy Agreement by giving written notice to Owner at any time prior to Owner's completion of such repairs.

During any period where a Room is untenable, as a result of Casualty that was not caused by the negligence or willful misconduct of a City Party, then (i) to the extent any Room is not available for City's use, the rent for any affected Room shall be abated each month by dividing the number of days the Room is unable to be occupied by thirty (30) days, and (ii) if portions of the Premises located outside of the Rooms are damaged or destroyed and not available for City's use, the rent for each Room shall be abated during the time that those portions of the Premises are not available for City's use by multiplying the rent for each Room by a fraction, the numerator of which is the square footage of the Premises that has been damaged or destroyed and the



denominator of which is the square footage of the entire Premises. It is understood and agreed that the City or its agent has the right to enter the destroyed or partially destroyed Premises provided any such entry is not prohibited by law or emergency services, and in all events any such entry is at the sole risk of City. At the City's request, the Owner shall immediately identify an appropriate route through the Hotel building to access the Premises. If the Owner cannot identify an appropriate access route, it is agreed that the City may use any and all means of access at its discretion in order to enter the Premises.

**Subrogation  
Waived**

11. To the extent authorized by any fire and extended coverage insurance policy issued to Owner or City (or the Operator) related to the Premises or operations on it, each such insured will diligently pursue with its insurer a good faith effort to have such insurer waive its rights of subrogation against the party causing the loss or damage. If a premium is required to obtain such waiver, the party seeking and benefitting from such waiver may elect to pay the premium or other cost to ensure the waiver occurs, but otherwise the insured party is under no obligation to procure the waiver of subrogation. Each party agrees to release its counterparty from liability for any loss or damage to the extent it is covered by said insurance.

**Prevailing  
Wage  
Provision**

12. For those projects defined as "public works" pursuant to Labor Code §1720.2, the following shall apply during the Term:

- A. Owner/contractor shall comply with prevailing wage requirements and be subject to restrictions and penalties in accordance with §1770 et seq. of the Labor Code which requires prevailing wages be paid to appropriate work classifications in all bid specifications and subcontracts.
- B. The Owner/contractor shall furnish all subcontractors/employees a copy of the Department of Industrial Relations prevailing wage rates which Owner will post at the job site. All prevailing wage rates shall be obtained by the Owner/contractor from:

Department of Industrial Relations  
Division of Labor Statistics and Research  
455 Golden Gate Avenue, 8th Floor  
San Francisco, California 94102  
Phone: (415) 703-4774  
Fax: (415) 703-4771

For further information on prevailing wage: [http://www.dir.ca.gov/dlsr/statistics\\_research.html](http://www.dir.ca.gov/dlsr/statistics_research.html)

- C. Owner/contractor shall comply with the payroll record keeping and availability requirement of §1776 of the Labor Code.
- D. Owner/contractor shall make travel and subsistence payments to workers needed for performance of work in accordance with the Labor Code.
- E. Prior to commencement of work, Owner/contractor shall contact the Division of Apprenticeship Standards and comply with §1777.5, §1777.6, and §1777.7 of the Labor Code and Applicable Regulations

**Fair  
Employment  
Practices**

13. During the Term of this Occupancy Agreement, the Owner shall not deny benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex. Owner shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

Owner shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.8), and the regulations or standards adopted by the awarding City to implement such article.

**Holding Over**

14. In the event the City remains in possession of the Premises with the express written consent of the Owner after the termination or the expiration of the Term, or any extension or renewal thereof, this Occupancy Agreement shall be automatically extended on a month to month basis, subject to a thirty day (30) day notice of termination by the Owner or the City and otherwise on the terms and conditions herein specified, so far as applicable, with Monthly Rent to be at two hundred percent (200%) of the Monthly Rent in effect immediately prior to such holdover period. If no such consent is provided by Owner, then there shall be no holding over and City will be liable to Owner for any consequential or special damages caused by the unlawful holding over.

**Surrender of Possession**

15. Upon termination or expiration of this Occupancy Agreement, the City will peacefully surrender to the Owner the Premises entirely vacant and in good order and repair, except for reasonable use and wear thereof and damage by earthquake, fire, public calamity, the elements, acts of God, or circumstances for which Owner is responsible pursuant to this Occupancy Agreement. Notwithstanding the foregoing, City's obligation to restore the Premises shall also be limited in accordance with Section 19.

**Time of Essence, Binding upon Successors**

16. Time is of the essence of this Occupancy Agreement. Without affecting the provisions governing assignment and subleasing, the terms and provisions of this Occupancy Agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns to the respective parties hereto.

**No Oral Agreements**

17. It is mutually understood and agreed that each party shall be deemed a drafter of the provisions of this Occupancy Agreement in equal measure, and that no alterations or variations of the terms of this Occupancy Agreement shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

**Hazardous Substance**

18. City agrees that it will comply with all applicable laws in occupying and using the Premises. This obligation includes complying with all laws existing during the Term pertaining to the presence, use, storage, transportation, and disposal of any "hazardous substance" or "hazardous materials" (as those terms are defined in Exhibit B, attached to this Occupancy Agreement; "**Hazardous Materials**") in on or about the Premises. City shall promptly advise Owner of the discovery of any such Hazardous Materials in or about the Premises where the presence, use, storage or disposal of the Hazardous Materials constitute an event requiring reporting to any governmental agency charged with protecting the environment or public health, or reflects a violation of the Environmental Laws, as these are defined in Exhibit B. In the event a government order is issued naming the City or the City incurs any liability during or after the Term in connection with Hazardous Materials that were present on the Premises before the Commencement Date, or which was caused by the Owner or its agent during the Term, Owner shall hold harmless, indemnify, and defend the City in connection therewith and shall be solely responsible as between City and Owner for all efforts and expenses arising from such preexisting contamination.

Owner represents and warrants that, to the knowledge of the Owner's manager: (a) the Premises do not contain asbestos; (b) the Premises do not contain any substance that is deemed Hazardous Materials, other than normal quantities of such Hazardous Materials as may typically be found in commercial construction or cleaning products used and disposed of in accordance with applicable laws; (c) there has been no release of Hazardous Materials on the Premises in violation of applicable law; (d) there are no underground storage tanks for petroleum products or

Hazardous Materials, active or abandoned, located on or under the Premises; (e) Owner has received no notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging any violation of any Environmental Laws or informing Owner that the Premises are subject to investigation, inquiry, or proceeding regarding Hazardous Materials or the potential violation of any Environmental Law; and (f) there are no environmental liens on the Premises.

**Improvements and Alterations; Restoration of Premises**

19. Throughout the Term, the City shall make no improvements or alterations to the Premises if these require permits or that affect any roof membrane, any structural elements or involve more than \$10,000 in costs without the express written permission of the Owner, which shall not be unreasonably withheld, conditioned, or delayed. City shall pay for the costs of any such works of improvement and ensure that no liens or other charges are imposed on the Premises. Upon termination of the Occupancy Agreement, any equipment installed on the Premises by the City shall remain the City's property and the City shall remove such property from the Premises and repair any damages caused by such removal before the end of the Term. Upon expiration or termination of the Term, the Premises shall be returned to Owner vacant and in the same condition that existed on the Commencement Date, reasonable wear and tear excepted. On expiration of the Occupancy Agreement, the Premises shall revert to its status as a tourist hotel.

**Indemnification and Insurance**

21. The City agrees to indemnify and hold harmless the Owner, its members, manager(s), agents, successors and assigns ("**Indemnitees**") in the event of any third party claim, demand, cause of action, judgments, obligations, liabilities, expenses and costs (including, e.g., court costs and reasonable attorney's fees) and all other reasonable expenses (collectively "**Claims**") which Owner may suffer as a proximate result of the negligence or other wrongful act or violation of law by a City Party (or by any person or persons acting under the direct control and authority of the City, the Operator, or the agents or employees or either of them), in connection with the City's occupancy of the Premises under and during the Term of this Occupancy Agreement, and agrees to repair or pay for any damage proximately caused by reason of the City's use of the Premises during the Term of this Occupancy Agreement, in accordance with the terms the City committed to in Sections 7, 10, Schedule 7 and Exhibit C, as well as when due to the City's default or an Event of Default, except (i) to the extent such damages are the result of Owner's negligence or willful misconduct or it is the result of negligence or willful misconduct of any person(s) acting under the direct control and authority of Owner. The City's defense and indemnity obligations under this Section shall not be limited by the policy limits of any policy of insurance.

Owner agrees to indemnify and hold harmless the City in the event of any third party Claims that the City may suffer as direct and proximate result of the negligence or other wrongful act or violation of law by the Owner, its employees, or any person or persons acting under the direct control and authority of the Owner and further excluding that portion of the Claim caused by the negligence or willful misconduct of a City Party. Owner's defense and indemnity obligations under this Section shall not be limited by the policy limits of any policy of insurance.

Without limiting either party's defense and indemnity obligations under this Section, each party shall be entitled to participate in the defense of any third party claim that is reasonably likely to give rise to an indemnification claim under this Section.

The parties shall maintain in force at all times such policies of insurance as specified in Exhibit C, and shall abide by all of the terms and conditions of Exhibit C, which are incorporated by reference as if set forth in full herein. The provisions of this Section 21 shall continue in full force and effect despite any expiration or termination of the Occupancy Agreement.

**Taxes** 22. Owner is solely responsible for all tax liabilities, including property taxes. However, the City represents and warrants that under no circumstances shall any room occupied by the City or Program Guests be subject to the City's Transient Occupancy Tax.

**Exclusive Use** 23. Owner shall not rent or allow occupancy of any vacant Rooms or facilities in the Hotel during the Term of the City's occupancy of the Premises.

**Occupancy of Premises** 24. Owner and City understand that they shall not receive rent, fees, or any other form of payments or consideration, or gifts from Program Guests of Rooms in exchange for access to or use of the Premises. Owner and City also understand that neither has entered into any contract with the occupants of the Rooms related to the use of the Premises within the meaning of California Civil Code section 1925. The occupants of the Rooms are not persons who hire any dwelling unit from Owner or City within the meaning of California Civil Code section 1940 and are not subject to the benefits of the California Civil Code or any other state statutes, rules, or regulations or local government rules, regulations or ordinances that confer tenancy rights on the occupants.

**Remedies** 25. (a) It is an "Event of Default" – and a breach by the City - under this Occupancy Agreement if the following occurs: (i) Monthly Rent is not timely paid and such failure is not cured within five (5) days of notice from Owner; (ii) Rent other than Monthly Rent is not timely paid and such failure is not cured within fifteen (15) days of notice from Owner; (iii) City is in breach of its obligation to maintain the insurance coverages required of it, or fails to ensure that the Operator maintains its required insurance coverages; (iv) the City fails to perform any other obligation under this Occupancy Agreement (other those enumerated below), and fails to cure such default within thirty (30) days of notice from Owner; (v) the City abandons the Premises; (vi) the City fails to timely surrender the Premises, or (vii) City permits nuisance conditions to exist on the Premises.

(b) It is an "Event of Default" – and breach by the Owner- under this Occupancy Agreement if the following occurs: (i) Owner fails to timely pay an obligation to City within thirty (30) days of notice from City of such delinquency; (ii) Owner fails to perform an obligation that is required of Owner under this Occupancy Agreement and it fails to cure such default within thirty (30) days of notice from City of such default; and (iii) the Owner is in breach of its obligation to maintain the insurance coverages required of it.

(c) Except to the extent budget has been authorized by the City for Rents due under this Occupancy Agreement, there shall be no right under any circumstances to accelerate the payment of Rent or otherwise declare any payments of Rent not then in default to be immediately due and payable, Owner reserves and shall have all of the remedies reserved to a landlord for a breach of a lease, including:

(1) Owner may: (i) terminate this Occupancy Agreement upon service of lawful notice, and City shall then surrender the Premises to Owner; or (ii) enter and take possession of the Premises, in accordance with any applicable laws governing such repossession, and remove City, with or without having terminated this Occupancy Agreement. The provisions of this Section 25 (c)(1) shall operate as a notice to quit, any other notice to quit or of Owner's intention to re-enter the Premises being expressly waived. If necessary, Owner may proceed to recover possession of the Premises under applicable laws, or by such other legal proceedings, including re-entry and possession. Owner's exercise of any of its remedies or its receipt of City's keys to the Premises shall not be considered an acceptance or surrender of the Premises by City. A surrender must be agreed to in writing and signed by both parties. City shall pay to Owner all costs, losses or damages howsoever arising or occurring payable at the same time and in the same manner as is provided herein in the case of payment of Rent. Any surplus received by the Owner from re-leasing the Premises shall be the absolute property of Owner and City shall have

no right thereto, nor shall the City be entitled to any credit in the event of a surplus in the rentals received by Owner.

(2) Owner shall have the right to continue the Occupancy Agreement in effect after City's breach and recover Rent as it becomes due, and Owner, in addition to all other rights and remedies, shall have the rights and the remedy described in California Civil Code § 1951.4 (which provides that the Owner may continue the Occupancy Agreement in effect after City's breach and abandonment and recover Rent as it becomes due, if the City has right to sublet or assign, subject only to reasonable limitations). Acts of maintenance or preservation, efforts to relet the Premises, or the appointment of a receiver upon Owner's initiative to protect its interest under this Occupancy Agreement shall not of themselves constitute a termination of City's right to possession. City consents to Owner repossessing the Premises and re leasing it for the account of City, in which event the City's obligation will accrue from year to year in accordance with this Occupancy Agreement and City will continue to receive the value of the use of the Premises from year to year in the form of credits against its obligation to pay Rent. The obligations of City shall remain the same as prior to such default, to pay Rent whether City re-enters or not. City agrees to and shall remain liable for the payment of all Rent and the performance of all conditions contained herein and shall reimburse Owner for any deficiency arising out of the re leasing of the Premises, or, in the event Owner is unable to re lease the Premises, then for the full amount of all Rent to the end of the Term, but said Rent and/or deficiency shall be payable only at the same time and in the same manner as provided above for the payment of Rent hereunder, notwithstanding such repossession by Owner or any suit, brought by Owner for the purpose of effecting such repossession of the Premises or the exercise of any other remedy by Owner.

(d) Unless specifically reserved in this Occupancy Agreement, or the damage is caused by the gross negligence or willful misconduct of a party or any agent of such party, each party waives any claims for consequential or special damages arising from this Occupancy Agreement or the use of the Premises. Subject to the preceding sentence, if a party breaches any term or provision of this Occupancy Agreement, the counterparty shall have the right to pursue all available remedies at law or equity, including recovery of damages and specific performance of this Occupancy Agreement. The parties hereto agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach of any of the provisions of this Occupancy Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, each party shall waive the defense that a remedy at law would be adequate. Except as expressly provided elsewhere in this Occupancy Agreement, each party's rights and remedies under this Occupancy Agreement are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.

**Conflict of Interest**

26. By executing this Occupancy Agreement, Owner certifies that it does not know of any fact which constitutes a violation of California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, and further agrees promptly to notify the City if it becomes aware of any such fact during the Term of this Occupancy Agreement.

**Right of First Offer**

27. THIS SECTION IS INTENTIONALLY DELETED

**CITY OF BERKELEY PROVISIONS**

28. City Non-Discrimination Ordinance. Owner hereby agrees to comply with the provisions of the Berkeley Municipal Code ("**B.M.C.**"), including without limitation Chapter 13.26, as amended

from time to time. In the performance of its obligations under this Occupancy Agreement, Owner agrees as follows during the Term:

a. Owner shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

b. Owner shall permit City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of City, are necessary to monitor compliance with this non-discrimination provision. In addition, Owner shall fill out, in a timely fashion, forms supplied by City to monitor this non-discrimination provision.

29. Non-Discrimination Against Persons With Disabilities.

a. If Owner provides any aid, service or benefit to others on the City's behalf, Owner shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Owner shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the City, if applicable.

b. If Owner is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Owner shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Owner. All of Owner's activities must be in accordance with these laws, ordinances, codes, and regulations, and Owner shall be solely responsible for complying therewith.

30. Conflict of Interest Prohibited.

a. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Owner nor any employee, officer, director, partner or member of Owner, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of City, who has directly or indirectly influenced the making of this Occupancy Agreement.

b. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 et seq.) no person who is a director, officer, partner, trustee, employee or consultant of Owner, or immediate family member of any of the preceding, shall make or participate in a decision made by City or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or City, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

Interpretation of this Section shall be governed by the definitions and provisions use in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

31. Nuclear Free Berkeley. Owner agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

32. Oppressive States.

a. In accordance with Resolution No. 59,853-N.S., Owner certifies that it has no contractual relations with, and agrees during the Term of this Occupancy Agreement to forego contractual relations to provide personal services to, the following entities:

i. The governing regime in any Oppressive State.

ii. Any business or corporation organized under the authority of the governing regime of any Oppressive State.

iii. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Occupancy Agreement) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

b. For purposes of this Occupancy Agreement, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed Oppressive States.

c. Owner's failure to comply with this Section 31 shall constitute a default of this Occupancy Agreement and Owner may terminate this Occupancy Agreement on five days' written notice to Owner. In the event that City terminates this Occupancy Agreement due to a default under this provision, City may deem Owner a non-responsible bidder for five (5) years from the date this Occupancy Agreement is terminated.

33. Berkeley Sanctuary City Ordinance. Owner hereby agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Owner agrees not to provide the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security with any Data Broker or Extreme Vetting Services as defined herein:

a. "Data Broker" means either of the following: (1) The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies; (2) the aggregation of data that was collected for another purpose from that for which it is ultimately used.

b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include: (1) The City's computer-network health and performance tools; (2) Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer-based activity.

**IN WITNESS WHEREOF, this Occupancy Agreement has been executed by the parties hereto as of the dates written below.**

**CITY:**

CITY OF BERKELY

**OWNER:**

CAMPUS MOTEL, LLC

By: \_\_\_\_\_  
Dee Williams-Ridley

By: \_\_\_\_\_  
Feroz Amin

Its: City Manager

Its: Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved as to Form**

\_\_\_\_\_  
DEPUTY CITY ATTORNEY

By: \_\_\_\_\_



## SCHEDULE 7

### REPAIRS, FUNDING, AND RISK MANAGEMENT OBLIGATIONS

The parties intend by these provisions to provide certain standards for reducing (and allocating) risks and costs between them, including the costs of repairs arising from the use of the Premises and the need for repairs or reconstruction of the Premises during the Term.

A. **ADA Accessibility And Disability Access Disclosure Under Section 1938 of the California Civil Code.** City acknowledges and agrees that it is familiar with the condition of the Premises and all improvements thereon and, except with respect to pending work on a retaining wall that affects some of the parking on site, is leasing the Premises in its "AS-IS" condition, and, except with respect to said retaining wall, Owner shall have no obligation whatsoever to perform any work, supply any materials, incur any expenses or make any installations in order to prepare the Premises for City's occupancy. Moreover, Owner has not granted any allowances of any kind for the condition of the Premises. Except as expressly provided in this Occupancy Agreement, Owner makes no representation or warranty of any kind or nature, express, implied or otherwise, regarding the condition or usefulness of the Premises by or for City, its compliance with applicable Legal Requirements, or the suitability of the Premises for any particular use or purpose.

In accordance with Section 1938 of the California Civil Code, Owner has notified City that the Premises has undergone an inspection by a Certified Access Specialist to determine if the Premises meet all applicable construction related accessibility standards pursuant to Section 55.53 of the California Civil Code. Owner makes the following statement in compliance with the requirements of Section 1938(e) of the California Civil Code:

*"A Certified Access Specialist ("CASp") can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state Laws. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the subject premises."*

If City desires to obtain such CASp inspection, the CASp party, the scope of the inspection and date such inspection shall be performed shall be subject to the prior written approval of Owner, which will not be unreasonably withheld. Owner shall have the right to have a representative present during such inspection. The cost of such inspection shall be paid by City without reimbursement or other payment from Owner. Any work with respect to the Premises required to be completed as described in the CASp report shall be performed and paid for by City. Nothing contained in this Schedule 7 (including, without limitation, the notice to City above), shall alter the Parties' respective obligations under the other express provisions of this Occupancy Agreement.

B. **Life Safety Systems.** At its cost, Owner shall provide the existing life safety systems on the Premises, together with any upgrades required by applicable law. City agrees that its Program manager will, at least on a weekly basis, (i) test all smoke/CO detectors throughout the Hotel, and (ii) report to Owner on any smoke detectors that fail the test. Separately, the City will promptly notify the Owner of any defects that it becomes aware of in the life safety systems on the Premises.

C. **Yearly Damage Deposit.** As provided in Section 7 of the Occupancy Agreement, on the Commencement Date and on each anniversary of the Commencement Date (thus, at the start of each Year of occupancy), the City will provide an annual amount as a "damage deposit" for the ensuing Operating Year to cover anticipated costs of repairing the Premises following a Casualty caused by a City Party.

Any unused portion of the Yearly Damage Deposit will be retained by Owner as Rent; provided, however, if the Owner exercises an Owner Termination Right, a Casualty Termination Right, or a Special Termination Right, or the City exercises a termination due to Owner's Event of Default, then as of the date the Term ends, any unused portion of the Yearly Damage Deposit shall be (i) applied to the need for repairs to the extent that City fails to surrender the Property in the condition required by the Occupancy Agreement; and (ii) the balance is to be paid over to the City within thirty (30) days of such surrender, or the completion of such repairs, whichever is later.

D. **Program Management.** The City has advised Owner that each Program Guest is bound by an agreement with the City ("**Residency Agreement**") to use the Premises for residential purposes only and to exercise care in pursuing that occupancy and use.

1. It is a material part of the Occupancy Agreement that the City observe and enforce the following requirements under the Residency Agreement: (i) it will ensure that the Program Guest will test the smoke/CO detector in that person's assigned Room and report on whether it functions (this shall not relieve the City from its own testing obligations); and (ii) the City will ensure that each Residency Agreement will be duly reviewed and signed by the Program Guest, and that it will contain the following warnings and provisions in capital letters and 14 point font (and it shall note that doing these things will be grounds for eviction from the Premises):

*[CITY/PROGRAM COMPANY] WANTS TO ENSURE THAT THE HOUSING OFFERED IS KEPT IN A SAFE AND USABLE CONDITION.*

*YOU AGREE TO HELP ENSURE THAT YOU DO YOUR PART TO REACH THIS GOAL.*

*IF YOU OR ANY GUEST OF YOURS ENGAGES IN ANY OF THE FOLLOWING CONDUCT, IT WILL CONSTITUTE **WILLFUL MISCONDUCT** AND WILL BE IMMEDIATE GROUNDS FOR TERMINATING YOUR RIGHT TO ENTER THE PROPERTY: (A) ANY INTENTIONAL DAMAGE TO THE ROOM OR ANY PART OF THE BUILDING OR EXTERIOR PREMISES (i.e., PURSUING A COURSE OF ACTION WITH THE LIKELY RESULT THAT IT WILL SO DAMAGE THE PREMISES); (B) SMOKING IN THE ROOM OR ANYWHERE IN THE BUILDING; (C) ANY TAMPERING OR DAMAGE TO THE SMOKE DETECTORS IN THE ROOM OR THE BUILDING; (D) ALLOWING ANYTHING TO ENTER THE TOILET OR BE FLUSHED DOWN THE TOILET OTHER THAN HUMAN WASTE AND REGULAR TOILET PAPER, (THIS IS **WITHOUT EXCEPTION** - SO, ALL OF THE FOLLOWING ARE PROHIBITED: SYRINGES, "WIPES" OF ANY KIND [INCLUDING THOSE THAT CLAIM TO BE "DISPOSABLE"], TAMPONS, PAPER TOWELS, HAIR BALLS, DENTAL FLOSS, STRING, ETC. ARE ALL STRICTLY PROHIBITED); (E) TAMPERING WITH ANY PLUMBING OR ELECTRICAL DEVICES (THAT IS, ANYTHING OTHER THAN TURNING FAUCETS ON OR OFF, OR PLUGGING IN APPLIANCES, ETC.); (F) ALLOWING ANY SINK TO OVERFLOW; (F) THE USE OF ANY OF THE FOLLOWING: ANY OPEN FLAME, ANY HOT PLATES AND ANY SPACE HEATERS; (G) TAMPERING WITH ANY ELECTRICAL WIRING; (H) BRINGING ANY HAZARDOUS MATERIALS ONTO THE PREMISES UNLESS IT IS A CONSUMER PRODUCT THAT IS KEPT IN ITS AUTHORIZED CONTAINER AND USED SOLELY FOR THE PURPOSE IT WAS DESIGNED FOR; AND (I) BRINGING PROPANE, GASOLINE OR ANY OTHER FLAMMABLE PRODUCT ONTO THE PREMISES, EXCEPT FOR FUEL IN A VEHICLE'S FUEL TANK.*

2. *IF YOU ARE RESPONSIBLE FOR ANY LOSS OR DAMAGES TO THE ROOM OR ANY PART OF THE PROPERTY, DUE TO YOUR NEGLIGENCE OR WILLFUL MISCONDUCT, THEN [THE CITY] CAN TERMINATE YOUR USE OF THE ROOM OR THE PREMISES IMMEDIATELY AND YOU WILL LOSE ALL PRIVILEGES AND BENEFITS OF THIS PROGRAM PROVIDED TO YOU BY THE CITY.*

3. For all purposes under this Occupancy Agreement, City acknowledges that if any City Party engages in any of the conduct identified as "willful misconduct" in the enumerated actions set out in capital letters of subsection 1., above, it shall be binding on City as an act of "willful misconduct" for all purposes under this Occupancy Agreement.

- Eviction for Misconduct. The City and its Operator shall ensure that Owner is promptly notified of any events or occurrences constituting a violation of the above requirements under the Residency Agreement (regardless of any ostensible "cure" period). All of the above must be grounds for immediate eviction under the Residency Agreement, and where any of the prescribed events occurs, the City will take all reasonable and lawful measures to cause such Program Guest to be evicted from the Premises within TEN (10) days of the occurrence, and ensure that he or she is precluded from reentering the Premises for the balance of the Term. Until such eviction is accomplished, the City will be responsible for any further losses caused by that Program Guest.
- Other Evictions/Risk Allocation. Moreover, if the Program Guest has more than one such damage incident, that is the result of mere negligence (i.e., the first such occurrence was not caused by an act or omission constituting gross negligence or willful misconduct, including, as defined in the Residency Agreement), and the aggregate damage inclusive of prior Casualties attributable to such Program Guest is greater than \$5,000, then, if the City does not oust the Program Guest, the City will be responsible for any further damages caused by that Program Guest's negligence (after the Yearly Damage Deposit has been exhausted). Where any Program Guest causes a loss of more than \$5,000.00 (in a single instance or in the aggregate), regardless of the degree of negligence or misconduct, and the City does not remove such person from the Premises immediately after such a threshold of harm has been reached, then the City shall be responsible for any further Claim, loss or damage caused by such Program Guest's acts or omissions (whether due to simple or gross negligence or due to willful misconduct); provided that, if the City is so obligated to pay for such further losses, the City can apply any balance remaining in the Yearly Damage Deposit for that Year (defined in Section 7, above) to cover the resulting costs.
  - Thus, if a Program Guest has caused two instances where repairs were needed and these cost more than \$5,000 in losses, and the City does not remove such person from the Premises, and then a further loss of \$10,000 occurs due to that person's acts or omissions, the City will pay for such additional \$10,000 loss; however, it can use any remaining balance in the Yearly Damage Deposit to pay for those costs. For example, if there are three thousand dollars (\$3,000) remaining in the Yearly Damage Deposit account for that Year, then the parties will apply the \$3,000 to pay for such repairs, and the City will provide further payment of the \$7,000.00 balance to cover the additional costs of repairs.
  - See additional provisions in Exhibit C.

D. Insurance. See Exhibit C.



**Exhibit A  
Aerial Site Plan**

This is an aerial site plan including all parking spaces contiguous to the subject hotel building.

This is a street view showing parking spaces contiguous to the subject hotel building.

## Exhibit B

## Hazardous Substances and Environmental Laws

**“Hazardous Substances”** means any hazardous or toxic substance, material or waste, or any pollutant or contaminant, or any substance that is or becomes regulated by any local governmental authority, the state in which the Premises are located or the United States Government, including without limitation: (a) those substances included within the definitions of “hazardous substances,” “hazardous materials,” “toxic substances,” or “solid waste” in CERCLA or RCRA; (b) those substances defined as “hazardous wastes” in section 25117 of the California Health & Safety Code, or as “hazardous substances” in section 25316 of the California Health & Safety Code, and in the regulations promulgated pursuant to said laws; (c) those substances listed in the United States Department of Transportation Table (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. part 302 and amendments thereto); (d) any material, waste or substance which is (i) petroleum (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), (ii) petroleum products, (iii) asbestos, (iv) polychlorinated biphenyls, (v) designated as a “hazardous substance” pursuant to section 311 of the Clean Water Act, 33 U.S.C. 1251 et seq. (33 U.S.C. §1321) or listed or designated as a “hazardous substance” pursuant to section 307 of the Clean Water Act (33 U.S.C. §1317), (vi) flammable explosives, or (vii) radioactive materials, (viii) urea formaldehyde, (ix) radon gas, (x) medical waste, and (xi) chemicals that may cause cancer or reproductive toxicity; (e) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. (42 U.S.C. § 6903), (f) defined as a “hazardous substance” pursuant to section 101 of the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601, et seq.); and (g) such other substances, materials, and wastes which are or become classified as hazardous or toxic under any of the Environmental Government Regulations or any other applicable local, state or federal law, or otherwise are or become regulated under any Environmental Law(s).

**“Environmental Law(s)”** means any federal, state, or local laws, ordinances, rules, regulations, requirements, orders, directives, guidelines, or permit conditions, in existence as of the Commencement Date or as later enacted, promulgated, issued, modified or adopted, regulating or relating to Hazardous Substances, and all applicable judicial, administrative, and regulatory decrees, judgments, and orders, and common law, including those relating to industrial hygiene, public safety, human health, or protection of the environment, or the reporting, licensing, permitting, use, presence, transfer, treatment, analysis, generation, manufacture, storage, discharge, Release, disposal, transportation, Investigation or Remediation of Hazardous Substances. Environmental Government Regulations include the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. section 9601, et seq.) (“CERCLA”); the Resource Conservation and Recovery Act, as amended, (42 U.S.C. section 6901 et seq.) (“RCRA”); the federal Water Pollution Control Act, as amended, (33 U.S.C. section 1251 et seq.); the Toxic Substances Control Act, as amended, (15 U.S.C. section 2601 et seq.); the Hazardous Substances Account Act (Chapter 6.8 of the California Health and Safety Code section 25300 et seq.); Chapter 6.5 commencing with section 25200 (Hazardous Waste Control) and Chapter 6.7 commencing with section 25280 (Underground Storage of Hazardous Substances) of the California Health and Safety Code; and the California Water Code, sections 13300 et seq.

## EXHIBIT C

### Minimum Insurance Requirements

Unless separately defined below, capitalized terms shall have the meaning given to them in the main body of the Occupancy Agreement. To the extent of any conflict between these provisions and those in the main body of the Occupancy Agreement, these shall prevail. In addition, the City will provide all of the coverages contained in its "Memorandum of Coverages" attached hereto as Schedule 2 to the extent that such coverages are broader than and more protective of Owner (otherwise the broader coverages of this Exhibit C and the provisions of the main body of the Occupancy Agreement will prevail).

a. For the Term of this Occupancy Agreement, City shall self-insure or maintain, at its own expense, comprehensive general liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single and aggregate limits for both bodily injury and property damage, personal injury, completed operations and products liability. City shall insure all of the City's personal property located on or in the Premises against all risks. All such liability insurance shall name the Owner and its members and manager and its agents and employees as additional insureds and shall contain a severability of interests clause, specifying that, with respect to the coverage limits, such liability insurance applies to each person named as additional insureds as though a separate policy were issued to each, thus providing primary coverage with respect to the claims arising from the operations on the Premises.

City shall cause its Operator to provide the following insurance coverages: (a) comprehensive general liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single and aggregate limits for both bodily injury and property damage, personal injury, completed operations and products liability; (b) "all risks" form of property insurance for all of the Operator's personal property on the Premises; (c) If any licensed professional performs services as the Operator, a professional liability insurance policy in the minimum amount of \$1,000,000 to cover any claims arising out of Operator's performance of services under this Occupancy Agreement; (d) Worker's Compensation Insurance at levels required by statute; and (e) if Operator uses any vehicles in its operations in or about the Property, automobile liability coverage for bodily injury and property damage of not less than \$100,000 per person bodily injury per accident and \$50,000 in property damage per accident. The Workers' compensation policy shall include Employer Liability Insurance with limits not less than \$1,000,000 each accident, and shall provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days prior written notice to Owner and shall provide for a waiver of any right of subrogation against Owner, to the extent permitted by law

City has provided a Memorandum of Coverage to signify its proposed coverage of these coverage obligations. A copy is attached to this Exhibit C as **Schedule 1**. The City agrees to maintain these coverages at its cost throughout the Term.

Subject to the provisions of this Exhibit C, Owner shall maintain at all times during the performance of this Occupancy Agreement the insurance coverages (for property damage to the Property and for liability insurance) as identified in the quote relating to property damage and liability insurance attached hereto as **Schedule 1**. To the extent permitted under Owner's Policies, Owner's liability insurance shall name the City, its officers, agents, volunteers and employees as additional insureds but shall be subordinate to the primary coverage provided by the City.

Owner shall not be in breach of this Occupancy Agreement if it is unable to procure ongoing or replacement coverage(s) for the policies or coverages noted on Schedule 1 (whether property damage or liability coverage; individually, an "**Owner's Policy**", and collectively, "**Owner's Policies**"), so long as Owner has made commercially reasonable efforts to find replacement coverage for an Owner's Policy

and is unable to find equivalent coverage, or is unable to find it at a premium cost that does not exceed the prior Year's coverage costs for such insurance by more than 50% and City will not cover the excess premium costs over such 50% maximum (referred to as a "**Coverage Failure**"). If Owner suffers a Coverage Failure, it may elect to terminate this Occupancy Agreement on thirty (30) days' notice ("**Special Termination Right**"), and if there is a loss of coverage under the Owner Policies before the City surrenders possession, City shall be responsible for any Claim, loss or damage suffered or incurred by Owner until such surrender occurs. If Owner exercises its Special Termination Right then City shall timely surrender the Premises to Owner as required within such thirty (30) days, unless the next sentence applies. The City shall have an option to extend the surrender date by ninety (90) days (so that the surrender date is one hundred and twenty (120) days after notice of the Special Termination Right ("**Extension Election**")) if (i) it has not otherwise caused an Event of Default, (ii) the Coverage Failure is only with respect to Owner's property damage coverage, and (iii) the City makes its Extension Election within ten (10) days of Owner's notice of exercising its Special Termination Right. If an Extension Election occurs, the City shall hold harmless, defend and indemnify the Owner and the Indemnitees from all Claims arising from the City's continued use of or operations on the Property until the Premises are duly surrendered by the City. Time is of the essence in making such Extension Election.

All insurance policies shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said policies except upon thirty (30) days written notice to the City's Contract Administrator or the Owner, as applicable (unless otherwise noted on Schedule 1); and 2) be evidenced by the original Certificate of Insurance, specifying the required coverage and the insurance carrier's standard additional insured form endorsement. If any of the stipulated coverages are to change, such change is to be approved as to form and sufficiency by the City's Contract Administrator and Owner, as applicable, with such approval to be reasonably exercised. A failure by City or Owner to procure and maintain the required coverage(s) is an Event of Default unless the failure is a Coverage Failure. The original insurance certificates and all extensions to the insurance certificates should be sent to the addresses identified below.

b. If the commercial general liability insurance referred to above or shown in Schedule 1 is written on a Claims Made Form then, following termination of this Occupancy Agreement, the applicable party required to provide coverages must purchase and ensure there is coverage that will survive for a period of not less than five years after the end of the Term. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this Occupancy Agreement.

c. If a party to the Occupancy Agreement (including any Operator) employs any person to be in or around the Premises, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to its counterparty. The workers' compensation insurance shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance except upon thirty (30) days written notice to the City's Contract Administrator or Owner (as applicable); 2) provide for a waiver of any right of subrogation against the counterparty, to the extent permitted by law; and 3) shall be approved as to form and sufficiency by the Contract Administrator and the Owner, as applicable.

Where there is a Casualty event, and coverage may be available under an Owner's Policy, it is within the Owner's discretion to tender a claim under such policies, except to the extent the City can direct that decision under this subsection (d). If, in any given Year there is a liability claim, or a Casualty event that involves a loss or damage (to Owner or a third party) that is covered under an Owner's Policy (a "**Covered Claim**"), then Owner shall (i) provide notice to the City of the nature of the Covered Claim and the date of occurrence ("**Claim Notice**"), and (ii) tender the Covered Claim under the applicable Owner's Policy if (i) the amount of the Covered Claim for an occurrence is more than \$150,000.00 (One Hundred and Fifty Thousand Dollars), (ii) if the amount of the Covered Claim is less than \$150,000.00, but more



than one Covered Claim has occurred during the applicable Year and the aggregate of all such Covered Claims in that Year (regardless of whether they were tendered) exceeds \$250,000.00, and (iii) the City directs the Owner to pursue submission of the Covered Claim within ten (10) days of the Claim Notice. If Owner submits such Covered Claim and, as a result, there is a Coverage Failure, Owner may elect to terminate this Occupancy Agreement as a Special Termination Right.

e. If there is a Casualty or Claim that exceeds the coverage limits required of Owner under the Occupancy Agreement (e.g., \$5 million in property coverage and \$1 million in liability coverage), the City agrees to hold harmless, defend and indemnify the Owner and the Indemnitees from and against any loss or Claims arising from the Casualty or Claim that exceed the required coverage limits.

f. Owner shall forward all insurance documents to:

Department Name: City Manager

Department Address: 2180 Milvia Street, Berkeley, CA 94704

The City shall forward all insurance documents to the Owner at its address for notices.





Office of the City Manager

CONSENT CALENDAR  
July 11, 2023

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: Insight Housing (formerly Berkeley Food and Housing Project) to operate interim housing at the Super 8

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract and all necessary amendments with Berkeley Food and Housing Project to operate an interim housing program at the Super 8 Motel (1619 University Ave.) in an amount not to exceed \$7,295,634.55 for the period of August 1, 2023 to July 31, 2028.

FISCAL IMPACTS OF RECOMMENDATION

If approved, this resolution will result in an expenditure contract with Insight Housing (formerly Berkeley Food and Housing Project) for an amount not to exceed \$7,295,634.55 for 60 months of program operations through July 31, 2028. This contract will be funded by the Encampment Resolution Fund Round 2 grant (the acceptance of which award is also before Council on the July 11, 2023 agenda) for the first two years. Extending beyond the first two years will require additional funding; consistent with the guidance from the Budget and Finance committee on February 9, 2023, years 3-4 would need to be covered by Measure P. The City will allocate \$2,913,253.82 of the \$4.9M Encampment Resolution Fund Round 2 (ERF-2) grant and/or additional Measure P to maintain shelter operations through July 31, 2028.

These funds will first be appropriated as part of the First Amendment to the FY 2024 Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

The encampments in Northwest Berkeley are the highest priority encampments in the City: they are our largest remaining encampments and pose numerous risks to community health, including heavy drug use, rodent harborage, and fire concerns. The accumulation of debris and rodent harborage conditions in the area negatively affects both the residents and the surrounding businesses. These encampments have been deep cleaned and/or closed on multiple occasions and have received significant street outreach efforts such as shelter offers, case management, housing navigation, and problem solving.

Prioritizing the well-being of the people who call the area home necessitates that they be assisted indoors or into places of greater safety. By developing a resource specifically tailored to the needs of the encampment, the City can assist everyone that wants a shelter bed to get indoors and work with remaining residents to identify a safer alternative. Further, we have not yet had a dedicated funding source to appropriately serve these encampments in their entirety (which together have an estimated 40 residents); by finding a resolution to this geographic area, we can more equitably redistribute resources to other areas of the city that require assistance.

Given the tremendous success of the City's use of the first round of state Emergency Resolution Funding, which targeted the encampment in People's Park by providing noncongregate, interim housing at the Rodeway Inn, staff is optimistic that this intervention will be equally successful. Since the beginning of ERF operations in May 1, 2022, over 125 individuals have been served with 42 individuals moving to permanent housing. Additionally, the Super 8 partnered with the City of Berkeley to utilize the Winter Relief Shelter funds, provided by Alameda County, which granted short term motel stays for individuals experiencing street homelessness during the winter months of 2023. By establishing a master lease with the property and bringing in supportive services provided by Insight Housing, staff will strengthen the partnership with the motel owner. A lease ordinance for this project is also before the Council on the July 11, 2023 agenda.

Staff propose to provide services from Insight Housing (formerly Berkeley Food and Housing Project) for the cohort currently living in the Northwest Berkeley encampments, and is recommending that the Council authorize the City Manager to contract with Insight Housing for this purpose. The proposed contract with Insight Housing would be for \$7.3M over 60 months and would cover an array of services including supportive housing navigation, housing search assistance and flexible funding to support moving and move-in expenses; three meals a day; transportation assistance; and intensive clinical case management that would help link individuals to a variety of other needed services. The City's Homeless Response Team will partner with LifeLong Medical Care, Bay Area Community Services, and the Homeless Action Center street teams to perform extensive outreach to the people living in the encampments and will coordinate and facilitate referrals with BFHP to support Super 8 enrollments. The City and Alameda County will partner to provide as many housing and supportive services resources as possible (given various Federal and State regulations) to the cohort at the Super 8, with the goal of ensuring that everyone at the encampment is ultimately transitioned to a permanent home.

If approved, the contract with BFHP would begin on August 1, 2023 and extend through July 31, 2028. Funding for the contract would come from the state's Encampment Resolution Fund Round 2 grant and possibly the City's Measure P funds.

**BACKGROUND**

On February 1, 2023 the Homeless Services Panel of Experts moved to support the City of Berkeley’s application for Encampment Resolution Funding to enter into a lease agreement with the Super 8 at 1619 University Ave for four years.

On February 9, 2023, the Budget and Finance Committee approved staff to apply for a second round of Encampment Resolution Funding from the California Interagency Council on Homelessness and authorized staff to include in the application a match commitment funded with Measure P dollars to continue the program in Fiscal Years 26-27 if awarded.

On Feb 28, 2023, staff submitted this application and on June 14, 2023, the City was awarded the full amount of its ERF Round 2 grant application.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

Helping unhoused people currently living in West Berkeley transition into interim and permanent housing placement will minimize the detrimental environmental impacts associated with encampment homelessness over the long run, including vector and fire hazards, accumulation of trash and waste, and impacts on sensitive waterways. It will also reduce negative impacts of environmental elements on the health and safety of those living in these encampments.

**RATIONALE FOR RECOMMENDATION**

Insight Housing will be the main social service provider for the proposal and has been providing services in our community since 1970, including: emergency food and shelter, transitional housing, rapid rehousing, and permanent supportive housing with support services to individuals and families. Insight Housing also has experience operating non-congregate shelter in Berkeley, having operated a Project Roomkey site during the pandemic.

**ALTERNATIVE ACTIONS CONSIDERED**

None. The City of Berkeley’s current shelter crisis resolution (Resolution No. 70,179-N.S.) authorizes the City Manager to waive usual purchasing and bid requirements for the provision of emergency shelter; pursuant to this authority, and for the purpose of implementing the new ERF-2 funding as quickly as possible, staff recommend sole-sourcing this contract to BFHP.

**CONTACT PERSON**

Josh Jacobs, Homeless Services Coordinator, 510-225-8035.

Attachments:

- 1: Resolution

RESOLUTION NO. XX,XXX N.S.

AUTHORIZING A CONTRACT WITH INSIGHT HOUSING TO OPERATE INTERM HOUSING AT THE SUPER 8 MOTEL FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$7,295,634.55 FOR THE PERIOD AUGUST 1, 2023 TO JULY 31, 2028.

WHEREAS, the severe lack of housing affordable to people who are experiencing homelessness or insecurely housed, is contributing to an acute housing shortage that is worsening the rates of homelessness in Berkeley; and

WHEREAS, Northwest Berkeley is currently home to several large encampments of unsheltered individuals who will need to be assisted indoors into realistic, safe, and dignified interim and permanent housing options in order to address the street conditions in the area; and

WHEREAS, the City applied for \$4.9M in State of California Encampment Resolution Fund (ERF) grant funds to operate the Super 8 as an intensive interim housing destination for the cohort currently living in the Northwest Berkeley encampments; and

WHEREAS, as part of this ERF application, the City secured commitments from the County as well as Insight Housing to establish a program model at the Super 8 to serve and rehouse the cohort in Northwest Berkeley; and

WHEREAS, the City was awarded the full amount of their ERF application on June 14, 2023; and

WHEREAS, Insight Housing (formerly Berkeley Food and Housing Project) is an experienced provider of shelter and services to people experiencing homelessness, and is uniquely qualified to operate the Super 8, having provided emergency food and shelter, transitional housing, rapid rehousing, and permanent supportive housing with support services to individuals and families since 1970, and having operated noncongregate, motel-based shelter in Berkeley during the COVID-19 pandemic; and

WHEREAS, The City of Berkeley's current shelter crisis resolution (Resolution No. 70,179-N.S.) authorizes the City Manager to waive usual purchasing and bid requirements for the provision of emergency shelter; pursuant to this authority, and for the purpose of implementing the new project as quickly as possible, staff recommend sole-sourcing this contract to Insight Housing.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to enter into a contract and all necessary amendments for the period August 1, 2023 through July 31, 2028 with Insight Housing for operating a noncongregate interim housing program at the Super 8.

July 11, 2023

BE IT FURTHER RESOLVED that the contract amount will not exceed \$7,295,634.55. Contract payments will be paid from the Encampment Resolution Fund grant monies and Measure P general fund dollars.

BE IF FURTHER RESOLVED that an advance payment of \$368,575 (25% of the FY24 annual allocation) will be advanced prior to contract execution to cover staffing and operating costs. A recorded signature copy of said contract and any amendments will be on file in the City Clerk Department.







Office of the City Manager

CONSENT CALENDAR  
July 11, 2023

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 July 11, 2023

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.

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is \$482,500.

| <u>PROJECT</u>                                                             | <u>Fund</u> | <u>Source</u>                       | <u>Amount</u>    |
|----------------------------------------------------------------------------|-------------|-------------------------------------|------------------|
| Towing Services Contract                                                   | 011         | GF - Discretionary                  | \$180,000        |
| Woolsey-Eton Intersection Improvements<br><br>City Project No.: PWTRTC2202 | 130         | Measure B – Local Streets and Roads | \$302,500        |
| <b>Total:</b>                                                              |             |                                     | <b>\$482,500</b> |

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

Formal Bid Solicitations and Request for Proposals  
Scheduled for Possible Issuance After Council  
Approval on July 11, 2023

CONSENT CALENDAR  
July 11, 2023

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.

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 goods and/or 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 July 11, 2023
  - a. Towing Services Contract
  - b. Woolsey-Eton Intersection Improvements - City Project No. PWTRTC2202

Note: Original of this attachment with live signature of authorizing personnel is on file in General Services.

| SPECIFICATION NO.  | DESCRIPTION OF GOODS / SERVICES BEING                                      | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                             | ESTIMATED COST                                    | BUDGET CODE TO BE CHARGED                                   | DEPT. / DIVISION              | CONTACT NAME & PHONE    |
|--------------------|----------------------------------------------------------------------------|----------------------|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------------------|-------------------------------|-------------------------|
| 23-11612-C         | Towing Services Contract                                                   | 8/1/23               | 8/29/2023                | The Contractor agrees to perform all services described in Exhibit A, in accordance with its stated terms and conditions. Exhibit A is attached to made a part of the proposed contract. | \$180,000 NTE                                     | 011-71-702-805-0000-000-421-612990                          | Police Department             | Lt Jen Tate<br>981-5983 |
| <b>DEPT. TOTAL</b> |                                                                            |                      |                          |                                                                                                                                                                                          | <b>\$180,000</b>                                  |                                                             |                               |                         |
| 23-11614-C         | Woolsey-Eton Intersection Improvements<br><br>City Project No.: PWTRTC2202 | 7/15/23              | 8/31/2023                | Construction of traffic circle, medians, curb ramps, sidewalk, curb, gutter, raised crosswalk, asphalt concrete pavement, and pavement markings. Removal of two existing street trees.   | \$302,500 (includes 10% construction contingency) | FY2023:<br>130-54-622-668-0000-000-431-665110- (PWTRTC2202) | Public Works - Transportation | Ken Jung<br>981-7028    |
| <b>DEPT. TOTAL</b> |                                                                            |                      |                          |                                                                                                                                                                                          | <b>\$302,500</b>                                  |                                                             |                               |                         |
| <b>TOTAL</b>       |                                                                            |                      |                          |                                                                                                                                                                                          | <b>\$482,500</b>                                  |                                                             |                               |                         |





Office of the City Manager

CONSENT CALENDAR  
July 11, 2023

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: Strategic Economics and Street Level Advisors for Affordable Housing Requirements Economic Feasibility Analysis

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with Strategic Economics as a Contractor and Street Level Advisors as a subcontractor, to conduct an Economic Feasibility Analysis of the Affordable Housing Requirements for the Department of Health, Housing, and Community Services (HHCS) from July 15, 2023 to July 15, 2024 in an amount not to exceed \$150,000.

FISCAL IMPACTS OF RECOMMENDATION

The term of this contract is from July 15, 2023 to July 15, 2024. Funding in the amount of \$150,000 for the Affordable Housing Requirements Economic Feasibility Analysis contract is available in the Fiscal Year 24 Budget in the General Fund (ERMA Fund 011).

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley adopted revised Affordable Housing Requirements (AHR) (Berkeley Municipal Code Chapter 23.328) for new housing development projects on February 28, 2023. The ordinance went into effect on April 1, 2023. The revisions transition the City's affordable housing requirements from an affordable housing mitigation fee to an inclusionary housing requirement with an option to pay a fee in-lieu of the onsite provision of affordable housing. All in-lieu fees are deposited into the City's Housing Trust Fund program. City Council directed staff to conduct an economic feasibility analysis related to the new AHR.

In addition, the City's condominium conversion regulations (Berkeley Municipal Code Chapter 21.28) established an affordable housing mitigation fee to mitigate the impact of removing rental housing from the local market. The City is seeking updated analysis to consider changes to the program's affordable housing requirements.

Staff issued Request for Proposals (RFP) Specification No. 23-11571-C on March 21, 2023. The RFP closed on April 18, 2023. The City received two responses. The selection committee included staff from HHCS' Housing and Community Services Division (HHCS/HCS) and the Department of Planning and Development.

### BACKGROUND

State law requires the City offer alternative options for AHR compliance. Since 2015, the AHR has generated approximately \$38 million for the Housing Trust Fund Program to support the new construction and rehabilitation of affordable housing.

The economic feasibility analysis will quantify how the revised AHR will impact the feasibility of new residential development. HHCS/HCS is also seeking analysis on the condominium conversion requirements to supplement the City's updated AHR analysis. The analysis resulting from this contract will inform the City Council in light of evolving market conditions. The analysis will meet the specified criteria in the State's guidance on AB1505 and other best practices.

The analysis will also consider the financial impacts of the new health care and apprenticeship requirements (Berkeley Municipal Chapter Code 13.07) on the feasibility of residential development.

The feasibility analysis will be used to verify the feasibility of the current in-lieu fee and/or determine new fee amounts for the AHR, including fees for smaller projects, and condominium conversion projects. Staff and the consultant will use the feasibility analysis to develop policy option recommendations for Council's consideration.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental impacts related to this contract.

### RATIONALE FOR RECOMMENDATION

The City conducted a competitive bid process. The Strategic Economics/Street Level Advisors application successfully met the bid requirements and ranked highest among all bidders.

### ALTERNATIVE ACTIONS CONSIDERED

The City also received a very competitive application from Century Urban. Reviewers found Strategic Economics/Street Level Advisors better demonstrated a strategy for analyzing Berkeley's housing market, including missing middle project sizes and ownership structures requested by Council. Therefore, contracting with Century Urban for this project is not recommended.

### CONTACT PERSON

Mike Uberti, Senior Community Development Project Coordinator, HHCS, (510) 981-5424

Contract: Strategic Economics and Street Level Advisors  
for Affordable Housing Requirements Economic Feasibility Analysis

CONSENT CALENDAR  
July 11, 2023

Attachments:  
1: Resolution

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

CONTRACT: STRATEGIC ECONOMICS AND STREET LEVEL ADVISORS FOR AFFORDABLE HOUSING REQUIREMENTS ECONOMIC FEASIBILITY ANALYSIS

WHEREAS, the City of Berkeley adopted revised Affordable Housing Requirements (Berkeley Municipal Code Chapter 23.328) for new housing development projects on February 28, 2023.

WHEREAS, the City of Berkeley issued a Request for Proposals (RFP) to obtain professional services to conduct an economic feasibility analysis to support the revised Affordable Housing Requirements and Condominium Conversion ordinance; and

WHEREAS, the City conducted RFP Specification No. 23-11571-C with proposals due no later than April 18, 2023; and

WHEREAS, the City received two proposals in response to this RFP; and

WHEREAS, the City conducted a competitive bid process, and a joint application from Strategic Economics and Street Level Advisors met the bid requirements and ranked highest among all bidders.

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 Strategic Economics as a contractor, and Street Level Advisors as a subcontractor, to provide professional services for Affordable Housing Requirements Economic Feasibility Analysis from July 15, 2023 to July 15, 2024 in an amount not to exceed \$150,000.





Office of the City Manager

CONSENT CALENDAR  
July 11, 2023

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. 32300134 Amendment: Bonita House for Specialized Care Unit Provider

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to amend Contract No. 32300134 with Bonita House to add \$68,000 of Mental Health Services Act (MHSA) funding for the Specialized Care Unit for a not-to-exceed total of \$4,568,000.

FISCAL IMPACTS OF RECOMMENDATION

This amendment will add \$68,000 for a total not-to-exceed amount of \$4,568,000. Funding for the Bonita House contract for the Specialized Care Unit (SCU) evaluation is available in the FY2023 budget in the Mental Health Services Act Fund 315. Funds will be appropriated as part of the First Amendment to the FY 2024 Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

The SCU is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity. City Council approved the selection on December 13, 2022. Throughout 2023, Bonita House has started hiring staff and purchasing operational supplies. This additional funding set aside through the previously-approved MHSA plan will help support continued operations of the SCU's initial implementation activities including recruitment and purchasing supplies.

BACKGROUND

In response to the killing of George Floyd by Minneapolis police in May 2020 and the ensuing protests across the nation, a conversation emerged about how policing can be done differently. The Berkeley City Council initiated a wide-reaching process to re-imagine safety in the City of Berkeley. As part of the Re-Imagining Public Safety process, the City engaged in research and planning to implement a 24/7 SCU to respond to and support people who are experiencing a mental health or substance use crisis without direct involvement of the police. The SCU will be different than the City's current Mobile Crisis Team that is a partnership of HHCS' Mental Health Division (HHCS/MH) and the Police Department.

Design for the SCU began in Fall 2020 with contracted consultant, Resource Development Associates (RDA), and the establishment of the SCU Steering Committee, an advisory group of HHCS and Berkeley Fire Department staff as well as representation from the Berkeley Mental Health Commission and Berkeley Community Safety Coalition. The City of Berkeley, in partnership with RDA, conducted extensive community engagement and stakeholder analysis to determine a model that would best serve the Berkeley community. This work culminated in 25 recommendations for the implementation of the SCU. These recommendations for implementation were subsequently evaluated by the SCU Steering Committee, with accompanying analysis to further create a SCU that would meet the community need in Berkeley.

The City of Berkeley released a Request for Proposals (RFP) to contract with a community-based organization (CBO) to serve as and implement the SCU. After a competitive proposal process, Bonita House was selected as the provider for the SCU and approved by Council in December 2022.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental sustainability and climate impacts directly associated to this recommendation have been identified.

#### RATIONALE FOR RECOMMENDATION

The additional funding planned in the MHSA plan will support SCU operations and assist in sustaining a pilot program for a full two-year period. Amending the SCU contract to include the MHSA funding for the SCU is in direct alignment with the already approved MHSA plan.

#### ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered because the MHSA plan has already been approved with this funding line item for the SCU.

#### CONTACT PERSON

Katherine Hawn, Special Projects Coordinator, HHCS, 510-981-5411

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

CONTRACT NO. 32300134 AMENDMENT: BONITA HOUSE FOR SPECIALIZED  
CARE UNIT PROVIDER

WHEREAS, Contract #32300143 was awarded to Resource Development Associates (RDA) to design and implement an evaluation for program effectiveness of the Specialized Care Unit (SCU); and

WHEREAS, through Contract #32300134 Bonita House has started hiring staff and purchasing supplies for the SCU; and

WHEREAS, \$68,000 was allocated as a part of Berkeley's previously approved Mental Health Services Act (MHSA) plan to directly support the SCU; and

WHEREAS, Bonita House is the most qualified organization to receive the additional funding to further support implementation of Berkeley's SCU.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to amend the Specialized Care Unit Provider Contract No. 32300134 with Bonita House by adding \$68,000 for a not-to-exceed amount of \$4,568,000. Funds will be appropriated as part of the First Amendment to the FY 2024 Annual Appropriations Ordinance in the Mental Health Services Act Fund 315.





Office of the City Manager

CONSENT CALENDAR  
July 11, 2023

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. 321001100 Amendment: JotForm, Inc. for a HIPAA Compliant Platform to Support Clinical Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32100110 and any subsequent amendments or extensions with the JotForm, Inc. by adding \$53,424, bringing the contract total to an amount not to exceed \$109,218 and extending the end date through May 12, 2026.

FISCAL IMPACTS OF RECOMMENDATION

Funding in the amount of \$53,424 will be available in Fiscal Year 2024 in Mental Health Realignment fund (Fund 158) to support clinical services, subject to approval of the Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

Technology services provided through this contract provide support to clinical services for clients at the Berkeley High School & Berkeley Technology Academy Health Centers. Clients use this platform to independently request confidential services for mental health, reproductive health, and sexual health services. The current proposed amendment for \$53,424 will ensure that clinicians and the clinical care teams have continued access to appointment requests and data on previous requests for another three years. New clients who have used JotForm thus far say that they appreciate having an easy way to request services and are surprised how quickly the health centers are able to respond to their request and make an appointment.

JotForm is a temporary solution until the City's Electronic Health Record (EHR) system can be updated to provide the same services. Due to resource limitations, an upgrade for the Electronic Health Record (EHR) system, and the module that would enhance the service model in the same way as JotForm has been delayed, necessitating this contract extension recommendation.

**BACKGROUND**

JotForm provides a HIPAA compliant server that increases clients' access to the Health Center by providing a confidential link to request services. Service areas that clients can request an appointment for include: first aid, counseling, reproductive, and sexual health services. JotForm has been readily adopted by the adolescent population served by the Health Center.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

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

**RATIONALE FOR RECOMMENDATION**

JotForm removes barriers for access to care for adolescent clients. Clients can request services from this platform anywhere they can access a smart device and internet. The high school health centers continue to be a resource for students who need reproductive and sexual health, first aid, and counseling services. Increasing accessibility to these services supports public health goals of improving the health and well-being of the community.

**ALTERNATIVE ACTIONS CONSIDERED**

Ceasing to use JotForm at this point would reduce access to health care for the high school health center population. While there would be a cost savings, reducing access to health care is not consistent with the Mental Health Division's mission to increase access, and therefore not recommended.

**CONTACT PERSON**

Conor Murphy, Associate Management Analyst, HHCS, (510) 981-7611  
Jeffrey Buell, Manager of Mental Health Services, HHCS, (510) 981-7682

Attachments:  
1: Resolution

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

CONTRACT NO. 32100110 AMENDMENT: JOTFORM, INC FOR A HIPAA  
COMPLIANT PLATFORM TO SUPPORT CLINICAL SERVICES

WHEREAS, Berkeley Public Health Division originally contracted with JotForm, Inc, in May 2020 for a HIPAA compliant platform for clinical support of clients at the Berkeley High School and Berkeley Technology Academy Health Centers; and

WHEREAS, the Public Health Division originally identified JotForm, Inc early in the COVID-19 pandemic to fill an immediate need for a HIPAA compliant online software for COVID testing/vaccination consents, Vital Statistics appointments, and referrals for Mental Health services at the Berkeley High School Health Center; and

WHEREAS, JotForm, Inc provides a HIPAA-compliant server that increases client's accessibility to the health centers by providing a confidential link to request services pertaining to first aid needs, counseling, reproductive, and sexual health services; and

WHEREAS, JotForm, Inc's services complement those provided by the City and other community health care providers, and support public health goals of improving the health and well- being of the community; and

WHEREAS, these services are still required due to the delay in Electronic Health Record (EHR) system updates and enhancements due to resource limitations; and

WHEREAS, on May 10, 2022 by Resolution No. 70,339-N.S., City Council authorized the City Manager to approve amending Contract No. 32100110 in an amount not to exceed \$55,794; and

WHEREAS, funding is subject to appropriation in the Fiscal Year 2024 budget in Mental Health Realignment Fund Account 158-51-503-520-0000-000-451-651120-.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute an amendment to Contract No. 32100110 and any subsequent amendments or extensions with JotForm, Inc. in an amount not to exceed \$109,218 through May 12, 2026 for the purpose of funding continued usage of a HIPAA compliant platform to support the clinical services for clients at the Berkeley High School & Berkeley Technology Academy Health Centers within the City of Berkeley. A record signature copy of said contract to be on file in the office of the City Clerk.







Office of the City Manager

CONSENT CALENDAR  
July 11, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein: Director, Planning and Development  
Lisa Warhuus, Director, Health, Housing, and Community Services

Subject: California Department of Housing and Community Development (HCD)  
Prohousing Designation Program Application

RECOMMENDATION

Adopt a Resolution authorizing the City of Berkeley's application to and participation in the California Department of Housing and Community Development (HCD) Prohousing Designation Program.

FISCAL IMPACTS OF RECOMMENDATION

Jurisdictions who obtain the Prohousing Designation will receive additional points or other preference in the scoring of their competitive applications for specified housing, community development, and infrastructure funding. Such jurisdictions may also be eligible to apply for dedicated grant funding.

CURRENT SITUATION AND ITS EFFECTS

The Prohousing Designation Program creates incentives for jurisdictions that are compliant with state housing element requirements and have enacted what HCD has determined to be "Prohousing" local policies. Cities with a Prohousing Designation will receive additional points or other preference in the scoring of their competitive applications for specified housing, community development, and infrastructure funding.

Obtaining this funding is critical to leverage the City's Housing Trust Fund (HTF) program commitments and complete the financing for the City's affordable housing pipeline. The City has over 750 affordable housing units in the pipeline that will require access to competitive State funding to move forward. Obtaining the Prohousing Designation will improve the City's ability to access the competitive funds.

Berkeley has made significant progress in adopting policies consistent with the Prohousing Designation Program, which are outlined in the recently approved 2023-2031 Housing Element. The Department of Health, Housing, and Community Services (HHCS) is coordinating with the Planning and Development Department to identify eligible criteria and complete the application. The City's application will reflect adopted

policies and programs as well as those identified in the Housing Element to be implemented in the next two years, which can be included in the application as “proposed policies.” Authorization from the City Council is required to submit the application.

Obtaining the Prohousing Designation would advance the City’s strategic plan goal to create affordable housing and housing support service for our most vulnerable community members.

**BACKGROUND**

Increasing the availability of housing statewide is critical to bettering the quality of life of all Californians and to ending homelessness. The 2019-2020 Budget Act provided a spectrum of support, incentives, and accountability measures to meet California’s housing goals, and provided for the establishment of the Prohousing Designation Program.

Local governments with the Prohousing Designation can receive priority processing or funding points when applying for several funding programs including:

- Affordable Housing & Sustainable Communities (AHSC)
- Infill Infrastructure Grant (IIG)
- Transformative Climate Communities (TCC)
- Solutions for Congested Corridors
- Local Partnership Program
- Transit and Intercity Rail Capital Program (TIRCP)

Other programs may be added to the list after HCD engages with stakeholders and partner agencies to consider adding Prohousing points to other housing and non-housing programs.

There is also the potential to qualify for special funding. Local governments with the Prohousing Designation were eligible to apply for the new Prohousing Incentive Pilot Program grant funding, a \$26 million state investment from the Building Homes and Jobs Trust Fund established earlier this year. Future grant funds may be available to jurisdictions with Prohousing Designation.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

There are no environmental sustainability and climate impacts associated with this recommendation.

**RATIONALE FOR RECOMMENDATION**

Obtaining the Prohousing Designation will make Berkeley affordable housing projects more competitive in accessing state funding, as well as potentially giving the City

access to grants only available to Prohousing jurisdictions. The Prohousing Designation will help the City better leverage its funding with State funds for producing affordable housing and meeting its Regional Housing Needs Assessment (RHNA) goals.

ALTERNATIVE ACTIONS CONSIDERED

Staff did not consider alternative actions. Participating in this program will help Berkeley be more competitive for funds for affordable housing.

CONTACT PERSON

Anna Cash, Community Development Project Coordinator, HHCS, (510) 981-5403

Attachments:

1: Resolution

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

A RESOLUTION OF BERKELEY CITY COUNCIL AUTHORIZING APPLICATION TO  
AND PARTICIPATION IN THE PROHOUSING DESIGNATION PROGRAM

WHEREAS, Government Code section 65589.9 established the Prohousing Designation Program (“**PDP**” or “**Program**”), which creates incentives for jurisdictions that are compliant with state housing element requirements and that have enacted Prohousing local policies; and

WHEREAS, such jurisdictions will be designated Prohousing, and, as such, will receive additional points or other preference during the scoring of their competitive applications for specified housing and infrastructure funding; and

WHEREAS, the Department of Housing and Community Development (“**Department**”) has adopted emergency regulations (Cal. Code Regs., tit. 25, § 6600 et seq.) to implement the Program (“**Program Regulations**”), as authorized by Government Code section 65589.9, subdivision (d); and

WHEREAS, the **City of Berkeley** (“**Applicant**”) desires to submit an application for a Prohousing Designation (“**Application**”).

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

1. Applicant is hereby authorized and directed to submit an Application to the Department.
2. Applicant acknowledges and confirms that it is currently in compliance with applicable state housing law.
3. Applicant acknowledges and confirms that it will continue to comply with applicable housing laws and to refrain from enacting laws, developing policies, or taking other local governmental actions that may or do inhibit or constrain housing production. Examples of such local laws, policies, and action include moratoriums on development; local voter approval requirements related to housing production; downzoning; and unduly restrictive or onerous zoning regulations, development standards, or permit procedures.
4. Applicant further acknowledges and confirms that it commits itself to affirmatively furthering fair housing pursuant to Government Code section 8899.50.
5. If the Application is approved, Applicant is hereby authorized and directed to enter into, execute, and deliver all documents required or deemed necessary or appropriate to participate in the Program, and all amendments thereto (the “**Program Documents**”).

6. Applicant acknowledges and agrees that it shall be subject to the Application; the terms and conditions specified in the Program Documents; the Program Regulations; and any and all other applicable law.
7. The City Manager or designee is authorized to execute and deliver the Application and the Program Documents on behalf of the Applicant for participation in the Program.





Office of the City Manager

CONSENT CALENDAR  
July 11, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Aram Kouyoumdjian, Director of Human Resources  
 Subject: Contract No. 32000226 Amendment: MidAmerica Administrative & Retirement Solutions, Third Party Administrator for SRIP I Disability, and Health Reimbursement Accounts for Retiree Health Premium Assistance Plan Reimbursements, and Police Employees Retiree Income Plan

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract amendment to Contract No. 32000226 with MidAmerica Administrative & Retirement Solutions for administration of the SRIP I Disability, Retiree Health Premium Assistance Plan (RHPAP) Health Reimbursement Account (HRA), and Police Employees Retiree Income Plans (PERIP) for the period covering January 1, 2021 through December 31, 2025, for a total cost not to exceed \$233,736.00.

FISCAL IMPACTS OF RECOMMENDATION

The total estimated cost for this contract is \$233,736.00.  
 MidAmerica will administer the Plans at the following rates:

Plan Administration

|                     |              |
|---------------------|--------------|
| 401a Administration | \$10.00 PEPM |
|---------------------|--------------|

Partial funding is available for this contract in allocations from the following budget codes:

| Budget Code                         | Retiree Medical Programs                        | Costs       |
|-------------------------------------|-------------------------------------------------|-------------|
| 731-99-900-900-0000-000-412-612990- | Berkeley Police Association                     | \$22,200.00 |
| 736-99-900-900-0000-000-412-612990- | Berkeley Fire Fighters Association              | \$4,800.00  |
| 722-99-900-900-0000-000-412-612990- | International Brotherhood of Electrical Workers | \$1,680.00  |
| 723-99-900-900-0000-000-412-612990- | Public Employees Union, Local One               | \$4,560.00  |
| 724-99-900-900-0000-000-412-612990- | Unrepresented Unit Z1-Department Head           | \$3,120.00  |

| Budget Code                         | Retiree Medical Programs                                                                                                 | Costs              |
|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------|--------------------|
| 725-99-900-900-0000-000-412-612990- | Unrepresented Unit Z2                                                                                                    | \$4,080.00         |
| 726-99-900-900-0000-000-412-612990- | Service Employees International Union, Local 1021<br>Community Services Unit/Part-Time Recreation<br>Leaders Association | \$4,200.00         |
| 727-99-900-900-0000-000-412-612990- | Service Employees International Union, Local 1021<br>Maintenance and Clerical Chapter                                    | \$8,040.00         |
| <b>Total</b>                        |                                                                                                                          | <b>\$52,680.00</b> |

**CURRENT SITUATION AND ITS EFFECTS**

The City has contractual obligations under 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.

**BACKGROUND**

Third Party Administrator, Mid-America, has been administering the City’s Supplemental Retirement Income Plan – SRIP I Disability – since January 1, 2015.

In 2017, the City amended the contract with MidAmerica to include reimbursement of Retiree Health Premium Assistance Plan (RHPAP) benefits to Unrepresented and Local 1227 employees.

In 2021, the City broadened the definition of “Eligible Employee” from BFFA and Unrepresented to allow the City to provide RHPAP benefit payments to any classification of Retiree. This streamlined the RHPAP reimbursement process and allowed the City to utilize the MidAmerica Health Reimbursement Account for RHPAP benefit payments to all current and future retirees.

**ENVIRONMENTAL SUSTAINABILITY**

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

**RATIONALE FOR RECOMMENDATION**

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, MidAmerica, 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 MidAmerica.



CONTACT PERSON

Aram Kouyoumdjian, Director of Human Resources, (510) 981-6807.

Attachments:

1. Resolution

RESOLUTION NO. XX,XXX-N.S.

CONTRACT NO. 32000226 AMENDMENT: MIDAMERICA FOR ADMINISTRATION OF THE RETIREE HEALTH PREMIUM ASSISTANCE PLAN AND OTHER RETIREE MEDICAL PROGRAMS

WHEREAS, the City of Berkeley has contractual obligations under various agreements with its employee groups to provide post-employment retiree medical services; and

WHEREAS, contracting with a third-party administrator is the most efficient and cost-effective way to administer these benefits; and

WHEREAS, MidAmerica Administrative & Retirement Solutions has been administering a number of these benefits for the past several years; and

WHEREAS, the City of Berkeley would like MidAmerica to provide administrative services for SRIP I Disability, RHPAP Health Reimbursement Account (HRA), and Police Employees Retiree Income Plans (PERIP); and

WHEREAS, funds are available and will be budgeted in future years in an amount not to exceed \$233,736.00 through December 31, 2025.

NOW THEREFORE, BE IT RESOLVED that the Council authorizes the City Manager to execute an amendment to Contract No. 32000226 with MidAmerica for administration of SRIP I Disability, RHPAP Health Reimbursement Account (HRA), and Police Employees Retiree Income Plans (PERIP) for sworn Fire and Police not to exceed \$233,736.00, for the period covering January 1, 2021 through December 31, 2025.

BE IT FURTHER RESOLVED that a record signature copy of said contract and any amendments be on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR  
July 11, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Aram Kouyoumdjian, Director of Human Resources  
 Subject: Contract No. 32300158 Amendment: AppleOne Employment Services for Temporary Staffing Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32300158 with AppleOne Employment Services for temporary staffing services, to cover the period February 1, 2023 to June 30, 2025, for a total cost not to exceed \$750,000.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the contract will be provided by user departments from various budget codes.

CURRENT SITUATION AND ITS EFFECTS

Although the City has consistently hired over attrition in recent months, departments continue to contend with high vacancy rates and ongoing recruitment and retention challenges. As such, it is critical that departments have access to temporary hires in order to ensure continuity of vital operations in the event of sudden vacancies or unexpected spikes in work volume.

Multiple departments, including Human Resources, along with the City Manager's Office and the Office of the Director of Police Accountability, have drawn upon the original contract that had a limit of \$250,000. An extension of the contract and an increase in its cap are necessary to keep these services viable for the next two fiscal years.

BACKGROUND

Departments are in the midst of a number of large projects, which can be disrupted by vacancies created not just by separations from City employment but also internal promotions. In these instances, immediate temporary staffing – funded by salary savings – is necessary to sustain vital City services.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

Maintaining necessary staffing levels is key to providing high-caliber services that Berkeley residents expect and deserve. When vacancies occur suddenly or in hard-to-fill positions, or when there are unexpected spikes in workload, temporary staffing can serve as an interim gap. This contract extension allows the City to have continued access to temporary staff on short notice – a service that AppleOne has provided in a responsive and time-sensitive manner throughout the initial term of the contract.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Aram Kouyoumdjian, Director of Human Resources, (510) 981-6807.

Attachments:

1: Resolution

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

CONTRACT NO. 32300158 AMENDMENT: APPLEONE EMPLOYMENT SERVICES  
FOR TEMPORARY STAFFING SERVICES

WHEREAS, the Human Resources Department conducts recruitments and maintains employment lists of qualified individuals for career and temporary positions; and

WHEREAS, City departments may require additional administrative, clerical, technical, or professional temporary staff to augment their existing resources to deliver vital services; and

WHEREAS, if there are no available candidates from existing employment lists, City departments may use a temporary staffing agency to obtain limited-term temporary staff; and

WHEREAS, expenditures for these services will be paid from a variety of funding sources in budgets of individual operating departments when temporary staffing services are required.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32300158 with AppleOne, Inc. dba AppleOne Employment Services for an amount not to exceed \$750,000 for the period covering February 1, 2023 through June 30, 2025.

BE IT FURTHER RESOLVED that a record signature copy of said contract and any amendments be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
July 11, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Aram Kouyoumdjian, Director of Human Resources  
 Subject: Revisions to the Unrepresented Employee Manual

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute changes to the Unrepresented Employee Manual that (1) effectuates merit raises for employees on salary ranges on their anniversary date in their current classification; (2) aligns vacation accrual, longevity pay rates, vacation sell-back policies, and a certification differential for the Fire Chief, the Police Chief, and their deputies with the corresponding provisions of the Memoranda of Understanding with the Berkeley Fire Fighters Association and the Berkeley Police Association; and (3) includes Accounting Office Specialists III among the classifications that qualify for the City Manager Department Differential.

FISCAL IMPACTS OF RECOMMENDATION

The fiscal impacts of these revisions will be borne by the affected departments.

CURRENT SITUATION AND ITS EFFECTS

Current policy provides a mechanism for employees on salary ranges to receive merit raises but indicates no effective date.

Current vacation accrual and vacation sell-back policies for the Fire Chief, the Police Chief, and their deputies, as well as longevity pay provisions for the Police Chief and Emergency Medical Technician certification differentials for the Fire Chief and Deputy Fire Chief, do not reflect the benefits afforded to members of the Berkeley Fire Fighters Association and the Berkeley Police Association, meaning that members of those employee groups who promote to the chief or deputy positions actually suffer losses in benefits that can lead to a reduction in total compensation.

Current classifications that qualify for the City Manager Department Differential do not include Accounting Office Specialists III.

BACKGROUND

The Unrepresented Employee Manual periodically undergoes revision so that its provisions are brought up-to-date and aligned with City practices. (The Manual was most recently revised in July 2020.) The newly proposed changes were triggered by inconsistent timing of merit raises, as well as unintended reduction of benefits for the Fire Chief, the Police Chief, and their deputies due to lack of alignment between Manual provisions and the terms of the City’s Memoranda of Understanding with the Berkeley Fire Fighters Association and the Berkeley Police Association.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

Revisions are necessary to the Unrepresented Employee Manual to eliminate inconsistencies in effectuation dates of merit raises for employees on salary ranges and to ensure alignment of vacation and longevity benefits, as well as a certification differential, for the Fire Chief, the Police Chief, and their deputies with those of sworn officers and firefighters, respectively.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Aram Kouyoumdjian, Director of Human Resources, (510) 981-6807.

Attachments:

1: Resolution

Exhibit A: Unrepresented Employee Manual (Revised – July 2023)

2: Unrepresented Employee Manual – Proposed Revisions (Tracked Changes)



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

REVISIONS TO UNREPRESENTED EMPLOYEE MANUAL

WHEREAS, the Human Resources Department periodically revises the Unrepresented Employee Manual, most recently in July 2020;

WHEREAS, changes to the Manual are warranted in order to clarify City procedures, and to ensure consistency and internal alignment;

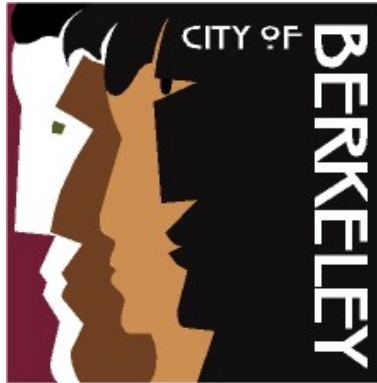
WHEREAS, current policy provides a mechanism for employees on salary ranges to receive merit raises but indicates no effective date;

WHEREAS, current vacation accrual and vacation sell-back policies for the Fire Chief, the Police Chief, and their deputies, as well as longevity pay provisions for the Police Chief (and Deputy Police Chief) and Emergency Medical Technician certification differentials for the Fire Chief (and Deputy Fire Chief), do not reflect the benefits afforded to members of the Berkeley Fire Fighters Association and the Berkeley Police Association, meaning that members of those employee groups who promote to the chief or deputy positions actually suffer losses in benefits that can lead to a reduction in total compensation; and

WHEREAS, current classifications that qualify for the City Manager Department Differential do not include Accounting Office Specialists III;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute changes to the Unrepresented Employee Manual (set forth in Exhibit A) that (1) effectuates merit raises for employees on salary ranges on their anniversary date in their current classification; (2) aligns vacation accrual, longevity pay rates, vacation sell-back policies, and a certification differential for the Fire Chief, the Police Chief, and their deputies with the corresponding provisions of the Memorandum of Understanding with the Berkeley Fire Fighters Association and the Berkeley Police Association; and (3) includes Accounting Office Specialists III among the classifications that qualify for the City Manager Department Differential.

Exhibit A: Unrepresented Employee Manual (Revised – July 2023)



**City of Berkeley**

# **Unrepresented Employee Manual**

**July 11, 2023**

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RESOLUTION NO. 69,968-N.S.

UNREPRESENTED EMPLOYEES MANUAL

WHEREAS, on July 30, 2020, the City Council adopted Resolution No. 69,538-N.S., the Unrepresented Employee Manual, that establishes rules governing working conditions, benefits and compensation for unrepresented career benefited and regular at-will employees; and

WHEREAS, in a separate agenda item on July 20, 2021, the City Council will consider a new Memoranda Agreement with the Service Employees International Union Local 1021 Maintenance and Clerical Chapters that provides for an additional three-years and modifies its members' benefits; and

WHEREAS, the City Manager is recommending similar changes in terms and conditions for the unrepresented employees in Units X-1 (Unrepresented Hourly Non-Career); X-2 (Retired Annuitants); Z-1 (Confidential and Executive Management Employees); Z-2 (Confidential Professional Employees); Z-3 (Confidential Clerical Employees); Z-6 (Legislative Analysts); and Z-9 (Unrepresented at-will positions in the Rent Stabilization Program); and

WHEREAS, the Unrepresented Employee Manual is amended as a result of the attached Agreement July 20, 2021.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley rescind Resolution No. 69, 538-N.S. (Unrepresented Employee Manual) and all other resolutions amendatory thereto and that the Unrepresented Employee Manual that includes the executed Memoranda Agreement as shown in Exhibit A attached hereto and made a part hereof, is hereby adopted as the City of Berkeley Unrepresented Employee Manual.

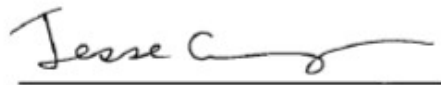
The foregoing Resolution was adopted by the Berkeley City Council on July 20, 2021 by the following vote:

The foregoing Resolution was adopted by the Berkeley City Council on July 20, 2021 by the following vote:

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

Noes: None.

Absent: None.

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

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

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## UNREPRESENTED EMPLOYEE MANUAL

This document establishes the rules governing benefits and working conditions, which are in effect for Unrepresented employees which have been approved by the City Council of the City of Berkeley.

This Unrepresented Employment Manual provides the personnel policies and procedures that affect the working conditions and benefits of unrepresented employees in the City of Berkeley. For purpose of categorization, all classifications are designated by a representation unit. Unrepresented employees are in classifications included in representation units Z-1; Z-2; Z-3; Z-9; X; and X-1, as noted in the City's Classification/Salary Resolution. The working conditions and benefits for represented employees are contained in their respective memoranda agreements. Rules, which describe general policies of the City's personnel system, are found in the City of Berkeley Personnel Rules and Regulations.

## **ARTICLE 1 - SALARY, OTHER PAY AND OVERTIME**

### **1.1 Intent**

This Section (Salary, Other Pay and Overtime) is intended only to define the normal hours of work and the time for which salary shall be paid, and to provide the basis for the calculation of overtime pay. Nothing in these rules shall be construed as a guarantee of hours of work per day or per week, or of days of work per week. The City's pay records, practices and procedures shall govern the payment of all wages.

### **1.2 Hours and Days of Work**

Hours and days of work shall be governed by rules established by the City.

### **1.3 Workweek**

The workweek shall consist of seven days beginning at 12:01 a.m. on Sunday to and including 12:00 midnight the following Saturday.

### **1.4 Regular Workweek**

The regular workweek shall consist of forty hours of work within the workweek.

### **1.5 Payment of Salaries**

Payment of salaries shall be bi-weekly and shall cover a pay period of two (2) consecutive workweeks. Each payment shall be made not later than Friday following the ending of each payroll period and shall include payment for all earnings reported during the previous payroll period.

### **1.6 Salary Ranges without Salary Steps**

In those classes of positions for which a salary range is established without a designation of salary steps, the City Manager is authorized to fix the salary rate at any point within the established salary range. Subsequent increases, if approved by the City Manager, shall be effectuated at the start of the pay period closest to the employee's anniversary date (defined as the date of hire into the employee's current classification).

### **1.7 Automobile Allowances**

In addition to the salaries provided in the salary resolution, employees may be reimbursed for the use of automobiles owned by employees of the City of Berkeley and used on City business, as authorized by the City. Current automobile allowances are appended to this Manual, as shown in the Appendix, Section 13.27 (Automobile Allowance).

## 1.8 Mandatory Professional Fees and Licenses

The City will assume full payment of the mandatory professional fees and licenses required by employees in the following unrepresented classes in order to maintain their continued employment with the City of Berkeley:

|                                                      |                           |
|------------------------------------------------------|---------------------------|
| Director of Public Works                             | City Attorney             |
| Deputy Director of Public Works (Registered)         | The Attorney Class Series |
| Rent Stabilization Board Staff Attorney Class Series | Audit Manager             |
| Classes requiring a license to practice medicine     |                           |

## 1.9 Bilingual Pay

Employees appointed to positions requiring bilingual abilities, including Braille and sign language shall receive additional compensation as established by the City Council. Only those employees who possess second language competency, can demonstrate second language competency, and are serving in a position requiring competency in that particular language are entitled to receive the bilingual premium pay. The current level of approved compensation and procedures for qualifying and receiving bilingual pay are appended to these Rules, as shown in Appendix, Section 13.3 (Bilingual Premium Pay).

## 1.10 Overtime for FLSA Non-Exempt Employees

All employees who are covered by the overtime provisions of the Fair Labor Standards Act are designated as "FLSA non-exempt employees." Unless otherwise required by the Fair Labor Standards Act, all FLSA non-exempt employees, and employees in the classification of Battalion Chief, who are required to work in excess of their regular workweek shall be paid overtime compensation at the rate of one and one-half times the straight time rate based upon the regular monthly salaries or shall be given compensatory time off in lieu of payment at the rate of one and one-half hours off with pay for each overtime hour worked. The following provisions regarding overtime apply only to FLSA non-exempt employees and do not apply to FLSA exempt employees. FLSA non-exempt employees, temporarily promoted to FLSA exempt classifications, will be ineligible for overtime compensation for the duration of the appointment.

1.10.1 **Manner of Compensation:** An employee may be compensated for overtime by either compensatory time off or by payment; the method of overtime compensation shall be agreed upon by the employee and the supervisor at the time of obtaining approval to work overtime.

1.10.2 **Pre-Authorization:** No employee may work overtime without the express prior approval of his or her department head.

1.10.3 **Accrual Limit on Compensatory Time:** Compensatory time shall not accumulate in excess of sixty (60) overtime hours worked which is the equivalent of ninety (90) hours of compensatory time. Overtime accumulation in excess of sixty (60) hours shall be paid as compensation.

- 1.104 **Use of Compensatory Time:** All use of compensatory time off must be approved, in advance, by the employee's department head, on forms provided by the City.
- 1.105 **Effect of Termination on Compensatory Time:** An employee is entitled to compensation for any accumulated overtime upon resignation or termination.

### 1.11 Emergency Overtime

All FLSA non-exempt employees who are called to duty from their living quarters outside of their regular work hours and work days shall be paid emergency overtime compensation for the actual time worked provided, however, that each employee shall be paid a minimum of two (2) hours pay for emergency overtime unless such emergency overtime work is performed prior to the beginning of his or her work regularly scheduled work period without a break in service in which case, compensation shall be paid only for the actual time worked.

### 1.12 Shift Differential

All unrepresented FLSA non-exempt employees (except for Police Aides) who regularly work a shift of eight hours or more, which includes more than four hours between the hours of 5:00 p.m. and 12:00 a.m., or between 12:00 a.m. and 7:00 a.m., are paid a shift differential in addition to their regular base rate of pay in an amount established by the City Council. The current shift differential rate paid to unrepresented employees is in the Appendix to this Manual.

### 1.13 Fifty-Six (56) Hour per Week Work Schedule Leave Conversion Factor

The conversion factor for Fire Management employees accruing and using vacation leave, sick leave or sick leave bonus bank of hours is as shown below. The intent of the parties is to have the dollar value of the vacation leave, sick leave or sick leave bonus bank of hours accrued be the same whether an employee is assigned to a fifty-six (56) hour per week schedule or a forty (40) hour per week schedule.

- 1.13.1 **Leave Accrual for 56 Hour per Week Schedule:** Vacation leave, sick leave or sick leave bonus bank of hours accrued on a fifty-six (56) hour per week scheduled is converted to a forty (40) hour per week schedule by multiplying number of hours of vacation leave or sick leave accrued by the conversion factor of 0.7143.
- 1.13.2 **Leave Accrual for 40 Hour per Week Schedule:** Vacation leave, sick leave or sick leave bonus bank of hours accrued on a forty (40) hour per week scheduled is converted to a fifty-six (56) hour per week schedule by multiplying number of hours of vacation leave accrued by the conversion factor of 1.4.

### 1.14 One-Time Allocation

Employees in Units Z-1, Z-2, Z-3, Z-6, and Z-9 who are in paid status as of July 29, 2018 will receive a one-time allocation of \$2,000.00 (prorated for part-time employees) on August 17, 2018, minus applicable local, state and/or federal taxes.

### 1.15 Payroll Specialty Pay

City shall provide (“payroll clerks”) identified by the City in Unrepresented Employees a one-time lump sum payment of \$500.00 effective the first full pay period after Council adoption of this successor agreement and a second \$500.00 one-time lump sum payment the first full pay period in January 2022 for only those employees in the Accounting Office Specialist III classification. Such payments are subject to applicable payroll taxes and will not be considered pensionable salary. At the time of each payment, employee must be still employed by the City and must still be in the Accounting Office Specialist III classification. Employees working less than full-time (40 hours per week, 2,080 hours per year) shall receive a pro rata share of the one-time lump sum payment based on the number of hours they are assigned to work. For example, an employee working 30 hours per week, shall receive 75% of the one-time lump sum payment (\$375 effective the first full pay period after Union ratification and Council adoption of this successor agreement and \$375.00 the first full pay period in January 2022).

#### 1.15.1 Salary Resolution

Effective the first full pay period in July 2021 after Council adoption on its regular agenda, the salary ranges for those classifications covered by this Manual shall receive a salary increase of four percent (4.0%).

Effective the first full pay period in July 2022, the salary ranges for those classifications covered by this Manual as listed in Exhibit A shall be increased by three percent (3.0%)

Effective the first full pay period in July 2023, the salary ranges for those classifications covered by this Manual as listed in Exhibit A shall be increased by one percent (1%).

Effective the first full pay period after City Council adoption on its regular agenda, a onetime non-pensionable lump sum payment of \$1,000.00 for each career bargaining unit employee shall be conferred. Eligible employees must be current City employees in paid status for the full pay period this lump sum is conferred and shall not apply to unit members who are in unpaid status. Such payment shall be subject to required payroll tax deductions. The parties agree that this lump sum provision does not create or bind the City to any precedent or past practice.

## **ARTICLE 2 - PROBATIONARY PERIOD**

### **2.1 Length of Probationary Period**

All original and promotional appointments to positions in the career service shall be tentative and subject to a probationary period. The length of the probationary period shall be determined for each class by the City Council. However, the length of the probationary period shall not be less than six months of actual service (1040 hours) or more than two years of actual service (4160 hours). A six (6) month probationary period must be completed in no more than one (1) year. A one (1) year probationary period (2080 hours) must be completed in no more than two (2) years. A two (2) year probationary period must be completed in no more than three (3) years. A current schedule of probationary periods for unrepresented classes is appended to this Manual, as shown in Appendix, Section 13.16 (Probationary Periods for Unrepresented Classifications).

### **2.2 Objectives of Probationary Period**

The probationary period shall be regarded as a part of the selection process and shall be used to closely observe and evaluate the employee's work, to secure the most effective adjustment of a new employee to his or her position, and to eliminate any probationary employee whose performance does not meet the required standards of work.

### **2.3 Rejection of Probationers**

During the probationary period, an employee may be rejected from employment at any time by the City Manager without cause and without the right of appeal.

### **2.4 Rejection during Probationary Promotion**

An employee rejected during the probationary period following a promotional appointment shall be reinstated to the classification from which he or she was promoted unless charges are filed and he or she is discharged in the manner provided in the Personnel Ordinance and these rules.



## ARTICLE 3 - VACATION

### 3.1 Vacation Leave

All benefitted employees shall be entitled to annual vacation leave subject to the provisions in this chapter.

### 3.2 Vacation Approval

All vacations must be approved, in advance, by the employee's department head, on forms provided by the City.

### 3.3 Vacation Accrual

3.3.1 **Full Time Benefitted Employees:** During the first two (2) calendar years of employment, all full time benefitted employees shall be entitled to take only such annual vacation leave as the employees earn based on their continuous length of service measured from the date of hire. After two (2) years of service, employees may request, and upon approval, take up to a maximum of two (2) weeks of their annual vacation, in advance of actual earning. Approval of requests for advance vacation shall be solely at the discretion of management.

Vacation accrues according to schedules established by the City Council and can vary for different groups of employees. The current vacation schedules for full time unrepresented employees are in the Appendix to this Manual.

3.3.2 **Part Time and Temporary Employees:** Benefitted part-time employees working a minimum of twenty (20) hours per week accrue vacation benefits on a pro rata basis. Employees who work less than twenty (20) hours per week and temporary employees, unless otherwise authorized, do not accrue leave benefits

3.3.3 **Accrual of Vacation Credits:** Vacation leave credits are only accrued for each straight time hour for which the employee is paid.

3.3.4 **Effect of Extended Leave on Vacation Accrual:** An employee who has returned from extended military leave or an extended authorized leave of absence without pay of six (6) months or more or who has been re-employed or reinstated shall be entitled, during the calendar year in which the employee returns to the City service, to earn vacation according to a schedule based upon the total years in the career service with the City and upon the total number of months of actual service with the City during the said calendar year. For succeeding calendar years, the employee's vacation leave shall accrue as provided in this Manual.

- 3.3.5 **New Hire Vacation Accrual:** For new hires, the City Manager may authorize vacation accrual at a higher rate, up to the maximum accrual rate, depending upon the paid leave accrual of the potential employee at his or her present employer. The new hire must be able to document his or her current paid leave accrual, which has been earned for general use, such as vacation. The waiting period to advance to the next accrual rate would be the actual number of years between the respective accrual levels.
- 3.3.6 **Vacation Accrual for Unit Z1 Police Chief and Deputy Police Chief:** The vacation accrual rate for the Police Chief and Deputy Police Chief classifications will provide the same benefits as the vacation accrual for represented sworn police employees under the Berkeley Police Association (Units E & F) Memorandum of Understanding.
- 3.3.7 **Vacation Accrual for Unit Z1 Fire Chief and Deputy Fire Chief:** The vacation accrual rate for the Fire Chief and Deputy Police Chief classifications will provide the same benefits as the vacation accrual for represented sworn fire employees under the Berkeley Fire Fighters Association (Units B) Memorandum of Understanding.
- 3.3.8 The classifications identified within Sections 3.3.6 and 3.3.7 shall be allowed to participate in the annual vacation leave sell back to the extent such rights are afforded to the bargaining units they supervise in their respective memoranda of understanding.

### 3.4 Vacation Scheduling

The times during the calendar year at which an employee shall take his or her vacation shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the service. If the requirements of the service are such that a department head cannot permit the employee to take an annual vacation leave or any part of such leave within a particular calendar year, the employee may accrue vacation according to Section 3.3 (Vacation Accrual) of this Manual.

### 3.5 Maximum Vacation Accumulation

Employees may defer vacation earned up to a maximum cumulative total of eight (8) weeks. An employee who has attained maximum accumulation may be required to take all excess earned vacation at the option of the City. Not later than October 1 of each year, the City will advise employees who have attained a maximum accumulation of vacation whether such excess earned vacation must be scheduled as time off prior to March 31. Such time off shall be scheduled in accordance with the provisions of Section 3.2 (Vacation Approval).

The City shall require all employees to reduce their accrued vacation balances to no more than 320 hours, as of the last pay period in February of each year. To effectuate the requirement that employees not accrue more than 320 hours vacation leave, no later than November 15 of each year the City will provide Department Heads with a report identifying all employees who have accrued two hundred and eighty (280) hours of vacation leave and appear in danger of exceeding the 320 hour limit.

Employees who have accrued 280 hours of vacation leave, as of that date, will be advised by their supervisor that they must take vacation leave to reduce their vacation leave accrual by February of the following year.

Supervisors should be flexible in granting employee vacation requests to those employees above, or approaching the 320 hours limit, and further, that with regard to employees who are in danger of exceeding the 320 hour limit, no vacation request by such an employee shall be unreasonably denied. If an employee who is in danger of exceeding the 320 hour limit fails by December 31 to schedule a vacation to be taken before the last pay period in February, the City has the

authority to direct the employee to go on vacation leave to reduce the employee's accrued vacation.

If, due to operational necessity, a department head denies an employee vacation leave and does not provide the employee with an alternate vacation date, and as a result causes the employee to exceed the 320 vacation leave limit, said employee shall nonetheless be entitled to use that vacation leave in the next calendar year to the extent necessary to reduce their accrued vacation to not more than 320 hours. Under no circumstances will the City liquidate any vacation leave balances for any employee during employment.

### **3.6 Vacation Leave before Retirement**

Accumulated vacation shall not be used immediately prior to retirement, which has the effect of extending the date of retirement, but shall be paid out in full upon retirement.

### **3.7 Vacation Leave in Lieu of Sick Leave**

Except for absences that qualify for benefits under Administrative Regulation 2.4 (Family Care Leave) Vacation leave shall not be used in lieu of accrued sick leave for absences due to illness. If accrued sick leave is exhausted, vacation leave may be used for absences due to illness, only if such leave is approved by the employee's department head.

### **3.8 Payout upon Termination or Extended Unpaid Leave**

Upon termination, including death, extended military leave or other extended leave without pay, an employee or his or her estate shall be paid for all accrued unused vacation leave at the employee's base rate at the time of his or her termination, and such employee or his or her estate shall reimburse the City for any vacation leave taken before it had accrued, in accordance with provisions established by the City Manager.

### **3.9 Holidays Occurring during Vacation**

If an observed City holiday occurs during an employee's scheduled vacation, no deduction from accrued vacation will be made for the holiday period.

## **ARTICLE 4 - SICK LEAVE**

### **4.1 Eligibility**

All full-time benefitted employees are eligible for one (1) sick leave day (eight [8] hours) per month of service, except that the Police Chief hired before September 11, 2012 is eligible for two (2) sick leave days for each month of service during the twenty-first (21) year of employment and thereafter. Employees in the classifications of Fire Chief and Deputy Fire Chief shall be credited with two (2) sick leave days for each month of service during the seventeenth (17<sup>th</sup>) year of employment and thereafter. Part time benefitted employees are eligible to accrue sick leave on a pro rata basis.

### **4.2 Sick Leave Not a Privilege**

Sick leave shall not be considered a privilege, which an employee may use at his or her discretion, but shall be allowed only in the case of his or her sickness or disability or in the case of illness within the defined family of the employee.

### **4.3 Family Sick Leave**

As of January 1, 1999, employees may use up to fifteen (15) working days of accrued sick leave in a calendar year to care for a family member, limited to one of the following: a legal dependent, parent, spouse, son, daughter or domestic partner.

### **4.4 Notice to Department Head**

In order to qualify for sick leave benefits, the employee shall notify his or her department head or designee prior to or within two (2) hours after the time set for the beginning of the employee's daily duties, or as otherwise required by the department head. Leave for non-emergency medical appointments shall be requested in advance of the workday.

### **4.5 Medical Verification**

The City of Berkeley retains the right to request a verification from a licensed medical practitioner under appropriate circumstances which include (1) showing that an employee's illness or disability has started or ended, before the City will allow an employee to take a leave or to return from leave, (2) showing regular updates during a medical leave of absence regarding the employee's medical status and the date the employee expects to return to work, (3) where reasonable cause exists to believe that the employee is not medically fit to perform the essential functions of the job or that the employee cannot perform the job without endangering the health and safety of the employee or others, and (4) where reasonable cause exists to believe that the employee is abusing sick leave or family sick leave. Sick leave pay may be withheld if a satisfactory verification is not received.

#### 4.6 Injury Incurred in Outside Employment

No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that the injury is covered by California's workers' compensation law or by provisions of the other employer granting payment for time off because of the injury. In the event the injury is not covered either by the workers' compensation law or by the other employer's provisions, sick leave will be granted in accordance with this chapter only if the outside employment had been authorized by the City before the injury occurred

#### 4.7 Bonus for Unused Sick Leave

For every six (6) months of perfect attendance, the employee will receive eight (8) hours of bonus time. "Perfect attendance" means the employee has not received sick leave or salary continuation benefits and has not taken or been placed on leave without pay. Benefitted part time employees will receive sick leave bonus time on a pro rata basis. Sick leave bonus can be used for any leave purpose authorized by this Manual.

#### 4.8 Accumulation of Sick Leave

Employees may accumulate sick leave up to a maximum of two hundred (200) days (1600 hours) except for the classifications named below.

The Police Chief and Fire Chief may accumulate sick leave in excess of the 1600-hour limit by 100 hours per year.

#### 4.9 Payout for Excessive Sick Leave for Employees Hired on or Before June 30, 2013

All employees, except employees in the classification of Deputy Fire Chief hired on or before June 30, 2013 in the career service who regularly work one-half time or more who have attained the two hundred (200) day maximum sick leave accumulation shall be entitled to receive payment for one-third (1/3) of the first twelve (12) days of sick leave days (or if earning sick leave at the rate of two (2) working days each month of service, one-third (1/3) of the first twenty-four (24) days of sick leave days), for which sick leave days they become eligible, they do not use and they would otherwise forfeit because of the two hundred (200) day maximum limitation. Determination of eligibility for such payment shall be made on an annual calendar year basis, and payment for such sick leave for any calendar year shall be made not later than the first full pay period in January. Such payment shall be at the employee's salary rate in effect on the preceding December 31, and shall be made only in units of whole days and will not be made for any fraction of a day.

4.9.1 **Deputy Fire Chief:** For employees in the classification of Deputy Fire Chief, the following provisions shall apply. In each year following that 1200 hour base year, the employee may, on a form provided by the City, elect to receive pay for excess sick leave or may elect to increase his or her sick leave accumulated base by the 96 hours and take any additional

excess sick leave in pay at the following prescribed rate: employees who choose to increase their sick leave accumulated base by the 96 hours will receive 50% pay off rate in March; employees who choose to receive pay out for excess sick leave over the base, and do not exercise the option of increasing their accumulated sick leave base by 96 hours in any particular year, will be paid for excess sick leave at the 38% pay off rate in March.

Forms, provided by the City along with projected excess sick leave balances, shall be distributed to affected employees by February of each year and shall be returned to the City by February 15th. If an employee uses part of an established "sick leave maximum accumulation level", the employee may replenish the used portion at the applicable rate.

Determination of eligibility for such payment shall be made on an annual basis, and payment for such sick leave for any calendar year shall be made during the month of March each year. Such payment shall be made at the employee's regular monthly salary rate in effect on the last day of the first pay period to end in March. An employee shall be eligible for this provision whether or not the employee is on the payroll as of the last day of the first pay period to begin and end in March.

- 4.9.2 **Police Chief and Fire Chief Hired on or before June 30, 2013:** For the Police Chief and Fire Chief hired on or before June 30, 2013, the maximum sick leave accrual allowed shall be adjusted at the rate of 100 additional hours per year above the 1600-hour limit. The employee may elect to receive pay for the excess sick leave or may elect to increase the base by 100 hours, in each subsequent year. Payment for excess sick leave is prescribed at 1/3 of the excess leave balance.

#### 4.10 **Effect of Leave without Pay on Sick Leave Accrual**

Sick leave will not accrue during any period of absence without pay. Sick leave credits are accrued on the basis of actual straight time hours worked or paid, based on a forty-hour workweek.

#### 4.11 **Accrued Sick Leave Canceled Upon Termination**

Except as otherwise provided under the CalPERS conversion of sick leave retirement credit benefit (California Government Code Section 20965) and the other exceptions set forth below, all accrued sick leave shall be canceled upon termination of an employee. Such leave shall be credited back to the employee if the employee returns to City employment within two (2) years of termination except as otherwise provided by the City Council, or within three (3) years of termination if re-employed under the City's Layoff Policy provided in this Manual.

- 4.11.1 **CalPERS Miscellaneous Members, Chief of Police Hired on or before June 30, 2013 Sick Leave Payout:** For CalPERS



Miscellaneous members and Chief of Police hired on or before June 30, 2013 who voluntarily separate from service with a vested pension and at least twenty (20) years of benefitted City of Berkeley service or to employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the City shall be entitled to liquidate a portion of their accrued but unused sick leave as follows: Upon termination, employees with between twenty (20) years and twenty-eight (28) years of benefitted City of Berkeley service shall be entitled to receive payment in an amount equal to 38% of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days.

All employees hired on or after July 1, 2013 shall not be eligible for payment of any unused sick leave days.

Employees hired on or before June 30, 2013 who voluntarily separate from service with a vested pension and at least twenty-eight (28) years of benefitted City of Berkeley service or employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the City, with at least twenty-eight years of benefitted City of Berkeley service, shall be entitled to receive payment in an amount equal to 50% of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days. Employees hired on or after July 1, 2013 shall not be eligible for payment of any unused sick leave days.

4.11.2 **Fire Chief and Deputy Fire Chief Hired on or before June 30, 2014 Sick Leave Payout:** For employees hired on or before June 30, 2014 in the classification of Fire Chief and Deputy Fire Chief who retire or voluntarily terminate with twenty (20) years of service or who retire on permanent disability arising out of and incurred in the course and scope of their employment with the City, shall be entitled to receive payment at retirement or termination of unused sick leave days, based on the following schedule:

| Number of Days    | % of Payment |
|-------------------|--------------|
| 0-75 Days         | 38%          |
| 75-99 Days        | 41%          |
| 100-124 Days      | 44%          |
| 125-149 Days      | 47%          |
| 150 Days and over | 50%          |

Employees in classifications identified in this Section 4.11.2 (Fire Chief and Deputy Fire Chief Hired on or before June 30, 2014 Sick Leave Payout) hired on or after July 1, 2014 shall not be eligible for payment of any unused sick leave days.



#### **4.12 City of Berkeley Supplemental Retirement Plan [Termination 401(a)]**

Employees who retire on a vested pension shall be eligible to participate in the City of Berkeley Supplemental Retirement Plan. The Supplemental Retirement Plan provides for negotiated required roll-forwards of accrued but unused leave, and also permits the City to do a "tax pick-up" of employee contributions under Section 414(h)(2) of the Internal Revenue Code. A tax pick-up works through an irrevocable payroll deduction authorization, on an individual by individual elective basis, to contribute accrued but unused sick leave, vacation leave, compensatory time, floating holiday and bonus sick leave into an Internal Revenue Code 401(a) defined contribution plan. The Supplemental Retirement Plan Document shall govern administration of the Plan.

#### **4.13 Accrued Sick Leave Applied to CalPERS Retirement Credit**

The conversion of unused sick leave to retirement credit benefit under Government Code Section 20965 offered by CalPERS as an optional benefit to contracting agencies shall be made available to employees who retire with a vested pension.

#### **4.14 Sick Leave Benefits and State Disability Insurance**

Employees may use their accrued sick leave benefits during the normal seven day period before the eligible employees are paid benefits from State Disability Insurance. Following the seven day period, an employee will continue to receive accrued sick pay until exhausted and then, upon approval by the department head, accrued vacation or compensatory pay, less the disability benefits actually received.

#### **4.15 Workers' Compensation and Salary Continuation**

Workers' compensation payments shall commence in accordance with State law, on the fourth day following an industrial injury, unless the employee is hospitalized in which case payment commences on the first day of injury. For the purpose of this Section (Workers' Compensation and Salary Continuation), "hospitalized" means confinement.

For all career and regular at-will employees who are receiving or shall receive workers' compensation benefits for an industrial injury, the City will pay retroactive compensation benefits to the eligible employee for the normal three day waiting period before the employee is paid workers' compensation benefits for temporary disability pursuant to California law governing the industrial injury or illness.

Payments under the workers' compensation law for temporary disability or a recurrence thereof arising out of and in the course of employment shall be paid for a period not to exceed 365 days at a maximum payment of the employee's pre-disability pay, but shall not exclude any salary adjustments to which the employee is entitled. Thereafter, the employee will continue to receive only the temporary disability payments provided under State law and the City shall cease to pay the difference.

#### 4.15.1 Salary Continuation Benefit

1. New Accepted Claim with Overlapping Previously Accepted Injury - Where an Employee sustains a subsequent industrial injury as part of a new accepted workers' compensation claim that includes a previously accepted body part in the same five (5) year period, Employee shall be entitled to a period of time not to exceed 183 days of Salary Continuation Benefits.
2. New Accepted Claim with No Overlapping Previously Accepted Injury - Where an Employee sustains another industrial injury resulting in a new accepted workers' compensation claim within the same five (5) year period that does not include a previously accepted body part, the Employee's new accepted claim shall be entitled to a period of time not to exceed 365 days of the Salary Continuation Benefit.
3. New Accepted Claim for Same Previously Accepted Injury after Five (5) Years - Where an Employee sustains an industrial injury to a previously claimed body part after five (5) years from the initial Date of Injury, the Employee shall be entitled to a new period of time not to exceed 365 days of the Salary Continuation Benefit. In effect, after five (5) years from the initial Date of Injury, the benefit resets with respect to a previously claimed body part.
4. Workers' Compensation Medical Appointments and Salary Continuation - For the purposes of the Salary Continuation Benefit, effective January 1, 2019, the City shall calculate absences from work to attend medical appointments for the treatment of an accepted industrial injury in one (1) hour increments for the purposes of running against the maximum 365 days of Salary Continuation.

#### 4.16 Sick Leave Accrual for Department Heads and Deputy City Managers

At the time of appointment of new hires in regular at-will department head classifications and Deputy City Managers, the City Manager may authorize credit for accrual of sick leave based on sick leave accrual with a prior employer in an amount that does not exceed four weeks of sick leave credit.

**ARTICLE 5 - HOLIDAYS****5.1 Holidays**

The City observes the following holidays and provides all full time regular, at-will and career employees. Contingent upon agreement by all Employee Bargaining Units, the parties agree that the Lincoln Holiday shall be eliminated and that Cesar Chavez Day – observed on March 31, or on the Monday or Friday closest to March 31 if it falls on a Saturday or Sunday would be added instead.

| <b>Holiday</b>                     | <b>Day Observed</b>             |
|------------------------------------|---------------------------------|
| New Year's Day                     | January 1                       |
| Martin Luther King, Jr.'s Birthday | Third Monday in January         |
| Lincoln's Birthday                 | February 12                     |
| Washington's Birthday              | Third Monday in February        |
| Malcolm X's Birthday               | Monday or Friday nearest May 19 |
| Memorial Day                       | Last Monday in May              |
| Juneteenth                         | June 19                         |
| Independence Day                   | July 4                          |
| Labor Day                          | First Monday in September       |
| Indigenous People's Day            | Second Monday in October        |
| Veterans' Day                      | November 11                     |
| Thanksgiving Day                   | Fourth Thursday in November     |
| The Day After Thanksgiving         | Fourth Friday in November       |
| Christmas                          | December 25                     |

**5.2 Floating Holidays**

Full time, regular at-will, and career employees who have worked for the City six (6) months or more shall be granted three (3) floating holidays each calendar year. Employees may take floating holidays in one (1) hour increments. Employees who terminate employment within the first six (6) months of initial employment shall not be eligible for payout of any accrued but unused floating holiday.

In the first calendar year of employment, employees shall be granted prorated floating holidays as follows:

| <b>Date of Hire</b>            | <b>Number of Floating Holidays</b> |
|--------------------------------|------------------------------------|
| Hired January 1 - April 30     | 3 days                             |
| Hired May 1 - August 31        | 2 days                             |
| Hired September 1- December 31 | 1 day                              |

All use of floating holidays must be approved, in advance, by the employee's department head, on forms approved by the City. The days on which the employee shall take his or her floating holiday(s) shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the service. If the requirements of the service are such that a department head

cannot permit the employee to take the floating holiday(s) within a particular calendar year, the employee shall add the unused floating holiday(s) to the employee's accrued vacation according to Section 3.5 (Maximum Vacation Accumulation).

### **5.3 Eligibility**

In order to be eligible for holiday pay, an employee must be on paid leave status on his or her regularly scheduled workdays before the holiday.

### **5.4 Part-Time Employee Eligibility**

Benefitted part time employees are eligible for holiday benefits on a pro rata basis.

### **5.5 No Work on the Holiday**

Employees in the career service who are not scheduled to work on the day observed as a holiday will be granted an alternative scheduled holiday. The alternative holiday must be scheduled, by the department head, during the same workweek.

### **5.6 Work on the Holiday**

FLSA non-exempt benefitted employees who work on a scheduled holiday shall be paid at one and one-half times their normal base rate for all hours worked or shall be granted the equivalent amount of compensatory time off. In either event, the holiday pay shall be in addition to the employees' regular salary.

## **ARTICLE 6 - OTHER PAID LEAVES OF ABSENCE**

### **6.1 Family Bereavement Leave**

Any benefitted employee who experiences a death in the immediate family is granted death leave of up to three (3) working days for the purpose of attending the funeral or memorial service in the State of California, or up to five (5) working days for the purpose of attending the funeral or memorial service outside the State of California. Employees in the classification of Fire Chief and Deputy Fire Chief shall be granted one week (five (5) consecutive calendar days) for a death in the immediate family whether in state or out of state for the purpose of attending the funeral or memorial service.

For all employees except those employees in the classification of Fire Chief and Deputy Fire Chief, "immediate family" is limited to wife, husband, mother, father, sister, brother, child, grandmother, grandfather, aunt, uncle, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchildren, dependent or domestic partner. For employees in the classification of Fire Chief and Deputy Fire Chief, "immediate family" is limited to wife, husband, domestic partner mother, father, sister, brother, child, grandmother, grandfather, aunt, uncle mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchildren or dependent residing within the household.

Bereavement leave will be paid at the employee's normal base rate of pay for the actual time lost and is allowed solely for the purpose of attending funeral or memorial services. The department head may, within his or her discretion, grant the employee additional time off provided that all accrued vacation and/or sick leave shall be used prior to taking a leave of absence without pay for this purpose.

In special cases, with the approval of the department head, the City Manager may grant death leave within his or her discretion to allow an employee to attend a funeral or memorial services because of the death of persons not included within the definition of immediate family.

### **6.2 Jury Duty Leave**

Any benefitted employee who is called or required to serve as a trial juror, upon notification and appropriate verification submitted to his or her department head, shall be entitled to be absent with pay from his or her duties with the City during the period of such service and while necessarily being present in court as a result of such call. An employee is required to be present at work when not serving as a trial juror or as a member of a jury selection panel. An employee will notify his or her supervisor of any requirements (on-call status) made by the court that may affect the employee's ability to simultaneously fulfill his or her jury duty service and employment obligations. The employee will keep any payment received for jury service including mileage reimbursement.

### 6.3 Continuing Education Leave

The City will grant a continuing education leave of absence with pay up to forty hours per year to benefitted employees who are required by their employment or continuing employment with the City of Berkeley to pursue course work in order to:

- (a) renew a license issued by the State of California; or
- (b) obtain a license issued by the State of California provided that employees verify to the City that the course work for the initial license was not offered as a part of their basic curriculum.

Upon prior approval of the department head, FLSA non-exempt employees who take required course work during non-scheduled work hours in order to obtain or renew a job-required license shall be allowed time off from work on an hour-for-hour basis without loss of compensation or other benefits.

### 6.4 Administrative Leave Program

The City Manager provides for paid administrative leave to eligible employees as set forth in the Appendix to this Manual. Administrative leave is not charged against other accrued leave balances.

### 6.5 Temporary Employees – Earned Leave

A temporary employee who works one thousand forty (1040) hours or more in a calendar year and is in active employment during December of such year, shall be credited with forty (40) hours of paid time off to be used by such employee in the subsequent calendar year for either paid vacation or paid sick leave. The following conditions shall apply to the use of this earned leave as paid time off:

- a. To qualify for earned leave as vacation, the employee must apply, in writing, to the employee's supervisor at least thirty calendar days in advance of the desired time off. The granting or denial of the requested time off shall be in writing and shall be controlled by program considerations as established by the City.
- b. To qualify for earned as sick leave, the employee must notify the employee's supervisor of an inability to report to work by reason of illness or injury in advance of the scheduled work.
- c. An employee who has any unused earned leave credit shall receive payment for such time upon termination of temporary employment. All credited earned leave not utilized by employees at the end of the calendar year in which the employees are eligible to take such leave will be paid at the end of such year as wages and this earned leave shall not be accumulated from year to year.

## 6.6 Abolishment of Temporary Employees – Earned Leave

Effective July 1, 2015, Section 6.5 (Temporary Employees – Earned Leave) is abolished in its entirety and replaced with the following Section 6.7 (Temporary Employees Sick Leave).

## 6.7 Temporary Employees Sick Leave

Effective January 1, 2015, Temporary Employees who have been employed for at least 90 days on July 1, 2015 are eligible to accrue and use sick leave based on hours worked after July 1, 2015 as provided in Section 6.8 (Sick Leave Accrual) below.

## 6.8 Sick Leave Accrual

Effective July 1, 2015, once a temporary employee works for 30 days within a calendar year, the employee shall be eligible to accrue one (1) hour of sick leave for every 30 hours worked thereafter, to a maximum accumulation of 48 hours. Once an employee accrues 48 hours sick leave, the employee shall not accrue any additional sick leave hours until his or her sick leave balance is below the maximum of 48 hours. Under no circumstances will an employee be allowed to accrue more than 48 hours sick leave.

## 6.9 Sick Leave Use

Temporary Employees shall be eligible to use sick leave beginning on the 90<sup>th</sup> day of work. Sick leave shall be used in a minimum of two (2) hours increments, and limited to a maximum of 24 hours use each calendar year. Unused accrued sick leave hours shall carry over to the following calendar year. The following conditions shall apply to the use of this sick leave as paid time off:

- a. Sick Leave may be used for the following purposes: Diagnosis, care, or treatment, of an existing health condition or, preventive care for, an employee or an employee's family member; for an employee who is a victim of domestic violence, sexual assault, or stalking. To qualify for earned as sick leave and if the need for sick leave is foreseeable, the employee must notify the employee's supervisor of an inability to report to work in advance of the scheduled work. If the need for sick leave is unforeseeable, the employee shall provide notice to the immediate supervisor of the need for the leave as soon as practicable.
- b. All accrued and unused sick leave shall be cancelled upon separation/termination of employment. Such previously accrued and unused sick leave shall be credited back to the employee if the employee returns to City employment within one (1) year from the date of separation.



## ARTICLE 7 - LEAVES OF ABSENCE WITHOUT PAY

### 7.1 Power to Grant Leave

The City Manager shall have the power within his or her sole discretion to grant leaves of absence, with and without pay.

### 7.2 Authorized Leave Without Pay

Upon request of the employee, a department head may grant or deny a leave of absence to an employee within his or her department without pay for a period not to exceed thirty working days. No leave without pay shall be granted for more than thirty working days except upon written request of the employee and written approval of the City Manager.

7.2.1 **Required Exhaustion of Accrued Leave:** In the event of an authorized absence due to illness, the employee must use all accrued sick, compensatory and vacation leave prior to receiving authorization for leave without pay. In the event of personal leaves not related to sickness, the employee must use all accrued compensatory and vacation leave prior to receiving authorization for leave without pay. However, employees in the classifications of Legislative Assistant and Assistant to the Mayor are not required to use all accrued compensatory and vacation leave prior to receiving authorization for leave without pay for the employee's respective appointing Councilmember or the Mayor. This subsection does not apply to parental leave or to the exhaustion of sick leave by employees in the classification of Deputy Fire Chief as referenced in Section 7.2.2 (Fire Chief and Deputy Fire Chief Use of Sick Leave), below.

7.2.2 **Fire Chief and Deputy Fire Chief Use of Sick Leave:** In the event of illness or injury of an employee in the classification of Fire Chief and Deputy Fire Chief requiring the use of sick leave, the employee has the option to notify the City in writing that he/she wishes to freeze the use of sick leave after thirty (30) days, prior to receiving authorization for leave without pay, in order to utilize the International Association of Fire Fighters sponsored Long Term Disability benefit.

7.2.3 **Grounds for Discharge:** Failure on the part of an employee to report to work promptly at the expiration of the authorized leave without pay will result in discipline up to and including termination.

### 7.3 Unauthorized Leave of Absence

All paid and unpaid leaves of absence must be approved in accordance with the applicable sections of this Manual. Any absence on the part of the employee who has failed to obtain such approval or failure of an employee to report for duty without appropriate authorization as required by each department will result in the employee being placed on unauthorized leave of absence without pay.



7.3.1 **Grounds for Discharge:** Unauthorized leave of absence without pay shall be cause for disciplinary action up to and including termination.

#### 7.4 Parental Leave

Any employee with one or more years of benefitted employment with the City of Berkeley shall be entitled to up to one year of parental leave upon the birth of a child or the adoption of a child who is five years or younger as provided in Administrative Regulation 2.4 (Family Care Leave).

#### 7.5 Family Care Leave

The City will fully comply with the requirements of the state and federal law regarding pregnancy disability leave and medical/family illness/child care leave where their provisions are more generous than those provided elsewhere in this Manual or Administrative Regulation 2.4 (Family Care Leave). Leaves under this Section 7.5 (Family Care Leave) and Section 7.4 (Parental Leave) and as provided in Administrative Regulation 2.4 may not be combined to yield a larger amount of leave than the state or federal maximums and may not be combined to exceed the maximum one year period of parental leave provided by the City of Berkeley.

#### 7.6 Military Leave

Employees will be granted a leave of absence without pay with appropriate seniority, pay, status and vacation as required by law for the purpose of fulfilling any required military obligation.

## ARTICLE 8 - EMPLOYEE FRINGE BENEFITS

### 8.1 Group Medical-Dental Insurance Benefits

Benefitted employees and their dependents may participate in the City's group medical and dental benefits, which are summarized in the Appendix.

8.1.1 **Part Time Employment:** All benefitted employees who work a minimum of twenty hours, but less than forty hours per week, qualify to receive prorated health and dental benefits and shall pay a pro rata portion of the health and dental insurance premiums. Full time career employees who accept part time employment in lieu of layoff shall continue to receive full health and dental benefits paid by the City.

8.1.2 **Medical Plan for Part-Time Employees:** Effective November 1, 2016, the City will pay 75% of the cost of the medical plan which is fully paid for full-time employees for those benefitted part-time employees who work twenty (20) to twenty-nine (29) hours per week. The City will pay 100% of the cost of the medical plan which is fully paid for benefitted full-time employees for those part-time employees who work thirty (30) or more hours per week.

8.1.3 **Medical Contribution Executive Managers:** Effective July 1, 2019, the City Manager, Deputy City Manager, and all department heads shall pay fifty dollars (\$50.00) per month via pre-tax payroll deduction toward their health premium, and the City will pay an amount equal to the balance of the Kaiser monthly premium rate for the employee's applicable single, two-party, or family employee category.

### 8.2 Life Insurance

The City provides basic group life insurance coverage by a carrier of the City's choice to all benefitted employees and pays the full amount of the life insurance coverage. The City also provides the option to benefitted employees to purchase additional coverage, at their own expense. A summary of the terms of the life insurance coverage is in the Appendix.

### 8.3 Hourly Rated Employees in Lieu of Benefits

Except for employees in the Aquatics Specialist II and Senior Aquatics Specialist classifications, the Salary Resolution shall provide that hourly-rated employees working in career benefitted classifications will receive an additional seven percent (7.0%) in lieu of benefits.

### 8.4 Public Employees Retirement System:

8.4.1 **Participation:** The City shall continue to participate in the Miscellaneous Employees Plan, the Safety Fire Plan and the Safety

Police Plan of the California Public Employees Retirement System ("CalPERS"). All benefitted employees shall participate in one of these plans.

8.4.2 **"Classic Employees" Definition:** Classic Employees are defined as current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA).

8.4.3 **CalPERS Retirement Formula for Miscellaneous Employees "New Members" as Defined under PEPRA:** Miscellaneous Employees "New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the 2% at age 62 retirement formula with the highest three (3) year average compensation as set forth in PEPRA.

8.4.4 **CalPERS Miscellaneous Employees Retirement Formula and Employer Paid Member Contribution for Classic Employees:** Effective January 1, 2003, the City amended its Miscellaneous Employees Plan contract with CalPERS to provide the 2.7% at age 55-retirement formula benefit improvement and the City's contribution to CalPERS on behalf of Miscellaneous employees increased from 7% to 8%. Effective July 3, 1994, contributions made pursuant to this Section shall be reported to CalPERS as "special compensation" as provided in Government Code Section 20636(c)(4) pursuant to Section 20691. Said contributions shall not apply in the case of temporary or provisional employees.

The contributions in Section 8.4.4 (CalPERS Miscellaneous Employees Retirement Formula and Employer Paid Member Contribution for Classic Employees) shall not be considered as a part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked or for other differentials; nor shall such contributions be taken into account in determining the level of any other benefit which is a function of or percentage of salary.

The City will not treat these contributions as compensation subject to income tax withholding unless the Internal Revenue Service or Franchise Tax Board indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of the implementation of this Section or any penalty that may be imposed therefore.

8.4.5 **Miscellaneous Employees Classic Employee Pension Contribution through a 20516 Contract Amendment**

- 8.4.5.1 **June 4, 2017:** Effective June 4, 2017, Miscellaneous employees will contribute one percent (1%) toward the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions via automatic payroll deduction on a pre-tax basis. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.
- 8.4.5.2 **December 31, 2017:** Effective December 31, 2017, Miscellaneous employees will contribute an additional seven percent (7%) towards the City's CalPERS employer share of pension through a 20516 CalPERS contract amendment that allows such contributions on a pre-tax basis, for a total of eight percent (8.0%), via automatic payroll deduction on a pre-tax basis. Such employee deductions by the City shall be used towards the City's CalPERS required contributions. The parties recognize that the Employer Paid Member Contributions (EPMC) shall remain in effect as long as the CalPERS amendment stays in effect.
- 8.4.5.3 If legislation is enacted requiring employers under the CalPERS retirement system to pay all of the employee's share of retirement, thus eliminating the Employer Paid Member Contribution, the City may convert the employee's contribution to the employer's share under this Section 20516 CalPERS contract amendment to the employee's share toward retirement and may continue to pay the 5.58% wage increase provided on December 31, 2017 associated with the CalPERS swap for Miscellaneous Classic Employees.

#### 8.4.6 **Miscellaneous New Members' Pension Contribution**

- 8.4.6.1 Miscellaneous New Members as defined in the California Public Employees' Pension Reform Act of 2013 (PEPRA), shall continue to pay 50% of the Normal Cost required under PEPRA.
- 8.4.6.2 **June 4, 2017:** Effective June 4, 2017, in addition to the contribution in Section 8.4.6.1, Miscellaneous New Members shall contribute one percent (1.0%) toward the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allow such contributions as pre-tax via automatic payroll deduction. Such employee deductions by the City shall be used toward the City's CalPERS required contributions.
- 8.4.6.3 **December 31, 2017:** Effective December 31, 2017, in addition to the contributions in Sections 8.4.6.1 and 8.4.6.2 above,

Miscellaneous New Members shall contribute an additional seven percent (7.0%) towards the City's CalPERS employer share of pension through a 20516 CalPERS contract amendment that allows such contributions as pre-tax, for a total of eight percent (8.0%) via automatic payroll deduction. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.

8.4.6.4 Miscellaneous New Member contributions in Sections 8.4.6.2 and 8.4.6.3 to the CalPERS 20516 employee contributions towards the employer rate are in addition to the required 50% of the normal share of cost of "New Members" (required pursuant to PEPRA) benefits and made in consideration of additional salary increases effective June 4, 2017 and December 31, 2017 and set forth in the Salary Resolution (a total of 5.58% in exchange for employees paying an additional eight percent (8.0%) towards CalPERS pension costs).

8.4.6.5 Miscellaneous New Member contributions in Sections 8.4.6.2, 8.4.6.3, and 8.4.6.4 to the CalPERS 20516 employee contributions towards the employer rate will be amended and reduced as follows:

8.4.6.5.a

- FY2021-22: 1% (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
- FY 2026-27: 1% effective July 1, 2026

8.4.6.5.b No change to Classic members' contributions during the contract term.

8.4.7 **Public Safety CalPERS Retirement Formula for "New Members" as Defined Under PEPRA:** Public Safety "New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the 2.7% at age 57 retirement formula with the highest three (3) year average compensation as set forth in PEPRA.

8.4.8 **Public Safety Classic Employees CalPERS Retirement Formula:** The City agrees to provide the 3% at age 50-retirement formula benefit

improvement (December 22, 2000 for Classic Fire Safety; and July 7, 2002 for Classic Police Safety hired prior to December 28, 2011).

For Classic Police Safety Employees hired on or after December 28, 2011, the City provides the 3% at age 55-retirement formula benefit.

- 8.4.9 **Public Safety Fire Classic Employees' CalPERS Pension Contribution:** On July 1, 1994, the City increased the base salary of Classic Employees participating in the Safety Fire Plan, in the amount of nine percent (9%). Employees then assumed, and shall continue to assume responsibility for payment of the normal employee retirement contribution to CalPERS. The City shall designate such payments as an Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code. The employee contributions shall be made through automatic payroll deduction.

**Cost Share:** Effective November 8, 2015 (the first full pay period after Council approval of this Unrepresented Employee Manual), Public Safety Fire Classic Employees shall contribute two percent (2%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis.

- 8.4.10 **Public Safety Police Classic Employees' CalPERS Pension Contribution:** On July 1, 1994, the City increased the base salary of Classic Employees participating in the Safety Police Plan, in the amount of nine percent (9%). Employees then assumed, and shall continue to assume responsibility for payment of the normal employee retirement contribution to CalPERS. The City shall designate such payments as an Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code. The employee contributions shall be made through automatic payroll deduction.

Effective January 3, 2016, Police Public Safety Classic Employees shall contribute one percent (1%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis. And, effective July 3, 2016, Police Public Safety Classic employees shall contribute an additional one percent (1%), for a total of two percent (2%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis.

- 8.4.11 **Public Safety Fire New Members CalPERS Pension Contribution:** Public Safety Fire New Members hired on or after January 1, 2013 shall pay fifty percent (50%) of the normal share of cost as required pursuant to PEPRA.

**Cost Share:** Effective November 8, 2015 (the first full pay period after Council approval of this Unrepresented Employee Manual), Fire New

Members shall also contribute an additional two percent (2%) of pensionable compensation, in addition to the PEPRA mandated 50% of the normal share of cost, toward the City's CalPERS employer contribution rate through automatic payroll deduction on a pre-tax basis

- 8.4.12 **Public Safety Police New Members CalPERS Pension Contribution:** Public Safety Police New Members hired on or after January 1, 2013 shall pay fifty percent (50%) of the normal share of cost required by PEPRA.

**Cost Share:** Effective January 3, 2016, Public Safety Police New Members shall also contribute one percent (1%) of pensionable compensation (in addition to contributing 50% of the normal share of cost) towards the City's CalPERS employer contribution rate through automatic payroll deduction on a pre-tax basis. And, effective July 3, 2016, Police Public Safety New Members shall contribute an additional one percent (1%), for a total of two percent (2%), in addition to the PEPRA mandated 50% of the normal share of cost, toward the City's CalPERS employer contribution rate through automatic payroll deduction on a pre-tax basis.

- 8.4.13 **CalPERS Options Available to Berkeley Employees:** The City's contract with CalPERS includes the following optional benefits:

- a) Classic Employees Only - One-Year Final Compensation as provided in Section 20042 (July 9, 1978 for Miscellaneous; July 22, 1976 for Fire and Police).
- b) Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (December 16, 1973 for Miscellaneous; March 1, 1973 for Fire and Police).
- c) Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
- d) Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).
- e) 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (December 16, 1973 for Miscellaneous; March 1, 1973 for Fire and Police).
- f) Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).



- g) Fourth Level of 1959 Survivor Benefits as provided in Section 21574 for Police Safety only (October 15, 1998).
- h) Military Service Credit as Public Service as provided in Section 21024 (April 9, 1999 for Miscellaneous; July 14, 2000 for Fire; November 6, 1998 for Police).
- i) Public Service Credit for Peace Corps or America Corps: Vista Service as provided in Section 21023.5. (April 14, 2000).
- j) Classic Fire - 3% @ 50 for Local Safety Members as provided in Section 21362.2 for Fire members only, (December 22, 2000); and for Police members only (July 7, 2002.).
- k) Classic Police Hired Prior to December 28, 2012: 3% @ 50 for Local Safety Classic Members as provided in Section 21362.2 for Police members only (July 7, 2002).
- l) Classic Police: 3% @ 55 for Local Safety Classic Members as provided in Section 21363.1 for Police members only (December 28, 2012).
- m) Classic Miscellaneous: 2.7% at age 55 for miscellaneous members as provided in Section 21354.2 on January 5, 2003.
- n) New Members Miscellaneous: 2% at age 62 for Miscellaneous New Members as defined by PEPRA on January 1, 2013.
- o) New Members Police and Fire: 2.7% @ 57 for Local Safety New Members as defined by PEPRA (January 1, 2013).
- p) Indexed Level of 1959 Survivor Benefits as provided in Section 21574.5 for Fire Safety only (June 13, 2003).

8.4.14 **Unused Sick Leave Conversion:** The conversion of unused sick leave to CalPERS Retirement Credit for Unused Sick Leave under Government Section 20965 shall be made available to qualified retiring employees. This allows employees to convert unused accumulated sick leave at time of retirement, for which the employee receives no compensation, to additional service credit at the rate of 0.004 year of service credit for each day. This credit applies to qualified employees



whose effective date of retirement is within four months of separation from employment. The CalPERS sick leave conversion applies to accumulated sick leave, exclusive of the amount of accumulated sick leave paid out to the employee pursuant to Section 4.11 (Accrued Sick Leave Cancellation Upon Termination), of this Manual.

- 8.4.15 **Retirement Benefit Allowance:** CalPERS retirement benefits are calculated on a formula based on the participating employee's years of service, age at retirement, and percentage of highest year compensation. For employees participating in the Local Miscellaneous Employees Plan, the percentage is 2.7% at age 55 effective January 5, 2003. For Classic Employees participating in the Fire Safety Employees Plan, the percentage is three percent (3%) at age 50 effective December 22, 2000. For Classic Employees participating in the Police Safety Employees Plan, the percentage is three percent (3%) at age 50 effective July 7, 2002. For Classic Employees participating in the Police Safety Employee Plan effective December 28, 2012, the percentage is three percent (3%) at age 55.

## 8.5 Supplementary Retirement and Income Plans

In lieu of participating in the Federal Social Security Program, the City provides a supplemental retirement and income plan to most benefitted employees. There are three supplementary retirement and income plans: Supplementary Retirement and Income Plans I, II and III ("SRIP I, II and III"). The City's contributions to these plans on behalf of participating employees is not subject to income tax until it is paid out to the employees upon retirement or termination, or to the employee's beneficiary in the event of the employee's death.

- 8.5.1 **SRIP I:** In SRIP I, the City contributes 5.7% of the participating employee's salary (up to a maximum annual salary of \$32,400) into an investment account and 1% into a long term permanent disability plan. SRIP I was closed to new participants on July 22, 1988.

- 8.5.2 **SRIP II:** In SRIP II, the City contributes 6.7% of the participating employee's salary (up to a maximum annual salary of \$32,400) into an investment account and pays into a disability insurance benefit plan on the employee's behalf; and employees may also borrow up to 50% of the balance in their SRIP II investment accounts, subject to certain limitations. All employees, including the Fire Chief, hired (or who are subsequently enrolled by resolution of the City Council) after July 22, 1988 are automatically enrolled in SRIP II.

The Deputy Fire Chief is enrolled, effective July 1, 1993.

- 8.5.3 **SRIP III:** For eligible Police Safety employees, the City contributes 2% of the employee's salary (up to a maximum annual salary of \$32,400) into the investment account, SRIP III.

## 8.6 Deferred Compensation

Benefitted City employees are eligible to participate in the City's Deferred Compensation Plan through voluntary payroll deductions from the employee's salary. The Deferred Compensation Plan allows employees to defer part of their salaries, in accordance with Internal Revenue Service limits, to a separate fund, which is not subject to income tax until it is paid out to the employee upon retirement or termination, or to the employee's beneficiary in the event of the employee's death.

## 8.7 PARS

At-will employees who are not eligible to receive fringe benefits under this chapter are automatically enrolled in the Public Agency Retirement System ("PARS"). Each pay period, such employee shall contribute 3.75% of his or her salary into the employee's PARS account on a tax deferred basis and the City shall contribute a matching amount equaling 3.75 % of the employee's salary. The employee's PARS account balance will be distributed to the employee upon retirement or termination, or to the employee's beneficiary in the event of the employee's death.

## 8.8 Public Safety Uniform Allowance

Due to the requirement for sworn fire and police department management personnel to wear standard and dress uniforms in the performance of their duties, the City Manager may provide for the payment of uniform allowance, in keeping with the allowance provided to other fire and police personnel, as shown in the Appendix. The uniform allowance is intended to cover uniform expenses incurred during active service prior to the payment and shall be paid semi-annually, in installments of equal amounts. To comply with CALPERS requirement, Union allowance payments shall be paid over twenty-six (26) equal biweekly installments instead of twice a year payment.

## 8.9 Supplemental Retirement Plan and Trust Agreement

Effective July 1, 2001, the City adopted a Supplemental Retirement Plan and Trust Agreement to provide supplemental retirement income and other benefits for eligible unrepresented career benefitted and regular at-will employees through the liquidation of termination pay. Termination pay means pay due to an eligible unrepresented career benefitted and regular at-will employee from the City on account of termination of his or her employment, but only including the commuted value of the following such accumulated pay: vacation, sick leave, sick leave bonus, compensatory time and floating holidays. The Supplemental Retirement Plan includes both mandatory contributions of termination pay and voluntary contributions for employees who provide the City with an irrevocable payroll deduction authorization at least 90 days in advance of the date of termination.

## **ARTICLE 9 - EMPLOYMENT AT-WILL**

### **9.1 Employment At-Will**

An employee who is employed in a position that is excluded from the career service by Berkeley Municipal Code Section 4.04.120 of the Personnel Ordinance is employed by the City in an "at-will" status. This means that both the at-will employee and the City have the right to terminate employment at any time, with or without advance notice, and with or without cause. No employee or officer of the City of Berkeley has the authority to alter the employee's at-will status or to enter into an oral or written agreement for employment for a specified period of time, or to make any promises, assurances or agreements contrary to this the provisions of this Section.

### **9.2 No Right to Appeal Discharge**

An at-will employee who is discharged has no right of appeal or hearing in any manner provided by this Manual.

### **9.3 Benefits**

Those offices, positions and employments named in the Berkeley Municipal Code, Sections 4.04.120 (A), (B) and (C) who regularly work twenty or more hours per week are classified as regular at-will employees and shall be entitled to those benefits as specified for benefitted employees by this. A list of regular at-will positions entitled to receive such benefits is in the Appendix.

All other offices, positions and employments named in the Berkeley Municipal Code, Section 4.04.120, are not eligible for any benefits provided under these Rules, except those expressly specified for temporary employees, such as the Earned Leave benefit or those required by State or Federal law such as Family Care Leave and enrollment in the City's PARS retirement plan, as provided in this Manual.

### **9.4 Standards of Conduct**

At-will employees are subject to the same standards of conduct that prevail over employees in the career service. Any evaluations, warnings or disciplinary action provided to at-will employees regarding their conduct or job performance does not create any obligation or duty on the City's part to provide a warning or evaluation or corrective progressive discipline prior to discharge and in no way negates or otherwise abrogates the City's right to discharge at-will employees for any reason without notice at any time during their employment and without right of appeal.

### **9.5 Transfer or Appointment of Career Employee to an At-Will Position**

Any employee in the career service who accepts a transfer or appointment to an at-will position shall be reinstated to the career position from which he or she was transferred or appointed if within six months after such transfer or appointment, action is taken to dismiss the employee, unless charges are filed and the employee

is discharged in accordance with these Rules. After expiration of the six month period, the employee is excluded from the career service and from any retreat rights to former career positions and is subject to termination at any time, with or without advance notice, with or without cause, and without the right of appeal.

## **ARTICLE 10 - LAYOFF POLICY AND PROCEDURE**

### **10.1 Statement of Intent**

This layoff policy is intended to provide the maximum employment protection to employees in the career service and to minimize the impact on the City's affirmative action accomplishments should a layoff become necessary.

### **10.2 Announcement of Layoff**

The City Council, City Manager and department heads shall make every reasonable effort to manage and budget the City's resources effectively, and to plan for the delivery of City services in a manner which will avoid the necessity to lay off career City employees. A reduction in the workforce for more than thirty calendar days is necessitated by, but not limited to, the following a material change in duties and organization, adverse working conditions, return of employee from leave of absence, or shortage of work or fund. In the event of a layoff, the City Manager shall notify the Director of Human Resources of the intended action and the reason for the layoff.

### **10.3 Vacancy Freeze**

Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the career service in similar and related classes to those likely to be targeted for layoff. The City Manager shall notify the department heads of a freeze of vacancies in their departments and shall require that requisitions continue to be submitted for any budgeted positions which the department head intends to fill and for which funding is available.

### **10.4 Seniority Service Date**

All service in the employ of the City shall be counted toward the establishment of an employee's Seniority Service Date, including permanent, probationary, provisional, temporary, part time (on a prorated basis), seasonal, regular at-will employment, and approved military and parental leaves of absence. All other leaves without pay, including time off as a result of formal disciplinary action will be subtracted from the Seniority Service Date.

### **10.5 Establishment of Seniority Lists**

Layoffs shall be made according to City-wide class Seniority Lists which the Human Resources Department will immediately establish for probationary and permanent employees in each class targeted for layoff. The names of all City employees holding permanent and probationary appointments in a given class will be listed on the appropriate list in descending order by Seniority Service Date.

Probationary or permanent employees temporarily acting out of class and holding a provisional appointment in another class will be listed on the Seniority List of the class in which they hold permanent or probationary status.

## 10.6 Order of Layoff

Employees within a specific class shall be laid off on the basis of their Seniority Service Date; i.e., employees with the least amount of total service shall be laid off first. All emergency, temporary and provisional employees working in classes similar to those identified for layoff must be terminated prior to the layoff of probationary and permanent employees. Probationary employees will be laid off prior to permanent employees for a specific class.

10.6.1 **Tie:** If two or more employees on a Seniority List have an identical Seniority Service Date, the tie shall be broken in the following order: (1) time in class--the employee having least time in the class shall be laid off first, and (2) by lot.

10.6.2 **Administrative & Fiscal Services Manager Position in the Berkeley Public Library:** This is a specialty designated position within the Administrative & Fiscal Services Manager classification, and will be treated as a separate classification for the purpose of administering the Layoff Policy and Procedure.

## 10.7 Notification

Permanent and probationary employees should be notified individually, in writing, of pending layoffs as soon as possible, with no less than thirty calendar days notification if targeted for termination or retreat to a lower class.

All other employees to be laid off shall be given, whenever possible, at least a fourteen (14) calendar day prior notice.

## 10.8 Employee Retreat Rights

A probationary or permanent employee affected by layoff shall have the right to displace an employee in a lower level class in which the affected employee once had permanent status or in a subsequently created intermediate level career class which provides normal progression through the class series. Retreat rights shall also extend to employees who have not previously been promoted through a class but for whom the class is a natural progression or beginning in the class series. Retreat rights into a lower class will be granted in order of the highest seniority date on the Seniority List for employees in that class.

10.8.1 **Qualified to Retreat into More than One Classification:** When an employee is qualified to retreat into more than one class, the options shall be discussed with the employee and due consideration given to the employee's preferences. However, it is the prerogative of the City Manager to determine the final placement offer to the employee

10.8.2 **Salary Step:** Employees retreating to a lower class or being flexibly placed in a similar class shall be placed at the salary step representing

the least loss of pay. In no case shall the salary be increased above that received in the class from which the employee was laid off.

- 10.8.3 **Reinstatement after Transfer:** An employee whose position is abolished and is transferred in lieu of layoff shall have the right to return to the position if it is restored within one year of the date of the transfer.

## 10.9 Flexible Placement Program

After all frozen vacant positions have been filled by employees entitled to retreat rights under Section 10.8 (Employee Retreat Rights) of this chapter, the Human Resources Department will review and identify the remaining frozen vacant classes into which career employees targeted for layoff who have not retreated into a lower class may be placed on the basis of total experience and education.

- 10.9.1 **Failure to Meet Minimum Requirements:** Where the targeted employee does not meet the minimum qualifications of a frozen vacant position, the City Manager has the discretion to either waive the minimum qualifications and/or substitute the targeted employee's job-related experience and education for the minimum qualifications, but under no circumstances is the City Manager required to do so. Where the employee does not meet the minimum qualifications, flexible placement can occur only if the City Manager determines that management and supervisory personnel are able to provide adequate supervised on-the-job training to the employee to meet the requirements of the job. The employee must successfully complete the training within six months as determined by the Director of Human Resources or the employee shall be again subject to the layoff procedures.
- 10.9.2 **Salary Range:** Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off.
- 10.9.3 **Order of Assignment:** Offers to positions under the Flexible Placement Program shall be made according to the employee's standing on the Seniority List.

## 10.10 Failure to Accept Offer under Layoff

Failure on the part of an employee to accept a written bona fide offer to retreat to a lower class or be flexibly placed in an alternative job within ten calendar days after the offer is made shall result in forfeiture of any further right to employment retention. Acceptance of a reassignment to a lower class does not remove the employee's right of appeal under Section 10.12 (Appeal Procedures) nor does acceptance of an alternative job under the Flexible Placement Program jeopardize an employee's standing on the re-employment lists as further provided in this Section 10.10 (Failure to Accept Offer under Layoff).



## 10.11 Re-Employment List

The names of probationary and permanent employees laid off in accordance with this chapter shall be entered on a re-employment list for both those classes from which they were separated as well as other classes to which they have retreat rights.

- 10.11.1 **Duration of List:** Re-employment lists for laid off employees who are separated from City service shall remain in effect for three years. Re-employment lists for laid off employees who are demoted shall remain in effect indefinitely.
- 10.11.2 **Use of List:** Re-employment lists shall be used by each department when a vacancy arises in the same or lower class of position before certification is made from an eligible list.
- 10.11.3 **Order of Appointment:** Employees on the re-employment list shall be certified and appointed to a vacancy in the appropriate class according to their standing on the Seniority List.
- 10.11.4 **Failure to Appoint from Re-Employment List:** If a vacancy is filled from an eligible list in a class for which a re-employment list exists which is a violation of this Section, the employee on the re-employment list who should have been appointed shall be appointed to the vacancy and paid retroactively from the date the vacancy occurred.
- 10.11.5 **Failure to Accept Bona Fide Offer:** Failure on the part of the employee on the re-employment list to accept a bona fide written offer of re-employment within fifteen calendar days will result in removal of the employee's name from the re-employment list from which the offer was made. Failure to accept an offer of re-employment to the class with the highest salary range for which the employee is eligible for re-employment will result in automatic removal of the employee's name from all re-employment lists. The employee may, however, accept or decline temporary re-employment without jeopardizing his or her standing the re-employment list for the class from which he or she was originally terminated.
- 10.11.6 **Salary Step:** Upon reappointment to the class from which the employee was originally separated or demoted, the employee shall be placed at the salary step that the employee held at the time of the separation or demotion.
- 10.11.7 **Reinstatement List:** Any former employee on a re-employment list shall be included as an eligible on the reinstatement list for a specific class at or below the class from which layoff occurred, upon written request by the employee for reinstatement which is submitted with a current, completed City of Berkeley application and upon meeting the



minimum qualifications of the specific class unless waived by the City Manager as provided under flexible placement.

### **10.12 Appeal Procedures**

The decision of the City Manager to implement a layoff is not appealable. Any unrepresented career employee who believes that the layoff procedure, as defined herein, has been improperly administered as to the employee may appeal the action under the Complaints, Appeals and Hearing Procedure of this Manual. Employees are entitled to review all records pertaining to their class and their rights under the provisions of the layoff policy.

### **10.13 Audit**

In the event of a dispute between an employee and the City over the application of the re-employment list and if either party so requests, the City Manager's Office shall order an audit by an outside auditor of all vacant positions filled in each department to determine whether vacancies were filled in compliance with the procedures for appointments from re-employment lists set forth in Section 10.11 (Re-Employment List) of this Manual. In the event vacancies for which re-employment lists were in existence remain unfilled, the auditor shall offer an opinion as to whether or not the reasons for leaving the positions vacant appear to be legitimate. A report of the audit shall be transmitted to the City Manager and the City Council.

## **ARTICLE 11 - DISCIPLINARY ACTION**

### **11.1 Policy**

Prior to the suspension, disciplinary demotion or discharge of an employee in the career service for disciplinary purposes, the procedure set forth in this Article 11 (Disciplinary Action) shall be complied with provided, however, that only those employees in the career service who are not represented by a labor organization shall be entitled to the notice, rights and procedures provided under Section 11.3 (Disciplinary Actions).

### **11.2 Final Decision Maker for Disciplinary Action**

For purposes of this chapter, the City Manager is the final decision maker for City of Berkeley employees. The Rent Stabilization Board is the final decision maker for Rent Stabilization Program employees. The Library Board of Trustees is the final decision maker for Library employees.

### **11.3 Disciplinary Actions**

The department head shall initiate disciplinary procedures, as set forth here. The department head may suspend a subordinate employee for not more than three working days at any one time. For suspensions of more than three days, disciplinary demotions and discharge, the department head shall make a recommendation to the final decision-maker. The final decision-maker may suspend an employee from a position at any time for cause. Suspension without pay shall not exceed thirty working days, nor shall any employee be penalized by suspension for more than thirty working days in any continuous twelve month period. However, FLSA exempt employees shall not be suspended in less than regular workweek increments except for safety or security violations. A "regular workweek" is defined elsewhere by this Manual.

### **11.4 Written Reprimands for Fire Safety Employees**

Consistent with the Firefighter Bill of Rights Act, the Deputy Fire Chief receiving a written reprimand shall have the right to a non-evidentiary administrative appeal to the Fire Chief or Fire Chief's designee. The employee must request an administrative appeal in writing to the Fire Chief within ten (10) working days of receipt of the written reprimand. Failure to do so shall be deemed a waiver of the employee's right to appeal. The Fire Chief or Fire Chief's designee shall have discretion regarding how the appeal meeting is conducted, including whether and the extent to which witnesses other than the employee and employee's representative are required and may participate. The Fire Chief or Fire Chief's designee shall notify the employee of his or her decision within ten (10) working days of the appeal meeting. An employee and the Association have no further right to appeal or grieve a written reprimand beyond the administrative appeal described in this paragraph.

### **11.5 Written Reprimands for Non- Safety Employees**

In the event that an employee receives a written reprimand, the employee may write a rebuttal within thirty (30) calendar days of receiving the written reprimand and such rebuttal will be placed in the Personnel File along with the written reprimand. Employees have not right to appeal or grieve a written reprimand.

## ARTICLE 12 - COMPLAINTS, APPEALS AND HEARINGS

### 12.1 Policy

The procedure for filing complaints and appeals by employees set forth under this Article 12 shall be complied with provided, however, that only those employees in the career service who are not represented by a labor organization shall be entitled to file complaints with the City and appeals to the Personnel Board pursuant to the provisions of this Manual.

### 12.2 Final Decision Maker for Purposes of this Article

For purposes of this chapter, the City Manager is the final decision maker for City of Berkeley employees. The Rent Stabilization Board is the final decision maker for Rent Stabilization Program employees. The Library Board of Trustees is the final decision maker for Library employees.

### 12.3 Complaints

Disciplinary action shall be taken in accordance with Article 11 (Disciplinary Action) of this Manual. All other complaints by employees, except complaints about compensation, which allege a violation of the Personnel Ordinance or this Manual shall be filed through proper channels, commencing with the department head, and then to the final decision maker.

12.3.1 **Compensation Complaints:** All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources. The Director of Human Resources shall respond in writing within thirty (30) working days. If the complaint has not been resolved within thirty (30) working days of filing with the Director of Human Resources, the complaint may be moved to the final decision maker. Only complaints, which allege that employees are not being compensated in accordance with the policies, rules and resolutions of the City Council, shall be considered as complaints under this Section. No compensation adjustment shall be retroactive for more than thirty calendar days from the date upon which the complaint was filed or thirty calendar days from the date when an employee may reasonably be expected to have learned of the claimed violation.

**Appeal:** If the grievant is not satisfied with the decision of the Director of Human Resources or his or her designee, the grievant may move the complaint to the final decision maker within ten (10) days of receipt of the decision rendered under Section 12.3.1 above. Failure by the employee to file an appeal within the specified time limits specified constitutes a dropping of the complaint. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

- 12.3.2 **Discrimination Complaints:** An employee may file a complaint concerning a violation of the "FAIR EMPLOYMENT" provision specified by the rules of this Manual, and the complaint shall be processed in accordance with the EEO Complaint Investigation and Resolution Procedure of the City of Berkeley EEO/Affirmative Action Program, as established in Resolution No. 54,926-N.S., as amended from time to time.

## 12.4 Right of Appeal

An aggrieved employee shall have the right to appeal the decision of the final decision-maker regarding the aggrieved employee's disciplinary dismissal, demotion, suspension or complaint to the Personnel Board except in instances where the right to appeal is prohibited by the Personnel Ordinance or the provisions of this Manual.

## 12.5 Method of Appeal

Appeals to the Personnel Board shall be in writing, signed by the aggrieved employee and filed with the Director of Human Resources within ten calendar days after the action is imposed. The appeal shall be a written statement, addressed to the Chair of the Personnel Board, explaining the matter appealed from and setting forth a statement of the action desired by the aggrieved employee, supported by his or her reasons. The Director of Human Resources shall, within ten calendar days after receipt of the appeal, inform the Chair of the Personnel Board, the City Manager and the affected department head of the filing and contents of the appeal with the Board.

## 12.6 Investigations and Hearings

Upon receipt of any appeal, the Personnel Board shall make such investigation, as it may deem necessary.

An aggrieved employee who has been demoted for a disciplinary purpose, suspended or discharged is entitled to a hearing upon appeal before the Personnel Board. As to all other appeals, the Personnel Board may grant a hearing or decide the appeal without a hearing as it may deem warranted.

## 12.7 Hearing Procedures

In cases where the employee is entitled to a hearing as a matter of right and in other cases whenever the Board may deem it advisable to hold a hearing, these procedures shall apply.

- 12.7.1 **Notice:** The Personnel Board shall schedule a hearing on the appeal within forty-five calendar days from the date of the filing of an appeal. The Director of Human Resources shall notify all interested parties of the date, time and place of the hearing at such places as the Personnel Board shall prescribe.

12.7.2 **Hearing Procedure:** The aggrieved employee shall appear personally unless physically unable to do so before the Personnel Board at the time and place of the hearing. The aggrieved employee may be represented by any person or attorney as may be selected and may at the hearing produce relevant oral or documentary evidence. The party who has the burden of proof shall state the case first after which opposition matter may be presented. Rebuttal matter that is not repetitive may be allowed at the discretion of the Personnel Board. Cross-examination of witnesses shall be permitted. Hearings need not be conducted according to technical rules relating to evidence and witnesses, but shall be conducted according to any rules of applicable procedures. Hearings shall be closed unless otherwise required by the Ralph M. Brown Act, Government Code Section 54950, as amended from time to time, or any other applicable law.

## 12.8 Findings and Recommendations

The Personnel Board shall, within thirty calendar days after the conclusion of the hearing, or if no hearing was conducted, within thirty calendar days of its decision, certify its findings and recommendation(s) in writing to the aggrieved employee and to the final decision-maker. The final decision maker shall review the findings and recommendation(s) of the Personnel Board and may then affirm, reject or modify the Personnel Board's findings and recommendation(s) as, in his or her judgment, seems warranted, and the final decision maker's decision shall be final. Any member of the Personnel Board may submit a minority or supplemental report which shall be attached to the findings and recommendation(s) of the Board.

## APPENDIX

This Appendix contains detailed information regarding benefits and compensation which covers unrepresented benefitted employees. It is appended to the Unrepresented Employee Manual but the contents are not part of the resolution establishing the Unrepresented Employee Manual and may be changed to reflect changes in benefit details, as approved by the City Council by resolution.

### 13.1 Administrative Leave

Employees who are in career, benefitted, or at-will benefitted classifications which are FLSA Exempt may be approved by the City Manager to receive up to an additional 50 hours of compensated administrative leave beginning on January 1, 2016, and at the beginning of each calendar year thereafter, or prorated during the course of the year when employed less than a full year. This administrative leave is granted to employees whose job responsibilities cause them to work numerous hours in excess of the normal City workweek. The City Manager has the authority to rescind administrative leave in those instances of abuse or misuse of the intent of this provision.

Administrative leave taken must be approved in advance by the department head and posted to the employee's timecard. Unused administrative leave may be carried over to the next calendar year, providing the total of excess vacation and unused administrative leave do not exceed 320 hours. Otherwise, the excess administrative leave must be taken within the calendar year in which it was earned or it may be forfeited. Upon termination or retirement, no monetary award will be authorized for unused accumulated administrative leave.

**13.1.1 Prorated Administrative Leave:** A benefitted employee who is otherwise eligible for overtime and who is on a temporary or provisional benefitted appointment in an FLSA Exempt classification for a period of one month or longer, and is ineligible to earn overtime, shall be entitled to prorated Administrative leave for the duration of the temporary or provisional appointment. Any unused administrative leave at the end of the temporary or provisional appointment will roll into vacation, provided the total of accrued and unused vacation and accrued administrative leave do not exceed 320 hours.

### 13.2 Automobile Allowance

The City reimbursement rate for the use of a private automobile on authorized City business will be equal to the amount established by the Internal Revenue Service.

### 13.3 Bilingual Premium Pay

**13.3.1 As Part of Regular Job Assignment:** An employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language, routinely and consistently as part of his or her regular job assignment as determined by the City

will receive a Bilingual Premium Pay Differential of 5%. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 5% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

- 13.3.2 **Occasional Assignments:** An employee assigned occasionally to provide non-English language services, including Braille and sign language, when either a) assigned by management, or b) at the request of the employee with the supervisor's agreement, or, c) after a job audit will receive a Bilingual Premium Pay Differential of 2%. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 2% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.
- 13.3.3 **Competency and Management Rights:** The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. Management reserves the right to test for second language appropriate competency prior to a Bilingual Premium Pay Differential.
- 13.3.4 **Temporary Designation:** The City may designate an employee to receive either the 5% or 2% Bilingual Premium Pay Differential on a temporary basis for a specified period provided the employee met the requirements contained in the first or second paragraph of this Section.

#### 13.4 Cash-In-Lieu Payments

For those employees who are able to show proof of ongoing alternate group medical coverage, the City will compensate employees \$560.00 per month, prorated for less than full-time employees. This benefit shall be frozen at this amount. To comply with FLSA laws, health insurance in-lieu payments shall be paid over twenty-six (26) equal biweekly installments instead of once a month.

#### 13.5 Dependent Care

Employees shall be allowed to designate a specific amount of salary, consistent with State and Federal tax laws, to be redirected to pay for dependent care costs through pre-tax salary deductions. The amount of funds designated should be considered carefully, because under the current tax code, any unexpended funds which have not been spent for the specific purpose of paid dependent care and remain in the employee's account at the end of the year, will be forfeited.



### 13.6 Life Insurance

The City shall provide paid group life insurance, by a carrier of the City's choice, in the amount of \$25,000 which shall include a standard accidental death and dismemberment provision of a like amount. Employees in the classification of Police Chief and Fire Chief shall be provided with life insurance in the amount of \$100,000, which shall include a standard accidental death and dismemberment provision of a like amount. Life insurance shall become effective the first day of the calendar month following appointment, and shall continue until the last day of the calendar month in a pay status.

In addition, all unrepresented benefitted employees may purchase additional coverage, in increments of \$10,000, up to a maximum of \$300,000, at the rate offered by the City's insurance carrier, subject to any rules and restrictions of the carrier, including but not limited to any medical exam that might be required by the insurance carrier.

### 13.7 Medical/Dental Insurance for Employees/Dependents

Except as provided in Section 8.1 (Group Medical-Dental Insurance Benefits), the City offers fully paid and/ or partially paid health insurance plans and a fully paid dental plan for the employee and eligible dependents, including a domestic partner. The dental plan currently provides orthodontic coverage for the employee's dependent children through age 26 and 90% of the Bay Area Usual, Customary and Reasonable charges. Effective January 1, 2007, the maximum annual coverage will be \$2,000 annual coverage, and \$2,000 lifetime orthodontia limit. Any employee, who is required to partially pay premiums, shall be allowed to make these payments with pre-tax deductions. The medical and dental benefit coverage for dependent children extends to the date of their 26<sup>th</sup> birthday, providing they meet the Internal Revenue Service definition of "dependent". If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for medical benefits and/or dental benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

Medical and dental benefits shall begin the first day of the calendar month following the date of hire, and end the last day of the month an employee is in pay status, except in the case of parental and Family and Medical Leave Act, as described in the Administrative Regulation No. 2.4. Maximum annual coverage amounts are found in the Employee Benefits Handbook.

**13.7.1 Dental Coverage for Fire Management:** Effective January 15, 2015, employees in the classification of Fire Chief and Deputy Fire Chief, shall be provided with dental insurance with an annual maximum coverage of \$3,000 and lifetime orthodontia limit of \$3,000.

### 13.8 Retiree Medical Plan

The terms and conditions of this benefit shall be set forth in a separate document which shall contain a full plan description and shall control the administration of the retiree medical plan.

### 13.9 Amendment of Retiree Health Premium Assistance Plans I and II, effective June 28, 1998, Restated and Amended effective March 22, 2011

Employees who retire on or after June 21, 2015, shall be permitted, at their discretion, to enroll in non-City sponsored health plans. After Council approval of this Unrepresented Employee Manual, the City shall amend the Retiree Health Premium Assistance Plans I and II as soon as practicable to allow enrollment in non-City sponsored health plans. In the event a retiree elects to enroll in a non-City sponsored health plan, the City shall make medical insurance premium payments directly to the health insurance provider in an amount equal to what the City would contribute to the City sponsored health plan. Retiree shall be solely responsible for all aspects of the requirements to enroll in a non-City sponsored health plan and maintain eligibility for such a plan; the City's sole obligation is to pay the medical insurance premium contribution required under this section, as directed by the retiree to a non-City sponsored health plan. The City shall not be responsible for any excess cost differentials associated with the direct payment of premiums to non-City sponsored plans. The City will only make payments through its third party administrator to provide medical insurance premium payments for an individual plan and will not make payments for a group plan. The retiree and/or surviving spouse or domestic partner that enroll in non-City sponsored health plans shall be solely responsible for paying the administrative set up fee, the monthly administrative fee, and/or any other fees established by the third party administrator, and said fees will be deducted directly from the retiree's monthly contribution. No cash payments will be paid directly to the retiree or the retiree's spouse/domestic partner. There shall be no cash in lieu payments made under this benefit.

The City will also amend the Retiree Premium Assistance Plans I and II to allow eligible retirees who retired prior to June 21, 2015 to enroll in a non-City sponsored health plan.

### 13.10 Retiree Medical for Unrepresented Benefitted Employees

Effective June 28, 1998, the City will provide the retiree medical coverage set forth below for all unrepresented benefitted employees, except employees in the classifications of Police Chief, Fire Chief, and Deputy Fire Chief (see separate plans below). An employee's entitlement to any and all benefits provided by the City under this retiree medical plan is subject to the funding limitations set forth in the plan document.

- 13.10.1 **Eligibility and Percentage of City Contribution:** An employee is eligible for the retiree health insurance coverage as set forth in Sections 13.10.3 (Pre Age 65 Retiree Health Insurance) and 13.10.4 (Retiree

Benefits for Employees Age 65 or Over) below if he or she meets all the following criteria:

- a. retires from career service on or after June 28, 1998;
- b. is vested with CalPERS;
- c. has at least eight (8) years of CalPERS qualifying service with the City; and
- d. is at least age 55.

An “Eligible Retiree” also includes individuals who meet the definition as set forth in Section 2.11.1 of the Retiree Health Premium Assistance Plan I for Confidential and Executive Management Employees (Representation Unit Z-1; Z-5; Z-7; Z-9 and Elected Officials) Restated and Amended effective as of March 22, 2011 (Resolution No. 65,196-N.S.) for “Eligible Retiree.”

**Percentage of City Contribution:** The actual monthly amount of money the City will contribute on the employee’s behalf will be based on the employee’s total years of CalPERS service as provided in the following chart:

| Years of CalPERS Qualifying Service | Percentage of City Contribution |
|-------------------------------------|---------------------------------|
| 8                                   | 30%                             |
| 9                                   | 40%                             |
| 10                                  | 50%                             |
| 11                                  | 58%                             |
| 12                                  | 66%                             |
| 13                                  | 74%                             |
| 14                                  | 82%                             |
| 15                                  | 90%                             |
| 16                                  | 92%                             |
| 17                                  | 94%                             |
| 18                                  | 96%                             |
| 19                                  | 98%                             |
| 20                                  | 100%                            |

- 13.10.2 **Annual Increase:** Retirees will pay the difference between the City’s monthly contribution and the actual monthly medical insurance premium charged by the health plan he or she has elected for retiree medical coverage. If the premiums for such health insurance are increased, the amount the City contributes shall increase no more than 4.5% above the previous year’s contribution. No increases in the amount the City contributes shall occur before July 1, 1999. Thereafter, any increase in the amount contributed by the City will occur on July 1 each year thereafter.

- 13.10.3 **Pre Age 65 Retiree Health Insurance:** Beginning June 28, 1998, the City shall make available health insurance coverage to the employee and his or her spouse or domestic partner. The City will pay on the employee's behalf no more than \$166.26 per month for an employee electing single party health coverage and no more than \$332.52 per month for an employee electing two party coverage.
- 13.10.4 **Retiree Benefits for Employees Age 65 and over:** Once an employee or retiree reaches age 65, he or she is eligible for Medicare. As a result his or her eligibility for the retiree medical benefits set forth in Section 13.10.1 (Eligibility) ceases. On reaching age 65, the City will make available health insurance coverage in addition to Medicare. When an employee or retiree reaches age 65, the City will contribute no more than \$16.17 per month on the employee's behalf for single party health insurance coverage and no more than \$32.34 per month for two-party health coverage.
- 13.10.5 **Termination by City of Retiree Medical Benefit:** Failure of the retiree or surviving spouse to pay their monthly share of the health insurance premium will result in termination of the retiree medical benefit and relieve the City of any further obligation to provide any further benefits under Section 13.10 (Retiree Medical for Unrepresented Benefitted Employees).
- 13.10.6 **Retiree Medical Benefit for Employees Retiring between the Ages of 50 and 55:** An employee who is at least 50 years of age, but less than 55, has at least eight (8) years of CalPERS qualifying employment with the City will retain eligibility for the retiree medical benefits provided in Section 13.10.1 (Eligibility) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in group health care coverage the employee forfeits his or her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this Section to the employee and/or his spouse or domestic partner.
- 13.10.7 **Employees Retiring with a CalPERS Approved Disability Retirement:** If an employee retires from the City before age 55 with a CalPERS approved disability retirement, the employee will retain eligibility for the retiree medical benefits provided in Section 13.10.1 (Eligibility) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his or her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide

any benefits under this Section to the employee and/or his spouse or domestic partner.

- 13.10.8 **City Funding of Retiree Health Benefit:** City contributions to the retiree medical benefit began on July 1, 1998. Funding of this benefit has been set aside in a trust to be established by the City.

The retiree medical benefit will be funded by a charge of 0.25% of payroll in each year, so that contributions are at 1% of the payroll after four years. The City will fund the benefit at approximately 1% of the payroll for every year thereafter with the intent of achieving a funding level of 70% after 30 years. The funding will be ongoing to maintain a 70% funding level thereafter.

Effective July 4, 2004, an additional charge of 0.25% of payroll was charged each year in the subsequent four years so that contributions are at 2% by July 1, 2007. The purpose of this 1% increase in payroll contribution is to fund post age 65 Medicare supplement plans. As a result of this change, the amount the City contributes toward the post-65 Medicare Supplement coverage under the Retiree Health Premium Assistance Plan was \$102 effective July 7, 2002 for all post 65 retirees as well as future retirees.

- 13.10.9 **Retiree Medical Plan for Unrepresented Employees (Rep Units Z-2, Z-3, Z-6):** Eligible retirees who retired from positions in Representation Units Z-2, Z-3 and Z-6 on or after July 1, 2008.

**Not Medicare Eligible:** Effective July 1, 2008, between the ages of 55 and 65 who retire on or after June 29, 2008 the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by \$50 per month in addition to the 4.5% that occurs on July 1 as provided in Section 13.10.2 (Annual Increase). Effective July 1, 2009, the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$75 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 13.10.2 (Annual Increase). Effective July 1, 2011, the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$100 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 13.10.2 (Annual Increase).

- 13.10.10 **Retiree Medical Plan for Confidential and Executive Management Employees (Rep Unit Z-1; Z-5; Z-7; Z-9; and Elected Officials):** Eligible retirees who retired from positions in Representation Unit Z-1 on or after July 1, 2008.

**Medicare and Not Medicare Eligible:** Effective June 29, 2008, an additional charge of 0.50% of payroll will be charged so that contributions are at 2.5%. The purpose of this 0.50% increase in payroll contribution is to fund both pre-65 retiree health care premium costs and post age 65 Medicare Supplement plans for eligible retiree who retired from positions in Representation Unit Z-1; Z-5; Z-7; Z-9 and Elected Officials on or after July 1, 2008. As a result of this change, the amount the City contributes toward pre age 65 health insurance premium costs shall increase from \$258.19 per month to \$309.39 per month for single coverage and from \$516.38 per month to \$618.78 per month for 2-party coverage. The City's contribution toward the post-65 Medicare Supplement coverage shall increase from \$132.83 per month to \$184.03 per month for single coverage and from \$265.67 per month to \$368.06 per month for 2-party coverage.

### 13.11 Reimbursement Plan

After Council approval of this Unrepresented Employee Manual, the City shall amend the Retiree Health Premium Assistance Plans I and II as soon as practicable to allow for the reimbursement of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner until the death of both. If there is no spouse or domestic partner at the time of retirement, the City shall only reimburse the single party rate. The reimbursement shall be paid directly to the retiree or surviving spouse or domestic partner. The maximum amount the City will reimburse for the cost of Medical Insurance Premiums is based on the schedule described in Section 13.10.1 (Eligibility and Percentage of City Contribution) above.

#### 13.11.1 Retiree Medical Reimbursement Plan for Unrepresented Confidential and Executive Management Employees (Rep Units Z-1; Z-5; Z-7; Z-9; and Elected Officials) Who Retire on or After June 28, 1998 through June 30, 2008

13.11.1.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner until the death of both as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.2 (Annual Increase), each month after the employee retires, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$166.26 for single party coverage for the retiree or \$332.52 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.



- b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Annual Increase), total \$338.60 for single party coverage for the retiree or \$677.19 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

13.11.1.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.4 (Retiree Benefits for Employees Age 65 and Over) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$16.17 for single party coverage for the retiree or \$32.34 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of July 7, 2002:** Effective July 7, 2002, as provided in Section 13.10.8 (City Funding of Health Benefits) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$102.00 for single party coverage for the retiree or \$204.00 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- c. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$172.98 for single party coverage for the retiree or \$345.96 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

13.11.2 **Retiree Medical Reimbursement Plan for Unrepresented Confidential and Executive Management Employees (Rep Units Z-1; Z-5; Z-7; Z9 and Elected Officials) Who Retire on or After July 1, 2008**

- 13.11.2.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:
- a. **Reimbursement as of July 1, 2008:** On July 1, 2008, as provided in Section 13.10.10 (Retiree Medical Plan for Unrepresented Confidential and Executive Management Employees), the City will reimburse the cost of Medical Insurance Premiums in an amount totaling \$309.39 for single party coverage for the retiree or \$618.78 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
  - b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$405.73 for single party coverage for the retiree or \$811.46 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- 13.11.2.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:
- a. **Reimbursement as of July 1, 2008:** Effective July 1, 2008, as provided in Section 13.10.10 (Retiree Medical Plan for Unrepresented Confidential and Executive Management Employees), each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$184.03 for single party coverage for the retiree or \$368.06 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
  - b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$239.65 for single party coverage for the retiree or \$479.31 for two party



coverage for the retiree and/or surviving spouse/domestic partner coverage.

13.11.3 **Retiree Medical Reimbursement Plan for Unrepresented Employees (Rep Units Z-2; Z-3; Z-6) Who Retire on or After June 28, 1998 through June 30, 2008**

13.11.3.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.2 (Annual Increase), each month after the employee retires, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$166.26 for single party coverage for the retiree or \$332.52 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Annual Increase), total \$338.60 for single party coverage for the retiree or \$677.19 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

13.11.3.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.4 (Retiree Benefits for Employees Age 65 and Over) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$16.17 for single party coverage for the retiree or \$32.34 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of July 7, 2002:** Effective July 7, 2002, as provided in Section 13.10.8 (City Funding of

Health Benefits) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$102.00 for single party coverage for the retiree or \$204.00 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

- c. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$180.76 for single party coverage for the retiree or \$361.53 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

#### 13.11.4 **Retiree Medical Reimbursement Plan for Unrepresented Employees (Rep Units Z-2; Z-3; and Z-6) Who Retire on or After June 29, 2008**

13.11.4.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of July 1, 2008:** On July 1, 2008, as provided in Section 13.10.9 (Retiree Medical Plan for Unrepresented Employees), the City will reimburse the cost of Medical Insurance Premiums in an amount totaling \$297.08 for single party coverage for the retiree or \$544.16 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of July 1, 2009:** As of July 1, 2009, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.9 (Retiree Medical Plan for Unrepresented Employees), total \$335.45 for single party coverage for the retiree or \$593.64 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- c. **Reimbursement as of July 1, 2011:** As of July 1, 2011, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.9 (Retiree Medical

Plan for Unrepresented Employees), total \$391.32 for single party coverage for the retiree or \$673.27 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

- d. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$469.92 for single party coverage for the retiree or \$808.52 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

3.11.4.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of July 1, 2008:** As of July 1, 2008, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$138.81 for single party coverage for the retiree or \$277.62 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$172.98 for single party coverage for the retiree or \$345.96 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

#### 13.11.5 **Enrollment in City Group Plans**

Retiring employees may receive continuing health coverage in City sponsored group health plans subject to the limitations and co-pay amounts permitted by the health care providers.

### 13.12 **Fire Chief and Deputy Fire Chief Retiree Medical Plan**

Internal City of Berkeley candidates who promote and are appointed to the Fire Chief or Deputy Fire Chief classification, without a break in service, shall be eligible for the same Retiree Medical Plan as provided to sworn fire employees in Representation Unit B.

- 13.12.1 **Retiree Medical Benefits for External Appointments:** External City of Berkeley candidates appointed to the Fire Chief or Deputy Fire Chief classifications shall be covered by the Retiree Health Premium Assistance Plan described herein at Section 13.10 (Retiree medical Plan) et seq., except that the employee shall not be required to meet the eligibility requirements of sub-Sections 13.10.1(b) and 13.10.1(c) and instead credited with 15 years of qualifying years of service for eligibility in the Plan and shall receive benefits as a Representation Unit Z-1 employee.

### 13.13 Retiree Medical for Police Chief Classification

Internal City of Berkeley candidates who promote and are appointed to the Police Chief classification, without a break in service, shall be eligible for the same Retiree Medical Plan as provided to sworn police employees in Representation Units E and F.

- 13.13.1 **Retiree Medical Benefits for External Appointments:** External City of Berkeley candidates appointed to the Police Chief classification shall be covered by the Retiree Health Premium Assistance Plan described herein at Section 13.10 (Retiree medical Plan) et seq., except that the employee shall not be required to meet the eligibility requirements of sub-Sections 13.10.1(b) and 13.10.1(c) and instead credited with 15 years of qualifying years of service for eligibility in the Plan and shall receive benefits as a Representation Unit Z-1 employee.

### 13.14 Partially Subsidized YMCA Membership

The City currently provides a partially subsidized membership in the Berkeley YMCA for those employees who agree to pay the required monthly fee. Use of a YMCA membership by a City of Berkeley employee, as provided by this provision, is not part of the employee's work related duties, is not required for continued employment and is not considered part of a City sponsored physical fitness program. The City of Berkeley nor its Claims Administrator shall not be liable for any injury that may arise out of a City of Berkeley employee's participation in and use of a YMCA membership. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding.

### 13.15 Part-Time Employees Eligible for Full Benefits

Those part time employees who have been continuously employed by the City in benefitted part time career positions since prior to July 1, 1977 and who have not accepted a full time career position are eligible to participate in the City's health and dental insurance programs with the City's payment of premiums at the same level as for full time benefitted employees.

### 13.16 Probationary Periods for Unrepresented Classifications

The competitive appointment to a career classification will include a probationary period during which time the incumbent may be dismissed without right of appeal. The probationary period for unrepresented classifications varies from six (6) months of actual work hours (1040 hours for full time employees and 520 hours for half time) to one year of actual work hours (2080 hours for full time and 1040 hours for half time).

Presently, unrepresented classifications require a six (6) month probationary period except for the following unrepresented classifications which require a one year probationary period:

- (a) All classifications in Unit Z-1 in the career service; and
- (b) All classifications in Unit Z-2 in the career service.

### 13.17 Public Safety Uniform Allowance

- (a) Fire Uniform Allowance: Effective November 9, 2004, \$1,000 annual allowance. Effective December 1, 2015, \$1,100 annual allowance.
- (b) Police Uniform Allowance: Effective July 7, 2002, \$1,000 annual allowance.
- (c) To comply with CALPERS requirement, Union allowance payments shall be paid over twenty-six (26) equal biweekly installments instead of twice a year payment.

### 13.18 Regular "At-Will" Classifications

The following classifications are exempt from the career service and in accordance with the Personnel Ordinance (Berkeley Municipal Code Section 4.04.120), At-Will appointments are eligible to receive benefits:

- All department heads
- Assistant City Manager
- Assistant to the City Manager
- Assistant to the Mayor
- Assistant, Associate and Senior Management Analyst in the City Manager's Department and in the Office of Budget and Fiscal Management
- Budget Manager
- Capital Improvement Programs Manager
- Deputy City Manager
- Economic Development Manager
- Health Officer
- Legislative Assistant
- Police Review Commission Investigator
- Police Review Commission Officer
- Secretary to the Mayor, Administrative Secretary and Secretary in the Mayor's Office
- Supervising Psychiatrist

**13.19 City Manager Department Differential**

Assistant, Associate, Senior Management Analysts, and Accounting Office Specialists III in the City Manager's Department and in the Office of Budget and Fiscal Management shall receive a 5% salary differential.

**13.20 Shift Differential**

Employees whose regular schedules meet the definition, as specified by Unrepresented Employee Manual Section 1.12 (Shift Differential), for shift differential, for the hours of 5:00 p.m. to 12:00 a.m., shall be paid their regular salary plus seven and one-half percent (7.5%) of their monthly salary per month. Those whose regular schedule meets the definition for shift differential, for the hours of 12:00 a.m. to 7:00 a.m., shall be paid their regular monthly salary plus ten percent (10%) of their monthly salary per month.

**13.21 SRIP II Disability Insurance**

The City shall pay the premium for the current cost of long term disability insurance for SRIP covered employees who are enrolled in the SRIP II (Supplementary Retirement and Income Plan).

**13.22 Vacation Schedules**

Unrepresented employees, except those confidential executive, management and professional employees in Section 13.20.1 (Confidential Executive Management and Professional Employees) below, shall be entitled to earn annual vacation leave as follows:

| Authorized Annual Vacation<br>(in work weeks) | Years of Actual Benefitted Service                        |
|-----------------------------------------------|-----------------------------------------------------------|
| 2-workweeks (FTE 80 hours)                    | During the first 3-years                                  |
| 3-workweeks (FTE 120 hours)                   | During the 4 <sup>th</sup> through 11 <sup>th</sup> year  |
| 4-workweeks (FTE 160 hours)                   | During the 12 <sup>th</sup> through 17 <sup>th</sup> year |
| 5-workweeks (FTE 200 hours)                   | During the 18 <sup>th</sup> through 24 <sup>th</sup> year |
| 6 workweeks (FTE 240 hours)                   | During the 25 <sup>th</sup> and subsequent years          |

- 13.22.1 **Confidential Executive, Management and Professional Employees:** Confidential executive, management and professional employees who were eligible under the City's Administrative Leave Policy are entitled to earn annual vacation leave as follows:

| Authorized Annual Vacation<br>(in work weeks) | Years of Actual Benefitted Service                        |
|-----------------------------------------------|-----------------------------------------------------------|
| 2-workweeks (FTE 80 hours)                    | During the first 2-years                                  |
| 3-workweeks (FTE 120 hours)                   | During the 3 <sup>rd</sup> through 5 <sup>th</sup> year   |
| 4-workweeks (FTE 160 hours)                   | During the 6 <sup>th</sup> through 17 <sup>th</sup> year  |
| 5-workweeks (FTE 200 hours)                   | During the 18 <sup>th</sup> through 24 <sup>th</sup> year |

|                             |                                                  |
|-----------------------------|--------------------------------------------------|
| 6 workweeks (FTE 240 hours) | During the 25 <sup>th</sup> and subsequent years |
|-----------------------------|--------------------------------------------------|

- 13.22.2 **Director of Library Services and Deputy Director of Library Services:** Employees in the classifications of Director of Library Services and Deputy Director of Library Services are entitled to earn annual vacation Leave as follows:

| Years of Actual Benefited Service                  | Authorized Annual Vacation Accrual |
|----------------------------------------------------|------------------------------------|
| Through the first 5 Years of Service               | 3 weeks (120 Hours)                |
| Beginning the 6th through 17th Years of Service    | 4 weeks (160 Hours)                |
| Beginning the 18th through 24th Years of Service   | 5 weeks (200 Hours)                |
| Beginning the 25th and subsequent Years of Service | 6 weeks (240 Hours)                |

### 13.23 Special Pay for Camps Personnel

When an employee, who has a valid Red Cross Senior Lifesaving Certificate and occupies a camps classification, is specifically assigned in writing by the Camps Manager or an authorized representative, with approval by the City Manager, to temporarily serve as a lifeguard for one day or more, said employee shall be paid a five percent (5%) differential, more than the employee's current salary.

### 13.24 Hazard Premium Pay for Clerical Mental Health Personnel

Clerical employees who are regularly assigned to work in Mental Health Programs, in direct contact with clinic patients, shall receive a five percent (5%) differential. This Hazard Premium Pay shall be reported to CalPERS as "Hazard Premium" under PERL Section 571 (Definition of Special Compensation), (4) Special Assignment Pay.

### 13.25 Longevity Pay

Effective the first full pay period after Council adoption, employees in Representation Units Z-2, Z-3 and Z-6 who complete nineteen (19) years of service shall receive a three percent (3%) differential beginning with the anniversary date of beginning the twentieth (20th) year of service and shall apply to all hours in a paid status. Longevity pay shall be paid at the beginning of the pay period following completion of the 20 years of service. This Longevity Pay shall be reported to CalPERS as "Longevity Pay" under PERL Section 571.a.(1) Incentive Pay.

### 13.26 Longevity Pay for Confidential and Executive Management Employees

Effective the first full pay period after Council adoption, and except as noted below in Section 13.24.1 (Longevity Pay for Unit Z1 Fire Chief and Deputy Fire Chief), employees in Representation Unit Z-1 who have completed nineteen (19) years of service shall receive a three percent (3%) differential beginning with the



anniversary date of beginning the twentieth (20th) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

- 13.26.1 **Longevity Pay for Unit Z1 Fire Chief and Deputy Fire Chief:** The longevity pay for the Fire Chief and Deputy Fire Chief classifications is intended to provide the same benefits as the Longevity Pay for represented sworn fire employees under the Berkeley Fire Fighters Association (Unit B) Memorandum of Understanding.
- 13.26.2 **Longevity Pay for Unit Z1 Police Chief and Deputy Police Chief:** The longevity pay for the Police Chief and Deputy Police Chief classifications will provide the same benefits as the Longevity Pay for represented sworn police employees under the Berkeley Police Association (Units E & F) Memorandum of Understanding.

### 13.27 Automobile Allowance for Police Chief

The City Manager may authorize an automobile allowance of \$400 per month in lieu of a City provided vehicle for an employee appointed after November 1, 2009 to the classification of Police Chief.

### 13.28 Video Display Terminal Screening/Glasses

The City offers VDT screening and glasses as medically required, every two years, to employees who in the course of their employment operate VDT equipment more than four hours in a work day.

### 13.29 Emergency Medical Technician

Unit Z-1 Fire Chief and Deputy Fire Chief who maintain current Emergency Medical Technician (EMT) certification shall receive the same EMT pay differential as sworn fire employees under the Berkeley Fire Fighters Association (Unit B) Memorandum of Understanding.

### 13.30 Shoe Allowance

An annual allowance of two hundred dollars (\$200) shall be paid to benefitted employees in the classification of Janitor, Groundskeeper, Laborer, and Solid Waste Worker.

### 13.31 Training Differential

- 13.31.1 **Trainer Differential:** Effective July 1, 2016, any employee, excluding those classifications that require training as part of the assignment (e.g. supervisors), designated by the department and approved by the Director of Human Resources as qualified trainers or instructors for specific specialized skills (identified by the departments in consultation with Human Resources) who is required to provide formalized training to a new employee or an employee who management has identified as needing formalized training, shall receive a five percent (5%) differential in salary for that time served in such capacity. Such assignment shall be in writing by the department and approved by the Director of Human Resources. This Training Differential will be reported to CalPERS as



Training Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported

“compensation earnable” in California Government Code Section 20635.

- 13.31.2 **Higher Class Training Differential:** For training purposes, employees not meeting all of the minimum qualifications of a higher classification may be temporarily assigned for a minimum of one (1) week, to perform the duties of the higher classification and will receive a five percent (5%) increase in their current base salary for the duration of the temporary assignment. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments shall be approved in advance by the City Manager, or his or her designee by an Employee Transaction Form, and forwarded to the Human Resources Department for inclusion in the employee's official Personnel file.
- 13.31.3 **Trainee Differential:** For training purposes and to enhance an employee skills and abilities, any employee designated in advance by the department director and approved by the Director of Human Resources to perform duties that are outside of the employee's classification, shall receive a three percent (3%) differential in salary for that time served in such capacity. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments shall be approved in advance by the City Manager, or his or her designee by an Employee Transaction Form, and forwarded to the Human Resources Department for inclusion in the employee's official Personnel file.

---

### 13.32 Summary of May 2017 Changes to the Unrepresented Employee Manual

- Included reference to Unrepresented Unit Z-9 (Deputy Director Rent Stabilization Program).
- Former Section 1.14 (One-Time Allocation) - deleted obsolete provision.
- Section 5.2 (Floating Holidays) - corrected omission of one (1) day.
- Section 8.3 (Hourly Rated Employees in Lieu of Benefits) – codified existing benefit.
- Section 13.11 (Reimbursement Plan) – revise plan as reimbursement.
- Section 13.12 (Fire Chief and Deputy Fire Chief Retiree Medical Plan) – clarified benefit for internal and external appointments.
- Section 13.13 (Retiree medical for Police Chief Classification) – clarified benefit for internal and external appointments.
- Section 13.18 (Regular “At-Will” Classifications) – deleted duplicate classification.
- Section 13.31.3 (Trainee Differential) – included provision authorizing differential for employees assigned duties outside of classification.

---

### 13.33 Summary of October 2017 Changes to the Unrepresented Employee Manual

- Section 8.4.5 Miscellaneous Employees Classic Employee Pension Contribution through a 20516 Contract Amendment – added subsection 8.4.5.3
- 

### 13.34 Summary of July 2018 Changes to the Unrepresented Employee Manual

- Section 1.14 (One-Time Allocation) - \$2,000 paid August 17, 2018.
  - Section 8.1.3 (Medical Contribution Executive Managers) – Cost-share of \$50.00 for medical contributions by all department heads, City Manager and Deputy City Manager effective July 1, 2019.
  - Section 8.4.6.4 – Correct typographical error.
  - Section 11.5 (Written Reprimand for Non-Safety Employees) – Include provision allowing written rebuttal.
  - Section 12.3.1 (Compensation Complaints) – Include provision that specifies appeal time lines.
  - 13.1 (Administrative Leave) – Clarify leave extended to career and benefitted at-will employees; benefit is prorated based on assignment; and codifies practice that unused administrative leave rolls into vacation.
  - 13.24 (Hazard Premium Pay for Clerical Mental Health Personnel) – Clarify pay is reportable to CalPERS.
  - 13.25 (Longevity Pay) – Include CalPERS reportable section.
  - 13.30 (Shoe Allowance) – Clarify benefit extended to benefitted employees.
  - Shoe Allowance
  - 13.31 Training Differential
  - 13.32 Summary of July 2018 Changes to the Unrepresented Employee Manual
  - 13.33 Summary of October 2017 Changes to the Unrepresented Employee Manual
- 

### 13.35 Summary of July 2020 Changes to the Unrepresented Employee Manual

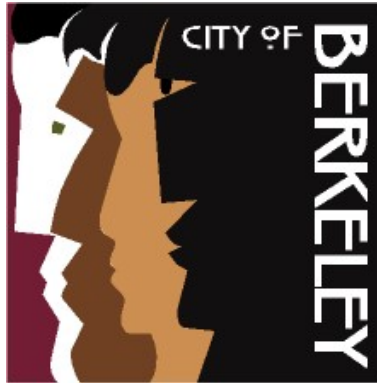
| Section       | Change                                                                                                                                                                                                                                                                       |
|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Term Duration | Parties agree to a one-year term Agreement ending on June 30, 2021                                                                                                                                                                                                           |
| Living Wage – | NEW LANGUAGE: The City agrees to pay each of its direct employees an hourly wage of no less than \$18.33 effective the first full pay period in January 2021. The City agrees to pay each of its direct employees an hourly wage of no less than \$19.33 effective the first |

| Section                                                      | Change                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                              | full pay period in June 2021. If the Living Wage increases beyond \$19.33, as outlined in the Berkeley Municipal Code effective July 2021, the City shall implement the increases the first full pay period in September 2021 and July 1st of each year thereafter.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Additional City Emergency Paid Sick Leave Allocation         | NEW LANGUAGE: The City shall provide an additional 80 hours of emergency paid sick leave to be used for COVID-19 related reasons as listed in the Emergency Paid Sick Leave Act. Part-time employees receive a prorated number of hours. In order to use this additional City emergency paid sick leave, the employee must first exhaust all hours that they received under the Emergency Paid Sick Leave Act. The City will use a specific pay code for this additional emergency paid sick leave and these additional hours will be available until June 30, 2021. These additional 80 emergency paid sick leave hours shall have no cash value and may not be used towards any CalPERS retirement service credit as outlined 4.13 of the Unrepresented Employees Manual.                                                                                                                                                                                               |
| Additional Floating Holidays                                 | NEW LANGUAGE: For employees who were required to remain in the workplace from March 17, 2020 – June 1, 2020, the City will provide 8 hours of floating holidays for every 40 hours of regularly scheduled hours worked in the workplace up to a maximum of 32 hours of floating holiday. The City will credit these floating holiday hours in the first full pay period after adoption of the Agreement for classifications which, due to the nature of the assignment, require backfill, employees will be paid a stipend in the amount of the earned floating holiday hours up to a maximum of 32 hours the first full pay period in August 2020. The City will use a specific pay code for these additional floating holiday hours will be available until June 30, 2021. These additional 32 hours of floating holiday shall have no cash value and may not be used towards CalPERS retirement service credit as outlined 4.13 of the Unrepresented Employees Manual. |
| Additional language on Layoffs for the Term of the Agreement | NEW LANGUAGE: The City recognizes the important role that the employee workforce plays in delivering public services; therefore, during the period ending June 30, 2021 the City agrees to not layoff any Unrepresented career employees. However, should the City determine that its expenditures exceed its revenues during the period ending June 24, 2021, the City may                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

| Section              | Change                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                      | notice the Unrepresented group in writing and the Unrepresented group shall be provided an opportunity to meet and discuss one-time cost savings and alternatives such as furloughs, VTO, etc. Nothing in this section requires the City to retain positions (filled or vacant) where state, federal or grant funding has been reduced or eliminated and would require the City to backfill such positions. All other provisions on Layoffs remain unchanged. |
| Provisional Employee | No employees shall hold a provisional appointment in the same position for more than 12 months. The City Manager may extend the provisional appointment beyond this 12- month limitation with the mutual agreement of the parties.                                                                                                                                                                                                                            |
| Limited Reopener     | If during the fiscal year 2020 -2021 the City reaches agreement with SEIU or extends to other unrepresented employees an opportunity to confer on an across the board Cost of Living Adjustment (COLA) increase and/or an additional City contribution towards medical premiums, the City agrees to a limited reopener to meet and discuss with the Unrepresented group on these increases.                                                                   |

### 13.36 Summary of July 2023 Changes to the Unrepresented Employee Manual

- Add second sentence to section 1.6.
- Add sections 3.3.6, 3.3.7, 3.3.8, and 13.26.2.
- Add “group” to section 13.4.
- Add “Accounting Office Specialists III” to section 13.19.
- Revise section 13.29.



**City of Berkeley**

# **Unrepresented Employee Manual**

~~July 17, 2021~~ July 11, 2023

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RESOLUTION NO. 69,968-N.S.

UNREPRESENTED EMPLOYEES MANUAL

WHEREAS, on July 30, 2020, the City Council adopted Resolution No. 69,538-N.S., the Unrepresented Employee Manual, that establishes rules governing working conditions, benefits and compensation for unrepresented career benefited and regular at-will employees; and

WHEREAS, in a separate agenda item on July 20, 2021, the City Council will consider a new Memoranda Agreement with the Service Employees International Union Local 1021 Maintenance and Clerical Chapters that provides for an additional three-years and modifies its members' benefits; and

WHEREAS, the City Manager is recommending similar changes in terms and conditions for the unrepresented employees in Units X-1 (Unrepresented Hourly Non-Career); X-2 (Retired Annuitants); Z-1 (Confidential and Executive Management Employees); Z-2 (Confidential Professional Employees); Z-3 (Confidential Clerical Employees); Z-6 (Legislative Analysts); and Z-9 (Unrepresented at-will positions in the Rent Stabilization Program); and

WHEREAS, the Unrepresented Employee Manual is amended as a result of the attached Agreement July 20, 2021.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley rescind Resolution No. 69, 538-N.S. (Unrepresented Employee Manual) and all other resolutions amendatory thereto and that the Unrepresented Employee Manual that includes the executed Memoranda Agreement as shown in Exhibit A attached hereto and made a part hereof, is hereby adopted as the City of Berkeley Unrepresented Employee Manual.

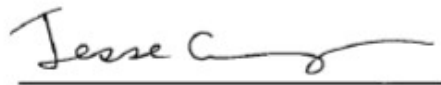
The foregoing Resolution was adopted by the Berkeley City Council on July 20, 2021 by the following vote:

The foregoing Resolution was adopted by the Berkeley City Council on July 20, 2021 by the following vote:

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

Noes: None.

Absent: None.

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

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



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## UNREPRESENTED EMPLOYEE MANUAL

This document establishes the rules governing benefits and working conditions, which are in effect for Unrepresented employees which have been approved by the City Council of the City of Berkeley.

This Unrepresented Employment Manual provides the personnel policies and procedures that affect the working conditions and benefits of unrepresented employees in the City of Berkeley. For purpose of categorization, all classifications are designated by a representation unit. Unrepresented employees are in classifications included in representation units Z-1; Z-2; Z-3; Z-9; X; and X-1, as noted in the City's Classification/Salary Resolution. The working conditions and benefits for represented employees are contained in their respective memoranda agreements. Rules, which describe general policies of the City's personnel system, are found in the City of Berkeley Personnel Rules and Regulations.

## ARTICLE 1 - SALARY, OTHER PAY AND OVERTIME

### 1.1 Intent

This Section (Salary, Other Pay and Overtime) is intended only to define the normal hours of work and the time for which salary shall be paid, and to provide the basis for the calculation of overtime pay. Nothing in these rules shall be construed as a guarantee of hours of work per day or per week, or of days of work per week. The City's pay records, practices and procedures shall govern the payment of all wages.

### 1.2 Hours and Days of Work

Hours and days of work shall be governed by rules established by the City.

### 1.3 Workweek

The workweek shall consist of seven days beginning at 12:01 a.m. on Sunday to and including 12:00 midnight the following Saturday.

### 1.4 Regular Workweek

The regular workweek shall consist of forty hours of work within the workweek.

### 1.5 Payment of Salaries

Payment of salaries shall be bi-weekly and shall cover a pay period of two (2) consecutive workweeks. Each payment shall be made not later than Friday following the ending of each payroll period and shall include payment for all earnings reported during the previous payroll period.

### 1.6 Salary Ranges without Salary Steps

In those classes of positions for which a salary range is established without a designation of salary steps, the City Manager is authorized to fix the salary rate at any point within the established salary range. Subsequent increases, if approved by the City Manager, shall be effectuated at the start of the pay period closest to the employee's anniversary date (defined as the date of hire into the employee's current classification).

### 1.7 Automobile Allowances

In addition to the salaries provided in the salary resolution, employees may be reimbursed for the use of automobiles owned by employees of the City of Berkeley and used on City business, as authorized by the City. Current automobile allowances are appended to this Manual, as shown in the Appendix, Section 13.27 (Automobile Allowance).



## 1.8 Mandatory Professional Fees and Licenses

The City will assume full payment of the mandatory professional fees and licenses required by employees in the following unrepresented classes in order to maintain their continued employment with the City of Berkeley:

|                                                      |                           |
|------------------------------------------------------|---------------------------|
| Director of Public Works                             | City Attorney             |
| Deputy Director of Public Works (Registered)         | The Attorney Class Series |
| Rent Stabilization Board Staff Attorney Class Series | Audit Manager             |
| Classes requiring a license to practice medicine     |                           |

## 1.9 Bilingual Pay

Employees appointed to positions requiring bilingual abilities, including Braille and sign language shall receive additional compensation as established by the City Council. Only those employees who possess second language competency, can demonstrate second language competency, and are serving in a position requiring competency in that particular language are entitled to receive the bilingual premium pay. The current level of approved compensation and procedures for qualifying and receiving bilingual pay are appended to these Rules, as shown in Appendix, Section 13.3 (Bilingual Premium Pay).

## 1.10 Overtime for FLSA Non-Exempt Employees

All employees who are covered by the overtime provisions of the Fair Labor Standards Act are designated as "FLSA non-exempt employees." Unless otherwise required by the Fair Labor Standards Act, all FLSA non-exempt employees, and employees in the classification of Battalion Chief, who are required to work in excess of their regular workweek shall be paid overtime compensation at the rate of one and one-half times the straight time rate based upon the regular monthly salaries or shall be given compensatory time off in lieu of payment at the rate of one and one-half hours off with pay for each overtime hour worked. The following provisions regarding overtime apply only to FLSA non-exempt employees and do not apply to FLSA exempt employees. FLSA non-exempt employees, temporarily promoted to FLSA exempt classifications, will be ineligible for overtime compensation for the duration of the appointment.

1.10.1 **Manner of Compensation:** An employee may be compensated for overtime by either compensatory time off or by payment; the method of overtime compensation shall be agreed upon by the employee and the supervisor at the time of obtaining approval to work overtime.

1.10.2 **Pre-Authorization:** No employee may work overtime without the express prior approval of his or her department head.

1.10.3 **Accrual Limit on Compensatory Time:** Compensatory time shall not accumulate in excess of sixty (60) overtime hours worked which is the equivalent of ninety (90) hours of compensatory time. Overtime accumulation in excess of sixty (60) hours shall be paid as compensation.

- 1.104 **Use of Compensatory Time:** All use of compensatory time off must be approved, in advance, by the employee's department head, on forms provided by the City.
- 1.105 **Effect of Termination on Compensatory Time:** An employee is entitled to compensation for any accumulated overtime upon resignation or termination.

### 1.11 Emergency Overtime

All FLSA non-exempt employees who are called to duty from their living quarters outside of their regular work hours and work days shall be paid emergency overtime compensation for the actual time worked provided, however, that each employee shall be paid a minimum of two (2) hours pay for emergency overtime unless such emergency overtime work is performed prior to the beginning of his or her work regularly scheduled work period without a break in service in which case, compensation shall be paid only for the actual time worked.

### 1.12 Shift Differential

All unrepresented FLSA non-exempt employees (except for Police Aides) who regularly work a shift of eight hours or more, which includes more than four hours between the hours of 5:00 p.m. and 12:00 a.m., or between 12:00 a.m. and 7:00 a.m., are paid a shift differential in addition to their regular base rate of pay in an amount established by the City Council. The current shift differential rate paid to unrepresented employees is in the Appendix to this Manual.

### 1.13 Fifty-Six (56) Hour per Week Work Schedule Leave Conversion Factor

The conversion factor for Fire Management employees accruing and using vacation leave, sick leave or sick leave bonus bank of hours is as shown below. The intent of the parties is to have the dollar value of the vacation leave, sick leave or sick leave bonus bank of hours accrued be the same whether an employee is assigned to a fifty-six (56) hour per week schedule or a forty (40) hour per week schedule.

- 1.13.1 **Leave Accrual for 56 Hour per Week Schedule:** Vacation leave, sick leave or sick leave bonus bank of hours accrued on a fifty-six (56) hour per week scheduled is converted to a forty (40) hour per week schedule by multiplying number of hours of vacation leave or sick leave accrued by the conversion factor of 0.7143.
- 1.13.2 **Leave Accrual for 40 Hour per Week Schedule:** Vacation leave, sick leave or sick leave bonus bank of hours accrued on a forty (40) hour per week scheduled is converted to a fifty-six (56) hour per week schedule by multiplying number of hours of vacation leave accrued by the conversion factor of 1.4.

### 1.14 One-Time Allocation

Employees in Units Z-1, Z-2, Z-3, Z-6, and Z-9 who are in paid status as of July 29, 2018 will receive a one-time allocation of \$2,000.00 (prorated for part-time employees) on August 17, 2018, minus applicable local, state and/or federal taxes.

### 1.15 Payroll Specialty Pay

City shall provide (“payroll clerks”) identified by the City in Unrepresented Employees a one-time lump sum payment of \$500.00 effective the first full pay period after Council adoption of this successor agreement and a second \$500.00 one-time lump sum payment the first full pay period in January 2022 for only those employees in the Accounting Office Specialist III classification. Such payments are subject to applicable payroll taxes and will not be considered pensionable salary. At the time of each payment, employee must be still employed by the City and must still be in the Accounting Office Specialist III classification. Employees working less than full-time (40 hours per week, 2,080 hours per year) shall receive a pro rata share of the one-time lump sum payment based on the number of hours they are assigned to work. For example, an employee working 30 hours per week, shall receive 75% of the one-time lump sum payment (\$375 effective the first full pay period after Union ratification and Council adoption of this successor agreement and \$375.00 the first full pay period in January 2022).

#### 1.15.1 Salary Resolution

Effective the first full pay period in July 2021 after Council adoption on its regular agenda, the salary ranges for those classifications covered by this Manual shall receive a salary increase of four percent (4.0%).

Effective the first full pay period in July 2022, the salary ranges for those classifications covered by this Manual as listed in Exhibit A shall be increased by three percent (3.0%)

Effective the first full pay period in July 2023, the salary ranges for those classifications covered by this Manual as listed in Exhibit A shall be increased by one percent (1%).

Effective the first full pay period after City Council adoption on its regular agenda, a onetime non-pensionable lump sum payment of \$1,000.00 for each career bargaining unit employee shall be conferred. Eligible employees must be current City employees in paid status for the full pay period this lump sum is conferred and shall not apply to unit members who are in unpaid status. Such payment shall be subject to required payroll tax deductions. The parties agree that this lump sum provision does not create or bind the City to any precedent or past practice.

## **ARTICLE 2 - PROBATIONARY PERIOD**

### **2.1 Length of Probationary Period**

All original and promotional appointments to positions in the career service shall be tentative and subject to a probationary period. The length of the probationary period shall be determined for each class by the City Council. However, the length of the probationary period shall not be less than six months of actual service (1040 hours) or more than two years of actual service (4160 hours). A six (6) month probationary period must be completed in no more than one (1) year. A one (1) year probationary period (2080 hours) must be completed in no more than two (2) years. A two (2) year probationary period must be completed in no more than three (3) years. A current schedule of probationary periods for unrepresented classes is appended to this Manual, as shown in Appendix, Section 13.16 (Probationary Periods for Unrepresented Classifications).

### **2.2 Objectives of Probationary Period**

The probationary period shall be regarded as a part of the selection process and shall be used to closely observe and evaluate the employee's work, to secure the most effective adjustment of a new employee to his or her position, and to eliminate any probationary employee whose performance does not meet the required standards of work.

### **2.3 Rejection of Probationers**

During the probationary period, an employee may be rejected from employment at any time by the City Manager without cause and without the right of appeal.

### **2.4 Rejection during Probationary Promotion**

An employee rejected during the probationary period following a promotional appointment shall be reinstated to the classification from which he or she was promoted unless charges are filed and he or she is discharged in the manner provided in the Personnel Ordinance and these rules.

## ARTICLE 3 - VACATION

### 3.1 Vacation Leave

All benefitted employees shall be entitled to annual vacation leave subject to the provisions in this chapter.

### 3.2 Vacation Approval

All vacations must be approved, in advance, by the employee's department head, on forms provided by the City.

### 3.3 Vacation Accrual

3.3.1 **Full Time Benefitted Employees:** During the first two (2) calendar years of employment, all full time benefitted employees shall be entitled to take only such annual vacation leave as the employees earn based on their continuous length of service measured from the date of hire. After two (2) years of service, employees may request, and upon approval, take up to a maximum of two (2) weeks of their annual vacation, in advance of actual earning. Approval of requests for advance vacation shall be solely at the discretion of management.

Vacation accrues according to schedules established by the City Council and can vary for different groups of employees. The current vacation schedules for full time unrepresented employees are in the Appendix to this Manual.

3.3.2 **Part Time and Temporary Employees:** Benefitted part-time employees working a minimum of twenty (20) hours per week accrue vacation benefits on a pro rata basis. Employees who work less than twenty (20) hours per week and temporary employees, unless otherwise authorized, do not accrue leave benefits

3.3.3 **Accrual of Vacation Credits:** Vacation leave credits are only accrued for each straight time hour for which the employee is paid.

3.3.4 **Effect of Extended Leave on Vacation Accrual:** An employee who has returned from extended military leave or an extended authorized leave of absence without pay of six (6) months or more or who has been re-employed or reinstated shall be entitled, during the calendar year in which the employee returns to the City service, to earn vacation according to a schedule based upon the total years in the career service with the City and upon the total number of months of actual service with the City during the said calendar year. For succeeding calendar years, the employee's vacation leave shall accrue as provided in this Manual.

**3.3.5 New Hire Vacation Accrual:** For new hires, the City Manager may authorize vacation accrual at a higher rate, up to the maximum accrual rate, depending upon the paid leave accrual of the potential employee at his or her present employer. The new hire must be able to document his or her current paid leave accrual, which has been earned for general use, such as vacation. The waiting period to advance to the next accrual rate would be the actual number of years between the respective accrual levels.

**3.3.6 Vacation Accrual for Unit Z1 Police Chief and Deputy Police Chief:** The vacation accrual rate for the Police Chief and Deputy Police Chief classifications will provide the same benefits as the vacation accrual for represented sworn police employees under the Berkeley Police Association (Units E & F) Memorandum of Understanding.

**3.3.7 Vacation Accrual for Unit Z1 Fire Chief and Deputy Fire Chief:** The vacation accrual rate for the Fire Chief and Deputy Police Chief classifications will provide the same benefits as the vacation accrual for represented sworn fire employees under the Berkeley Fire Fighters Association (Units B) Memorandum of Understanding.

**3.3.53.3.8** The classifications identified within Sections 3.3.6 and 3.3.7 shall be allowed to participate in the annual vacation leave sell back to the extent such rights are afforded to the bargaining units they supervise in their respective memoranda of understanding.

### 3.4 Vacation Scheduling

The times during the calendar year at which an employee shall take his or her vacation shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the service. If the requirements of the service are such that a department head cannot permit the employee to take an annual vacation leave or any part of such leave within a particular calendar year, the employee may accrue vacation according to Section 3.3 (Vacation Accrual) of this Manual.

### 3.5 Maximum Vacation Accumulation

Employees may defer vacation earned up to a maximum cumulative total of eight (8) weeks. An employee who has attained maximum accumulation may be required to take all excess earned vacation at the option of the City. Not later than October 1 of each year, the City will advise employees who have attained a maximum accumulation of vacation whether such excess earned vacation must be scheduled as time off prior to March 31. Such time off shall be scheduled in accordance with the provisions of Section 3.2 (Vacation Approval).

The City shall require all employees to reduce their accrued vacation balances to no more than 320 hours, as of the last pay period in February of each year. To effectuate the requirement that employees not accrue more than 320 hours vacation leave, no later than November 15 of each year the City will provide Department Heads with a report identifying all employees who have accrued two hundred and eighty (280) hours of vacation leave and appear in danger of exceeding the 320 hour limit.

Employees who have accrued 280 hours of vacation leave, as of that date, will be advised by their supervisor that they must take vacation leave to reduce their vacation leave accrual by February of the following year.

Supervisors should be flexible in granting employee vacation requests to those employees above, or approaching the 320 hours limit, and further, that with regard to employees who are in danger of exceeding the 320 hour limit, no vacation request by such an employee shall be unreasonably denied. If an employee who is in danger of exceeding the 320 hour limit fails by December 31 to schedule a vacation to be taken before the last pay period in February, the City has the



authority to direct the employee to go on vacation leave to reduce the employee's accrued vacation.

If, due to operational necessity, a department head denies an employee vacation leave and does not provide the employee with an alternate vacation date, and as a result causes the employee to exceed the 320 vacation leave limit, said employee shall nonetheless be entitled to use that vacation leave in the next calendar year to the extent necessary to reduce their accrued vacation to not more than 320 hours. Under no circumstances will the City liquidate any vacation leave balances for any employee during employment.

### **3.6 Vacation Leave before Retirement**

Accumulated vacation shall not be used immediately prior to retirement, which has the effect of extending the date of retirement, but shall be paid out in full upon retirement.

### **3.7 Vacation Leave in Lieu of Sick Leave**

Except for absences that qualify for benefits under Administrative Regulation 2.4 (Family Care Leave) Vacation leave shall not be used in lieu of accrued sick leave for absences due to illness. If accrued sick leave is exhausted, vacation leave may be used for absences due to illness, only if such leave is approved by the employee's department head.

### **3.8 Payout upon Termination or Extended Unpaid Leave**

Upon termination, including death, extended military leave or other extended leave without pay, an employee or his or her estate shall be paid for all accrued unused vacation leave at the employee's base rate at the time of his or her termination, and such employee or his or her estate shall reimburse the City for any vacation leave taken before it had accrued, in accordance with provisions established by the City Manager.

### **3.9 Holidays Occurring during Vacation**

If an observed City holiday occurs during an employee's scheduled vacation, no deduction from accrued vacation will be made for the holiday period.



## **ARTICLE 4 - SICK LEAVE**

### **4.1 Eligibility**

All full-time benefitted employees are eligible for one (1) sick leave day (eight [8] hours) per month of service, except that the Police Chief hired before September 11, 2012 is eligible for two (2) sick leave days for each month of service during the twenty-first (21) year of employment and thereafter. Employees in the classifications of Fire Chief and Deputy Fire Chief shall be credited with two (2) sick leave days for each month of service during the seventeenth (17<sup>th</sup>) year of employment and thereafter. Part time benefitted employees are eligible to accrue sick leave on a pro rata basis.

### **4.2 Sick Leave Not a Privilege**

Sick leave shall not be considered a privilege, which an employee may use at his or her discretion, but shall be allowed only in the case of his or her sickness or disability or in the case of illness within the defined family of the employee.

### **4.3 Family Sick Leave**

As of January 1, 1999, employees may use up to fifteen (15) working days of accrued sick leave in a calendar year to care for a family member, limited to one of the following: a legal dependent, parent, spouse, son, daughter or domestic partner.

### **4.4 Notice to Department Head**

In order to qualify for sick leave benefits, the employee shall notify his or her department head or designee prior to or within two (2) hours after the time set for the beginning of the employee's daily duties, or as otherwise required by the department head. Leave for non-emergency medical appointments shall be requested in advance of the workday.

### **4.5 Medical Verification**

The City of Berkeley retains the right to request a verification from a licensed medical practitioner under appropriate circumstances which include (1) showing that an employee's illness or disability has started or ended, before the City will allow an employee to take a leave or to return from leave, (2) showing regular updates during a medical leave of absence regarding the employee's medical status and the date the employee expects to return to work, (3) where reasonable cause exists to believe that the employee is not medically fit to perform the essential functions of the job or that the employee cannot perform the job without endangering the health and safety of the employee or others, and (4) where reasonable cause exists to believe that the employee is abusing sick leave or family sick leave. Sick leave pay may be withheld if a satisfactory verification is not received.

#### 4.6 Injury Incurred in Outside Employment

No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that the injury is covered by California's workers' compensation law or by provisions of the other employer granting payment for time off because of the injury. In the event the injury is not covered either by the workers' compensation law or by the other employer's provisions, sick leave will be granted in accordance with this chapter only if the outside employment had been authorized by the City before the injury occurred.

#### 4.7 Bonus for Unused Sick Leave

For every six (6) months of perfect attendance, the employee will receive eight (8) hours of bonus time. "Perfect attendance" means the employee has not received sick leave or salary continuation benefits and has not taken or been placed on leave without pay. Benefitted part time employees will receive sick leave bonus time on a pro rata basis. Sick leave bonus can be used for any leave purpose authorized by this Manual.

#### 4.8 Accumulation of Sick Leave

Employees may accumulate sick leave up to a maximum of two hundred (200) days (1600 hours) except for the classifications named below.

The Police Chief and Fire Chief may accumulate sick leave in excess of the 1600-hour limit by 100 hours per year.

#### 4.9 Payout for Excessive Sick Leave for Employees Hired on or Before June 30, 2013

All employees, except employees in the classification of Deputy Fire Chief hired on or before June 30, 2013 in the career service who regularly work one-half time or more who have attained the two hundred (200) day maximum sick leave accumulation shall be entitled to receive payment for one-third (1/3) of the first twelve (12) days of sick leave days (or if earning sick leave at the rate of two (2) working days each month of service, one-third (1/3) of the first twenty-four (24) days of sick leave days), for which sick leave days they become eligible, they do not use and they would otherwise forfeit because of the two hundred (200) day maximum limitation. Determination of eligibility for such payment shall be made on an annual calendar year basis, and payment for such sick leave for any calendar year shall be made not later than the first full pay period in January. Such payment shall be at the employee's salary rate in effect on the preceding December 31, and shall be made only in units of whole days and will not be made for any fraction of a day.

4.9.1 **Deputy Fire Chief:** For employees in the classification of Deputy Fire Chief, the following provisions shall apply. In each year following that 1200 hour base year, the employee may, on a form provided by the City, elect to receive pay for excess sick leave or may elect to increase his or her sick leave accumulated base by the 96 hours and take any additional

excess sick leave in pay at the following prescribed rate: employees who choose to increase their sick leave accumulated base by the 96 hours will receive 50% pay off rate in March; employees who choose to receive pay out for excess sick leave over the base, and do not exercise the option of increasing their accumulated sick leave base by 96 hours in any particular year, will be paid for excess sick leave at the 38% pay off rate in March.

Forms, provided by the City along with projected excess sick leave balances, shall be distributed to affected employees by February of each year and shall be returned to the City by February 15th. If an employee uses part of an established "sick leave maximum accumulation level", the employee may replenish the used portion at the applicable rate.

Determination of eligibility for such payment shall be made on an annual basis, and payment for such sick leave for any calendar year shall be made during the month of March each year. Such payment shall be made at the employee's regular monthly salary rate in effect on the last day of the first pay period to end in March. An employee shall be eligible for this provision whether or not the employee is on the payroll as of the last day of the first pay period to begin and end in March.

- 4.9.2 **Police Chief and Fire Chief Hired on or before June 30, 2013:** For the Police Chief and Fire Chief hired on or before June 30, 2013, the maximum sick leave accrual allowed shall be adjusted at the rate of 100 additional hours per year above the 1600-hour limit. The employee may elect to receive pay for the excess sick leave or may elect to increase the base by 100 hours, in each subsequent year. Payment for excess sick leave is prescribed at 1/3 of the excess leave balance.

#### 4.10 Effect of Leave without Pay on Sick Leave Accrual

Sick leave will not accrue during any period of absence without pay. Sick leave credits are accrued on the basis of actual straight time hours worked or paid, based on a forty-hour workweek.

#### 4.11 Accrued Sick Leave Canceled Upon Termination

Except as otherwise provided under the CalPERS conversion of sick leave retirement credit benefit (California Government Code Section 20965) and the other exceptions set forth below, all accrued sick leave shall be canceled upon termination of an employee. Such leave shall be credited back to the employee if the employee returns to City employment within two (2) years of termination except as otherwise provided by the City Council, or within three (3) years of termination if re-employed under the City's Layoff Policy provided in this Manual.

- 4.11.1 **CalPERS Miscellaneous Members, Chief of Police Hired on or before June 30, 2013 Sick Leave Payout:** For CalPERS

Miscellaneous members and Chief of Police hired on or before June 30, 2013 who voluntarily separate from service with a vested pension and at least twenty (20) years of benefitted City of Berkeley service or to employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the City shall be entitled to liquidate a portion of their accrued but unused sick leave as follows: Upon termination, employees with between twenty (20) years and twenty-eight (28) years of benefitted City of Berkeley service shall be entitled to receive payment in an amount equal to 38% of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days.

All employees hired on or after July 1, 2013 shall not be eligible for payment of any unused sick leave days.

Employees hired on or before June 30, 2013 who voluntarily separate from service with a vested pension and at least twenty-eight (28) years of benefitted City of Berkeley service or employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the City, with at least twenty-eight years of benefitted City of Berkeley service, shall be entitled to receive payment in an amount equal to 50% of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days. Employees hired on or after July 1, 2013 shall not be eligible for payment of any unused sick leave days.

- 4.11.2 **Fire Chief and Deputy Fire Chief Hired on or before June 30, 2014 Sick Leave Payout:** For employees hired on or before June 30, 2014 in the classification of Fire Chief and Deputy Fire Chief who retire or voluntarily terminate with twenty (20) years of service or who retire on permanent disability arising out of and incurred in the course and scope of their employment with the City, shall be entitled to receive payment at retirement or termination of unused sick leave days, based on the following schedule:

| Number of Days    | % of Payment |
|-------------------|--------------|
| 0-75 Days         | 38%          |
| 75-99 Days        | 41%          |
| 100-124 Days      | 44%          |
| 125-149 Days      | 47%          |
| 150 Days and over | 50%          |

Employees in classifications identified in this Section 4.11.2 (Fire Chief and Deputy Fire Chief Hired on or before June 30, 2014 Sick Leave Payout) hired on or after July 1, 2014 shall not be eligible for payment of any unused sick leave days.

#### **4.12 City of Berkeley Supplemental Retirement Plan [Termination 401(a)]**

Employees who retire on a vested pension shall be eligible to participate in the City of Berkeley Supplemental Retirement Plan. The Supplemental Retirement Plan provides for negotiated required roll-forwards of accrued but unused leave, and also permits the City to do a "tax pick-up" of employee contributions under Section 414(h)(2) of the Internal Revenue Code. A tax pick-up works through an irrevocable payroll deduction authorization, on an individual by individual elective basis, to contribute accrued but unused sick leave, vacation leave, compensatory time, floating holiday and bonus sick leave into an Internal Revenue Code 401(a) defined contribution plan. The Supplemental Retirement Plan Document shall govern administration of the Plan.

#### **4.13 Accrued Sick Leave Applied to CalPERS Retirement Credit**

The conversion of unused sick leave to retirement credit benefit under Government Code Section 20965 offered by CalPERS as an optional benefit to contracting agencies shall be made available to employees who retire with a vested pension.

#### **4.14 Sick Leave Benefits and State Disability Insurance**

Employees may use their accrued sick leave benefits during the normal seven day period before the eligible employees are paid benefits from State Disability Insurance. Following the seven day period, an employee will continue to receive accrued sick pay until exhausted and then, upon approval by the department head, accrued vacation or compensatory pay, less the disability benefits actually received.

#### **4.15 Workers' Compensation and Salary Continuation**

Workers' compensation payments shall commence in accordance with State law, on the fourth day following an industrial injury, unless the employee is hospitalized in which case payment commences on the first day of injury. For the purpose of this Section (Workers' Compensation and Salary Continuation), "hospitalized" means confinement.

For all career and regular at-will employees who are receiving or shall receive workers' compensation benefits for an industrial injury, the City will pay retroactive compensation benefits to the eligible employee for the normal three day waiting period before the employee is paid workers' compensation benefits for temporary disability pursuant to California law governing the industrial injury or illness.

Payments under the workers' compensation law for temporary disability or a recurrence thereof arising out of and in the course of employment shall be paid for a period not to exceed 365 days at a maximum payment of the employee's pre-disability pay, but shall not exclude any salary adjustments to which the employee is entitled. Thereafter, the employee will continue to receive only the temporary disability payments provided under State law and the City shall cease to pay the difference.

#### 4.15.1 Salary Continuation Benefit

1. New Accepted Claim with Overlapping Previously Accepted Injury - Where an Employee sustains a subsequent industrial injury as part of a new accepted workers' compensation claim that includes a previously accepted body part in the same five (5) year period, Employee shall be entitled to a period of time not to exceed 183 days of Salary Continuation Benefits.
2. New Accepted Claim with No Overlapping Previously Accepted Injury - Where an Employee sustains another industrial injury resulting in a new accepted workers' compensation claim within the same five (5) year period that does not include a previously accepted body part, the Employee's new accepted claim shall be entitled to a period of time not to exceed 365 days of the Salary Continuation Benefit.
3. New Accepted Claim for Same Previously Accepted Injury after Five (5) Years - Where an Employee sustains an industrial injury to a previously claimed body part after five (5) years from the initial Date of Injury, the Employee shall be entitled to a new period of time not to exceed 365 days of the Salary Continuation Benefit. In effect, after five (5) years from the initial Date of Injury, the benefit resets with respect to a previously claimed body part.
4. Workers' Compensation Medical Appointments and Salary Continuation - For the purposes of the Salary Continuation Benefit, effective January 1, 2019, the City shall calculate absences from work to attend medical appointments for the treatment of an accepted industrial injury in one (1) hour increments for the purposes of running against the maximum 365 days of Salary Continuation.

#### 4.16 Sick Leave Accrual for Department Heads and Deputy City Managers

At the time of appointment of new hires in regular at-will department head classifications and Deputy City Managers, the City Manager may authorize credit for accrual of sick leave based on sick leave accrual with a prior employer in an amount that does not exceed four weeks of sick leave credit.



**ARTICLE 5 - HOLIDAYS****5.1 Holidays**

The City observes the following holidays and provides all full time regular, at-will and career employees. Contingent upon agreement by all Employee Bargaining Units, the parties agree that the Lincoln Holiday shall be eliminated and that Cesar Chavez Day – observed on March 31, or on the Monday or Friday closest to March 31 if it falls on a Saturday or Sunday would be added instead.

| <b>Holiday</b>                     | <b>Day Observed</b>             |
|------------------------------------|---------------------------------|
| New Year's Day                     | January 1                       |
| Martin Luther King, Jr.'s Birthday | Third Monday in January         |
| Lincoln's Birthday                 | February 12                     |
| Washington's Birthday              | Third Monday in February        |
| Malcolm X's Birthday               | Monday or Friday nearest May 19 |
| Memorial Day                       | Last Monday in May              |
| Juneteenth                         | June 19                         |
| Independence Day                   | July 4                          |
| Labor Day                          | First Monday in September       |
| Indigenous People's Day            | Second Monday in October        |
| Veterans' Day                      | November 11                     |
| Thanksgiving Day                   | Fourth Thursday in November     |
| The Day After Thanksgiving         | Fourth Friday in November       |
| Christmas                          | December 25                     |

**5.2 Floating Holidays**

Full time, regular at-will, and career employees who have worked for the City six (6) months or more shall be granted three (3) floating holidays each calendar year. Employees may take floating holidays in one (1) hour increments. Employees who terminate employment within the first six (6) months of initial employment shall not be eligible for payout of any accrued but unused floating holiday.

In the first calendar year of employment, employees shall be granted prorated floating holidays as follows:

| <b>Date of Hire</b>            | <b>Number of Floating Holidays</b> |
|--------------------------------|------------------------------------|
| Hired January 1 - April 30     | 3 days                             |
| Hired May 1 - August 31        | 2 days                             |
| Hired September 1- December 31 | 1 day                              |

All use of floating holidays must be approved, in advance, by the employee's department head, on forms approved by the City. The days on which the employee shall take his or her floating holiday(s) shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the service. If the requirements of the service are such that a department head

cannot permit the employee to take the floating holiday(s) within a particular calendar year, the employee shall add the unused floating holiday(s) to the employee's accrued vacation according to Section 3.5 (Maximum Vacation Accumulation).

### **5.3 Eligibility**

In order to be eligible for holiday pay, an employee must be on paid leave status on his or her regularly scheduled workdays before the holiday.

### **5.4 Part-Time Employee Eligibility**

Benefitted part time employees are eligible for holiday benefits on a pro rata basis.

### **5.5 No Work on the Holiday**

Employees in the career service who are not scheduled to work on the day observed as a holiday will be granted an alternative scheduled holiday. The alternative holiday must be scheduled, by the department head, during the same workweek.

### **5.6 Work on the Holiday**

FLSA non-exempt benefitted employees who work on a scheduled holiday shall be paid at one and one-half times their normal base rate for all hours worked or shall be granted the equivalent amount of compensatory time off. In either event, the holiday pay shall be in addition to the employees' regular salary.



## **ARTICLE 6 - OTHER PAID LEAVES OF ABSENCE**

### **6.1 Family Bereavement Leave**

Any benefitted employee who experiences a death in the immediate family is granted death leave of up to three (3) working days for the purpose of attending the funeral or memorial service in the State of California, or up to five (5) working days for the purpose of attending the funeral or memorial service outside the State of California. Employees in the classification of Fire Chief and Deputy Fire Chief shall be granted one week (five (5) consecutive calendar days) for a death in the immediate family whether in state or out of state for the purpose of attending the funeral or memorial service.

For all employees except those employees in the classification of Fire Chief and Deputy Fire Chief, "immediate family" is limited to wife, husband, mother, father, sister, brother, child, grandmother, grandfather, aunt, uncle, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchildren, dependent or domestic partner. For employees in the classification of Fire Chief and Deputy Fire Chief, "immediate family" is limited to wife, husband, domestic partner mother, father, sister, brother, child, grandmother, grandfather, aunt, uncle mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchildren or dependent residing within the household.

Bereavement leave will be paid at the employee's normal base rate of pay for the actual time lost and is allowed solely for the purpose of attending funeral or memorial services. The department head may, within his or her discretion, grant the employee additional time off provided that all accrued vacation and/or sick leave shall be used prior to taking a leave of absence without pay for this purpose.

In special cases, with the approval of the department head, the City Manager may grant death leave within his or her discretion to allow an employee to attend a funeral or memorial services because of the death of persons not included within the definition of immediate family.

### **6.2 Jury Duty Leave**

Any benefitted employee who is called or required to serve as a trial juror, upon notification and appropriate verification submitted to his or her department head, shall be entitled to be absent with pay from his or her duties with the City during the period of such service and while necessarily being present in court as a result of such call. An employee is required to be present at work when not serving as a trial juror or as a member of a jury selection panel. An employee will notify his or her supervisor of any requirements (on-call status) made by the court that may affect the employee's ability to simultaneously fulfill his or her jury duty service and employment obligations. The employee will keep any payment received for jury service including mileage reimbursement.

### 6.3 Continuing Education Leave

The City will grant a continuing education leave of absence with pay up to forty hours per year to benefitted employees who are required by their employment or continuing employment with the City of Berkeley to pursue course work in order to:

- (a) renew a license issued by the State of California; or
- (b) obtain a license issued by the State of California provided that employees verify to the City that the course work for the initial license was not offered as a part of their basic curriculum.

Upon prior approval of the department head, FLSA non-exempt employees who take required course work during non-scheduled work hours in order to obtain or renew a job-required license shall be allowed time off from work on an hour-for-hour basis without loss of compensation or other benefits.

### 6.4 Administrative Leave Program

The City Manager provides for paid administrative leave to eligible employees as set forth in the Appendix to this Manual. Administrative leave is not charged against other accrued leave balances.

### 6.5 Temporary Employees – Earned Leave

A temporary employee who works one thousand forty (1040) hours or more in a calendar year and is in active employment during December of such year, shall be credited with forty (40) hours of paid time off to be used by such employee in the subsequent calendar year for either paid vacation or paid sick leave. The following conditions shall apply to the use of this earned leave as paid time off:

- a. To qualify for earned leave as vacation, the employee must apply, in writing, to the employee's supervisor at least thirty calendar days in advance of the desired time off. The granting or denial of the requested time off shall be in writing and shall be controlled by program considerations as established by the City.
- b. To qualify for earned as sick leave, the employee must notify the employee's supervisor of an inability to report to work by reason of illness or injury in advance of the scheduled work.
- c. An employee who has any unused earned leave credit shall receive payment for such time upon termination of temporary employment. All credited earned leave not utilized by employees at the end of the calendar year in which the employees are eligible to take such leave will be paid at the end of such year as wages and this earned leave shall not be accumulated from year to year.

## 6.6 Abolishment of Temporary Employees – Earned Leave

Effective July 1, 2015, Section 6.5 (Temporary Employees – Earned Leave) is abolished in its entirety and replaced with the following Section 6.7 (Temporary Employees Sick Leave).

## 6.7 Temporary Employees Sick Leave

Effective January 1, 2015, Temporary Employees who have been employed for at least 90 days on July 1, 2015 are eligible to accrue and use sick leave based on hours worked after July 1, 2015 as provided in Section 6.8 (Sick Leave Accrual) below.

## 6.8 Sick Leave Accrual

Effective July 1, 2015, once a temporary employee works for 30 days within a calendar year, the employee shall be eligible to accrue one (1) hour of sick leave for every 30 hours worked thereafter, to a maximum accumulation of 48 hours. Once an employee accrues 48 hours sick leave, the employee shall not accrue any additional sick leave hours until his or her sick leave balance is below the maximum of 48 hours. Under no circumstances will an employee be allowed to accrue more than 48 hours sick leave.

## 6.9 Sick Leave Use

Temporary Employees shall be eligible to use sick leave beginning on the 90<sup>th</sup> day of work. Sick leave shall be used in a minimum of two (2) hours increments, and limited to a maximum of 24 hours use each calendar year. Unused accrued sick leave hours shall carry over to the following calendar year. The following conditions shall apply to the use of this sick leave as paid time off:

- a. Sick Leave may be used for the following purposes: Diagnosis, care, or treatment, of an existing health condition or, preventive care for, an employee or an employee's family member; for an employee who is a victim of domestic violence, sexual assault, or stalking. To qualify for earned as sick leave and if the need for sick leave is foreseeable, the employee must notify the employee's supervisor of an inability to report to work in advance of the scheduled work. If the need for sick leave is unforeseeable, the employee shall provide notice to the immediate supervisor of the need for the leave as soon as practicable.
- b. All accrued and unused sick leave shall be cancelled upon separation/termination of employment. Such previously accrued and unused sick leave shall be credited back to the employee if the employee returns to City employment within one (1) year from the date of separation.

## ARTICLE 7 - LEAVES OF ABSENCE WITHOUT PAY

### 7.1 Power to Grant Leave

The City Manager shall have the power within his or her sole discretion to grant leaves of absence, with and without pay.

### 7.2 Authorized Leave Without Pay

Upon request of the employee, a department head may grant or deny a leave of absence to an employee within his or her department without pay for a period not to exceed thirty working days. No leave without pay shall be granted for more than thirty working days except upon written request of the employee and written approval of the City Manager.

7.2.1 **Required Exhaustion of Accrued Leave:** In the event of an authorized absence due to illness, the employee must use all accrued sick, compensatory and vacation leave prior to receiving authorization for leave without pay. In the event of personal leaves not related to sickness, the employee must use all accrued compensatory and vacation leave prior to receiving authorization for leave without pay. However, employees in the classifications of Legislative Assistant and Assistant to the Mayor are not required to use all accrued compensatory and vacation leave prior to receiving authorization for leave without pay for the employee's respective appointing Councilmember or the Mayor. This subsection does not apply to parental leave or to the exhaustion of sick leave by employees in the classification of Deputy Fire Chief as referenced in Section 7.2.2 (Fire Chief and Deputy Fire Chief Use of Sick Leave), below.

7.2.2 **Fire Chief and Deputy Fire Chief Use of Sick Leave:** In the event of illness or injury of an employee in the classification of Fire Chief and Deputy Fire Chief requiring the use of sick leave, the employee has the option to notify the City in writing that he/she wishes to freeze the use of sick leave after thirty (30) days, prior to receiving authorization for leave without pay, in order to utilize the International Association of Fire Fighters sponsored Long Term Disability benefit.

7.2.3 **Grounds for Discharge:** Failure on the part of an employee to report to work promptly at the expiration of the authorized leave without pay will result in discipline up to and including termination.

### 7.3 Unauthorized Leave of Absence

All paid and unpaid leaves of absence must be approved in accordance with the applicable sections of this Manual. Any absence on the part of the employee who has failed to obtain such approval or failure of an employee to report for duty without appropriate authorization as required by each department will result in the employee being placed on unauthorized leave of absence without pay.

7.3.1 **Grounds for Discharge:** Unauthorized leave of absence without pay shall be cause for disciplinary action up to and including termination.

#### 7.4 Parental Leave

Any employee with one or more years of benefitted employment with the City of Berkeley shall be entitled to up to one year of parental leave upon the birth of a child or the adoption of a child who is five years or younger as provided in Administrative Regulation 2.4 (Family Care Leave).

#### 7.5 Family Care Leave

The City will fully comply with the requirements of the state and federal law regarding pregnancy disability leave and medical/family illness/child care leave where their provisions are more generous than those provided elsewhere in this Manual or Administrative Regulation 2.4 (Family Care Leave). Leaves under this Section 7.5 (Family Care Leave) and Section 7.4 (Parental Leave) and as provided in Administrative Regulation 2.4 may not be combined to yield a larger amount of leave than the state or federal maximums and may not be combined to exceed the maximum one year period of parental leave provided by the City of Berkeley.

#### 7.6 Military Leave

Employees will be granted a leave of absence without pay with appropriate seniority, pay, status and vacation as required by law for the purpose of fulfilling any required military obligation.

## ARTICLE 8 - EMPLOYEE FRINGE BENEFITS

### 8.1 Group Medical-Dental Insurance Benefits

Benefitted employees and their dependents may participate in the City's group medical and dental benefits, which are summarized in the Appendix.

8.1.1 **Part Time Employment:** All benefitted employees who work a minimum of twenty hours, but less than forty hours per week, qualify to receive prorated health and dental benefits and shall pay a pro rata portion of the health and dental insurance premiums. Full time career employees who accept part time employment in lieu of layoff shall continue to receive full health and dental benefits paid by the City.

8.1.2 **Medical Plan for Part-Time Employees:** Effective November 1, 2016, the City will pay 75% of the cost of the medical plan which is fully paid for full-time employees for those benefitted part-time employees who work twenty (20) to twenty-nine (29) hours per week. The City will pay 100% of the cost of the medical plan which is fully paid for benefitted full-time employees for those part-time employees who work thirty (30) or more hours per week.

8.1.3 **Medical Contribution Executive Managers:** Effective July 1, 2019, the City Manager, Deputy City Manager, and all department heads shall pay fifty dollars (\$50.00) per month via pre-tax payroll deduction toward their health premium, and the City will pay an amount equal to the balance of the Kaiser monthly premium rate for the employee's applicable single, two-party, or family employee category.

### 8.2 Life Insurance

The City provides basic group life insurance coverage by a carrier of the City's choice to all benefitted employees and pays the full amount of the life insurance coverage. The City also provides the option to benefitted employees to purchase additional coverage, at their own expense. A summary of the terms of the life insurance coverage is in the Appendix.

### 8.3 Hourly Rated Employees in Lieu of Benefits

Except for employees in the Aquatics Specialist II and Senior Aquatics Specialist classifications, the Salary Resolution shall provide that hourly-rated employees working in career benefitted classifications will receive an additional seven percent (7.0%) in lieu of benefits.

### 8.4 Public Employees Retirement System:

8.4.1 **Participation:** The City shall continue to participate in the Miscellaneous Employees Plan, the Safety Fire Plan and the Safety

Police Plan of the California Public Employees Retirement System ("CalPERS"). All benefitted employees shall participate in one of these plans.

8.4.2 **"Classic Employees" Definition:** Classic Employees are defined as current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA).

8.4.3 **CalPERS Retirement Formula for Miscellaneous Employees "New Members" as Defined under PEPRA:** Miscellaneous Employees "New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the 2% at age 62 retirement formula with the highest three (3) year average compensation as set forth in PEPRA.

8.4.4 **CalPERS Miscellaneous Employees Retirement Formula and Employer Paid Member Contribution for Classic Employees:** Effective January 1, 2003, the City amended its Miscellaneous Employees Plan contract with CalPERS to provide the 2.7% at age 55-retirement formula benefit improvement and the City's contribution to CalPERS on behalf of Miscellaneous employees increased from 7% to 8%. Effective July 3, 1994, contributions made pursuant to this Section shall be reported to CalPERS as "special compensation" as provided in Government Code Section 20636(c)(4) pursuant to Section 20691. Said contributions shall not apply in the case of temporary or provisional employees.

The contributions in Section 8.4.4 (CalPERS Miscellaneous Employees Retirement Formula and Employer Paid Member Contribution for Classic Employees) shall not be considered as a part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked or for other differentials; nor shall such contributions be taken into account in determining the level of any other benefit which is a function of or percentage of salary.

The City will not treat these contributions as compensation subject to income tax withholding unless the Internal Revenue Service or Franchise Tax Board indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of the implementation of this Section or any penalty that may be imposed therefore.

8.4.5 **Miscellaneous Employees Classic Employee Pension Contribution through a 20516 Contract Amendment**



- 8.4.5.1 **June 4, 2017:** Effective June 4, 2017, Miscellaneous employees will contribute one percent (1%) toward the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions via automatic payroll deduction on a pre-tax basis. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.
- 8.4.5.2 **December 31, 2017:** Effective December 31, 2017, Miscellaneous employees will contribute an additional seven percent (7%) towards the City's CalPERS employer share of pension through a 20516 CalPERS contract amendment that allows such contributions on a pre-tax basis, for a total of eight percent (8.0%), via automatic payroll deduction on a pre-tax basis. Such employee deductions by the City shall be used towards the City's CalPERS required contributions. The parties recognize that the Employer Paid Member Contributions (EPMC) shall remain in effect as long as the CalPERS amendment stays in effect.
- 8.4.5.3 If legislation is enacted requiring employers under the CalPERS retirement system to pay all of the employee's share of retirement, thus eliminating the Employer Paid Member Contribution, the City may convert the employee's contribution to the employer's share under this Section 20516 CalPERS contract amendment to the employee's share toward retirement and may continue to pay the 5.58% wage increase provided on December 31, 2017 associated with the CalPERS swap for Miscellaneous Classic Employees.

#### 8.4.6 **Miscellaneous New Members' Pension Contribution**

- 8.4.6.1 Miscellaneous New Members as defined in the California Public Employees' Pension Reform Act of 2013 (PEPRA), shall continue to pay 50% of the Normal Cost required under PEPRA.
- 8.4.6.2 **June 4, 2017:** Effective June 4, 2017, in addition to the contribution in Section 8.4.6.1, Miscellaneous New Members shall contribute one percent (1.0%) toward the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allow such contributions as pre-tax via automatic payroll deduction. Such employee deductions by the City shall be used toward the City's CalPERS required contributions.
- 8.4.6.3 **December 31, 2017:** Effective December 31, 2017, in addition to the contributions in Sections 8.4.6.1 and 8.4.6.2 above,



Miscellaneous New Members shall contribute an additional seven percent (7.0%) towards the City's CalPERS employer share of pension through a 20516 CalPERS contract amendment that allows such contributions as pre-tax, for a total of eight percent (8.0%) via automatic payroll deduction. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.

8.4.6.4 Miscellaneous New Member contributions in Sections 8.4.6.2 and 8.4.6.3 to the CalPERS 20516 employee contributions towards the employer rate are in addition to the required 50% of the normal share of cost of "New Members" (required pursuant to PEPRA) benefits and made in consideration of additional salary increases effective June 4, 2017 and December 31, 2017 and set forth in the Salary Resolution (a total of 5.58% in exchange for employees paying an additional eight percent (8.0%) towards CalPERS pension costs).

8.4.6.5 Miscellaneous New Member contributions in Sections 8.4.6.2, 8.4.6.3, and 8.4.6.4 to the CalPERS 20516 employee contributions towards the employer rate will be amended and reduced as follows:

8.4.6.5.a

- FY2021-22: 1% (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
- FY 2026-27: 1% effective July 1, 2026

8.4.6.5.b No change to Classic members' contributions during the contract term.

8.4.7 **Public Safety CalPERS Retirement Formula for "New Members" as Defined Under PEPRA:** Public Safety "New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the 2.7% at age 57 retirement formula with the highest three (3) year average compensation as set forth in PEPRA.

8.4.8 **Public Safety Classic Employees CalPERS Retirement Formula:** The City agrees to provide the 3% at age 50-retirement formula benefit

improvement (December 22, 2000 for Classic Fire Safety; and July 7, 2002 for Classic Police Safety hired prior to December 28, 2011).

For Classic Police Safety Employees hired on or after December 28, 2011, the City provides the 3% at age 55-retirement formula benefit.

- 8.4.9 **Public Safety Fire Classic Employees' CalPERS Pension Contribution:** On July 1, 1994, the City increased the base salary of Classic Employees participating in the Safety Fire Plan, in the amount of nine percent (9%). Employees then assumed, and shall continue to assume responsibility for payment of the normal employee retirement contribution to CalPERS. The City shall designate such payments as an Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code. The employee contributions shall be made through automatic payroll deduction.

**Cost Share:** Effective November 8, 2015 (the first full pay period after Council approval of this Unrepresented Employee Manual), Public Safety Fire Classic Employees shall contribute two percent (2%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis.

- 8.4.10 **Public Safety Police Classic Employees' CalPERS Pension Contribution:** On July 1, 1994, the City increased the base salary of Classic Employees participating in the Safety Police Plan, in the amount of nine percent (9%). Employees then assumed, and shall continue to assume responsibility for payment of the normal employee retirement contribution to CalPERS. The City shall designate such payments as an Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code. The employee contributions shall be made through automatic payroll deduction.

Effective January 3, 2016, Police Public Safety Classic Employees shall contribute one percent (1%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis. And, effective July 3, 2016, Police Public Safety Classic employees shall contribute an additional one percent (1%), for a total of two percent (2%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis.

- 8.4.11 **Public Safety Fire New Members CalPERS Pension Contribution:** Public Safety Fire New Members hired on or after January 1, 2013 shall pay fifty percent (50%) of the normal share of cost as required pursuant to PEPRA.

**Cost Share:** Effective November 8, 2015 (the first full pay period after Council approval of this Unrepresented Employee Manual), Fire New

Members shall also contribute an additional two percent (2%) of pensionable compensation, in addition to the PEPRA mandated 50% of the normal share of cost, toward the City's CalPERS employer contribution rate through automatic payroll deduction on a pre-tax basis

- 8.4.12 **Public Safety Police New Members CalPERS Pension Contribution:** Public Safety Police New Members New Members hired on or after January 1, 2013 shall pay fifty percent (50%) of the normal share of cost required by PEPRA.

**Cost Share:** Effective January 3, 2016, Public Safety Police New Members shall also contribute one percent (1%) of pensionable compensation (in addition to contributing 50% of the normal share of cost) towards the City's CalPERS employer contribution rate through automatic payroll deduction on a pre-tax basis. And, effective July 3, 2016, Police Public Safety New Members shall contribute an additional one percent (1%), for a total of two percent (2%), in addition to the PEPRA mandated 50% of the normal share of cost, toward the City's CalPERS employer contribution rate through automatic payroll deduction on a pre-tax basis.

- 8.4.13 **CalPERS Options Available to Berkeley Employees:** The City's contract with CalPERS includes the following optional benefits:

- a) Classic Employees Only - One-Year Final Compensation as provided in Section 20042 (July 9, 1978 for Miscellaneous; July 22, 1976 for Fire and Police).
- b) Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (December 16, 1973 for Miscellaneous; March 1, 1973 for Fire and Police).
- c) Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
- d) Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).
- e) 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (December 16, 1973 for Miscellaneous; March 1, 1973 for Fire and Police).
- f) Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).

- g) Fourth Level of 1959 Survivor Benefits as provided in Section 21574 for Police Safety only (October 15, 1998).
- h) Military Service Credit as Public Service as provided in Section 21024 (April 9, 1999 for Miscellaneous; July 14, 2000 for Fire; November 6, 1998 for Police).
- i) Public Service Credit for Peace Corps or America Corps: Vista Service as provided in Section 21023.5. (April 14, 2000).
- j) Classic Fire - 3% @ 50 for Local Safety Members as provided in Section 21362.2 for Fire members only, (December 22, 2000); and for Police members only (July 7, 2002.).
- k) Classic Police Hired Prior to December 28, 2012: 3% @ 50 for Local Safety Classic Members as provided in Section 21362.2 for Police members only (July 7, 2002).
- l) Classic Police: 3% @ 55 for Local Safety Classic Members as provided in Section 21363.1 for Police members only (December 28, 2012).
- m) Classic Miscellaneous: 2.7% at age 55 for miscellaneous members as provided in Section 21354.2 on January 5, 2003.
- n) New Members Miscellaneous: 2% at age 62 for Miscellaneous New Members as defined by PEPRA on January 1, 2013.
- o) New Members Police and Fire: 2.7% @ 57 for Local Safety New Members as defined by PEPRA (January 1, 2013).
- p) Indexed Level of 1959 Survivor Benefits as provided in Section 21574.5 for Fire Safety only (June 13, 2003).

8.4.14 **Unused Sick Leave Conversion:** The conversion of unused sick leave to CalPERS Retirement Credit for Unused Sick Leave under Government Section 20965 shall be made available to qualified retiring employees. This allows employees to convert unused accumulated sick leave at time of retirement, for which the employee receives no compensation, to additional service credit at the rate of 0.004 year of service credit for each day. This credit applies to qualified employees

whose effective date of retirement is within four months of separation from employment. The CalPERS sick leave conversion applies to accumulated sick leave, exclusive of the amount of accumulated sick leave paid out to the employee pursuant to Section 4.11 (Accrued Sick Leave Cancellation Upon Termination), of this Manual.

- 8.4.15 **Retirement Benefit Allowance:** CalPERS retirement benefits are calculated on a formula based on the participating employee's years of service, age at retirement, and percentage of highest year compensation. For employees participating in the Local Miscellaneous Employees Plan, the percentage is 2.7% at age 55 effective January 5, 2003. For Classic Employees participating in the Fire Safety Employees Plan, the percentage is three percent (3%) at age 50 effective December 22, 2000. For Classic Employees participating in the Police Safety Employees Plan, the percentage is three percent (3%) at age 50 effective July 7, 2002. For Classic Employees participating in the Police Safety Employee Plan effective December 28, 2012, the percentage is three percent (3%) at age 55.

## 8.5 Supplementary Retirement and Income Plans

In lieu of participating in the Federal Social Security Program, the City provides a supplemental retirement and income plan to most benefitted employees. There are three supplementary retirement and income plans: Supplementary Retirement and Income Plans I, II and III ("SRIP I, II and III"). The City's contributions to these plans on behalf of participating employees is not subject to income tax until it is paid out to the employees upon retirement or termination, or to the employee's beneficiary in the event of the employee's death.

- 8.5.1 **SRIP I:** In SRIP I, the City contributes 5.7% of the participating employee's salary (up to a maximum annual salary of \$32,400) into an investment account and 1% into a long term permanent disability plan. SRIP I was closed to new participants on July 22, 1988.
- 8.5.2 **SRIP II:** In SRIP II, the City contributes 6.7% of the participating employee's salary (up to a maximum annual salary of \$32,400) into an investment account and pays into a disability insurance benefit plan on the employee's behalf; and employees may also borrow up to 50% of the balance in their SRIP II investment accounts, subject to certain limitations. All employees, including the Fire Chief, hired (or who are subsequently enrolled by resolution of the City Council) after July 22, 1988 are automatically enrolled in SRIP II.

The Deputy Fire Chief is enrolled, effective July 1, 1993.

- 8.5.3 **SRIP III:** For eligible Police Safety employees, the City contributes 2% of the employee's salary (up to a maximum annual salary of \$32,400) into the investment account, SRIP III.

## 8.6 Deferred Compensation

Benefitted City employees are eligible to participate in the City's Deferred Compensation Plan through voluntary payroll deductions from the employee's salary. The Deferred Compensation Plan allows employees to defer part of their salaries, in accordance with Internal Revenue Service limits, to a separate fund, which is not subject to income tax until it is paid out to the employee upon retirement or termination, or to the employee's beneficiary in the event of the employee's death.

## 8.7 PARS

At-will employees who are not eligible to receive fringe benefits under this chapter are automatically enrolled in the Public Agency Retirement System ("PARS"). Each pay period, such employee shall contribute 3.75% of his or her salary into the employee's PARS account on a tax deferred basis and the City shall contribute a matching amount equaling 3.75 % of the employee's salary. The employee's PARS account balance will be distributed to the employee upon retirement or termination, or to the employee's beneficiary in the event of the employee's death.

## 8.8 Public Safety Uniform Allowance

Due to the requirement for sworn fire and police department management personnel to wear standard and dress uniforms in the performance of their duties, the City Manager may provide for the payment of uniform allowance, in keeping with the allowance provided to other fire and police personnel, as shown in the Appendix. The uniform allowance is intended to cover uniform expenses incurred during active service prior to the payment and shall be paid semi-annually, in installments of equal amounts. To comply with CALPERS requirement, Union allowance payments shall be paid over twenty-six (26) equal biweekly installments instead of twice a year payment.

## 8.9 Supplemental Retirement Plan and Trust Agreement

Effective July 1, 2001, the City adopted a Supplemental Retirement Plan and Trust Agreement to provide supplemental retirement income and other benefits for eligible unrepresented career benefitted and regular at-will employees through the liquidation of termination pay. Termination pay means pay due to an eligible unrepresented career benefitted and regular at-will employee from the City on account of termination of his or her employment, but only including the commuted value of the following such accumulated pay: vacation, sick leave, sick leave bonus, compensatory time and floating holidays. The Supplemental Retirement Plan includes both mandatory contributions of termination pay and voluntary contributions for employees who provide the City with an irrevocable payroll deduction authorization at least 90 days in advance of the date of termination.



## **ARTICLE 9 - EMPLOYMENT AT-WILL**

### **9.1 Employment At-Will**

An employee who is employed in a position that is excluded from the career service by Berkeley Municipal Code Section 4.04.120 of the Personnel Ordinance is employed by the City in an "at-will" status. This means that both the at-will employee and the City have the right to terminate employment at any time, with or without advance notice, and with or without cause. No employee or officer of the City of Berkeley has the authority to alter the employee's at-will status or to enter into an oral or written agreement for employment for a specified period of time, or to make any promises, assurances or agreements contrary to this the provisions of this Section.

### **9.2 No Right to Appeal Discharge**

An at-will employee who is discharged has no right of appeal or hearing in any manner provided by this Manual.

### **9.3 Benefits**

Those offices, positions and employments named in the Berkeley Municipal Code, Sections 4.04.120 (A), (B) and (C) who regularly work twenty or more hours per week are classified as regular at-will employees and shall be entitled to those benefits as specified for benefitted employees by this. A list of regular at-will positions entitled to receive such benefits is in the Appendix.

All other offices, positions and employments named in the Berkeley Municipal Code, Section 4.04.120, are not eligible for any benefits provided under these Rules, except those expressly specified for temporary employees, such as the Earned Leave benefit or those required by State or Federal law such as Family Care Leave and enrollment in the City's PARS retirement plan, as provided in this Manual.

### **9.4 Standards of Conduct**

At-will employees are subject to the same standards of conduct that prevail over employees in the career service. Any evaluations, warnings or disciplinary action provided to at-will employees regarding their conduct or job performance does not create any obligation or duty on the City's part to provide a warning or evaluation or corrective progressive discipline prior to discharge and in no way negates or otherwise abrogates the City's right to discharge at-will employees for any reason without notice at any time during their employment and without right of appeal.

### **9.5 Transfer or Appointment of Career Employee to an At-Will Position**

Any employee in the career service who accepts a transfer or appointment to an at-will position shall be reinstated to the career position from which he or she was transferred or appointed if within six months after such transfer or appointment, action is taken to dismiss the employee, unless charges are filed and the employee

is discharged in accordance with these Rules. After expiration of the six month period, the employee is excluded from the career service and from any retreat rights to former career positions and is subject to termination at any time, with or without advance notice, with or without cause, and without the right of appeal.



## **ARTICLE 10 - LAYOFF POLICY AND PROCEDURE**

### **10.1 Statement of Intent**

This layoff policy is intended to provide the maximum employment protection to employees in the career service and to minimize the impact on the City's affirmative action accomplishments should a layoff become necessary.

### **10.2 Announcement of Layoff**

The City Council, City Manager and department heads shall make every reasonable effort to manage and budget the City's resources effectively, and to plan for the delivery of City services in a manner which will avoid the necessity to lay off career City employees. A reduction in the workforce for more than thirty calendar days is necessitated by, but not limited to, the following a material change in duties and organization, adverse working conditions, return of employee from leave of absence, or shortage of work or fund. In the event of a layoff, the City Manager shall notify the Director of Human Resources of the intended action and the reason for the layoff.

### **10.3 Vacancy Freeze**

Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the career service in similar and related classes to those likely to be targeted for layoff. The City Manager shall notify the department heads of a freeze of vacancies in their departments and shall require that requisitions continue to be submitted for any budgeted positions which the department head intends to fill and for which funding is available.

### **10.4 Seniority Service Date**

All service in the employ of the City shall be counted toward the establishment of an employee's Seniority Service Date, including permanent, probationary, provisional, temporary, part time (on a prorated basis), seasonal, regular at-will employment, and approved military and parental leaves of absence. All other leaves without pay, including time off as a result of formal disciplinary action will be subtracted from the Seniority Service Date.

### **10.5 Establishment of Seniority Lists**

Layoffs shall be made according to City-wide class Seniority Lists which the Human Resources Department will immediately establish for probationary and permanent employees in each class targeted for layoff. The names of all City employees holding permanent and probationary appointments in a given class will be listed on the appropriate list in descending order by Seniority Service Date.

Probationary or permanent employees temporarily acting out of class and holding a provisional appointment in another class will be listed on the Seniority List of the class in which they hold permanent or probationary status.

## 10.6 Order of Layoff

Employees within a specific class shall be laid off on the basis of their Seniority Service Date; i.e., employees with the least amount of total service shall be laid off first. All emergency, temporary and provisional employees working in classes similar to those identified for layoff must be terminated prior to the layoff of probationary and permanent employees. Probationary employees will be laid off prior to permanent employees for a specific class.

10.6.1 **Tie:** If two or more employees on a Seniority List have an identical Seniority Service Date, the tie shall be broken in the following order: (1) time in class--the employee having least time in the class shall be laid off first, and (2) by lot.

10.6.2 **Administrative & Fiscal Services Manager Position in the Berkeley Public Library:** This is a specialty designated position within the Administrative & Fiscal Services Manager classification, and will be treated as a separate classification for the purpose of administering the Layoff Policy and Procedure.

## 10.7 Notification

Permanent and probationary employees should be notified individually, in writing, of pending layoffs as soon as possible, with no less than thirty calendar days notification if targeted for termination or retreat to a lower class.

All other employees to be laid off shall be given, whenever possible, at least a fourteen (14) calendar day prior notice.

## 10.8 Employee Retreat Rights

A probationary or permanent employee affected by layoff shall have the right to displace an employee in a lower level class in which the affected employee once had permanent status or in a subsequently created intermediate level career class which provides normal progression through the class series. Retreat rights shall also extend to employees who have not previously been promoted through a class but for whom the class is a natural progression or beginning in the class series. Retreat rights into a lower class will be granted in order of the highest seniority date on the Seniority List for employees in that class.

10.8.1 **Qualified to Retreat into More than One Classification:** When an employee is qualified to retreat into more than one class, the options shall be discussed with the employee and due consideration given to the employee's preferences. However, it is the prerogative of the City Manager to determine the final placement offer to the employee

10.8.2 **Salary Step:** Employees retreating to a lower class or being flexibly placed in a similar class shall be placed at the salary step representing

the least loss of pay. In no case shall the salary be increased above that received in the class from which the employee was laid off.

- 10.8.3 **Reinstatement after Transfer:** An employee whose position is abolished and is transferred in lieu of layoff shall have the right to return to the position if it is restored within one year of the date of the transfer.

## 10.9 Flexible Placement Program

After all frozen vacant positions have been filled by employees entitled to retreat rights under Section 10.8 (Employee Retreat Rights) of this chapter, the Human Resources Department will review and identify the remaining frozen vacant classes into which career employees targeted for layoff who have not retreated into a lower class may be placed on the basis of total experience and education.

- 10.9.1 **Failure to Meet Minimum Requirements:** Where the targeted employee does not meet the minimum qualifications of a frozen vacant position, the City Manager has the discretion to either waive the minimum qualifications and/or substitute the targeted employee's job-related experience and education for the minimum qualifications, but under no circumstances is the City Manager required to do so. Where the employee does not meet the minimum qualifications, flexible placement can occur only if the City Manager determines that management and supervisory personnel are able to provide adequate supervised on-the-job training to the employee to meet the requirements of the job. The employee must successfully complete the training within six months as determined by the Director of Human Resources or the employee shall be again subject to the layoff procedures.
- 10.9.2 **Salary Range:** Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off.
- 10.9.3 **Order of Assignment:** Offers to positions under the Flexible Placement Program shall be made according to the employee's standing on the Seniority List.

## 10.10 Failure to Accept Offer under Layoff

Failure on the part of an employee to accept a written bona fide offer to retreat to a lower class or be flexibly placed in an alternative job within ten calendar days after the offer is made shall result in forfeiture of any further right to employment retention. Acceptance of a reassignment to a lower class does not remove the employee's right of appeal under Section 10.12 (Appeal Procedures) nor does acceptance of an alternative job under the Flexible Placement Program jeopardize an employee's standing on the re-employment lists as further provided in this Section 10.10 (Failure to Accept Offer under Layoff).

## 10.11 Re-Employment List

The names of probationary and permanent employees laid off in accordance with this chapter shall be entered on a re-employment list for both those classes from which they were separated as well as other classes to which they have retreat rights.

- 10.11.1 **Duration of List:** Re-employment lists for laid off employees who are separated from City service shall remain in effect for three years. Re-employment lists for laid off employees who are demoted shall remain in effect indefinitely.
- 10.11.2 **Use of List:** Re-employment lists shall be used by each department when a vacancy arises in the same or lower class of position before certification is made from an eligible list.
- 10.11.3 **Order of Appointment:** Employees on the re-employment list shall be certified and appointed to a vacancy in the appropriate class according to their standing on the Seniority List.
- 10.11.4 **Failure to Appoint from Re-Employment List:** If a vacancy is filled from an eligible list in a class for which a re-employment list exists which is a violation of this Section, the employee on the re-employment list who should have been appointed shall be appointed to the vacancy and paid retroactively from the date the vacancy occurred.
- 10.11.5 **Failure to Accept Bona Fide Offer:** Failure on the part of the employee on the re-employment list to accept a bona fide written offer of re-employment within fifteen calendar days will result in removal of the employee's name from the re-employment list from which the offer was made. Failure to accept an offer of re-employment to the class with the highest salary range for which the employee is eligible for re-employment will result in automatic removal of the employee's name from all re-employment lists. The employee may, however, accept or decline temporary re-employment without jeopardizing his or her standing the re-employment list for the class from which he or she was originally terminated.
- 10.11.6 **Salary Step:** Upon reappointment to the class from which the employee was originally separated or demoted, the employee shall be placed at the salary step that the employee held at the time of the separation or demotion.
- 10.11.7 **Reinstatement List:** Any former employee on a re-employment list shall be included as an eligible on the reinstatement list for a specific class at or below the class from which layoff occurred, upon written request by the employee for reinstatement which is submitted with a current, completed City of Berkeley application and upon meeting the

minimum qualifications of the specific class unless waived by the City Manager as provided under flexible placement.

### **10.12 Appeal Procedures**

The decision of the City Manager to implement a layoff is not appealable. Any unrepresented career employee who believes that the layoff procedure, as defined herein, has been improperly administered as to the employee may appeal the action under the Complaints, Appeals and Hearing Procedure of this Manual. Employees are entitled to review all records pertaining to their class and their rights under the provisions of the layoff policy.

### **10.13 Audit**

In the event of a dispute between an employee and the City over the application of the re-employment list and if either party so requests, the City Manager's Office shall order an audit by an outside auditor of all vacant positions filled in each department to determine whether vacancies were filled in compliance with the procedures for appointments from re-employment lists set forth in Section 10.11 (Re-Employment List) of this Manual. In the event vacancies for which re-employment lists were in existence remain unfilled, the auditor shall offer an opinion as to whether or not the reasons for leaving the positions vacant appear to be legitimate. A report of the audit shall be transmitted to the City Manager and the City Council.

## **ARTICLE 11 - DISCIPLINARY ACTION**

### **11.1 Policy**

Prior to the suspension, disciplinary demotion or discharge of an employee in the career service for disciplinary purposes, the procedure set forth in this Article 11 (Disciplinary Action) shall be complied with provided, however, that only those employees in the career service who are not represented by a labor organization shall be entitled to the notice, rights and procedures provided under Section 11.3 (Disciplinary Actions).

### **11.2 Final Decision Maker for Disciplinary Action**

For purposes of this chapter, the City Manager is the final decision maker for City of Berkeley employees. The Rent Stabilization Board is the final decision maker for Rent Stabilization Program employees. The Library Board of Trustees is the final decision maker for Library employees.

### **11.3 Disciplinary Actions**

The department head shall initiate disciplinary procedures, as set forth here. The department head may suspend a subordinate employee for not more than three working days at any one time. For suspensions of more than three days, disciplinary demotions and discharge, the department head shall make a recommendation to the final decision-maker. The final decision-maker may suspend an employee from a position at any time for cause. Suspension without pay shall not exceed thirty working days, nor shall any employee be penalized by suspension for more than thirty working days in any continuous twelve month period. However, FLSA exempt employees shall not be suspended in less than regular workweek increments except for safety or security violations. A "regular workweek" is defined elsewhere by this Manual.

### **11.4 Written Reprimands for Fire Safety Employees**

Consistent with the Firefighter Bill of Rights Act, the Deputy Fire Chief receiving a written reprimand shall have the right to a non-evidentiary administrative appeal to the Fire Chief or Fire Chief's designee. The employee must request an administrative appeal in writing to the Fire Chief within ten (10) working days of receipt of the written reprimand. Failure to do so shall be deemed a waiver of the employee's right to appeal. The Fire Chief or Fire Chief's designee shall have discretion regarding how the appeal meeting is conducted, including whether and the extent to which witnesses other than the employee and employee's representative are required and may participate. The Fire Chief or Fire Chief's designee shall notify the employee of his or her decision within ten (10) working days of the appeal meeting. An employee and the Association have no further right to appeal or grieve a written reprimand beyond the administrative appeal described in this paragraph.

### **11.5 Written Reprimands for Non- Safety Employees**

In the event that an employee receives a written reprimand, the employee may write a rebuttal within thirty (30) calendar days of receiving the written reprimand and such rebuttal will be placed in the Personnel File along with the written reprimand. Employees have not right to appeal or grieve a written reprimand.

## ARTICLE 12 - COMPLAINTS, APPEALS AND HEARINGS

### 12.1 Policy

The procedure for filing complaints and appeals by employees set forth under this Article 12 shall be complied with provided, however, that only those employees in the career service who are not represented by a labor organization shall be entitled to file complaints with the City and appeals to the Personnel Board pursuant to the provisions of this Manual.

### 12.2 Final Decision Maker for Purposes of this Article

For purposes of this chapter, the City Manager is the final decision maker for City of Berkeley employees. The Rent Stabilization Board is the final decision maker for Rent Stabilization Program employees. The Library Board of Trustees is the final decision maker for Library employees.

### 12.3 Complaints

Disciplinary action shall be taken in accordance with Article 11 (Disciplinary Action) of this Manual. All other complaints by employees, except complaints about compensation, which allege a violation of the Personnel Ordinance or this Manual shall be filed through proper channels, commencing with the department head, and then to the final decision maker.

12.3.1 **Compensation Complaints:** All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources. The Director of Human Resources shall respond in writing within thirty (30) working days. If the complaint has not been resolved within thirty (30) working days of filing with the Director of Human Resources, the complaint may be moved to the final decision maker. Only complaints, which allege that employees are not being compensated in accordance with the policies, rules and resolutions of the City Council, shall be considered as complaints under this Section. No compensation adjustment shall be retroactive for more than thirty calendar days from the date upon which the complaint was filed or thirty calendar days from the date when an employee may reasonably be expected to have learned of the claimed violation.

**Appeal:** If the grievant is not satisfied with the decision of the Director of Human Resources or his or her designee, the grievant may move the complaint to the final decision maker within ten (10) days of receipt of the decision rendered under Section 12.3.1 above. Failure by the employee to file an appeal within the specified time limits specified constitutes a dropping of the complaint. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.



- 12.3.2 **Discrimination Complaints:** An employee may file a complaint concerning a violation of the "FAIR EMPLOYMENT" provision specified by the rules of this Manual, and the complaint shall be processed in accordance with the EEO Complaint Investigation and Resolution Procedure of the City of Berkeley EEO/Affirmative Action Program, as established in Resolution No. 54,926-N.S., as amended from time to time.

## 12.4 Right of Appeal

An aggrieved employee shall have the right to appeal the decision of the final decision-maker regarding the aggrieved employee's disciplinary dismissal, demotion, suspension or complaint to the Personnel Board except in instances where the right to appeal is prohibited by the Personnel Ordinance or the provisions of this Manual.

## 12.5 Method of Appeal

Appeals to the Personnel Board shall be in writing, signed by the aggrieved employee and filed with the Director of Human Resources within ten calendar days after the action is imposed. The appeal shall be a written statement, addressed to the Chair of the Personnel Board, explaining the matter appealed from and setting forth a statement of the action desired by the aggrieved employee, supported by his or her reasons. The Director of Human Resources shall, within ten calendar days after receipt of the appeal, inform the Chair of the Personnel Board, the City Manager and the affected department head of the filing and contents of the appeal with the Board.

## 12.6 Investigations and Hearings

Upon receipt of any appeal, the Personnel Board shall make such investigation, as it may deem necessary.

An aggrieved employee who has been demoted for a disciplinary purpose, suspended or discharged is entitled to a hearing upon appeal before the Personnel Board. As to all other appeals, the Personnel Board may grant a hearing or decide the appeal without a hearing as it may deem warranted.

## 12.7 Hearing Procedures

In cases where the employee is entitled to a hearing as a matter of right and in other cases whenever the Board may deem it advisable to hold a hearing, these procedures shall apply.

- 12.7.1 **Notice:** The Personnel Board shall schedule a hearing on the appeal within forty-five calendar days from the date of the filing of an appeal. The Director of Human Resources shall notify all interested parties of the date, time and place of the hearing at such places as the Personnel Board shall prescribe.

- 12.7.2 **Hearing Procedure:** The aggrieved employee shall appear personally unless physically unable to do so before the Personnel Board at the time and place of the hearing. The aggrieved employee may be represented by any person or attorney as may be selected and may at the hearing produce relevant oral or documentary evidence. The party who has the burden of proof shall state the case first after which opposition matter may be presented. Rebuttal matter that is not repetitive may be allowed at the discretion of the Personnel Board. Cross-examination of witnesses shall be permitted. Hearings need not be conducted according to technical rules relating to evidence and witnesses, but shall be conducted according to any rules of applicable procedures. Hearings shall be closed unless otherwise required by the Ralph M. Brown Act, Government Code Section 54950, as amended from time to time, or any other applicable law.

## 12.8 Findings and Recommendations

The Personnel Board shall, within thirty calendar days after the conclusion of the hearing, or if no hearing was conducted, within thirty calendar days of its decision, certify its findings and recommendation(s) in writing to the aggrieved employee and to the final decision-maker. The final decision maker shall review the findings and recommendation(s) of the Personnel Board and may then affirm, reject or modify the Personnel Board's findings and recommendation(s) as, in his or her judgment, seems warranted, and the final decision maker's decision shall be final. Any member of the Personnel Board may submit a minority or supplemental report which shall be attached to the findings and recommendation(s) of the Board.

## APPENDIX

This Appendix contains detailed information regarding benefits and compensation which covers unrepresented benefitted employees. It is appended to the Unrepresented Employee Manual but the contents are not part of the resolution establishing the Unrepresented Employee Manual and may be changed to reflect changes in benefit details, as approved by the City Council by resolution.

### 13.1 Administrative Leave

Employees who are in career, benefitted, or at-will benefitted classifications which are FLSA Exempt may be approved by the City Manager to receive up to an additional 50 hours of compensated administrative leave beginning on January 1, 2016, and at the beginning of each calendar year thereafter, or prorated during the course of the year when employed less than a full year. This administrative leave is granted to employees whose job responsibilities cause them to work numerous hours in excess of the normal City workweek. The City Manager has the authority to rescind administrative leave in those instances of abuse or misuse of the intent of this provision.

Administrative leave taken must be approved in advance by the department head and posted to the employee's timecard. Unused administrative leave may be carried over to the next calendar year, providing the total of excess vacation and unused administrative leave do not exceed 320 hours. Otherwise, the excess administrative leave must be taken within the calendar year in which it was earned or it may be forfeited. Upon termination or retirement, no monetary award will be authorized for unused accumulated administrative leave.

**13.1.1 Prorated Administrative Leave:** A benefitted employee who is otherwise eligible for overtime and who is on a temporary or provisional benefitted appointment in an FLSA Exempt classification for a period of one month or longer, and is ineligible to earn overtime, shall be entitled to prorated Administrative leave for the duration of the temporary or provisional appointment. Any unused administrative leave at the end of the temporary or provisional appointment will roll into vacation, provided the total of accrued and unused vacation and accrued administrative leave do not exceed 320 hours.

### 13.2 Automobile Allowance

The City reimbursement rate for the use of a private automobile on authorized City business will be equal to the amount established by the Internal Revenue Service.

### 13.3 Bilingual Premium Pay

**13.3.1 As Part of Regular Job Assignment:** An employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language, routinely and consistently as part of his or her regular job assignment as determined by the City

will receive a Bilingual Premium Pay Differential of 5%. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 5% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

- 13.3.2 **Occasional Assignments:** An employee assigned occasionally to provide non-English language services, including Braille and sign language, when either a) assigned by management, or b) at the request of the employee with the supervisor's agreement, or, c) after a job audit will receive a Bilingual Premium Pay Differential of 2%. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 2% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.
- 13.3.3 **Competency and Management Rights:** The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. Management reserves the right to test for second language appropriate competency prior to a Bilingual Premium Pay Differential.
- 13.3.4 **Temporary Designation:** The City may designate an employee to receive either the 5% or 2% Bilingual Premium Pay Differential on a temporary basis for a specified period provided the employee met the requirements contained in the first or second paragraph of this Section.

#### 13.4 Cash-In-Lieu Payments

For those employees who are able to show proof of ongoing alternate [group](#) medical coverage, the City will compensate employees \$560.00 per month, prorated for less than full-time employees. This benefit shall be frozen at this amount. To comply with FLSA laws, health insurance in-lieu payments shall be paid over twenty-six (26) equal biweekly installments instead of once a month.

#### 13.5 Dependent Care

Employees shall be allowed to designate a specific amount of salary, consistent with State and Federal tax laws, to be redirected to pay for dependent care costs through pre-tax salary deductions. The amount of funds designated should be considered carefully, because under the current tax code, any unexpended funds which have not been spent for the specific purpose of paid dependent care and remain in the employee's account at the end of the year, will be forfeited.

### 13.6 Life Insurance

The City shall provide paid group life insurance, by a carrier of the City's choice, in the amount of \$25,000 which shall include a standard accidental death and dismemberment provision of a like amount. Employees in the classification of Police Chief and Fire Chief shall be provided with life insurance in the amount of \$100,000, which shall include a standard accidental death and dismemberment provision of a like amount. Life insurance shall become effective the first day of the calendar month following appointment, and shall continue until the last day of the calendar month in a pay status.

In addition, all unrepresented benefitted employees may purchase additional coverage, in increments of \$10,000, up to a maximum of \$300,000, at the rate offered by the City's insurance carrier, subject to any rules and restrictions of the carrier, including but not limited to any medical exam that might be required by the insurance carrier.

### 13.7 Medical/Dental Insurance for Employees/Dependents

Except as provided in Section 8.1 (Group Medical-Dental Insurance Benefits), the City offers fully paid and/ or partially paid health insurance plans and a fully paid dental plan for the employee and eligible dependents, including a domestic partner. The dental plan currently provides orthodontic coverage for the employee's dependent children through age 26 and 90% of the Bay Area Usual, Customary and Reasonable charges. Effective January 1, 2007, the maximum annual coverage will be \$2,000 annual coverage, and \$2,000 lifetime orthodontia limit. Any employee, who is required to partially pay premiums, shall be allowed to make these payments with pre-tax deductions. The medical and dental benefit coverage for dependent children extends to the date of their 26<sup>th</sup> birthday, providing they meet the Internal Revenue Service definition of "dependent". If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for medical benefits and/or dental benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

Medical and dental benefits shall begin the first day of the calendar month following the date of hire, and end the last day of the month an employee is in pay status, except in the case of parental and Family and Medical Leave Act, as described in the Administrative Regulation No. 2.4. Maximum annual coverage amounts are found in the Employee Benefits Handbook.

**13.7.1 Dental Coverage for Fire Management:** Effective January 15, 2015, employees in the classification of Fire Chief and Deputy Fire Chief, shall be provided with dental insurance with an annual maximum coverage of \$3,000 and lifetime orthodontia limit of \$3,000.

### 13.8 Retiree Medical Plan

The terms and conditions of this benefit shall be set forth in a separate document which shall contain a full plan description and shall control the administration of the retiree medical plan.

### 13.9 Amendment of Retiree Health Premium Assistance Plans I and II, effective June 28, 1998, Restated and Amended effective March 22, 2011

Employees who retire on or after June 21, 2015, shall be permitted, at their discretion, to enroll in non-City sponsored health plans. After Council approval of this Unrepresented Employee Manual, the City shall amend the Retiree Health Premium Assistance Plans I and II as soon as practicable to allow enrollment in non-City sponsored health plans. In the event a retiree elects to enroll in a non-City sponsored health plan, the City shall make medical insurance premium payments directly to the health insurance provider in an amount equal to what the City would contribute to the City sponsored health plan. Retiree shall be solely responsible for all aspects of the requirements to enroll in a non-City sponsored health plan and maintain eligibility for such a plan; the City's sole obligation is to pay the medical insurance premium contribution required under this section, as directed by the retiree to a non-City sponsored health plan. The City shall not be responsible for any excess cost differentials associated with the direct payment of premiums to non-City sponsored plans. The City will only make payments through its third party administrator to provide medical insurance premium payments for an individual plan and will not make payments for a group plan. The retiree and/or surviving spouse or domestic partner that enroll in non-City sponsored health plans shall be solely responsible for paying the administrative set up fee, the monthly administrative fee, and/or any other fees established by the third party administrator, and said fees will be deducted directly from the retiree's monthly contribution. No cash payments will be paid directly to the retiree or the retiree's spouse/domestic partner. There shall be no cash in lieu payments made under this benefit.

The City will also amend the Retiree Premium Assistance Plans I and II to allow eligible retirees who retired prior to June 21, 2015 to enroll in a non-City sponsored health plan.

### 13.10 Retiree Medical for Unrepresented Benefitted Employees

Effective June 28, 1998, the City will provide the retiree medical coverage set forth below for all unrepresented benefitted employees, except employees in the classifications of Police Chief, Fire Chief, and Deputy Fire Chief (see separate plans below). An employee's entitlement to any and all benefits provided by the City under this retiree medical plan is subject to the funding limitations set forth in the plan document.

- 13.10.1 **Eligibility and Percentage of City Contribution:** An employee is eligible for the retiree health insurance coverage as set forth in Sections 13.10.3 (Pre Age 65 Retiree Health Insurance) and 13.10.4 (Retiree

Benefits for Employees Age 65 or Over) below if he or she meets all the following criteria:

- a. retires from career service on or after June 28, 1998;
- b. is vested with CalPERS;
- c. has at least eight (8) years of CalPERS qualifying service with the City; and
- d. is at least age 55.

An “Eligible Retiree” also includes individuals who meet the definition as set forth in Section 2.11.1 of the Retiree Health Premium Assistance Plan I for Confidential and Executive Management Employees (Representation Unit Z-1; Z-5; Z-7; Z-9 and Elected Officials) Restated and Amended effective as of March 22, 2011 (Resolution No. 65,196-N.S.) for “Eligible Retiree.”

**Percentage of City Contribution:** The actual monthly amount of money the City will contribute on the employee’s behalf will be based on the employee’s total years of CalPERS service as provided in the following chart:

| Years of CalPERS Qualifying Service | Percentage of City Contribution |
|-------------------------------------|---------------------------------|
| 8                                   | 30%                             |
| 9                                   | 40%                             |
| 10                                  | 50%                             |
| 11                                  | 58%                             |
| 12                                  | 66%                             |
| 13                                  | 74%                             |
| 14                                  | 82%                             |
| 15                                  | 90%                             |
| 16                                  | 92%                             |
| 17                                  | 94%                             |
| 18                                  | 96%                             |
| 19                                  | 98%                             |
| 20                                  | 100%                            |

- 13.10.2 **Annual Increase:** Retirees will pay the difference between the City’s monthly contribution and the actual monthly medical insurance premium charged by the health plan he or she has elected for retiree medical coverage. If the premiums for such health insurance are increased, the amount the City contributes shall increase no more than 4.5% above the previous year’s contribution. No increases in the amount the City contributes shall occur before July 1, 1999. Thereafter, any increase in the amount contributed by the City will occur on July 1 each year thereafter.



- 13.10.3 **Pre Age 65 Retiree Health Insurance:** Beginning June 28, 1998, the City shall make available health insurance coverage to the employee and his or her spouse or domestic partner. The City will pay on the employee's behalf no more than \$166.26 per month for an employee electing single party health coverage and no more than \$332.52 per month for an employee electing two party coverage.
- 13.10.4 **Retiree Benefits for Employees Age 65 and over:** Once an employee or retiree reaches age 65, he or she is eligible for Medicare. As a result his or her eligibility for the retiree medical benefits set forth in Section 13.10.1 (Eligibility) ceases. On reaching age 65, the City will make available health insurance coverage in addition to Medicare. When an employee or retiree reaches age 65, the City will contribute no more than \$16.17 per month on the employee's behalf for single party health insurance coverage and no more than \$32.34 per month for two-party health coverage.
- 13.10.5 **Termination by City of Retiree Medical Benefit:** Failure of the retiree or surviving spouse to pay their monthly share of the health insurance premium will result in termination of the retiree medical benefit and relieve the City of any further obligation to provide any further benefits under Section 13.10 (Retiree Medical for Unrepresented Benefitted Employees).
- 13.10.6 **Retiree Medical Benefit for Employees Retiring between the Ages of 50 and 55:** An employee who is at least 50 years of age, but less than 55, has at least eight (8) years of CalPERS qualifying employment with the City will retain eligibility for the retiree medical benefits provided in Section 13.10.1 (Eligibility) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in group health care coverage the employee forfeits his or her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this Section to the employee and/or his spouse or domestic partner.
- 13.10.7 **Employees Retiring with a CalPERS Approved Disability Retirement:** If an employee retires from the City before age 55 with a CalPERS approved disability retirement, the employee will retain eligibility for the retiree medical benefits provided in Section 13.10.1 (Eligibility) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his or her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide



any benefits under this Section to the employee and/or his spouse or domestic partner.

- 13.10.8 **City Funding of Retiree Health Benefit:** City contributions to the retiree medical benefit began on July 1, 1998. Funding of this benefit has been set aside in a trust to be established by the City.

The retiree medical benefit will be funded by a charge of 0.25% of payroll in each year, so that contributions are at 1% of the payroll after four years. The City will fund the benefit at approximately 1% of the payroll for every year thereafter with the intent of achieving a funding level of 70% after 30 years. The funding will be ongoing to maintain a 70% funding level thereafter.

Effective July 4, 2004, an additional charge of 0.25% of payroll was charged each year in the subsequent four years so that contributions are at 2% by July 1, 2007. The purpose of this 1% increase in payroll contribution is to fund post age 65 Medicare supplement plans. As a result of this change, the amount the City contributes toward the post-65 Medicare Supplement coverage under the Retiree Health Premium Assistance Plan was \$102 effective July 7, 2002 for all post 65 retirees as well as future retirees.

- 13.10.9 **Retiree Medical Plan for Unrepresented Employees (Rep Units Z-2, Z-3, Z-6):** Eligible retirees who retired from positions in Representation Units Z-2, Z-3 and Z-6 on or after July 1, 2008.

**Not Medicare Eligible:** Effective July 1, 2008, between the ages of 55 and 65 who retire on or after June 29, 2008 the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by \$50 per month in addition to the 4.5% that occurs on July 1 as provided in Section 13.10.2 (Annual Increase). Effective July 1, 2009, the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$75 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 13.10.2 (Annual Increase). Effective July 1, 2011, the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$100 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 13.10.2 (Annual Increase).

- 13.10.10 **Retiree Medical Plan for Confidential and Executive Management Employees (Rep Unit Z-1; Z-5; Z-7; Z-9; and Elected Officials):** Eligible retirees who retired from positions in Representation Unit Z-1 on or after July 1, 2008.

**Medicare and Not Medicare Eligible:** Effective June 29, 2008, an additional charge of 0.50% of payroll will be charged so that contributions are at 2.5%. The purpose of this 0.50% increase in payroll contribution is to fund both pre-65 retiree health care premium costs and post age 65 Medicare Supplement plans for eligible retiree who retired from positions in Representation Unit Z-1; Z-5; Z-7; Z-9 and Elected Officials on or after July 1, 2008. As a result of this change, the amount the City contributes toward pre age 65 health insurance premium costs shall increase from \$258.19 per month to \$309.39 per month for single coverage and from \$516.38 per month to \$618.78 per month for 2-party coverage. The City's contribution toward the post-65 Medicare Supplement coverage shall increase from \$132.83 per month to \$184.03 per month for single coverage and from \$265.67 per month to \$368.06 per month for 2-party coverage.

### 13.11 Reimbursement Plan

After Council approval of this Unrepresented Employee Manual, the City shall amend the Retiree Health Premium Assistance Plans I and II as soon as practicable to allow for the reimbursement of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner until the death of both. If there is no spouse or domestic partner at the time of retirement, the City shall only reimburse the single party rate. The reimbursement shall be paid directly to the retiree or surviving spouse or domestic partner. The maximum amount the City will reimburse for the cost of Medical Insurance Premiums is based on the schedule described in Section 13.10.1 (Eligibility and Percentage of City Contribution) above.

#### 13.11.1 Retiree Medical Reimbursement Plan for Unrepresented Confidential and Executive Management Employees (Rep Units Z-1; Z-5; Z-7; Z-9; and Elected Officials) Who Retire on or After June 28, 1998 through June 30, 2008

13.11.1.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner until the death of both as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.2 (Annual Increase), each month after the employee retires, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$166.26 for single party coverage for the retiree or \$332.52 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

- b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Annual Increase), total \$338.60 for single party coverage for the retiree or \$677.19 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

13.11.1.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.4 (Retiree Benefits for Employees Age 65 and Over) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$16.17 for single party coverage for the retiree or \$32.34 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of July 7, 2002:** Effective July 7, 2002, as provided in Section 13.10.8 (City Funding of Health Benefits) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$102.00 for single party coverage for the retiree or \$204.00 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- c. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$172.98 for single party coverage for the retiree or \$345.96 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

13.11.2 **Retiree Medical Reimbursement Plan for Unrepresented Confidential and Executive Management Employees (Rep Units Z-1; Z-5; Z-7; Z9 and Elected Officials) Who Retire on or After July 1, 2008**

- 13.11.2.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:
- a. **Reimbursement as of July 1, 2008:** On July 1, 2008, as provided in Section 13.10.10 (Retiree Medical Plan for Unrepresented Confidential and Executive Management Employees), the City will reimburse the cost of Medical Insurance Premiums in an amount totaling \$309.39 for single party coverage for the retiree or \$618.78 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
  - b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$405.73 for single party coverage for the retiree or \$811.46 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- 13.11.2.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:
- a. **Reimbursement as of July 1, 2008:** Effective July 1, 2008, as provided in Section 13.10.10 (Retiree Medical Plan for Unrepresented Confidential and Executive Management Employees), each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$184.03 for single party coverage for the retiree or \$368.06 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
  - b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$239.65 for single party coverage for the retiree or \$479.31 for two party

coverage for the retiree and/or surviving spouse/domestic partner coverage.

13.11.3 **Retiree Medical Reimbursement Plan for Unrepresented Employees (Rep Units Z-2; Z-3; Z-6) Who Retire on or After June 28, 1998 through June 30, 2008**

13.11.3.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.2 (Annual Increase), each month after the employee retires, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$166.26 for single party coverage for the retiree or \$332.52 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Annual Increase), total \$338.60 for single party coverage for the retiree or \$677.19 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

13.11.3.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.4 (Retiree Benefits for Employees Age 65 and Over) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$16.17 for single party coverage for the retiree or \$32.34 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of July 7, 2002:** Effective July 7, 2002, as provided in Section 13.10.8 (City Funding of

Health Benefits) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$102.00 for single party coverage for the retiree or \$204.00 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

- c. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$180.76 for single party coverage for the retiree or \$361.53 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

#### 13.11.4 **Retiree Medical Reimbursement Plan for Unrepresented Employees (Rep Units Z-2; Z-3; and Z-6) Who Retire on or After June 29, 2008**

13.11.4.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of July 1, 2008:** On July 1, 2008, as provided in Section 13.10.9 (Retiree Medical Plan for Unrepresented Employees), the City will reimburse the cost of Medical Insurance Premiums in an amount totaling \$297.08 for single party coverage for the retiree or \$544.16 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of July 1, 2009:** As of July 1, 2009, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.9 (Retiree Medical Plan for Unrepresented Employees), total \$335.45 for single party coverage for the retiree or \$593.64 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- c. **Reimbursement as of July 1, 2011:** As of July 1, 2011, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.9 (Retiree Medical



Plan for Unrepresented Employees), total \$391.32 for single party coverage for the retiree or \$673.27 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

- d. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$469.92 for single party coverage for the retiree or \$808.52 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

3.11.4.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of July 1, 2008:** As of July 1, 2008, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$138.81 for single party coverage for the retiree or \$277.62 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$172.98 for single party coverage for the retiree or \$345.96 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

#### 13.11.5 **Enrollment in City Group Plans**

Retiring employees may receive continuing health coverage in City sponsored group health plans subject to the limitations and co-pay amounts permitted by the health care providers.

### 13.12 **Fire Chief and Deputy Fire Chief Retiree Medical Plan**

Internal City of Berkeley candidates who promote and are appointed to the Fire Chief or Deputy Fire Chief classification, without a break in service, shall be eligible for the same Retiree Medical Plan as provided to sworn fire employees in Representation Unit B.

- 13.12.1 **Retiree Medical Benefits for External Appointments:** External City of Berkeley candidates appointed to the Fire Chief or Deputy Fire Chief classifications shall be covered by the Retiree Health Premium Assistance Plan described herein at Section 13.10 (Retiree medical Plan) et seq., except that the employee shall not be required to meet the eligibility requirements of sub-Sections 13.10.1(b) and 13.10.1(c) and instead credited with 15 years of qualifying years of service for eligibility in the Plan and shall receive benefits as a Representation Unit Z-1 employee.

### 13.13 Retiree Medical for Police Chief Classification

Internal City of Berkeley candidates who promote and are appointed to the Police Chief classification, without a break in service, shall be eligible for the same Retiree Medical Plan as provided to sworn police employees in Representation Units E and F.

- 13.13.1 **Retiree Medical Benefits for External Appointments:** External City of Berkeley candidates appointed to the Police Chief classification shall be covered by the Retiree Health Premium Assistance Plan described herein at Section 13.10 (Retiree medical Plan) et seq., except that the employee shall not be required to meet the eligibility requirements of sub-Sections 13.10.1(b) and 13.10.1(c) and instead credited with 15 years of qualifying years of service for eligibility in the Plan and shall receive benefits as a Representation Unit Z-1 employee.

### 13.14 Partially Subsidized YMCA Membership

The City currently provides a partially subsidized membership in the Berkeley YMCA for those employees who agree to pay the required monthly fee. Use of a YMCA membership by a City of Berkeley employee, as provided by this provision, is not part of the employee's work related duties, is not required for continued employment and is not considered part of a City sponsored physical fitness program. The City of Berkeley nor its Claims Administrator shall not be liable for any injury that may arise out of a City of Berkeley employee's participation in and use of a YMCA membership. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding.

### 13.15 Part-Time Employees Eligible for Full Benefits

Those part time employees who have been continuously employed by the City in benefitted part time career positions since prior to July 1, 1977 and who have not accepted a full time career position are eligible to participate in the City's health and dental insurance programs with the City's payment of premiums at the same level as for full time benefitted employees.



### 13.16 Probationary Periods for Unrepresented Classifications

The competitive appointment to a career classification will include a probationary period during which time the incumbent may be dismissed without right of appeal. The probationary period for unrepresented classifications varies from six (6) months of actual work hours (1040 hours for full time employees and 520 hours for half time) to one year of actual work hours (2080 hours for full time and 1040 hours for half time).

Presently, unrepresented classifications require a six (6) month probationary period except for the following unrepresented classifications which require a one year probationary period:

- (a) All classifications in Unit Z-1 in the career service; and
- (b) All classifications in Unit Z-2 in the career service.

### 13.17 Public Safety Uniform Allowance

- (a) Fire Uniform Allowance: Effective November 9, 2004, \$1,000 annual allowance. Effective December 1, 2015, \$1,100 annual allowance.
- (b) Police Uniform Allowance: Effective July 7, 2002, \$1,000 annual allowance.
- (c) To comply with CALPERS requirement, Union allowance payments shall be paid over twenty-six (26) equal biweekly installments instead of twice a year payment.

### 13.18 Regular “At-Will” Classifications

The following classifications are exempt from the career service and in accordance with the Personnel Ordinance (Berkeley Municipal Code Section 4.04.120), At-Will appointments are eligible to receive benefits:

- All department heads
- Assistant City Manager
- Assistant to the City Manager
- Assistant to the Mayor
- Assistant, Associate and Senior Management Analyst in the City Manager's Department and in the Office of Budget and Fiscal Management
- Budget Manager
- Capital Improvement Programs Manager
- Deputy City Manager
- Economic Development Manager
- Health Officer
- Legislative Assistant
- Police Review Commission Investigator
- Police Review Commission Officer
- Secretary to the Mayor, Administrative Secretary and Secretary in the Mayor's Office
- Supervising Psychiatrist

**13.19 City Manager Department Differential**

Assistant, Associate, ~~and~~ Senior Management Analysts, and Accounting Office Specialists III in the City Manager's Department and in the Office of Budget and Fiscal Management shall receive a 5% salary differential.

**13.20 Shift Differential**

Employees whose regular schedules meet the definition, as specified by Unrepresented Employee Manual Section 1.12 (Shift Differential), for shift differential, for the hours of 5:00 p.m. to 12:00 a.m., shall be paid their regular salary plus seven and one-half percent (7.5%) of their monthly salary per month. Those whose regular schedule meets the definition for shift differential, for the hours of 12:00 a.m. to 7:00 a.m., shall be paid their regular monthly salary plus ten percent (10%) of their monthly salary per month.

**13.21 SRIP II Disability Insurance**

The City shall pay the premium for the current cost of long term disability insurance for SRIP covered employees who are enrolled in the SRIP II (Supplementary Retirement and Income Plan).

**13.22 Vacation Schedules**

Unrepresented employees, except those confidential executive, management and professional employees in Section 13.20.1 (Confidential Executive Management and Professional Employees) below, shall be entitled to earn annual vacation leave as follows:

| Authorized Annual Vacation (in work weeks) | Years of Actual Benefitted Service                        |
|--------------------------------------------|-----------------------------------------------------------|
| 2-workweeks (FTE 80 hours)                 | During the first 3-years                                  |
| 3-workweeks (FTE 120 hours)                | During the 4 <sup>th</sup> through 11 <sup>th</sup> year  |
| 4-workweeks (FTE 160 hours)                | During the 12 <sup>th</sup> through 17 <sup>th</sup> year |
| 5-workweeks (FTE 200 hours)                | During the 18 <sup>th</sup> through 24 <sup>th</sup> year |
| 6 workweeks (FTE 240 hours)                | During the 25 <sup>th</sup> and subsequent years          |

- 13.22.1 **Confidential Executive, Management and Professional Employees:** Confidential executive, management and professional employees who were eligible under the City's Administrative Leave Policy are entitled to earn annual vacation leave as follows:

| Authorized Annual Vacation (in work weeks) | Years of Actual Benefitted Service                        |
|--------------------------------------------|-----------------------------------------------------------|
| 2-workweeks (FTE 80 hours)                 | During the first 2-years                                  |
| 3-workweeks (FTE 120 hours)                | During the 3 <sup>rd</sup> through 5 <sup>th</sup> year   |
| 4-workweeks (FTE 160 hours)                | During the 6 <sup>th</sup> through 17 <sup>th</sup> year  |
| 5-workweeks (FTE 200 hours)                | During the 18 <sup>th</sup> through 24 <sup>th</sup> year |

|                             |                                                  |
|-----------------------------|--------------------------------------------------|
| 6 workweeks (FTE 240 hours) | During the 25 <sup>th</sup> and subsequent years |
|-----------------------------|--------------------------------------------------|

- 13.22.2 **Director of Library Services and Deputy Director of Library Services:** Employees in the classifications of Director of Library Services and Deputy Director of Library Services are entitled to earn annual vacation Leave as follows:

| Years of Actual Benefited Service                  | Authorized Annual Vacation Accrual |
|----------------------------------------------------|------------------------------------|
| Through the first 5 Years of Service               | 3 weeks (120 Hours)                |
| Beginning the 6th through 17th Years of Service    | 4 weeks (160 Hours)                |
| Beginning the 18th through 24th Years of Service   | 5 weeks (200 Hours)                |
| Beginning the 25th and subsequent Years of Service | 6 weeks (240 Hours)                |

### 13.23 Special Pay for Camps Personnel

When an employee, who has a valid Red Cross Senior Lifesaving Certificate and occupies a camps classification, is specifically assigned in writing by the Camps Manager or an authorized representative, with approval by the City Manager, to temporarily serve as a lifeguard for one day or more, said employee shall be paid a five percent (5%) differential, more than the employee's current salary.

### 13.24 Hazard Premium Pay for Clerical Mental Health Personnel

Clerical employees who are regularly assigned to work in Mental Health Programs, in direct contact with clinic patients, shall receive a five percent (5%) differential. This Hazard Premium Pay shall be reported to CalPERS as "Hazard Premium" under PERL Section 571 (Definition of Special Compensation), (4) Special Assignment Pay.

### 13.25 Longevity Pay

Effective the first full pay period after Council adoption, employees in Representation Units Z-2, Z-3 and Z-6 who complete nineteen (19) years of service shall receive a three percent (3%) differential beginning with the anniversary date of beginning the twentieth (20th) year of service and shall apply to all hours in a paid status. Longevity pay shall be paid at the beginning of the pay period following completion of the 20 years of service. This Longevity Pay shall be reported to CalPERS as "Longevity Pay" under PERL Section 571.a.(1) Incentive Pay.

### 13.26 Longevity Pay for Confidential and Executive Management Employees

Effective the first full pay period after Council adoption, and except as noted below in Section 13.24.1 (Longevity Pay for Unit Z1 Fire Chief and Deputy Fire Chief), employees in Representation Unit Z-1 who have completed nineteen (19) years of service shall receive a three percent (3%) differential beginning with the

anniversary date of beginning the twentieth (20th) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

**13.26.1 Longevity Pay for Unit Z1 Fire Chief and Deputy Fire Chief:** The longevity pay for the Fire Chief and Deputy Fire Chief classifications is intended to provide the same benefits as the Longevity Pay for represented sworn fire employees under the Berkeley Fire Fighters Association (Unit B) Memorandum of Understanding.

~~13.26.1~~ **13.26.2 Longevity Pay for Unit Z1 Police Chief and Deputy Police Chief:** The longevity pay for the Police Chief and Deputy Police Chief classifications will provide the same benefits as the Longevity Pay for represented sworn police employees under the Berkeley Police Association (Units E & F) Memorandum of Understanding.

### 13.27 Automobile Allowance for Police Chief

The City Manager may authorize an automobile allowance of \$400 per month in lieu of a City provided vehicle for an employee appointed after November 1, 2009 to the classification of Police Chief.

### 13.28 Video Display Terminal Screening/Glasses

The City offers VDT screening and glasses as medically required, every two years, to employees who in the course of their employment operate VDT equipment more than four hours in a work day.

### 13.29 Emergency Medical Technician

~~Effective September 13, 2015,~~ Unit Z-1 Fire Chief and Deputy Fire Chief who maintain current Emergency Medical Technician (EMT) certification shall receive thean same EMT pay differential ~~as sworn fire of four percent (4.0%) employees under the Berkeley Fire Fighters Association (Unit B) Memorandum of Understanding.~~

### 13.30 Shoe Allowance

An annual allowance of two hundred dollars (\$200) shall be paid to benefitted employees in the classification of Janitor, Groundskeeper, Laborer, and Solid Waste Worker.

### 13.31 Training Differential

**13.31.1 Trainer Differential:** Effective July 1, 2016, any employee, excluding those classifications that require training as part of the assignment (e.g. supervisors), designated by the department and approved by the Director of Human Resources as qualified trainers or instructors for specific specialized skills (identified by the departments in consultation with Human Resources) who is required to provide formalized training to a new employee or an employee who management has identified as needing formalized training, shall receive a five percent (5%) differential in salary for that time served in such capacity. Such assignment shall

be in writing by the department and approved by the Director of Human Resources. This Training Differential will be reported to CalPERS as Training Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported

“compensation earnable” in California Government Code Section 20635.

- 13.31.2 **Higher Class Training Differential:** For training purposes, employees not meeting all of the minimum qualifications of a higher classification may be temporarily assigned for a minimum of one (1) week, to perform the duties of the higher classification and will receive a five percent (5%) increase in their current base salary for the duration of the temporary assignment. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments shall be approved in advance by the City Manager, or his or her designee by an Employee Transaction Form, and forwarded to the Human Resources Department for inclusion in the employee's official Personnel file.
- 13.31.3 **Trainee Differential:** For training purposes and to enhance an employee skills and abilities, any employee designated in advance by the department director and approved by the Director of Human Resources to perform duties that are outside of the employee's classification, shall receive a three percent (3%) differential in salary for that time served in such capacity. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments shall be approved in advance by the City Manager, or his or her designee by an Employee Transaction Form, and forwarded to the Human Resources Department for inclusion in the employee's official Personnel file.

### 13.32 Summary of May 2017 Changes to the Unrepresented Employee Manual

- Included reference to Unrepresented Unit Z-9 (Deputy Director Rent Stabilization Program).
- Former Section 1.14 (One-Time Allocation) - deleted obsolete provision.
- Section 5.2 (Floating Holidays) - corrected omission of one (1) day.
- Section 8.3 (Hourly Rated Employees in Lieu of Benefits) – codified existing benefit.
- Section 13.11 (Reimbursement Plan) – revise plan as reimbursement.
- Section 13.12 (Fire Chief and Deputy Fire Chief Retiree Medical Plan) – clarified benefit for internal and external appointments.
- Section 13.13 (Retiree medical for Police Chief Classification) – clarified benefit for internal and external appointments.
- Section 13.18 (Regular “At-Will” Classifications) – deleted duplicate classification.
- Section 13.31.3 (Trainee Differential) – included provision authorizing differential for employees assigned duties outside of classification.

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### 13.33 Summary of October 2017 Changes to the Unrepresented Employee Manual

- Section 8.4.5 Miscellaneous Employees Classic Employee Pension Contribution through a 20516 Contract Amendment – added subsection 8.4.5.3
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### 13.34 Summary of July 2018 Changes to the Unrepresented Employee Manual

- Section 1.14 (One-Time Allocation) - \$2,000 paid August 17, 2018.
  - Section 8.1.3 (Medical Contribution Executive Managers) – Cost-share of \$50.00 for medical contributions by all department heads, City Manager and Deputy City Manager effective July 1, 2019.
  - Section 8.4.6.4 – Correct typographical error.
  - Section 11.5 (Written Reprimand for Non-Safety Employees) – Include provision allowing written rebuttal.
  - Section 12.3.1 (Compensation Complaints) – Include provision that specifies appeal time lines.
  - 13.1 (Administrative Leave) – Clarify leave extended to career and benefitted at-will employees; benefit is prorated based on assignment; and codifies practice that unused administrative leave rolls into vacation.
  - 13.24 (Hazard Premium Pay for Clerical Mental Health Personnel) – Clarify pay is reportable to CalPERS.
  - 13.25 (Longevity Pay) – Include CalPERS reportable section.
  - 13.30 (Shoe Allowance) – Clarify benefit extended to benefitted employees.
  - Shoe Allowance
  - 13.31 Training Differential
  - 13.32 Summary of July 2018 Changes to the Unrepresented Employee Manual
  - 13.33 Summary of October 2017 Changes to the Unrepresented Employee Manual
- 

### 13.35 Summary of July 2020 Changes to the Unrepresented Employee Manual

| Section       | Change                                                                                                                                                                                                                                                                       |
|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Term Duration | Parties agree to a one-year term Agreement ending on June 30, 2021                                                                                                                                                                                                           |
| Living Wage – | NEW LANGUAGE: The City agrees to pay each of its direct employees an hourly wage of no less than \$18.33 effective the first full pay period in January 2021. The City agrees to pay each of its direct employees an hourly wage of no less than \$19.33 effective the first |



| Section                                                      | Change                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                              | full pay period in June 2021. If the Living Wage increases beyond \$19.33, as outlined in the Berkeley Municipal Code effective July 2021, the City shall implement the increases the first full pay period in September 2021 and July 1st of each year thereafter.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Additional City Emergency Paid Sick Leave Allocation         | NEW LANGUAGE: The City shall provide an additional 80 hours of emergency paid sick leave to be used for COVID-19 related reasons as listed in the Emergency Paid Sick Leave Act. Part-time employees receive a prorated number of hours. In order to use this additional City emergency paid sick leave, the employee must first exhaust all hours that they received under the Emergency Paid Sick Leave Act. The City will use a specific pay code for this additional emergency paid sick leave and these additional hours will be available until June 30, 2021. These additional 80 emergency paid sick leave hours shall have no cash value and may not be used towards any CalPERS retirement service credit as outlined 4.13 of the Unrepresented Employees Manual.                                                                                                                                                                                               |
| Additional Floating Holidays                                 | NEW LANGUAGE: For employees who were required to remain in the workplace from March 17, 2020 – June 1, 2020, the City will provide 8 hours of floating holidays for every 40 hours of regularly scheduled hours worked in the workplace up to a maximum of 32 hours of floating holiday. The City will credit these floating holiday hours in the first full pay period after adoption of the Agreement for classifications which, due to the nature of the assignment, require backfill, employees will be paid a stipend in the amount of the earned floating holiday hours up to a maximum of 32 hours the first full pay period in August 2020. The City will use a specific pay code for these additional floating holiday hours will be available until June 30, 2021. These additional 32 hours of floating holiday shall have no cash value and may not be used towards CalPERS retirement service credit as outlined 4.13 of the Unrepresented Employees Manual. |
| Additional language on Layoffs for the Term of the Agreement | NEW LANGUAGE: The City recognizes the important role that the employee workforce plays in delivering public services; therefore, during the period ending June 30, 2021 the City agrees to not layoff any Unrepresented career employees. However, should the City determine that its expenditures exceed its revenues during the period ending June 24, 2021, the City may                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |



| Section              | Change                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                      | notice the Unrepresented group in writing and the Unrepresented group shall be provided an opportunity to meet and discuss one-time cost savings and alternatives such as furloughs, VTO, etc. Nothing in this section requires the City to retain positions (filled or vacant) where state, federal or grant funding has been reduced or eliminated and would require the City to backfill such positions. All other provisions on Layoffs remain unchanged. |
| Provisional Employee | No employees shall hold a provisional appointment in the same position for more than 12 months. The City Manager may extend the provisional appointment beyond this 12- month limitation with the mutual agreement of the parties.                                                                                                                                                                                                                            |
| Limited Reopener     | If during the fiscal year 2020 -2021 the City reaches agreement with SEIU or extends to other unrepresented employees an opportunity to confer on an across the board Cost of Living Adjustment (COLA) increase and/or an additional City contribution towards medical premiums, the City agrees to a limited reopener to meet and discuss with the Unrepresented group on these increases.                                                                   |

### 13.36 Summary of July 2023 Changes to the Unrepresented Employee Manual

- Add second sentence to section 1.6.
- Add sections 3.3.6, 3.3.7, 3.3.8, and 13.26.2.
- Add “group” to section 13.4.
- Add “Accounting Office Specialists III” to section 13.19.
- Revise section 13.29.





Human Resources Department

CONSENT CALENDAR

July 11, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Aram Kouyoumdjian, Director of Human Resources  
 Subject: Supplemental Military Leave Compensation Policy

RECOMMENDATION

Adopt a Resolution extending Resolution No. 63,646-N.S. to offer the City's supplemental military leave compensation benefit retroactively from June 1, 2019 to June 30, 2025 to provide additional wages to supplement an employee's military pay and allowances for a period not to exceed two (2) years that must be taken within 36 months of the leave request for employees called up to involuntary active military service.

To receive the retroactive payment the employee must have been employed with the City of Berkeley at the time of active duty and remained employed with the City of Berkeley at the time of payment.

FISCAL IMPACTS OF RECOMMENDATION

The current supplemental military leave policy expired on May 31, 2019. Since the policy expired, employees called to active duty no longer have monetary and medical benefits in place for up to one (1) year or longer to support themselves and their family during deployment. This has an adverse impact on the employee and the employee's family at a time of high stress and demand.

The financial impact of the supplemental military leave policy will vary depending upon the number of employees who are ordered to involuntary active military service and upon their military and City compensation. If no additional employees are ordered to involuntary active military service, then there is no additional cost to the City. Based on experience with prior deployments, if employees are ordered to involuntary active military service, the additional cost to the City should not exceed \$20,000 per employee and would be absorbed within the affected department's budget. If the employee is from either the Police or Fire Department, then the cost would be borne by the General Fund.

CURRENT SITUATION AND ITS EFFECTS

The involuntary active duty call ups of military reservists have been more extensive and for a longer duration than staff anticipated when it recommended adoption of a supplemental military leave compensation policy. The City has experienced military reservists being called to involuntary active duty for more than one deployment within a short period of time. There is no predictability of the duration or the frequency of the military service call to active duty.

The current supplemental military leave compensation policy was adopted through Resolution No. 63,646-N.S. on April 24, 2007. The supplemental military leave policy provides different benefits depending on how long the employee has worked for the City. The supplemental military leave policy provides:

1. In addition to the 30 days fully paid annual military leave provided under the California Military and Veterans Code, the City will pay additional wages to supplement an employee's military pay and allowances to an amount equal to the employee's regular salary for a period not to exceed two (2) years that must be taken within 36 months of the initial call up order for employees who have at least one (1) year of employment with the City and who have been called up to involuntary active service. However, if the twelve months have elapsed since the employee has returned from deployment and is redeployed, the employee will start a new cycle of Supplemental Military Leave Benefits as described above.
2. The City will pay additional wages to supplement an employee's military pay and allowances in an amount equal to one-half (1/2) of the employee's regular salary for a period not to exceed two (2) years that must be taken within 36 months of the initial call up order for employees with less than one (1) year in the career service with the City and who have been called up to involuntary active service.

#### BACKGROUND

The City provides military leave benefits as required under the California Military and Veterans Code Section 389 et seq., and under the Federal Uniformed Services Employment and Re-employment Rights Act (USERRA) of 1994, 38 U.S.C. Sections 4301 et seq. The United States Department of Labor's Veterans' Employment and Training Service issued final regulations to clarify USERRA's application effective January 18, 2006. Under State law, the City is required to and currently does pay employees with one (1) year of City employment their full salary and benefits for the first 30 days of their military service each year. The City is also required under Federal law to continue to provide fully paid health insurance benefits for up to one (1) year while the employee is on military leave, since it provides such a benefit to City employees on Parental Leave who have at least one (1) year of career City service. Under Federal and California State law, retirement benefits continue to accrue to employees on active duty.

Since the events of September 11, 2001, the City Council has adopted several resolutions on supplemental military leave compensation. The City's policy on supplemental military leave compensation was last updated on April 24, 2007 and has been incorporated in Resolution No. 63,646-N.S. The supplemental military leave compensation benefit provides additional wages to supplement an employee's military pay and allowances to an amount equal to the employee's regular salary. Without the temporary supplemental military leave benefit, employees would not be entitled to receive their full pre-military leave net pay. The supplemental military leave compensation policy expired on May 31, 2019 and as result our employees, who were called to serve in our nation's military, have gone without receiving the supplemental military leave compensation.

RATIONALE FOR RECOMMENDATION

To ensure continuous implementation of a supplemental military leave benefit policy that is fair and equitable, and to alleviate financial hardships those employees and their families will experience as a result of the employee being ordered to involuntary active military service.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Aram Kouyoumdjian, Director of Human Resources, (510) 981-6807.

Attachment:

1: Resolution

RESOLUTION NO. XXXX

SUPPLEMENTAL MILITARY LEAVE COMPENSATION POLICY

WHEREAS, since September 11, 2001, the City Council has adopted several Resolutions that provided for supplemental military leave compensation to employees who have been involuntarily called up to active military service; and

WHEREAS, the City's regular military pay policy complies with the California Military and Veterans Code Section 389 et seq., and under the Federal Uniformed Services Employment and Re-employment Rights Act of 1994, 38 U.S.C. Sections 4301 et seq. in that it provides paid military leave to a maximum of thirty calendar days per fiscal year to employees who have been with the City for at least one year and who are ordered to active military service; and

WHEREAS, on September 21, 2004 the City Council adopted Resolution No. 62,648–N.S. that provided that the City would pay additional wages to supplement an employee's military pay and allowances to an amount equal to the employee's regular salary for a period not to exceed two (2) years that must be taken within 36 months of the initial call up order for employees who have at least one (1) year of employment; and

WHEREAS, this same Resolution No. 62,648–N.S. provided that the City will pay additional wages to supplement an employee's military pay and allowances in an amount equal to one-half (1/2) of the employee's regular salary for a period not to exceed two (2) years that must be taken within 36-months of the initial call up order for employees with less than one (1) year in the career service with the City who have been called up to involuntary active service; and

WHEREAS, on April 24, 2007 the City Council adopted Resolution No. 63,646–N.S. that provided that the City would pay additional wages to supplement an employee's military pay and allowances to an amount equal to the employee's regular salary for an aggregate period of 24-months that must be taken within 36-months for employees called for active military service and to extend the City's supplemental military leave compensation benefit to May 31, 2008; and

WHEREAS, this same Resolution No. 63,646–N.S. provided that if 12 months have elapsed since the employee has returned from deployment and is redeployed, the employee will start a new cycle of supplemental military leave compensation benefits to provide a salary supplement for an aggregate of 24 months that must be taken within 36 months of the subsequent deployment; and

WHEREAS, this same Resolution No. 63,646–N.S. provided that the City will pay additional wages to supplement an employee's military pay and allowances in an amount equal to one-half (1/2) of the employee's regular salary for a period not to exceed two (2) years that must be taken within 36 months of the initial call up order for employees with

less than one (1) year in the career service with the City who have been called up to involuntary active service; and

WHEREAS, the City Council adopted various resolutions to extend the Supplemental Military Leave Benefit on an annual basis, starting on April 24, 2007 (Resolution No. 63,646-N.S.); May 20, 2008 (Resolution No. 64,063-N.S.); April 21, 2009 (Resolution No. 64,398-N.S.); April 27, 2010 (Resolution No. 64,851-N.S.); April 26, 2011 (Resolution No. 65,239-N.S.); May 15, 2012 (Resolution No. 65,701-N.S.); May 7, 2013 (Resolution No. 66,124-N.S.); May 6, 2014 (Resolution No. 66,564-N.S.); May 12, 2015 (Resolution No. 67,017-N.S.); and April 26, 2016 (Resolution No 67,438-N.S.);

WHEREAS, on May 16, 2017, the City Council adopted Resolution No. 67,963-N.S. to extend the Supplemental Military Leave Benefit until May 31, 2019, when it could be reevaluated;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Resolution No 63,646–N.S. is amended to extend the City’s supplemental military leave compensation benefit retroactively from June 1, 2019 to June 30, 2025, to provide a salary supplement for an aggregate of 24-months that must be taken within 36-months for employees who have at least one (1) year of employment with the City and who have been called up to involuntary active service. To receive the retroactive payment the employee must have been employed with the City of Berkeley at the time of active duty and remained employed with the City of Berkeley at the time of payment.

BE IT FURTHER RESOLVED that if twelve months have elapsed since the employee has returned from deployment and is redeployed to involuntary active military service, the employee will start a new cycle of supplemental military leave compensation benefits to provide a salary supplement for an aggregate of 24 months that must be taken within 36 months of the subsequent deployment.

BE IT FURTHER RESOLVED that the City will pay additional wages to supplement an employee’s military pay and allowances in an amount equal to one-half (1/2) of the employee’s regular salary for a period not to exceed two years that must be taken within 36 months of the initial call up order for employees with less than one year in the career service with the City who have been called up to involuntary active military service.

BE IT FURTHER RESOLVED that the policy is to remain in effect until June 30, 2025 when it may be re-evaluated based on the situation at that time.







Office of the City Manager

CONSENT CALENDAR  
July 11, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront

Subject: Accepting grant funds from the Alameda County Transportation Commission for the Berkeley Pier Water Transportation / Ferry Project Design Phase

RECOMMENDATION

Adopt a Resolution to accept the Alameda County Transportation Commission grant allocation for the design phase of the Berkeley Pier Water Transportation/ Ferry Project in the amount of \$5,138,685, confirming the City's commitment to the Alameda County Transportation Commission grant requirements, and authorizing the City Manager to execute the associated grant agreement and amendments.

FISCAL IMPACTS OF RECOMMENDATION

The grant provides \$5,138,685 of Alameda County Transportation Commission administered funds to support the development of plans, specifications and cost estimates, as well as environmental review, for the Berkeley Pier Water Transportation / Ferry Project. Required matching funds shall be provided by other grants, City staff costs, and contributions from the Water Emergency Transportation Authority (direct contributions and staff time).

CURRENT SITUATION AND ITS EFFECTS

On May 31, 2022, Council adopted a resolution authorizing the City Manager to submit grant applications to the Alameda County Transportation Commission (Alameda CTC) for funding through the County's Fiscal Year (FY) 2024 – FY 2028 Comprehensive Investment Plan, and authorizing the City Manager to execute agreements as needed for accepting the awarded grant funds. This included an application for the Berkeley Pier Water Transportation / Ferry Project for an amount up to \$3,000,000 (Reso No. 70,399-N.S.).

On December 13, 2022, Council adopted a resolution authorizing the City Manager to execute grant contracts with the State Coastal Conservancy (SCC) to receive the FY2022 State Budget allocation of \$15 Million for improvement projects at the Berkeley Waterfront, which includes \$2,961,000 allocated for the environmental review and preliminary design of the Berkeley Pier / Ferry Project (Reso No. 70,629-N.S.). The allocation of \$2.961M from the SCC allowed the City to modify its Alameda CTC grant

application to increase the grant request from \$3M to \$5,138,685 to fund the development of Project plans, specifications and cost estimates. At its meeting on May 25, 2023, Alameda CTC awarded \$5,138,685 in Alameda CTC Administered funds to the City of Berkeley for the implementation and delivery of the design phase (development of Project plans, specifications and cost estimates, PSE) and environmental review.

Alameda CTC has requested that all grantees adopt a post-award resolution to reflect the final award value, and to confirm:

- City's commitment to secure matching funds against the awarded Alameda CTC administered funds; and
- City's commitment to provide any additional funding required to delivered the awarded phase of the Project, with an understanding the same shall not be funded with additional Alameda CTC administered funds; and
- City's commitment to implement the awarded phase(s) of the Project as described in the funding application and the subsequent funding agreement between Alameda CTC and the City; and
- City's commitment to comply with the Alameda CTC Project Funding Agreement; and
- City's commitment to comply with the applicable requirements set forth in Alameda CTC's Local Business Contract Equity ("LBCE") Project for professional services and construction contracts funded with Measure B, Measure BB and/or VRF funds, and abide by the LBCE procedures in the applicable solicitations and contracts; and
- There is no pending or threatened litigation that might in any way adversely affect City's ability to implement and deliver the proposed Project; and
- Authorization for its City Manager or designee to execute the agreement; and
- City will provide Alameda CTC with a fully-executed copy of the resolution confirming these commitments.

### BACKGROUND

In 2018, the San Francisco Bay Area Water Emergency Transportation Authority (WETA) staff met with City of Berkeley staff to begin a dialogue about potential new ferry service in Berkeley. In early 2019, WETA and the City allocated funding and entered into a Memorandum of Understanding (MOU) for the conceptual planning phase of the Project. The City conducted a year-long study to identify technical constraints and to engage the community and receive public feedback. On December 7, 2021, City staff presented the preferred concept of a dual-purpose recreation and ferry pier to Council.

The Alameda CTC administers funding programs for projects and programs that benefit the Alameda County transportation system, consisting of 2000 Measure B, 2010 Vehicle Registration Fee, 2014 Measure BB, CMA-TIP, and Transportation Fund for Clean Air

Programs. Prior to the receipt of any Alameda CTC funds, the City shall be required to enter into a Project Funding Agreement with Alameda CTC.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The design phase of the Berkeley Pier Water Transportation / Ferry Project has no climate impacts. The City's Climate Action Plan identified public transit as a more sustainable form of transportation, and sets a goal to expand under-used modes of transportation, such as ferry service at the Berkeley Marina that would connect to San Francisco and other locations.

RATIONALE FOR RECOMMENDATION

Grant funding allows the City to develop the plans, specifications and cost estimates, as well as conduct environmental review, for the Berkeley Pier Water Transportation / Ferry Project.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation & Waterfront, (510) 981-6700  
Liza McNulty, Project Manager, Parks, Recreation & Waterfront, (510) 542-4131

Attachments:  
1: Resolution

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

ACCEPTING FUNDS FROM THE ALAMENDA COUNTY TRANSPORTATION  
COMMISSION FOR THE BERKELEY PIER WATER TRANSPORTATION / FERRY  
PROJECT

WHEREAS, the Alameda County Transportation Commission (“Alameda CTC”) administers funding programs for projects and programs that benefit the Alameda County transportation system, consisting of 2000 Measure B, 2010 Vehicle Registration Fee, 2014 Measure BB, CMA-TP, and Transportation Fund for Clean Air Programs, and such funding is collectively defined as and shall be referenced herein as the “Alameda CTC Administered Funds”; and

WHEREAS, City of Berkeley submitted a funding application (“application”) to the Alameda County Transportation Commission (“Alameda CTC”) for the design phase of the Berkeley Pier Water Transportation / Ferry Project (“Project”); and

WHEREAS, the funding will facilitate the design phase of the Project, including the development of plans, specifications and cost estimates (“PSE”) and environmental review; and

WHEREAS, by action of the Alameda CTC at its meeting held on May 25, 2023, Alameda CTC awarded \$5,138,685 in Alameda CTC administered funds to the City of Berkeley for the implementation and delivery of the PSE and environmental review phase (“Awarded Phase”) of Project; and

WHEREAS, prior to receipt of any Alameda CTC Administered Funds, City of Berkeley shall be required to enter into a Project Funding Agreement with Alameda CTC for the Project (“Agreement”) based on Alameda CTC’s form therefor, which Agreement shall set forth certain project-specific requirements applicable to the Project; and

WHEREAS, as part of the requirements to receive Alameda CTC Administered Funds awarded to the Project, Alameda CTC requires a resolution accepting the awarded funding to be adopted by the City of Berkeley’s governing body confirming the following:

1. City of Berkeley’s commitment to secure matching funds against the awarded Alameda CTC Administered Funds; and
2. City of Berkeley’s commitment to provide any additional funding required to deliver the Awarded Phase of Project, with an understanding the same shall not be funded with additional Alameda CTC Administered Funds; and
3. City of Berkeley’s commitment to implement the Awarded Phase of Project as described in the funding application and the subsequent funding agreement between Alameda CTC and the Fund Recipient; and
4. City of Berkeley’s commitment to comply with the Agreement; and
5. City of Berkeley’s commitment to comply with the applicable requirements set forth in Alameda CTC’s Local Business Contract Equity (“LBCE”) Program for professional services and construction contracts funded with Measure B,

Measure BB, and/or VRF funds, and abide by the LBCE procedures in the applicable solicitations and contracts.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that City of Berkeley agrees to accept award of \$5,138,685 in Alameda CTC Administered Funds; and

BE IT FURTHER RESOLVED that City of Berkeley, by adopting this resolution, does hereby state that:

1. City of Berkeley will provide a minimum of \$5,138,685 in matching funds for the design phase, anticipated to be from a combination of City, other grants and the San Francisco Bay Area Water Emergency Transportation Authority; and
2. City of Berkeley understands that the City shall be responsible to provide any additional funding required to deliver the Awarded Phase of Project, and the same shall not be funded with additional Alameda CTC Administered Funds; and
3. Awarded Phase of the Project will be implemented as described in the Application, Agreement, and in this resolution; and
4. City of Berkeley will comply with the Agreement; and
5. City of Berkeley will comply with the applicable requirements set forth in Alameda CTC's LBCE Program; and

BE IT FURTHER RESOLVED that by accepting the award, the City of Berkeley does not commit to approving the construction of the Berkeley Pier Water Transportation / Ferry Project and the City reserves its full discretion to mitigate environmental impacts, select other feasible alternatives that will avoid environmental impacts, balance the benefits of any future actions against the environmental impacts, or decline to carry out the Project, all based upon information generated by the environmental review process;

BE IT FURTHER RESOLVED that City of Berkeley hereby confirms that there is no pending or threatening litigation that might in any way adversely affect City's ability to implement and deliver the proposed Project; and

BE IT FURTHER RESOLVED that City of Berkeley authorizes its City Manager, or designee, to execute the Agreement; and

BE IT FURTHER RESOLVED that City of Berkeley shall provide Alameda CTC with a fully-executed copy of this Resolution.





Office of the City Manager

CONSENT CALENDAR  
July 11, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront

Subject: Contract No. 32000188 Amendment: GSI Environmental Inc. for On-Call Environmental Consulting Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000188 with GSI Environmental Inc. for on-call environmental consulting services to increase the contract amount by \$75,000 for a new not to exceed amount of \$225,000 and extend the contract term from December 20, 2023 to June 30, 2025.

FISCAL IMPACTS OF RECOMMENDATION

This on-call contract is approaching the currently authorized not-to-exceed amount. Additional funding of \$75,000 for this on-call contract is included in the FY 2023 and FY 2024 California Statewide Park Development and Community Revitalization Program (SPP), Proposition 68 grant budget (Fund 336).

CURRENT SITUATION AND ITS EFFECTS

The Department of Parks, Recreation, and Waterfront (PRW) received \$5 million in CA SPP Proposition 68 grant funding to convert the former Santa Fe Right-of-Way from Blake Street to Ward Street into a new park. This project requires environmental services to remediate the contaminated soils left behind by its former railroad use. PRW selected GSI Environmental Inc. to provide the required environmental services for the project.

Additional services by GSI Environmental Inc. are needed for the Santa Fe Trackbed to Park Conversion project to complete existing tasks, add services based on requirements from the California Department of Toxic Substances Control, maintain the project's schedule, and meet the original grant project completion deadline of December 31, 2025. Staff recommends increasing the contract length to June 30, 2025 for GSI's scope of work for this project. This work is required in order to proceed with design and construction services of the Santa Fe Trackbed to Park Conversion project.

BACKGROUND

On July 24, 2019, the City issued a Request for Qualifications (RFQ) for On-Call Environmental Consulting Services (Specification No. 19-11329-C). The City received Statements of Qualifications (SOQs) from 12 firms. After evaluation of the SOQs by the

review panel, GSI Environmental Inc., Wood Environment and Infrastructure Solutions, Inc., and Northgate Environmental Management Inc. were among the firms selected.

On April 21, 2020, Council authorized a contract for On-call Environmental consulting services with GSI Environmental Inc. in an amount not to exceed \$150,000 for the period November 1, 2019 through November 30, 2022 (Resolution No. 69,171-N.S.).

On December 12, 2022, the City Manager authorized an extension of the On-call Environmental consulting services contracts from November 30, 2022 to December 30, 2023.

This is a Citywide contract supporting multiple departments as needed to assist with ongoing environmental compliance, consulting needs for planned or ongoing projects, and for unanticipated environmental consulting needs.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The services GSI Environmental Inc. provides will clean up the contaminants left behind by the former railroad that ran between Blake Street and Ward Street along Acton Street and allow the City to open a new park for all to safely enjoy and recreate. There are no identified climate impacts.

RATIONALE FOR RECOMMENDATION

GSI Environmental Inc. includes highly-qualified staff as previously evaluated through the City's contracting process. They have the required expertise in remediating former railroad sites, and complement the personnel and capacity available in the Parks, Recreation and Waterfront Departments to complete the Santa Fe Trackbed to Park Conversion project. City staff does not have the expertise to provide environmental consulting services.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Scott Ferris, Director, Parks Recreation & Waterfront, (510) 981-6700  
Evelyn Chan, Supervising Civil Engineer, PRW, (510) 981-6430

Attachments:

1: Resolution: GSI Environmental Inc.



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

AMENDMENT TO CONTRACT NO. 32000188 FOR ON-CALL ENVIRONMENTAL CONSULTING SERVICES BY GSI ENVIRONMENTAL INC.

WHEREAS, on July 24, 2019 by Resolution No. 69,171-N.S. the City Council authorized Contract No. 32000188 with GSI Environmental Inc. in an amount not to exceed \$150,000 for on-call environmental consulting services for various citywide services and needs through November 30, 2022; and

WHEREAS, on December 12, 2022, the City Manager authorized the extension of the on-call contract from November 30, 2022 to December 30, 2023; and

WHEREAS, City staff does not have the expertise to provide environmental consulting services; and

WHEREAS, the current contract not to exceed amount has been depleted and the City has need of GSI Environmental Inc's continued environmental consulting services through June 30, 2025; and

WHEREAS, additional funding of \$75,000 for this on-call contract is included in the FY 2023 and FY 2024 California Statewide Park Development and Community Revitalization Program (SPP), Proposition 68 grant budget (Fund 336).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32000188 with GSI Environmental Inc. for environmental consulting services increasing the amount by \$75,000 for a revised contract amount not to exceed \$225,000, and extending the contract to June 30, 2025.





Office of the City Manager

CONSENT CALENDAR

July 11, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Chief of Police

Subject: Contract No. 32300022 Amendment: Public Safety Family Counseling Group Inc. for Additional Critical Incident Stress Management (CISM), Education and Counseling Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32300022 with Public Safety Family Counseling Group Inc. to provide additional CISM Peer Support Team support, education and counselling services, for a total amount not to exceed \$150,000 for a total contract amount not to exceed \$200,000, and extending the term through June 30, 2026.

FISCAL IMPACTS OF RECOMMENDATION

The amendment will add \$150,000 to this contract to cover the continuation of necessary support and services through FY2026. Funds for this contract will be allocated in General Fund, budget code 011-71-701-801-0000-000-421-612990.

CURRENT SITUATION AND ITS EFFECTS

Providing public safety employees with ongoing CISM, Peer Support Team development, education and counseling services is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared City. The additional funding will allow the Berkeley Police Department (BPD) to prioritize employee well-being and stress tolerance, which aligns with recommendation 5.2, Invest in Mental & Physical Health Services for Employees on the City Manager's Employer of Choice Roadmap.

In 2020, BPD contracted with the Psychological Services Group (PSG), for critical incident stress management, and peer support training following the suicide of a police officer and the unexpected death of a second officer. PSG was owned by Elizabeth Dansie, who had over 30 years' experience providing clinical support to California law enforcement agencies drawing on decades of experience responding to similar tragedies. BPD sought to provide immediate and ongoing support to our employees to navigate the loss of our staff and provide a safety net for others struggling with the

trauma experienced during a career in law enforcement. PSG was known as the gold standard for critical incident response and education through peer to peer defusing and facilitation of critical incident stress debriefings.

In 2021, with the guidance of PSG staff, BPD implemented a new peer support policy, created a new peer support team, and set out to train 24 peer support officers following the national curriculum developed by the International Critical Incident Stress Foundation and supported by the International Association of Chiefs of Police. Nearly all team members have successfully completed the training and are actively engaged with our employees. Peer Support Team members are available 24/7, along with clinicians to provide immediate support and resources after a critical incident or employee injury. This program has seen great engagement and serves as a proactive effort to reduce the stigma that can be a barrier to employees seeking help when in crisis.

In 2022, PSG changed names and ownership and is now known as Public Safety Family Counseling Group Inc. (PSFCG). Due to the overwhelming success of the program, BPD contracted with PSFCG through June 30, 2022 and waived competitive solicitation based on the need to provide continuity of care, ongoing CISM services, education, and training to our employees. Through this contract BPD has benefited from the collaboration with more than a dozen other Bay Area law enforcement agencies through PSFCG quarterly regional training. It is imperative that we continue to provide these valuable resources to our employees.

### BACKGROUND

It is well known that those in law enforcement occupations experience a variety of adverse exposures to life threatening situations, traumatic events, witnessing violence and assaults, and other compounding adverse incidents. These exposures can increase the potential for suicidal ideation such as depression and hopelessness. A 2018 study showed that police officers are more likely to die by suicide than in the line of duty. The study cites the discrepancy between suicide rates among the general population and first responders are rooted in unaddressed shame and stigma associated with suicide and a lack of research and resources for first responders dealing with mental health challenges as well as growing pressure and stress from the pandemic. According to CDC data, suicide rates for the general population declined by 3 percent, from 2019 to 2020, whereas rates among first responders showed moderate to no decrease from 2017 to 2020. In 2020, 116 police officers died by suicide and 113 died in the line of duty. Researchers suggest that the 2020 numbers are likely an undercount due to stigma and shame, which may have caused a lack of reporting. In 2021, 46 officers were fatally shot, where more than triple that (140) committed suicide.

In June 2021, BPD participated in a National Wellness Survey for public safety personnel. The survey was conducted by the U.S. Marshals Service, Fairfax County PD, and Nova Southeastern University. The survey was designed to assess the impact of public safety work on individual well-being. Of the 199 employees (sworn officers and

public safety dispatchers) invited to complete the survey, 48 (24%) participated. The survey found in part that 52% of respondents indicated some degree of depression, 73% were feeling discouraged about the future, 10% received scores representing clinical significance on the PTSD checklist, 60% reported being bothered by a stressful event or experience within the past month, and 44% reported trouble with sleep.

Our police officers and professional employees, are not immune to the stressors of police work. It is imperative that we continue to discuss police suicide and provide positive solutions to managing workplace stressors by actively promoting mental an emotional health. Of the 18,000 law enforcement agencies across the country, approximately five percent have suicide prevention training programs such as what currently exists at BPD.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

This contract does not create environmental sustainability or climate change impacts.

#### RATIONALE FOR RECOMMENDATION

Peer support serves as a powerful resource for police employees in addressing stress management, mental health concerns, suicide prevention, and overall officer safety and wellness. It is the City of Berkeley's obligation to continue to mitigate these impacts through education and post incident support. The BPD Peer Support Team has been engaged and continues to progress in their effort to reduce lost work time, workers compensation claims and improving the mental health and resilience of BPD employees with the assistance of PSFCG services.

#### ALTERNATIVE ACTIONS CONSIDERED

Either not fund the contract or require competitive bid, which would cause tremendous delay and leave the BPD Peer Support Team unsupported in a critical incident and interrupt mental health support services already in place by a trusted vendor for BPD employees.

#### CONTACT PERSON

Jennifer Tate, Lieutenant, Police Department, (510) 981-5983

#### Attachments

1: Resolution

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

CONTRACT NO. 32300022 AMENDMENT: PUBLIC SAFETY FAMILY COUNSELING GROUP INC. FOR ADDITIONAL CRITIAL INCIDENT STRESS MANAGEMENT, EDUCATION AND COUNSELING SERVICES

WHEREAS, Public Safety Family Counseling Group Inc. (PSFCG) has provided reliable Critical Incident Stress Management, education and counseling services and assisted BPD with the selection and training of a robust Peer Support Team; and

WHEREAS, It is well known that those in law enforcement occupations experience a variety of adverse exposures to life threatening situations, traumatic events, witnessing violence and assaults, and other compounding adverse incidents. These exposures can increase the potential for suicidal ideation such as depression and hopelessness. A 2018 study showed that police officers are more likely to die by suicide than in the line of duty; and

WHEREAS PSFCG has provided critically needed crisis intervention stress management and crisis response services for the multiple traumatic events that Berkeley Police Employees have endured over the past several years. These events have included the suicide of an employee as well as life-saving efforts provided to several individuals who tragically succumbed to their injuries. These services are urgently needed to ensure the men and women of the Berkeley Police Department have continued resources and support necessary to process these events resiliently; and

WHEREAS, with the guidance of PSFCG staff, BPD implemented a new peer support policy, created a new peer support team, and set out to train 24 peer support officers following the national curriculum developed by the International Critical Incident Stress Foundation and supported by the International Association of Chiefs of Police; and

WHEREAS, the PSFCG has been incredibly impactful, normalizing the practice of organized discussion of post traumatic events with proactive intervention with the assistance of professional clinicians who have been instrumental in crisis treatment for numerous Bay Area law enforcement agencies. This group of clinicians is able to respond to the unpredictable and the often off hours nature of the BPD Peer Support Team requests for assistance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32300022 with Public Safety Family Counseling Group Inc. in an amount not to exceed \$150,000 for a total contract amount not to exceed \$200,000 to extend the term of the contract through June 30, 2026. Funding is budgeted in 011-71-701-801-0000-000-421-612990.



Housing Advisory Commission

CONSENT CALENDAR  
July 11, 2023

To: Honorable Mayor and Members of the City Council  
 From: Housing Advisory Commission  
 Submitted by: Debbie Potter, Chairperson, Housing Advisory Commission  
 Subject: Conduct a Study on the City's History of Discriminatory Actions in Housing Policies/Programs

RECOMMENDATION

Conduct a study that is comprehensive of the following actions:

- Document the city of Berkeley's past discriminatory actions in housing policies and programs that adversely impacted the Black community and its ability to remain and grow in the city, build inter-generational wealth, and fully realize the benefits of homeownership;
- Inform future housing policy and program development and implementation to address these historic discriminatory practices; and
- Provide data and information about historic discriminatory housing policies and programs in support of the city's on-going reparations work.
- Select community organization(s) as partners in the study to ensure a comprehensive community engagement process that documents lived experiences and local history so that lessons learned from those experiences can inform future housing policies and programs.

FISCAL IMPACTS OF RECOMMENDATION

Funding is required to undertake the recommended study and the fiscal impact would be determined by the responses to an RFP.

CURRENT SITUATION AND ITS EFFECTS

At its April 7, 2022 meeting, HAC considered a proposed housing preference policy for the city's affordable rental and ownership units. There was robust discussion about whether it was appropriate to provide a preference point for qualified Black households given historic discriminatory housing policies and programs that led to disproportionate impacts on Black residents due to redlining, use of eminent domain to build the Ashby and North Berkeley BART stations, demolition of public housing, predatory lending

practices, biased real estate appraisals that under-valued houses owned by Black residents, etc.

HAC members expressed some frustration that laws, policies, and practices that are explicitly race-based are prohibited in California (and throughout the Country), but that negative effects from past policies are felt by people of color (especially African Americans) in Berkeley today. The harm and trauma from structural racism in the housing market has adversely impacted families and kept them from thriving for generations.

While HAC voted to recommend that City Council approve the affordable housing preference policy, it also wants to encourage the city to do more to document past discriminatory housing policies to support more explicitly race-based restorative housing initiatives in the future. Therefore, at its October 6, 2022 meeting, HAC approved the following motion:

Action: M/S/C (Simon-Weisberg/Johnson) to recommend City Council fund a study to document the City of Berkeley's history of discriminatory actions as well as its actions to regulate or fail to regulate discrimination in the housing market. This work should be sourced to local community organizations advancing racial justice initiatives in the community.

Vote: Ayes: Ching, Johnson, Lee-Egan, Mendonca, Sanidad, and Simon-Weisberg. Noes: None. Abstain: None. Absent: Calavita (excused), Fain (unexcused), Rodriguez (unexcused), and Potter (excused).

### BACKGROUND

Staff undertook a comprehensive process to develop the proposed housing preference policy. That effort included a commitment to an equity-based policy and partnership with East Bay Community Law Center and with Healthy Black Families, Inc., a Berkeley-based non-profit organization committed to advancing social equity and justice, with a focus on Black individuals and families, to ensure robust community engagement.

During public comment for the housing preference policy item, representatives from Healthy Black Families and African American and elder community members provided information about past discriminatory policies and told stories of living in, or being displaced from, Berkeley. They advocated for race-based housing preferences that would address these historic injustices. These stories, combined with census data that shows a steep decline in Berkeley's African American population, informed the HAC's recommendation to City Council to study this issue to better understand the impacts of past discriminatory policies to better shape future housing policies and programs.

Public comment also underscored the importance of lived experiences and documented history. Therefore, HAC's recommendation includes sourcing aspects of the study to local community organizations advancing racial justice issues in the community.



ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

The recommended study will better inform, and build on, existing housing program and policies by collecting data and information regarding historic discriminatory policies, ranging from redlining and predatory lending practices to demolishing public housing and utilizing eminent domain in harmful ways, to achieve racial justice. This information can also be useful as the city moves forward with its reparations work as housing is a critical arena for repairing past harms.

ALTERNATIVE ACTIONS CONSIDERED

While some community members, along with several HAC members, supported an explicitly race-based preference for the city's affordable housing units, it was understood that without more data and information to support such a preference, it was not a legally sound approach. Therefore, it was unanimously agreed that such a study should be recommended to City Council to continue the city's efforts to work toward racial justice in the housing arena.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

This recommendation should be referred to the budget process in order to identify funding for this work.

CONTACT PERSON

Anna Cash, Secretary, HHCS, (510) 981-5403





Office of the Mayor

CONSENT CALENDAR  
July 11, 2023

To: Honorable Members of the City Council  
 From: Mayor Jesse Arreguín  
 Subject: Berkeley Housing Authority Board of Commissioners Re-Appointments

RECOMMENDATION

Adopt a Resolution re-appointing Alexandria Thomas-Rodriguez, Max Levine and Ali Kashani to the Berkeley Housing Authority Board of Commissioners.

BACKGROUND

On May 22, 2007, the Berkeley City Council established a Berkeley Housing Authority (BHA) Board of Commissioners. State law mandates BHA commissioners, including successors be appointed by the Mayor and confirmed by the City Council. State law also states that the length of a commissioner's term shall be four years and can be reappointed.

Currently, there are three members of the BHA Board that have either terms that have expired or will be expiring soon. Specifically, they are:

**Alexandria Thomas-Rodriguez** – Expired January 2023

Ms. Thomas-Rodriguez serves as a tenant commissioner on the BHA board and was first appointed in January 2021 (Resolution No. 69,672-N.S.). Among other leadership qualities, Ms. Thomas Rodriguez brings her extensive experience as a community leader to assist BHA in improving tenant outreach and customer service. Ms. Thomas-Rodriguez is also a commissioner on the Berkeley Housing Advisory Commission.

**Max Levine** – Expired April 2023

Mr. Levine is the current vice-chair of the BHA board and was first appointed in April 2019 (Resolution No. 68,846-N.S.). Mr. Levine brings his valuable experience as a Section 8 landlord in Oakland to assist BHA in improving landlord outreach and customer service.

**Ali Kashani** – Expires in December 2023

Mr. Kashani was first appointed to the BHA board in December 2019 (Resolution No. 69,206, N.S.). Mr. Kashani brings significant expertise in affordable housing development to assist BHA in policy matters and in the development of the Housing Authority's nonprofit arm, Affordable Housing Berkeley, Inc.

All three commissioners have expressed verbally their request to serve another term.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution
2. Resolution 69,672-N.S.
3. Resolution 68,846-N.S.
4. Resolution 69,206-N.S.

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

RE-APPOINTMENT OF ALEXANDRIA THOMAS-RODRIGUEZ, MAX LEVINE AND ALI KASHANI TO THE BERKLEY HOUSING AUTHORITY BOARD OF COMMISSIONERS

WHEREAS, the Council of the City of Berkeley, as the governing body of the City of Berkeley, declared itself to the Commissioners of the Berkeley Housing Authority (BHA) and appointed two tenant Commissioners pursuant to Health and Safety Code Section 34290; and

WHEREAS, on May 22, 2007 the Mayor appointed and the City Council by a majority vote confirmed the appointment of 5 Commissioners and 2 tenant Commissioners to the BHA Board pursuant to Health and Safety Code Section 34270; and

WHEREAS, there are currently three commissioners – Alexandria Thomas-Rodriguez, Max Levine and Ali Kashani, whose terms have either expired or will be expiring soon; and

WHEREAS, all three commissioners have expressed verbally their request to serve another term.

NOW THEREFORE, BE IT RESOLVED by the Mayor of the City of Berkeley that Max Levine and Ali Kashani are re-appointed to serve as a Commissioner of the Berkeley Housing Authority Board; and

BE IT FURTHER RESOLVED by the Mayor of the City of Berkeley that Alexandria Thomas-Rodriguez is re-appointed to serve as a tenant Commissioner on the Berkeley Housing Authority Board; and

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that it supports the Mayor's determination regarding the qualifications of Alexandria Thomas-Rodriguez, Max Levine and Ali Kashani and hereby confirms the Mayor's reappointment; and

BE IT FURTHER RESOLVED that by the Mayor of the City of Berkeley that, pursuant to Health and Safety Code Section 34272(a), Max Levine and Ali Kashani are appointed to serve a four-year term; and

BE IT FURTHER AND FINALLY RESOLVED by the Mayor of the City of Berkeley that, pursuant to Health and Safety Code Section 34272(a), Alexandria-Rodriguez is appointed to serve as a tenant Commissioner for a two-year term.

RESOLUTION NO. 69,672-N.S.

APPOINTING ALEXANDRIA THOMAS-RODRIGUEZ AS A TENANT COMMISSIONER  
ON THE BERKELEY HOUSING AUTHORITY BOARD OF COMMISSIONERS

WHEREAS, the Council of the City of Berkeley, as the governing body of the City of Berkeley, declared itself to the Commissioners of the Berkeley Housing Authority (BHA) and appointed two tenant Commissioners pursuant to Health and Safety Code Section 34290; and

WHEREAS, on May 22, 2007 the Mayor appointed and the City Council by a majority vote confirmed the appointment of 5 Commissioners and 2 tenant Commissioners to the BHA Board pursuant to Health and Safety Code Section 34270; and

WHEREAS, there is currently one vacant tenant Commissioner seat that needs to be filled; and

WHEREAS, Alexandria Thomas-Rodriguez has been involved with the Berkeley Housing Authority for the past three years, serving on the Resident Advisory Board, where she works on reviewing, editing and brainstorming ideas with the Operations Manager and other Section 8 participants on the Administrative Plan; and

WHEREAS, Thomas-Rodriguez currently works as a Tenant Counselor and Hotline Administrator for Tenants Together where she is on the front lines of handling tenant issues, taking in and prioritizing calls amid the COVID-19 pandemic that has led to a surge in tenants seeking advice. She also recently joined Berkeley Mutual Aid as a Case Manager, providing resources to Berkeley citizens for mental health, housing, food and essential items; and

WHEREAS, As a Section 8 tenant and through her work experience, Thomas-Rodriguez has gained the knowledge and experience to handle the work of the BHA Board, bringing compassion and fairness for tenants and landlords.

NOW THEREFORE, BE IT RESOLVED by the Mayor of the City of Berkeley that Alexandria Thomas-Rodriguez is appointed to serve as a tenant Commissioner on the Berkeley Housing Authority Board; and

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that it supports the Mayor's determination regarding the qualifications of Alexandria Thomas-Rodriguez and hereby confirms the Mayor's appointment; and


BE IT FURTHER AND FINALLY RESOLVED by the Mayor of the City of Berkeley that, pursuant to Health and Safety Code Section 34272(a), Alexandria Thomas-Rodriguez is appointed to serve as a tenant Commissioner for a two-year term.

The foregoing Resolution was adopted by the Berkeley City Council on December 15, 2020 by the following vote:

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

Noes: None.

Absent: None.

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

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

RESOLUTION NO. 68,846-N.S.

APPOINTMENT OF MAX LEVINE TO THE BERKELEY HOUSING AUTHORITY  
BOARD OF COMMISSIONERS

WHEREAS, the Council of the City of Berkeley, as the governing body of the City of Berkeley, declared itself to the Commissioners of the Berkeley Housing Authority (BHA) and appointed two tenant Commissioners pursuant to Health and Safety Code Section 34290; and

WHEREAS, on May 22, 2007 the Mayor appointed and the City Council by a majority vote confirmed the appointment of 5 Commissioners and 2 tenant Commissioners to the BHA Board pursuant to Health and Safety Code Section 34270; and

WHEREAS, on March 8, 2016, the Berkeley City Council confirmed the Mayor's nomination of Damion McNeil to a four-year term on the Berkeley Housing Authority (BHA) Board of Commissioners; and

WHEREAS, in late 2018, Mr. McNeil resigned from the BHA Board and there are currently three vacancies on the Board; and

WHEREAS, the Mayor has nominated Max Levine, a Berkeley resident, PTA leader, property owner in the East Bay, with a background in finance and private equity investment.

WHEREAS, the Mayor of the City of Berkeley is an office filled by election of the people of Berkeley.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Max Levine is appointed to serve as Commissioner of the Berkeley Housing Authority Board.

BE IT FURTHER RESOLVED by the Mayor of the City of Berkeley that, pursuant to Health and Safety Code Section 34272(a), Mr. Levine be appointed to serve a four-year term.

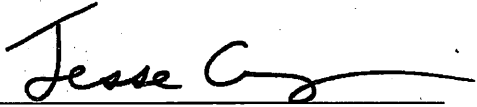


The foregoing Resolution was adopted by the Berkeley City Council on April 30, 2019 by the following vote:

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. 69,206-N.S.

APPOINTMENT OF ALI KASHANI TO THE  
BERKELEY HOUSING AUTHORITY BOARD OF COMMISSIONERS

WHEREAS, the Council of the City of Berkeley, as the governing body of the City of Berkeley, declared itself to the Commissioners of the Berkeley Housing Authority (BHA) and appointed two tenant Commissioners pursuant to Health and Safety Code Section 34290; and

WHEREAS, on May 22, 2007 the Mayor appointed and the City Council by a majority vote confirmed the appointment of 5 Commissioners and 2 tenant Commissioners to the BHA Board pursuant to Health and Safety Code Section 34270; and

WHEREAS, there are currently two vacancies on the Board; and

WHEREAS, the Mayor has nominated Ali Kashani, a Berkeley resident, who has over 35 years of experience in real estate acquisition, zoning/planning, and financial analysis for affordable and market-rate housing in the Bay Area; and

WHEREAS, Kashani has served as the founding Executive Director of Affordable Housing Associates (now SAHA) from 1993-2004, and has held board positions at Resources for Community Development, Bay Area Community Services, East Bay Housing Organizations, and Livable Berkeley; and

WHEREAS, the Mayor of the City of Berkeley is an office filled by election of the people of Berkeley.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Ali Kashani is appointed to serve as Commissioner of the Berkeley Housing Authority Board.


BE IT FURTHER RESOLVED by the Mayor of the City of Berkeley that, pursuant to Health and Safety Code Section 34272(a), Mr. Kashani be appointed to serve a four-year term.

The foregoing Resolution was adopted by the Berkeley City Council on December 10, 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





Office of the Mayor

CONSENT CALENDAR

July 11, 2023

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín and Councilmember Sophie Hahn

Subject: Support Rooftop Solar and Battery Storage for Multifamily Housing and Schools

RECOMMENDATION

Adopt a Resolution in support of viable Virtual Net Energy Metering (VNEM) and Net Energy Metering Aggregation (NEM-A) tariffs. Submit a copy of the Resolution 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.

In December 2022, the CPUC issued a final decision updating the current NEM structure.<sup>1</sup> The new rulemaking is referred to as NEM 3.0 because this is the third iteration of the NEM program.

The following elements, which were opposed by the City Council, were approved, at the December 2022 meeting:

- Most residential NEM solar consumers who apply for a NEM interconnection after April 14, 2023, experience an average 75% reduction in the credit they receive for sharing their extra energy with the grid – from an average of \$.30/kilowatt-hours (kWh) to about \$.08/kWh.

<sup>1</sup> <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M500/K043/500043682.PDF>

- Churches, nonprofits, or businesses who go solar after April 14, 2023, realize an even greater reduction in the solar credit.<sup>2</sup>

Despite this vastly reduced credit value for energy exported to the electric grid compared to the previous NEM tariff, the CPUC decision still allows customers to buy less energy from the utilities when they use their generated or stored energy on-site in real time. The Commission is now considering changes to net energy metering rules for multi-meter properties, which would impact multi-family tenants and cooperative residents through the VNEM program as well as schools and farms through the NEM-A program.<sup>3</sup>

Recent proposals made by investor-owned utilities would deny multi-meter properties the ability to buy less power from the utilities when they consume power directly from on-site solar, which would force tenants, schools, and farms to buy all of their power from the utility even when it is generated on their own rooftop or field<sup>4</sup> – a patently absurd and unfair proposal as it would allow customers with only one electric meter to distinguish between on-site usage and exports while not allowing customers with multiple meters to do the same.

This and other proposals that seek to curtail rather than expand the ability for multifamily tenants and cooperative residents, schools, and farmers to benefit from bill savings through locally generated renewable energy violate the following principles expressed by the City Council in 2021<sup>5</sup> and 2022,<sup>6</sup> respectively:

- 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

<sup>2</sup> <https://solarrights.org/update-state-officials-release-new-rooftop-solar-proposal/>

<sup>3</sup> <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M502/K977/502977211.PDF>

<sup>4</sup> <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M502/K757/502757134.PDF>

<sup>5</sup> <https://berkeleyca.gov/sites/default/files/documents/2021-10-26%20Item%2027%20Support%20Net%20Energy%20Metering.pdf>

<sup>6</sup> <https://berkeleyca.gov/sites/default/files/2022-04/2022-01-18%20Item%2021%20OPPOSE%20Net%20Energy%20Metering.pdf>

- (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.

On the contrary, should the CPUC adopt a successor VNEM tariff that is robust and incentivizes the growth of the VNEM program, the benefits to the tenants in multifamily buildings would be immense and immediate – not just through their realization of up to \$50 in savings on their monthly utility bills<sup>7</sup>, but in building climate resilience. A recent storm-induced power outage by Pacific Gas and Electric left much of Berkeley without power for nearly an entire day,<sup>8</sup> and having solar with backup batteries would go a long way to ensure reliability. Moreover, with solar installed on the rooftops of multifamily buildings, property owners could then upgrade their buildings to efficient and clean heating, water heating, and cooking infrastructure run by electric power rather than natural gas, the price of which tends to be volatile as it depends on various global events over which we have no control in Berkeley. Similarly, the adoption of a robust successor NEM-A tariff would ensure that budget-challenged school and community college districts across the state would be able to realize savings to their utility bills through the generation of rooftop solar on their own buildings.

#### FINANCIAL IMPLICATIONS

None

#### ENVIRONMENTAL SUSTAINABILITY

No direct identifiable environmental sustainability savings are associated with this item. However, the outcome of this rulemaking is likely to determine the extent to which rooftop-scale solar and storage in the City of Berkeley is deployed in multifamily housing and schools, which could positively or negatively impact a key strategy in the realization of Berkeley's Climate Action and resiliency goals.

#### CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

#### Attachments:

1: Resolution

<sup>7</sup> <https://calsomah.org/tenant-benefits>

<sup>8</sup> <https://www.berkeleyscanner.com/2023/03/22/disaster-preparedness/berkeley-storm-power-outage-downed-trees/>

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

IN SUPPORT OF NET ENERGY METERING FOR MULTI-FAMILY HOUSING AND SCHOOLS

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, in 2020 the California Public Utilities Commission (CPUC) launched a formal proceeding to update the current NEM structure 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 in December 2022, the CPUC issued a final decision updating the current NEM structure; and

WHEREAS, the following elements, which were opposed by the City Council, were approved, at the December 2022 meeting:

- Most residential NEM solar consumers who apply for a NEM interconnection after April 14, 2023, experience an average 75% reduction in the credit they receive for sharing their extra energy with the grid – from an average of \$.30/kilowatt-hours (kWh) to about \$.08/kWh.
- Churches, nonprofits, or businesses who go solar after April 14, 2023, realize an even greater reduction in the solar credit; and

WHEREAS, despite this vastly reduced credit value for energy exported to the electric grid compared to the previous NEM tariff, the CPUC decision still allows customers to buy less energy from the utilities when they use their generated or stored energy on-site in real time; and

WHEREAS, the Commission is now considering changes to net energy metering rules for multi-meter properties, which would impact multi-family tenants and cooperative residents as well as schools and farms; and



WHEREAS, recent proposals made by investor-owned utilities would deny multi-meter properties the ability to buy less power from the utilities when they consume power directly from on-site solar, which would force tenants, schools, and farms to buy all of their power from the utility even when it is generated on their own rooftop or field – a patently absurd and unfair proposal as it would allow customers with only one electric meter to distinguish between on-site usage and exports while not allowing customers with multiple meters to do the same; and

WHEREAS, this and other proposals that seek to curtail rather than expand the ability for multifamily tenants and cooperative residents, schools, and farmers to benefit from bill savings through locally generated renewable energy violate the following principles expressed by the City Council in 2021 and 2022, respectively; and

WHEREAS, should the CPUC adopt a successor NEM tariff that is robust and incentivizes the growth of the rooftop solar and battery storage in multifamily housing and schools, the benefits would be immense and immediate – not just through the realization of up to \$50 in savings by tenants on their monthly utility bills<sup>9</sup> and commensurate savings to school districts, but in building climate resilience; 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, not less

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it urges the California Public Utilities Commission and Governor to reject any proposals that seek to frustrate or dismantle the ability of multifamily tenants and schools to avail themselves of the benefits of local, renewable, and affordable energy through rooftop solar and battery storage;

BE IT FURTHER RESOLVED that the Council of the City of Berkeley calls on the California Public Utilities Commission to instead approve a net energy metering tariff for multifamily housing and schools that includes full credits and savings for multifamily tenants and schools from customer-generated energy (full “property netting”) as well as a gradual transition toward lower export rates to ensure a reasonable glidepath for the customer solar market;

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<sup>9</sup> <https://calsomah.org/tenant-benefits>

[Title of Report]

CONSENT CALENDAR  
July 11, 2023

BE IT FURTHER RESOLVED that that copies of this Resolution shall be sent to Governor Gavin Newsom, State Senator Nancy Skinner, Assemblymember Buffy Wicks, and members of the California Public Utilities Commission Board.



Office of the Mayor

CONSENT CALENDAR

July 11, 2023

To: Members of the City Council

From: Mayor Jesse Arreguín and Councilmember Sophie Hahn

Subject: Relinquishment of Council Office Budget Funds for Chavez/Huerta Tribute Site

RECOMMENDATION

Adopt a Resolution approving the expenditure of up to \$5,000 from Mayor Arreguín, and any other Councilmembers, to the Kala Art Institute, the fiscal sponsor for the Chavez/Huerta Tribute Site, with funds relinquished from the City's General Fund for the purpose of hiring of grounds keepers and providing the resources needed for the maintenance of the Chavez/Huerta Tribute Site, from the discretionary Council Office Budgets of Mayor Arreguín and any other Councilmembers who would like to contribute.

BACKGROUND

The Chavez/Huerta Tribute Site<sup>1</sup>, located at Cesar Chavez Park along Spinnaker Way, is centered around a lush green space overlooking the Bay Area. Instead of a single statue or monument for the farmworker and labor organizer by which the park is named after, the site has intentionally developed a comprehensive urban solar/lunar calendar, along with a quartet of stones engraved with four virtues of the Farmworkers Movement: Determination, Courage, Hope, and Tolerance. The site draws from design concepts in art, astronomy, and architecture found at ancient and indigenous sky observatory sites from around the world. The site seeks to promote an understanding of the Rhythm of the Seasons, the work, life, and values of Cesar E. Chavez and Dolores Huerta, provide an outdoor classroom to study science, math, and culture, and create a space for reflection and peace along the Berkeley shoreline. The site also contains a virtual tour, which can be activated using your mobile device, and a physical, self-explanatory sign to assist visitors with utilizing the solar calendar and position of stones to understand its relationship to solstice and equinox.

A sum of \$5,000 is being sought by the caretakers of the Chavez/Huerta Tribute Site to go towards fees associated with employing gardeners, hauling soil, conducting stone replacement, composting goods, grounds maintenance, upgrading signage, and paying the Kala Art Institute a fiscal agent fee.

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<sup>1</sup> <https://chavezpark.org/cesar-chavez-memorial-solar-calendar/>

Relinquishment of Council Office Budget Funds for Chavez/Huerta Tribute Site      CONSENT CALENDAR  
July 11, 2023

We are proposing that City Councilmembers make individual grants of up to \$1,000 to the Kala Art Institute to help with the upkeep of the Chavez Huerta Tribute site, with work in the next fiscal year to begin in October 2023.

FINANCIAL IMPLICATIONS

No General Fund impact; up to \$5,000 available from Mayor Arreguín's Office Budget discretionary accounts.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental impacts associated with the recommendations in this report.

CONTACT PERSON

Mayor Jesse Arreguín, 510-981-7100  
Anthony Rodriguez, Senior Legislative Assistant

Attachments:

1: Resolution for Council Expenditures

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR FUNDING TOWARDS THE MAINTENANCE OF THE CHAVEZ/HUERTA TRIBUTE SITE, A PUBLIC SERVICE FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Mayor Arreguín has surplus funds in his office expenditure account; and

WHEREAS, a California non-profit tax-exempt corporation, the Kala Art Institute, seeks funds in the amount of \$5,000 to provide maintenance and upkeep for the Chavez/Huerta Tribute Site located at the Cesar Chavez Park along Spinnaker Way; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose of bringing communities across the City, including but not limited to Latine, immigrant, astronomy lovers, historians, youth, and civic communities, together to honor the virtues and contribution of Cesar Chavez, Dolores Huerta, and others involved in the Farmworkers Movement.

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 of up to \$5,000 per office shall be granted to the Kala Art Institute to fund the following services bringing communities across the City, including, but not limited to, Latine, immigrant, astronomy lovers, historians, youth, and civic communities, together to honor the virtues and contribution of Cesar Chavez, Dolores Huerta, and others involved in the Farmworkers Movement.





Office of the Mayor

CONSENT CALENDAR  
July 11, 2023

To: Honorable Members of the City Council  
From: Mayor Jesse Arreguín  
Subject: Excused Absence for Vice Mayor Ben Bartlett

RECOMMENDATION

Excuse Vice Mayor Ben Bartlett from the June 6, 2023 Council meeting as a result of an illness of a close family member who needed immediate care.

BACKGROUND

Pursuant to the City Charter, Article V, § 19, the City Council must approve an absence by a Councilmember from a meeting in order for that absence to be considered excused. Specifically, it states:

*If the Mayor or any member of the Council is absent from one or more regular meetings of the Council during any calendar month, unless excused by the Council in order to attend to official business of the City, or unless excused by the Council as a result of their own illness or the illness or death of a “close family member” as defined in the City’s bereavement policy from attending no more than two regular meetings in any calendar year, they shall be paid for each regular meeting attended during such months in an amount equal to the monthly remuneration divided by the number of regular meetings held during such month.*

Vice Mayor Bartlett was unable to attend the June 6, 2023 Council meeting due to an illness of a close family member who needed immediate care.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

Not applicable

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100







CONSENT CALENDAR  
July 11, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin, Councilmember Hahn, and Councilmember Humbert

Subject: Berkeley Humane: Bark (& Meow) Around the Block: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of council office budget funds, including \$500 from Councilmember Taplin, to support the Bark (& Meow) Around the Block adoption event hosted by Berkeley Humane, with funds relinquished to the City's general fund.

FINANCIAL IMPLICATIONS

No General Fund impact. \$500 is available from contributing Councilmember's Council Office Budget discretionary accounts.

BACKGROUND

The Berkeley-East Bay Humane Society's Bark (& Meow) Around the Block (August 26, 2023) will be one of the largest single-day adoption events hosted in Northern California. Berkeley Humane will be closing down several city streets to accommodate more than 20 shelters and rescues along with food trucks, live music, and other vendors. This event is sponsored by NBC Bay Area and several local businesses and organizations.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

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, Councilmember Taplin has surplus funds in his office expenditure account (budget code 011-11-102-100-0000-000-411); and

WHEREAS, a California non-profit tax exempt corporation Berkeley-East Bay Humane Society seeks funds to provide the following public services: Bark (& Meow) Around the Block adoption drive; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose: reunion for BHS alumni and BHS scholarships;

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 \$1000 shall be granted to Berkeley-East Bay Humane Society to fund the following services: Bark (& Meow) Around the Block adoption drive.



CONSENT CALENDAR  
July 11, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin and Councilmember Hahn

Subject: Berkeley High School All Class Reunion: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of council office budget funds, including \$500 from Councilmember Taplin, to support the Berkeley High School All Class Reunion Committee (BHS ACRC) by way of its fiscal sponsor, the Berkeley Public Schools Fund, with funds relinquished to the City’s general fund.

FINANCIAL IMPLICATIONS

No General Fund impact. \$500 is available from contributing Councilmember’s Council Office Budget discretionary accounts.

BACKGROUND

The Berkeley High School All Class Reunion Committee (BHS ACRC) is planning the 6<sup>th</sup> Biennial All Class Picnic on Saturday August 26, 2023 at San Pablo Park, Berkeley, 10:00 AM to 6:00 PM. This “Fun Family Event” was designed to rekindle memories of Berkeley pride and reconnect friendships, neighbors, and family of all ages to enjoy a picnic in the park with good food, music, vendors, arts/crafts and kids zone and a health fair. The last four reunions reconnected over 2,000 people. Additionally, any excess of funds will help fund a BHS Scholarship.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

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, Councilmember Taplin has surplus funds in his office expenditure account (budget code 011-11-102-100-0000-000-411); and

WHEREAS, a California non-profit tax exempt corporation Berkeley Public Schools Fund seeks funds to provide the following public services: Berkeley High School All Class Reunion; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose: reunion for BHS alumni and BHS scholarships;

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 \$1000 per office shall be granted to Berkeley Public Schools Fund to fund the following services: Berkeley High School All Class Reunion.

**BEN BARTLETT**

VICE MAYOR

CONSENT CALENDAR

July 11th, 2023

To: Honorable Mayor and Members of the City Council

From: Vice Mayor Ben Bartlett (Author), Mayor Jesse Arreguin, Councilmember Kate Harrison, and Councilmember Rashmi Kesarwani (Co-Sponsor)

Subject: Resolution for unionized employees of REI

RECOMMENDATION

Adopt a Resolution of Support for the unionized employees of Recreational Equipment, Inc. (REI) in Berkeley, California that instructs REI to live up to its values, by ceasing to withhold the 2022 "Summit Pay", and bargain in good faith.

CURRENT SITUATION

Workers at REI Berkeley are one of eight unionized REIs across the country. (Out of 179 REI stores in total). The REI company has chosen to fight its workers' unionization efforts around the country, including in Berkeley.

UFCW5 has six open unfair labor practice complaints ("ULPs") filed against the Berkeley REI. Since the workers voted to unionize, REI has unilaterally changed their COVID pay policy, revoked the annual bonus that workers receive ("Summit Pay"), and retaliated against pro-union workers.

The 2022 Summit Pay remains the most important issue to the workers. Meanwhile, REI and the union's bargaining committee have not met since March. REI recently canceled the June bargaining dates and has not responded to any rescheduling requests.

The REI Berkeley workers continue to advocate for their 2022 Summit Pay and are gathering community support to amplify their voices.

BACKGROUND

On August 25<sup>th</sup>, 2022, employees at Recreational Equipment, Inc. (REI) in Berkeley voted to unionize with the United Food and Commercial Workers (UFCW) Local 5. They were the second REI location to unionize.

Summit Pay is REI's annual bonus program for employees. It is determined by a formula that combines store performance with company-wide performance to determine a percentage multiplier that, once applied to an employee's earnings for the preceding year, becomes a lump sum bonus distributed each March.

In 2022, REI was unprofitable. As a result, the original formula for Summit Pay calculated a \$0 payout. On August 30, REI announced a revised 2022 formula for Summit Pay to still provide its employees with some payout in March 2023. REI's attorneys emailed the union on the same day alerting employees to the change in formula, to which the response was that there was no problem with the new formula's application to Berkeley.

In February 2023, REI changed course and rescinded the 2022 Summit Pay for the Berkeley workers. The employees ran an internal petition, generating signatures from more than 70% of the staff and presented the document at bargaining in March.

When this was not enough, the workers created a member-facing petition to demonstrate support from the community. They gathered more than 1,500 signatures. A community event was hosted on May 27<sup>th</sup> with local faith, labor, and non-profit leaders to stand with the REI workers in demanding their 2022 Summit Pay.

March is the last time that REI and the union sat down to negotiate. REI has not responded to emails requesting new meeting dates, after canceling both May and June's in-person sessions.

In addition to withholding Summit Pay, REI has also engaged in retaliation against the Berkeley workers and other employees across the country. On January 30<sup>th</sup>, REI fired nine workers in Berkeley, many of whom were heavily involved in the organizing effort. Since then, workers have been fired in Durham, Raleigh, St. Louis, and Eugene as retaliation for workers' unionization efforts.

REI is an industry leader in sustainability, and prides itself as an inclusive workplace with high starting wages. REI should listen to its employees, and bargain with them in good faith.

The REI workers of Berkeley ask the City Council for support by passing a resolution imploring REI to provide workers with their 2022 Summit Pay, cease making unilateral changes, and bargain with the union.

#### CONSULTATION/OUTREACH OVERVIEW AND RESULTS

On the issue of 2022 Summit Pay, the Berkeley REI workers have::

- Filed an Unfair Labor Practice Complaint
- Gathered a worker petition in the store with more than 70% support
- Generated an REI member petition with more than 1,500 signatures
- Held a community support event on May 27<sup>th</sup>

#### RATIONALE FOR RECOMMENDATION

The city of Berkeley believes in labor rights. REI is withholding 2022 Summit Pay from its two unionized stores and sidestepping its obligation to bargain with its employees. The Berkeley store was the second to open in the Coop and has been a part of this community since 1975. The Council can embody its values by helping hold REI accountable to its own.

#### CONTACT PERSON

Vice Mayor Ben Bartlett  
James Chang

[bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)  
[jchang@cityofberkeley.info](mailto:jchang@cityofberkeley.info)

#### ATTACHMENT

1. Resolution

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

WHEREAS, the workers at REI Berkeley are one of eight unionized REIs across the country (out of 179 REI stores in total) and the REI company has chosen to fight its workers' unionization efforts around the country, including in Berkeley; and

WHEREAS, the 2022 Summit Pay (Summit Pay is REI's annual bonus program for employees determined by a formula that combines store performance with company-wide performance to determine a percentage multiplier that, once applied to an employee's earnings for the preceding year, becomes a lump sum bonus distributed each March) remains the most important issue to the workers. Meanwhile, REI and the union's bargaining committee have not met since March. REI recently canceled the June bargaining dates and has not responded to any rescheduling requests; and

WHEREAS, UFCW5 has six open unfair labor practice complaints ("ULPs") filed against the Berkeley REI. Since the workers voted to unionize, REI has unilaterally changed their COVID pay policy, revoked the annual bonus that workers receive ("Summit Pay"), and retaliated against pro-union workers; and

WHEREAS, REI is an industry leader in sustainability, prides itself as an inclusive workplace with high starting wages. REI should listen to its employees, and bargain with them in good faith; and

WHEREAS, The city of Berkeley believes in labor rights and REI is withholding 2022 Summit Pay from its two unionized stores and sidestepping its obligation to bargain with its employees; and

THEREFORE BE IT RESOLVED, that I, Vice Mayor Bartlett, reaffirm the City of Berkeley's commitment to supporting workers and implore REI to provide workers with their 2022 Summit Pay, cease making unilateral changes, and bargain with the union.







Kate Harrison  
Councilmember, District 4

CONSENT CALENDAR  
July 11, 2023

TO: Honorable Members of the City Council

FROM: Councilmember Harrison, Mayor Arreguín, and Councilmember Hahn

SUBJECT: Relinquishment of Council Office Budget Funds and Co-Sponsorship of the César Chávez Dolores Huerta Tribute Site Curriculum Project

RECOMMENDATION

Adopt a resolution approving an expenditure of D13 funds and cosponsorship of the César Chávez/Dolores Huerta Tribute Site Curriculum Project, with \$250 relinquished to the City's general fund for this purpose each from Mayor Arreguín's and Councilmember Harrison's discretionary Council Office Budget Funds, and from any other Councilmembers who would like to contribute.

BACKGROUND

The current statewide curricula that covers the life and work of labor and environmental organizers, César Chávez and Dolores Huerta, does not adequately cover their rich legacies nor their direct impact on Berkeley. However, new lesson plans developed as part of the "César Chávez Dolores Huerta Tribute Site Curriculum Project" will include both in-class and experiential learning at the tribute site on the waterfront at Berkeley's César Chávez Park. The founders of the curriculum project, Santiago Casal and Beatriz Levya-Cutler, aim to "...honor the equitable relationship, work and words of César and Dolores and others in the farmworker struggle. The synergy of their partnership is what made them highly effective."

Casal and Levya-Cutler plan to apply for the Berkeley Public Schools Fund grant, LEARNING for Equity, which provides \$1,000 - \$15,000 grants to projects focused on addressing systemic oppression through strategic, justice-oriented programming. This funding would allow complete curriculum implementation across Berkeley schools by Spring 2024. The funds provided by Council discretionary budgets, will help provide supplemental compensation for teacher leaders who will utilize summer 2023 to develop prototypes and recruit grade-level teacher consultants. It is in the public interest to donate to this project which serves the fundamental municipal purpose of education.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact. \$250 is available from Mayor Arreguín and Councilmember Harrison's office accounts.

Relinquishment of Council Office Budget Funds and Co-Sponsorship of the Cesar Chavez Dolores Huerta Tribute Site Curriculum Project

**ENVIRONMENTAL SUSTAINABILITY**

Not applicable.

**CONTACT PERSON**

Councilmember Kate Harrison, (510) 981-7140

Mayor Jesse Arreguín, (510) 981-7100

**ATTACHMENTS**

1. Resolution Granting Office Funds for a Municipal Purpose

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

CITY SPONSORSHIP OF THE CESAR CHAVEZ DOLORES HUERTA  
TRIBUTE SITE CURRICULUM FOR BERKELEY STUDENTS

WHEREAS, César Chávez and Dolores Huerta were civil and human rights activists, labor leaders, and environmental justice organizers who dedicated their lives to the earth, to agriculture, and to the farmworkers; and

WHEREAS, the synergy of their partnership and combined legacy uplifts workers across the world; and

WHEREAS, the City of Berkeley re-named Berkeley's Waterfront Park as César Chávez Park in 1996 and the City of Berkeley supported the creation of a solar calendar at the Park as a tribute to these two social and environmental justice warriors; and

WHEREAS, Dolores Huerta is, to this day, a long-standing community advocate and promotes the educational importance of land stewardship; and

WHEREAS, the Chávez/Huerta curriculum will expose students in Berkeley's public schools to the importance of service to the community and to four virtues located in the four directions of the Chávez/Huerta Tribute Site: Hope (East), Determination (South), Courage (West), and Tolerance/Non-Violence (North); and

WHEREAS, the children and students of Berkeley now more than ever need and want to inherit a planet that is safe and sustainable.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by Mayor Arreguín and Councilmember Harrison from their Office budgets of up to \$250 each and from their office budgets of an amount to be determined by other Councilmembers, shall be granted to the Chávez/Huerta Tribute Site Curriculum Project to serve a municipal public purpose.





Kate Harrison  
Councilmember, District 4

CONSENT CALENDAR  
July 11, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Resolution Opposing Tokyo Electric Power Company and the Government of Japan's Planned Discharge of Wastewater from Fukushima Daiichi Nuclear Power Plant into the Pacific Ocean

RECOMMENDATION

Adopt a Resolution opposing Tokyo Electric Power Company (TEPCO) and the government of Japan's plan to discharge wastewater from Fukushima Daiichi Nuclear Power Plant into the Pacific Ocean and send copies of this resolution to Secretary Blinken, Senator Dianne Feinstein, Senator Alex Padilla, and Representative Barbara Lee.

BACKGROUND

Fukushima radiation began reaching California's shores in 2015 after the 2011 nuclear disaster. On April 13, 2021, the government of Japan announced Tokyo Electric Power Company's (TEPCO) plan to start releasing additional wastewater from the Fukushima Plant as soon as Spring of 2023. With the planned discharge of wastewater from the Fukushima Daiichi Nuclear Power Plant, we are facing a dire situation which may affect the health of our planet and future generations. Not enough due diligence has been done to ascertain the safety of the discharge, and many experts have argued that TEPCO and the government of Japan are acting without proper understanding of the level of risk it may pose.

TEPCO and the government of Japan claim that the wastewater has been "treated" and, therefore, it poses neither environmental nor health risks. Contrary to their claim, many scientists, marine biologists, marine pollution experts have pointed out severe lack of due diligence, including with respect to the "Advanced Liquid Processing System" (ALPS), the filtration system used at the site. This system cannot remove all radioactive materials before the release.<sup>1</sup> Dr. Tim Deere-Jones, an independent marine pollution researcher, warns that people who live or work within 10 miles from the coastline could

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<sup>1</sup> "Fukushima Daiichi ALPS Treated Water Discharge - FAQs." 2022. Wwww.iaea.org. April 27, 2022. <https://www.iaea.org/topics/response/fukushima-daiichi-nuclear-accident/fukushima-daiichi-alps-treated-water-discharge/faq>.

be affected, because ocean water evaporates, which eventually can carry radioactive particles inland.<sup>2</sup>

In April 2021, three independent human rights experts appointed by the United Nations Human Rights Council expressed their concerns that the dumping of wastewater from the Fukushima Daiichi could impact millions of lives and livelihoods in the Pacific region, and such dumping imposes considerable risks to environmental and human rights across the globe.<sup>3</sup>

On March 6, 2023, the city of West Hollywood passed a resolution opposing TEPCO and the government of Japan's planned discharge of wastewater from the Fukushima Daiichi Nuclear Power Plant.

The City of Berkeley is globally recognized for its environmental leadership and values and has the opportunity to join in the City of West Hollywood's efforts and tens of thousands of concerned citizens worldwide in passing a similar resolution.

#### FISCAL IMPACTS OF RECOMMENDATION

Limited staff time associated with sending a letter to designated recipients.

#### ENVIRONMENTAL SUSTAINABILITY.

Releasing nuclear wastewater will harm marine ecosystems critical to the wellbeing and maintenance of environmental stasis and ocean life.

#### CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140

#### ATTACHMENTS:

1. Resolution
2. Letters of Opposition

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<sup>2</sup> "Fukushima: Japanese Government and IAEA Ignore Radiation Risks to Coastal Population." n.d. Theecologist.org. Accessed June 16, 2023. <https://theecologist.org/2015/sep/28/fukushima-japanese-government-and-iaea-ignore-radiation-risks-coastal-population>.

<sup>3</sup> "Japan Must Step up Efforts to Solve Human Rights Fallout from Fukushima Disaster: UN Experts." n.d. OHCHR. Accessed June 16, 2023. <https://www.ohchr.org/en/press-releases/2021/03/japan-must-step-efforts-solve-human-rights-fallout-fukushima-disaster-un>.

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

RESOLUTION OPPOSING TOKYO ELECTRIC POWER COMPANY (TEPCO) AND THE GOVERNMENT OF JAPAN'S PLANNED DISCHARGE OF WASTEWATER FROM FUKUSHIMA DAIICHI NUCLEAR POWER PLANT INTO THE PACIFIC OCEAN

WHEREAS, the Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code Chapter 3.68.070); and

WHEREAS, on April 13, 2021, Tokyo Electric Power Company (TEPCO) and the government of Japan announced its plan to release more than 1.28 million metric tons of wastewater from the damaged Fukushima Daiichi Nuclear Power Plant into the Pacific Ocean, starting as early as spring 2023 and continuing for the next 30 years; and

WHEREAS, the wastewater from the Fukushima Daiichi Nuclear Power Plant is highly radioactive and is fundamentally different from the water from a nuclear power plant during a regular operation; and

WHEREAS, Fukushima radiation has been detected on West Coast shores of the United States and Canada since 2015, and whatever is released in the planned discharge will eventually reach the shores of the United States and Canada and other nations in the Pacific, affecting their marine and coastal environment; and

WHEREAS, radioactive substances contained in the wastewater such as tritium and strontium, when consumed, may have negative long-term health effects on a body; and

WHEREAS, Dr. Arjun Makhijani, along with four other scientists, has pointed out multiple deficiencies in TEPCO's plan, including inadequacies in sampling, inadequacies in assessing the effectiveness of ALPS, and inadequacies in ecosystem assessment; and

WHEREAS, Fukushima agricultural, forestry, fisheries, and consumer cooperatives strongly oppose the TEPCO plan of disposing the wastewater into the Pacific Ocean; and

WHEREAS, civil society groups, elected officials, and scholars in Japan, the United States, and other nations in the Pacific region have expressed concerns with TEPCO's plan and petitioned the Japanese government to reconsider its plan; and

WHEREAS, safer, more environmentally sound alternative solutions have been proposed by Japanese civil society groups, engineers, and researchers; and

WHEREAS, No Nukes Action, a Berkeley based group has networked worldwide to demand a better world free of nuclear power since May 2011, has embarked on a campaign for cities to oppose TEPCO and the government of Japan's planned discharge of wastewater from the Fukushima Daiichi Nuclear Power Plant on behalf of citizens who wish to leave a clean planet to future generations; and

WHEREAS, the City of Berkeley is situated directly on the San Francisco Bay which is connected to the Pacific Ocean, therefore, its residents and businesses are at risk of being

adversely affected by the planned release.

NOW, THEREFORE BE IT RESOLVED, that the Council of the City of Berkeley opposes the plan of the Tokyo Electric Power Company (TEPCO) and the government of Japan to discharge wastewater from the damaged Fukushima Daiichi Nuclear Power Plant into the Pacific Ocean.

BE IT FURTHER RESOLVED that the Council urges U.S. Secretary of State Antony Blinken and Berkeley's Congressional delegation to call on TEPCO and the government of Japan to reconsider the plan and adopt a more environmentally sound alternative solution which does not cause unnecessary harm to the marine and human life in the Pacific Region.

BE IT FURTHER AND FINALLY RESOLVED that the Berkeley City Clerk forward a copy of this resolution and accompanying letters to Secretary Anthony Blinken, Senator Dianne Feinstein, Senator Alex Padilla, and Representative Barbara Lee.



Secretary Antony Blinken  
2201 C St. NW  
Washington, DC 20451

**RE: Berkeley City Council Opposes Tokyo Electric Power Company (TEPCO) and the Government of Japan's Planned Discharge of Wastewater from Fukushima Daiichi Nuclear Power Plant into the Pacific Ocean**

Dear Secretary Blinken,

We write to express our opposition to the government of Japan and Tokyo Electric Power Company's (TEPCO) plan to start releasing additional wastewater from the Fukushima Daiichi Nuclear Power Plant.

There has not yet been adequate research into the effect the wastewater will have on humans, animals, and the environment, but scientists and human rights activists are very concerned by the level of risk the contaminated water may pose. While the government of Japan and TEPCO have ensured the water is safe to release, marine pollution experts have verified that not all radioactive materials can be removed.

For these reasons, the Berkeley City Council strongly opposes the release of wastewater from the Fukushima Daiichi Nuclear Power Plant.

Sincerely,  
The Berkeley City Council

Senator Dianne Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510

**RE: Berkeley City Council Opposes Tokyo Electric Power Company (TEPCO) and the Government of Japan's Planned Discharge of Wastewater from Fukushima Daiichi Nuclear Power Plant into the Pacific Ocean**

Dear Senator Feinstein,

We write to express our opposition to the government of Japan and Tokyo Electric Power Company's (TEPCO) plan to start releasing additional wastewater from the Fukushima Daiichi Nuclear Power Plant.

There has not yet been adequate research into the effect the wastewater will have on humans, animals, and the environment, but scientists and human rights activists are very concerned by the level of risk the contaminated water may pose. While the government of Japan and TEPCO have ensured the water is safe to release, marine pollution experts have verified that not all radioactive materials can be removed.

For these reasons, the Berkeley City Council strongly opposes the release of wastewater from the Fukushima Daiichi Nuclear Power Plant.

Sincerely,  
The Berkeley City Council

Senator Alex Padilla  
501 I Street  
Suite 7-800  
Sacramento, CA 95814

**RE: Berkeley City Council Opposes Tokyo Electric Power Company (TEPCO) and the Government of Japan's Planned Discharge of Wastewater from Fukushima Daiichi Nuclear Power Plant into the Pacific Ocean**

Dear Senator Padilla,

We write to express our opposition to the government of Japan and Tokyo Electric Power Company's (TEPCO) plan to start releasing additional wastewater from the Fukushima Daiichi Nuclear Power Plant.

There has not yet been adequate research into the effect the wastewater will have on humans, animals, and the environment, but scientists and human rights activists are very concerned by the level of risk the contaminated water may pose. While the government of Japan and TEPCO have ensured the water is safe to release, marine pollution experts have verified that not all radioactive materials can be removed.

For these reasons, the Berkeley City Council strongly opposes the release of wastewater from the Fukushima Daiichi Nuclear Power Plant.

Sincerely,  
The Berkeley City Council

The Honorable Barbara Lee  
2470 Rayburn House Office Building  
Washington, DC, 20515-0512

**RE: Berkeley City Council Opposes Tokyo Electric Power Company (TEPCO) and the Government of Japan's Planned Discharge of Wastewater from Fukushima Daiichi Nuclear Power Plant into the Pacific Ocean**

Dear Representative Lee,

We write to express our opposition to the government of Japan and Tokyo Electric Power Company's (TEPCO) plan to start releasing additional wastewater from the Fukushima Daiichi Nuclear Power Plant.

There has not yet been adequate research into the effect the wastewater will have on humans, animals, and the environment, but scientists and human rights activists are very concerned by the level of risk the contaminated water may pose. While the government of Japan and TEPCO have ensured the water is safe to release, marine pollution experts have verified that not all radioactive materials can be removed.

For these reasons, the Berkeley City Council strongly opposes the release of wastewater from the Fukushima Daiichi Nuclear Power Plant.

Sincerely,  
The Berkeley City Council



Office of the City Manager

PUBLIC HEARING  
July 11, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Director, Planning and Development Department  
 Subject: Zoning Ordinance Amendments to Title 23 of the Berkeley Municipal Code to Conform to State Law, and Make Non-Substantive Technical Edits

### RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt the first reading of an Ordinance amending the following sections of the Zoning Ordinance to match State law relating to special needs housing (including supportive and transitional housing, emergency shelter, navigation center), employment housing, and family day care, and to make technical edits, corrections and other non-substantive amendments:

- 23.202.020 Allowed Land Uses (Residential Districts)
- 23.202.110 R-4 Multi-Family Residential District
- 23.204.020 Allowed Land Uses (Commercial Districts)
- 23.204.040 Use Specific Regulations (Commercial Districts)
- 23.204.060 C-U University Commercial District
- 23.206.020 Allowed Land Uses and Permit Requirements (Manufacturing Districts)
- 23.206.040 Use Specific Regulations (Manufacturing Districts)
- 23.206.050 Protected Industrial Uses
- 23.206.080 MU-LI Mixed Use-Light Industrial District (Land Use Regulations)
- 23.302.070 Use-Specific Regulations (Supplemental Use Regulations)
- 23.304.030 Setbacks
- 23.304.040 Building Separation in Residential Districts
- 23.308.020 Applicability and Nonconformities (Emergency Shelters)
- 23.308.030 Standards for Emergency Shelters
- 23.324 Nonconforming Uses, Structures, and Buildings
- 23.324.010 Chapter Purpose
- 23.324.050 Nonconforming Structures and Buildings
- 23.502.020 Glossary

### SUMMARY

As directed by the Department of Housing and Community Development in February 2023, when it approved Berkeley's adopted Housing Element, and to further comply with other recent changes to state law related parking, family day care home and

employee housing, staff are proposing a package of technical amendments to Berkeley's Zoning Ordinance.

#### FISCAL IMPACTS OF RECOMMENDATION

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

#### CURRENT SITUATION AND ITS EFFECTS

Aligning the Zoning Ordinance with state law and making technical edits and corrections advances the City's Strategic Plan goal of being a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

On January 18, 2023, the Berkeley City Council adopted an updated Housing Element for the period 2023-2031 (Resolution No. 70,669-N.S.). On February 28, 2023, the State Department of Housing and Community Development (HCD) found the adopted Housing Element in substantial compliance with State Housing Element Law (Article 10.6 of the Gov. Code) and stated the City must continue timely and effective implementation of all programs. *Program 31 – Zoning Code Amendments: Special Needs Housing* requires the City of Berkeley to review and adopt new zoning provisions by December 2023 to align land use standards with state law requirements for special needs housing. In addition, staff are bringing forward related parking, family day care home and employee housing amendments required for compliance with other recently approved state laws, as well as technical edits to ensure consistency throughout the Zoning Ordinance and correct inadvertent errors or content changes that resulted from the 2021 formatting update to the Zoning Ordinance (**Attachment 1**).

The following is a summary of proposed amendments. Staff have also prepared a summary table that identifies the proposed changes in relation to the Zoning Ordinance section (**Attachment 2**).

#### Emergency Shelter (AB 139 & AB 2339)

AB 139 (2019) limits the development standards that local jurisdictions can impose on emergency shelters. Jurisdictions are limited to regulating the following objective standards:

- Maximum number of beds
- Minimum parking to accommodate staff, provided that the standard does not require more parking for shelters than other residential or commercial uses in the same zone
- Size and location of onsite client waiting and intake areas
- Proximity to other shelters, provided that shelters are not required to be more than 300 feet apart
- Length of stay
- Lighting
- Provisions for onsite management

- Security during operating hours, such as a management plan that requires security guards present between 10am to 8pm

To address AB 139, proposed amendments would:

- Remove standards that local jurisdictions cannot regulate.
- Include “emergency shelter” as a land use in applicable Allowed Use Tables.
- Update the definition of “emergency shelter” to clarify that 24-hour services are permitted.

AB 2339 (2022) provides that the sites identified for emergency shelters must be in areas where residential uses are permitted or are otherwise suitable, thus prohibiting local governments from situating shelters in industrial zones or other areas disconnected from services. Services may include health care, transportation, retail, employment, and social services. No zoning code changes are proposed in response to AB 2339, because the City has adequate areas zoned for emergency shelters and currently allows emergency shelters in all areas where residential uses are permitted.

#### Low Barrier Navigation Center (AB 101)

AB 101 (2019) defines “low barrier navigation centers” as:

*“A Housing First, low barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing.”*

Housing First refers to serving individuals experiencing homelessness by prioritizing a safe place to live. Local jurisdictions shall not prohibit additional flexibility in low barrier shelters, such as allowing partners to share living spaces or allowing pets.

AB 101 requires local jurisdictions to allow low barrier navigation centers by right in zones where multifamily and mixed-use development is permitted, including nonresidential zones that allow multifamily uses, provided the facility meets certain standards.

The Berkeley Zoning Ordinance does not currently define or address low barrier navigation centers. Consistent with AB 101, proposed amendments would:

- Add the use permitted by right with a Zoning Certificate in each zoning district that permits multifamily and/or mixed uses
- Add a definition of “low barrier navigation center” that is consistent with State law.

#### Supportive Housing (AB 2162)

AB 2162 (2018) requires local jurisdictions to allow supportive housing projects with 50 or fewer units by right in all zones where multifamily and mixed-use residential

development is allowed, provided the project meets specified criteria pursuant to [Government Code Section 65651\(a\)](#)<sup>1</sup>. The requirements include:

1. Affordability restrictions for at least 55 years.
2. One hundred percent of the units restricted to lower income households or receiving public funding to ensure affordability for lower income households.
3. At least 25 percent of the units in the development or 12 units, whichever is greater, are restricted to residents in supportive housing who meet criteria of the target population.
4. Developer provides information to the planning agency which details entities that will provide services, proposed funding sources as well as proposed staffing levels.
5. Nonresidential floor area shall be used for onsite supportive services.
6. The developer must replace any existing dwelling units on the site.
7. Units within the development must include at least one bathroom and a kitchen.

Additionally, parking is not required for supportive housing projects located within one half-mile of a public transit stop as required by [Government Code Section 65654](#)<sup>2</sup>.

Currently, the Zoning Ordinance includes supportive housing within the definition of “community care facility,” as well as a separate stand-alone definition for “supportive housing.” Proposed amendments would:

- Remove “supportive housing” from the “community care facility” definition
- Amend Residential, Commercial and Manufacturing zoning allowed use tables to be consistent with state law criteria
- Modify the definition to be consistent with the California Health and Safety Code

Projects consistent with the criteria under Government Code Section 65651(a) would be permitted by right with a Zoning Certificate in all zones where multifamily and mixed-use residential development is permitted. Projects that do not qualify under the criteria would not be considered supportive housing and would fall under another definition for housing, such as transitional housing or homeless shelter, with permit requirements consistent with the respective allowed use table.

### Employee Housing Act

The Employee Housing Act (Health and Safety Code 17021.5) requires local jurisdictions to consider employee housing providing accommodations for six or fewer employees as a single-family structure, with a residential land use designation. The proposed changes amend the definition of “single-family dwelling” to include employee housing.

<sup>1</sup> [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=65651](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=65651)

<sup>2</sup> [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=65654](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=65654)



Household Definition

In response to formal comments from HCD<sup>3</sup>, Program 31, “Zoning Code Amendments: Special Needs Housing” of the adopted 2023-2031 Housing Element includes a proposal to simplify the definition of “household” to align with state law, while maintaining a distinction from other residential arrangements, such as Dormitory or Group Living Accommodation. The amendments would remove reference to a single lease, rental agreements or proof of shared living expenses from the definition of household.

Lanterman Developmental Disabilities Service Act

In accordance with state law, state licensed residential facilities for six or fewer persons are a permitted use in all zones where residential use is permitted, with no minimum parking requirement for non-resident employees. The following statutes require that small (serving six or fewer persons) licensed group homes be treated like other residential uses and include: facilities for persons with disabilities and other facilities (Welfare & Institutions Code 5116), residential health care facilities (Health & Safety Code 1267.8, 1267.9, & 1267.16), residential care facilities for the elderly (Health & Safety Code 1568.083 - 1568.0831, 1569.82 – 1569.87), community care facilities (Health & Safety Code 1518, 1520.5, 1566 - 1566.8, 1567.1), pediatric day health facilities (Health & Safety Code 1267.9;1760 – 1761.8), and facilities for alcohol and drug treatment (Health & Safety Code 11834.23).

Currently, the Zoning Ordinance permits conversion of an existing dwelling into a residential care facility with a Zoning Certificate. New construction of a residential care facility would require a Use Permit, which is the same review procedure applied to other residential development. Proposed amendments would bring consistency to all districts that allow residential uses, including the MU-R zoning district.

Supportive Child Care Family Home Expansion (SB 234)

SB 234 (2019) requires cities to consider all family day care homes for up to 14 children, operating under the standards defined by state law, a residential use and prohibits the local requirement of a business license.

Currently, the Zoning Ordinance permits family day care homes with a Zoning Certificate and the City does not require a business license. Proposed amendments would:

- Clarify the definition of family day care home as an activity allowed as part of residential use
- Amend the residential use table to align with that change

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<sup>3</sup> November 8, 2022. Formal Comments from HCD re: City of Berkeley Draft Housing Element, dated August 10, 2022. [https://berkeleyca.gov/sites/default/files/documents/2022-11-08\\_Berkeley%20Initial%20Draft%20OUT%20Housing%20Element%20Letter.pdf](https://berkeleyca.gov/sites/default/files/documents/2022-11-08_Berkeley%20Initial%20Draft%20OUT%20Housing%20Element%20Letter.pdf)

- Amend the definition of “child-serving uses” in the MU-LI and MU-R District to remove reference to family day care homes
- Remove “family day care home” as a protected industrial use in MU-R District, as it is inherently a permitted residential use

#### Minimum Parking Requirements (AB 2097)

AB 2097 (2022) prohibits the City from imposing a minimum off-street automobile parking requirement on most development projects in any zoning district located within one half-mile of a major transit stop as defined in [Section 21155 of Public Resource Code<sup>4</sup>](#), which defines a “major transit stop” as a site containing an existing rail or bus rapid transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. The definition also includes major transit stops that are included in the applicable regional transportation plan.

The proposed amendments include a location exemption from the minimum off-street parking requirements, and codify language consistent with state law to preserve the City’s ability to impose minimum parking requirements in limited instances, such as parking requirements for hotels and event centers.

#### Technical Edits

On October 12, 2021, the City Council passed Ordinance No. 7,787-N.S., which replaced Title 23 (“the old Zoning Ordinance”) of the Berkeley Municipal Code and adopted a new Title 23 (“the new Zoning Ordinance”) to make the City’s Zoning Ordinance easier to understand and administer. The City Council gave staff direction to make minor changes to comply with state law or codify prior zoning interpretations, and to correct inadvertent errors.

The following technical edits are proposed:

- **R-4 Lot and Height Standards.** Staff identified an error between the allowed building height and permit requirement in the R-4 Lot and Height Standards Table. The development standards for residential additions allow an average building height of 16 feet, but the footnote requires a permit for average heights greater than 14 feet. Also, text describing stories permitted from the old Zoning Ordinance was omitted from the footnote. Staff propose to correct the error and include omitted text.
- **C-U Setback Standards.** Text from the old Zoning Ordinance pertaining to minimum rear setbacks—for lots on the south side of University Avenue abutting lots in residential districts—was omitted from the new Zoning Ordinance. Staff propose to re-insert the minimum rear setback requirement to correct the error. Staff also

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<sup>4</sup>[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=4.2.&article](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=4.2.&article)

propose to correct an error pertaining to rear setbacks for lots in the C-U on the south side of University Avenue *not* abutting lots in residential districts. Staff proposes no minimum setback to match the old Zoning Ordinance, which did not require a rear setback. Finally, staff propose to remove Note #2 in Table 23.204-12 (C-U Setback Standards) to avoid confusion; the old Zoning Ordinance referenced calculation of rear setback area as an example, not a requirement.

- **MU-LI Building Materials and Garden Supplies.** The old Zoning Ordinance permitted building materials and garden supplies stores with less than 20,000 square feet of floor area with an AUP, and 20,000 square feet or larger with a Use Permit. The new Zoning Ordinance incorrectly limits building materials and garden supplies stores to 2,000 square feet. Proposed text corrects this error and permits uses and sizes consistent with the old Zoning Ordinance.
- **Allowed Building Projections.** If all criteria are met<sup>5</sup>, a Reasonable Accommodation is required for all wheelchair ramps, while stairs, decks and porches are not subject to minimum setback requirements. Proposed amendments would make standards consistent for other similar features like porches, stairs and decks and clarifies development requirements for accessibility features.
- **Protected Industrial Uses.** The old Zoning Ordinance allowed conversion of protected industrial uses up to 25% of the total floor area or 20,000 square feet of floor area (whichever was less) with an AUP. The old Zoning Ordinance did not require findings for a change of use for all permits in the MM and MU-LI Districts; findings were only required when a use permit was required. The new Zoning Ordinance removed this standard and requires findings for all permits and does not permit conversions with an AUP. Staff propose edits to clarify the requirement to only apply when a change of use requires a use permit. In addition, staff propose amendments to protected industrial uses in the MU-R district. The MU-R district in the old Zoning Ordinance did not describe protected industrial uses and incorrectly included findings for change of use between manufacturing, warehousing and wholesale to match formatting for MM and MU-LI Districts. Staff propose to remove the protected industrial uses from the MU-R Zoning District, where they are generally not allowed at all.
- **Conforming and Nonconforming Uses, Structures, and Buildings.** The old Zoning Ordinance clarified that both conforming and nonconforming residential-only structures or buildings with four residential units or less that are involuntarily damaged or destroyed may be replaced or reconstructed with a Zoning Certificate. The new Zoning Ordinance removed the term “conforming” from headers and titles, which resulted in new permit requirements for conforming projects, while the lesser requirement still applies to nonconforming projects. The proposed changes correct this error through revised headers and titles.

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<sup>5</sup> <https://berkeley.municipal.codes/BMC/23.406.090>

### BACKGROUND

On May 3, 2023, the Planning Commission held a public hearing on the proposed amendments, and unanimously recommended adoption by a vote of 7-0-0 (**Attachment 3**)<sup>6</sup>.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

The proposed Zoning Ordinance amendments related to special needs housing and employment housing are within the scope of the analysis of the City of Berkeley 2023-2031 Housing Element EIR (SCH#2022010331) certified by the City Council on January 18, 2023 (Resolution No. 70,669-N.S.) and would not result in any new or substantially more severe significant impacts.

The proposed amendments related to parking, family day care home and technical edits do not constitute a project under the requirements of the California Environmental Quality Act, together with state CEQA guidelines collectively, because they have no potential for resulting in a physical change to the environment. In the event that these amendments are found to be a project under CEQA, they are subject to the CEQA “Common Sense Exemption” contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the amendments may have a significant effect on the environment.

### RATIONALE FOR RECOMMENDATION

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

### ALTERNATIVE ACTIONS CONSIDERED

No alternatives were considered.

### CONTACT PERSON

Robert Rivera, Senior Planner, Planning and Development Department, 510-981-7476

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<sup>6</sup> Agenda-related materials for the May 3, 2023 Planning Commission meeting can be found at: [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-05-03%20PC\\_Agenda%20Packet.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-05-03%20PC_Agenda%20Packet.pdf)

State Law Zoning Ordinance Amendments and Technical Edits  
to BMC Title 23

PUBLIC HEARING  
JULY 11, 2023

**Attachments:**

1. Ordinance
2. Reference Matrix
3. Report to Planning Commission, May 3, 2023
4. Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDMENTS TO THE RESIDENTIAL DISTRICT CHAPTER (BMC 23.202), COMMERCIAL DISTRICT CHAPTER (BMC 23.204), MANUFACTURING DISTRICT CHAPTER (BMC 23.206), USE-SPECIFIC REGULATIONS (SUPPLEMENTAL USE REGULATIONS) (BMC 23.302.070), GENERAL DEVELOPMENT STANDARDS CHAPTER (BMC 23.304), EMERGENCY SHELTERS CHAPTER (BMC 23.308), PARKING AND LOADING CHAPTER (BMC 23.322), NONCONFORMING USES, STRUCTURES, AND BUILDINGS (BMC 23.342), AND GLOSSARY (BMC 23.502.020) FOR CONSISTENCY WITH STATE LAW RELATED TO SPECIAL NEEDS AND EMPLOYMENT HOUSING, FAMILY DAY CARE HOME, PARKING, AND ASSOCIATED TECHNICAL EDITS

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

Section 1. That the following lines under the category “Public and Quasi-Public Uses” in Table 23.202-1 (Allowed Land Uses in Residential Districts) within Berkeley Municipal Code 23.202.020 are amended, added, or removed: “Emergency Shelter” is hereby amended, the lines “Emergency Shelter, more than 15 beds”; “Low Barrier Navigation Center” and “Supportive Housing” are hereby added, and the lines “Family Day Care Home, Large” and “Family Day Care Home, Small” are hereby removed to read as follows:

Table 23.202-1: Allowed Land Uses in Residential Districts

| ZC = Zoning Certificate<br>AUP = ADMINISTRATIVE USE PERMIT<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>* Use-Specific Regulations Apply<br>**--Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D | RESIDENTIAL DISTRICTS |      |      |     |      |     |         |           |           |           |           | USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*) |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|------|------|-----|------|-----|---------|-----------|-----------|-----------|-----------|--------------------------------------------------------------------------------------------------------|--|
|                                                                                                                                                                                                                                                                                     | R-1                   | R-1A | ES-R | R-2 | R-2A | R-3 | R-4     | R-5       | R-S       | R-SMU     | R-BMU*    |                                                                                                        |  |
| <b>Public and Quasi-Public Uses</b>                                                                                                                                                                                                                                                 |                       |      |      |     |      |     |         |           |           |           |           |                                                                                                        |  |
| Emergency Shelter, <u>15 beds or fewer</u>                                                                                                                                                                                                                                          | NP                    | NP   | NP   | NP  | NP   | NP  | See 23. | <u>ZC</u> | <u>ZC</u> | <u>ZC</u> | <u>ZC</u> | <u>23.308 - Emergency Shelters</u>                                                                     |  |

|                                             |                |                |                |                     |                     |                     |                     |                     |                     |                     |                     |                                                   |
|---------------------------------------------|----------------|----------------|----------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------------------------------------|
|                                             |                |                |                |                     |                     |                     | 308<br><u>ZC</u>    |                     |                     |                     |                     |                                                   |
| <u>Emergency Shelter, more than 15 beds</u> | <u>NP</u>      | <u>NP</u>      | <u>NP</u>      | <u>NP</u>           | <u>NP</u>           | <u>NP</u>           | <u>UP (P H)</u>     | <u>UP (P H)</u>     | <u>UP (P H)</u>     | <u>UP (P H)</u>     | <u>UP (P H)</u>     |                                                   |
| <u>Family Day Care Home, Large</u>          | <u>ZG</u><br>- | <u>ZG</u><br>- | <u>ZG</u><br>- | <u>ZG</u><br>-      | <u>ZG</u><br>-      | <u>ZG</u><br>-      | <u>ZG</u><br>-      | <u>ZG</u><br>-      | <u>ZG</u><br>-      | <u>ZG</u><br>-      | <u>ZG</u><br>-      |                                                   |
| <u>Family Day Care Home, Small</u>          | <u>ZG</u><br>- | <u>ZG</u><br>- | <u>ZG</u><br>- | <u>ZG</u><br>-      | <u>ZG</u><br>-      | <u>ZG</u><br>-      | <u>ZG</u><br>-      | <u>ZG</u><br>-      | <u>ZG</u><br>-      | <u>ZG</u><br>-      | <u>ZG</u><br>-      |                                                   |
| <u>Low Barrier Navigation Center</u>        | <u>NP</u>      | <u>NP</u>      | <u>NP</u>      | <u>ZC</u>           | <u>ZC</u>           | <u>ZC</u>           | <u>ZC</u>           | <u>ZC</u>           | <u>ZC</u>           | <u>ZC</u>           | <u>ZC</u>           |                                                   |
| <u>Supportive Housing</u>                   | <u>NP</u>      | <u>NP</u>      | <u>NP</u>      | <u>ZC</u><br>*<br>- | <u>ZC</u><br>*<br>- | <u>ZC</u><br>*<br>- | <u>ZC</u><br>*<br>- | <u>ZC</u><br>*<br>- | <u>ZC</u><br>*<br>- | <u>ZC</u><br>*<br>- | <u>ZC</u><br>*<br>- | <a href="#">23.302.070.1 – Supportive Housing</a> |

Section 2. The Berkeley Municipal Code Table 23.202-14 is hereby amended to read as follows:

TABLE 23.202-14. R-4 LOT AND HEIGHT STANDARDS

| BASIC STANDARDS                                                                               |                          | SUPPLEMENTAL STANDARDS        |
|-----------------------------------------------------------------------------------------------|--------------------------|-------------------------------|
| Lot Area, Minimum                                                                             |                          | 23.304.020– Lot Requirements  |
| New Lots                                                                                      | 5,000 sq. ft.            |                               |
| Per Group Living Accommodation Resident                                                       | 350 sq. ft. [1]          |                               |
| Usable Open Space, Minimum                                                                    |                          | 23.304.090– Usable Open Space |
| Per Dwelling Unit                                                                             | 200 sq. ft.              |                               |
| Per Group Living Accommodation Resident                                                       | 90 sq. ft.               |                               |
| Floor Area Ratio, Maximum                                                                     | No maximum               |                               |
| Main Building Height, Average                                                                 |                          | 23.304.050– Building Height   |
| New Buildings and Non-Residential Additions                                                   | 35 ft. and 3 stories [2] |                               |
| Residential Additions                                                                         | 16 ft. [3]               |                               |
| Notes:                                                                                        |                          |                               |
| 1. One additional resident is allowed for remaining lot area between 200 and 350 square feet. |                          |                               |

- 2. Maximum 65 ft. and six stories allowed with Use Permit.
- 3. Height greater than 164 ft. up to 35 ft. allowed with an AUP. Height greater than 35 ft. up to 65 ft. and six stories allowed with a Use Permit.

**Section 3.** That the following lines under the category “Public and Quasi-Public Uses” in Table 23.204-1 (Allowed Uses in the Commercial Districts) within Berkeley Municipal Code 23.204.020 (Allowed Land Uses) are hereby amended or added: “Emergency Shelter” is amended; and the lines “Emergency Shelter, 26 to 60 beds”; “Emergency Shelter, more than 60 beds”; “Low Barrier Navigation Center”; and “Supportive Housing” are hereby added to read as follows:

TABLE 23.204-1. ALLOWED USES IN THE COMMERCIAL DISTRICTS

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see 23.204.020(B)<br>[#] = Table Note<br>Permit Requirement<br>* Use-Specific Regulations Apply | COMMERCIAL DISTRICTS     |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          | USE-SPECIFIC REGULATIONS                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|---------------------------------------------|
|                                                                                                                                                                                                                                     | C-C                      | C-N                      | C-U                      | C-E                      | C-NS                     | C-NA                     | C-SA                     | C-T                      | C-SO                     | C-DMU                    | C-AC                     |                                             |
| <b>Public and Quasi-Public Uses</b>                                                                                                                                                                                                 |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                                             |
| <a href="#">Emergency Shelter, 25 beds or fewer</a>                                                                                                                                                                                 | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">23.308 - Emergency Shelters</a> |
| <a href="#">Emergency Shelter, 26 to 60 beds</a>                                                                                                                                                                                    | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> | <a href="#">ZC</a>       | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> |                                             |
| <a href="#">Emergency Shelter, more than 60 beds</a>                                                                                                                                                                                | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> | <a href="#">UP (P H)</a> |                                             |
| <a href="#">Low Barrier Navigation Center</a>                                                                                                                                                                                       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       | <a href="#">ZC</a>       |                                             |



|                                    |                              |                              |                              |                              |                              |                              |                              |                              |                              |                              |                              |                                                                    |
|------------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|--------------------------------------------------------------------|
| <a href="#">Supportive Housing</a> | <a href="#">ZC</a><br>*<br>- | <a href="#">ZC</a><br>*<br>- | <a href="#">ZC</a><br>*<br>- | <a href="#">ZC</a><br>*<br>- | <a href="#">ZC</a><br>*<br>- | <a href="#">ZC</a><br>*<br>- | <a href="#">ZC</a><br>*<br>- | <a href="#">ZC</a><br>*<br>- | <a href="#">ZC</a><br>*<br>- | <a href="#">ZC</a><br>*<br>- | <a href="#">ZC</a><br>*<br>- | <a href="#">23.302.0<br/>70.1-<br/>Supportiv<br/>e<br/>Housing</a> |
|------------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|--------------------------------------------------------------------|

Section 4. That Berkeley Municipal Code Table 23.204-12 is hereby amended to read as follows:

TABLE 23.204-12. C-U SETBACK STANDARDS

| LOT LINE & PROJECT CONDITIONS                                                                                | REQUIRED SETBACK                                                                                     |
|--------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| <b>Front</b>                                                                                                 |                                                                                                      |
| Ground-floor non-residential uses fronting University Avenue                                                 | Average 2 ft.<br>2 ft. at all sidewalk pedestrian entries                                            |
| Ground-floor residential uses fronting University Avenue                                                     | Average 2 ft.<br>Maximum 10 ft.[1]                                                                   |
| Fronting a street other than University Avenue and confronting a non-residential district                    | No <u>minimum</u> .                                                                                  |
| <b>Rear</b>                                                                                                  |                                                                                                      |
| Lots on south side of University Avenue abutting <del>a lot in</del> residential district-                   | <u>Minimum of 10 ft. or 10% of lot depth, whichever is greater, and an average of 20 ft. [2] [3]</u> |
| <del>All other lots</del> <u>Lots on south side of University Avenue not abutting a residential district</u> | <u>No minimum 10 ft. or 10% of lot depth, whichever is greater</u>                                   |
| Lots on north side of University Avenue                                                                      | See 23.204.060(-D)(-5)- C-U University Commercial District (Solar Access)                            |
| Interior Side                                                                                                | No minimum                                                                                           |
| Street Side                                                                                                  | 2 ft. average                                                                                        |
| All setbacks for lots on South Side of University Avenue fronting a street other than University Avenue      | As required by 23.304.030.C.2- Setbacks (Lots Adjacent to Residential Districts) [34]                |

Section 5. That the following lines under the category “Public and Quasi-Public Uses” in Table 23.206-1 (Allowed Uses in Manufacturing Districts), within Berkeley Municipal Code 23.206.020 (Allowed Land Uses and Permit Requirements) named Low Barrier Navigation Center; and Supportive Housing are hereby added to read as follows:

TABLE 23.206-1. ALLOWED USES IN MANUFACTURING DISTRICTS

|                                                     |                                |           |              |             |                                                       |
|-----------------------------------------------------|--------------------------------|-----------|--------------|-------------|-------------------------------------------------------|
| ZC = Zoning Certificate<br>AUP = Administrative Use | <b>MANUFACTURING DISTRICTS</b> |           |              |             | <b>Use-Specific Standards</b><br>Applies to uses with |
|                                                     | <b>M</b>                       | <b>MM</b> | <b>MU-LI</b> | <b>MU-R</b> |                                                       |

|                                                                                                                                                                                        |                    |                    |                    |                     |                                                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------|--------------------|---------------------|----------------------------------------------------------------|
| Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP,<br>see 23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit<br>Requirement<br>* Use-Specific Standards<br>Apply |                    |                    |                    |                     | an asterisk following<br>the permit requirement<br>(e.g., ZC*) |
| <b>Public and Quasi-Public Uses</b>                                                                                                                                                    |                    |                    |                    |                     |                                                                |
| <a href="#">Low Barrier Navigation Center</a>                                                                                                                                          | <a href="#">NP</a> | <a href="#">NP</a> | <a href="#">NP</a> | <a href="#">ZC</a>  |                                                                |
| <a href="#">Supportive Housing</a>                                                                                                                                                     | <a href="#">NP</a> | <a href="#">NP</a> | <a href="#">NP</a> | <a href="#">ZC*</a> | <a href="#">23.302.070.1 – Supportive Housing</a>              |

Notes:

1. A maximum setback of 10 feet is only permitted for landscaping that enhances the streetscape and provides privacy for residential units on the first floor.

~~Rear setback area must be greater than or equal to the width of the lot in feet multiplied by 20 feet.~~

2. See 23.304.030(C)(-2)(-b) ([Modifications in Commercial Districts](#)) for allowed reductions.
3. If a lot fronting a side street is consolidated into a single project with the adjacent University Avenue-fronting lot, the project must conform to the setback standards in this table.

Section 6. That the line named “Retail, General” in Table 23.206-1 (Allowed Uses in Manufacturing Districts), within Berkeley Municipal Code 23.206.020 (Allowed Land Uses and Permit Requirements) is hereby amended to read as follows:

TABLE 23.206-1. ALLOWED USES IN MANUFACTURING DISTRICTS

|                                                                                                                                                                                                                                            |                                |           |              |             |                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|-----------|--------------|-------------|-------------------------------------------------------------------------------------------------------------------------|
| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP,<br>see 23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit<br>Requirement<br>* Use-Specific Standards<br>Apply | <b>MANUFACTURING DISTRICTS</b> |           |              |             | <b>Use-Specific Standards</b><br>Applies to uses with<br>an asterisk following<br>the permit requirement<br>(e.g., ZC*) |
|                                                                                                                                                                                                                                            | <b>M</b>                       | <b>MM</b> | <b>MU-LI</b> | <b>MU-R</b> | <b>Use-Specific Regulation</b>                                                                                          |
| <b>Retail Uses</b>                                                                                                                                                                                                                         |                                |           |              |             |                                                                                                                         |
| Retail, General                                                                                                                                                                                                                            | NP                             | NP        | AUP*[5]      | AUP*[3]     | 23.206.080(-B)(-6);                                                                                                     |

|  |  |  |  |  |                                            |
|--|--|--|--|--|--------------------------------------------|
|  |  |  |  |  | 23.206.090( <del>B</del> )( <del>4</del> ) |
|--|--|--|--|--|--------------------------------------------|

Section 7. That Note 5 in Table 23.206-1 (Allowed Uses in Manufacturing Districts), within Berkeley Municipal Code 23.206.020 (Allowed Land Uses and Permit Requirements) is hereby amended to read as follows:

[5] ~~Not permitted over 2,000 sq. ft.~~ Requires a Use Permit for more than 5,000 sq. ft. of floor area.

Section 8. That Berkeley Municipal Code Section 23.206.040(C)(1) is hereby amended to read as follows:

1. As used in this section, “child-serving use” means a school, child care center, ~~family day care~~ or park/recreational facility used by children. Family day care homes are exempt from these regulations and not included in the definition of “child-serving use.”

Section 9. That Berkeley Municipal Code 23.206.050(A)(3)(a) is hereby amended to read as follows:

- a) To approve a ~~Use P~~ use P permit required by Table 23.206-6 for changes to a protected industrial use in the MM and MU-LI districts, the review authority must find that replacement space is provided as required by Paragraph 4 (Replacement Space) below.

Section 10. That Berkeley Municipal Code 23.206.050(B) is hereby removed and Berkeley Municipal Code 23.206.050(C) is hereby amended to read as follows:

~~B. Protected Industrial Uses in the MU-R District.~~

- ~~1. Protected Industrial Uses Defined. Manufacturing, warehousing, and wholesale trade are protected industrial uses in the MU-R district. Protections apply only to legally established uses.~~
- ~~2. Permit Required. Except as allowed by Section 23.206.050.B.4 (Exempt from Permit Requirement), a Use Permit is required to change a protected industrial use to any use that is not a protected industrial use.~~
- ~~3. Permit Findings. To approve a Use Permit, when required by Section 23.206.050.B.2 (Permit Required), the review authority must find that:~~

- a) ~~The change of use will not have a materially detrimental impact on the character of the MU-R district as a light industrial district, with particular reference to the character of the blocks and parts of blocks in the part of the district that is contiguous with the site; and~~
  - b) ~~Appropriate mitigation has been made for loss of the manufacturing, wholesale trade, or warehouse space in excess of 25 percent of that space through providing such space elsewhere in Berkeley, payment into the West Berkeley Building Acquisition Fund, or by other appropriate means.~~
4. ~~Exempt from Permit Requirement. A protected industrial use may be changed to an art/craft studio or contractor use with the permit required by Section 23.206.020 (Allowed Land Uses and Permit Requirements). Approval of an art/craft studio or contractor use within a protected industrial space does not eliminate any protections for the prior protected use and such protections will remain if the new non-protected use ceases.~~

**B. Protected Non-Industrial Uses in the MU-LI and MU-R Districts.**

1. *Protected Non-Industrial Uses Defined.* A use in the MU-LI or MU-R districts listed in Table 23.206-8 is classified as a protected non-industrial use, provided the use:
  - (a) Was legally established as of July 6, 1989; and
  - (b) Exists as a single stand-alone use or is combined with residential use in a live/work unit.

TABLE 23.206-8: PROTECTED NON-INDUSTRIAL USES

| CATEGORY   | PROTECTED USES                                                                                                                                                                                                                                                                                                           |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Category 1 | Art/craft studio                                                                                                                                                                                                                                                                                                         |
| Category 2 | 1) Art galleries, ancillary to art/craft studios and when located in the same building<br>2) Child care facility<br><del>3) Family day care home</del><br>34) Fine arts performance, instruction and rehearsal studios (dance, music, theater)<br>45) Theaters, stage performance, but excluding motion picture theaters |

2. *Permit Required for Change of Use.*
  - (a) Table 23.206-9 shows permits required to change a protected non-industrial use.

TABLE 23.206-9: PERMITS REQUIRED FOR CHANGE TO PROTECTED NON-INDUSTRIAL USE

|  | NEW USE |
|--|---------|
|  |         |

| EXISTING PROTECTED USE GROSS FLOOR AREA | A PROTECTED USE IN THE SAME CATEGORY | A PROTECTED USE IN A DIFFERENT CATEGORY | A NON-PROTECTED USE THAT OCCUPIES ALL OF THE NON-RESIDENTIAL FLOOR AREA IN THE BUILDING |
|-----------------------------------------|--------------------------------------|-----------------------------------------|-----------------------------------------------------------------------------------------|
| Less than 5,000 sq. ft.                 | ZC                                   | AUP                                     | AUP                                                                                     |
| 5,000 sq. ft. or more                   | AUP                                  | UP(PH)                                  | UP(PH)                                                                                  |

3. *Owner-Occupied Exemption.* A protected non-industrial use which is owner-occupied and occupies all of the non-residential floor area in a building is exempt from the requirements of this section.

4. *Findings.*

(a) To approve a permit required by Table 23.206-9, the review authority must find that space occupied by the existing non-industrial protected use will be replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category. Such replacement space may not qualify for exemption under Paragraph 3 (Owner-Occupied Exemption) above or by reason of having been established after July 6, 1989.

(b) When making additional findings required by Chapter 23.406 (Specific Permit and Approval Requirements), the review authority may only consider the potential detriment associated with the new use. Dislocation of any specific previous occupant or use may not be a basis for finding detriment.

Section 11. That Berkeley Municipal Code 23.206.080(B)(6) is hereby amended to read as follows:

6. *General Retail.* Allowed general retail uses in the MU-LI district are limited to food product stores and building materials and garden supply stores. Other types of general retail uses are not permitted. Food product stores are not permitted if over 2,000 square feet. Building materials and garden supplies stores are permitted with an AUP if under 20,000 square feet and with a Use Permit if 20,000 square feet or more.

Section 12. That Berkeley Municipal Code 23.206.090(B)(3) is hereby amended to read as follows:

3. *Community Care Facility.* Community care facilities are allowed in the MU-R district only as a change of use. New construction is not permitted with a Use Permit.

Section 13. That Berkeley Municipal Code 23.302.070(I) through (K) are hereby added and re-lettered to read as follows:

I. Supportive Housing.

1. Permits Required. Supportive housing shall be allowed by right in zones where multifamily and mixed uses are permitted, if the proposed housing development satisfies requirements pursuant to Government Code Section 65651(a).

J. Smoke Shops. In all districts, smoke shops are not permitted within 1,400 feet of a school or public park.

J.K. Warehouse Storage for Retail Use.

1. In all districts where retail uses are allowed, on-site storage of goods is allowed as an accessory use to a primary retail use on the lot.
2. The storage of goods for a contiguous and directly accessible retail space is allowed in the MU-LI and MU-R districts subject to the following:
  - a) An AUP is required for storage 3,000 square feet or less; a Use Permit is required for storage more than 3,000 square feet.
  - b) Except for food product stores in the MU-LI district, the storage is permitted only for uses within the district. Storage for retail uses wholly or partially outside the district is not permitted.

Section 14. That Berkeley Municipal Table 23.304-2 is hereby amended to read as follows:

TABLE 23.304-2: ALLOWED BUILDING PROJECTIONS

| BUILDING FEATURE                                                                                         | MAXIMUM PROJECTION INTO REQUIRED SETBACK<br>(MUST MAINTAIN 3 FT MINIMUM FROM INTERIOR SIDE<br>LOT LINE) |         |                  |                |
|----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|---------|------------------|----------------|
|                                                                                                          | FRONT                                                                                                   | REAR    | INTERIOR<br>SIDE | STREET<br>SIDE |
| Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment                                  | 2.5 ft.                                                                                                 | 2.5 ft. | 1.5 ft.          | 2.5 ft.        |
| Eaves, Cornices, Canopies, Awnings and Bay Windows [1]                                                   | 2.5 ft.                                                                                                 | 2.5 ft. | 1.5 ft.          | 2.5 ft.        |
| Uncovered decks, porches, landings, ramps and stairs when 30 inches or more above grade at any point [2] | 6 ft.                                                                                                   | 6 ft.   | 1.5 ft.          | 2.5 ft.        |
| Balconies and fire escapes [1]                                                                           | 6 ft.                                                                                                   | 6 ft.   | 1.5 ft.          | 2.5 ft.        |

Notes:

1. Projecting bay windows and balconies may not exceed 25% of the length of building wall to which its attached.
2. Uncovered decks, porches, landings and stairs less than 30 inches in height ([not including railings](#)) are not subject to minimum setback requirements.

**Section 15.** That Berkeley Municipal Code 23.304.030(B)(4) is hereby amended to read as follows:

4. *Accessibility for Persons with Disabilities.* Wheelchair ramps, lifts, and other structures to accommodate persons with disabilities [that are less than 30 inches above grade \(not including railings\) are not subject to minimum setback requirements.](#) [Any accessibility feature with a height above grade of 30 inches or more \(not including railings\)](#) may project into a required setback area with approval of a reasonable accommodation request. See Section 23.406.090 (Reasonable Accommodation). Preferred designs would comply with the following:
  - a) One side yard with a pedestrian pathway of at least 3 feet in width that provides access to the rear yard shall be maintained on the lot. [A public sidewalk that provides access to the rear yard would also meet this requirement, and-](#)
  - b) The projection may not block access to or encroach into any required off-street parking space or driveway leading to such space [unless there is no other feasible location for the accessibility feature.](#)

**Section 16.** That Berkeley Municipal Code Section 23.308.020(C) is hereby removed as follows:

**C. Required Permits.** ~~Table 23.308-1 shows permits required for emergency shelters.~~

~~TABLE 23.308-1: PERMIT REQUIREMENTS FOR EMERGENCY SHELTERS~~

| <del>DISTRICTS</del>                                            | <del>PERMIT REQUIRED [1]</del> |
|-----------------------------------------------------------------|--------------------------------|
| <del><b>Residential Districts</b></del>                         |                                |
| <del>R-1, R-1A, ES-R, R-2, R-2A, R-3</del>                      | <del>Not Permitted</del>       |
| <del>R-4, R-5, R-S, R-SMU, and R-BMU</del>                      |                                |
| <del>15 beds or fewer [1]</del>                                 | <del>ZC</del>                  |
| <del>More than 15 beds</del>                                    | <del>UP(PH)</del>              |
| <del><b>Commercial Districts</b></del>                          |                                |
| <del>C-C, C-U, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-AG</del> |                                |

|                                                                                          |               |
|------------------------------------------------------------------------------------------|---------------|
| 25 beds or fewer                                                                         | ZC            |
| More than 25 beds                                                                        | UP(PH)        |
| C-DMU                                                                                    |               |
| 60 beds or fewer                                                                         | ZC            |
| More than 60 beds                                                                        | UP(PH)        |
| <b>Manufacturing Districts</b>                                                           |               |
| M, MM, MU-LI, MU-R                                                                       | Not Permitted |
| Notes:<br>[1] See also permit requirements based on floor area of use in Table 23.308-2. |               |

Section 17. That Berkeley Municipal Code 23.308.030(A) is hereby amended to read as follows:

- A. *All Districts.* The following standards apply to emergency shelters in all districts.
1. No individual or household mayshall be denied emergency shelter because of an inability to pay.
  2. No emergency shelter shall be located within 300 feet of another emergency shelter, except when a Use Permit is approved to allow less of a buffer distance.
  3. When abutting a Residential District, all waiting and intake areas areas for shelter activities and uses, including but not limited to waiting and intake, personal storage, facility storage, and recreation, shall be located indoors.
    4. ~~The following e~~Emergency shelter facilities are required :to have
    - 5.4. Aan area for onsite client intake equal to one-quarter of the area provided for client beds. This may be a multi-use area.
      - a. ~~Shower and restroom facilities~~
    - 6.5. The following incidental uses are permitted in emergency shelter facilities ~~are optional:~~
      - a. ~~Secure personal storage.~~
      - b. ~~Daytime services.~~
      - e.a. Meal services~~On-site cafeteria.~~
      - d. ~~Communal kitchen.~~
      - e. ~~Laundry equipment for clients.~~
      - f.b. Child care center.
      - g. ~~Vehicle and/or bicycle parking.~~
    - 7.6. Lighting shall be provided in all exterior areas, including pathways, parking areas, courtyards, rear yard areas, and spaces between structures. Lighting shall be directed in a manner that does not cast light onto neighboring properties.



~~8.7.~~ On-site management and security shall be provided at all times the facility is in operation and on-site management shall be provided at least one hour before and after facility operation hours.

~~9.~~ ~~The shelter operator shall prepare and implement a Shelter Safety and Management Plan. The Plan shall be available to the public upon request and shall address the following:~~

- ~~a.~~ Client congregation outside of the shelter facility to prevent queuing within the public right-of-way.
- ~~b.~~ Eligibility criteria, enforcement rules, and procedures for disruptive clients.
- ~~c.~~ Number and responsibilities of on-site support staff, training standards, other management procedures, and a primary and secondary contact person.
- ~~d.~~ Bed bug prevention.
- ~~e.~~ Refuse collection.
- ~~f.~~ Security procedures.
- ~~g.~~ Separation of sleeping areas and restrooms by gender and for families.
- ~~h.~~ Consistency with the Alameda County Wide Homeless Continuum of Care: Health, Safety and Accessibility Standards for Shelter Facilities in Alameda County.

~~10.8.~~ The shelter provider shall conduct a community meeting after giving notice to all owners and occupants on record with the Alameda County Assessor within a 100-foot radius of the proposed shelter location. A community meeting shall not be required when the target population of the proposed shelter requires privacy due to safety concerns as determined by the Zoning Officer.

Section 18. That Berkeley Municipal Code 23.308.030(C) is hereby amended to read as follows:

C. *Findings.* To approve a Use Permit for an emergency shelter, under Section 23.308.020.C (Required Permits) or 23.308.030.B.2 (Standards in Residential Districts), the Zoning Adjustments Board (ZAB) must find that a:

A larger shelter facility will help meet the City's goals pertaining to emergency housing of the homeless;

1. The circumstances of the subject property make the larger facility appropriate; and

2. Design features will minimize impacts on the surrounding area.

Section 19. That the category named "Non-Residential Uses" in Table 23.322-1, (Required Off Street Parking in Residential Districts), within Berkeley Municipal Code 23.322.030 (Required Parking Spaces), is hereby amended to read as follows:

TABLE 23.322-1. REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS

| Land Use                                          | Number of Required Off-street Parking Spaces                                                                                                                                                                              |
|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Non-Residential Uses</b>                       |                                                                                                                                                                                                                           |
| All non-residential uses except uses listed below | <u>R-SMU District</u> : 1 per 1,000 sq. ft.<br><u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft.<br><u>All Other Residential Districts</u> : See 23.322.030.A.2                            |
| Community Care Facility                           | <u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft.<br><u>All Other Residential Districts</u> : <u>One per two non-resident employees</u><br><u>None required</u>                            |
| Food Service Establishment                        | <u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft.<br><u>All Other Residential Districts</u> : 1 per 300 sq. ft.                                                                            |
| Hospital                                          | <u>R-SMU District</u> : 1 per 1,000 sq. ft.<br><u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft.<br><u>All Other Residential Districts</u> : 1 per each 4 beds plus 1 per each 3 employees |
| Library                                           | <u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft.<br><u>All Other Residential Districts</u> : 1 per 500 sq. ft. of publicly accessible floor area                                          |
| Nursing Home                                      | 1 per 3 employees                                                                                                                                                                                                         |
| Medical Practitioners                             | <u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft.<br><u>All Other Residential Districts</u> : 1 per 300 sq. ft.                                                                            |
| Non-Medical Offices                               | <u>R-SMU District</u> : 1 per 1,000 sq. ft.<br><u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft.<br><u>All Other Residential Districts</u> : 1 per 400 sq. ft.                             |
| Hotels, Tourist                                   | 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees                                                                                                                                                             |

Section 20. That the category named “Non-Residential Uses” in Table 23.322-4 (Required Off Street Parking in Manufacturing Districts), within Berkeley Municipal Code 23.322.030 (Required Parking Spaces), is hereby amended to read as follows:

TABLE 23.322-4: REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

| Land Use                                          | Required Parking Spaces                                                                                                                                                                                                                                       |
|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Non-Residential Uses</b>                       |                                                                                                                                                                                                                                                               |
| All non-residential uses except uses listed below | 2 per 1,000 sq. ft.                                                                                                                                                                                                                                           |
| Art/Craft Studio                                  | 1 per 1,000 sq. ft.                                                                                                                                                                                                                                           |
| Community Care Facility                           | <del>1 per 2 non-resident employees</del> <u>None required</u>                                                                                                                                                                                                |
| Food Service Establishment                        | 1 per 300 sq. ft.                                                                                                                                                                                                                                             |
| Library                                           | 1 per 500 sq. ft. of publicly accessible floor area                                                                                                                                                                                                           |
| Laboratories                                      | 1 per 650 sq. ft.                                                                                                                                                                                                                                             |
| Nursing Home                                      | 1 per 5 residents, plus 1 per 3 employees                                                                                                                                                                                                                     |
| Medical Practitioners                             | One per 300 sq. ft.                                                                                                                                                                                                                                           |
| Large Vehicle Sales and Rental                    | <u>MU-LI District:</u> 1.5 per 1,000 sq. ft.<br><u>All Other Districts:</u> 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay                                                                           |
| Manufacturing                                     | <u>MU-R District:</u> 1.0 per 1,000 sq. ft.<br><u>All Other Districts:</u> 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more                                                                     |
| Storage, warehousing, and wholesale trade         | 1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.;<br>1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more                                                                                                                                          |
| Live/Work                                         | <u>MU-LI District:</u> 1 per 1,000 sq. ft. of work area where workers/clients are permitted<br><u>MU-R District:</u> if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area |

Section 21. That Berkeley Municipal Code 23.322.020(D) is hereby added to read as follows:

D. Location Exemption. Off-street parking spaces are not required for a new use or building, or an enlargement or intensification of an existing use or structure, that is located within 0.5 miles of a major transit stop, as defined by Section 21155 of the California Public Resources Code, unless otherwise authorized by Government Code Section 65863.2.

Section 22. That Berkeley Municipal Code 23.324 title is hereby amended to read as follows:

**Chapter 23.324**

**CONFORMING AND NONCONFORMING USES, STRUCTURES, AND BUILDINGS, AND LOTS**

Section 23. That Berkeley Municipal Code 23.324.010 is hereby amended to read as follows:

**23.324.010 Chapter Purpose.**

This chapter establishes regulations for conforming and nonconforming lots, uses, structures, and buildings. These regulations are intended allow for:

- A. The development and use of lawful nonconforming lots;
- B. Changes to nonconforming uses and the termination of abandoned uses;
- C. Maintenance, repair, and expansion of nonconforming structures and buildings; and
- D. Alterations to nonconforming structures and buildings when needed for public safety.

Section 24. That Berkeley Municipal Code 23.324.050 section title is hereby amended to read as follows:

**23.324.050 Conforming and Nonconforming Structures and Buildings**

Section 25. That Berkeley Municipal Code 23.324.050(F)(4)(a) is hereby amended to read as follows:

(a) A conforming or nonconforming residential-only structure or building with four residential units or less, including any accessory structures or buildings, that is involuntarily damaged or destroyed may be replaced or reconstructed with a Zoning Certificate.

Section 26. That Berkeley Municipal Code 23.502.020(C)(17) is hereby amended to read as follows:

17. *Community Care Facility.* A state-licensed facility for the non-medical care and supervision of children, adolescents, adults or elderly persons. This use includes

community care facilities as defined in California Health and Safety Code (H&SC) Section 1500 et seq, residential care facilities for the elderly (H&SC Section 1569 et seq.), facilities for the mentally disordered or otherwise handicapped (California Welfare and Institutions Code Section 5000 et seq.), alcoholism or drug abuse recovery or treatment facilities (H&SC Section 11834.02), ~~supportive housing (California Government Code Section 65582),~~ and other similar facilities. This use excludes medical care institutions, skilled nursing facilities, nursing homes, foster homes, family day care homes, child care facilities, supportive housing, and transitional housing.

Section 27. That Berkeley Municipal Code 23.502.020(E)(3) is hereby amended to read as follows:

3. *Emergency Shelter.* Temporary lodging for homeless persons with minimal supportive services that may include 24-hour services and that may be limited to occupancy of six months or less as defined in Health and Safety Code Section 50801(e).

Section 28. That Berkeley Municipal Code 23.502.020(F)(3) is hereby amended to read as follows:

3. *Family Day Care Home.* An establishment providing day care for 14 or fewer children in a dwelling unit as licensed by the California Department of Social Services. A family day care home is considered an activity allowed as part of residential use in any zoning district in which residential uses are either permitted or conditionally permitted. ~~must be incidental to must be operated in the dwelling unit or accessory building where the family day care operator resides.~~

~~(a) Small Family Day Care Home. A family day care home for eight or fewer children, including children who live at the home.~~

~~(b) Large Family Day Care Home. A family day care home for nine to fourteen children, including children who live at the home.~~

Section 29. That Berkeley Municipal Code 23.502.020(H)(10) is hereby amended to read as follows:

10. *Household.* One or more persons, whether or not related by blood, marriage, or adoption, with common access to and use of all living, kitchen, and eating areas within a single dwelling unit. ~~sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities,~~

~~as well as maintaining a single lease or rental agreement for all members of the household and other similar characteristics indicative of a single household.~~

Section 30. That Berkeley Municipal Code 23.502.020(L)(21) is hereby added as follows:

21. *Low Barrier Navigation Center.* A temporary, low-barrier-to-entry shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, healthy services, shelter, and housing. Low barrier includes best practices to reduce barriers to entry, such as allowing partners, pets, storage of personal items, and privacy pursuant to California Government Code Section 65660 and includes services to connect people to permanent housing through a service plan and services staffing and a coordinated entry system pursuant to Section 576.400(d) or Section 578.7(a)(8), as applicable, of Title 24 of the Code of Federal Regulations.

Section 31. That Berkeley Municipal Code Section 23.502.020(S)(16) is hereby amended to read as follows:

16. *Single-Family Dwelling.* A building designed for and occupied exclusively by one household, or may provide accommodations for six or fewer employees as “employee housing” pursuant to Healthy and Safety Code Section 17021.5

Section 32. That Berkeley Municipal Code Section 23.502.020(S)(32) is hereby amended to read as follows:

32. *Supportive Housing.* As defined in Health and Safety Code 50675.14(b)(2), housing with no limit on length of stay,(2): Housing with no limit on length of stay, Any dwelling unit or a Group Living Accommodation, that is occupied by the target population as defined in Health and Safety Code 50675.14(b)(3)in subdivision (d) of Section 53260 of the CA Health and Safety Code, with no limit on length of stay, that is and linked to on- or off-site services that assist the supportive housing residents in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community.

Section 33. 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.

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other Technical Edits – Reference Matrix

Table 1 Proposed Amendments to Address State Laws

| State Laws                                                                                                                                                                                                                                                                                                                           | Amended Berkeley Municipal Code Section(s)                                                                                                                                                                                                                                                                                                                                                                                 | Proposed Amendment(s)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>AB 139 (Emergency Shelters 2019)</b> limits the development standards that local jurisdictions can impose on emergency shelters.</p> <p><b>AB 2339 (Emergency Shelters 2022)</b> provides that the sites identified for emergency shelters must be in areas where residential uses are permitted or are otherwise suitable</p> | <p>23.202.020 Allowed Land Use (Residential)<br/>                     23.204.040 Allowed Land Uses (Commercial)<br/>                     23.308.020(C) Applicability and Nonconformities (Emergency Shelters);<br/>                     23.308.030(A) Standards for Emergency Shelters;<br/>                     23.308.030(C) Findings (Emergency Shelters);<br/>                     23.502.020(E)(3) Defined Terms;</p> | <p>Removes standards that local jurisdictions cannot regulate pursuant to AB139 and included Emergency Shelter in applicable allowed use tables. No substantive changes for permit types or thresholds for number of beds are included.</p> <p>Proposed amendment also updates the definition of Emergency Shelter to clarify that 24-hour services are permitted</p> <p>No changes are proposed in response to AB 2339 because sites identified for emergency shelters are already permitted and located in all areas where residential uses are permitted.</p> |
| <p><b>AB 101 (Low Barrier Navigation Center)</b> defines “low barrier navigation centers” and requires local jurisdictions to permit low barrier navigation centers by right in zones that allow mixed-use development and nonresidential zones that permit multifamily uses, provided the facility meets certain standards.</p>     | <p>23.202.020 Allowed Land Uses (Residential)<br/>                     23.204.020 Allowed Land Uses (Commercial)<br/>                     23.206.020 Allowed Land Uses (Manufacturing)<br/>                     23.502.020(L)(21) Defined Terms</p>                                                                                                                                                                        | <p>AB 101 permits low barrier navigation centers by right in zones that permit multifamily uses. Consistent with AB 101, proposed amendment added the use permitted by right with a ZC in each zoning district that permits multifamily. Also, proposed amendments added a definition consistent with state law.</p>                                                                                                                                                                                                                                             |

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other Technical Edits – Reference Matrix

| State Laws                                                                                                                                                                                                                                                                  | Amended Berkeley Municipal Code Section(s)                                                                                                                                                                                                                                                                                                                                  | Proposed Amendment(s)                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>AB 2162 (Supportive Housing)</b> requires local jurisdictions to allow supportive housing projects with 50 or fewer units in all zones where multifamily and mixed-use residential development is permitted, provided the project meets other specified criteria.</p> | <p>23.202.020 Allowed Land Uses (Residential)<br/>                     23.204.020 Allowed Land Uses (Commercial)<br/>                     23.206.020 Allowed Land Uses (Manufacturing)<br/>                     23.302.070(I) Use-Specific Regulation<br/>                     23.502.020(C)(17) Defined Terms<br/>                     23.502.020(S)(32) Defined Terms</p> | <p>Amend Community Care Facility definition to exclude supportive housing; supportive housing is already defined separately. Proposed amendments updated the definition to be consistent with the California Health and Safety Code and amend the City-wide Use Specific Regulations to include criteria requirements under AB 2162.</p> |
| <p><b>Health and Safety Code HSC 17021.5 (Employee Housing Act)</b> requires local jurisdictions to consider employee housing providing accommodations for six or fewer employees as a single-family structure with a residential land use designation.</p>                 | <p>23.502.020(S)(16) Defined Terms</p>                                                                                                                                                                                                                                                                                                                                      | <p>Update Single-Family Dwelling definition to include “employee housing” to align with the requirements from Health and Safety Code 17021.5</p>                                                                                                                                                                                         |
| <p><b>House Element (Household definition)</b> as part of Program-31 requires the City to update the definition of household to remove constraint on housing for persons with disabilities.</p>                                                                             | <p>23.502.020(H) Defined Terms</p>                                                                                                                                                                                                                                                                                                                                          | <p>Update the definition of household to be consistent with current practice. The city does not require proof of single lease, rental agreements or proof of shared living expenses and therefore proposed amendments remove the requirements from the definition of household.</p>                                                      |
| <p><b>Lanterman Developmental Disabilities Service Act (Residential Care)</b> requires local jurisdictions to allow licensed residential facilities for six or fewer persons as a permitted use</p>                                                                         | <p>23.206.090(B)(3) MU-R Mixed Use-Residential District (Community Care Facility)</p>                                                                                                                                                                                                                                                                                       | <p>Amend use specific standards to allow new development of community care facilities with a Use Permit, consistent with multifamily use, in the MU-R District.</p>                                                                                                                                                                      |



Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other Technical Edits – Reference Matrix

| State Laws                                                                                                                                                                                                                                                                                                                                                                                    | Amended Berkeley Municipal Code Section(s)                                                                                                                                                                                                                            | Proposed Amendment(s)                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| in all zones where residential use is permitted.                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p><b>SB 234 (Supportive Child Care Family Home Expansion)</b> considers all family daycare homes for up to 14 children, that operate under the standards of state law, a by-right residential use and prohibits the requirement of a business license.</p>                                                                                                                                   | <p>23.202.020 Allowed Land Uses (Residential)<br/>                 23.206.040(C)(1) Use-Specific Regulation<br/>                 23.206.050(C) Protected Non-Industrial Uses in the MU-LI and MU-R Districts.<br/>                 23.502.020(F)(3) Defined Terms</p> | <p>Amend the definition of “family day care home” to clarify that they are considered an activity allowed as part of residential use and amend the residential use table to align with the change. Proposed amendments also updated definition of “child-serving uses” in the MU-LI and MU-R District to remove reference to family day care homes and removed “family day care home” as a protected industrial use in MU-R District, as it is inherently a permitted residential use.</p> |
| <p><b>AB 2097 (Minimum Parking Requirements)</b> prohibits the City from imposing a minimum off-street automobile parking requirement on most<sup>1</sup> development projects in any zoning district located within ½ mile of a major transit stop as defined in Section 21155 of Public Resource Code<sup>2</sup> which defines a major transit stop as a corridor with fixed route bus</p> | <p>23.322.020(D) Applicability</p>                                                                                                                                                                                                                                    | <p>Consistent with state law, staff included a location exemption for all development projects within ½ mile of major transit stop.</p>                                                                                                                                                                                                                                                                                                                                                    |

<sup>1</sup> “Project” does not include a project where any portion is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging, except where a portion of a housing development project is designated for use as a residential hotel, as defined in Section 50519 of the Health and Safety Code.

<sup>2</sup> [https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=4.2.&article=](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=4.2.&article=)

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other Technical Edits – Reference Matrix

| State Laws                                                                          | Amended Berkeley Municipal Code Section(s) | Proposed Amendment(s) |
|-------------------------------------------------------------------------------------|--------------------------------------------|-----------------------|
| service with service intervals no longer than 15 minutes during peak commute hours. |                                            |                       |

Table 2 Proposed Technical Zoning Amendments

| Technical Edits/Corrections         | Amended Berkeley Municipal Code Section(s)                                            | Proposed Amendment(s)                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------------|---------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>R-4 Lot and Height Standards</b> | 23.202.110 E. (Development Standards)<br>Table 23-202-14 R-4 Lot and Height Standards | Staff identified an error between the allowed building height and permit requirement in the R-4 Lot and Height Standards Table. The development standards for residential additions allow a building height of 16 feet, but the footnote requires a permit for heights greater than 14 feet. Also, text describing stories permitted from the old Zoning Ordinance was omitted from the footnote. Proposed amendments correct the error and include omitted text. |
| <b>C-U Setback Standards</b>        | 23.204.060 D. (Development Standards)<br>Table 23.204-12: C-U Setback Standards       | Text was omitted from the old Zoning Ordinance pertaining to minimum rear setbacks and proposed amendments include the text to correct the error.                                                                                                                                                                                                                                                                                                                 |

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other Technical Edits – Reference Matrix

| Technical Edits/Corrections                                | Amended Berkeley Municipal Code Section(s)                                                                                                           | Proposed Amendment(s)                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>MU-LI Building Materials and Garden Supplies</b></p> | <p>23.206.080(B)(6) (Land use Regulations)<br/>Table 23.206-1 including notes</p>                                                                    | <p>The Old Zoning Ordinance allowed building materials and garden supplies stores up to 20,000 sq. ft. with an AUP. New Zoning Ordinance limits building materials and garden supplies stores to 2,000 sq. ft. Proposed amendments correct the error and permit uses consistent with the old Zoning Ordinance.</p>                                                                     |
| <p><b>Allowed Building Projections</b></p>                 | <p>23.304.030 (Setbacks)</p>                                                                                                                         | <p>A Reasonable Accommodation (AUP) is required for all wheelchair ramps, if all criteria are met, while stairs, decks and porches are not subject to minimum setback requirements.</p> <p>Proposed amendments would make standards consistent for other similar features like porches, ramps, stairs and decks and clarifies development requirements for accessibility features.</p> |
| <p><b>Protected Industrial Uses</b></p>                    | <p>23.206.050(A)(3)(a) Protected Industrial Uses in the MM and MU-LI Districts<br/>23.206.050(B) Protected Industrial Uses in the MU-R District.</p> | <p>The old Zoning Ordinance allowed conversion of protected industrial uses up to 25% or 20,000 (whichever was less) with an AUP. The old Zoning Ordinance did not apply change of use findings for all permits in the MM and MU-LI Districts. Findings were only applied when a use permit was required. The new Zoning Ordinance removed this standard and requires</p>              |

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other Technical Edits – Reference Matrix

| Technical Edits/Corrections                                                 | Amended Berkeley Municipal Code Section(s)                                                                                                                                                           | Proposed Amendment(s)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                             |                                                                                                                                                                                                      | <p>findings for all permits and does not permit conversions with an AUP. Proposed amendments clarify the applicability to only apply when a change of use requires a use permit. In addition, Staff propose amendments to protected industrial uses in the MU-R district. The MU-R district in the old Zoning Ordinance did not describe protected industrial uses and incorrectly included findings for change of use between manufacturing, warehousing and wholesale to match formatting for MM and MU-LI Districts. Staff propose to remove the protected industrial uses from the MU-R Zoning District.</p> |
| <p><b>Conforming and Nonconforming Uses, Structures, and Buildings.</b></p> | <p>23.342 Nonconforming Uses, Structures and Buildings<br/>                 23.342.040 Nonconforming Structures and Buildings<br/>                 23.324.050(F)(4)(a) Damage and Reconstruction</p> | <p>The old Zoning Ordinance clarified that both conforming and nonconforming residential-only structures or buildings with four residential units or less that are involuntarily damaged or destroyed may be replaced or reconstructed with a Zoning Certificate. The new Zoning Ordinance removed the term “conforming” from headers and titles, which resulted in additional permitting requirements for conforming projects that could have been rebuilt with a Zoning Certificate. The proposed</p>                                                                                                          |

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other Technical Edits – Reference Matrix

| Technical Edits/Corrections | Amended Berkeley Municipal Code Section(s) | Proposed Amendment(s)                                         |
|-----------------------------|--------------------------------------------|---------------------------------------------------------------|
|                             |                                            | changes correct this error through revised headers and titles |



Development Department  
Division

## STAFF REPORT

DATE: May 3, 2023

TO: Members of the Planning Commission

FROM: Robert Rivera, Senior Planner

SUBJECT: Amendments to Title 23 for Consistency with State Law Related to Special Needs and Employment Housing, Family Day Care Home, Parking, and Associated Technical Edits

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### RECOMMENDATION

The Planning Commission is asked to conduct a public hearing to: 1) discuss zoning amendments required to align with State laws related to special needs housing, employment housing, family day care home, and parking, as well as additional non-substantive edits to the sections of the Berkeley Municipal Code (BMC) listed below; and 2) make a recommendation to City Council to approve the proposed Zoning Ordinance amendments (**Attachment 1**).

- 23.202.020 Allowed Land Uses (Residential Districts)
- 23.202.110 R-4 Multi-Family Residential District
- 23.204.020 Allowed Land Uses (Commercial Districts)
- 23.204.040 Use Specific Regulations (Commercial Districts)
- 23.204.060 C-U University Commercial District
- 23.206.020 Allowed Land Uses and Permit Requirements (Manufacturing Districts)
- 23.206.040 Use Specific Regulations (Manufacturing Districts)
- 23.206.050 Protected Industrial Uses
- 23.206.080 MU-LI Mixed Use-Light Industrial District (Land Use Regulations)
- 23.302.070 Use-Specific Regulations (Supplemental Use Regulations)
- 23.304.030 Setbacks
- 23.304.040 Building Separation in Residential Districts
- 23.308.020 Applicability and Nonconformities (Emergency Shelters)
- 23.308.030 Standards for Emergency Shelters
- 23.322.020 Applicability (Parking and Loading)
- 23.322.030 Required Parking
- 23.502.020 Glossary

## SUMMARY

In response to recent changes in housing-related State laws, and programs adopted in the City's 2023-2031 Housing Element, staff has prepared Zoning Ordinance amendments to align land use standards with State law requirements for special needs and employment housing, family day care home, and parking. Furthermore, staff has incorporated technical, non-substantive amendments identified as necessary to maintain consistency throughout the Zoning Ordinance.

## BACKGROUND

On January 18, 2023, The Berkeley City Council adopted an updated Housing Element for the period 2023-2031 (Resolution No. 70,669-N.S). On February 28, 2023, the State Department of Housing and Community Development (HCD) found the adopted Housing Element in substantial compliance with State Housing Element Law (Article 10.6 of the Gov. Code) and stated the City must continue timely and effective implementation of all programs. Program 31 – Zoning Code Amendments: Special Needs Housing - requires the City of Berkeley to review and adopt new zoning provisions by December 2023 to align land use standards with State law requirements for special needs housing. In addition, staff is also bringing forward related parking, family day care home, and employee housing amendments required for compliance with other recently approved State laws, as well as technical edits to ensure consistency throughout the Zoning Ordinance (**Attachment 1**).

## DISCUSSION

The following is a summary of State law requirements related to special needs and employment housing, family day care home, parking, and also non-substantive technical edits identified by the Zoning Officer. Each section provides a brief summary and references a summary table that identifies the Zoning Ordinance section and the proposed changes (**Attachment 2**).

### Emergency Shelter (AB 139 & AB 2339)

AB 139 (2019) limits the development standards that local jurisdictions can impose on emergency shelters. Jurisdictions are limited to regulating the following objective standards:

- Maximum number of beds,
- Sufficient parking to accommodate all staff, provided that this standard does not require more parking for shelters than other residential or commercial uses in the same zone,
- Size and location of onsite client waiting and intake areas,
- Proximity to other shelters, provided that shelters are not required to be more than 300 feet apart,
- Length of stay,
- Lighting,
- Provision of onsite management,
- Security during operating hours.

AB 2339 (2022) provides that the sites identified for emergency shelters must be in areas where residential uses are permitted or are otherwise suitable, thus prohibiting local governments from situating shelters in industrial zones or other areas disconnected from services which may include, health care, transportation, retail, employment, and social services.

To address AB 139, staff propose removing standards that local jurisdictions cannot regulate and included Emergency Shelter in applicable Allowed Use Tables. No substantive changes for permit types or thresholds for number of beds are included. Staff also updated the definition of Emergency Shelter to clarify that 24-hour services may be included. Staff has not made any changes in response to AB 2339 because sites identified for emergency shelters are permitted and located in all areas where residential uses are permitted.

#### Low Barrier Navigation Center (AB 101)

AB 101 (2019) defines “low barrier navigation centers” as:

*“A Housing First, low barrier, service enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing.”*

Housing First refers to serving individuals experiencing homelessness by prioritizing a safe place to live. Low barrier shelters may also provide additional flexibility, such as allowing partners to share living spaces or pets.

AB 101 requires local jurisdictions to permit low barrier navigation centers by right in zones that allow mixed-use development and nonresidential zones that permit multifamily uses, provided the facility meets certain standards.

The Berkeley Zoning Ordinance does not currently define or address low barrier navigation centers. Consistent with AB 101, staff propose adding the use permitted by right with a ZC in each zoning district that permits multifamily. Also, staff propose a definition of “low barrier navigation center” that is consistent with State law.

#### Supportive Housing (AB 2162)

AB 2162 (2018) requires local jurisdictions to allow supportive housing projects with 50 or fewer units in all zones where multifamily and mixed-use residential development is permitted, provided the project meets other specified criteria pursuant to [Government Code Section 65651\(a\)](#)<sup>1</sup>. Additionally, parking is not required for supportive housing projects located within one half-mile of a public transit stop as required by [Government Code Section 65654](#).

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<sup>1</sup> [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=65651](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=65651).



Currently, the Zoning Ordinance includes supportive housing within the definition of Community Care Facility, as well as a separate stand-alone definition for supportive housing. Proposed amendments would remove supportive housing from the community care facility definition, amend Residential, Commercial and Manufacturing zoning use tables to be consistent with State law criteria, and amend the definition to be consistent with the California Health and Safety Code.

Projects consistent with the criteria under Government Code Section 65651(a) would be permitted by-right, with a Zoning Certificate, in all zones where multifamily and mixed-use residential development is permitted. If a project does not qualify under the criteria, the project would not be considered supportive housing and would fall under another definition for housing with permit requirements consistent with the respective allowed use table.

#### Employee Housing Act

The Employee Housing Act (Health and Safety Code 17021.5) requires local jurisdictions to consider employee housing providing accommodations for six or fewer employees as a single-family structure with a residential land use designation. Thus, the proposed changes amend the definition of Single-Family Dwelling to include employee housing.

#### Household definition

The 2023-2031 Housing Element – Program 31 identified the City's definition of household as a necessary update to remove constraints on housing for persons with disabilities by updating the definition to align with current City practices. The City does not require proof of single lease, rental agreements or proof of shared living expenses and therefore staff proposes to remove the requirements from the definition of household. Staff also reviewed the Zoning Ordinance to ensure that this change does not impact other regulations where reference to "household" is made.

#### Lanterman Developmental Disabilities Service Act (Lanterman Act)

In accordance with State law, State licensed residential facilities for six or fewer persons are a permitted use in all zones where residential use is permitted, with no minimum parking requirement for non-resident employees. The following State statutes require that small (serving six or fewer persons) licensed group homes be treated like other residential uses and include: facilities for persons with disabilities and other facilities (Welfare & Inst. Code 5116), residential health care facilities (Health & Safety Code 1267.8, 1267.9, & 1267.16), residential care facilities for the elderly (Health & Safety Code 1568.083 - 1568.0831, 1569.82 – 1569.87), community care facilities (Health & Safety Code 1518, 1520.5, 1566 - 1566.8, 1567.1), pediatric day health facilities (Health & Safety Code 1267.9;1760 – 1761.8), and facilities for alcohol and drug treatment (Health & Safety Code 11834.23).

Currently, the Zoning Ordinance permits conversion of an existing dwelling into a residential care facility, regardless of the number of residents, with a Zoning Certificate. New construction of a residential care facility would require a Use Permit, which is the

same review procedure applied to other residential development. Proposed amendments would make that consistent within the MU-R District. Parking for non-resident employees is the other non-compliant development standard and the proposed amendment would remove parking requirements for nonresident employees to be consistent with State law.

#### Supportive Child Care Family Home Expansion (SB 234)

SB 234 (2019) considers all family daycare homes for up to 14 children, operating under the standards defined by State law, a residential use and prohibits the requirement of a business license.

Currently, the Zoning Ordinance requires a Zoning Certificate for all family day care homes and the City does not require a business license. Proposed amendments edit the definition of family day care home to clarify that they are considered an activity allowed as part of residential use and amend the residential use table to align with the change. Staff also amended the definition of “child-serving uses” in the MU-LI and MU-R District to remove reference to family day care homes.

#### Minimum Parking Requirements (AB 2097)

AB 2097 (2022) prohibits the City from imposing a minimum off-street automobile parking requirement on most development projects in any zoning district located within one half-mile of a transit stop as defined in Section 21155 of Public Resource Code<sup>2</sup>, which defines a high-quality transit corridor as a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

The proposed amendments include a location exemption from the minimum off-street parking requirements and codify language consistent with State law to preserve the City’s ability to impose minimum parking requirements in limited instances, such as parking requirements for hotels and event centers.

#### Technical Edits

On October 12, 2021, the City Council passed Ordinance No. 7,787-N.S., which replaced Title 23 (“the old Zoning Ordinance”) of the Berkeley Municipal Code and adopted a new Title 23 (“the new Zoning Ordinance”) to make the City’s Zoning Ordinance easier to understand and administer. The City Council gave staff direction to make minor changes to comply with State law or codify prior zoning interpretations. Staff was directed to regularly return to the Planning Commission and City Council with amendments necessary to maintain the integrity of the new Zoning Ordinance.

Proposed non-substantive amendments correct mistakes and errors identified by the Zoning Officer, City staff, and the public, as inconsistent with the old Zoning Ordinance. The following technical edits are proposed:

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<sup>2</sup>[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=4.2.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=4.2.&article=)

- **R-4 Lot and Height Standards.** The development standards for residential additions allow a building height of 16 feet, but the footnote requires a permit for heights greater than 14 feet and text was omitted from the old Zoning Ordinance. Staff propose to correct the error.
- **C-U Setback Standards.** Text from the old Zoning Ordinance pertaining to minimum rear setbacks—for lots on the south side of University Avenue abutting lots in residential districts—was omitted from the new Zoning Ordinance. Staff proposes to re-insert the minimum rear setback requirement to correct the error. Staff also proposes to correct an error pertaining to rear setbacks for lots in the C-U on the south side of University Avenue *not* abutting lots in residential districts. Staff proposes no minimum setback to match the old Zoning Ordinance, which did not require a rear setback. Finally, staff proposes to remove Note #2 in Table 23.204-12 (C-U Setback Standards) to remove confusion; the old Zoning Ordinance referenced calculation of rear setback area as an example, and not a requirement.
- **MU-LI Building Materials and Garden Supplies.** The old Zoning Ordinance allowed building materials and garden supplies stores up to 20,000 square feet with an AUP and 20,000 square feet or larger with a Use Permit. The new Zoning Ordinance limits building materials and garden supplies stores to 2,000 square feet. Proposed text corrects this error and permits uses and sizes consistent with the old Zoning Ordinance.
- **Allowed Building Projections.** If all criteria are met<sup>3</sup>, a Reasonable Accommodation (AUP) is required for all wheelchair ramps, while stairs, decks and porches are not subject to minimum setback requirements. Proposed amendments would make standards consistent across sections and clarify development requirements for accessibility features.
- **Protected Industrial Uses.** The old Zoning Ordinance did not apply change of use findings for all permits in the MM and MU-LI Districts – which must provide replacement space. Findings were only applied when a use permit was required. Staff has clarified the applicability to only apply when the change of use requires a use permit. Similarly, for the MU-R Zoning District, the old Zoning Ordinance did not require a use permit to change a protected industrial use for all changes from manufacturing, warehousing and wholesale. The new Zoning Ordinance requires a permit for all change of uses regardless of the permit requirements. The proposed changes correct this error.

## ENVIRONMENTAL REVIEW

Staff recommends that the Planning Commission make a recommendation to the City Council that:

- The proposed Zoning Ordinance amendments related to *special needs housing and employment housing* are within the scope of the analysis of the City of Berkeley 2023-2031 Housing Element EIR (SCH#2022010331) certified by the City Council on January 18, 2023 (Resolution No. 70,669-N.S.) and would not result in any new or substantially more severe significant impacts.

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<sup>3</sup> <https://berkeley.municipal.codes/BMC/23.406.090>

- The proposed amendments related to *family day care home, parking, and technical edits* do not constitute a project under the requirements of the California Environmental Quality Act, together with State CEQA guidelines collectively, “CEQA”) because they have no potential for resulting in a physical change to the environment.

In the event that this Ordinance is found to be a project under CEQA, they are subject to the CEQA exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the amendments may have a significant effect on the environment.

### **NEXT STEPS**

Upon receiving Planning Commission recommendation and public comment, Staff will forward a proposed draft Zoning Ordinance to City Council for consideration and adoption.

### **ATTACHMENTS**

1. Draft Ordinance – Zoning Ordinance Amendments
2. Reference Matrix – Proposed Zoning Ordinance Amendments Pursuant to State Law and Other Technical Edits
3. Public Hearing Notice

## NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL

**Adoption of Zoning Ordinance Amendments to Title 23 of the Berkeley Municipal Code to Conform to State Law Relating to Special Needs Housing, Employment Housing, Family Day Care, Parking; and Non-Substantive Technical Edits to the Berkeley Municipal Code Sections 23.202.020 Allowed Land Uses (Residential Districts); 23.202.110 (R-4 Multi-Family Residential District); 23.204.020 (Allowed Land Uses Commercial Districts); 23.204.040 (Use Specific Regulations Commercial Districts); 23.204.060 (C-U University Commercial District); 23.206.020 (Allowed Land Uses and Permit Requirements Manufacturing Districts); 23.206.040 (Use Specific Regulations Manufacturing Districts); 23.206.050 (Protected Industrial Uses); 23.206.080 (MU-LI Mixed Use-Light Industrial District Land Use Regulations); 23.302.070 Use-Specific Regulations Supplemental Use Regulations); 23.304.030 (Setbacks); 23.304.040 (Building Separation in Residential Districts); 23.308.020 (Applicability and Nonconformities Emergency Shelters); 23.308.030 (Standards for Emergency Shelters); 23.322.020 (Applicability Parking and Loading); 23.322.030 (Required Parking); 23.324 (Nonconforming Uses, Structures, and Buildings); 23.324.010 (Chapter Purpose); 23.324.050 (Nonconforming Structures and Buildings); 23.502.020 (Glossary)**

The Department of Planning and Development is proposing Zoning Ordinance Amendment to align land use standards with State law requirements for special needs housing. In addition, staff is also bringing forward related parking, family day care home, and employee housing amendments required for compliance with other recently approved State laws, as well as technical edits to ensure consistency throughout the Zoning Ordinance.

The proposed Zoning Ordinance amendments related to *housing* are within the scope of the analysis of the City of Berkeley 2023-2031 Housing Element EIR (SCH#2022010331) certified by the City Council on January 18, 2023 (Resolution No. 70,669-N.S.) and would not result in any new or substantially more severe significant impacts. The proposed amendments related to *family day care home, parking, and technical edits* do not constitute a project under the requirements of the California Environmental Quality Act, together with State CEQA guidelines collectively, “CEQA”) because they have no potential for resulting in a physical change to the environment. In the event that this Ordinance is found to be a project under CEQA, they are subject to the CEQA “Common Sense Exemption” contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the amendments may have a significant effect on the environment.

The hearing will be held on **Tuesday, July 11, 2023 at 6:00 PM.** in the Berkeley Unified School District Board Room located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City’s website at

[www.berkeleyca.gov](http://www.berkeleyca.gov) as of June 29, 2023. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

For further information, please contact Robert Rivera, Senior Planner, at 510-981-7480.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to [council@berkeleyca.gov](mailto:council@berkeleyca.gov) in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at (510) 981-6900 or [council@berkeleyca.gov](mailto:council@berkeleyca.gov) for further information.

**Published:** June 30, 2023 – The Berkeley Voice

Public Hearing required by BMC 23.412.050 and Govt Code 65853; notice provided according to Govt Code 65090 and BMC 23.404.040.

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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 June 29, 2023.

Mark Numainville, City Clerk



ACTION CALENDAR

July 11, 2023

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor *zw*

Subject: Staff Shortages: City Services Constrained by Staff Retention Challenges and Delayed Hiring

RECOMMENDATION

We recommend City Council request that the City Manager report back by January 2024, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented. Some of our recommendations include: establish retention goals and conduct an analysis of staff needed for city operations and services; consider staff capacity around new legislation; take steps to improve employee satisfaction; identify opportunities for efficiency in the hiring process, and modernize its recruiting process; expand the telework policy to align with best practices; and regularly collect data on employee satisfaction and on diversity, equity, inclusion, and accessibility.

FISCAL IMPACTS OF RECOMMENDATION

Implementing the recommendations outlined in the audit *Staff Shortages: City Services Constrained by Staff Retention Challenges and Delayed Hiring* will have fiscal implications for the city. While the exact financial impact will depend on specific implementation strategies and timelines, it is crucial to allocate adequate resources to ensure the successful execution of these initiatives. The long-term benefits of improved employee retention, such as enhanced service delivery, reduced recruitment and onboarding costs, and increased employee productivity, will outweigh the initial investments.

CURRENT SITUATION AND ITS EFFECTS

During the audit period of fiscal year 2018 to fiscal year 2022, Berkeley experienced staff shortages that impacted the delivery of crucial city services. The City lacked a clear and data-driven retention strategy, exacerbating the problem. Employee dissatisfaction emerged as a key factor contributing to staff turnover, with voluntary separations (resignations and retirements) surpassing new hires each year of the audit period. Outcomes of the employee satisfaction survey that we performed as part of the audit highlight concerns related to workload, outdated internal systems, limited professional development opportunities, employee pay, and inadequate support and communication from city management. In a survey of former employees, 47 percent reported that organizational culture problems were among their primary reasons for leaving the City.

The instability in the Human Resources department further impeded Berkeley's ability to fill vacancies effectively. Over the audit period, the average time to hire new employees increased substantially, from 4.9 months in fiscal year 2018 to 7.7 months in fiscal year 2022, causing

delays in crucial recruitment processes. Additionally, while telework showed potential in retaining employees, the City's existing telework policy is limited and in need of enhancement. We also found a lack of reliable data for monitoring workforce retention trends, including accurate information on vacancies and employee satisfaction.

BACKGROUND

The City of Berkeley has 1,792 budgeted full-time equivalent (FTE) positions as of FY 2023. Retaining employees is important for government organizations to ensure there are enough staff to deliver services and programs effectively. Though outside factors such as the Great Resignation provide a larger context for employee retention, retaining employees in Berkeley was a problem before the pandemic and the Great Resignation, which are not solely responsible for citywide retention challenges.

Some level of employee turnover is necessary in healthy organizations. Employees leave for many reasons other than job dissatisfaction, including retirement, or relocation. Employee turnover also allows new talent and people with new skillsets to enter the organization. However, too much employee turnover becomes costly and makes it more difficult for organizations to function. Excessive turnover can also lower the morale of the remaining staff in an organization.

ENVIRONMENTAL SUSTAINABILITY

In our report, we identify opportunities to reduce greenhouse gas emissions created from employee commutes through the use of telework. Decreasing emissions aligns with Berkeley's Climate Action Plan goal to reduce the year 2000 emissions by 80 percent by 2050.

RATIONALE FOR RECOMMENDATION

Implementing our recommendations will improve the City's management of employee retention and mitigate risks associated with excessive turnover and vacancies.

CONTACT PERSON

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Attachments:

- 1: Audit Report - Staff Shortages: City Services Constrained by Staff Retention Challenges and Delayed Hiring

Audit Report
June 22, 2023

Staff Shortages: City Services Constrained by Staff Retention Challenges and Delayed Hiring



BERKELEY CITY AUDITOR

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Staff Shortages: City Services Constrained by Staff Retention Challenges and Delayed Hiring

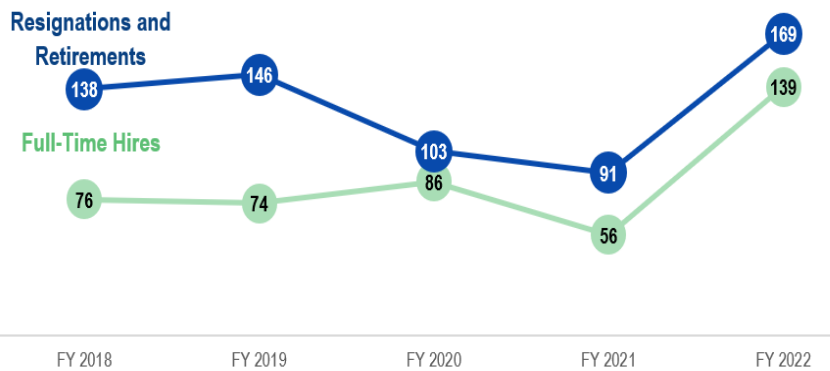
Report Highlights

June 22, 2023

Findings

1. Berkeley's staff shortages constrained city services, but the City did not have a clear strategy to improve retention during our audit period. More employees left the City than were hired in each year of the audit period, contributing to the staff shortage.

Resignations and retirements outpaced full-time hires during the audit period.



Source: ERMA, FUND\$, and NEOGOV

2. Employee dissatisfaction made it harder for the City to retain staff. Surveyed employees reported dissatisfaction with workloads, professional development opportunities, pay, and communication and support from city leadership.
3. Instability in Human Resources delayed hiring and impacted internal services. The average time it took to hire new employees increased from 4.9 months in fiscal year 2018 to 7.7 months in fiscal year 2022.
4. Telework can benefit the City and help retain some employees but the current policy is limited.
5. The City lacked reliable data to monitor trends and address staff shortages.

Objectives

1. How do staff shortages affect city services?
2. What is the state of employee satisfaction?
3. What internal factors impact the City's ability to fill vacancies?
4. How does telework affect the City's ability to retain employees?
5. How does the City use data to address staff shortages?

Why This Audit Is Important

Berkeley government has faced difficulties retaining employees, which caused staff shortages that limited the City's ability to provide services to residents. Staff shortages can make workloads for current employees unmanageable, which can drive down morale and worsen employee retention. Combined, these issues can lead to an increase in employee errors, a decrease in the quality of services, and an overall increase in the City's financial risks and other liabilities. The inability to retain employees can also be costly to the City in the long run, as it may be more expensive to hire and train new employees than it is to retain productive employees.

Recommendations

We recommend that the City establish retention goals, conduct an analysis of staff needed for city services and consider staff capacity around new legislation. We also recommend that the City take steps to address employee satisfaction and improve the recruiting and hiring process. We also recommend that the City expand the telework policy to align with best practices and regularly collect data on employee satisfaction and on diversity, equity, inclusion, and accessibility.



BERKELEY CITY AUDITOR

For the full report, visit:
<https://berkeleyca.gov/your-government/city-audits>

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Introduction

We identified employee retention in the City of Berkeley as an area needing independent assessment based on our observation of challenges with employee retention and staff shortages in previous audits.¹ **Employee retention** refers to an organization's ability to keep employees and reduce turnover. Staff shortages can limit Berkeley government's ability to provide public services and programs. For example, understaffing in the Police department and 911 dispatch center can increase 911 call response times for the Berkeley community and result in officer burnout and fatigue, contributing to health and safety risks. Understaffing in financial oversight roles can increase the risk of fraud. Employee retention is essential to maintaining enough staff to provide high quality services to Berkeley residents.

¹ Past audits identifying workforce retention issues include an audit of [Police overtime and outside security work](#), an audit of [911 dispatcher staffing and overtime](#), and an audit of the [Code Enforcement unit](#).

Our audit examines the root causes of the City’s retention challenges and provides recommendations to prevent the City from facing a staffing crisis of this magnitude in the future. While some departments have unique retention challenges based on the nature of their work, the purpose of this audit is to understand citywide challenges and provide recommendations to improve retention across all departments. We initially started work on this audit in November 2019, but postponed our work at the onset of the COVID-19 pandemic as audit staff were diverted to the Emergency Operations Center. We resumed this audit in March 2022. In September 2022, the City contracted with consulting firm MRG Associates to develop a separate *Employer of Choice* report. Some themes of this audit are similar to MRG’s report, but our work follows audit standards as specified in the City Charter.

Objectives, Scope, and Methodology

Our objectives were to answer the following questions:

1. How do staff shortages affect city services?
2. What is the state of employee satisfaction?
3. What internal factors impact the City’s ability to fill vacancies?
4. How does telework affect the City’s ability to retain employees?
5. How does the City use data to address staff shortages?

We evaluated employee retention data for fiscal years (FY) 2018 through 2022. We analyzed data on hiring, vacancies, longevity, and employee demographics. To understand employee perspectives, we surveyed current employees about their job satisfaction, and surveyed employees who voluntarily resigned or retired from the City about why they left. We also interviewed every department director in the City and offered to meet with union representatives from employee labor groups. Lastly, we reviewed best practices from leading human resource organizations along with staffing data from local jurisdictions to compare to Berkeley. For more information on the methodology, see page 49.

Background

City of Berkeley's Workforce

The City of Berkeley has 1,792 budgeted full-time equivalent (FTE) positions as of fiscal year 2023.² The three largest departments are Public Works, Police, and Health, Housing, and Community Services (Table 1).

Table 1. Budgeted Full-Time Equivalent Positions by Department, Fiscal Year 2023

Department	Budgeted FTEs
Public Works	340.00
Police	313.20
Health, Housing and Community Services	265.58
Fire	203.00
Parks, Recreation, and Waterfront	165.62
Planning and Development	116.04
Library	115.60
Finance	56.00
Information Technology	52.00
City Manager	45.50
Rent Board	23.55
Human Resources	22.00
Mayor and Council	19.00
City Attorney	17.00
City Auditor	14.75
City Clerk	10.00
Economic Development	8.00
Office of the Director of Police Accountability	5.00

Source: Berkeley's FY 2023 and FY 2024 Budget Book

Employee retention is important in government organizations to ensure there are enough staff to deliver services and programs effectively. City of Berkeley staff have a wide range of responsibilities that affect the Berkeley community, including road maintenance, public safety, transportation, housing assistance, city planning, and many others. City staffing challenges can therefore impact almost everyone who lives in, works in, or visits Berkeley.

² Some of these budgeted positions may be vacant.

Retention Challenges

Many employers are currently facing challenges retaining employees. About a year after the onset of the COVID-19 pandemic, people began leaving their jobs nationwide at increasing rates. This phenomenon became known as the Great Resignation. According to a survey by Pew Research Center, around 1 in 5 adults left their job voluntarily during 2021 due to various reasons, including childcare needs, salary, lack of career advancement, COVID-19 concerns, and a desire for more flexibility or work-life balance. The retirement rate also increased nationwide by 13 percent among the baby boomer generation in 2020. In the City of Berkeley, nearly 20 percent of the workforce is eligible for retirement as of 2022, which will increase to 28 percent by 2025. An increase in retirements may worsen retention issues in the coming years. Therefore, improving retention of remaining staff should be a high priority for the City of Berkeley.

Though outside factors such as the Great Resignation provide a larger context for employee retention, workforce retention in Berkeley was a problem before the pandemic and the Great Resignation, which are not solely responsible for citywide retention challenges. Our analysis of employee perspectives provides information on internal factors that affect retention.³

Some level of employee turnover is necessary in healthy organizations. Employees leave for many reasons other than job dissatisfaction, such as retirement or relocation. Employee turnover also allows new talent to enter the organization. However, too much employee turnover becomes costly and makes it difficult for organizations to function. Excessive turnover can also lower the morale of the remaining staff in an organization and impact service delivery.

³ Finding 2 on page 12 outlines the primary causes of employee dissatisfaction leading to retention issues in the City of Berkeley.

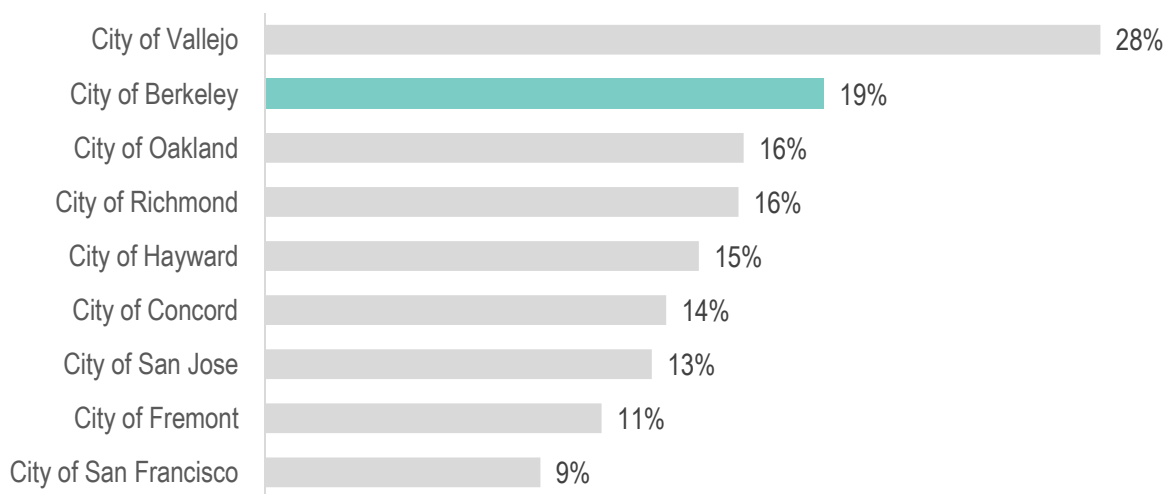
Staff shortages constrained city services.

Berkeley had a high vacancy rate, reflecting staff shortages. These shortages have caused reductions in basic services for community members, such as delayed staff responses and facility closures. Though the City's strategic plan includes a goal to attract and retain a talented and diverse workforce, the City did not have a clear and data-driven strategy to improve retention or address the root causes of excessive turnover during our audit period.

Berkeley's high vacancy rate reflected staff shortages.

Berkeley has experienced a staff shortage, as indicated by its vacancy rate (the percentage of budgeted positions that are vacant). Compared to other cities in the Bay Area with available vacancy data, Berkeley's citywide vacancy rate was the second highest at 19 percent in 2022 (Figure 1).

Figure 1. Berkeley had the second highest vacancy rate compared to other Bay Area cities in 2022.



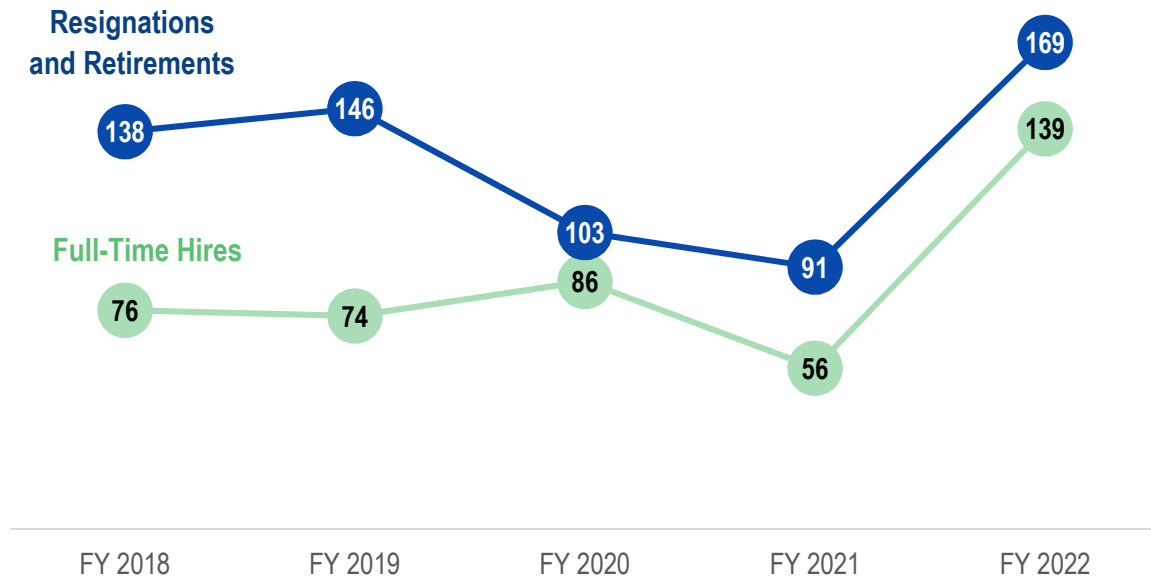
Note: Berkeley and San Francisco vacancy data are from October 2022, and all other data is from June 2022. These were the most recent dates available to compare vacancy rates at the time of our data request.

Sources: City of Berkeley, City of San Francisco Human Resources, City of Oakland Human Resources

Berkeley's vacancy rate is based on counts from department directors in October 2022. Some department directors reported that the high vacancy rate was a problem before the pandemic. However, we were unable to quantify how the vacancy rate has changed over the years due to data limitations (see Finding 5 on page 36 for more information on the City's data challenges).

The City did not hire enough employees to address the gap between voluntary separations (resignations and retirements) and new hires. Figure 2 shows that there were more resignations and retirements than full-time hires in each year of our audit period.⁴ As a result, the cumulative hiring need increased, as the City did not hire enough employees each year to make up for the number of employees who left in previous years.

Figure 2. Resignations and retirements outpaced full-time hires during the audit period.



Note: Full-time hires refers to staff hired into full-time permanent positions. Resignations and retirements do not include medical separations or disability retirements. The data does not include internal transfers or promotions.

Source: ERMA, FUND\$, and NEOGOV

Staff shortages impaired services to the community and other departments.

An increase in vacant positions reduced the number of staff available to ensure city programs and services functioned as intended. In response to our satisfaction survey, some employees explained that staff shortages made it difficult to deliver basic services to the community. According to one employee:

When departments are stretched thin, they cannot do a good job of supporting the community or other departments. [...] When departments experience turnover, it is very difficult to absorb the responsibilities, train new staff, and still deliver baseline services.

⁴ According to the Human Resources Director, from January to March 2023, the City hired more than twice as many new employees as the number of employees who left the City.

In a presentation to City Council on December 13, 2022, the City Manager outlined how vacancies reduced city services. For example, there were reduced services or hours of operation at clinics and senior centers, and temporary closures of some fire stations.

Additionally, understaffing in public safety increased the need for mandatory overtime in both the Police and Fire departments. According to the City Manager, vacancies in the Transportation division have also contributed to delays in a major transportation project. Such delays may limit the City's ability to achieve goals such as reducing greenhouse gas emissions or improving traffic safety.

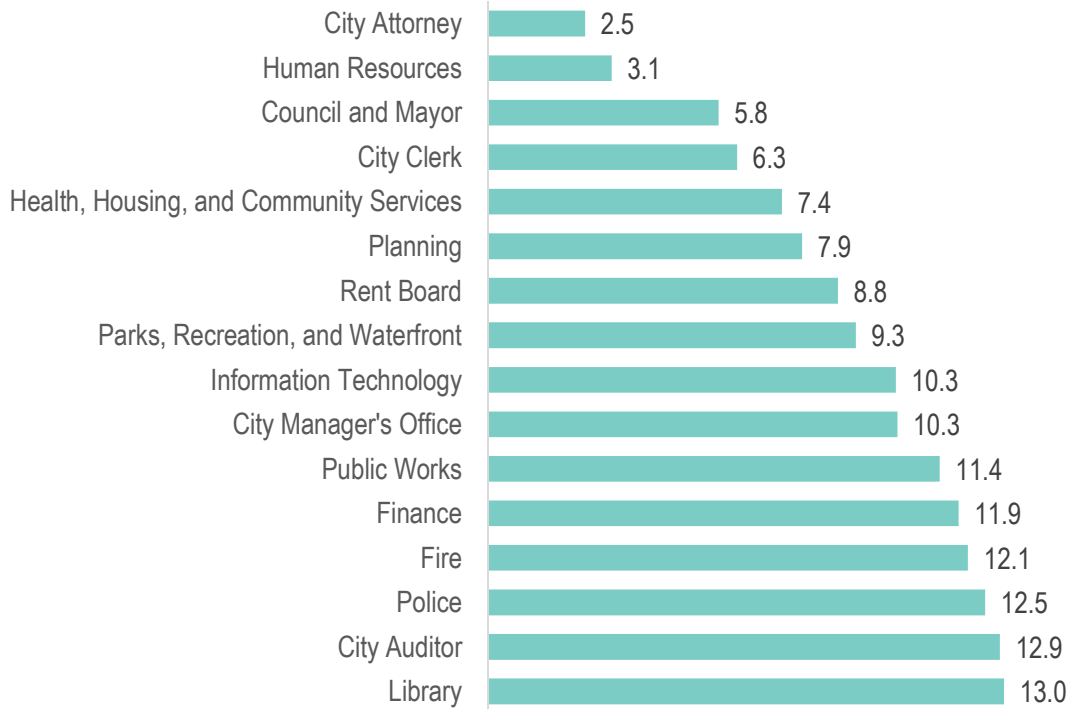
Vacancies also affected services that some departments provide to support the City's internal operations. For example, according to an Information Technology (IT) manager, understaffing in IT caused delays in technical assistance to employees. These types of delays impact employees' ability to do their jobs efficiently, which can in turn impact the delivery of services to the Berkeley community.

Vacant positions can also increase risk to the City. For example, lack of sufficient supervisory review can increase risk of overpayments, missed payments, or fraud. When employees leave, it may take years for new employees to gain that same level of knowledge.

A high vacancy rate combined with decreased employee tenure (the length of time an employee has worked for an organization) can also impact services if staff do not have institutional knowledge or are not yet fully trained. Departments may also lose specialized knowledge or knowledge of a particular city process when the employee managing that function leaves. One former employee stated:

At the time I began working for [the City], the office culture and knowledge from within was superior. As time went on and more people left, the office began to fail.

Employee tenure varies by department (Figure 3). The two departments with the lowest average employee tenure are the City Attorney's Office and Human Resources (HR). Low average tenure may present challenges to some important internal services due to lost institutional knowledge.

Figure 3. Average Years of Employee Tenure by Department, 2022

Note: Each data point refers to the average employee tenure in each department as of October 2022.

Source: ERMA

The City lacked a clear and data-driven retention strategy.

The City did not have a clear strategic approach during our audit period to address the root causes of excessive turnover and meet its strategic plan goal. The City's strategic plan includes a goal to attract and retain a talented and diverse city government workforce. According to the 2022 strategic plan update, the City has revised some personnel rules and regulations and expanded employee wellness and resiliency programs in the Police department. The City also implemented the skilled worker academy, an in-depth program for some frontline staff to gain computer skills and other professional skills in September 2022. However, some department directors cited a lack of clarity around an overall retention strategy from city management or HR, or a perception that the City does not have the data and staff to sustain successful retention initiatives. The Society for Human Resources Management, an association of HR professionals, recommends organizations develop targeted strategies to improve retention. Data can help identify the areas where an organization needs to improve and inform strategies to address these issues. During the audit period, the City did not have reliable data on retention and employee satisfaction to inform a data-driven retention strategy (see Finding 5 on page 36 for more information on the City's data challenges).

Additionally, the City has not conducted an analysis of staffing levels needed for city operations and services. This may include working with department directors to identify the optimal number of FTEs and type of positions in each department, and aligning those positions with the department's goals for successful city operations and services. Based on guidance issued by the Government Finance Officers Association, it is a best practice for governments to determine the optimal level and type of staff needed to meet the organization's goals and objectives in light of cost constraints. It will be difficult for the City to develop targeted strategies to address retention challenges without this data.

Recommendations

To better manage retention, we recommend the City Manager's Office:

- 1.1 Establish citywide retention goals and report to City Council on progress towards those goals biennially.
- 1.2 Conduct a staffing analysis based on critical needs to identify the number and type of full-time equivalent positions needed for successful city operations and services. The City may consider conducting this analysis one department at a time based on available resources.

Some surveyed employees reported dissatisfaction and many have contemplated leaving.

Employee satisfaction is a major factor in employee retention. Fifty-five percent of surveyed employees reported being satisfied with their job, which is lower than a federal government average. Factors impacting satisfaction among survey respondents were workloads, professional development opportunities, pay,⁵ and communication and support from city leadership.

Some City of Berkeley employees reported low job satisfaction and over half have contemplated leaving.

Only 55 percent of current city employees who responded to our survey reported that they were satisfied or somewhat satisfied with their job. This is lower than the job satisfaction rate among federal government agencies, which is 73 percent (Figure 4).

Figure 4. Surveyed City of Berkeley employees reported lower job satisfaction than federal government employees in similar-sized agencies.



Note: Federal employee data is from medium-sized agencies with 1,000-9,999 employees; Berkeley had 1,468 full-time employees as of 2022. Job satisfaction data from local government agencies was not readily available.

Sources: 2022 City of Berkeley employee satisfaction survey and 2022 federal employee viewpoint survey

Many current employees we surveyed also contemplated leaving the City. Over half, or 55 percent of current employees surveyed reported looking for another job in the year before taking the survey. Additionally, about 47 percent of surveyed former employees reported that organizational culture problems were among their primary reasons for leaving the City (Appendix II).

⁵ We did not review city pay structures, as it was outside the scope of this audit.

Employee dissatisfaction is one of the main causes of turnover, according to the Society for Human Resources Management. High turnover is costly and affects an organization’s performance. Benchmarking data estimates that the total cost to recruit, train and develop a new hire may be at least half to two times that employee’s salary.

Some employees reported unmanageable workloads related to staff shortages, new work, and inefficient systems.

Some surveyed employees reported that one of the primary reasons they looked for a job in the past year was because they had a high workload due in part to staff shortages. Only 44 percent of current employees felt their workload was manageable (Figure 5). For comparison, in a survey of federal government employees, 61 percent agreed that their workload was reasonable. Nearly a quarter of surveyed former employees also listed high workload as one reason for leaving the City.

Figure 5. Forty-four percent of surveyed employees reported that their workload was manageable.



Source: 2022 satisfaction survey

Staff Perspectives

“There are not enough positions in my unit for the workload. I have demonstrated this time and again, and the solution from management has been for me, as the lowest level employee in my functional area exempt from overtime, to work 50 hours a week or more.” – Current employee

“The department I worked for was understaffed and lacked the resources to support city employees. I was provided insufficient training and had trouble keeping up with the workload. The workload and lack of support were primary reasons why I opted to look for new opportunities less than six months after starting at the City of Berkeley.” – Former employee

“When there are vacancies, it affects staff’s ability to do the work. It also impacts morale when people are stressed out. Some people left the department due to the unreasonable volume of work they were expected to produce.” – Department director

Sources: 2022 exit and satisfaction surveys, employee interviews

One department director also noted that certain job descriptions are out of date, which can make it difficult to recruit new employees to fill vacancies and help relieve the workload for current employees. The Chair of the Personnel Board also stated that the City has not reviewed certain job descriptions in recent years. Updated job descriptions can help ensure that city job postings accurately reflect job duties.

Employees receive new work beyond their regular duties, including referrals from City Council or public commissions, or additional items assigned in each department as noted in the *Employer of Choice* report.⁶ Some employees reported that because service delivery expectations remained the same when their department or division lacked adequate staffing, they were overloaded with work during periods of short staffing, which compounded their already unmanageable workload. City Council has a process to prioritize referrals to staff, though that process was not used in fiscal year 2020 and fiscal year 2021 due to the COVID-19 pandemic. However, it does not include a formal method of accounting for staffing impacts when assigning additional work. Without limiting or prioritizing referrals based on staff capacity, staff may not be able to balance council referrals with their regular duties or providing baseline services.

Employee workload is also exacerbated by ineffective internal and administrative systems. As one department director stated, “The substandard internal systems we have make a lot of our work inefficient.” This includes software systems such as ERMA, the City’s financial management platform. The City switched to ERMA from FUND\$, their prior HR/payroll management system, in January 2021. Some employees explained that this transition added to their workload significantly. Other employees described city systems as antiquated, with IT assistance, timesheets, telephones, and key access cited as examples. Some technology and system issues may be affected by retention challenges if an employee in charge of managing a system is new or not fully trained. Some employees and department directors expressed a sense that internal systems are outdated and hard to use, which is a source of frustration and affects their ability to do their jobs efficiently.

⁶ Council referrals are short or long-term projects assigned to departments based on City Council’s direction. Since the City starting tracking referrals in 2014, there have been approximately 500 referrals assigned. About 255 of the referrals are completed, 18 are in progress, and the rest have not yet been started or have been rejected by Council action.

Opportunities for professional development were limited.

Lack of career opportunities impacted retention.

Some surveyed employees reported dissatisfaction with career advancement opportunities in the City. Approximately 27 percent of surveyed former employees cited inadequate promotional opportunities as one of their primary reasons for leaving the City of Berkeley. Forty percent of surveyed current employees were also dissatisfied with their career advancement opportunities, compared to 41 percent who were satisfied, with 19 percent neutral (Figure 6).

Figure 6. Forty percent of surveyed employees reported being dissatisfied with career advancement opportunities.



Source: 2022 satisfaction survey

Staff Perspectives

“The promotions process is ambiguous and not transparent. People get promoted and those who do not are left wondering what they could have done to improve themselves and their chances for promotion. The promotional criteria are a mystery. Rather than continue waiting for a possible promotion, I decided to retire.” – Former employee

“Berkeley does not have many opportunities for advancement which has caused some people to leave the department.” – Department director

Source: 2022 exit survey, employee interviews

Berkeley is a mid-sized city, therefore options for career advancement might be more limited than in larger jurisdictions. However, there may be opportunities to improve promotional pathways through succession planning with a cross-training component. Succession planning identifies long range needs and cultivates internal talent to meet those needs and prepare for new roles in the organization. Cross-training is an approach to employee development that places employees in a position to learn skills and abilities that are not part of their current roles. The City can use cross-training in conjunction with succession planning to facilitate knowledge and skill transfer to current employees, which can help them meet the qualifications for future career advancement.

Though some departments have an internal succession planning process, there was no citywide initiative during the audit period. The City listed succession planning as a priority in its 2018-2019 Strategic Plan report, but placed the project on hold during the pandemic according to a July 2022 update. A stronger effort to upskill employees could help Berkeley better prepare for future retirements while broadening career advancement opportunities.

Providing adequate professional development opportunities is a best practice for employee retention. Employees will be more likely to remain at an organization if they are able to improve their job title, salary and/or responsibilities. This can help ensure that programs continue to run successfully through staffing changes, ultimately benefiting the Berkeley community.

Over half of surveyed employees did not receive regular performance evaluations.

Sixty-seven percent of surveyed employees reported that they did not receive a performance evaluation in the prior year. However, it is difficult to determine how often evaluations were happening and how that varied by department, as HR does not consistently keep records of past employee performance evaluations.

67%

of surveyed employees reported that they did not receive a performance evaluation in the past year.

Along with constructive guidance and regular feedback, performance evaluations are one component of successful employee performance management. Well-functioning performance management programs improve individual and team performance, and make organizations more effective. Performance evaluations also allow supervisors and employees to discuss areas for skill development, and identify learning opportunities for future advancement.

Some surveyed employees were dissatisfied with trainings and professional development opportunities.

Trainings and professional development opportunities are essential for employee satisfaction and can support career growth. Continuous skill development ensures employees have the tools they need to succeed, and it helps organizations retain top talent. However, many current employees reported dissatisfaction with Berkeley's available training opportunities. Among surveyed employees, 40 percent were dissatisfied with citywide trainings and professional development opportunities, compared to 27 percent who were satisfied, with 33 percent neutral (Figure 7).

Figure 7. Forty percent of surveyed employees were dissatisfied with citywide training and professional development opportunities.



Source: 2022 satisfaction survey

Staff Perspectives

“Citywide training and professional development opportunities are nearly non-existent. The training opportunities that do exist are generally subpar and not many employees know how to access them.” – Current employee

“Citywide training has a great deal of room for improvement and offers no tailored opportunities for public safety, which has different challenges than other departments.” – Current employee

“The City should be intentional in its efforts to prepare all employees who transition into leadership roles. To have high expectations of our supervisors, we should provide meaningful training and education so they are better prepared for these critical roles throughout the City.” – Department director

Source: 2022 satisfaction survey and employee interviews

Among surveyed supervisors, 40 percent found their citywide supervision training inadequate, compared to 38 percent who found it adequate (22 percent neutral). Supervisors are an important resource to the City in employee retention and satisfaction. Thirty-five percent of former employees who responded to our survey stated that a poor relationship with their supervisor was a primary consideration for leaving the City. This indicates that the relationship between supervisees and supervisors is a factor in retention. The City used to organize a leadership development program for supervisors, but has not conducted that training since prior to the pandemic. Consistent citywide training for supervisors may help foster a positive relationship with supervisees and improve retention.

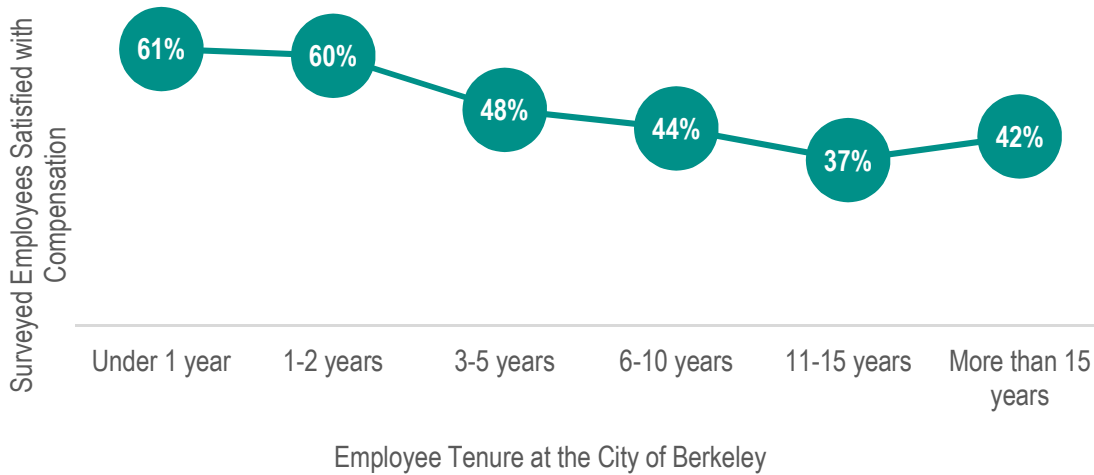
Prior to March 2020, many trainings received positive evaluations. The City put a pause on most trainings at the start of the COVID-19 pandemic in March 2020. The City resumed some regular trainings in June of 2021 and developed more trainings in 2022. The skilled workers academy is one example of a comprehensive training program that the City started in 2022 to help some employees develop professional skills and computer skills, among others. However, there are not similar professional development opportunities available for employees at all levels across all departments, and current dissatisfaction levels with city trainings suggest a need for improvement in this area. According to the HR Director, the City is currently looking at ways to provide specialized training to more employees.

HR's training division also had record keeping challenges during the audit period. California law requires that all employers of five or more people provide one to two hours of sexual harassment prevention training to staff every two years. According to the HR Director, since at least 2022 the City has been out of compliance with state-mandated sexual harassment prevention training. Due to inadequate data, we were unable to determine how long the City has been out of compliance with this law. In March 2023, the City set a goal to ensure all employees complete mandatory trainings by December 31, 2023.

Some surveyed employees were dissatisfied with pay.

Pay was a common issue among surveyed employees, and some department directors also reported issues with pay. We did not perform a salary analysis of Berkeley's compensation compared to market rates for similar positions as it was outside the scope of this audit. However, there are opportunities to improve retention by addressing some specific issues in Berkeley.

Some employees and department directors expressed in surveys and interviews that dissatisfaction with pay impacts employee retention. Thirty-seven percent of employees surveyed were dissatisfied with their compensation, while 47 percent were satisfied (16 percent neutral). Comparatively, 56 percent of federal employees were satisfied with their pay in 2022. Satisfaction survey data also shows that the longer employees worked for the City, the less satisfied they generally were with their compensation (Figure 8).

Figure 8. Pay satisfaction generally decreased as employee tenure increased.

Source: 2022 satisfaction survey

When asked to elaborate on pay and benefits, some surveyed employees expressed perceptions that their pay is not commensurate with their job duties. One department director noted that some staff are underpaid relative to staff performing the same work in other jurisdictions. Other surveyed employees expressed dissatisfaction with differences in pension benefit compensation. According to a 2019 report from union members, there is a significant difference in pension benefit compensation between Classic and California Public Employees' Pension Reform Act members represented by Local One and Service Employees International Union bargaining groups, as well as unrepresented employees.⁷ Additionally, many surveyed employees expressed a perception that the City's cost of living adjustments (COLAs) to salaries are inadequate, or that the City needs to develop a plan to have more frequent COLAs.

⁷ The California Public Employees' Pension Reform Act (PEPRA) took effect in January, 2013. The law changed the way the state's public employee retirement and health benefits are applied, and placed compensation limits on new members. In the City of Berkeley, the Pay Equity Committee for PEPRA members noted in 2019 that Classic members contributed 8.64 percent of their paycheck to the pension fund, whereas PEPRA members contributed 15.25 percent. In 2022, the City agreed to reduce some PEPRA members' pension contributions, though the terms of that ramp down varied by bargaining group.

The City typically renegotiates certain elements of employee pay about once every three years with each employee union. In the satisfaction survey, some employees expressed perceptions that the City's pay system is inflexible or unfair based on workload, classification or job duties. Pay may also be a factor in the recruitment and retention of specialized positions. Some specialized positions are particularly hard to recruit for based on the labor market. For example, some hiring managers stated that it has been difficult for the City to recruit firefighters, engineers, and mental health clinicians, among others, which may be related to the labor market in those fields. One director noted that this difficulty in recruiting made it hard to fill vacancies, which contributed to burnout among employees. Identifying ways to ensure that pay is competitive may improve recruitment and retention of these positions.

Staff Perspectives

"Positions, job duties, and classifications are not equitable. People doing basically the same job but in different classifications can have upward of a \$30k difference in pay."

– Current employee

"I realize terms are limited by union agreements, but it is my opinion that the compensation system is not nimble and cannot respond to the severe cost of living conditions at this time. Wage increases seriously lag the cost of living, and cannot adequately respond to current inflation conditions." – Current employee

Source: 2022 satisfaction survey

High turnover is costly, therefore organizations that invest in employee compensation may avoid recruitment and hiring costs that come with turnover. While the City must consider available revenue streams when making pay decisions, improved retention may ultimately lead to reduced turnover costs for the City. Ensuring pay is commensurate with comparable jurisdictions is frequently cited as an important aspect of employee retention.

Communication and support from city leadership may have impacted employee satisfaction.

Almost half, or 48 percent, of surveyed employees did not feel that city management communicated well when making decisions that affect Berkeley employees, compared to 23 percent who were satisfied with city management's communication, with 29 percent neutral (Figure 9). When asked to elaborate, surveyed employees gave examples including too little communication from city management, confusing communication, lack of transparency in communication, and too few opportunities to provide feedback.

Figure 9. Almost half of surveyed employees did not believe city management communicates well when making decisions that impact employees.



Source: 2022 satisfaction survey

One example of insufficient communication was a lack of clarity around COVID-19 policies. In the satisfaction survey, some employees expressed confusion around COVID-19 reporting, notifications, or inconsistencies around mask policy enforcement upon returning to the office. Lapses in communication can increase risk to the City and employees if they are not connected to the correct resources during emergencies, disasters or other important situations. For example, one employee described receiving inadequate information from city management around safety issues such as threats to employee safety. Effective communication is also important in building employee morale, satisfaction, and engagement.

Maintaining frequent and organized internal communication is often listed as a best practice for employee retention. Effective communication is essential for proper employee management, as it helps employees understand the terms of their employment, gives employees opportunities to provide feedback which is important for internal satisfaction, and reduces potential employee grievances due to misunderstandings.

Staff Perspectives

“I believe the translation of what city management is asking or saying gets lost when transferring the information back to the individual departments. Like a bad game of telephone, you get some of the information, none of the information, or a lot of bad information.” – Current employee

“I feel far removed from city management and that I am the last to find out about decisions from city management. I wish there was a way to bridge this gap.” – Current employee

Source: 2022 satisfaction survey

Lack of support from city or department management was among the most common reasons why surveyed employees looked for another job in the year prior. Additionally, 46 percent of surveyed employees reported that they did not believe city management cares about employees, compared to 27 percent who did (27 percent neutral). These responses suggest there may be opportunities for city and department leaders to build stronger communication with employees and develop strategies to ensure employees feel adequately supported at all levels of the organization.

Recommendations

To ensure job duties align with job descriptions, we recommend the City Manager's Office:

2.1 Review the highest priority city job descriptions to ensure they accurately reflect job duties.

To alleviate workloads associated with Council referrals, we recommend:

2.2 City Council consider staff capacity when introducing new legislation, and limit or prioritize new legislation during periods of short staffing.

2.3 The City Manager's Office report on the status of approved projects to City Council, including information about delays caused by staff vacancies.

To improve employee satisfaction, we recommend the City Manager's Office:

2.4 Improve pathways for promotion in the City through a citywide succession plan, which may include cross-training for positions.

2.5 Direct departments to ensure that all employees receive an annual performance evaluation.

To improve employee satisfaction, we recommend Human Resources:

2.6 Implement a comprehensive training program that ensures staff at all levels receive the training they need to fulfill their job duties and develop their job skills as needed. Consider increasing the training budget and redesigning the training curriculum to best address the needs of a post-pandemic workforce, improving training for supervisors and managers, ensuring that experts conduct trainings, and allowing employees to request specific trainings.

To improve transparency, we recommend Human Resources:

2.7 Ensure that all city employees complete mandatory trainings in accordance with the state law. Report data on mandated trainings to Council annually.

We also recommend the City Manager's Office:

- 2.8 Update City Council on the recruitment status of hard-to-fill positions during the biennial budget process, as well as steps taken to fill these positions.
- 2.9 Identify positions that are hard-to-recruit and retain and consider reassessing pay for those positions.

To improve communication channels in the City, we recommend the City Manager's Office:

- 2.10 Assess employees' needs regarding communication from the City Manager's Office and design a communication strategy that addresses those needs.

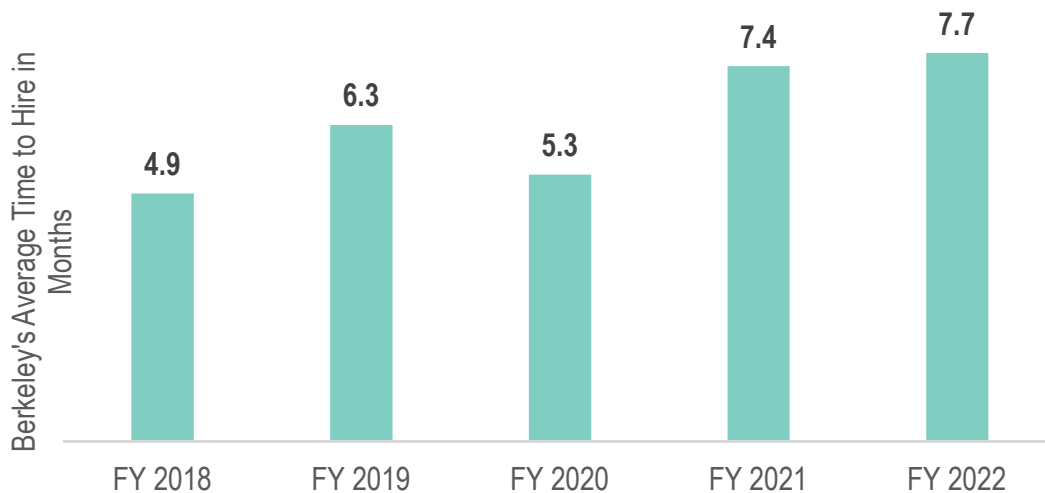
Instability in Human Resources delayed hiring and impacted internal services.

The average time it takes to hire increased by almost three months between fiscal years 2018 and 2022, from 4.9 months to 7.7 months. Understaffing and instability in HR contributed to these hiring delays during our audit period. Additionally, increases in the number of budgeted positions in HR did not keep pace with increases in budgeted positions citywide. Thus, remaining staff in HR were burdened with heavy workloads to manage the City's hiring needs. There are opportunities for HR to improve citywide hiring practices as well as onboarding for new employees.

The average time to hire increased by almost three months.

One of HR's established performance measures is to reduce the average time to hire each year, but it has increased since fiscal year 2018. According to Berkeley's internal hiring data, the average time it takes for Berkeley to hire new employees increased from 4.9 to 7.7 months between fiscal years 2018 and 2022 (Figure 10).⁸ During the audit period, HR did not hire fast enough to address the growing gap between resignations and retirements compared to new hires as shown in Figure 2 (page 8).

Figure 10. The average time to hire increased since fiscal year 2018.



Source: NEOGOV

⁸ The time to hire calculation measures the average time between the date the department created a requisition to hire a new employee and the date of the employee's first day on the job.

One explanation for the hiring timeline increase may be the citywide hiring freeze that lasted from April 2020 to September 2022. The City asked departments to suspend all hiring activities, though they could request exceptions to be approved by the City Manager on a case-by-case basis. The additional approval may have lengthened the hiring timeline.

Another factor of the increased hiring timeline may be HR’s instability due to their staff shortage. HR had the highest vacancy rate among departments in October 2022, at 45 percent (Figure 11). HR’s vacancy rate more than quadrupled between 2018 and 2022, from 10 percent to 45 percent.⁹ Therefore, fewer HR staff were available to work on hiring and filling vacancies in other departments. There was also a loss of institutional knowledge in the department when many employees departed. Some positions turned over multiple times—26 HR employees left the City between fiscal year 2018 and fiscal year 2022. For context, HR was budgeted to have 21 FTEs in fiscal year 2018, and 22 FTEs beginning in fiscal year 2020. As of September 2022, the average employee tenure in HR was 3.1 years compared to the citywide average tenure of 10.4 years. According to the Society for Human Resources Management, losing key employees can impact workflow and result in productivity losses. These impacts were felt around the City, as HR provides hiring support and other internal services to every department.

Figure 11. Human Resources had the City’s highest vacancy rate in October 2022.



Source: Department directors

⁹ This number is based on a point-in-time count using payroll data from October 2018 and a department director interview from 2022.

There has additionally been instability within HR leadership. During the audit period, there were four different people in the role of HR Director. Leadership turnover can lead to organizational instability, lower employee morale and productivity, and decrease employee retention.

In addition to vacancy challenges, the number of budgeted positions in HR has not kept pace with citywide increases in the number of FTEs. The City added about 126 additional full-time positions between fiscal years 2018 and 2022, but only one of these new positions was allocated to the HR department. According to the HR Director, the 126 new positions increased recruitment and hiring demands, as well as the need for HR support in areas including transactions, training, employee relations, benefits, equal employment opportunity investigations, occupational safety, and workers' compensation. The HR Director also noted that some of these HR functions were staffed by a single member of the department. If a staff member took time off or left the City, there may have been no one managing an essential HR function. This combined with HR's high vacancy rate may have contributed to the issues with personnel data we discuss in Finding 5 on page 36.

HR was faced with a cyclical problem over the audit period: the City's average time to hire increased (Figure 10) due in part to lack of staff capacity in HR (Figure 11). Some former employees reported that they left the City because of an unmanageable workload tied to staff shortages, which only increased the overall number of vacancies for HR to help fill. The *Employer of Choice* report also identified the importance of investing in HR and recommended hiring up to six additional FTEs in HR. As of May 2023, City Council authorized HR to hire three additional HR staff members.

HR is now in the process of stabilizing. As of May 2023, HR has staffed 95 percent of the department's original 22 FTEs. Other department directors have noticed a positive change, with one stating:

The team that has been assembled is responsive, informative, and has demonstrated an ability to support our needs, which is not an easy task. Having an effective, responsive and knowledgeable HR team is critical to maintaining operations throughout the City and I am so grateful to the team as I know how hard they are working to support us.

Ineffective procedures may have contributed to hiring challenges.

There are opportunities for HR to modernize, streamline, and standardize hiring procedures. Updating hiring processes can help the City attract and hire qualified candidates in order to fill vacancies.

HR did not generally use modern hiring processes during the audit period. For example, HR has not historically used LinkedIn, or other job boards such as college and university job boards as recruiting platforms. Additionally, according to one manager, application processes could be lengthy due to multiple supplemental questions included in the application. Best practices for hiring recommended by the Society for Human Resources Management include using social media to advertise positions, making sure the application process is streamlined and easy-to-use, and collaborating with universities, colleges and high schools to increase the applicant pool. Some department directors also expressed that the management approval process for new positions slowed down the hiring process.

HR did not provide department hiring managers with comprehensive procedures or trainings for the hiring process during the audit period. One department director stated that they never received any training from HR on citywide recruitment processes, and they had to learn the City's hiring system NEOGOV on an ad hoc basis.¹⁰ The former Interim HR Director also noted that the department had no one to train HR employees on how to use NEOGOV. According to the current HR Director, HR has recently developed trainings on the City's hiring process and how to use NEOGOV, and they have conducted these trainings with some departments. The HR Director also stated that every department now has an assigned HR analyst who works with departments to strategize for recruitments.

Some surveyed employees reported inadequate onboarding.

Thirty-eight percent of surveyed employees did not believe that HR provided them with adequate onboarding to the City, compared to 36 percent who did (26 percent neutral). Onboarding involves providing the employee with the tools and information they need to become a productive member of the team. According to the Society for Human Resources Management, a well-designed onboarding process can improve employee engagement and retention.

38%

of surveyed employees did not think HR provided them with adequate onboarding to the City.

¹⁰ NEOGOV is a talent management system used by many public sector agencies, including the City of Berkeley. The City uses NEOGOV software to support the City's hiring process.

Of the surveyed employees who answered demographic questions, 51 percent of employees hired within the past two years were dissatisfied with their onboarding, compared to 37 percent of employees hired before then. This may indicate that the quality of the City's onboarding process has declined in recent years. This time period overlaps with the COVID-19 pandemic, which may have impacted employees' onboarding experiences. Nevertheless, it is still important to ensure employees receive adequate onboarding so that they feel welcomed and understand their role and responsibilities.

Recommendations

To improve hiring procedures, we recommend the City Manager's Office:

- 3.1 Assess the level of staff and resources needed to meet the City's recruitment and hiring needs. Prioritize filling these positions when vacancies in this area fall below a level that would jeopardize the City's ability to hire quickly.
- 3.2 Assess the approval process for hiring new employees and identify opportunities to reduce inefficiencies.

We also recommend Human Resources:

- 3.3 Develop and execute a plan to modernize recruitment and hiring using social media and community engagement.
- 3.4 Communicate standard procedures and trainings for NEOGOV and the City's hiring process to all department heads and hiring managers.
- 3.5 Improve the employee onboarding process so employees have the tools and information they need to do their jobs.

Telework can benefit the City but the current policy is limited.

Among surveyed employees who were able to telework, 64 percent reported being satisfied with their experience. In addition to other benefits, telework may help retain employees by increasing employee satisfaction, performance, and commitment to the organization. It may also serve as a draw to potential applicants. Telework may also produce additional environmental and financial benefits to the City. Still, the current telework policy is not comprehensive and lacks accountability.

Most surveyed city employees report being satisfied with telework.

In March of 2020, the City began allowing some employees the option to telework in response to the COVID-19 pandemic. The City prohibited teleworking prior to 2020. This policy was implemented quickly due to the pandemic emergency, and there has not been much analysis on the impact of telework on employees. Therefore, we asked current employees about their satisfaction with telework.

Sixty-seven percent of all survey respondents believed they could do some or all of their work remotely, while 33 percent did not. Though some employees cannot telework based on their job duties—public safety officers, maintenance workers, and others—the majority of city employees have some job duties that can be done remotely. Of the employees we surveyed who were able to telework, 64 percent reported being satisfied with their experience. Only 15 percent reported being dissatisfied with telework (21 percent neutral). When asked to elaborate on their telework responses, the majority of employees described the positive impacts of telework on their life. This included decreased commute time, improved job satisfaction, improved work-life balance, and improved workplace safety. Seventy-five percent of surveyed employees who telework reported still feeling connected to their colleagues. Fifty-two percent of surveyed employees who telework also stated they would look for other employment if they are not able to telework at least some of the time. This indicates that telework is an important factor in retaining Berkeley employees.

52%

of surveyed employees who telework said they would seek other employment if the City removes the option to telework.

Staff Perspectives

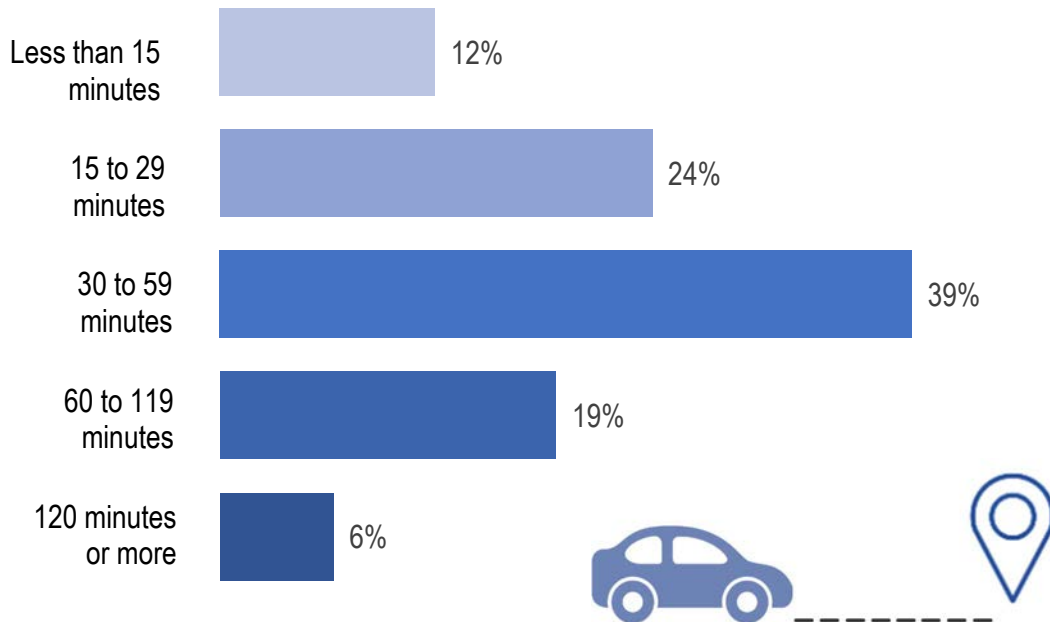
“I am grateful for the City’s decision to continue telework. It allows me to save time and money on commuting. [...] My colleagues and I all work effectively from home and stay connected via phone, email, Teams chat and conference calls. Remote work is a primary consideration for staying with the City.” – Current employee

“Being able to telework is a fantastic aspect of working with the City. The City’s COVID rules are rarely followed in the offices, so being able to cut down on exposure time is great, especially because I have a young infant and an immunocompromised spouse at home.” – Current employee

Source: 2022 satisfaction survey

Telework is one method of reducing employee commute times, which may increase employee satisfaction. Many City of Berkeley employees have long work commutes, as only 17 percent of full-time employees live in Berkeley. The majority of surveyed employees reported commuting 30 minutes or more to their worksite, with a quarter reporting a commute of an hour or more (Figure 12). Telework can therefore alleviate the burden of a long commute for these employees and the time spent commuting can be replaced with something more valuable to the employee.

Figure 12. A quarter of surveyed employees reported commuting an hour or more to work.



Source: 2022 satisfaction survey

Telework likely increased employee wellbeing and overall satisfaction for those who were able to telework during the pandemic, but some employees expressed needing telework policies that were fairer and more flexible. Over a quarter of surveyed employees expressed that they did not feel safe going to their worksite because of COVID-19. In open-ended survey responses, employees expressed different opinions regarding COVID-19 safety. Some believed the City provided enough protection around the virus, while others expressed concern about contracting COVID-19 at their worksite. Some felt that the City was inflexible around telework allowances, even for employees with underlying health conditions.

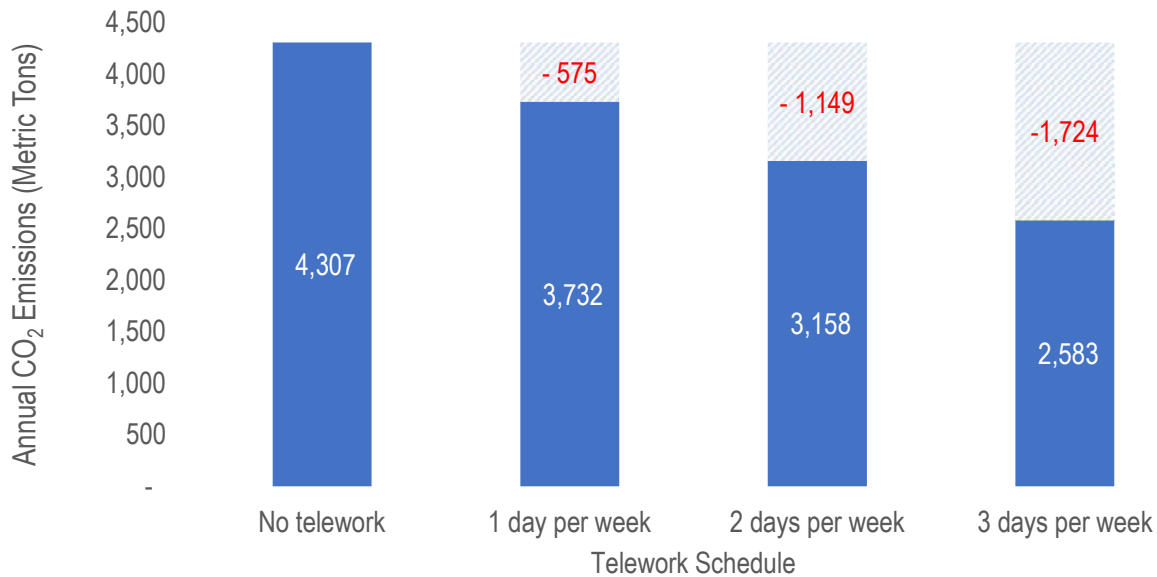
Telework may have additional benefits to the City.

There may be additional recruitment, environmental, financial, and disaster preparedness benefits associated with telework.

Telework can improve the recruitment pipeline by increasing the pool of available applicants to city positions. Many job seekers specifically look for flexible and remote working arrangements in an organization, therefore, Berkeley may be a more attractive employer by offering telework. Additionally, if Berkeley lacks funding to invest in improving workspaces, allowing employees to telework is one way to remain competitive with other organizations hiring from the same candidate pool. Other government organizations are also responding to job seekers' increased desire for telework. A recent NEOGOV survey of public sector HR directors found that 30 percent of organizations had expanded telework opportunities in order to attract more job candidates. This number will likely increase in the coming years as the public sector adapts to changing workforce norms.

Telework can also reduce carbon emissions created from employee commutes. An analysis of carbon emissions shows that if full-time career employees commute to Berkeley five days a week, this will generate approximately 4,307 metric tons of carbon annually. By allowing employees to work from home, the City can reduce its carbon footprint generated by employee commutes. We estimate that the City could reduce carbon emissions tied to employee commutes between 575 and 1,724 metric tons per year depending on the level of telework (Figure 13). Decreasing the emissions from employee commutes also aligns with Berkeley's Climate Action Plan goal to reduce the year 2000 emission levels by 80 percent by 2050.

Figure 13. Telework can reduce the amount of CO₂ produced by employee commutes.



Note: This calculation assumes 67 percent of full-time, career employees are participating in telework program. The current telework policy states employees can telework up to three days per week. We did not receive information on the number of city employees teleworking or how often they are teleworking.

Source: Berkeley City Auditor analysis

Telework can potentially reduce some costs for the City. Based on an analysis conducted by Global Workplace Analytics, *Telework in the 21st Century*, employers can save an estimated \$11,000 per half-time telecommuter per year.¹¹ Their estimate includes cost savings as a result of increased productivity, lower real estate costs, reduced absenteeism and turnover, and better disaster preparedness. We did not conduct an analysis of potential savings in the City of Berkeley.

Having a telework plan is a critical component of any emergency operations plan. During the COVID-19 pandemic, telework allowed the City to continue providing essential city services when employees could not be in their normal worksites. However, because the City did not have any teleworking policy or practice in place prior to the pandemic, there was no infrastructure in place for employees and managers to transition to working remotely. Having a practiced and thorough telework program would enable the City to adapt quickly to any event requiring the closure of city buildings without compromising service delivery.

¹¹ *Telework in the 21st Century*: <https://globalworkplaceanalytics.com/telecommuting-statistics>

The telework policy is not comprehensive and lacks accountability elements.

Despite employees' overall support for telework, the City's existing telework policy is not comprehensive, and does not address accountability issues. In February 2023, the City indicated that the telework policy would continue indefinitely after notifying employees that the COVID-19 masking and vaccine mandates would end at the end of that month. As of May 2023, no updates were made to create a more robust, long-term policy, though the contractor that produced the *Employer of Choice* report was developing a hybrid workplace best practices guide. One city employee union also pointed out the need for predictable and fair work from home policies as telework continues. A comprehensive telework policy should define eligibility, work expectations, and equipment and resource requirements.

Staff Perspectives

"Accountability needs to be redefined to make telework successful. Rather than physical presence as a measure of productivity, there should be performance benchmarks linked to clear goals with timeframes to make telework more equitable across the City. It would refocus accountability on results rather than physical presence (which is a poor indicator of productivity anyways)." – Current employee

"The City needs to identify ways to increase accountability in teleworking for it to be sustainable." – Current employee

"Berkeley doesn't provide a lot of guidance on telework policies, so we aren't able to give candidates clear information on how much flexibility they can expect." – Manager

Source: 2022 satisfaction survey, employee interviews

In open-ended survey responses, 24 employees expressed feeling that there are equity issues between teleworking and non-teleworking staff. According to a peer reviewed study, a perceived telework disparity can potentially lead to job dissatisfaction, a decrease in productivity, and difficulty retaining non-teleworking employees.¹² Transparency is one way to reduce perceived telework disparity. To realize the maximum benefits of teleworking, practices and policies should be made as transparent as possible. Additionally, teleworkers should provide their telework schedule and availability as well as having regular and fixed times to give updates to supervisors and colleagues.

¹² A Dark Side of Telework: A Social Comparison-Based Study from the Perspective of Office Workers: <https://rdcu.be/c8plU>

Updates to the telework policy can help improve transparency and encourage accountability. The current telework policy does not contain eligibility guidance, but leaves the determination of eligibility up to departments. It states that workers must be available by phone, email, or other specified method of communication during scheduled work hours, and it requires each remote worker to indicate how often they will check their email or phone during the workday. However, there appears to be no best practice guidelines in Berkeley's policy for these communication levels, and no accountability element if a remote employee is unresponsive. Berkeley's policy also does not require supervisors to justify their decision to deny telework requests.

Additionally, it is unclear which standard work equipment the City can provide to teleworkers. The policy only states that employees should contact their supervisor if they need equipment, but offers no guidance to supervisors on what they are allowed to provide to teleworkers. One department director said that the City did not consistently offer adequate training for supervisors of teleworking employees during the audit period.

The State of California, Alameda County, and the City and County of San Francisco developed comprehensive telework policies and guides for their employees (Table 2). These telework policies all require employees to receive training before teleworking, as well as specific trainings for supervisors to effectively manage their teleworking teams. These policies also outline a clear process for requesting equipment. Alameda County's policy has a checklist that managers must review before allowing a supervisee to telework, to ensure that the employee will be successful. Supervisors in the State of California and Alameda County are additionally required to justify their decision to deny or request a modification to employees' telework requests.

Table 2. The City of Berkeley does not have a comprehensive telework policy.

Elements of a Comprehensive Policy	State of California	Alameda County	City and County of San Francisco	City of Berkeley
The policy requires employees to be available for contact while teleworking.	✓	✓	✓	✓
The policy states that employees must comply with health and safety requirements at their telework site.	✓	✓	✓	✓
The policy has specific eligibility guidance.	✓	✓	✓	X
The policy has clear communication guidelines and expectations.	✓	✓	X	X
There is an accountability element for unresponsive employees.	✓	✓	✓	X
There are clear instructions for requesting equipment.	✓	✓	✓	X
There are training resources and requirements.	✓	✓	✓	X
Supervisors must provide justification for denying telework requests.	✓	✓	X	X

Source: State of California telework guide, Alameda County telework policy, City and County of San Francisco's teleworking policy, City of Berkeley telework policy

Recommendations

To improve the telework policy, we recommend the City Manager's Office:

- 4.1 Identify ways of reducing unused space in city buildings to save on overhead costs. This initiative may require additional resources beyond city staff.
- 4.2 Expand the citywide telework policy to include elements that align with best practices. This can include eligibility, employee accountability, equipment requests, telework training, and justifications for denying employee requests to telework.

The City lacked reliable data to address staff shortages.

Berkeley did not maintain accurate data to track retention trends. The City’s internal personnel data system, ERMA, was unable to produce reliable reports on vacancy and turnover rates during our audit period. Inaccurate data may impact the City’s service delivery if it cannot identify and respond to department vacancies or staff shortages in real-time. The City also has not consistently collected data on employee satisfaction. HR has not consistently sent exit surveys to departing employees or shared the data with departments. Additionally, city management has not reported sufficient data in recent years to track progress towards its diversity, equity, inclusion and accessibility goals and identify opportunities for improvement.

The City did not have reliable data on retention trends.

According to data systems owners in the City, ERMA was unable to produce reliable vacancy reports during our audit period. This means department directors did not receive vacancy data from HR and had to manually calculate vacancy rates. The **vacancy rate** is the percent of vacant positions within an organization. ERMA was also unable to produce accurate turnover reports during the audit period. The **turnover rate** measures the number of employees who leave in a given time period. Due to the City’s data challenges, we could not report on any information regarding employee turnover.

Table 3. Key Retention Data Was Unreliable

Data	Definition	Status
Vacancy rate	Percent of total positions that are vacant.	Unreliable
Turnover rate	Percent of employees to leave an organization during a given time period.	Unreliable

Source: Auditor conclusion

Calculating turnover allows organizations to monitor the movement of employees out of an organization over a specific time period rather than a single point in time. Tracking data on employee retention such as vacancies and turnover rates helps organizations identify and proactively address employee retention challenges. The International Public Management Association, an organization that represents HR professionals in government, states that HR professionals must have access to accurate, real time workforce data. Maintaining accurate workforce data is also important when developing the budget. The Government Finance Officers Association notes that since salaries generally make up the greatest portion of the expenditure budget, governments should use personnel data to account for the number of budgeted positions and expected vacancies. According to the HR Director, the City's ability to produce accurate and reliable vacancy and turnover reports are limited by pre-set data fields in ERMA which do not always capture data that HR would like to track. Custom data fields do not feed automated dashboards but must be manually extracted. The City is currently working on solutions to improve ERMA's reporting capabilities.

The City's personnel system is cumbersome and prone to errors. According to data system owners, migrating data from the previous system FUND\$ to ERMA in 2021 resulted in errors. Consequently, certain employee information was missing or incorrect in ERMA. Other data errors may have been due to the system's inability to accurately represent underfilled positions, or data entry errors that went unresolved. According to the former Interim HR Director, there were no established procedures around entering and managing personnel data in ERMA.

With these data limitations, the City will not be able to easily track or report on retention. This could affect the City's service delivery if it does not have the data to proactively identify concerning trends in vacancies and turnover. It also increases departments' workload as they manually calculate and update this data, instead of using ERMA to quickly produce a report. According to the HR Director, HR has made progress in cleaning up personnel data and engaged a consultant to produce accurate reports in ERMA.

The City did not consistently collect data on employee satisfaction or conduct exit surveys.

With the exception of the recent *Employer of Choice* report, the City has very little data on employee satisfaction and does not share available data with departments. While HR has an exit survey, they have not sent it to every employee who resigns, and the number of responses is low. Additionally, the data HR does collect is not shared with departments, and it is unclear how the City uses the data. Further, there is currently no process in place for ongoing monitoring of retention and satisfaction data.

Most of the departments we interviewed have some method of conducting exit interviews with departing employees, though exit interviews are sometimes sporadic depending on the size of the department and their available resources. The Public Works department additionally collects yearly internal satisfaction data. However, there is no organized citywide effort to collect satisfaction data and compare trends.

Collecting satisfaction data can help organizations understand employee experiences and take steps to reduce internal dissatisfaction, thus improving retention. For example, the U.S. Office of Personnel Management conducts an annual survey on employee engagement—the Federal Employee Viewpoint Survey—in order to report on trends in employee satisfaction. Surveys or interview data can identify the most common causes of dissatisfaction, thus allowing the City to develop a targeted approach to improving retention.

Employee engagement refers to the sense of purpose and commitment employees feel toward their employer and its mission.

Employee satisfaction is a measure of how satisfied employees are with different aspects of their work including their job, organization, pay, and others.

The City lacked a robust data-informed approach to meet its diversity, equity, inclusion, and accessibility workforce goals.

The City recognizes the importance of maintaining a diverse workforce, however, it has not reported sufficient data in recent years to track progress towards its goals and identify opportunities for improvement.

Promoting diversity in the government workforce is important for a number of reasons, including retention. Fostering a diverse and inclusive workplace can help organizations reduce turnover, increase employee retention across demographic groups and improve morale. Regular assessment of employee satisfaction could help the City uncover diversity, equity, inclusion and accessibility (DEIA) concerns that impact retention. As noted in the previous section, the City does not regularly collect data on employee satisfaction, including employees' perceptions of DEIA in the workplace. Some employees raised concerns about DEIA in their open-ended survey responses, which suggests that it is an important factor in employee satisfaction.¹³ A regular citywide survey of employees would allow the City to target common DEIA concerns among employees or prioritize interventions to address those concerns. The U.S. Office of Personnel Management has demonstrated how to do this by recently adding DEIA questions to its Federal Employee Viewpoint Survey, along with a DEIA score based on survey responses.

¹³ These concerns echoed some of the issues brought forth by 20 current and former employees who filed complaints with the Berkeley Branch of the NAACP and were interviewed by Mason Tillman Associates in 2014. Mason Tillman Associates noted the following dominant themes which emerged from their analysis: absence of transparency in the hiring and promotion process; failure to hold supervisors, managers and directors accountable for their actions; and inconsistent application of rules and regulations in the hiring and promotion process.

One of the City's strategic plan goals is to attract and retain a talented and diverse City government workforce. According to the proposed budget for fiscal years 2023 and 2024, one of HR's performance measures is to ensure that City demographics reach parity with Alameda County demographics and identify and address racial and ethnic disparities in the City workforce. In the past, the City's Equal Employment Office has provided the Personnel Board with Year End Workforce reports which analyze demographic trends across indicators like hires, promotions, and leadership roles compared to the U.S. Census American Community Survey (ACS) data for Alameda County. However, the reports have not been produced since fiscal year 2020. According to HR, the department plans to produce these reports again and is exploring the feasibility of automating these reports.

A full demographic analysis of the city workforce was outside the scope of this audit. However, we identified some retention trends in the Year End Workforce reports that merit closer attention. For example, in fiscal year 2020, Hispanic or Latino employees made up 19 percent of all employees, 9 percent of supervisors and managers, and there were no Hispanic or Latino employees in deputy director or director roles. This is based on the most recent report available; there may have been demographic changes since the fiscal year 2020 report.

While comparing the demographic breakdown of Berkeley's workforce to the Alameda County ACS sheds light on where Berkeley stands compared to one relevant labor market, it is also important to monitor workforce trends across all levels of the City employee population (i.e. staff, managers, and supervisors) to gain a better sense of representation within the organization. The City's performance measure on employee diversity does not report on all levels of employment. However, looking at the data in this way could highlight potential barriers, for example, pipelines into manager- or director-level roles.

Recommendations

To improve internal data systems, we recommend Human Resources:

- 5.1 Clean up personnel data in ERMA to ensure all employee data is accurate.
- 5.2 Develop standardized procedures for entering and managing personnel data in ERMA.
- 5.3 Produce reports that can be used to inform retention and hiring efforts, which may include data on vacancies, recruitments, turnover, or other useful data. Human Resources should also report to City Council on staff vacancies by department and how long those positions have been vacant.
- 5.4 Consistently conduct exit surveys or interviews and share results with departments.

To better manage retention efforts, we recommend City Council:

- 5.5 Determine the appropriate city department or other body to regularly collect data on employee satisfaction. Data collection should include employees' perceptions about diversity, equity, inclusion, and accessibility in the workplace. The department should consider publishing the data and comparing it to previous years to help inform retention efforts.

To improve reporting on diversity, equity, inclusion, and accessibility, we recommend the City Manager's Office and Human Resources:

- 5.6 Resume data collection and production of Year End Workforce Reports on demographic workforce trends at least annually. Consider expanding Human Resources' performance measure reported in the budget book to capture diversity at all levels of city employment.

Recommendations and Management Response

We provided a draft of this report to city management and HR for review and comment. City management agreed with our findings, conclusions, and recommendations. We generally expect the City to implement audit recommendations within two years of report issuance. Some of the following recommendations may be implemented immediately, or require a longer timeframe to implement depending on available resources. We believe these recommendations are a worthwhile investment for the City.

- 1.1** To better manage retention, we recommend the City Manager’s Office establish citywide retention goals and report to City Council on progress towards those goals biennially.
- Implementation Date:** 1 year
- Corrective Action Plan:** Upon stabilizing the City’s hiring crisis, Human Resources will establish staffing goals (e.g., hiring over attrition) and metrics by which to measure them (e.g., reductions in vacancy rates).
- 1.2** To better manage retention, we recommend the City Manager’s Office conduct a staffing analysis based on critical needs to identify the number and type of full-time equivalent positions needed for successful city operations and services. The City may consider conducting this analysis one department at a time based on available resources.
- Implementation Date:** 2+ years
- Corrective Action Plan:** A staffing analysis of the recommended scale – involving operational departments, Human Resources, and the Budget team – is beyond the capacity of the City’s current staff. In order to be implemented, the recommendation would need funding and external resources (i.e., the involvement of a consulting firm) or a drastic reduction of current priorities.
- 2.1** To ensure job duties align with job descriptions, we recommend the City Manager’s Office review the highest priority city job descriptions to ensure they accurately reflect job duties.
- Implementation Date:** 2 years
- Corrective Action Plan:** Human Resources has already embarked on this endeavor, working with departments and the Personnel Board to revise key classification specs as vacancies occur. Revisions, however, are time-consuming, since they involve researching changes to the job class, drafting new language, negotiating the edits with labor groups, conducting a compensation study and submitting the change proposals to the Personnel Board for review and approval and then to council for adoption. Given that HR has limited staff and a slew of other deliverables, the revision process will necessarily move forward in priority order over the course of two years, unless resources are invested for outside contractors to assist with the workload.

- 2.2** To alleviate workloads associated with Council referrals, we recommend City Council consider staff capacity when introducing new legislation, and limit or prioritize new legislation during periods of short staffing.
- Implementation Date:** 1 year
- Corrective Action Plan:** Staff currently articulate in staff reports and communications to the City Council regarding staff capacity to implement new legislation. In addition, the City Manager presented in December 2022 to the City Council regarding the staffing crisis the City is currently facing. Opportunities to enhance communications of this nature can be explored with the City Council.
- 2.3** To alleviate workloads associated with Council referrals, we recommend the City Manager’s Office report on the status of approved projects to City Council, including information about delays caused by staff vacancies.
- Implementation Date:** 1 year
- Corrective Action Plan:** Staff currently articulate in staff reports and communications to the City Council regarding staff capacity to implement new legislation. In addition, the City Manager presented in December 2022 to the City Council regarding the staffing crisis the City is currently facing. Opportunities to enhance communications of this nature can be explored with the City Council.
- 2.4** To improve employee satisfaction, we recommend the City Manager’s Office improve pathways for promotion in the City through a citywide succession plan, which may include cross-training for positions.
- Implementation Date:** 2 years
- Corrective Action Plan:** Human Resources will plan for promotional pathways through succession planning and cross-training while being mindful of inherent restrictions imposed on this effort by the relatively modest size of the City’s workforce, particularly in smaller City departments/divisions.
- 2.5** To improve employee satisfaction, we recommend the City Manager’s Office direct departments to ensure that all employees receive an annual performance evaluation.
- Implementation Date:** 18 months
- Corrective Action Plan:** Human Resources will reconfigure the employee evaluation process with the mindset that performance assessment and feedback should be continuous, constructive, and growth-minded, rather than limited to 12-month intervals.

- 2.6** To improve employee satisfaction, we recommend Human Resources implement a comprehensive training program that ensures staff at all levels receive the training they need to fulfill their job duties and develop their job skills as needed. Consider increasing the training budget and redesigning the training curriculum to best address the needs of a post-pandemic workforce, improving training for supervisors and managers, ensuring that experts conduct trainings, and allowing employees to request specific trainings.
- Implementation Date:** 18 months
- Corrective Action Plan:** Human Resources has already initiated a re-imagining of the workforce training curriculum, with specific focus on supervisory, non-supervisory, and safety-sensitive positions. This effort includes a redesign of the Leadership Development Program and the new Skilled Workers Academy to maximize efficiency and effectiveness. Many current employees have gone through this program already.
- 2.7** To improve transparency, we recommend Human Resources ensure that all city employees complete mandatory trainings in accordance with the state law. Report data on mandated trainings to Council annually.
- Implementation Date:** 1 year
- Corrective Action Plan:** Human Resources has already identified compliance with mandatory trainings as a top priority for the 2023 calendar year. Departments are asked to meet compliance milestones throughout the year, reaching 100% by December 31.
- 2.8** To improve transparency, we recommend the City Manager's Office update City Council on the recruitment status of hard-to-fill positions during the biennial budget process, as well as steps taken to fill these positions.
- Implementation Date:** 18 months
- Corrective Action Plan:** Human Resources has already instituted a system of prioritizing departments' most critical hiring needs. Once vacancy rates are stabilized, HR will highlight remaining hard-to-fill positions during every biennial budget process, along with articulating the measures implemented to recruit for them.

- 2.9** To improve transparency, we recommend the City Manager’s Office identify positions that are hard-to-recruit and retain and consider reassessing pay for those positions.
- Implementation Date:** 18 months
- Corrective Action Plan:** The City is already piloting a hiring pay incentive for certain positions in the Police Department but is mindful that reassessing pay for hard-to-recruit positions involves a complex set of considerations, including internal alignment (affecting supervisory or related classifications), internal equity, and labor negotiations.
- 2.10** To improve communication channels in the City, we recommend the City Manager’s Office assess employees’ needs regarding communication from the City Manager’s Office and design a communication strategy that addresses those needs.
- Implementation Date:** 1 year
- Corrective Action Plan:** This effort is currently underway as part of the Employer of Choice initiative. The Communications Division is currently meeting regularly with departments to assess communication needs. Additionally, a quarterly Employer of Choice newsletter goes out to all employees, in addition to the already-existing Berkeley Matters publication available to all employees. The City Manager's Office will continue to explore ways to enhance employee communications as envisioned by the Employer of Choice initiative.
- 3.1** To improve hiring procedures, we recommend the City Manager’s Office assess the level of staff and resources needed to meet the City’s recruitment and hiring needs. Prioritize filling these positions when vacancies in this area fall below a level that would jeopardize the City’s ability to hire quickly.
- Implementation Date:** 6 months
- Corrective Action Plan:** Recommendations to increase staffing within the Human Resources Department were made by the Municipal Resource Group (MRG) as part of its Employer of Choice roadmap, and the City Council has already allocated three additional positions for HR, two of which have been filled; requests for another three positions are pending.
- 3.2** To improve hiring procedures, we recommend the City Manager’s Office assess the approval process for hiring new employees and identify opportunities to reduce inefficiencies.
- Implementation Date:** 6 months
- Corrective Action Plan:** Human Resources has already re-ordered the sequence in which hiring approvals are processed but will seek out further opportunities to enhance efficiencies.

3.3 To improve hiring procedures, we recommend Human Resources develop and execute a plan to modernize recruitment and hiring using social media and community engagement.

Implementation Date: 1 year

Corrective Action Plan: Human Resources has already commenced these efforts pursuant to the Employer of Choice initiative. With funding allocated by Council, the department is in the process of issuing a Request for Proposal to engage a marketing firm that will provide a full suite of recruitment services on digital platforms and social media in order to broaden outreach to high-caliber candidates of diverse backgrounds.

3.4 To improve hiring procedures, we recommend Human Resources communicate standard procedures and trainings for NEOGOV and the City’s hiring process to all department heads and hiring managers.

Implementation Date: 6 months

Corrective Action Plan: Human Resources has already designed trainings on the use of NEOGOV for maximized efficiency in the hiring process, including the scheduling of interviews and the issuance of e-offers and e-reference checks. HR has conducted this training for the hiring managers of the largest departments, including Public Works, Planning, and Health, Housing & Community Services (HHCS), and will roll it to out all remaining departments before the end of the calendar year.

3.5 To improve hiring procedures, we recommend Human Resources improve the employee onboarding process so employees have the tools and information they need to do their jobs.

Implementation Date: 6 months

Corrective Action Plan: Human Resources has already automated the onboarding process so that new employees can submit pre-employment paperwork, make benefits selections, and review City policies electronically. Within the next six months, HR will develop and implement a broader “Welcome to Berkeley” onboarding initiative designed to ease new employees into their jobs and provide them with all necessary tools for success.

- 4.1** To improve the telework policy, we recommend the City Manager’s Office identify ways of reducing unused space in city buildings to save on overhead costs. This initiative may require additional resources beyond city staff.
- Implementation Date:** 2+ years
- Corrective Action Plan:** In order to be implemented citywide, this recommendation would need significant funding and external resources allocated. Currently, the City is making incremental progress on exploring more efficient use of space on a department-by-department basis.
- 4.2** To improve the telework policy, we recommend the City Manager’s Office expand the citywide telework policy to include elements that align with best practices. This can include eligibility, employee accountability, equipment requests, telework training, and justifications for denying employee requests to telework.
- Implementation Date:** 6 months
- Corrective Action Plan:** Efforts are already underway in this regard, as the consulting firm Municipal Resource Group (MRG) is preparing a Hybrid Workplace Best Practice Guide as a supplement to its Employer of Choice roadmap.
- 5.1** To improve internal data systems, we recommend Human Resources clean up personnel data in ERMA to ensure all employee data is accurate.
- Implementation Date:** 6 months
- Corrective Action Plan:** Human Resources has already completed the bulk of this work but will continually review and refine data in order to ensure maximum accuracy.
- 5.2** To improve internal data systems, we recommend Human Resources develop standardized procedures for entering and managing personnel data in ERMA.
- Implementation Date:** 6 months
- Corrective Action Plan:** Human Resources has already implemented methods of standardizing data input and management, and will continue to refine them while navigating limitations with the ERMA system itself.

5.3 To improve internal data systems, we recommend Human Resources produce reports that can be used to inform retention and hiring efforts, which may include data on vacancies, recruitments, turnover, or other useful data. Human Resources should also report to City Council on staff vacancies by department and how long those positions have been vacant.

Implementation Date: 6 months

Corrective Action Plan: Human Resources has already undertaken this effort by engaging a data consultant to design reports and dashboards in ERMA and in NEOGOV; however, limitations in those systems (particularly ERMA) pose impediments to this effort. Departments do provide their vacancy rates when they complete department presentations during budget and finance development each year.

5.4 To improve internal data systems, we recommend Human Resources consistently conduct exit surveys or interviews and share results with departments.

Implementation Date: 2 years

Corrective Action Plan: Human Resources currently sends out exit surveys but lacks capacity for robust follow through, analysis, and subsequent dialogue with departments. Meaningful implementation of this recommendation would require a modest investment in staffing (e.g., a dedicated part-time HR intern).

5.5 To better manage retention efforts, we recommend City Council determine the appropriate city department or other body to regularly collect data on employee satisfaction. The department should consider publishing the data and comparing it to previous years to help inform retention efforts. Data collection should include employees' perceptions about diversity, equity, inclusion, and accessibility in the workplace.

Implementation Date: 2 years

Corrective Action Plan: The Special Projects team working on the Employer of Choice initiative will collaborate with the to-be-hired DEI officer to implement a methodology to collect and report back on employees' perceptions about diversity, equity, inclusion, and accessibility in the workplace. This will be additional to the work being done to address the items presented in the Employer of Choice roadmap produced by MRG.

5.6 To improve reporting on diversity, equity, inclusion, and accessibility, we recommend the City Manager’s Office and Human Resources resume producing Year End Workforce Reports on demographic workforce trends at least annually. Consider expanding Human Resources’ performance measure reported in the budget book to capture diversity at all levels of city employment.

Implementation Date: 1 year

Corrective Action Plan: Human Resources will resume reporting on demographic trends and diversity levels as part of its data analytics efforts referenced in Recommendation No. 5.3.

Methodology and Statement of Compliance

We audited the City's approach to staff retention, including reviewing relevant Human Resources (HR) department's operations for fiscal years 2018 through 2022. We performed a risk assessment of HR's practices and procedures to identify potential internal control weaknesses, including fraud risks, within the context of our audit objectives. This included a review of selected policies and procedures, as well as interviews with subject matter experts, HR staff, department directors, and current and former employees.

To gain an understanding of HR's operations and internal controls and to achieve our audit objectives, we reviewed the following:

- Survey responses from a satisfaction survey we designed and sent to current employees,
- Survey responses from an exit survey we designed and sent to former employees who voluntarily resigned or retired,
- Survey responses from an exit survey that the HR department sent,
- Internal staffing data from the City's current employee information system ERMA (January 2021 – June 2022) and FUND\$ (July 2018 – December 2020),
- NEOGOV data on the City's new hires and promotions,
- Previous audit findings and recommendations regarding understaffing and vacancies,
- City of Berkeley HR policies and procedures,
- National media on public sector hiring and retention issues,
- Professional literature and best practices for hiring and retaining employees, including telework,
- Staffing data and telework policies from local jurisdictions to compare to Berkeley, and
- Other audits in comparison cities related to employee retention.

We also conducted interviews with:

- HR staff members, including the former Interim HR Director, and the current HR Director,
- Current and former city employees,
- Union representatives from City of Berkeley bargaining groups,
- City department directors,
- City leadership including the City Manager and City Councilmembers,
- A climate policy consultant, and
- The Chair of the Personnel Board.

We analyzed:

- Satisfaction and exit survey responses,
- Vacancy rate data from department directors,
- Resignation and retirement data from FUND\$ and ERMA,
- NEOGOV data on the City's new hires and promotions,
- Commuter carbon emissions data, and
- Year End Workforce Reports from fiscal years 2018-2020, i.e. reports produced by the City showing demographic trends in the City's workforce.

We included quotes from current employees, former employees, and department directors. To protect confidentiality, we did not include any identifiable information. Further, each quote featured in this report was only edited for clarity, length, or grammar.

Data Reliability

There are inherent limitations in using survey data to gauge employee satisfaction. However, even with those limitations, providing an anonymous survey was the most effective and efficient way to hear from a large number of current and former employees who could respond freely. During our audit, we kept the following in mind: 1) Many factors can impact a respondent's frame of mind when completing the survey, which could influence their responses either positively or negatively; 2) People who are dissatisfied are more apt to reply to the survey and ongoing changes within the City would impact perceptions day to day; 3) Unless the survey achieves a 100 percent response rate, some opinions may not be reflected in the quantitative analysis of responses; and 4) Despite our extensive preparation, respondents could have interpreted questions differently than we intended. Because the overall goal was to set a baseline of the morale at a point in time, we determined that the above factors would not create a significant risk to the accuracy of our audit findings, conclusions, and recommendations. The number of responses for both surveys was a strong indicator that the results were reliable, and the responses agreed with comments made during interviews, including discussions with employees, supervisors, and management.

We assessed the reliability of ERMA, FUND\$, and NEOGOV data by reviewing it for completeness, appropriateness, and consistency. We determined that ERMA data is reliable for the audit's purpose, with some caveats. ERMA data was reliable for pulling employee reports including resignation, retirement, hire, and service dates after January 1st, 2021. We determined the reliability of ERMA data by interviewing data owners and performing logic testing on the data. We could not confirm the accuracy of the vacancy rate or turnover data and therefore could not use it for analysis or use past employee data to analyze retention trends.

We also assessed the reliability of employee payroll data in the FUND\$ system and determined it is sufficiently reliable for the purposes of our analysis. We assessed reliability by reviewing two prior data reliability assessments from previous audits, as both audits used FUND\$ as a data source and found it to be reliable.

We additionally determined that NEOGOV data are sufficiently reliable for the audit's purpose. We determined data reliability by interviewing knowledgeable data owners, reviewing data manuals, and performing logic testing on the data. We noted a limitation in the data: there are nine new hires and five promotions whose start date was before their requisition create date. According to HR, these are employees who were hired before being entered into NEOGOV. Therefore, their requisition was created after their start date. These limitations did not significantly impact our analysis.

Independence

Payroll Audit is a Division of the City Auditor's Office. The Payroll Audit Division performs citywide payroll functions and is a module leader for the payroll/personnel module used to record payroll costs. HR and department payroll clerks are responsible for entering employee data and collecting relevant documentation. Payroll Audit is not responsible for verifying the employee's time or the use of budget codes by the department. Further, Payroll Audit limits its review of sufficient documentation for the reported time or transaction; HR and department payroll clerks are responsible for making adjustments to ensure the accuracy of the information in the system.

To reduce the threat to our independence, we limited our work to exclude areas overseen by our office. We also selected data from closed payroll periods that was in read only status.

We relied on previous consultations with representatives from the U.S. Government Accountability Office to assess the safeguards we put in place. Based on this, we determined that the safeguards mentioned above reduced the identified threats to our independence to an acceptable level to proceed with the audit.

Statement of Compliance

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix I. Satisfaction Survey Responses

To measure employee satisfaction levels, we surveyed current employees between August 30 and September 18, 2022. We received 771 total responses out of 2094 active employees, including part-time and temporary staff, with a response rate of 37 percent. We measured most responses on a scale from “agree”, “somewhat agree”, “neutral”, “somewhat disagree” to “disagree”. When displaying results, we combined the “agree” and “somewhat agree” responses, along with the “disagree” and “somewhat disagree” responses for simplicity. Certain questions were only accessible based on the respondent’s previous answers, for example, only supervisors could access questions about their supervising experience. To ensure employee confidentiality, the information in this report does not include individually identifiable information from the survey responses. Responses are displayed below.

Job

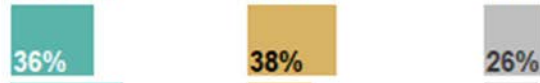
My job allows me to balance my work and personal life.



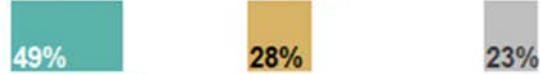
I am satisfied with my career advancement opportunities.



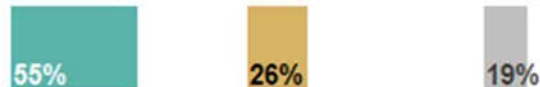
HR provided me with adequate onboarding to begin my job when I was hired.



I would recommend working at the City of Berkeley to a friend.



I am satisfied with my job.

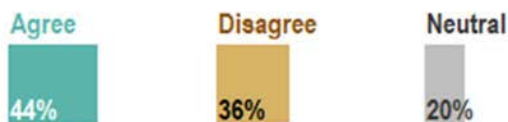


I have looked for another job in the past year.

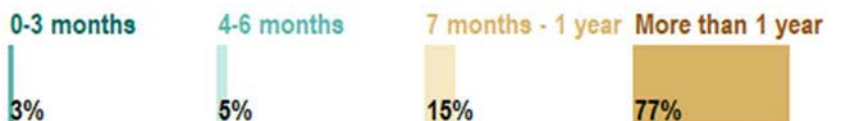


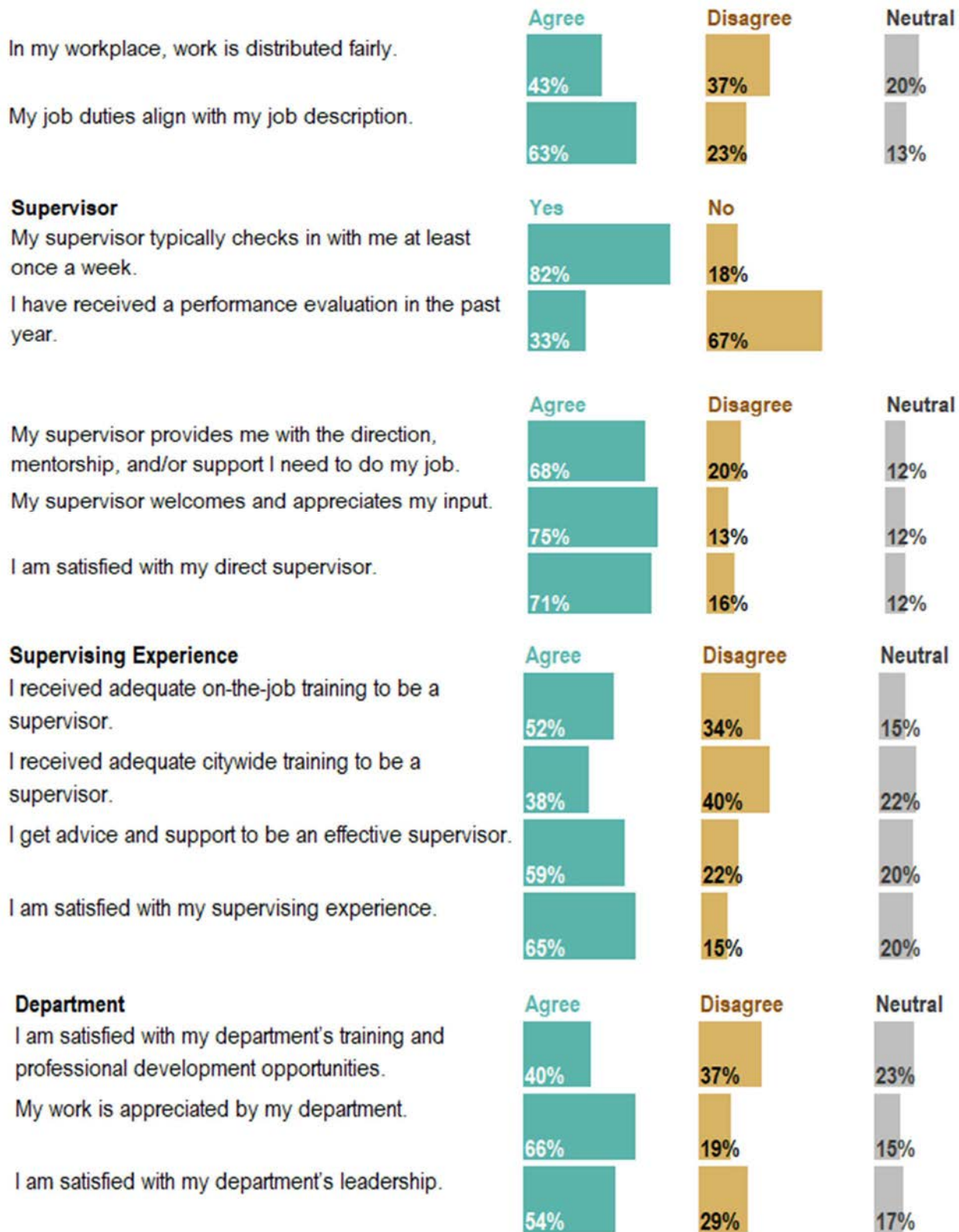
Workload

My workload is manageable.



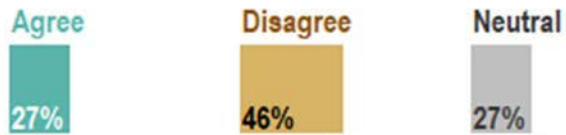
If disagree, how long has this been a problem?





City Management

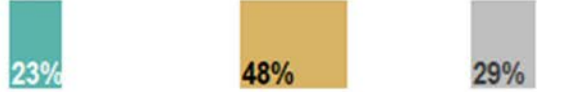
City management cares about employees.



I am satisfied with citywide training and professional development opportunities.



City management communicates well when making decisions that impact City of Berkeley employees.



Compensation and Benefits

I am satisfied with my compensation.



I am satisfied with my benefits package.

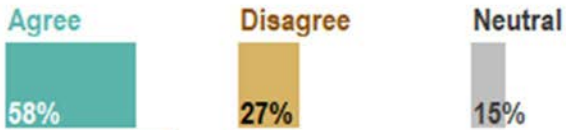


Commute and Telework

Given my current duties, I believe that some or all of my work can be successfully conducted remotely.



The City provides me with the materials, equipment, and training I need to successfully telework.



I feel connected to my colleagues.



If I am not permitted to telework (at least some of the time), I will find other employment.



I am satisfied with my teleworking experience.



COVID-19

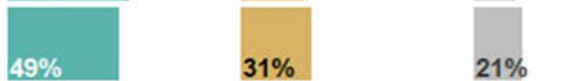
The City provides employees with adequate communication around COVID-19.



Regarding COVID-19, I feel safe going to my work site.

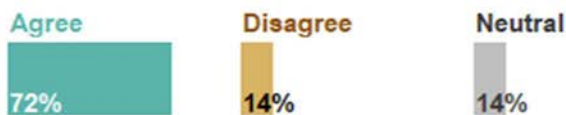


I am satisfied with the City's efforts to protect employees from COVID-19.



Fraud, Waste and Abuse

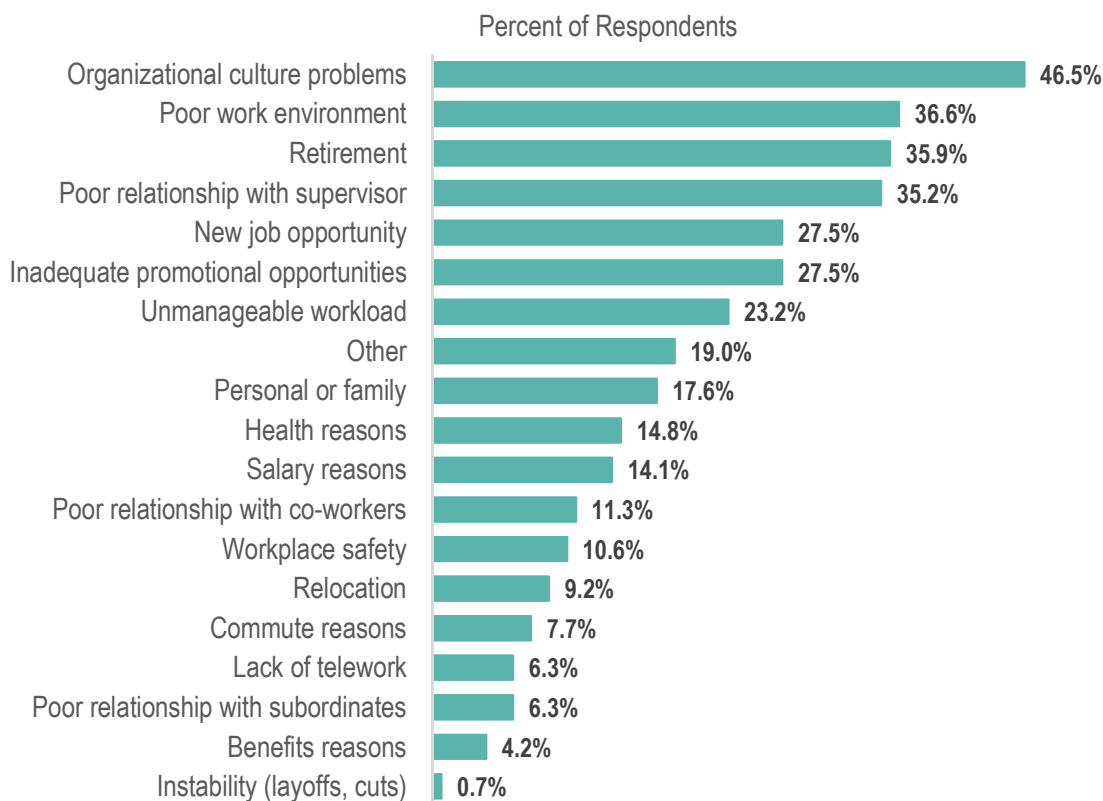
I know what to do if I encounter fraud, waste, or abuse of city resources in the workplace.



Appendix II. Exit Survey Responses

We asked employees who left the City to respond to an exit survey. We sent the exit survey to former employees who voluntarily left the City—indicated by a termination reason marked as resignation, retirement, medical separation or disability retirement in ERMA—between fiscal years 2018 and 2022. Respondents could fill out the online survey using SurveyMonkey, or they could fill out the paper survey that we mailed to their address. We received a total of 142 responses out of 495 former employees who received the survey. We decided to conduct our own exit survey because the City received only 38 responses to its exit survey between October 2018 and June 2022.

What were your reasons for leaving the City of Berkeley?



Note: We asked survey respondents to provide their five primary reasons for leaving the City out of the options above. This figure shows the percent of respondents who listed each reason as one of their primary reasons for leaving.

Source: 2022 exit survey

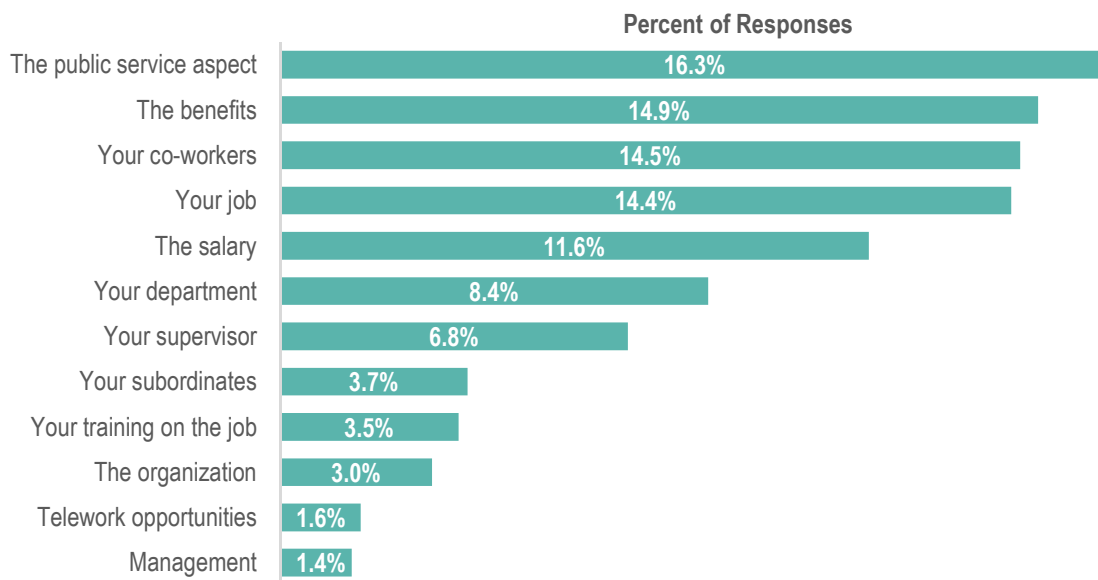
How would you rate your experience working for the City?



Note: Figure is an average of all responses. Respondents were asked to rate their experience from worst (1) to best (5).

Source: 2022 exit survey

What did you like best about working for the City?



Source: 2022 exit survey

Did you receive an exit survey upon leaving the City?

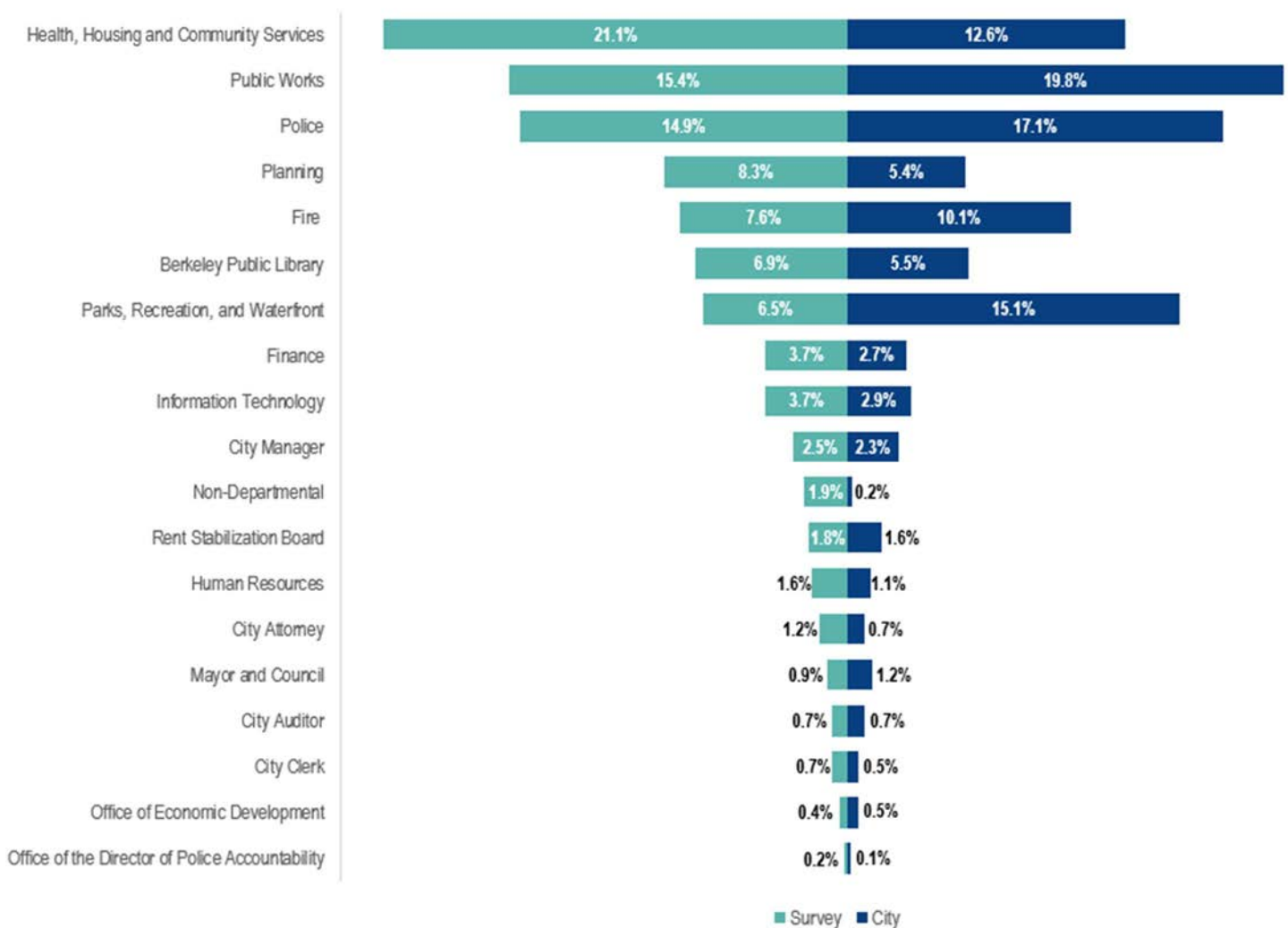


Source: 2022 exit survey

Appendix III. Satisfaction Survey Respondents by Department

We asked City of Berkeley employees to respond to a job satisfaction survey. In order to determine how well the responses represented the opinions of employees in different departments, we compared survey response data to citywide data. Employees from every department responded to the survey.

Figure 14. Full-Time Employees Who Responded to Satisfaction Survey by Department Compared to Citywide Data



Note: This figure reflects satisfaction survey respondents who indicated they were a full-time employee; some respondents skipped this question and therefore may not be captured in this graphic. Citywide data captures all full-time employees as of September 9, 2022.

Source: 2022 satisfaction survey and ERMA

Mission Statement

Promoting transparency and accountability in Berkeley government.

Audit Team

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<https://berkeleyca.gov/your-government/city-audits/city-auditor-reports>

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BERKELEY CITY AUDITOR



Office of the City Manager

ACTION CALENDAR
July 11, 2023

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: Referral Response: Affordable Housing Preference Policy for Rental Housing
 Created Through the Below Market Rate and Housing Trust Fund
 Programs

RECOMMENDATION

Adopt a Resolution to create an Affordable Housing Preference Policy applicable to new residential housing units created via the Below Market-Rate (BMR) and the Housing Trust Fund (HTF) programs consistent with Fair Housing law and government funder approvals, and direct the City Manager to adopt guidelines to administer the Housing Preference Policy.

SUMMARY

Housing preferences are a policy tool to prioritize applicants for affordable housing rental leases. The proposed Affordable Housing Preference Policy (HPP) establishes seven preferences designed to assist people who were displaced from Berkeley or are facing displacement in Berkeley to receive priority for new affordable housing units. Staff is requesting Council adopt a resolution to require these preferences be applied to new affordable housing units.

On February 21, 2023, City Council held a Work Session to receive information on the HPP, the community engagement and leadership efforts to craft the policy, and discuss policy development. Staff conducted analysis of the Work Session discussion and consulted with community partners to craft the policy recommendations.

The HPP is designed to achieve the following goals and outcomes:

- Support individuals who have previously been displaced from Berkeley and desire to return;
- Support individuals who are currently experiencing housing insecurity in Berkeley; and

- Acknowledge and address historical racial injustices, particularly for the Black community, who have been disproportionately impacted by exclusionary housing policies.

The HPP is intended to apply to units created by the City's Below Market Rate (BMR) and Housing Trust Fund (HTF) programs. Opportunities for implementation of the policy will be shaped by staffing levels, Fair Housing law, and approvals by other government funding sponsors for HTF projects.

The HPP proposal is a product of work undertaken by the Department of Health, Housing, and Community Services (HHCS) in partnership with community-based organizations, and reflects City Council's Work Session discussion of the preliminary policy proposal. In 2019, in response to Council referrals and ongoing community advocacy for a preference policy, HHCS and the Department of Planning applied for a Partnership for the Bay's Future (PBF) Challenge Grant. The Challenge Grant, which commenced in March 2020, allowed HHCS to support community partners Healthy Black Families (HBF) and East Bay Community Law Center (EBCLC) to engage in a community-driven process to make recommendations for an HPP. The Housing Advisory Commission (HAC) supported the community proposal.

FISCAL IMPACTS OF RECOMMENDATION

The proposed HPP will require new staff time for training/education, leasing certification, contract management, data collection and evaluation, and other ongoing implementation responsibilities. HHCS' Housing and Community Services Division (HHCS/HCS) estimates needing 0.3 FTE Community Service Specialist I (CSSI), 0.3 FTE Community Development Project Coordinator (CDPC) and 0.1 FTE Senior Community Development Project Coordinator to fulfill these duties. This represents an estimated annual staffing budget of \$136,299. The HHCS/HCS staffing study and corresponding staffing requests for FY24 include the FTEs needed to implement the Housing Preference Policy.

The staffing plan is predicated on approval of the new positions in HCS requested as part of the staffing study, which includes 2 FTE's funded from the General Fund/Measure U1 as well as 4 FTE's funded with special funds. Amendments to the proposed plan may affect the implementation of this proposal.

It will be critical to conduct outreach to ensure that potential affordable housing applicants are aware of the Housing Preference Policy. Staff recommend conducting an RFP to fund a community-based organization to conduct outreach in Berkeley, and outside of Berkeley to reach those already displaced from the community. It will be important to have consistent outreach and education through the development of the two BART sites. Staff estimate that outreach costs will be between \$35,000 to \$50,000. Staff will work on a more detailed outreach proposal for Council's consideration if the

policy is adopted.

CURRENT SITUATION AND ITS EFFECTS

The proposed HPP is the result of extensive community engagement and leadership by the City’s community partners, HBF and EBCLC, through a PBF Challenge Grant. This process is reflective of policy design driven by a collaborative, community-led process from outreach design to policy development. The proposal reflects collective work of Staff, City Council Work Session discussion, HBF, EBCLC, and a Community Leaders Group to draft a policy reflective of the Berkeley community’s values and priorities. This work was centered on supporting Berkeley’s African American community, which has been most impacted by displacement in Berkeley.

Table 1. Preferences and Details

Preference	Points	Preference Details
Displacement due to BART construction	(<u>First priority</u>)	Descendant of someone who was displaced due to construction of BART in the 1960s and 1970s in Berkeley.
Displaced due to foreclosure	1	Displaced due to foreclosure in Berkeley since 2005.
Displaced due to eviction	1	Displaced in Berkeley due to no-fault or non-payment eviction within the past seven years.
Families with children	1	Household with at least one child aged 17 or under.
Homeless <u>OR</u> at-risk of homelessness	1	Homeless and not eligible for Permanent Supportive Housing <u>OR</u> At-Risk of Homelessness with current/former address in Berkeley.
Ties to redlined areas	1	Residential ties to Berkeley’s redlined areas – current or former address of applicant.
Ties to redlined areas – historical	1	Residential ties to Berkeley’s redlined areas – applicant is a direct descendant of someone who lived in redlined areas.

City Council Work Session

The City Council held a Work Session on the Housing Preference Policy on February 21, 2023. Staff and the City’s community partner, Healthy Black Families, presented to Council about the policy proposal and goals, the community engagement that shaped recommendations, and implementation. The Council used the Work Session to discuss the preliminary HPP proposal. This discussion was critical for Staff to focus the scope of

the policy, inform implementation planning, and consider how to best target preferences to meet policy goals.

City Council's discussion included the importance of ensuring families originally displaced by construction of Berkeley BART stations in the 1960s and 1970s are able to return to the city, the impact of the foreclosure crisis and redlining on Black families, the loss of generational wealth for Black families due to displacement, and the potential of limiting the number of overall preferences to have more impact from priority preferences (such as displacement). A detailed overview of the Work Session discussion and analysis, and resulting modifications to the policy proposal, is included as Attachment 2.

Changes Based on Work Session

Following the Work Session, Staff met with community partner HBF to discuss potential changes to community recommendations. HBF expressed concern that adding additional preferences may dilute the policy's ability to achieve its core policy goals. Community engagement identified responding to historic injustice and displacement, which has significantly impacted Berkeley's Black community, as the central preference policy priorities.

Key changes were made to preferences based on the Work Session discussion:

- Narrowing the eviction preference to *no-fault or non-payment* eviction.
- Narrowing the homeless/risk of homelessness preference to homeless *and not eligible for Permanent Supportive Housing OR At-Risk of Homelessness* with current/former address in Berkeley.

Evictions: Council discussion suggested that not all evictions should be prioritized through a preference category. Staff analyzed narrowing this preference to no-fault evictions only. Data shows that nearly 90% of evictions in Berkeley are due to non-payment. The inability to pay up to seven years ago may impact an applicant's ability to secure affordable housing. There would also be racial equity implications of excluding non-payment evictions; the areas that are decreasing most in Black household population have seen dramatic rent increases, and Black household income is lower than that of other racial groups. There is likely displacement of Black households due to non-payment-related evictions. In order to narrow the preference and still achieve policy goals, Staff recommends narrowing the eviction preference to no-fault and non-payment evictions.

Homelessness: Council discussion suggested narrowing this preference to ensure homeless people are receiving housing with adequate support in order to remain housed. Homeless Services staff identified ways the Coordinated Entry System can be utilized for targeting of appropriate housing policies and resources. Narrowing this preference to homeless *and not eligible for Permanent Supportive Housing OR At-Risk*

of Homelessness with current/former address in Berkeley, will help ensure that those who need Permanent Supportive Housing continue to be served via the appropriate channels, and homeless individuals who do not require that level of support can still be prioritized in the preference policy.

Table 2: Summary of Preferences Recommended by HAC & Community Engagement, Revised Based on Council Work Session Discussion & Post-Work Session Analysis

Proposed Preference Category	Preference Eligibility – February 2023 Proposal	Preference Eligibility – July 2023 Proposal
Displacement due to BART construction (first priority)	Descendant of someone who was displaced due to construction of BART the 1960s and 1970s in Berkeley.	No Change.
Displaced due to foreclosure	Displaced due to foreclosure in Berkeley since 2005.	No Change.
Displaced due to eviction	Displaced in Berkeley due to eviction within the past seven years.	Displaced in Berkeley due to no-fault or non-payment eviction within the past seven years.
Families with children	Household with at least one child aged 17 or under.	No Change.
Homeless <u>OR</u> at-risk of homelessness	Homeless <u>OR</u> At-Risk of Homelessness with current/former address in Berkeley.	Homeless and not eligible for Permanent Supportive Housing <u>OR</u> At-Risk of Homelessness with current/former address in Berkeley.
Ties to redlined areas	Residential ties to Berkeley’s redlined areas – current or former address of applicant.	No Change.
Ties to redlined areas – historical	Residential ties to Berkeley’s redlined areas – applicant is a direct descendant of someone who lived in redlined areas.	No Change.

A detailed overview of the Work Session discussion and post-Work Session analysis, and resulting modifications to the policy proposal, is included as Attachment 2.

Implementation

The HPP will establish points that prioritize a portion of units in affordable housing application lotteries. Fair Housing law allows for only a portion of units to receive preferences to mitigate potential discrimination. BMR and HTF applications will be processed through the Alameda County Housing Portal (“Housing Portal”), an online application for affordable housing units across Alameda County. The Housing Portal will

incorporate the City's preferences into the uniform application. An applicant may select as many preferences as they believe they qualify for to receive a priority.

The lottery will sort the applications based on the number of total preference points per application. For the portion of units that preferences are being applied to, property managers will first conduct a lottery amongst descendants of people displaced due to BART construction. Property managers will then conduct lotteries based on the total number of other preferences for which applicants qualify, until all eligible units are filled.

Selected applicants will be required to submit documentation to verify their qualification for each selected preference. Staff will work with property managers to verify documentation and approve leases in a timely manner.

Staff will be tasked with several responsibilities to ensure efficiency and compliance, including:

- Training/education for property managers and prospective applicants;
- Certifying preferences for applicants selected by lottery;
- Contract management;
- Data collection and evaluation; and
- Securing required HTF County, State, and Federal Funder approvals.

Fair Housing Analysis

Fair Housing law requires disparate impact analysis (DIA) for some preferences before a preference policy can be implemented on HTF projects. DIA assesses whether specific racial groups or other protected classes would be inadvertently disproportionately impacted by the HPP. County, State, and Federal funding agencies that contribute funding to HTF projects require this analysis to permit use of the HPP on specific projects. Staff will need the discretion to adjust the application of preferences in order to ensure no disparate impact and secure the necessary funding approvals for HTF projects.

This analysis also determines what percentage of units can receive preferences without creating disparate impacts on protected classes under state and federal law. Staff's intent is for the policy to be applied to the maximum percentage of units permitted by disparate impact analysis. Research from other cities shows this analysis will limit the share of affordable housing units the policy can apply to; it will not be able to be applied to 100% of units in a development.

Staff issued a Request for Proposals (RFP) for Fair Housing analysis of the proposed preferences in August 2022. Staff received Council authorization on February 28, 2023 to execute a contract with the selected bidder, Street Level Advisors. At the time of writing this report in May 2023, work with Street Level Advisors on the Fair Housing

analysis has commenced, with a final report anticipated by December 2023. The Fair Housing analysis report will help determine how each preference can be applied to the maximum percentage of units permitted by disparate impact analysis, and will help secure approval for use of preferences from funding agencies.

Disparate Impact Analysis is not required for BMR units as they are not reliant on outside government funders. Staff recommend implementing the policy on new BMR units upon adoption of administrative guidelines, while the Fair Housing analysis required for HTF projects is simultaneously completed and/or awaiting approval from funding agencies.

Outreach and Monitoring

Meeting the HPP's policy goals requires outreach to ensure public awareness of the policy, and monitoring outcomes to ensure the policy is effectively implemented.

Outreach is important for this policy since it seeks to reach a population already displaced from Berkeley. These individuals may be harder to reach through typical outreach channels that focus on promoting awareness within Berkeley. In order to meet this challenge, Staff will conduct an RFP to fund a community-based organization to lead outreach in Berkeley and outside of Berkeley to reach those already displaced from the community.

It will be important to have consistent outreach and education through the development of affordable housing at North Berkeley and Ashby BART stations. Preferences for these projects were outlined in the Joint Vision & Priorities (JVP) for Transit-Oriented Development for Ashby and North Berkeley BART Stations and the City should build its outreach to ensure the policy is operating effectively when these projects are available to lease. The JVP states that affordable housing at each station should provide a preference for residents of Berkeley who are facing displacement, or who have been displaced from Berkeley in the past due to economic or discriminatory reasons. Staff interviewed other jurisdictions with preference policies about their outreach strategies.

As the HPP is implemented on new developments, staff will monitor the policy to understand how it is working and who is being served by it. This will involve collecting and processing demographic data of affordable housing applicants and new residents, and summarizing information on how preferences are being used. Staff will provide an annual report to Council documenting the policy's impact and request any policy amendments to better serve the anti-displacement goals.

Housing Advisory Commission Vote

The Housing Advisory Commission (HAC) supported adopting a Housing Preference Policy at the October 6, 2022 meeting with the following vote:

Action: M/S/C (Simon-Weisberg/Mendonca) to recommend City Council take the following actions:

- Adopt a policy to establish the following preferences for new affordable housing created via the City’s Housing Trust Fund and Below Market Rate programs:
 - Displacement due to eminent domain for North Berkeley and Ashby BART construction
 - Displaced in Berkeley due to foreclosure since 2005
 - Families with children
 - Homeless or at risk of homelessness
 - Ties to redlined areas
 - Ties to redlined areas – historical
 - Displaced in Berkeley due to eviction within the past seven years;
- Structure the preferences to provide applicants that qualify for the “Displacement due to eminent domain for North Berkeley and Ashby BART construction” a first priority and all remaining preferences equally weighted; and
- Share the research that informed these recommendations with the City’s reparations consultant.

Vote: Ayes: Ching, Johnson, Lee-Egan, Mendonca, Sanidad, and Simon-Weisberg.
Noes: None. Abstain: None. Absent: Calavita (excused), Fain (unexcused), Rodriguez (unexcused), and Potter (excused).

The HAC supported all six preferences staff identified via the community engagement process, and added a preference for those displaced by eviction, due to challenges renters may face finding new housing with an eviction that stays on their record for seven years, as well as the racial disparities of evictions. Community engagement leaders and the HAC agreed that a preference for displacement due to BART construction should have a first priority above other preferences.

Council Referrals

This report responds to two referrals: “Neighborhood Preference in Affordable Housing to reduce the impact of displacement and Ellis Act evictions,” which originally appeared on the agenda of the April 5, 2016 meeting and was sponsored by Councilmembers Droste, Moore, Capitelli, and Maio; and “Refer to the Planning Commission and Housing Advisory Commission to Research and Recommend Policies to Prevent Displacement and Gentrification of Berkeley Residents of Color and African Americans,” which originally appeared on the agenda of the April 30, 2019 Council meeting and was sponsored by Councilmembers Davila and Bartlett.

The HPP is a Strategic Plan Priority Project, advancing the City’s goal to create affordable housing and housing support services for Berkeley’s most vulnerable community members. The HPP will apply to units created by the BMR and HTF programs.

BACKGROUND

Multiple community-based organizations in Berkeley have called for a Housing Preference Policy to address gentrification and displacement in Berkeley, particularly from the African American community in South Berkeley. In 2016, Council made a referral to develop Neighborhood Preference in Affordable Housing to reduce the impact of displacement. The Adeline Corridor Specific Plan prioritized the development of a local preference policy for affordable housing, specifically mentioning preference policy on potential future affordable units at the Ashby BART station. In 2019, the City Council made a referral to create policies to develop a “right to return” for Berkeley’s displaced residents, “especially People of Color, including the African American communities who have been displaced.”

In 2020, with the support of the Mayor and Councilmembers Bartlett and Harrison, the City began the PBF Challenge Grant with a focus on developing a Housing Preference Policy rooted in community engagement and research. The City and BART Joint Vision & Priorities also included a Housing Preference Policy for future housing at Ashby and North Berkeley BART stations.

As part of the PBF Challenge Grant, the City of Berkeley worked with community partners Healthy Black Families and the East Bay Community Law Center to engage in a community-driven process to design the HPP. Community input was solicited through outreach and engagement strategies including:

- Community surveys: A targeted displacement-focused survey led by HBF, and a city-wide survey focused on a Housing Preference Policy hosted on Berkeley Considers (results and analysis of the survey are included as Attachment 3);
- Outreach led by Healthy Black Families;
- A “Community Leaders Group” comprised of representatives from local community-based organizations and community groups led by HBF and EBCLC. Participants were selected by the lead community groups.

The discussions around a Housing Preference Policy revolved around addressing specific challenges facing Berkeley’s most impacted residents:

- Significant displacement within and from Berkeley has already occurred. The number of people experiencing homelessness in Berkeley steadily grew at an average rate of 10% every two years between 2006 and 2019. The most common response to the question of why homeless people chose to sleep in Berkeley was that they grew up in Berkeley. Black people are disproportionately represented in Berkeley’s homeless population; since 2006, 65% of homeless service users in Berkeley are Black while Black people comprise less than 8% of the overall population. Between 1990 to 2018, Berkeley lost 49% of its Black population while other racial groups all grew slightly.

- There is ongoing housing insecurity and displacement pressure in Berkeley. Approximately 49% of low-income renters in Berkeley spend more than half their income on rent.
- There is historical harm to communities of color in Berkeley. Redlining facilitated patterns of disinvestment that continue to enable gentrification. Approximately 83% of today's gentrifying areas in the East Bay were rated as "hazardous" (red) or "definitely declining" (yellow) by the government agency that introduced redlining. These policies limited homeownership and housing stability in these Berkeley neighborhoods, which were predominantly populated by people of color. In the 1960s, BART bought blocks of homes in order to build Ashby and North Berkeley BART stations, in some cases invoking eminent domain; those who lost their homes due to BART construction lost their opportunities for intergenerational wealth-building.

In September 2022, the State of California adopted SB 649. This legislation established a State policy that lower-income individuals residing in neighborhoods and communities experiencing significant displacement need access to housing that is affordable and assists in avoiding displacement. The legislation recognizes a local tenant preference adopted pursuant to the bill's provisions is subject to the duty of public agencies to affirmatively further fair housing. This bill should aid the approval of Berkeley's preferences by the State's Department of Housing and Community Development.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Displacement can lead to commutes into Berkeley as displaced people continue to return to their community of origin for school, work, faith institutions, healthcare, and/or social networks. An HPP can help reduce greenhouse gas (GHG) emissions associated with these longer commutes by reducing or reversing displacement of those with ties to Berkeley.

RATIONALE FOR RECOMMENDATION

Anti-displacement initiatives are a key priority for the City of Berkeley and an ongoing call from local community members. Berkeley currently has 21 anti-displacement policies in place (14 of which are noted as best practices by UC Berkeley's Urban Displacement Project) yet still faces significant displacement of low-income residents and people of color, in particular the City's African American/Black population.

Table 3 outlines the rationale and potential benefits of each preference and how it can strengthen the City's anti-displacement efforts.

Table 3. Preferences and Rationale/Potential Benefits

Proposed Preferences	Details	Rationale & Potential Benefits
Displacement due to BART construction (first priority)	Descendant of someone who was displaced due to construction of BART in the 1960s and 1970s in Berkeley.	Supports those who lost their homes due to BART construction and forewent intergenerational wealth-building opportunities as a result. Acknowledges this harm and provides an opportunity to return to the community with stable housing.
Displaced due to foreclosure	Displaced due to foreclosure in Berkeley since 2005.	Supports displaced residents to return to Berkeley and acknowledges lack of support during the foreclosure crisis. The foreclosure crisis disproportionately impacted communities of color.
Displaced due to eviction	Displaced in Berkeley due to no-fault or non-payment eviction within the past seven years.	Supports renters facing challenges finding new housing due to an eviction, which stays on a record for seven years. Evictions disproportionately impact Black women. Eviction court cases move quickly, and renters are at a significant disadvantage when they do not have legal representation.
Families with children	Household with at least one child aged 17 or under.	Increases community cohesion, since families are being displaced from social networks and school districts, often to lower resource places. Research and community knowledge indicate that children are most impacted by displacement, with impacts on education, child care, and peer networks.
Homeless <u>OR</u> at-risk of homelessness	Homeless and not eligible for Permanent Supportive Housing <u>OR</u> At-Risk of Homelessness with current/former address in Berkeley.	Supports housing insecure Berkeley residents become stably housed in their community. Berkeley's homeless population is disproportionately people of color.
Ties to redlined areas	Residential ties to Berkeley's redlined areas – current or former address of applicant.	Acknowledges historic racialized injustices that contributed to the displacement crisis, supports displaced residents to return to Berkeley, and supports those in neighborhoods facing gentrification-related displacement pressures to become stably housed.
Ties to redlined areas – historical	Residential ties to Berkeley's redlined areas – applicant is a direct descendant of someone who lived in redlined areas.	<i>See above.</i>

The City of Berkeley is also making historic investments in affordable housing, including the \$135M Measure O bond dedicated to affordable housing, of which \$53M is dedicated to affordable housing at Ashby and North Berkeley BART stations. Measure O has led to a faster pace of affordable housing development, and there are over 1,000 units in the HTF pipeline. The HPP represents an opportunity to ensure new affordable housing in Berkeley can help address displacement in a more targeted way, as well as to partially address historical injustices.

ALTERNATIVE ACTIONS CONSIDERED

Policy alternatives considered have been detailed above. Council could choose to further modify the policy or opt not to adopt a policy. Staff are not recommending these options, particularly adding more preferences, for a variety of reasons outlined in the report. Community partners expressed concern that adding additional preferences may dilute the policy's ability to achieve its core policy goals. Community engagement identified responding to historic injustice and displacement, which has significantly impacted Berkeley's Black community, as the central preference policy priorities.

Adding additional preferences to the policy would also impact staffing costs and lease approvals, as more time will be required to process and verify additional preferences. Research from other jurisdictions show that applicants may indicate qualifying for more preferences than they can verify documentation for, which also requires additional time for processing leases. Additionally, the more preferences that are included, the less weight each individual preference will hold.

CONTACT PERSON

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Attachments:

- 1: Resolution
 Exhibit A: Housing Preference Policy
- 2: Council Work Session Overview
- 3: Housing Preference Policy Survey Results
- 4: Research Overview of Preference Policies in Other Jurisdictions
- 5: Referral Report from April 5, 2016
- 6: Referral Report from April 30, 2019

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

ADOPTING A HOUSING PREFERENCE POLICY FOR AFFORDABLE UNITS
DEVELOPED WITH CITY SUBSIDY AND THROUGH THE BELOW MARKET RATE
PROGRAM

WHEREAS, in the 1960s and 1970s, Bay Area Rapid Transit (“BART”) bought blocks of homes, in some cases invoking eminent domain, in order to build BART stations in Berkeley, displacing residents of South Berkeley and North Berkeley in the process. Those who lost their homes due to BART construction forewent intergenerational wealth-building; and

WHEREAS, redlining created large areas of concentrated communities of color into which subprime loans were channeled. From mid-2007 to mid-2008, there were more than 350 foreclosures in Berkeley; foreclosures in Berkeley were concentrated in South and West Berkeley. The City of Berkeley did not have a foreclosure assistance program. In the 2022 Point-in-Time Count, eviction/foreclosure/rent increase was the second most common cause of homelessness; and

WHEREAS, community input indicates that Berkeley families are being displaced from their social networks and school districts, often to lower-resourced areas. Research and community knowledge indicate that children are most impacted by displacement, via impacts to education, child care, and peer networks; and

WHEREAS, evictions remain part of an individual’s rental history for seven years, impacting their ability to secure safe and affordable housing. Given the shortage of affordable housing in Berkeley, an eviction from a housing unit may represent displacement from one’s community. In the 2022 Point-in-Time Count, eviction/foreclosure/rent increase was the second most common cause of homelessness; and

WHEREAS, 49% of low-income renters in Berkeley are severely rent-burdened, spending more than half their income on rent. The number of people experiencing homelessness in Berkeley has steadily grown at an average rate of 10% every two years between 2006 and 2019. Black people are disproportionately represented in Berkeley’s homeless population; since 2006, 65% of homeless service users in Berkeley are Black, when Black people comprise less than 8% of the overall population; and

WHEREAS, redlining has led to patterns of disinvestment that continue to enable gentrification. Approximately 83% of today’s gentrifying areas in the East Bay were rated as “hazardous” (red) or “definitely declining” (yellow) by the government-sponsored corporation that introduced redlining. These policies have limited homeownership and housing stability in these Berkeley neighborhoods, which were predominantly populated by people of color; and

WHEREAS, the City of Berkeley (“City”) provides funding to support affordable housing development in the City through its Housing Trust Fund program; and

WHEREAS, the City creates affordable housing via the City's Inclusionary Housing Requirements (Berkeley Municipal Code Section 23.328), requiring new market-rate residential developments to include Below Market Rate affordable housing units; and

WHEREAS, from February 2020 to February 2022, the City participated in the Partnership for the Bay’s Future Challenge Grant to develop a Housing Preference Policy informed by community engagement led by local community partners Healthy Black Families and East Bay Community Law Center; and

WHEREAS, on June 2, 2022, the City of Berkeley and BART adopted the City and BART Joint Vision and Priorities (JVP) for Transit-Oriented Development at the Ashby and North Berkeley BART Stations that included a shared priority for displacement prevention that states that “affordable housing should provide a preference for residents of Berkeley who are facing displacement, or who have been displaced from Berkeley in the past due to economic or discriminatory reasons”; and

WHEREAS, California Senate Bill (SB) 649 was adopted by the State of California in September 2022 to establish that it is the State’s policy that lower-income individuals residing in neighborhoods and communities experiencing significant displacement, as specified, need access to housing that is affordable and assists in avoiding displacement, and that a local tenant preference adopted pursuant to the bill’s provisions is subject to the duty of public agencies to affirmatively further fair housing.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley finds and declares the following:

1. Adopts a Housing Preference Policy, as set forth in Exhibit A to this Resolution and incorporated by this reference, that applies to new affordable housing units created by the City’s Housing Trust Fund and Below Market Rate programs;
2. Directs the City Manager to adopt guidelines to administer the Housing Preference Policy and take any other action with respect to the policy consistent with this resolution and its purpose;
3. Establishes that this Housing Preference Policy shall be applied only to the extent allowed by Fair Housing law and other government agency funding sources; and
4. Establishes that the Housing Preference Policy shall take effect January 1, 2024.

Exhibits

A: Housing Preference Policy

Exhibit A. Housing Preference Policy

Preference	Points	Preference Details
Displacement due to BART construction	(<u>First priority</u>)	Descendant of someone who was displaced due to construction of BART in the 1960s and 1970s in Berkeley.
Displaced due to foreclosure	1	Displaced due to foreclosure in Berkeley since 2005.
Displaced due to eviction	1	Displaced in Berkeley due to no-fault or non-payment eviction within the past seven years.
Families with children	1	Household with at least one child aged 17 or under.
Homeless <u>OR</u> at-risk of homelessness	1	Homeless and not eligible for Permanent Supportive Housing <u>OR</u> At-Risk of Homelessness with current/former address in Berkeley.
Ties to redlined areas	1	Residential ties to Berkeley's redlined areas – current or former address of applicant.
Ties to redlined areas – historical	1	Residential ties to Berkeley's redlined areas – applicant is a direct descendant of someone who lived in redlined areas.

Attachment 2: Council Work Session Overview

City Council held a Work Session on the Housing Preference Policy on February 21, 2023. Council discussion included:

- The importance of ensuring families displaced by the construction of Berkeley BART stations are able to return to the city;
- The impact of the foreclosure crisis and redlining on Black families;
- The loss of generational wealth for Black families due to displacement; and
- The potential of limiting the number of overall preferences to have more impact from priority preferences (such as displacement).

The tables below summarize:

- Changes made to the Housing Preference Policy proposal reflecting Council's Work Session discussion (Table 1)
- Work Session discussion of the proposed Housing Preference Policy and post-Work Session analysis (Table 2)

Table 1: Summary of Preferences Recommended by HAC & Community Engagement, Revised Based on Council Work Session Discussion & Analysis

Proposed Preference Category	Preference Eligibility – February 2023 Proposal	Preference Eligibility – July 2023 Proposal
Displacement due to BART construction (first priority)	Descendant of someone who was displaced due to construction of BART in the 1960s and 1970s Berkeley.	No Change.
Displaced due to foreclosure	Displaced due to foreclosure in Berkeley since 2005.	No Change.
Displaced due to eviction	Displaced in Berkeley due to eviction within the past seven years.	Displaced in Berkeley due to no-fault or non-payment eviction within the past seven years.
Families with children	Household with at least one child aged 17 or under.	No Change.
Homeless OR at-risk of homelessness	Homeless <u>OR</u> At-Risk of Homelessness with current/former address in Berkeley.	Homeless and not eligible for Permanent Supportive Housing <u>OR</u> At-Risk of Homelessness with current/former address in Berkeley.
Ties to redlined areas	Residential ties to Berkeley's redlined areas – current or former address of applicant.	No Change.
Ties to redlined areas – historical	Residential ties to Berkeley's redlined areas – applicant is a direct descendant of someone who lived in redlined areas.	No Change.

Changes Based on Work Session

Following the Work Session, Staff met with community partner HBF to discuss potential changes to community recommendations. HBF expressed concern that adding additional preferences may dilute the policy's ability to achieve its core policy goals. Community engagement identified responding to historic injustice and displacement, which has significantly impacted Berkeley's Black community, as the central preference policy priorities.

Key changes were made to preferences based on the Work Session discussion:

- Narrowing the eviction preference to *no-fault or non-payment* eviction.
- Narrowing the homeless/risk of homelessness preference to homeless *and not eligible for Permanent Supportive Housing OR At-Risk of Homelessness* with current/former address in Berkeley.

Evictions: Council discussion suggested that not all evictions should be prioritized through a preference category. Staff analyzed narrowing this preference to no-fault evictions only. Data shows that nearly 90% of evictions in Berkeley are due to non-payment. Ability to pay up to seven years ago may impact an applicant's ability to secure affordable housing. There would also be racial equity implications to excluding non-payment evictions; the areas that are decreasing most in Black household population have seen dramatic rent increases, and Black household income is lower than that of other racial groups. There is likely displacement of Black households due to non-payment-related evictions. In order to narrow the preference and still achieve policy goals, Staff recommend narrowing the eviction preference to no-fault and non-payment evictions.

Homelessness: Council discussion suggested narrowing this preference to ensure homeless people are receiving housing with adequate support in order to remain housed. Homeless Services staff identified ways the Coordinated Entry System can be utilized for targeting of appropriate housing policies and resources. Narrowing this preference to homeless *and not eligible for Permanent Supportive Housing OR At-Risk of Homelessness* with current/former address in Berkeley, will help ensure that those who need Permanent Supportive Housing continue to be served via the appropriate channels, and homeless individuals who do not require that level of support can still be prioritized in the preference policy.

Table 2: Summary of Work Session Discussion of Proposed Housing Preference Policy and Post-Work Session Analysis

Proposed Preference Category	Work Session Discussion	Post-Work Session Analysis
Displacement due to BART construction in the 1960s and 1970s (first priority)	Councilmembers expressed support. Input to explore displacement due to eminent domain (ED) in other South Berkeley sites.	Additional community outreach would be necessary to determine additional appropriate ED sites. The BART construction-related displacement preference will be complex to implement, requiring the creation of a database. Staff recommend starting with BART, and learning from implementation. Council could make future amendments to include other sites.
Displaced due to foreclosure	Councilmembers expressed support. No modifications were discussed.	N/A
Displaced due to eviction	Some Councilmembers suggested this preference should be narrowed to no-fault evictions only.	Analysis suggests that narrowing this preference to no-fault evictions would undermine policy goals, as nearly 90% of evictions in Berkeley are due to non-payment. Ability to pay up to seven years ago may impact an applicant's ability to secure affordable housing. There would also be racial equity implications to excluding non-payment evictions; the areas that are decreasing most in Black household population have seen dramatic rent increases, and Black household income is lower than that of other racial groups. There is likely displacement of Black households due to non-payment-related evictions. Staff recommend narrowing the preference to no-fault evictions plus non-payment evictions.
Families with children	Councilmembers expressed support. No modifications were discussed.	N/A
Homeless <u>OR</u> at-risk of homelessness	Some Councilmembers suggested narrowing this preference to ensure homeless people are receiving housing with adequate support.	Homeless Services staff identified ways the Coordinated Entry System can be utilized for targeting of appropriate housing policies and resources. Staff recommend narrowing this preference to at-risk of homelessness, and those who are homeless <i>but not eligible for Permanent Supportive Housing</i> .

Proposed Preference Category	Work Session Discussion	Post-Work Session Analysis
<p>Ties to redlined areas / historical ties to redlined areas</p>	<p>Councilmembers expressed support.</p> <p>Some Councilmembers suggested weighting this preference based on ties to area before wave of mass displacement.</p>	<p>Tying this preference to a certain year/overall demographics would exclude those who have been able to stay in the area, and undermine goals of proactively preventing displacement.</p> <p>Staff recommend maintaining the preference as-is: 1 point for current applicant ties to redlined areas, and additional point for parent/grandparent ties to redlined areas. This gives priority to those with long-term ties to the area, while also addressing proactive anti-displacement for those who are struggling to stay housed in gentrifying areas.</p>

Attachment 3. Preference Policy Survey Results

Two surveys were conducted as part of the outreach process to inform the Housing Preference Policy: a City survey on Berkeley Considers, and a community survey designed and implemented by Healthy Black Families. Healthy Black Families also supported on targeted outreach to the Black community of the Berkeley Considers survey. It is possible there is overlap in the respondents to the two surveys.

Healthy Black Families Survey

There were 93 responses to the Healthy Black Families survey.

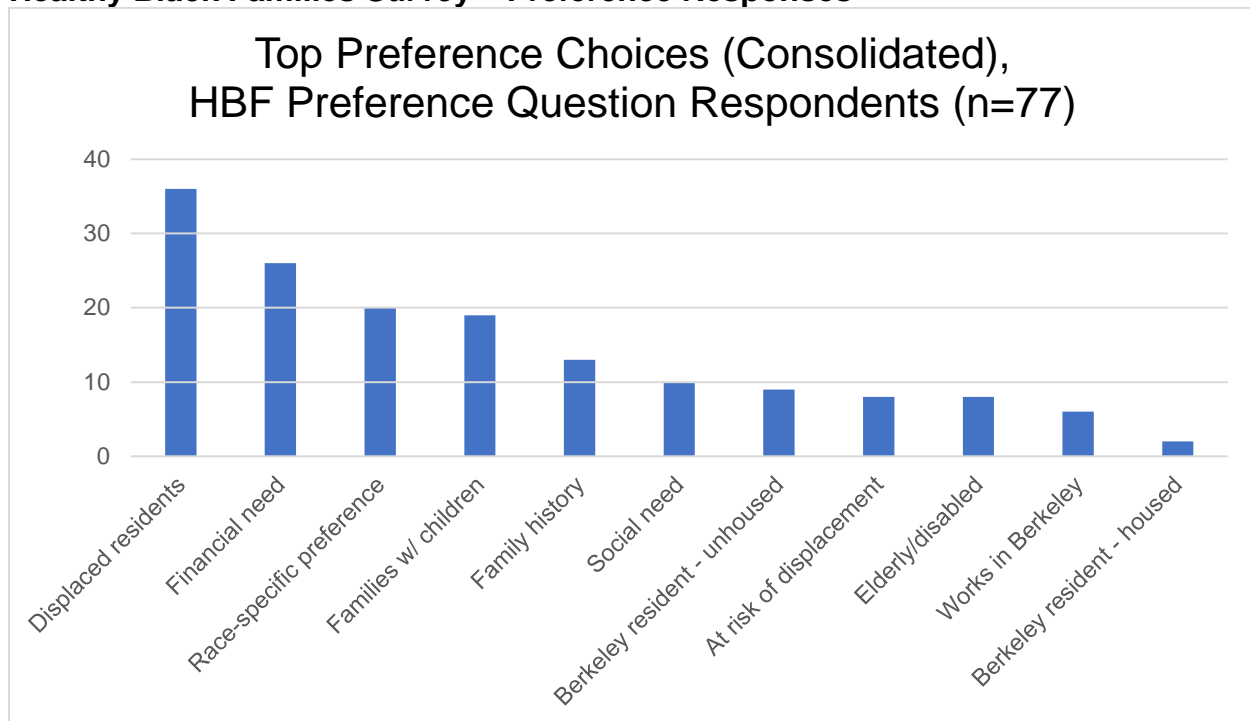
Healthy Black Families Survey - Demographics

- Race: 70% of respondents self-identified as Black, Black African, or Black Hispanic/Latinx; 18% identified as white, 3% as Latinx, 3% as other, 3% as Native American/Alaskan, and 2% as Asian/Indian/Pacific Islander.
- Housing tenure: 65% identified as renters, 25% as homeowners, 4% as living with family, 4% as other, and 2% as homeless.

Healthy Black Families Survey - Responses

- In the Healthy Black Families survey, respondents wrote in their suggestions for Preferences, and these were consolidated into themes at the analysis stage. There was not a limit on how many Preferences each respondent could indicate.
- Preferences - Overall Respondents: 77 respondents responded to the question, "What experiences or criteria do you think should be used to prioritize affordable housing applications in Berkeley?" The most common overarching categories were displaced residents, including displaced residents (24), displaced Black residents (10), displaced people of color (POC) residents (2) - followed by financial need (26), race - Black (11), POC (9) - and then other categories: families with children (19), family history/ties to Berkeley (13), social need (such as facing domestic violence) (10), unhoused Berkeley residents (9), at risk of displacement (8), elderly/disabled (8), works in Berkeley (6), housed Berkeley residents (2).

Healthy Black Families Survey – Preference Responses



Berkeley Considers Survey

There were 549 responses to the Berkeley Considers survey.

Berkeley Considers Survey - Demographics

- Race: 67% of respondents self-identified as white, 7% as African American/Black, 3% as Hispanic/Latinx, 3% as mixed race, 3% as Asian/Pacific-Islander, 1% other, and 15% preferred not to answer the race question.
- Housing tenure: 59% of respondents identified as homeowners, 31% as renters, 1% as unhoused, 4% living with family and friends and 5% other.
- Income: 41% of respondents reported an annual household income of above \$100,000, 9% reported \$80,000 to \$100,000, 7% reported \$65,000 to \$80,000, 12% reported \$40,000 to \$65,000, 10% reported \$20,000 to \$40,000, 7% reported less than \$20,000, and 13% did not answer.

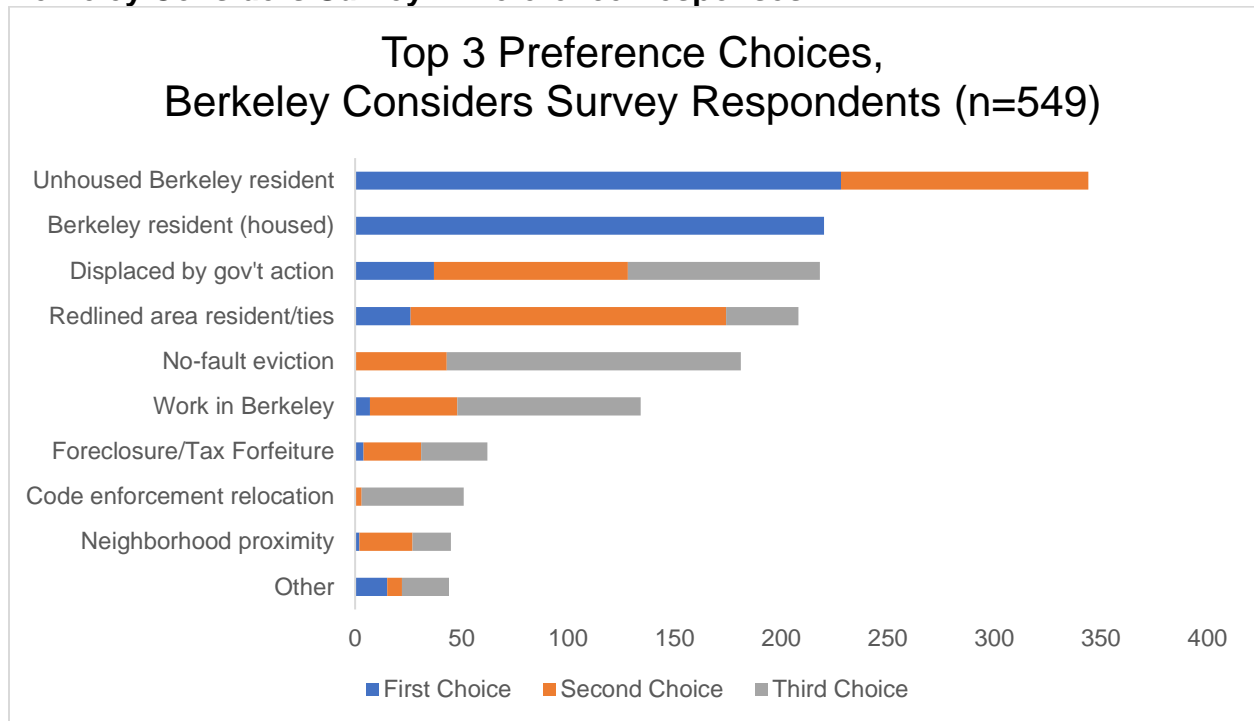
Berkeley Considers Survey - Responses

- Respondents were able to indicate their top three choices amongst a selection of potential Preferences. The numbers below reflect total selections across those who ranked Preferences first, second, or third choice.
- Preferences - Overall Respondents: In order of most common responses, the top Preferences were: unhoused Berkeley residents (344), housed Berkeley residents (220), those displaced by government action (218), those with ties to redlined areas (208), those displaced by no-fault evictions (181), those who work in Berkeley (134), those who lost their home to foreclosure/tax forfeiture (62),

those displaced due to code enforcement (51), those living in proximity to a new affordable housing (45), other (44).

- **Preferences - Low-Income Respondents:** Isolating the responses of low-income survey respondents (those who would be income-eligible for new affordable housing), the top three responses were the same as for the overall respondents: unhoused Berkeley residents, housed Berkeley residents, and those displaced by government action. Responses were: unhoused Berkeley residents (144), housed Berkeley residents (88), those displaced by government action (86), those displaced by no-fault eviction (80), those with ties to redlined areas (74), those who work in Berkeley (46) those displaced by foreclosure/tax forfeiture (27), those displaced by code enforcement (23), those living in proximity to the new affordable housing (20).
- **Preferences - African American Respondents:** Looking at the responses of African Americans, the group that has suffered most disproportionately from displacement pressures in Berkeley, “ties with redlined areas” rises to the #2 selection. Responses were: unhoused Berkeley residents (29), those with ties to redlined areas (21), housed Berkeley residents (15), those displaced by government action (12), those who work in Berkeley (8), those displaced by no-fault eviction (7), those displaced by foreclosure/tax forfeiture (4), those living in proximity to the new affordable housing (4), those displaced by code enforcement (3).

Berkeley Considers Survey – Preference Responses



Attachment 4. Research Overview of Preference Policies in Other Jurisdictions

Several US cities implemented Preference Policies to prioritize applications for affordable housing projects based on different criteria. Some of these policies prioritize those who live or work in the city or near the specific affordable housing development. Others focus on displacement from the city (through adverse governmental action, no-fault evictions, and/or natural disasters) and ties to neighborhoods with histories of discrimination. These policies can be applied to BMR units and/ or HTF units depending on the context.¹

California Cities:

East Palo Alto

The City of East Palo Alto adopted a Local Preference Policy in 2020 for living in East Palo Alto (with a durational requirement of three months that applies to inclusionary housing units only), working in East Palo Alto, and for involuntary displacement (natural disaster, code enforcement, domestic violence, and rent increases above 10%).²

Oakland

The City of Oakland implemented different versions of preference policies over time, but the current version is codified in a 2016 ordinance. Preferences apply to nonprofit affordable housing and include categories for current and former residents displaced by City of Oakland/Oakland Redevelopment Agency's projects, Oakland's code enforcement, or a no-fault eviction; residents who currently live in the same Council District as, or one mile from, the property; and applicants who currently live or work in Oakland.³

Redwood City

Redwood City adopted a Live/Work Preference policy as part of an amendment to its Affordable Housing Ordinance in 2021.⁴ This policy allows income-eligible households that live, formerly lived, work, or have been offered work in the city to receive a preference when affordable housing becomes available. The policy is supported by a Live/Work Policy Analysis.⁵

¹ See "Draft Adeline Corridor Specific Plan", page 93, for more information on how preference policies operate in other cities:

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/AdelineCorridor_DraftPlan_1.pdf.

² See

http://eastpaloalto.igam2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID=1070&MediaPosition=&ID=1174&CssClass=

³ See <https://oakland.legistar.com/LegislationDetail.aspx?ID=2685178&GUID=BC70BA9D-D54C-405F-AD33-A194C31A6346>.

⁴ See <http://www.redwoodcity.org/AffordableHousingOrdinance>.

⁵ See

<https://meetings.redwoodcity.org/AgendaOnline/Documents/ViewDocument/ATTACHMENT%20D%20E2%80%93%20LIVE-WORK%20POLICY%20ANALYSIS%20BY%20SEIFEL%20CONSULTING.pdf?meetingId=2250&documentType=Agenda&itemId=5223&publishId=9209&isSection=false>.

San Francisco

The City of San Francisco has adopted Preferences via multiple ordinances over time, with the most recent ordinance adopted in 2019. Preference categories include a Certificate of Preference (for former San Francisco residents displaced in the 1960s and 1970s, during the SF Redevelopment Agency's federally-funded urban renewal program); a Displaced Tenant Housing Preference Program (DTHP) for tenants evicted by Ellis Act or owner move-in, and for tenants whose apartment was extensively damaged by fire; a Neighborhood Resident Housing Preference (NRHP) for San Francisco residents who currently live in the same Supervisor district as, or half-mile from, the property being applied to; and a live-work preference for those who already live in San Francisco, or work at least 75% of working hours in San Francisco.⁶ There are also some project-specific Preferences.⁷

San Jose

In 2020, the San Jose City Council directed staff to establish a Neighborhood Tenant Preference for renters seeking affordable housing who live in certain areas of the city that are undergoing or at-risk of displacement. Staff has been working since 2017 on this effort. The City is currently working on gaining HCD approval for its Preferences and also worked with allies to propose the now-adopted state legislation SB 649 to clarify the use of state funding on projects in jurisdictions with preference policies.

Santa Monica

The City of Santa Monica implemented Preferences for inclusionary and nonprofit programs since the programs began in 1998. Preferences include: current or former residents displaced by no-fault evictions, natural disasters, reduction in housing voucher assistance, or government action; and applicants who currently live or work in Santa Monica. The preference for displaced people ranks above the live/work preference in a tiered system. Santa Monica is currently piloting an additional preference for those displaced by specific urban renewal projects.⁸

National:

Austin, Texas

In 2018, the City of Austin adopted Right to Stay and Right to Return policies for families affected by gentrification in certain Austin neighborhoods.⁹ Preference points included: having generational ties to a neighborhood or having been displaced from it (by rising rent and property taxes as well as by natural disasters and eminent domain), having a disability, and family size fitting available units.

⁶ See <https://sfmohcd.org/sites/default/files/Preferences%20Manual%20-%20%20203.31.2017.pdf> and <https://sfmohcd.org/lottery-preference-programs>.

⁷ In one project, where HUD did not approve of use of the neighborhood proximity preference, San Francisco implemented an "anti-displacement housing preference," where residents of neighborhoods at risk of or undergoing displacement would receive a preference point. See <https://www.kqed.org/news/11582750/part-of-s-f-housing-complex-reserved-for-seniors-at-risk-of-displacement>.

⁸ See <https://www.santamonica.gov/programs/below-market-housing-for-historically-displaced-households>.

⁹ <https://nextcity.org/daily/entry/austin-residents-have-right-to-return-in-new-development-for-the-first-time>

Eligible neighborhoods were determined by a University of Texas study. Residents will have to prove they or an immediate family member lived in these areas as far back as 2000.¹⁰ This program is not codified in an ordinance and the Preferences are being implemented through development agreements on specific developments.

Cambridge, Massachusetts

The City of Cambridge implemented Preferences for its inclusionary housing program since the program began in 1998. Preference categories include: current Cambridge resident (4 points), household with at least one child under 18 (1 point), household with at least one child under 6 (1 point), household with any of the following emergency needs (1 point): no-fault eviction, homeless, overcrowded housing, 50% or greater rent burden, outstanding code violations, and applicants who work in Cambridge (considered after all residents are considered, also given points for having children or an emergency need).¹¹

New York, New York

New York City implemented Preferences in the 1980s that apply to all City-funded affordable housing developments, applying to 50% of units. The policy establishes preference for residents living near the specific affordable housing development.

Portland, Oregon

Portland's Preference Policy was created as part of the North/Northeast (N/NE) Neighborhood Housing Plan in 2015, and applies to 40% of units in all city-funded projects in this historically African American neighborhood, including homeownership units. The policy gives preference to residents that have been harmed by City of Portland action through urban renewal practices within the Interstate Corridor Urban Renewal Area (ICURA).

The Preferences include: current or former residents of N/NE Portland, those with generational ties to N/NE Portland, those who have had property in N/NE Portland seized by the City. Applicants use interactive maps to locate where their address falls in the ICURA maps.¹² As of December 2019, five years into the Policy, 33 households became homebuyers as part of the program; 28 of these households were African American and two were Latinx. Of renter households who accessed affordable housing through the Preference Policy, survey respondents have lived in the neighborhood an average of 32 years, with 65% of respondents having lived in the neighborhood their entire life.¹³

¹⁰ <https://www.kut.org/austin/2019-11-08/people-with-ties-to-a-gentrifying-neighborhood-to-get-a-better-shot-at-affordable-housing>

¹¹ See <https://www.cambridgema.gov/CDD/housing/forapplicants/rentalapplicantpool>.

¹² See <https://www.portland.gov/phb/nnehousing/preference-policy>.

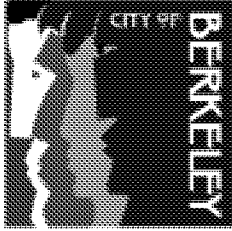
¹³ See https://www.portland.gov/sites/default/files/2020/nne_neighborhoodhousingstrategy2015-20_0.pdf.

Seattle, Washington

The City of Seattle implemented an opt-in preference policy in 2019 that affordable housing developers can choose to use for buildings in high displacement risk neighborhoods.¹⁴ The preference policy is not to apply to more than 50% of units in a development, and recommended preference categories include: for communities affected by historic and/or current displacement pressures, applicant is a current resident; for projects in neighborhoods currently facing high risk of displacement, applicant, family member, or ancestor (i.e. great-grandparent) is a former resident; for projects in neighborhoods that have historically been affected by high displacement, applicant has community ties or utilizes community services in the neighborhood. For homeownership, if more than one eligible and qualified household has expressed interest in a specific home, community preference could be used to determine who is offered the opportunity.¹⁵

¹⁴ See <https://www.seattle.gov/housing/programs-and-initiatives/community-preference> for highlighted census tracts.

¹⁵ See <https://www.seattle.gov/Documents/Departments/Housing/Programs%20and%20Initiatives/Community%20Preference/Community%20Preference%20Guideline.pdf>.



ACTION CALENDAR

April 5, 2016

(Continued from March 29, 2016)

TO: Honorable Mayor and Members of the City Council
 FROM: Councilmembers Lori Droste, Darryl Moore, Laurie Capitelli and Linda Maio

SUBJECT: Neighborhood Preference in Affordable Housing to reduce the impact of displacement and Ellis Act evictions

RECOMMENDATION

Refer to the City Manager and Planning Commission an ordinance to clarify existing preferences in allocating City affordable housing units to qualifying Berkeley residents living within ½ mile of any new development and qualifying tenants evicted under the Ellis Act, expand the second category of preference for eligible tenants displaced under the Ellis Act to include certain qualifying tenants displaced through an Owner Move-In or (Measure Y) eviction.

CURRENT SITUATION AND ITS EFFECTS

In late 2015, the San Francisco Board of Supervisors passed "neighborhood preference" legislation to address concerns of displacement, particularly within communities of color. The San Francisco legislation, which this proposal mirrors, allocated 40% of affordable ---subsidized -- units in new affordable developments funded totally or in part with city funds to residents living within ½ mile of the new development.

In 2015, Berkeley rents for studios and one-bedroom apartments are 25% higher than 2012 rents. Many long-term residents would not be able to remain in Berkeley since current market rates rents are unaffordable to those earning a median income (City of Berkeley Affordable Housing Nexus Study, 2015). Since subsidized housing is a scarce resource, the waiting lists number in the hundreds or thousands. A preference in qualifying for affordable housing for residents who have been, or are about to be displaced, is necessary to provide *more* opportunities for *more* residents to remain in Berkeley.

ENVIRONMENTAL SUSTAINABILITY

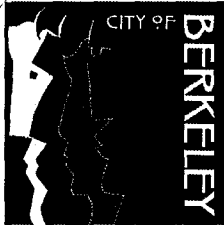
None identified.

FISCAL IMPACT

Staff time.

CONTACT

Councilmember Lori Droste	(510) 981-7180
Councilmember Laurie Capitelli	(510) 981-7150
Councilmember Darryl Moore	(510) 981-7120
Councilmember Linda Maio	(510) 981-7110



Cheryl Davila
Councilmember District 2

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APR 30 2019

**OFFICE OF THE CITY CLERK
CITY OF BERKELEY**

REVISED AGENDA MATERIAL

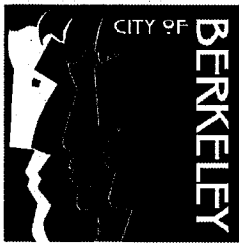
Meeting Date: April 30, 2019

Item Number: 22

Item Description: Refer to the Planning Commission and Housing Advisory Commission to Research and Recommend Policies to Prevent Displacement and Gentrification of Berkeley Residents of Color and African Americans

Submitted by: Councilmember Cheryl Davila and Ben Bartlett

Revised language.



Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR

April 30, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Cheryl Davila and Ben Bartlett

Subject: Refer to the Planning Commission and Housing Advisory Commission to Research and Recommend Policies to Prevent Displacement and Gentrification of Berkeley Residents of Color and African Americans

RECOMMENDATION

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 American sector of our Berkeley society.
- Develop rules and regulations to halt the loss of People of Color including the African American communities.
- Develop a "right to return" for Berkeley residents, especially People of Color, including the African American communities who have been displaced by these economic and social developments, and especially those who continue to be employed in our City, even after having to relocate beyond our boundaries.
- Solicit expert and lived experience testimonies regarding displacement and gentrification.
- Recommend alternatives to prevent displacement and gentrification of our valued Berkeley residents/citizens of color and African Americans.

CURRENT SITUATION

Minority groups are being pushed out of the neighborhoods in which they live. According to a study from the California Housing Partnership, between 2000 and 2015 the number of low-income households of color in the nine Bay Area counties dropped by 28%. This was matched in time by a 30% increase in rent rates. At the same time, there was no change in the proportion of white households. In Berkeley, from a high of 23.5% in 1970,

the Black population has been more than cut in half. According to the United States Census Bureau, it is now less than 10% of the total composition of the city.

Experts agree that the rising costs of housing in the Bay Area, primarily due to the rising fortunes of Silicon Valley, have priced many of the older residents out of the city. This is especially true of those or their family members who don't own homes.

In short, displacement has had a large negative effect on long-term black residents of Berkeley, both as a community and as a fate suffered by individual persons and families at the hands of rent increases by landlords.

BACKGROUND

Berkeley's neighborhoods were historically segregated based upon custom, as well as, contracts. Prior to 1948, so-called restrictive covenants by neighborhood groups blocked African American's and People of Color's access to "white communities". After the Supreme Court ruling *Shelley vs. Kraemer*, redlining or placing color codes on city maps to indicate where minorities could and could not live became the scheme to enforce housing discrimination. The result of this discrimination was that almost all Asian and Black Berkeleyans had to live south of Dwight Way and west of Martin Luther King Jr. Way (aka Grove Street) according to Charles Wollenberg, author of *Berkeley: A City in History*. Under these discriminatory conditions, "redlining" excluded Asian and Black Berkeleyans from most other parts of the City, thousands of Black families moved to South Berkeley during and after WWII.

According to *Redlining: The history of Berkeley's Segregated Neighborhoods*, by Jesse Barber, *Berkeleyside.com*, September 20, 2018, which stated, "They (Black residents after WWII) were cordoned off, not allowed to move to the north or to the east, so they built their own lives right there where they could find housing. Opening shops, stores, cobblers, food, etc. they prospered." The thriving *Lorin Station* business community in what is now called the "Adeline Corridor" developed organically to serve the needs of the growing South Berkeley African-American and Japanese citizenry. Fast forward to the 2000s: Minorities were being pushed out of the very neighborhoods in which they had been formerly compelled to live. According to a study from the California Housing Partnership, between 2000 and 2015 the number of poor households of color in the nine Bay Area counties dropped by 28%. This was matched in time by a 30% increase in rent rates. At the same time, there was no change in the proportion of white households.

In Berkeley, from a high of 23.5% in 1970, the African American population has decreased, significantly. According to the U.S. Census Bureau, it is now less than 10% of the total composition of the City, approximately 7%, currently.

Experts agree that the rising costs of housing in the Bay Area, primarily due to the rising fortunes of Silicon Valley, have priced many of the older residents out of our City. This is especially true of those or their family members who don't own homes.

In short, displacement has had a large negative effect on long-term African American and POC residents of Berkeley, both as a community and as a fate suffered by individual persons and families at the hands of rent increases by the unscrupulous.

ENVIRONMENTAL SUSTAINABILITY

Our community will be made whole again by having a diverse community filled with people of color including African Americans who will no longer be displaced. Possible reduction in Green House Gas (GHG's) since commute times may be eliminated or reduced.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

There are currently few, if any, protections against the effects of gentrification; this, in conjunction with uncontrollably rising housing costs, makes it probable that Berkeley's declining Black population will continue to decrease. Therefore, the creation of this workshop will be the first steps towards creating legislation and policies to decrease or stop gentrification.

ACTIONS/ ALTERNATIVES CONSIDERED

There are very few alternatives that the City can consider, as creating legislation with the guidance of experts on gentrification and displacement may be the best action to combat such issues.

OUTREACH OVERVIEW AND RESULTS

This legislation is designed to enable the Berkeley City Planning Commission and Housing Advisory Commission to create a workshop in which it will partner with multiple experts towards finding solutions for the causes and effects of gentrification and displacement.

RATIONALE FOR RECOMMENDATION

As the cost of housing and rent continue to rise in the Bay Area and Berkeley especially, low-income populations are struggling greatly to remain in their homes and many have already been displaced. A large proportion of this displaced population are from the black community. This recommendation will serve to protect those who are most vulnerable to the detrimental effects of development and rising housing costs as well as find a more equitable path of development.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

The workshop will be created and facilitated by the Berkeley City Planning and Housing Advisory Commissions and will work alongside experts and advisors on displacement and gentrification.

FINANCIAL IMPLICATIONS

Staff time will be necessary to implement this workshop. The anticipated date for such a workshop is June 2019.

CONTACTS:

Cheryl Davila, Councilmember District 2	510.981.7120
Ben Bartlett, Councilmember District 3	510.981.7130



Office of the City Manager

CONSENT CALENDAR
July 11, 2023

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Liam Garland, Public Works Director
 Subject: Adoption - Civic Center Phase II - Design Concept

RECOMMENDATION

Adopt a Resolution approving *Berkeley's Civic Center Design Concept Plan*, and declaring Council's intention to support the preferred design concept and necessary future studies and projects articulated in the plan.

SUMMARY

This item presents City Council with the culmination of the work to build on the adopted Civic Center Vision and Implementation Plan for Berkeley's Civic Center area, which includes the following:

- Veterans Memorial Building;
- Maudelle Shirek Building ("Old City Hall"); and
- Martin Luther King Jr. Civic Center Park ("Civic Center Park").

The Vision for Berkeley's Civic Center is: *Civic Center will be the heart of Berkeley's community. Civic Center will be the prime space for civic life, culture, and the arts. It will reflect the city's diverse identities, celebrating its history, and contributing to shaping its future. A place of shared resources and a platform for free expression accessible to all, Civic Center aims to manifest the city's values, advance social justice, and demonstrate the power of true public space.*

The City's Veterans Memorial Building, Maudelle Shirek Building, and Civic Center Park are important cultural resources, not only due to their age, but also their architectural significance, central location, and history as the center of City government. Adopting a shared Vision for Civic Center was an important Phase 1 accomplishment. Phase II of the Civic Center project sought to sharpen the vision-aligned consensus design concept for Civic Center and set a course for the next steps of implementation. Phase I (Vision) of the project commenced in summer 2019 and was funded through Phase 1 of the Measure T1 infrastructure bond designated to repair, renovate, replace, or reconstruct the City's infrastructure, facilities, and buildings. Phase II (Design Concept) of the Civic Center project was funded via a General Fund budget referral approved in the City Council's adoption of the FY 2022 Budget. Staff work on Phase II began in September

of 2022. The 156-page final report entitled *Berkeley's Civic Center Design Concept Report* (May 2023) is presented as Exhibit A in Attachment 1. The accompanying resolution adopting *Berkeley's Civic Center Vision Aligned Design Concept* sets a clear direction for the Civic Center's next act.

The Public Works Department and Office of Economic Development (OED) worked with a consultant team led by Siegel & Strain Architects. The consultant team spent the fall of 2022 and winter/early spring of 2023 conducting a public workshop about Civic Center, holding focus group interviews, hosting site tour(s), facilitating two "youth focused" workshops, and an in-depth session with Berkeley's art and culture organizations, attending approximately eight briefings with the Community for a Cultural Civic Center (CCCC) group, and engaging with five city commissions and the project's technical advisory group composed of city staff in a wide variety of departments. In March of 2023, the team presented a draft design concept for Civic Center to Berkeley's City Council for feedback.¹

The consultant team continued to work throughout the spring of 2023 to deliver a refined conceptual design, update cost estimates, provide an in-depth set of funding strategies, and develop a robust implementation plan or "next steps" for further study. This report presents the final report from the consultant team (Attachment 1) which includes a design concept for Berkeley's Civic Center, a summary of the community engagement conducted through May of 2023 and the resulting design drivers, next steps including future studies needed to accommodate a design with a daylight creek, and an appendix with the updated cost estimate for this once-in-a-generation project.

Design Concept – Recommendations

Integrating the input received through the engagement efforts, additional study on the changing context of the Civic Center, and the programmatic requirements heard from current and potential users, the Civic Center design concept proposes the following:

- *Maudelle Shirek Building* - seat of Berkeley's democracy with flexible meeting spaces and supportive and vision-aligned city services and educational uses.
- *Veterans Memorial Building* – a Community Arts Center, run by the City, with performance venues, teaching and exhibit space, accessible by all in the community.
- *Civic Center Park & Surrounding Streets* - a safe nature-based urban oasis for all of Berkeley, supporting community use throughout the day and strolling, relaxing, having lunch, visiting, and attending an impromptu gathering or organized event on evenings or weekends.

The preferred design concept, visualized on pages 70-71 of the Plan is detailed in *Section 5: Design Concept* (Attachment 1).

¹ Berkeley City Council Agenda Worksession, *Civic Center Phase II - Design Concept*, [Item #2](#) March 21, 2023.

FISCAL IMPACTS OF RECOMMENDATION

The exact fiscal impacts of the finalized design concept plan for Civic Center are to be determined. Preliminary construction cost estimates to achieve the design concepts discussed in the final report range from \$103,753,000 to \$131,587,000. These estimates assume additions and improvements that support the desired uses for the buildings, associated required seismic upgrades, and other park and street improvements.²

CURRENT SITUATION AND ITS EFFECTS*Project Timeline*

Phase II of the Civic Center project began in September 2022 and will be completed by June of 2023:

- Phase II Funding Authorized by Council June 29, 2021
- Project Commencement Sept. 1, 2022
- Public and City Engagement: Design Approach
 - Technical Advisory Committee Sept. 29, 2022
 - “Super” Subcommittee Meeting of the Public Works/Transportation, Landmarks, Parks and Civic Arts Commissions Sept. 29, 2022
 - 25+ Small Focus Group Interviews Sept. '22 – Feb. '23
 - Monthly meetings with Community for a Cultural Civic Center (CCCC) Sept. '22 – Feb. '23
 - Workshop #1: Open House (Berkeley Public Library) Nov. 16, 2022
 - Online Community Survey: Berkeley Civic Center Vision Project Nov. '22 – Jan. '23
 - Art Organizations Survey: Berkeley Arts Space Needs Assessment Jan. '23 – Feb. '23
- Public and City Engagement: Draft Design Concept
 - Technical Advisory Committee Meeting #2 Feb. 9, 2023
 - Commission Engagement - Super Subcommittee Meeting #2 Feb. 9, 2023
 - Workshop #2: Youth Focus at Berkeley High Feb. 15, 2023
 - Workshop #3: Education Focus at Berkeley City College Feb. 15, 2023

² *Berkeley's Civic Center Design Concept*, Attachment 1, Sections 5.3, 5.4. The design concept recommends a Building Performance Objective for New Buildings Plus (BPON+) seismic upgrade scheme for the Veterans Memorial Building (Attachment 1, Section 5.4). A combined Damage Control Plus (DC+) / Immediate Occupancy (IO) scheme, abbreviated as “DC+/IO” is recommended for the Maudelle Shirek building (Attachment 1, Section 5.3).

- Veterans Memorial Building Arts Space Focus Group Meeting
Feb. 24, 2023
- Council Work Session - Emerging Preferred Design Concept March 21, 2023
- Monthly meeting with CCCC group April 25, 2023
- Four Arts Organization Meetings April - May 2023
- Super Sub Committee of the Commissions Briefing May 16, 2023
- Council Adoption (anticipated) - Design Concept June 27, 2023

Summary of Meetings and Outreach

The consultant team, led by Sigel & Strain Architects and supported by staff from PW, OED, and other City departments, kicked off this phase with a series of public meetings in September 2022. The public outreach effort is described in more detail in Attachment 1, Section 2.

Technical Advisory Committee (TAC). The TAC is composed of City of Berkeley staff from a variety of departments, and its purpose is to provide subject matter expertise and feedback throughout the process. TAC members represent a cross-section of knowledgeable participants with an interest and stake in the Civic Center. The TAC met for the first time prior to releasing the Vision Plan project RFQ in late 2018, and has since gathered formally in this project phase twice with the consultant team: at the Phase II project kick off meeting in September 2022, and to review the draft consensus design concept in February 2023. In addition to formal meetings, ad hoc consultations with individual TAC members (e.g., the City’s special events coordinator, real estate manager, City Clerk, Public Safety, and PW Facilities Maintenance) have made essential contributions to the project.

Super Subcommittee of City Commissions. To efficiently engage with City Commissions that have an interest in this project, a “super” subcommittee meeting structure was established. Three City of Berkeley Commissions—the Public Works, Parks Recreation and Waterfront, and the Landmarks Preservation Commissions—already had established ad-hoc subcommittees to address projects funded by Measure T1 bond improvements, and the Civic Arts Commission established an ad-hoc standing subcommittee for the Civic Center visioning process. During Phase II of the Civic Center project, the super sub-committee structure continued. This larger group of subcommittees met twice in publicly noticed meetings on Zoom in the webinar format, first to kick off the project and discuss design approaches in September of 2022 and to review and comment on the draft design concept in February 2023. The Super Subcommittee of the Commissions, and representatives of a fifth commission, the Commission on Disability, had an in-person briefing in May 2023 to go over the final design concept report and discuss engagement of their “home” commissions prior to the final report publication in June of 2023. See <https://berkeleyca.gov/your-government/our-work/capital-projects/civic-center-vision-plan-project> for a complete list of materials presented at the Super Subcommittee meetings during Phase II.

Site Tours. City staff members have received many requests to tour the two buildings. During this project phase, the consultant team has toured the buildings with PW, and the park with the City's urban forester and arborist. Members of CCCC, TAC, Super Subcommittee of the commissions, and arts organizations have also toured the buildings to help envision programmatic uses. Several site tours were also conducted in the Vision phase of this planning effort (2019-2020).

Focus Groups and Interviews. From September 2022 through February 2023, staff and the consultant team conducted 25+ one-on-one or small group interviews with Civic Center stakeholders, including the current Civic Center tenants, several City Council Members (and/or their staff) and the Mayor's office, representatives from the Berkeley Unified School District including the principal of Berkeley High School, planners of annual community events that occur in Civic Center, arts organizations, business associations, local media outlets, ecological and riparian experts, city staff, and local community groups including the CCCC. See Attachment 1, Section 2.2 for a complete list of interviewees.

Open House, Workshops & Survey. On November 16, 2022, staff and the consultant team hosted an in-person Open House Workshop at the Berkeley Public Library. Approximately 40 community members attended the session, which was designed to generate thoughts about the underlying purposes and functions of our Civic Center, and to inform the project's Preferred Design Concept development. The consultant team organized the session into stations, with opportunities for discussion in small groups and written feedback on postcards at each station. This was supplemented with an **Online Survey** that asked the same questions of respondents as the in-person workshop did. The online survey recorded 694 responses, far exceeding the stated survey goal of 400 responses. Highlights of the survey responses are summarized in Attachment 1, Section 2.2. On February 15, 2023, staff and the consultant team hosted two **Youth-Focused Workshops**, one at Berkeley High School and one at Berkeley City College. Staff led students through a series of activities where participants were asked to identify what they liked and disliked about the draft design concept for Civic Center and asked participants to complete comment cards about their opinions related to the park and street design approach. Highlights and key takeaways of the youth focused workshops are summarized in Attachment 1, Section 2.2.

Arts Organizations. A tailored workshop, the *Veterans Memorial Building Arts Space Focus Group Meeting*, was hosted by the City of Berkeley's Civic Arts team on February 24, 2023 and included a detailed tour of the Veterans Building and dedicated focused discussions by artistic discipline. The goal of the meeting was to identify priority space needs for the Community Arts Center and to get input on the development of a spatial program to help determine if the Veterans Memorial Building has sufficient spaces to serve the programmatic needs of the community. This workshop was not open to the general public, but instead sought to elicit targeted feedback from individuals that are representative of Berkeley's diverse arts community. Sixteen arts professionals from the disciplines of theater, dance, music, visual arts, and literary arts participated in the focus

group meeting with the aim to have representation from various areas of Berkeley, racial and ethnic diversity, and a wide range of arts disciplines and organization sizes. Feedback gathered from this workshop is summarized in Attachment 1, Section 2.2.

City Council Worksession. The consultant team, in consultation with staff, developed an emerging preferred design concept, and draft concept design report that was presented to the Berkeley City Council members and the general public for feedback at a Berkeley City Council Worksession on March 21, 2023. The final report (Attachment 1) incorporates feedback received at the March 2023 Council Worksession and hews closely to the draft concept design presented in March 2023. The construction cost estimates and the Implementation chapters (Sections 6 and 7) are the areas of the report with the most updates since March 21, 2023.

Civic Center Design Concept

The outreach effort during this phase of the project (2022-23) affirmed the Vision Statement adopted in 2020. With the adopted Civic Center Vision serving as the north star for this project, four points on a compass emerged to further guide the design concept:

- **Community** – an inclusive and caring community;
- **The Arts** – expressive artistic and cultural events;
- **Governance** – good governance demonstrated through progressive policies;
- **Education** – powerful educational activities tied directly to history and nature.

Integrating the input received through outreach efforts, and the programmatic requirements heard from current and future users of the Civic Center, the project proposes the following current and potential future uses for each project element:

Maudelle Shirek Building will be the seat of Berkeley’s democracy with flexible meeting spaces and supportive and vision-aligned city services and educational uses, accessible by all in the community. As the historic seat of government in Berkeley, this project proposes returning city functions back to the Maudelle Shirek Building. In the public engagement efforts, Hearing & Meeting Rooms, Council Chambers, and flexible spaces for public-facing city services all scored high as priority uses for the building. Adding these functions to the heart of Berkeley’s Civic Center will bring residents to the area throughout the day and into the evenings, to attend meetings, speak at hearings, and organize with their community.

Public outreach also showed strong support for vision-aligned organizations finding a home in the Maudelle Shirek Building, including the Berkeley Historical Society & Museum and Berkeley Community Media. In order to support these functions, a number of improvements to the building will be required, including accessible improvements to the main entry and throughout, upgraded mechanical, electrical and plumbing systems, improved fire and egress systems, seismic retrofit, and an addition to provide space for the uses. For further discussion of the proposed uses, improvements, and management structure for the Maudelle Shirek building see Attachment 1, Sections 5.3 and 7.1.

Veterans Memorial Building will be a community Arts Center, run by the city, with performance venues, teaching and exhibit space, accessible by all in the community. This project identifies the building as a future Community Arts Center for the City of Berkeley, a use broadly supported by the public, Civic Arts Program, and the Community for a Cultural Civic Center. In a survey and workshop with local arts organizations who expressed interest in using the building, they identified exhibition and performance space as priorities, which aligns with the perception of need discovered in the public engagement process. Further, arts survey respondents identified a need for flexible multi-disciplinary spaces that are available to rent by the larger community, rather than controlled by a single anchor tenant.

The arts functions will require improvement to the Veterans Memorial building including accessible improvements throughout, upgraded mechanical, electrical and plumbing systems, improved fire and egress systems, seismic retrofit, and possibly additions to the sides of the main stage, and at the rooftop. For further discussion of the approach to this building, see Attachment 1, Sections 5.4 and 7.1.

Civic Center Park & Surrounding Streets will become a safe nature-based urban oasis for all of Berkeley. The park design will support community use throughout the day, evening and weekend for strolling, relaxing, sharing or having a meal, visiting, and attending an impromptu gathering or organized event.

Park Uses & Improvements

The design concept for MLK Jr. Civic Center Park builds from the existing condition of the park, and layers in new design elements and programs that support the desired everyday vibrancy of the park. It simplifies the path layout and reclaims underutilized space to fit new activity areas where possible. The proposed design preserves and builds upon the existing structure of the park, including the mature tree canopy, the central green open space, and the planned Turtle Island Monument terrace. Recommended improvements include simplified and widened path systems, native and biodiverse planting areas, a multi-use plaza with skate-able elements, a multi-age playground, an arts and market plaza to support the Farmers Market, expanded seating opportunities, and food and beverage vendors. For further discussion of the proposed park improvements, see Attachment 1, Section 5.2.

Creek Daylighting Considerations

Throughout the public engagement process in Phase II, the project team heard a consistent desire from some members of the community to “daylight” or bring Strawberry Creek to the surface area of Civic Center Park, and consistent concerns from others about cost, maintenance, and safety of a daylight creek. An alternate design concept layout (Attachment 1, Section 5.2, pages 104-107) illustrates a partial-flow daylighting scenario. The placement of the creek along Center Street aligns with the current location of the culvert under the park, and minimizes disruption to the overall

park layout and monuments. However, it does have a number of impacts that need to be considered more carefully through additional study:

- **Center Street** – The daylight creek reduces the width of Center Street to 26' travel path, allowing for emergency vehicle access. Parking and other vehicular traffic flow is removed. A parking & traffic study should be completed to understand the impact of closing Center Street to public traffic, and design solutions will need to be developed for providing delivery/drop-off to the buildings along Center Street. The Farmers Market also may need to be relocated to a new site with sufficient width for the market.
- **Hydrology** – The partial flow scenario is based on the 1999 Creek Study by Wolf Mason Associates. This report notes that the culvert is likely 18' under the surface of the park, sloping down to the west. A full restoration of the creek would require 150' in width and was determined infeasible. A partial flow scenario would require that the existing culvert remain, and that water is diverted through a flow control structure somewhere upstream of the park and downstream from the BART station to bring water closer to the surface. The exact width, depth, and design of a partial flow creek would need to be developed through a detailed hydrological study and will likely call for an engineered solution.
- **Maintenance** – any creek feature would involve new maintenance requirements, flooding mitigation considerations, and associated costs.

Parking and Circulation

In addition to the pedestrian pathway changes within the park, the concept design proposes changes to parking and circulation at both Center Street and Martin Luther King Jr Way.

- **Center Street** – aligned with the City's goal of a Green Center Street, the design proposes making this a pedestrian priority shared street, with a flush, curb-less transition from street to sidewalk, along with adding additional street trees and bioswales for stormwater management. A curve has been introduced in the road to create a more gracious entry plaza for the Veterans Memorial Building. The proposal shows 16 parallel parking spaces, in place of the 59 paid parking spaces currently on Center Street. These parking spaces generated \$156,860 in calendar year 2022 (at a rate of \$3.50/hour). There are also currently reserved parking spaces on this block – five for judges at the Alameda County Courthouse, one loading spot for the City mail truck, and four accessible "blue curb" spaces. The remaining 16 parallel spaces articulated in the plan could serve as reserved parking, or a small number of paid parking spaces could be maintained.
- **Martin Luther King Jr Way** – the primary concern at this road is pedestrian safety crossing between the park and the Maudelle Shirek Building. Currently, the edge of the curb between Allston and Center does not align with the curb on the blocks

to the north or the south – the road widens along the park’s edge. The concept design proposes reclaiming the portion of the road currently used as parallel parking to re-align the curbs in this area, and to create pedestrian bulb-outs at the street crossings. While the traffic lanes are not impacted, eight parking spaces would be removed. Another consideration for a future design phase will be raised pedestrian crosswalk or tables at Center and Allston.

In a next phase of work, a full traffic study should be implemented for this area to understand the impacts of the proposed improvements on traffic flow, circulation delays, intersection capacity, parking, and emergency response times.

Project Costs

The following high-level construction cost range estimations (Table 1) have been developed by staff and the consulting team (TBD Consultants working with Siegel & Strain) based on the design concept as presented in Attachment 1, Section 5. The total construction costs from TBD Consultants are very similar to the draft report presented at the March 21, 2023 Council Worksession. Additional cost information has been provided; including the construction costs of photovoltaic panels at both buildings and an addition at the Veterans Memorial building. In addition, a discussion on Operations & Maintenance Costs, a 10% construction contingency and 20% City costs have been added to the report (Section 6.1).

Other Costs

With an approved design concept, this project can move into its next phase of additional recommended studies, environmental reviews, and initiating specific design projects. This work, to get to the “shovel ready” stage is estimated to cost approximately \$15 million dollars and take 2-3 years to complete (Attachment 1, Sections 0.2 and 7.2).

Table 1: High-Level Construction Cost Estimate Range

SUMMARY PROJECT COSTS	SITE AREA (Total Square Foot, or SF)	\$/SF MIDRANGE	MID- RANGE (\$ in Millions)	LOW (-10%) \$ in Millions	HIGH (+10%) \$ in Millions
Maudelle Shirek Building <i>(Assumes 27,000 Gross Square Feet (GSF) Existing + 15,500 GSF Addition, DC+/IO seismic retrofit, upgraded building envelope & systems)</i>	43,000	\$1,323	\$56.9	\$51.2	\$62.6
Veterans Memorial Building <i>(Assumes 28,000 GSF Existing + 5,950 GSF addition, BPON+ seismic retrofit, upgraded building envelope & systems)</i>	33,950	\$987	\$33.5	\$26.3	\$36.9

MLK Jr Civic Center Park & Streets <i>(4.6 acres including park & streets with improved paths/paving, planting/irrigation, trees/tree protection, utilities, furnishings, lighting, public restroom improvements)</i>	223,000	\$82	\$18.3	\$16.47	\$20.13
SUBTOTAL CONSTRUCTION COST		\$1,413	\$108.7	\$93.97	\$119.63
CONTINGENCY Cost (Construction)	10%	\$141	\$10.87	\$9.783	\$11.957
CONSTRUCTION COST <i>(with contingency)</i>		\$1,554	\$119.570	\$103.753	\$131.587
SUMMARY PROJECT COSTS, continued	SITE AREA (Total Square Foot, or SF)	\$/SF MIDRANGE	MID-RANGE (\$ in Millions)	LOW (-10%) \$ in Millions	HIGH (+10%) \$ in Millions
CITY COSTS <i>(including permitting, inspections, design fees, technical reports, consultants, Construction Management and Project Management)</i>	20%	\$311	\$23.914	\$21.523	\$26.305
TOTAL PROJECT COST <i>Including contingency (10%) and city costs (20%)</i>		\$1,865	\$143.484	\$125.276	\$157.892

Project Funding Plan

A variety of funding sources could contribute to the City’s approach to funding. The first approach would involve many different sources of funding all leading to one large project, phased in over the course of years. If full project funding isn’t secured quickly, an opportunistic approach might be available. Instead, City staff would identify discrete project components that could be built without the entire project moving forward. When successful in gaining grants of other funding for these components, work could proceed. This approach would likely take more time and involve more project cost overall, given fewer opportunities for efficiencies of scale. See Attachment 1, Section 7.2 for a detailed discussion of funding strategies. In any case, the Civic Center project will be significantly more attractive for funding with an adopted conceptual design. Strong plans need funding, and funding is attracted to strong plans.

Next Steps

The next steps for project implementation are outlined below and described in greater detail in Attachment 1, Section 7.3. They include:

- Identify, fund and realize early activation projects.
- Initiate efforts for next phase of work including further studies and specific designs.
- Develop funding and phasing plans for each of the project components.

BACKGROUND

Originally conceived at the turn of the 20th Century, the Civic Center was planned and molded by City Beautiful Movement principles, and anchored by the 1909 construction of Berkeley’s second City Hall (now known as the Maudelle Shirek Building at 2134 Martin Luther King Jr Way). The plan transformed the City’s center into a cohesive group of civic buildings surrounding a central park by the 1940s. Today the Civic Center

comprises portions of the area surrounding Martin Luther King Jr. Civic Center Park including the Maudelle Shirek Building ‘Old City Hall’ (1909) and the Veterans Memorial Building (1928) which flank the Park on the west and north sides. The larger Berkeley Civic Center District (codified by the Civic Center Overlay Zone, 2014) itself was listed on the National Register of Historic Places in 1998. In addition, many of the buildings in the Civic Center District, including the Maudelle Shirek Building, the Veterans Memorial Building, and the Park itself, have been individually recognized as City Landmarks. Since the 1940s seismic building codes have evolved, requiring different thresholds of required maintenance and upkeep depending on use, and presently the historic buildings show signs of deferred maintenance.

Seismic Safety and Analysis

The Maudelle Shirek Building and the Veterans Memorial Building were evaluated in 2002 for seismic safety. The assessment included rough cost estimates for retrofitting the structures. In 2019, the 2002 figures were updated for consideration of current building code. In 2022, City Council received further information on both the buildings’ seismic analysis and costing, and the buildings’ leak study. The seismic analysis from Tipping Engineering and the costing from Public Works Department have contributed to the development the high-level cost estimates presented in Table 1 above. Public Works’ leak study identified \$1.48 million in necessary repairs for the Maudelle Shirek Building and \$1.9 million in repairs for the Veterans Building. These repairs primarily involve roof replacements and spot repairs to better prevent water intrusion.

Based on the adopted Vision Plan, and the proposed design concept and building program, the following building seismic retrofit levels are recommended:

Veterans Memorial Building is a three story, heavy concrete perimeter wall building with wood framed floors and roof that is seismically deficient and could pose life safety hazards to building occupants. For the design concept, the City’s Public Works Department recommends a seismic upgrade for the Veterans Memorial Building to the level of Building Performance Objective for New Buildings Plus (BPON+). At this level of seismic retrofit, the building would be reoccupied several months to a year after a major seismic event.

Maudelle Shirek Building is a three story, non-ductile concrete building that is seismically deficient and could pose life safety hazards to building occupants, as the building could collapse or partially collapse in a major earthquake proximate to the site. For the proposed design concept, the City’s Public Works Department recommends a seismic upgrade for the Maudelle Shirek Building to the level of Damage Control Plus (DC+) at the historic structure and the new addition be built to the Immediate Occupancy (IO) level. At the DC+ level of seismic retrofit, the Maudelle Shirek Building would be occupiable weeks to months after a major seismic event. The addition, built at the IO level, could be re-opened days after a major seismic event.

ENVIRONMENTAL SUSTAINABILITY

Successful initiatives that repurpose existing buildings and civic space for subsequent generations' fruitful use promotes beneficial environmental, civic, and economic sustainability. In addition, future action to renovate the existing buildings and park will incorporate specific sustainable measures into the design concept. These will include but are not limited to: electrifying buildings, installing solar systems, incorporating native/pollinator friendly plantings, deploying best practices in bioswales & stormwater management, permeable paving, and the protection of mature tree canopy.

RATIONALE FOR RECOMMENDATION

The preferred design concept for the adaptive reuse of both buildings and the Park articulates how the Veterans Memorial Building, the Maudelle Shirek Building, and Civic Center Park can be used going forward. The accompanying research includes cost estimates and potential revenue strategies to support renovation and ongoing operations for programs in Civic Center. By adopting the *Civic Center Design Concept* the City Council sets a clear direction for subsequent phases of this keystone project.

ALTERNATIVE ACTIONS CONSIDERED

None.

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Attachments:

- 1: Resolution Adopting Berkeley's Vision Aligned Civic Center Design Concept
Exhibit A: Final Report: *Berkeley Civic Center Design Concept*, May 2023.

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

APPROVING BERKELEY’S VISION-ALIGNED CIVIC CENTER DESIGN CONCEPT

WHEREAS, in September 2020, the Berkeley City Council adopted a Vision for Berkeley’s Civic Center to, “*be the heart of Berkeley’s community. Civic Center will be the prime space for civic life, culture, and the arts. It will reflect the city’s diverse identities, celebrating its history, and contributing to shaping its future. A place of shared resources and a platform for free expression accessible to all, Civic Center aims to manifest the city’s values, advance social justice, and demonstrate the power of true public space.*”; and

WHEREAS, the development of the Civic Center Vision Plan (2019-2020) was underwritten by the *T1 Bond Funding for Infrastructure and Facilities*, to repair, renovate, replace, or reconstruct the City’s aging infrastructure and facilities, including the Veterans Memorial Building, the Maudelle Shirek Building, and Civic Center Park, to help determine a direction for future capital improvements to restore and secure these facilities to maximize their community benefit; and

WHEREAS, in August of 2022, the city engaged a qualified project consultant team underwritten by general fund dollars to assist in the completion of Phase II of the project and the development of a consensus design concept aligned with the adopted vision for Civic Center; and

WHEREAS, the City of Berkeley’s project team has conducted an inclusive and transparent community process, engaged meaningfully with stakeholders, and provided a compelling and shared design concept for the Civic Center area that supports current and future community needs while respecting and celebrating the area’s rich past and historically significant structures; and

WHEREAS, *Berkeley’s Civic Center Design Concept Plan* determines a direction for future capital improvements to restore and secure these facilities, park, and surrounding area to maximize their community benefit; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council approves and adopts *Berkeley’s Civic Center Design Concept* (Exhibit A) and declares its intent to support the vision and design concept articulated in the plan.

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to further the implementation of the design concept as it embodies, reflects, and advances Berkeley’s ambitious vision for its Civic Center.

Exhibits:

A: Final Report: *Berkeley’s Civic Center Design Concept*, May 25, 2023



May 25, 2023

Berkeley's Civic Center

Design Concept
Report

| SIEGEL & STRAIN Architects | + Gehl + ecb + tbd

A Vision for Berkeley's Civic Center

Civic Center will be the heart of Berkeley's community. Civic Center will be the prime space for civic life, culture, and the arts. It will reflect the city's diverse identities, celebrating its history, and contributing to shaping its future. A place of shared resources and a platform for free expression accessible to all, Civic Center aims to manifest the city's values, advance social justice, and demonstrate the power of true public space.

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0.1

Executive Summary

Design Concept Phase

The Berkeley Civic Center is a place in Downtown Berkeley of great community and historic significance. The 6-acre project area, set within the Berkeley Civic Center Historic District and comprised of Martin Luther King Jr. Civic Center Park, the Maudelle Shirek Building, and the Veterans Memorial Building, is located at a physical crossroads between downtown Berkeley and residential neighborhoods amid well-established educational, cultural and civic institutions. The Berkeley Civic Center is also at a crossroads in time, awaiting a re-energization for use by its community as an updated civic space that embodies the values the community lives by.

This design concept effort is a continuation of the work completed in 2019/20 on the Berkeley Civic Center Vision and Implementation Plan. The purpose of this work is to document a design concept that reflects a synthesis of the shared aspirations captured in the vision statement and illustrates design ideas borne out of ongoing engagement with the Berkeley community. As with the previous Berkeley Civic Center effort, members of the community turned up in high numbers to work collaboratively for a common purpose, and the resulting design concept reflects their shared vision.



Berkeley Civic Center

→ Timeline

On September 22, 2020, Berkeley City Council adopted the Vision Statement articulated in the 2020 Vision & Implementation Plan Report for the Berkeley Civic Center project. This vision statement remains the north star for the project.

On June 1, 2021 and related to City Center District Visioning Resolution No. 69,579-N.S., the Berkeley City Council allocated funding and directed City Staff to provide additional public process, planning and design to develop a preferred design concept based on input from the community, City Commissions, and City Council.

The project's Steering Team, comprised of Berkeley City Staff from Public Works, Office of Economic Development, and Civic Arts, and design consultants began work on the 2022/23 Berkeley Civic Center Design Concept effort in September 2022.

→ Methodology

The key components of the project team's effort for this phase are research, community engagement and development of a high-level design concept.

The design team began this current effort by researching policies and improvements implemented since the conclusion of the 2019/20 Vision and Implementation Plan.

Working collaboratively with the project's Steering Team and with input from the Community for a Cultural Civic Center (CCCC), the design team developed an approach to community engagement with the goal of collecting input to inform a preferred design concept for the Martin Luther King Jr. Civic Center Park, the Maudelle Shirek Building and the Veterans Memorial Building.

The engagement effort was organized into two major efforts:

- General Public Engagement, including an open house, workshops and an online survey
- Focused Engagement, including meetings and work sessions with specific organizations and entities who are currently active in the Berkeley Civic Center and/or whose missions and interests align with and support the adopted Vision Statement.

Based on the engagement effort, which included input from over 700 individuals and 36 separate entities and organizations, the design team developed key design drivers that informed the emerging preferred design concept. The design concept was reviewed by the CCCC, Commissioners on the Super Sub-Committee, City of Berkeley staff representatives, students from Berkeley High School and Berkeley City College, and was presented to City Council and the general public at a Work Session on March 21, 2023. Comments from these groups were integrated in the preferred design concept described in the pages that follow.

→ Key Design Drivers

The outreach effort uncovered the following key design drivers that advance the vision statement, capture the unique identity and spirit of the Berkeley community, and inform the design concepts illustrated in the plan:

1. The Civic Center park and buildings should be a place to gather as a community.
2. MLK Jr Civic Center Park should be natural in character, preserving mature trees and enhancing native biodiversity.
3. The Park and open space should offer a safe, clean, and comfortable place to be outdoors with others.
4. Many are passionate about daylighting Strawberry Creek while others raised concerns.
5. Center Street should be better integrated into the Park and open space experience.
6. The Maudelle Shirek Building should be the seat of Berkeley's democracy with meeting and public-serving spaces supporting civic participation in City government.
7. These civic uses in Maudelle Shirek Building should be paired with vision-aligned services and educational functions.
8. The Veterans Memorial Building should be a Community Arts Center for creative expression and accessible to all.
9. The Community Arts Center should be activated all day every day, hosting arts organizations and practitioners across all disciplines, delivering performances and programming for the community.

→ Design Concept

Integrating the input received through the engagement efforts, additional study on the changing context of the Civic Center, and the programmatic requirements heard from current and potential users, the Civic Center project proposes the following:

- **Maudelle Shirek Building**
Seat of Berkeley's democracy with flexible meeting spaces and supportive and vision-aligned city services and educational uses.
- **Veterans Memorial Building**
A Community Arts Center, run by the City, with performance venues, teaching and exhibit space, accessible by all in the community.
- **Civic Center Park & Surrounding Streets**
A safe nature-based urban oasis for all of Berkeley, supporting community use throughout the day, evening and weekend for strolling, relaxing, having lunch, visiting, and attending an impromptu gathering or organized event.

→ Recommended Next Steps

The project team proposed the following next steps for project implementation, outlined below and described in greater detail in Section 7 of this report.

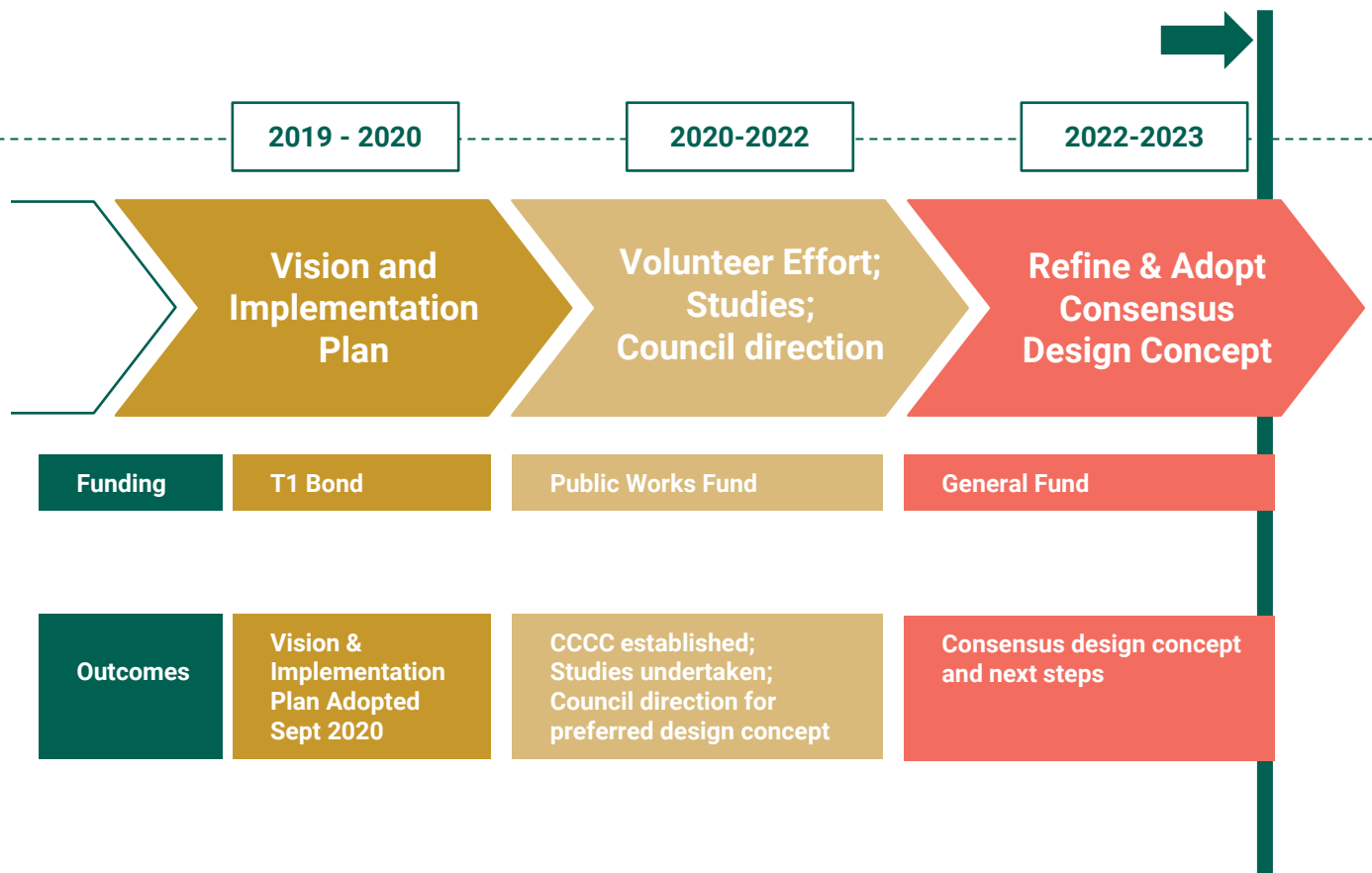
- Identify, fund and realize early activation projects.
- Initiate efforts for next phase of work including further studies and specific designs.
- Develop funding and phasing plans for each of the project components.

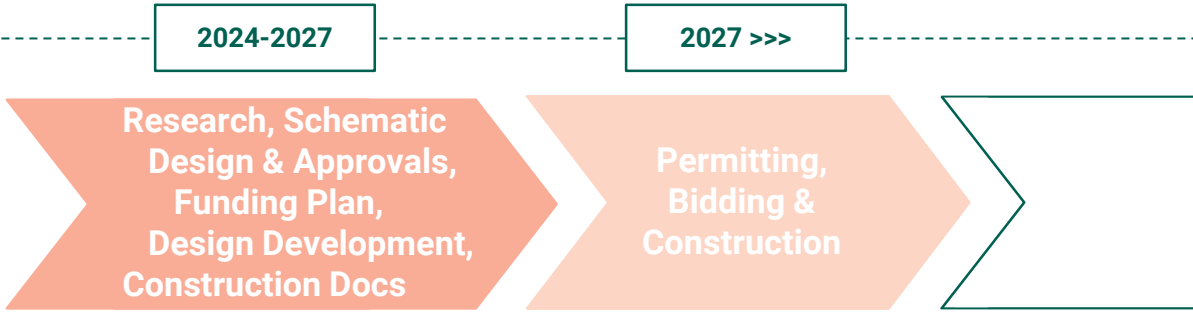


View to fountain terrace and sequoia from large green

0.2

Overall Project Schedule





Existing Conditions



Existing Conditions

1.1 Base Maps

1.2 Site Assessments

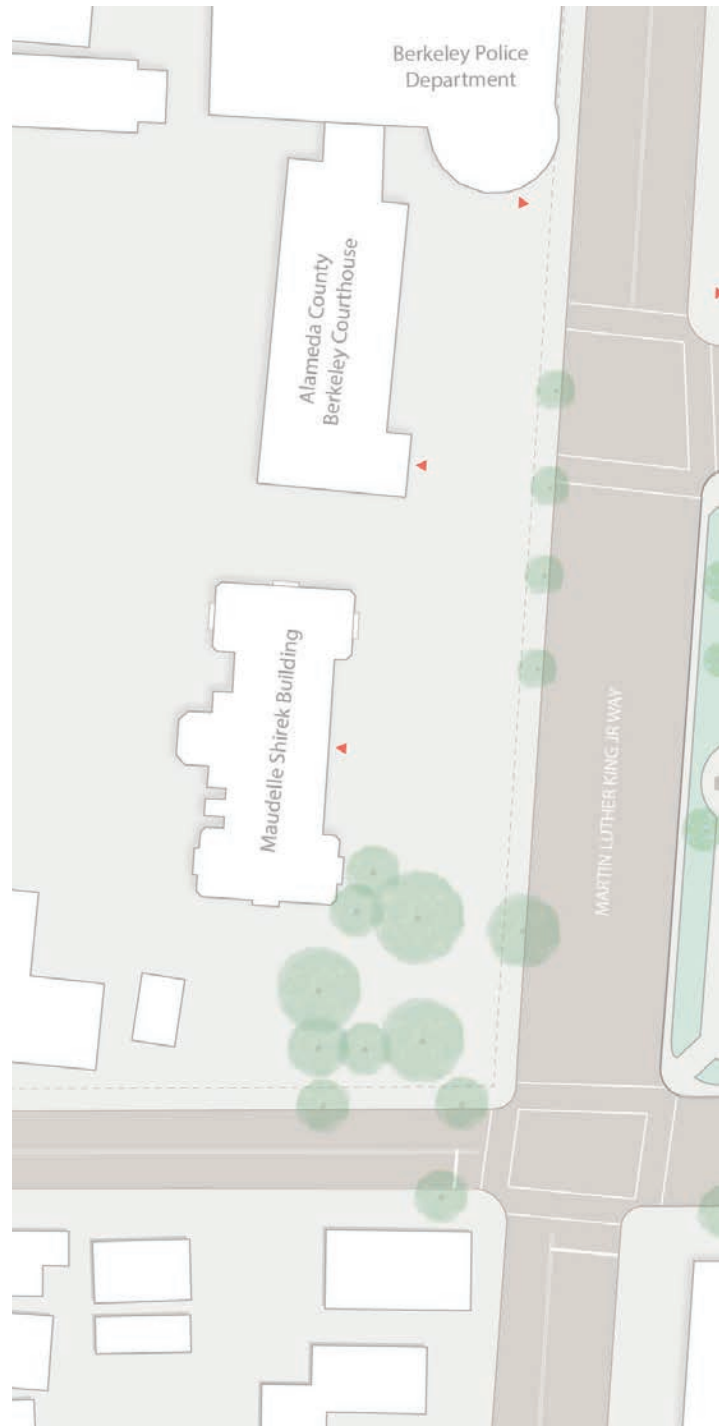
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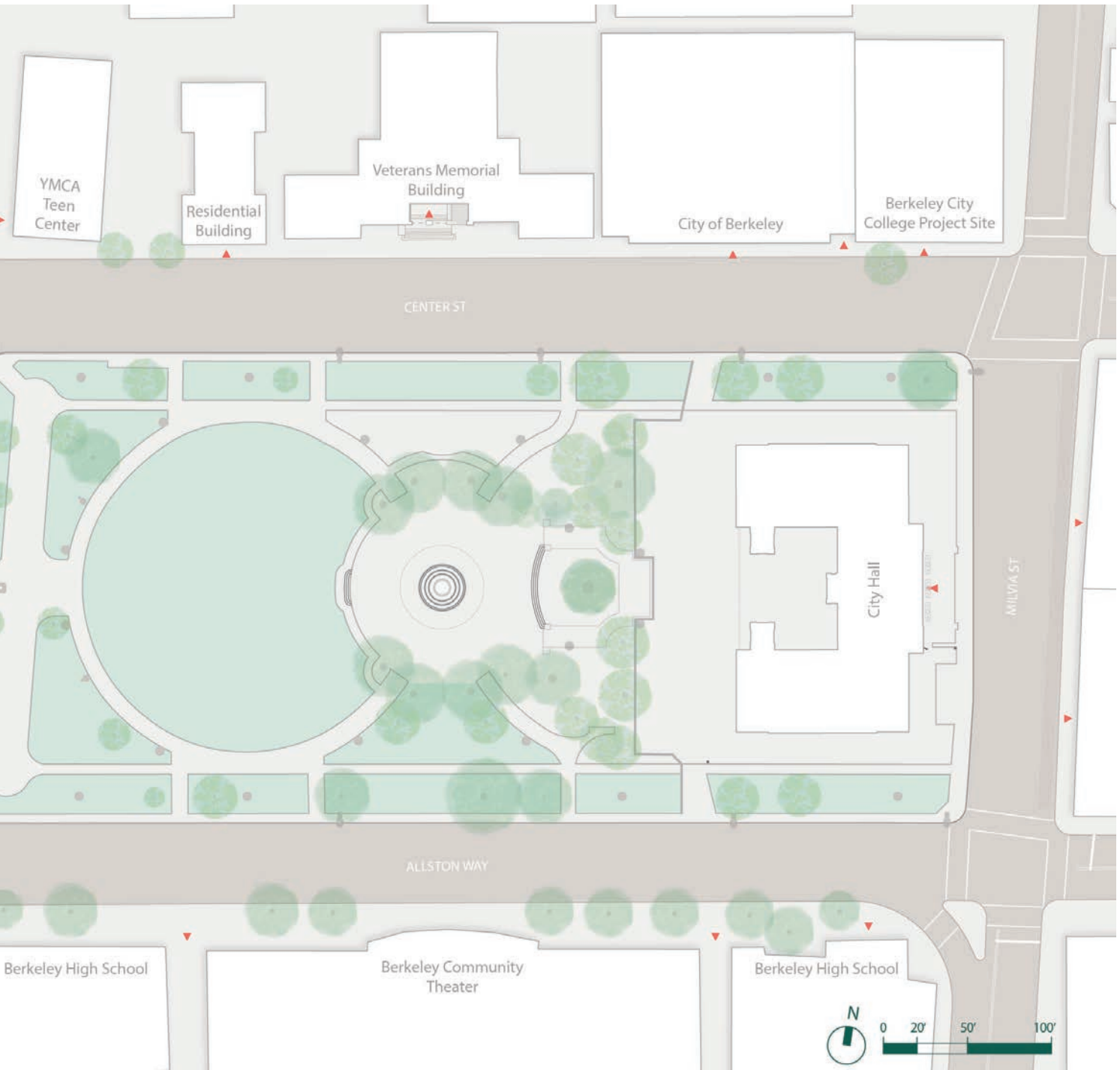
Base Maps

As part of the 2019-2020 Vision and Implementation Plan, the consultant design team developed base maps from historical plans and aerial imagery of the Martin Luther King Jr. Civic Center Park, the Maudelle Shirek Building, and the Veterans Memorial Building in the Civic Center. The design team has continued to use these as base drawings for the current Berkeley Civic Center design concept effort.

Verification of current conditions of the buildings, park and streets are required prior to specific design efforts. See Section 7.2 for a more complete list of recommended existing conditions documentation.

Additional site assessment is offered herein as diagrams to inform the design concept.





Existing Civic Center Site Plan

1.2

Site Assessments

Project Area Map

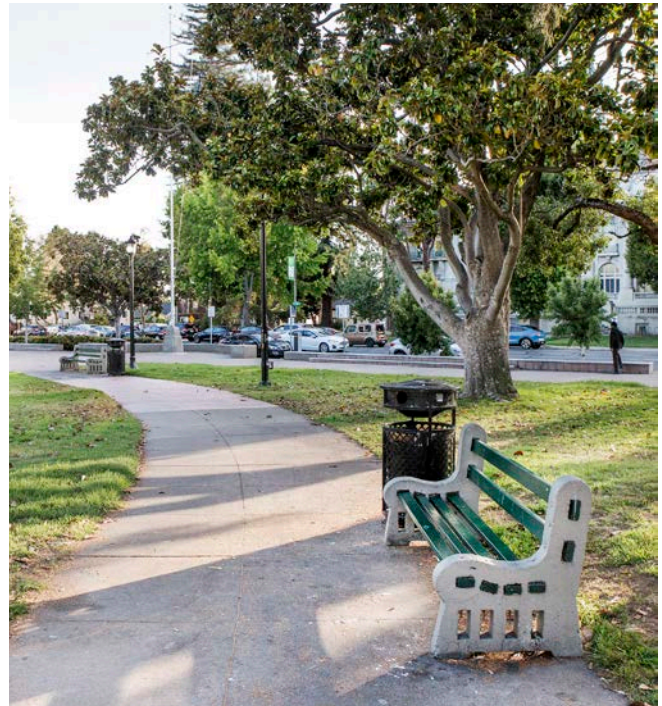
The project is located in the downtown area of Berkeley, one block west of the Bay Area Rapid Transit (BART) station, and two blocks west of the UC Berkeley campus. Directly south of the site sits the main campus of Berkeley High School. To the west, the urban fabric shifts to single family residential scale development.

As a part of this phase of work, additional site assessments were developed on the following topics:

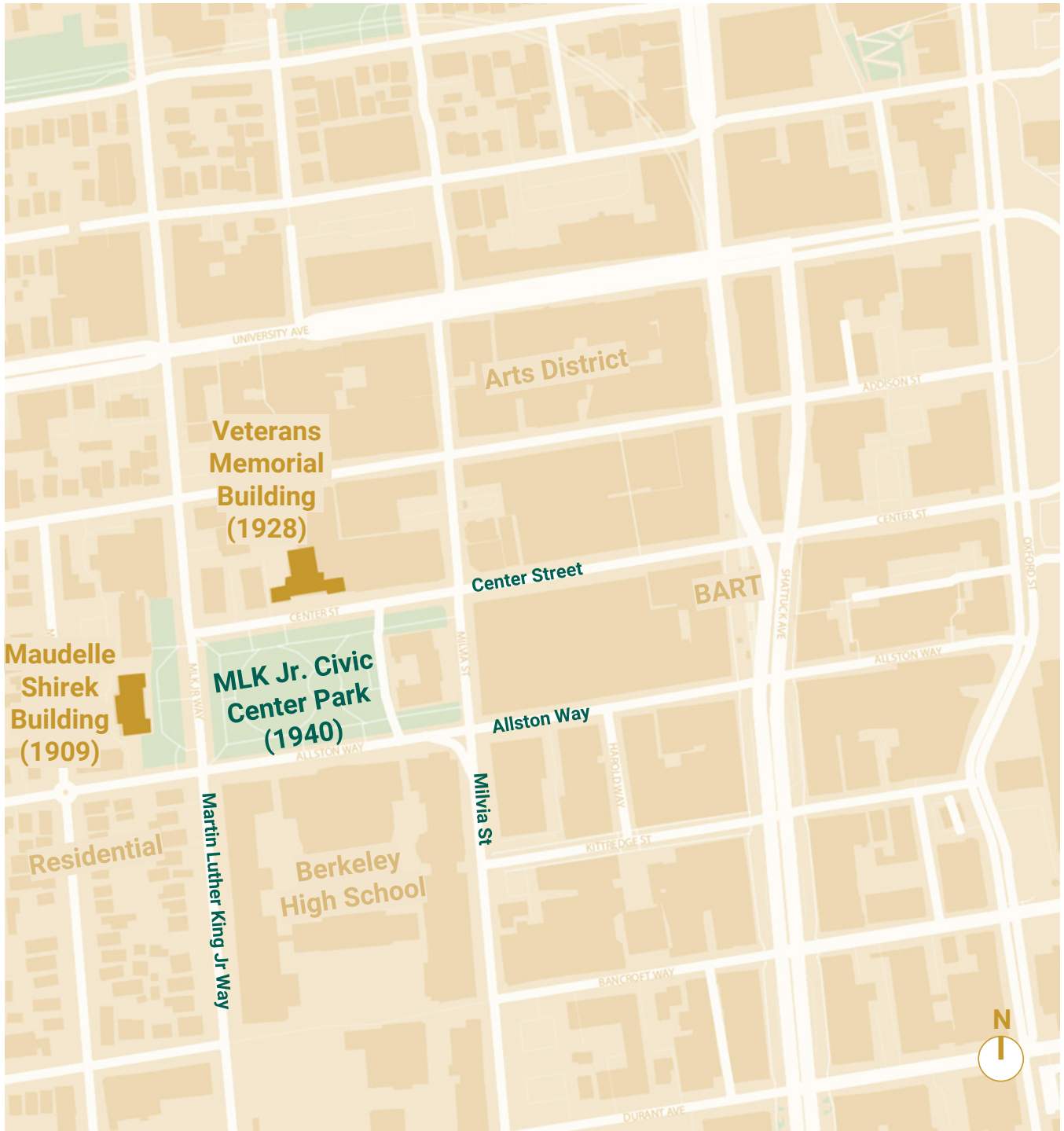
- Policy Context
- Circulation Context
- Input since 2020
- Civic Center Park Tree Map



Civic Center Park Peace Wall



Curved Path and Bench at Civic Center Park



Project Area Map

Policy Context

A number of City Policies affect the Berkeley Civic Center study area, including recent Council-adopted initiatives listed to the right. These have implications for proposed improvements at the buildings, park and the streets.

Most notably, the project is a part of the Civic Center Zoning Overlay District, established in 2014 and which encompasses a number of historic structures in the area. All proposed uses should fall within the allowable permitted uses listed to the right.



Fountain at Civic Center Park



Vision 2050

Equity, Public Health & Safety, Strong Local Economy, Resiliency & Sustainability (May 2020)



Existing Buildings Electrification Strategy

(November 2021)



Native Species Policy

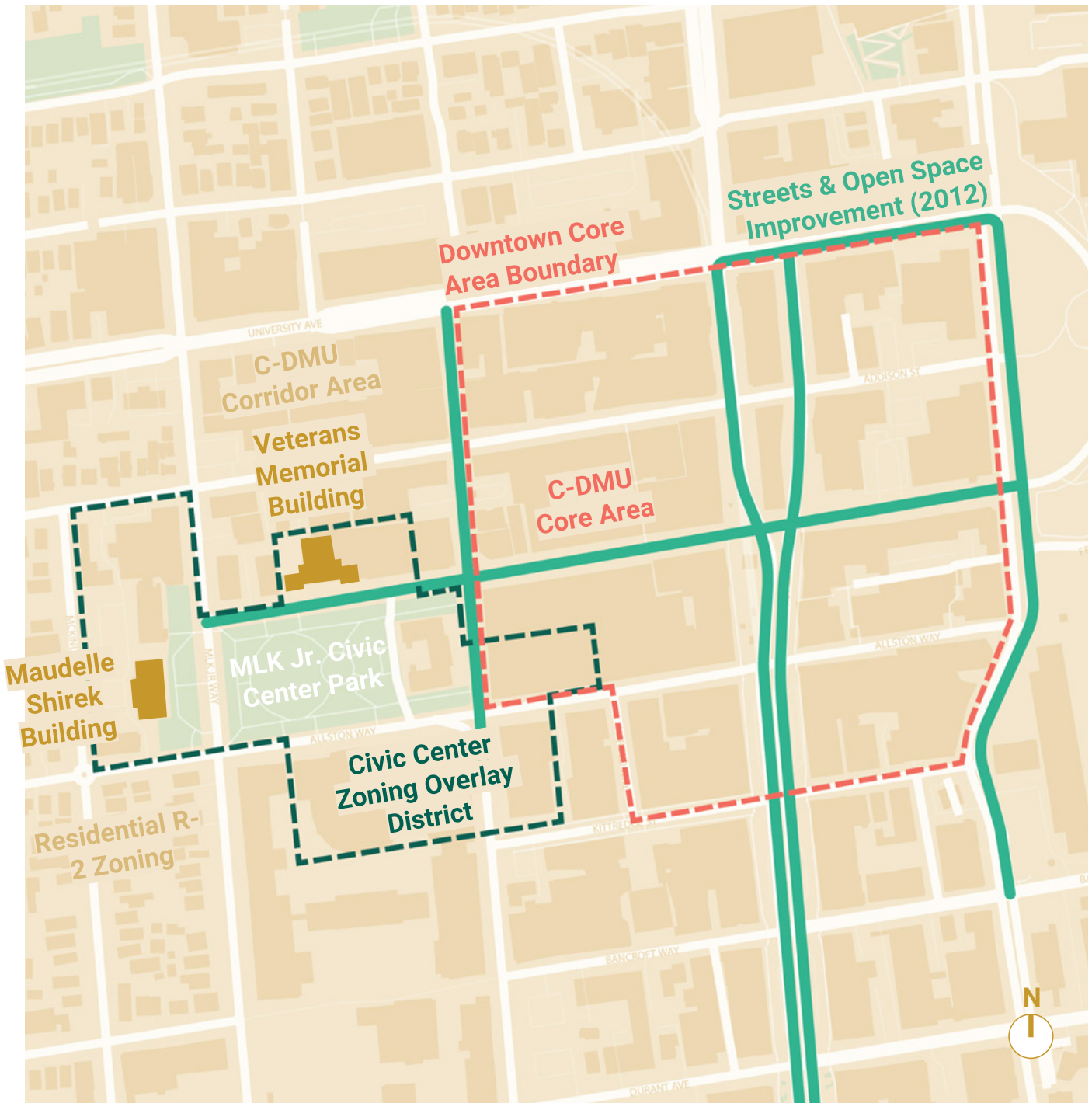
Native, Drought-Resistant, Pollinator-Friendly (April 2022)



Permitted Uses

Civic Center Zoning Overlay District (2014)

- Libraries & Museums
- Parks & Playgrounds
- Public Safety & Emergency Services
- Government Agencies / Institutions & Judicial Courts
- Public Schools / Educational Facilities
- Non-Profit Organizations
- Live Performance Theatre
- Public Market



Policy Context Map

Circulation Context

A number of improvements have been completed in the Civic Center area since conclusion of the 2020 Vision Phase.




Implementation of Milvia Bicycle Boulevard improvements changed traffic circulation west of Shattuck Avenue and the City's new Center Street Garage increased parking capacity in the downtown area.

Improved pedestrian safety is an identified priority for the area and will require changes to the streets. Proposed changes to MLK Jr Way, Allston Way and Center Street need to consider existing circulation, traffic and parking patterns.



View at MLK Jr. Way & Allston Way Intersection looking North

Legend

1. **Addison Bicycle Boulevard**
(Bicycle Plan 2017)
 2. **Milvia Bicycle Boulevard**
(Completed May 2022)
 3. **Center Street Greenway & Center Street Plaza**
(Streets and Open Space Improvement Plan 2012-23)
 4. **Center Street Parking Garage and BART Bike Parking**
720 vehicle spaces; 20 EV charging spaces; 350 bicycle spaces
 5. **Allston Way Civic Street**
(Streets and Open Space Improvement Plan 2012-23)
 6. **Pedestrian Signal Improvements**
(Pedestrian Master Plan 2019-20)
 7. **Crosswalk Bulbouts**
(Pedestrian Master Plan 2019-20)
 8. **Berkeley High School Loading**
(Completed May 2022)
 9. **Harold Way**
(Pedestrian Only)
-  **AC Transit Bus Route**
 -  **BHS Drop-off Approach Routes**
 -  **One-Way traffic**

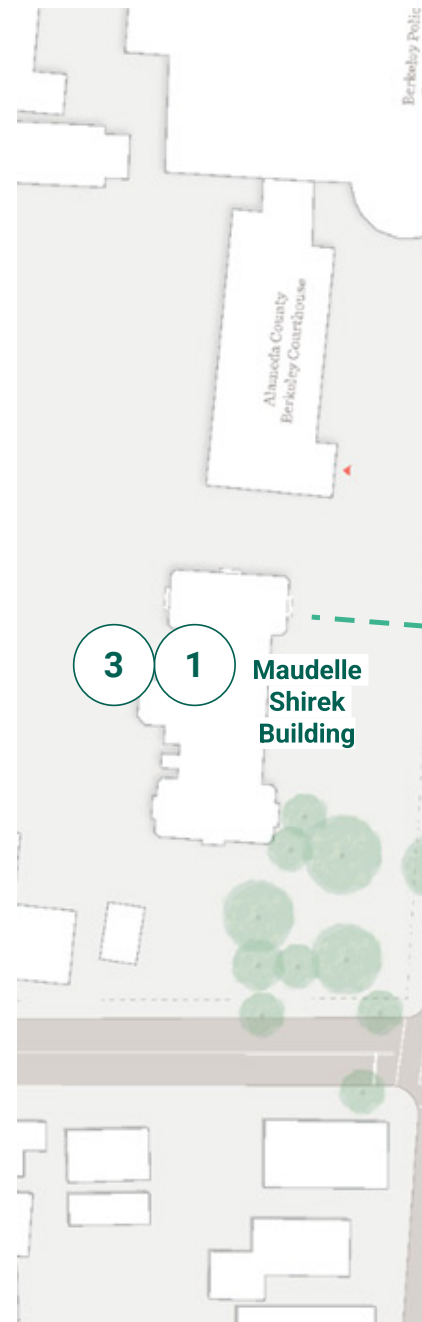


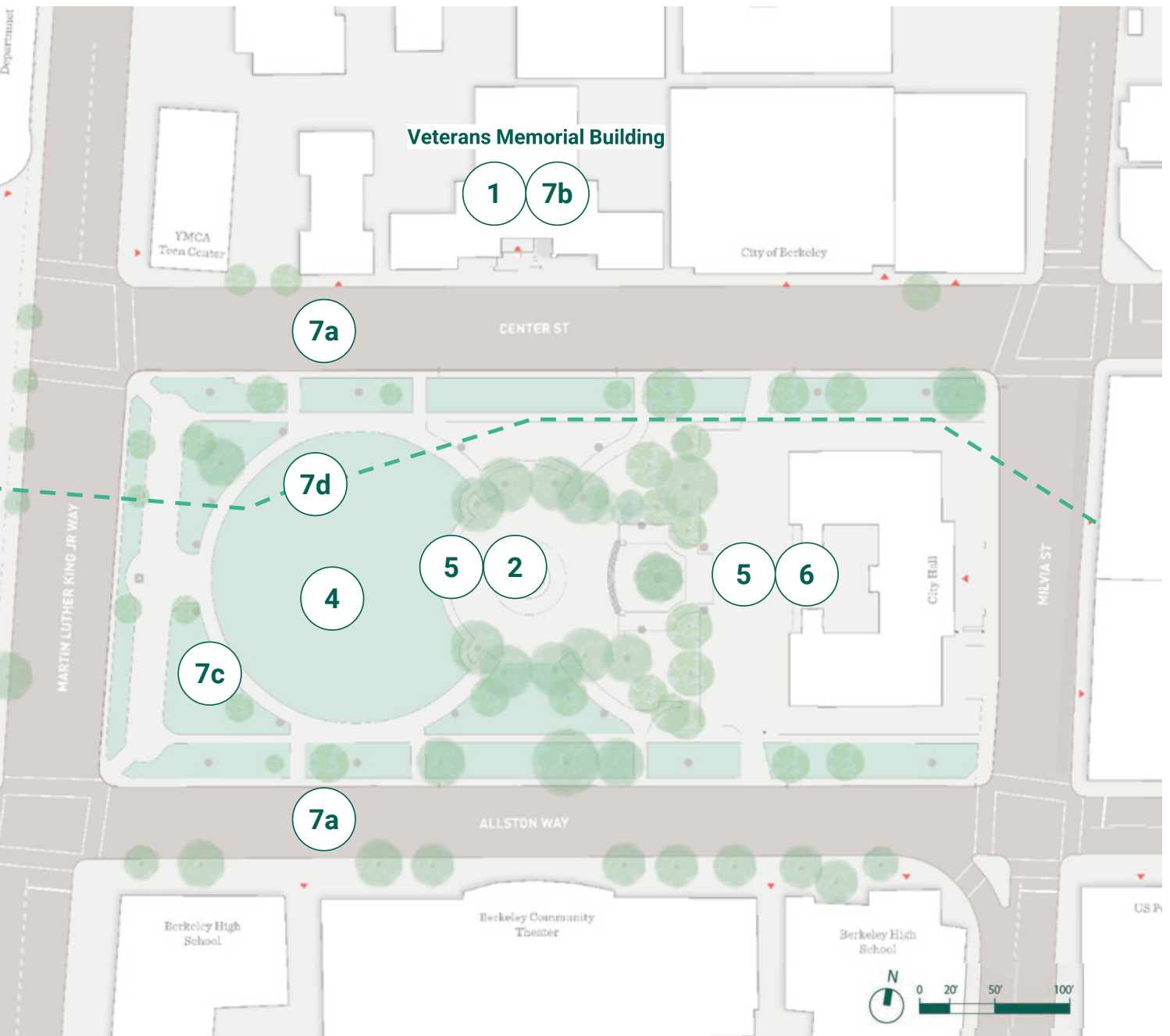
Circulation Context Map

Input Since 2020

Since the adoption of the Berkeley Civic Center Vision Statement in 2020, the City and active community members, primarily associated with the Community for a Cultural Civic Center (CCCC), provided additional input on the Vision & Implementation Plan, including:

- 1. Seismic Retrofit Study**
Exploration of alternate seismic approaches by Tipping Structural Engineers
- 2. Turtle Island Monument**
Design Development & Funding
- 3. Meeting Hall / Council Chambers**
Preference for Maudelle Shirek Building location
- 4. More Planting, Less Paving**
Preference for integration of native species and biodiversity, preservation of existing mature tree canopy, and inclusion of a large green open space
- 5. Park Performance Venues**
Study of Park performance venues by ELS Architecture & Urban Design
- 6. 2180 Milvia Parking Lot Removal**
Integration of Park uses into the parking lot west of 2180 Milvia
- 7. Identified for additional study:**
 - a. Allston Way & Center Street closure
 - b. Dorothy Day House & Options Recovery relocation
 - c. Inclusion of historic interpretive panels
 - d. Daylighting of Strawberry Creek & culverts





Site Plan indicating areas of Additional Study

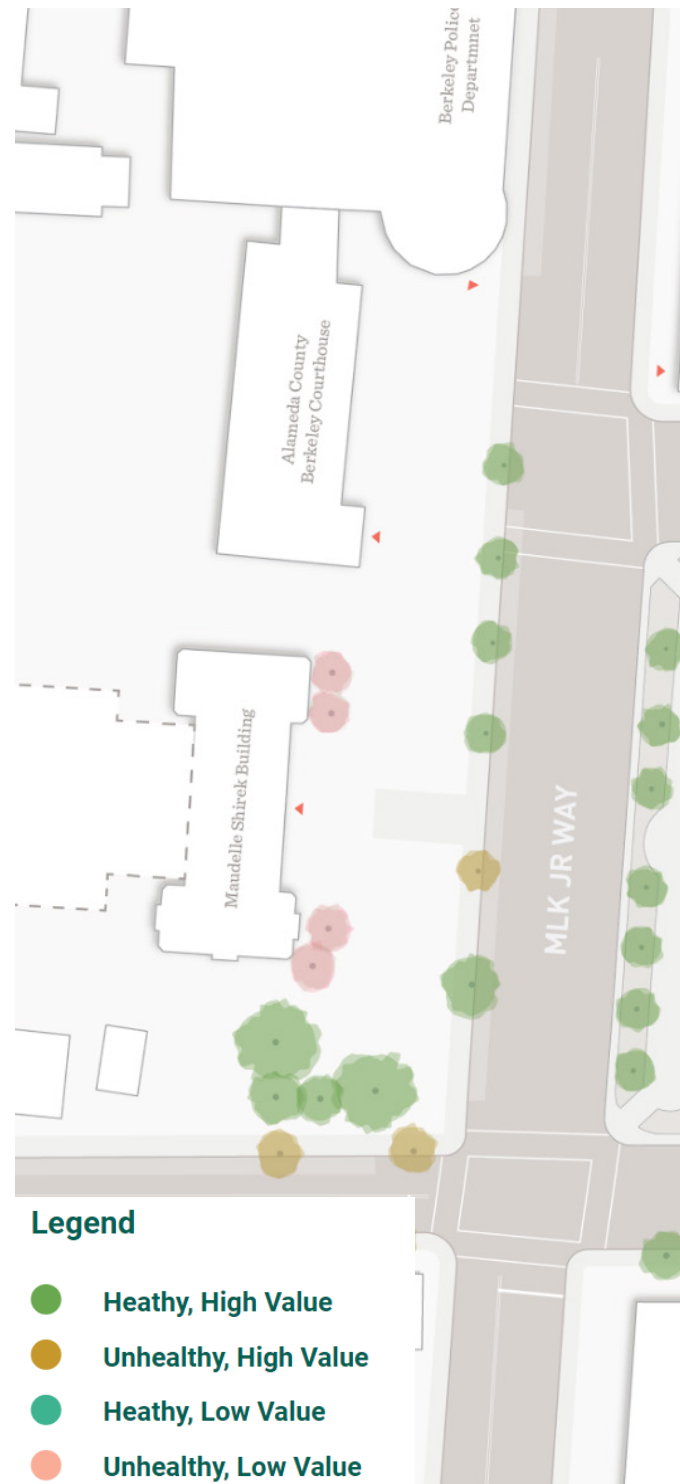
Tree Condition Map

Dan Gallanger, City of Berkeley Urban Forester, and Thomas Dodge, City of Berkeley Forestry Technician, walked the Civic Center area with the design team. Gallanger and Dodge identified the high value trees and gave the team an oral overview of the trees' health.

In addition to discussing tree protection strategies for the high value trees, the group identified the need for an updated tree survey, a tree protection plan, and a tree succession plan to support a healthy tree canopy ecosystem in the park into the future.



Sequoia (center) east of Turtle Island Monument





Tree Site Plan



Community Engagement

2.1 Engagement Plan

2.2 Engagement Summary

2.3 Key Design Drivers

2.1

Engagement Plan

The primary task of this phase is to create a preferred design concept for the Civic Center based on community, Commission, and Council input. The design team combined engagement with the general public and targeted outreach efforts to groups with specialized knowledge or interests in the project, including:

General Public Engagement

- > Open House - Nov 16, 2022
- > Online Survey - Dec 2022 - Jan 2023

Youth Engagement

- > In-person Work Sessions - Feb 15, 2023

Focused Engagement

- > Online & In-person Meetings
Sept 2022 - May 2023

Arts Organization Engagement

- > Online Survey - Jan - Feb 2023
- > Focus Group Tour & Meeting - Feb 24, 2023

Documentation of these efforts includes detailed meeting notes, and summaries of survey data and open-ended responses. The design team synthesized the input into key design drivers to guide the design concept.



Open House Nov 16, 2022



Veterans Memorial Building Art Organization Focus Group Tour

Maudelle Shirek Building

Question:
Which proposed uses are you most excited about for the Maudelle Shirek Building?
(Pick up to four)

...
 ...
 Civic Center

Veterans Memorial Building

Question:
What kinds of art programs do you think the community needs most at a new Arts Center in the Veterans Memorial Building?
(Pick up to four)

Visual Arts Exhibition
 Dance Performance
 Theater Performance
 Music Performance
 Film Screenings

Visual Arts Class Spaces
 Dance Class Spaces
 Theater Class Spaces
 Music Class Spaces
 Digital Arts Class Spaces

Civic Center Design Concept | Open House | Wednesday, November 16, 2022

Slower and Safer Streets

Question:
How do you feel about the following design approaches to improve pedestrian safety and calm traffic around Civic Center?

A. ... Reducing or eliminating parking on Center?

B. ...

MLK Jr. Civic Center Park

Question:
In your view, what park character would best enhance the vision for Civic Center?

(Choose the pie chart between 3 options)



Traditional
Playful
Natural

Example Responses:

"The park should be traditional and formal"



"A balance of old, new & natural"



"Mostly Natural"




Civic Center Design Concept | Open House | Wednesday, November 16, 2022
City of Berkeley


Engagement
Cards &
Boards

Berkeley Community Arts Center at the Veterans Memorial Building


EXISTING CHARACTER AND SPACE




PERFORM



PRACTICE



CREATE



MLK Jr Civic Center Park Character Inspiration

Traditional

Focuses on traditional park elements and materials, often with formal and symmetrical path layout that frames grand spaces and views.



Playful

Focuses on elements that promote active uses and provide moments of delight and whimsy. Allows for use of non-traditional elements and materials, and informal path layouts.



Natural

Focuses on organic elements, with use of wood, stone, and planting to create a space with wilder feel. Can also incorporate strategies to enhance biodiversity and local stormwater systems.



2.2

Engagement Summary

General Public Engagement

To complement the public outreach effort of the 2020 Vision & Implementation Plan, the design team developed a presentation and survey to reintroduce the Civic Center project to the public, and to gather feedback on design approaches to the buildings, park and streets.

The presentation and survey were shared in two forms - in person and online - to maximize the response rate. Almost **700** responses were gathered, providing the design team with feedback in the form of multiple-choice and open-ended responses.

Public Open House on Nov 16, 2022

- Participants gave input on four topics: **MLK Jr Civic Center Park, Surrounding Streets, Maudelle Shirek, and Veterans Memorial Buildings**
- Participants provided written feedback on more than 200 postcards
- Held at **Berkeley Main Library**

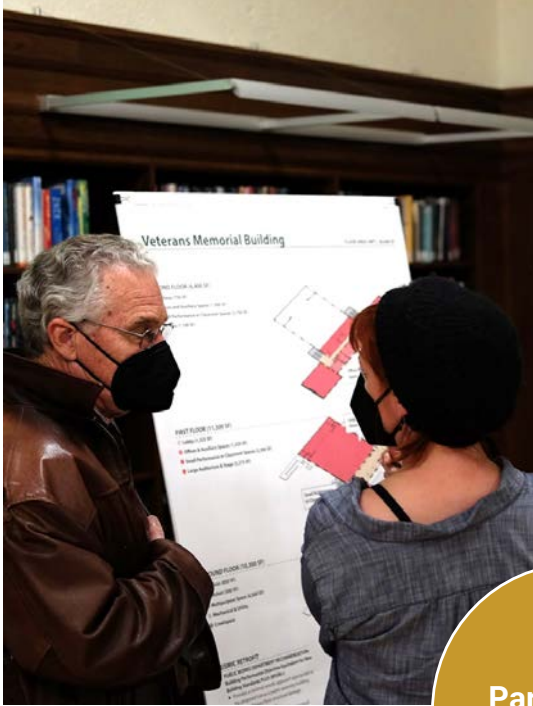
Online Survey Dec 9, 2022 to Jan 6, 2023



654

Online Survey Respondents

Dec 2022 to
Jan 2023



200+
Written
Comments on
Postcards
Nov 2022

40
Participants
at Open
House
Nov 2022



Photos of Open House - Nov 16, 2022

General Public Engagement Results

Participants in the outreach effort were asked to provide information about themselves, including age, district they lived in, and relationship to Civic Center area.

The results indicated that less than 6% of participants were between the ages of 15 and 24. With Berkeley High School and Berkeley City College in the adjacent blocks, students in this age range are important users of the Civic Center.

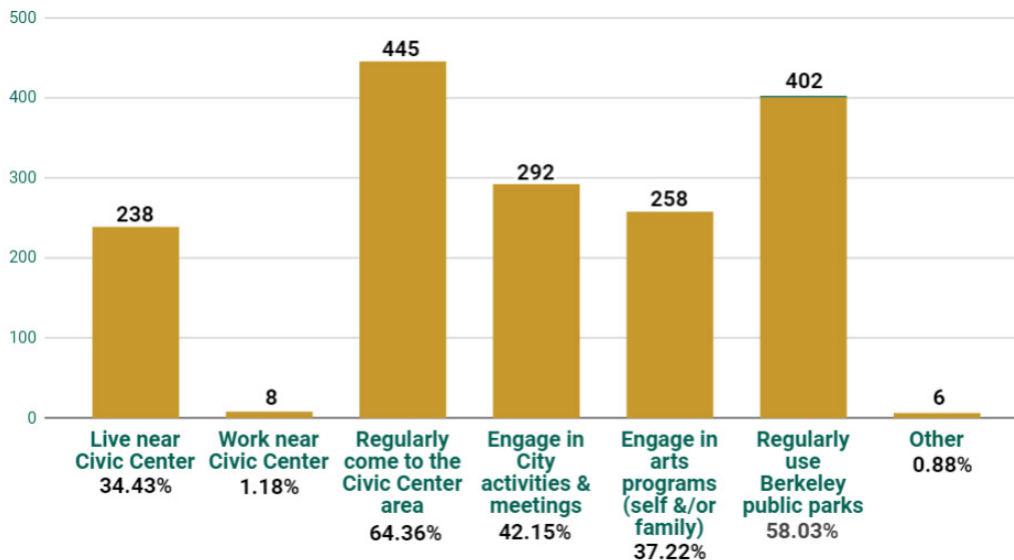
To address this missing age group, additional engagement events were held at Berkeley High School and at Berkeley Community College on February 15, 2023.

32 additional youth participants were shown preliminary design concepts and asked similar questions to the Open House participants about the parks and streets. Students were also given the opportunity to provide open-ended feedback on the design - what they liked, what they would change.

In most cases, their responses aligned with the commentary heard during the Open House and Online Survey - with some notable differences. Highlights from their responses are noted throughout the Engagement Results on the following pages.

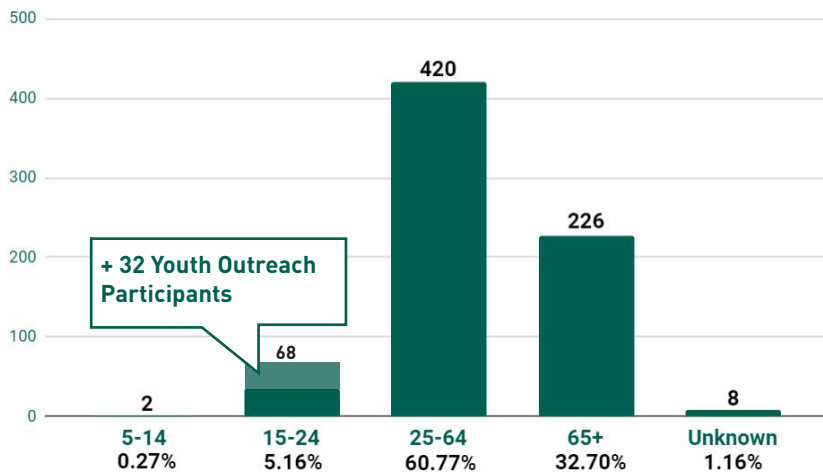
What is your relationship to MLK Jr. Civic Center Park?

Amounts are shown as a percentage of total respondents, respondents were allowed to choose more than one answer.



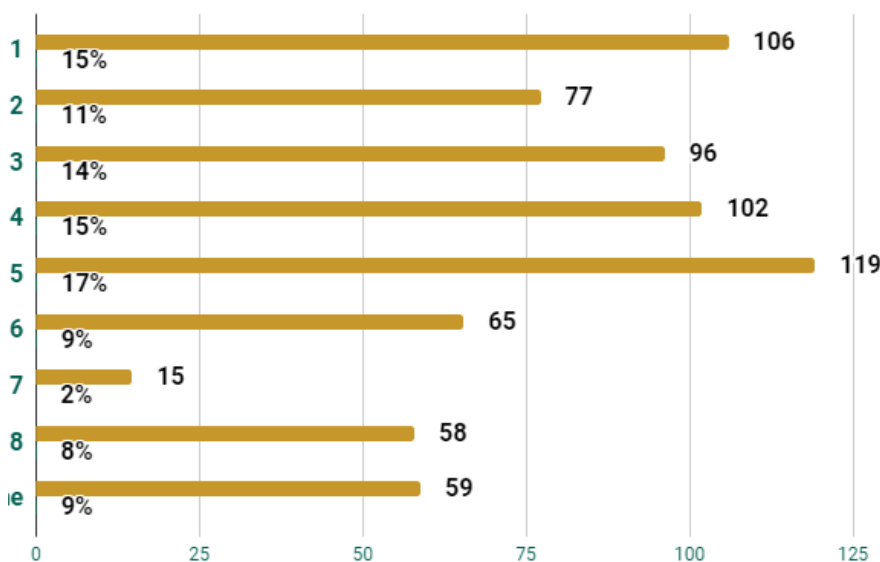
How old are you?

Amounts are shown as a percentage of 692 total respondents.



What City Council district do you live in?

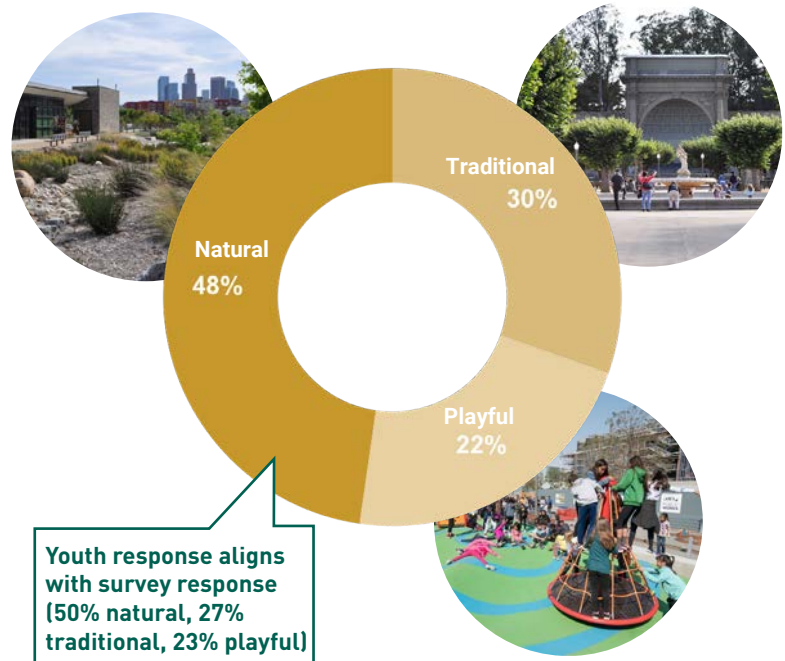
Amounts are shown as a percentage of 697 total respondents.



Martin Luther King Jr Civic Center Park

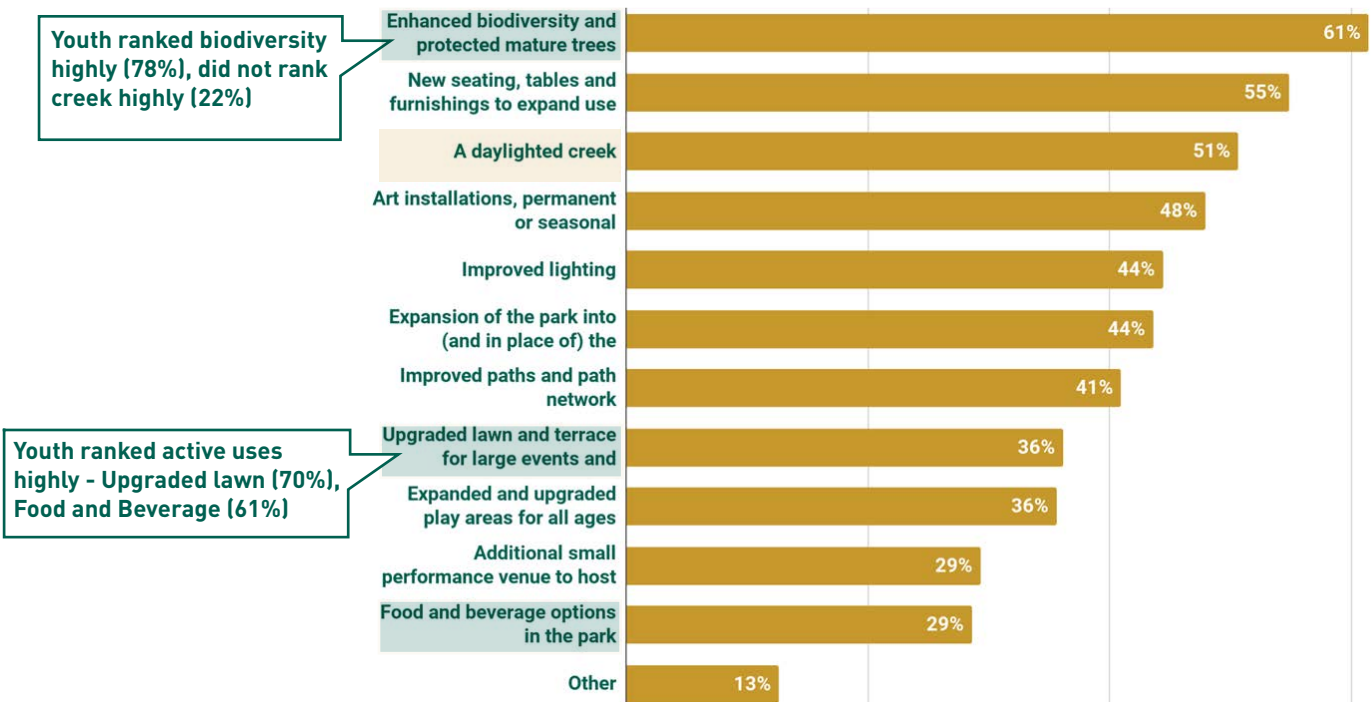
What character would you like to see in the park?

Amounts are shown as a percentage of 692 total respondents.



What uses would you like to see in prioritized in the park?

Amounts are shown as a percentage of 683 total respondents.



Anything else you want to share with us about MLK Jr. Civic Center Park?

Online Survey: 290 write-in responses

What, in your opinion, should the park be designed for?

Online Survey: 453 write-in responses



Write-In Response Emerging Themes

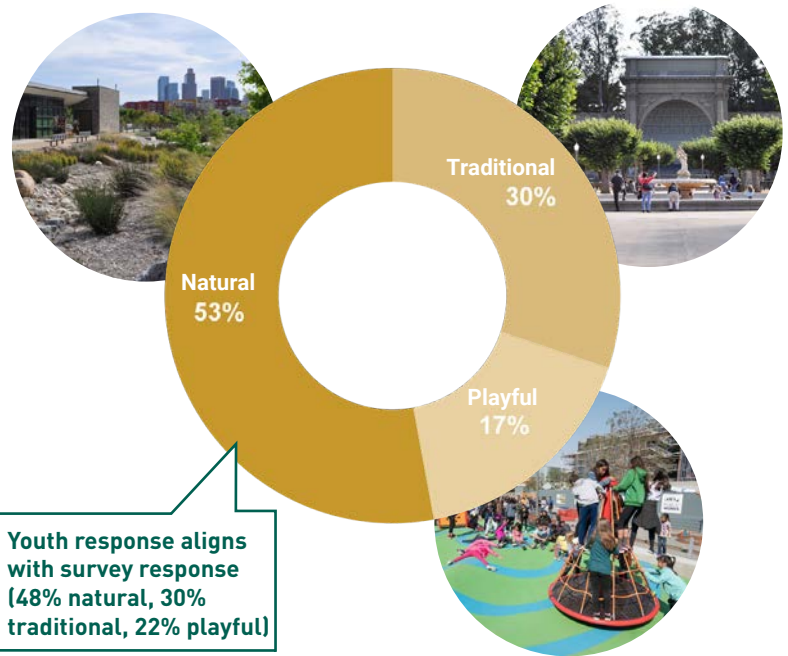
- 1 There are significant safety concerns about the presence of the unhoused population.
- 2 There's a desire for a mix of programs and spaces to invite a range of people to use the park.
- 3 People want to bring more nature to the park by promoting biodiversity and daylighting Strawberry Creek.
- 4 People want to see spaces for families & kids.
- 5 People want clean, safe, and well-maintained restrooms.

Youth also noted current safety concerns at park.

Surrounding Streets

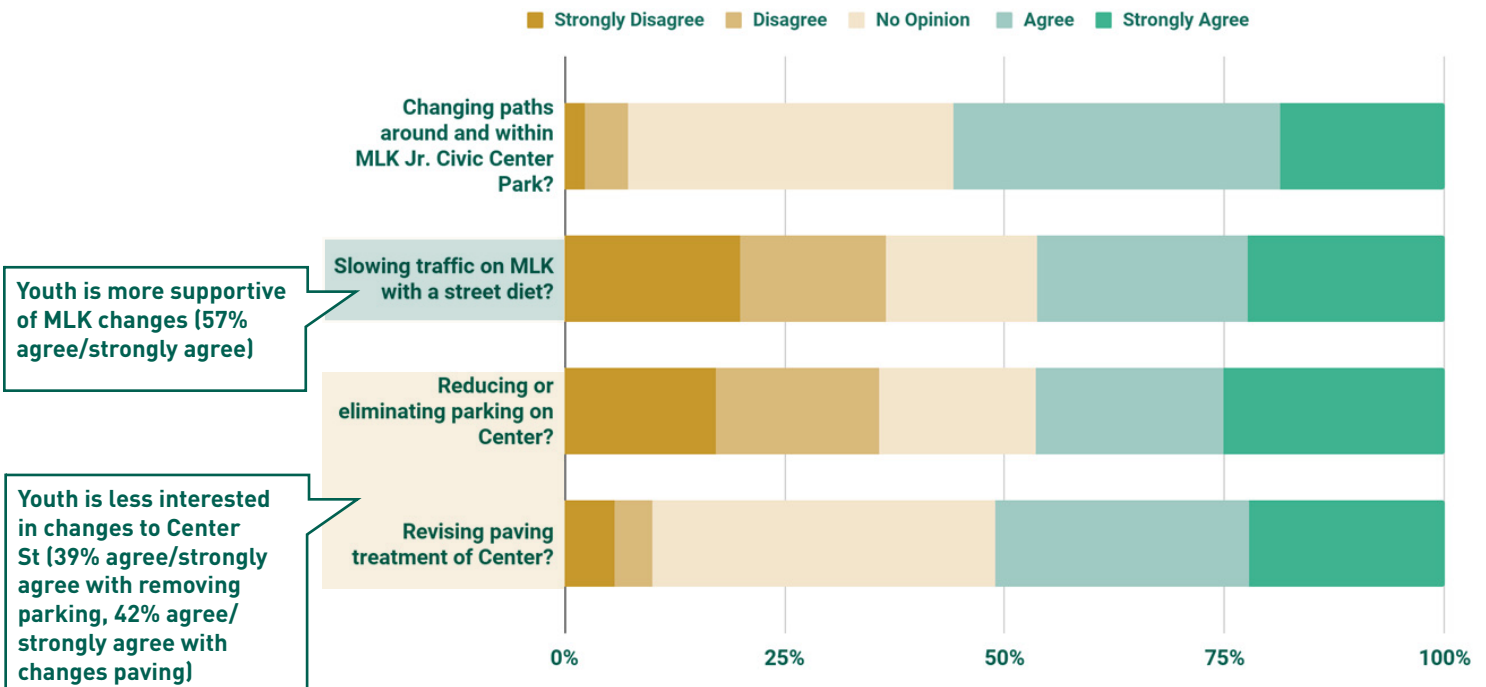
What character would you like to see in the surrounding streets?

Amounts are shown as a percentage of 665 total respondents.



How do you feel about the following design approaches to improve pedestrian safety and calm traffic around the park?

Amounts are shown as a percentage of 647 total respondents.



Anything else you want to share with us about the streets around MLK Jr. Civic Center Park?

Online Survey: 274 write-in responses



Write-In Response Emerging Themes

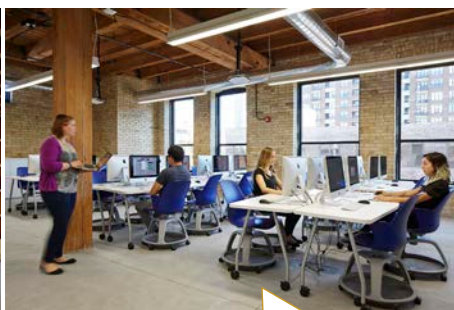
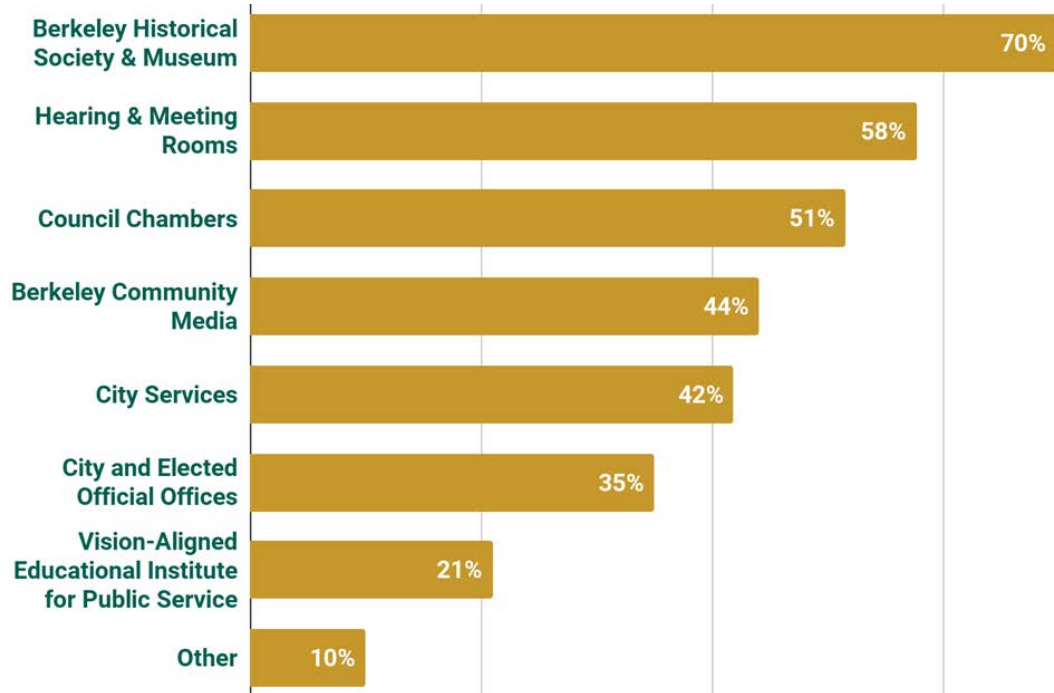
- 1 There are divergent opinions on traffic mitigation on MLK, however, the majority of comments are not in favor of a road diet.
- 2 People want to see pedestrians and cyclists prioritized on Center Street and Allston Street.
- 3 People want to ensure dropoff and pickup needs are met around Berkeley High School.
- 4 There are concerns about parking being removed.

Youth noted concerns related to dropoff and parking near BHS

Building Uses

Which proposed use are you most excited about for the Maudelle Shirek Building?

Amounts are shown as a percentage of 564 total respondents.



"Having a go to location to vote on election day and all related Berkeley city services."

BHS students noted interest in internship opportunities (BCM, Public Policy Institute)

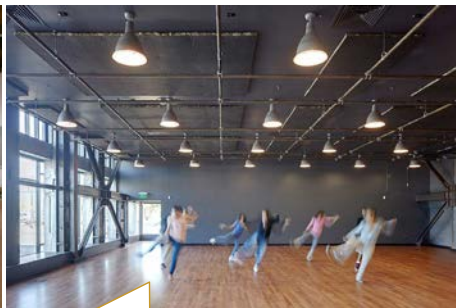
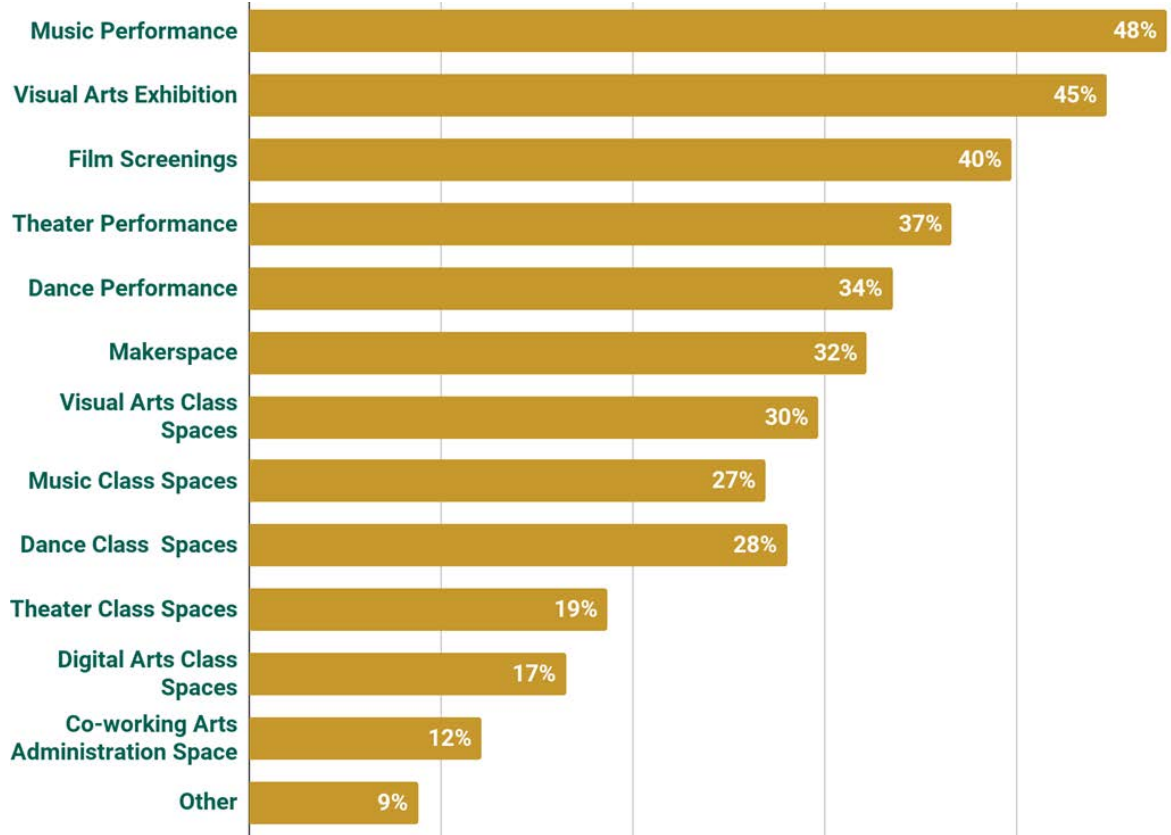
"Active use of meeting rooms for organizing events and activism, attending City Council meetings and public meetings."

"Perhaps some sort of partnership with UC to bring new energy and researchers to the building?"

"With the co-location of the Historical Society, Vision Institute, and Community Media, the community will have better access to these resources."

What types of programs do you think the community needs most at a new Arts Center in the Veterans Memorial Building?

Amounts are shown as a percentage of 546 total respondents.



'Film screenings and music performances!'

There's a shortage of arts class spaces, and I think this would be a great thing for the community."

BCC students noted interest in using the space for art classes, performances

"Love the idea of a true dance/music/arts center integrated into a revitalized & restored park."

"I think it needs to appear more open, accessible, inviting and welcoming...signage and a well-designed entrance foyer."

Focused Engagement

In addition to the general public, and with input from the project's City Steering Team, the design team identified City departments, park users, neighbors, and affiliated organizations who could provide detailed input on the design concept.

The design team shared drawings, diagrams, photographs, and precedent images of the park and buildings at these meetings and asked specific questions aimed at gathering insights from those most familiar with the area and its current condition.

The groups ranged from current tenants like the Berkeley Historical Society & Museum and The Ecology Center to discuss specific space needs, to the Parks, Recreation and Waterfront Department staff to discuss park maintenance budgets, approaches, and possible community involvement.

The design team met with representatives from some of these groups, such as BUSD and the CCCC, multiple times to solicit specific feedback.

City of Berkeley Staff & Departments

Civic Arts
City Clerk
Elected Officials
Fire Department
Parks, Recreation and Waterfront
Police Department
Public Works Department
Real Estate
Special Events
Transportation
Urban Forester

Neighbors, Users & Affiliated Organizations

Berkeley City College
Berkeley Community Media
Berkeley Commissioners
Berkeley Historical Society & Museum
Berkeley Unified School District
Community for a Cultural Civic Center (CCCC)
Creek Daylighting Advocates
Ecology Center
Potential Educational Partners
Skate XP

Farmers Market
2000 vtrs/wk
60 Vendors



Berkeley Historical Society & Museum



Berkeley Community Media
60 City Broadcasts / year

Council, Commissions, Committee Meetings
350+ / year



Special Events
16+ / year pre-pandemic



Berkeley Civic Center User Groups

Community Engagement - Engagement Summary

Arts Organization Engagement

As part of this effort and with assistance from the design team, the Civic Arts Division of Economic Development devised and released a survey to the recipients of City Civic Arts grants in January 2023. A focus group work session was held in February 2023 to discuss transforming the Veterans Memorial Building into a Berkeley Community Arts Center.

79 Arts Organizations and Cultural Producers

responded to questions related to their current space use, space needs, and desire to be located in the Civic Center area through the online survey.

16 participants from a wide-range of organization sizes, representing the disciplines of theater, dance, music, visual arts, and literary arts, attended the focus group to identify priority space needs in the Veterans Memorial Building for a Community Arts Center and to give input on the development of a spatial program.

Strong interest and demonstrated need for a Community Arts Center

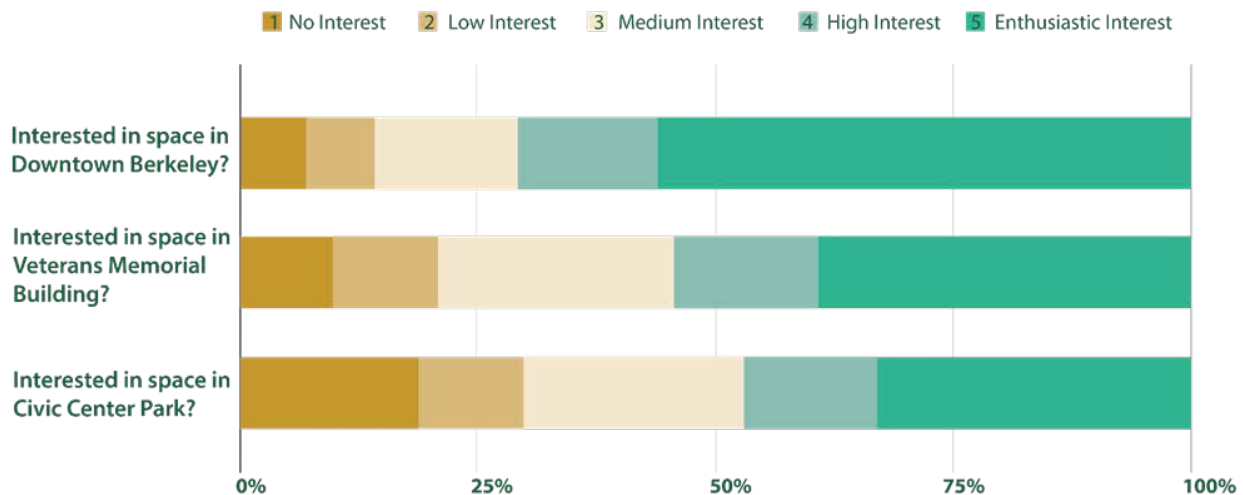
Survey responses demonstrate that Berkeley-based arts organizations have a need for spaces for performances, classes, workshops, exhibitions and other public programs:

43% Respondents do not have a facility for their public programming. They operate out of a home office or an administrative office and rent venues as needed for public programming.

66% Respondents rent space for their programming. This includes organizations that do not have a facility, and those that have a facility but need additional space on an occasional basis.

46% Respondents produce public programs for smaller audience sizes (250 people or less) indicating a good fit for the various public spaces in the Veterans Memorial Building.

Veterans Memorial Building’s downtown, central location near the arts district and transit is very appealing to arts groups.



Arts Survey Respondents



22
Dance
Orgs

33
Music
Orgs



27
Theater
Orgs

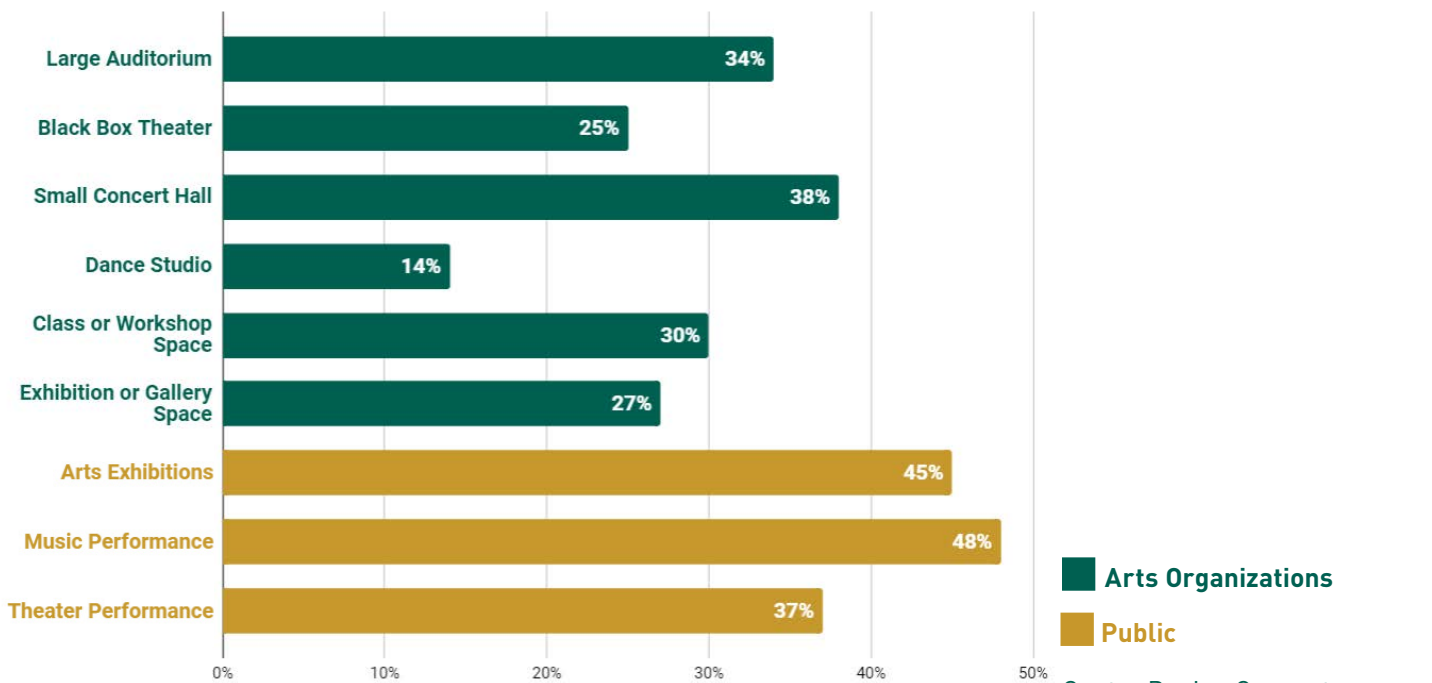


27
Visual
Arts
Orgs



30
Arts
Education
Orgs

Arts organizations are interested in multiple types of public program space in a renovated Veterans Memorial Building:



2.3

Key Design Drivers

The design team received feedback during the outreach and engagement events in a number of forms - written responses to directed and open-ended survey questions, verbal feedback, and additional feedback sent via email to the Civic Center email address. The outcome of the engagement effort was integrated into **9 key design drivers** to guide the design concept.

Overall, the community's responses during this phase reinforced the 2020 Vision Statement:

- Civic Center will be the heart of Berkeley's community.
- Civic Center will be the prime space for civic life, culture, and the arts.
- It will reflect the city's diverse identities, celebrating its history and contributing to shaping its future.
- It is a place of shared resources and a platform for free expression accessible to all.
- The Civic Center aims to manifest the city's values, advance social justice, and demonstrate the power of true public space.

Slower and Safer Streets

Anything else you want to share with us?

Answer: I would make center street part of the park - and use addition for traffic currently using center. The safest street has no cars 😊

Age: 5-14 25-64 15-24 65+

Relation to Place: Live near the Civic Center Regularly come to the Civic Center area Other:

Civic Center Design Concept | Open House | Wednesday, November 16, 2022 | City of Berkeley

MLK Jr. Civic Center Park

Anything else you want to share with us?

Answer: YES! ELIMINATE REDUNDANT PERIMETER PATHS - JUST MORE GREEN, LESS PAVING - HIDDEN ELECTRICAL/ ONE! INFRASTRUCTURE THROUGHOUT @ SYCAMORE. SOUND INSTALLATION @ FOUNTAIN - BIRDSONG

• ADD BETTER PATH LIGHTING THROUGHOUT - ACTIVATE PARK MORE HOURS! MISSING OPPORTUNITY CURRENTLY

High School MAIN EATE ADD WALKWAY BTWN PARKS

Age: 5-14 25-64 15-24 65+

Relation to Place: Live near the Civic Center Regularly come to the Civic Center area Use Berkeley Park

Civic Center Design Concept | Open House | Wednesday, November 16, 2022

Maudelle Shirek Building

Anything else you want to share with us?

Answer: IMO - super critical to have council chamber in M. Shirek Bldg - It is the most "memorable" structure on the park - and should be crest of Gov. I would also prioritize making it useful (at sale, etc) over perfect historic restoration

Age: 5-14 25-64 15-24 65+

Relation to Place: Live near the Civic Center Regularly come to the Civic Center area Engage in City activities & meetings

Civic Center Design Concept | Open House | Wednesday, November 16, 2022 | City of Berkeley

1

The Civic Center Park and buildings should be a place to gather as a community.

Parks should bring people together

Relaxing at performances, listening to music

Inviting public space for gathering & enjoyment

“

Informal and formal gatherings of people of all ages. A safe place to be in community together.”



300 +
Written comments related to community gathering

2 MLK Jr Civic Center Park should be natural in character, preserving mature trees and enhancing native biodiversity.

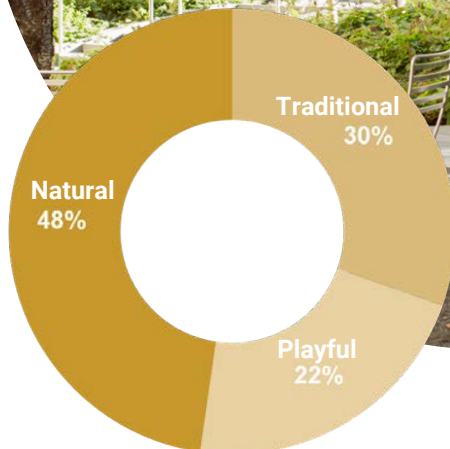
Return nature in the urban setting

The park should be a place for relaxing with nature

Amplify nature and art because that's what Berkeley is basically about.

“

As our city is becoming increasingly developed, the park should present a peaceful, calming, safe space where people can be in nature.”



61% of respondents prioritized biodiversity and protecting mature trees

3 The Park and open space should offer a safe, clean, and comfortable place to be outdoors with others.



The focus should be in day-to-day use with events being an important secondary use. Keep the park safe and accessible.

55%

of respondents prioritized new seating, tables and furnishing

Sitting & relaxing

Playing & recreating

Strolling/Walking

48%

of respondents prioritized art installations

44%

of respondents prioritized improved lighting



4 Many are passionate about daylighting Strawberry Creek while others raised concerns.



51%
of respondents
prioritized
daylighting
Strawberry
Creek

“Costs of daylighting need to be weighed against other park improvements.”

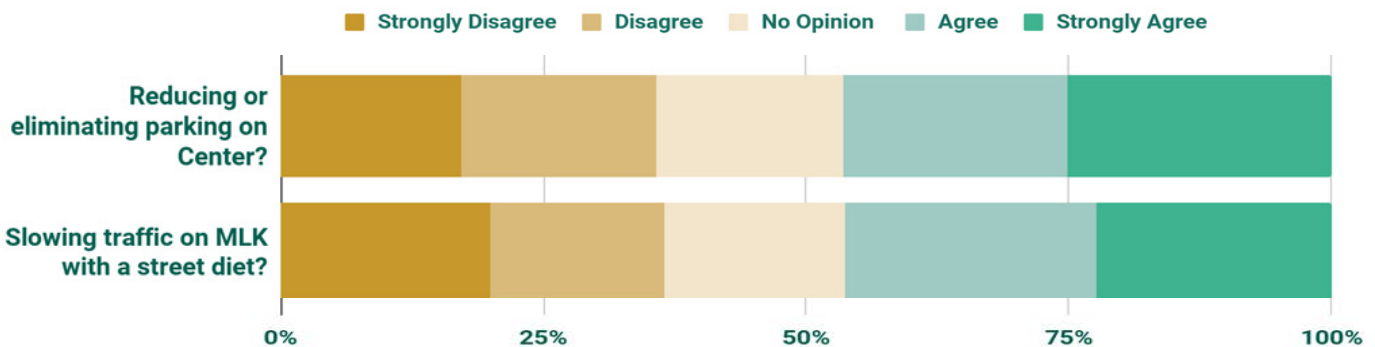
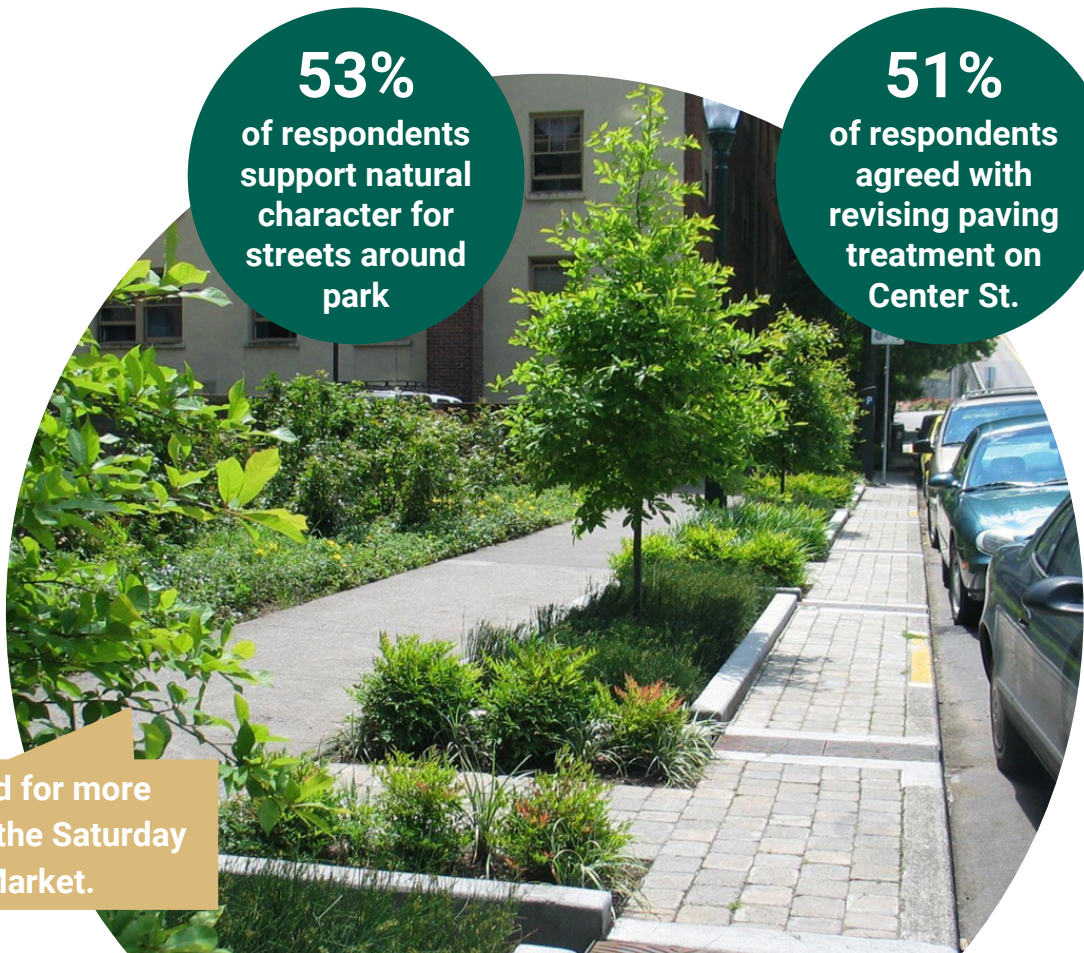
Too expensive / infeasible, hard to maintain.

A perfect opportunity to restore native plants and biodiversity, and to daylight Strawberry Creek

“Daylighting Strawberry Creek and restoring native vegetation can be a wonderful anchor to this vision.”

5

Center Street should be better integrated into the Park and open space experience.



6 The Maudelle Shirek Building should be the seat of Berkeley's democracy, with meeting and public-serving spaces supporting civic participation in City government.

58%
of respondents support community hearing & mtg rooms at MSB

51%
of respondents support Council Chambers at MSB



Promote access and use by all by making the building as inviting, interactive, and safe as possible.

A one stop shop for the general public.

7 The civic uses in the Maudelle Shirek Building should be paired with vision-aligned services and educational functions.

...center for education, inspiration, and action. Celebrate Berkeley's activist history!

70%
of respondents support Berkeley Historical Society & Museum at MSB

44%
of respondents support Berkeley Community Media at MSB

..a hub for BCM's important educational and public service work.

8 The Veterans Memorial Building should be a Community Arts Center for creative expression and accessible to all.

72%
of arts survey
respondents
showed high
interest in space
downtown



It would fantastic to have a community, municipal arts space in downtown.

9

The Community Arts Center should be activated all day every day, hosting arts organizations and practitioners across all disciplines, delivering performances and programming for the community.



Generate lots of activity in the building day and night!

Proximity to BHS, BCC supports partnerships and youth engagement



Vision



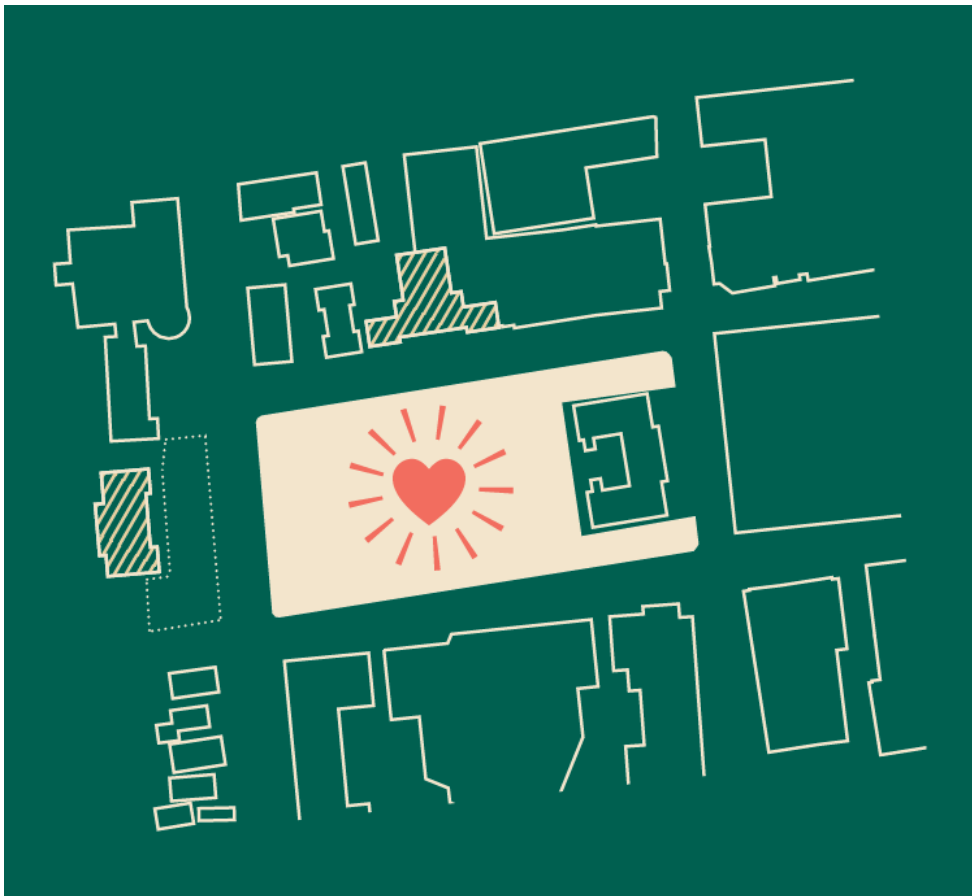
Vision

3.1 Vision Statement

3.1

Vision Statement for Berkeley's Civic Center

Reaffirmed in 2022-23 public engagement process.



Civic Center will be the heart of Berkeley's community. Civic Center will be the prime space for civic life, culture, and the arts. It will reflect the city's diverse identities, celebrating its history and contributing to shaping its future. A place of shared resources and a platform for free expression accessible to all, the Civic Center aims to manifest the city's values, advance social justice, and demonstrate the power of true public space.



Design Considerations

4.1 Opportunities

4.2 Programs & Uses

4.1

Opportunities

A Historic Asset

The Maudelle Shirek Building, Veterans Memorial Building, and Civic Center Park are contributing structures to the Berkeley Civic Center Historic District which is recognized both locally and nationally. Together they have served and are serving the community as gathering places, the seat of democracy, and settings for art and artistic expressions. They maintain much of their historic fabric, and present to the City an opportunity to reestablish the area as the heart of Berkeley's civic life.

A City Campus

This one block area of downtown contains seven structures owned or operated by the City of Berkeley. Densifying city uses in this area will further strengthen the city campus and provide flexibility for future growth and changing needs.

A Guiding Vision

With the adopted vision statement as the north star for the project, four points on a compass emerge from the engagement efforts and design thinking which are representative of Berkeley's culture and collective values:

Community

an inclusive and caring community

The Arts

expressive artistic and cultural events and pieces

Governance

good governance demonstrated through progressive policies

Education

powerful education tied directly to history and nature



"It is beautiful and should be invested in now, to preserve what we have and make it publicly usable again. Don't let it further deteriorate."

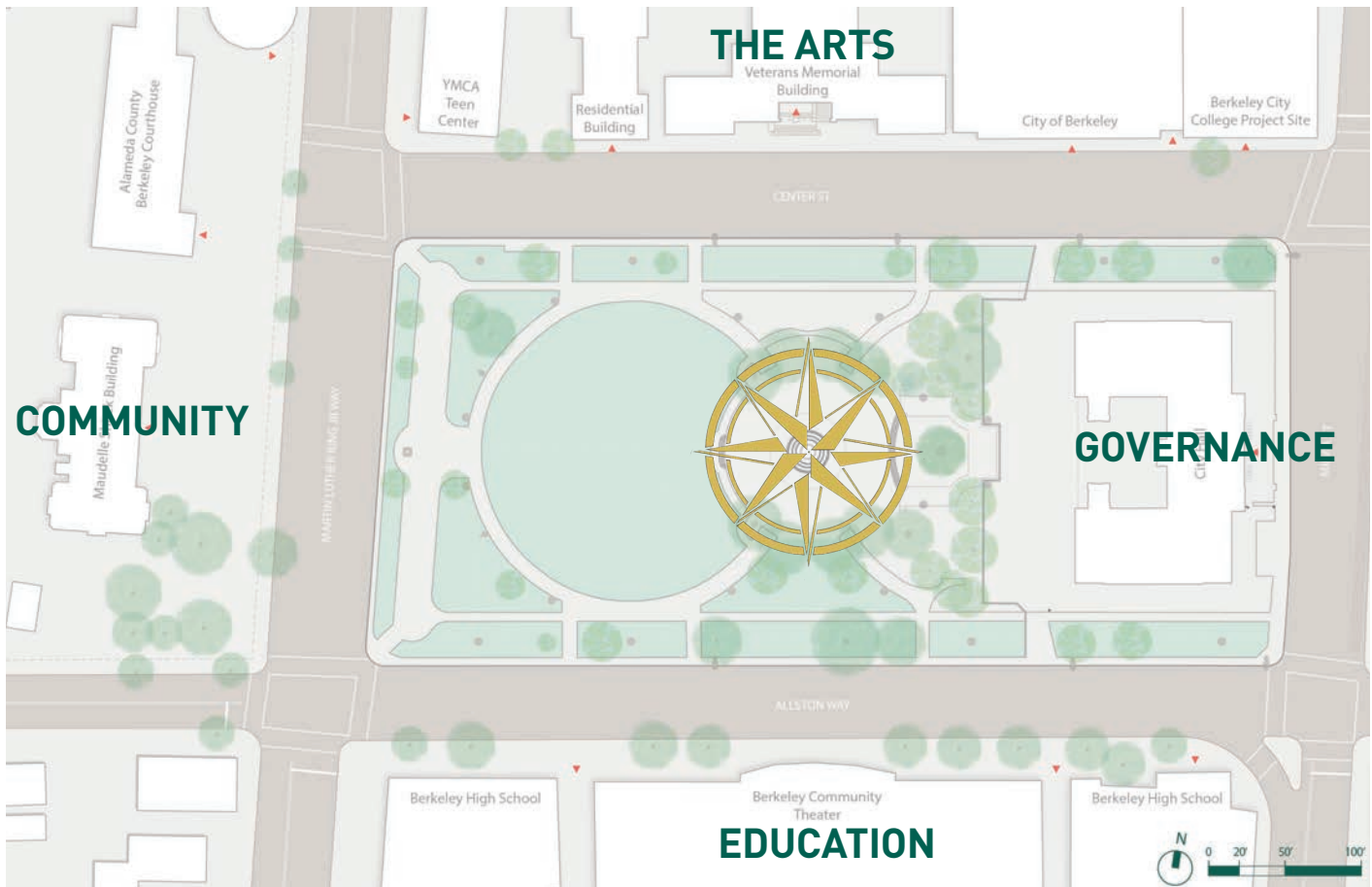
"It is a historical architectural treasure that needs our love and funding!"

"It is beautiful, and an asset to the city."



Maudelle Shirek Building Entry

Veterans Memorial Building Ceiling



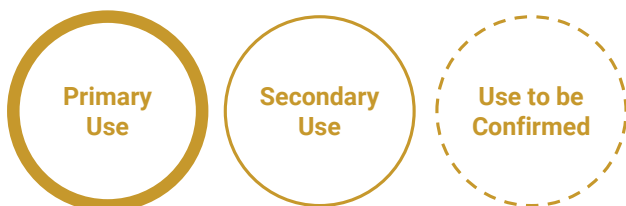
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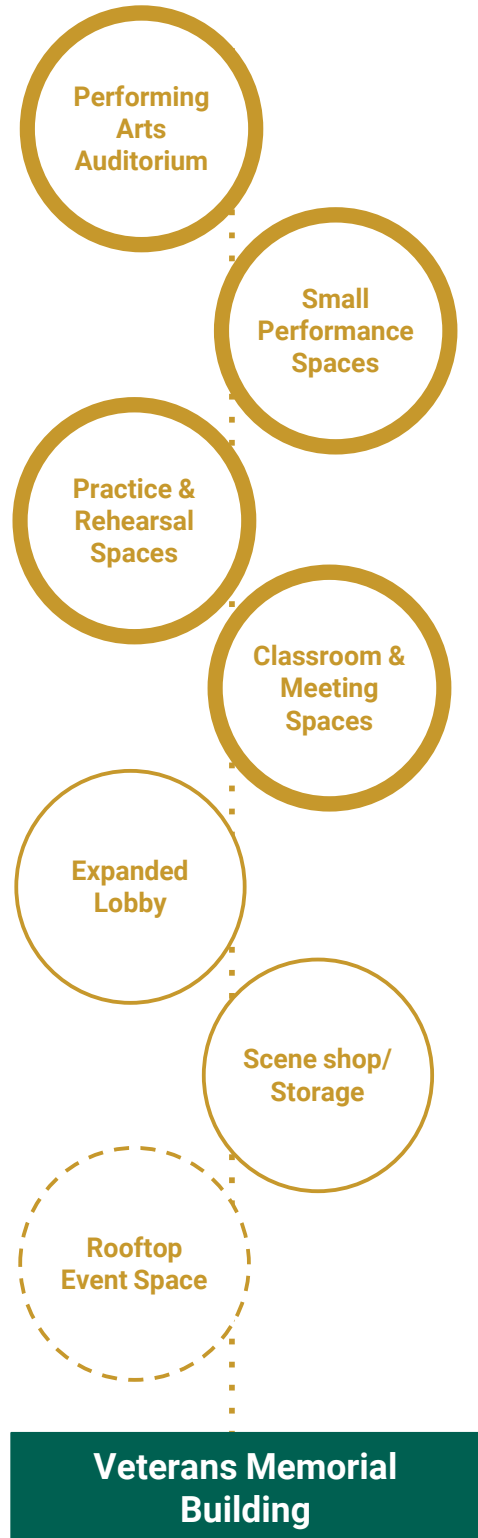
Programs & Uses

Parameters for Prioritizing Uses

Through the public outreach effort, many programs and uses were proposed and discussed for the Civic Center Park, Maudelle Shirek Building, and Veterans Memorial building. In order to prioritize those uses in the available space, the design team considered three additional parameters:

- **Vision Aligned** - Strengthen community; support civic life, culture and the arts; reflect diverse identities; celebrate Berkeley’s history; and manifest the city’s values.
- **Use Aligned** - Complement co-located uses based on space type needs, access and security requirements, and time of use to activate the area 24/7.
- **Funding** - Draw on sources of outside funding to bring investment to the restoration and enhancement of this historic district.





Civic Center Park

PARK ELEMENTS	NOTES
Civic Gathering Space Large Green	Utilized for civic events, festivals
Turtle Island Monument	Separate project under Civic Arts and Park, Recreation and Waterfront Department
Performance Spaces Large Performance Venue Small Performance Venue(s)	Co-located with civic gathering Identify multiple small performance spaces
Neighborhood Park Functions Seating for individuals and groups Play Areas Skate Spot	Multi-age, natural in character Multi-use plaza w/ skatable elements
Natural Habitat Native plants Historic/Mature Trees	Pollinators and habitat builders Protect existing tree canopy, develop tree succession plan
Food & Beverage Leasable space for vendors Cafe seating	For high school and city college students, people who live & work in area
Farmers Market Stalls, Food Trucks, Fresh Produce, Prepared Food, Crafts	Center Street, expansion into park
Daylit Creek	Partial-flow most likely, needs further study



Civic Center Park



Entrance to fountain terrace from green



Existing Skate spot along MLK Jr Way



Large central green

Maudelle Shirek Building

USE	NOTES
<p>Hearing Rooms - 9,600 SF Large Multi-purpose meeting room/ Council Chambers Conference Room Historic Hearing Room New Hearing Room Support Spaces</p>	<p>Seats 200-300</p> <p>Can be used for closed sessions Historic Council Chambers, seats 70 Seats 120</p>
<p>Meeting Rooms - 2,165 SF Small Meeting Rooms Large Meeting Rooms</p>	<p>Seat 10-20 Seat 20-30</p>
<p>Flexible Work Spaces - 3,375 SF Reception Area/Service Counter Private & Open offices Conference Rooms Print, Storage & Support Break Room/Kitchenette</p>	
<p>Berkeley Historical Society & Museum - 8,000 SF Permanent & Temporary Exhibit Offices, Research Room, Meeting Rooms Exhibit Preparation Room Archival Storage Bookstore/Gift Shop</p>	<p>3500 SF, may be located off-site</p>
<p>Berkeley Community Media - 5,500 SF Broadcast, Podcast & Green Cove Studios Offices, Editing Suites Lounge/Classroom Kitchenette</p>	
<p>Public Facing City Offices - SF Varies</p>	<p>To be determined, dependent on department</p>
<p>Public Policy Institute - SF Varies Classrooms, Meeting Rooms Offices</p>	<p>To be determined, dependent on program development</p>



Maudelle Shirek Building



Historic Hearing Room Dias



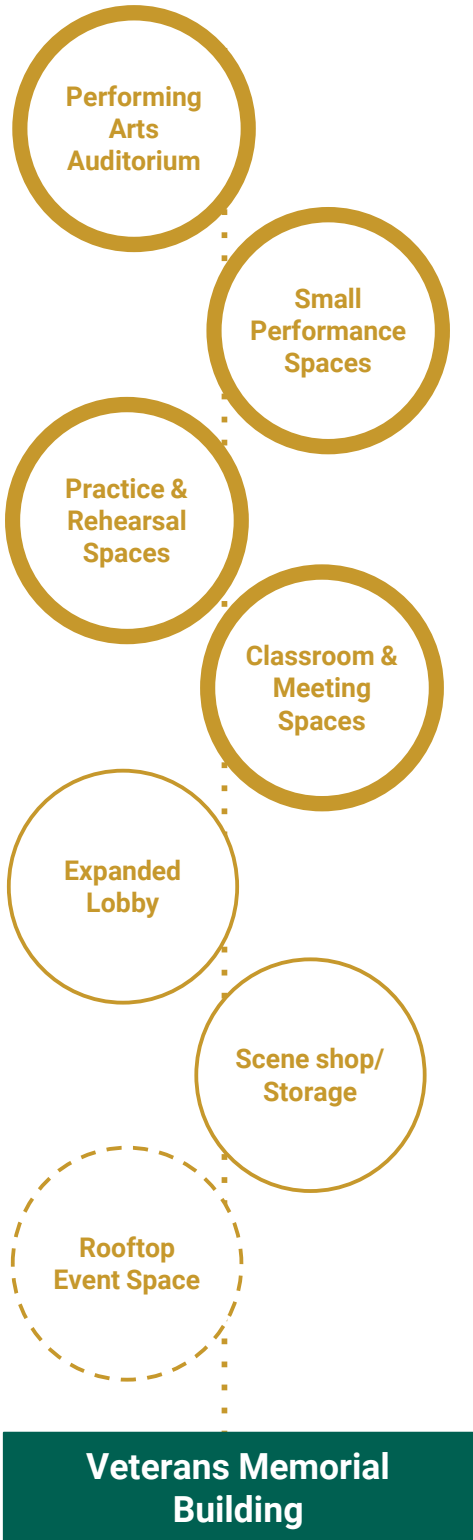
Central Stair at Second Floor



Second Floor Office Space

Veterans Memorial Building

USE	NOTES
Performance Space Large Performance Auditorium Small Performance Rooms Backstage	300-500 seats 100-120 seats Expanded for access to basement
Multi-functional Spaces Rehearsal Spaces Lecture/Conference spaces Classrooms/Workshops	Also function as small performance Could utilize large auditorium
Exhibition Space Visual Arts Exhibition Hall Flexible Arts Exhibition Space	Climate controlled, gallery lighting In public halls, temporary exhibits
Support Spaces Offices Bathrooms Dressing Rooms Storage Stage/Scenery Shop	
Event Space Entry Porch Lobby/Pre-function Space Banquet Area Commercial Kitchen Rooftop Terrace	To be determined



Veterans Memorial Building facade



Large Auditorium



Balcony ceiling



Design Concept

5.1 Preferred Design Concept

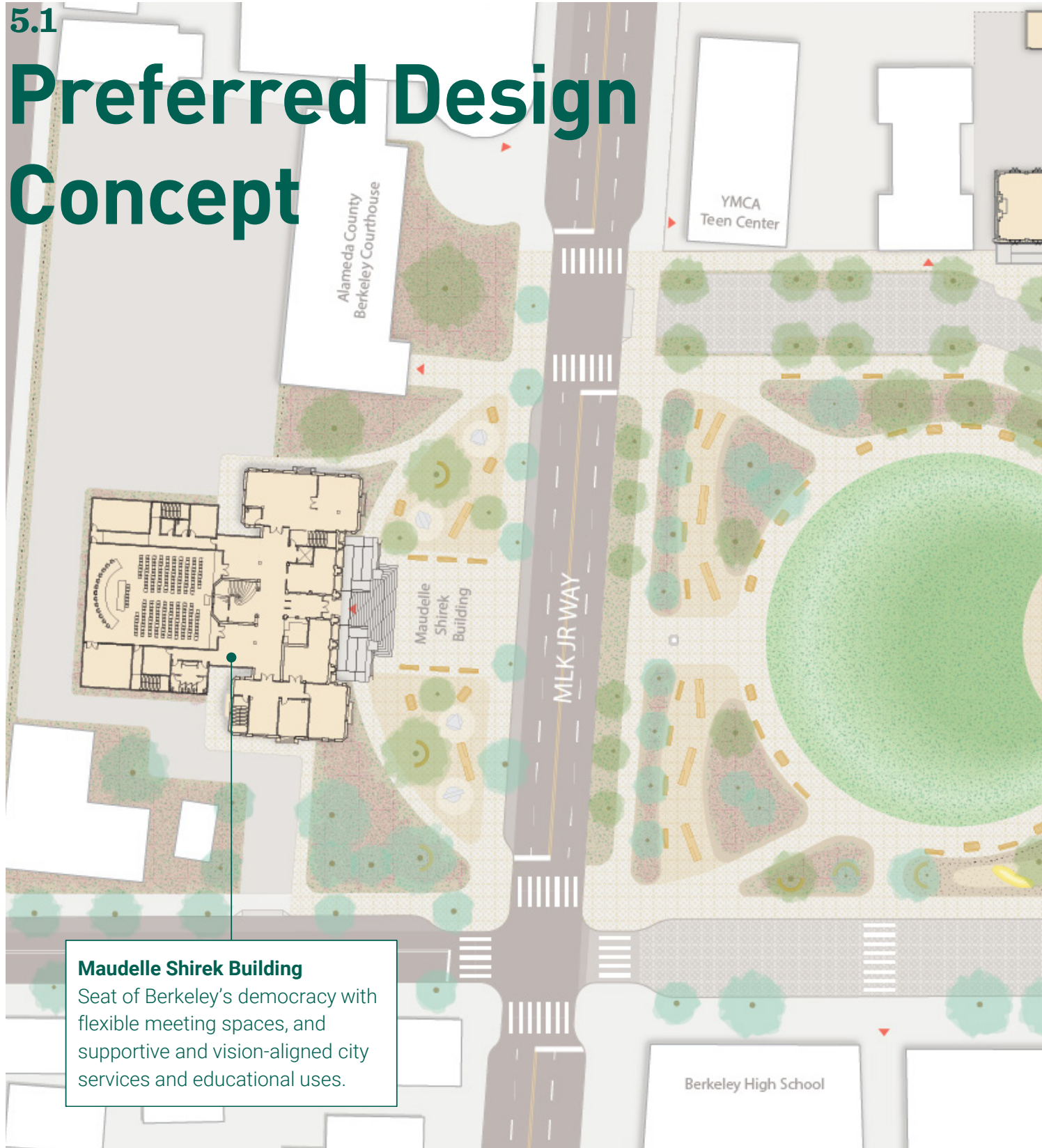
5.2 MLK Jr Civic Center Park & Surrounding Streets

5.3 Maudelle Shirek Building

5.4 Veterans Memorial Building

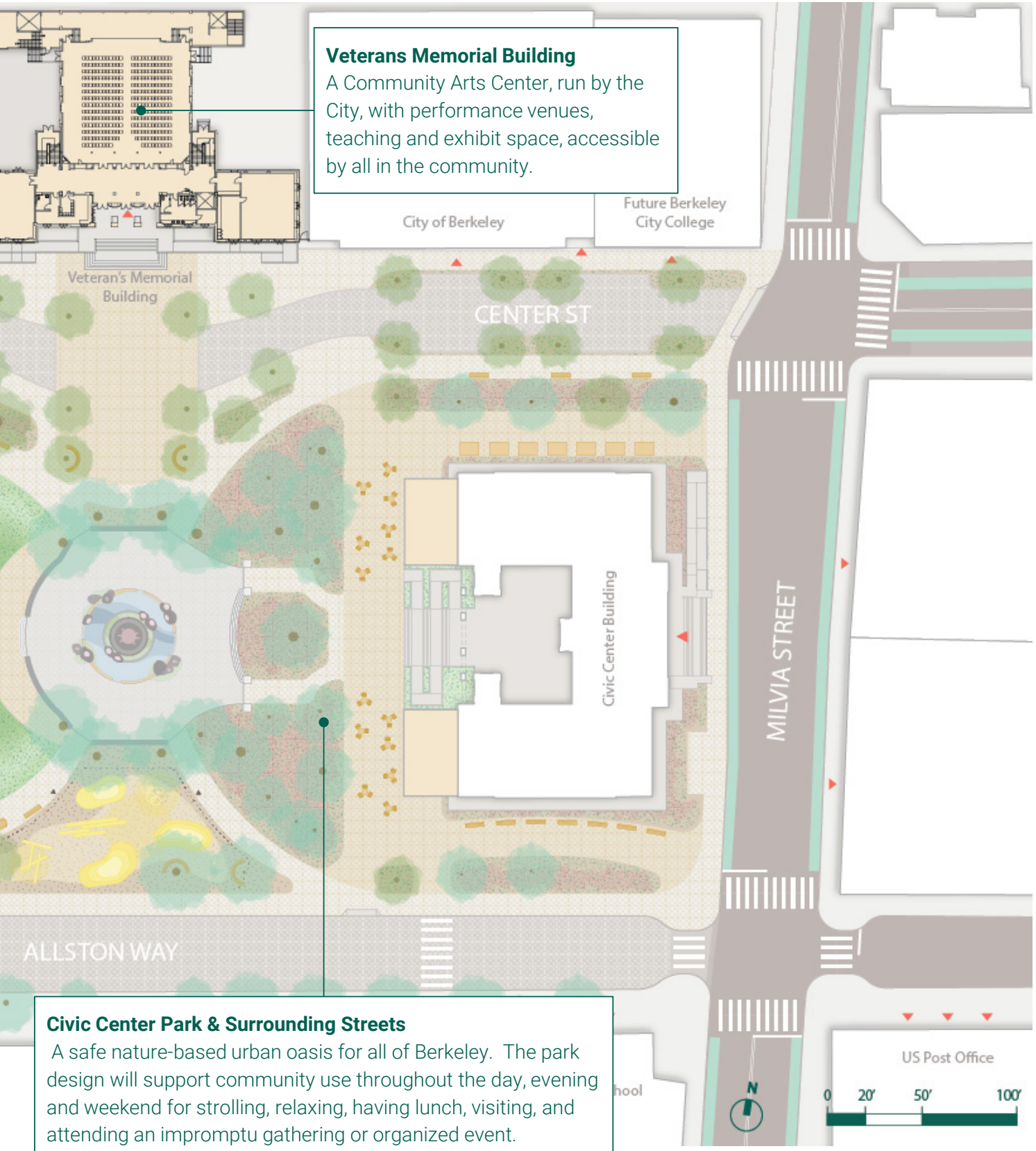
5.1

Preferred Design Concept



Maudelle Shirek Building
Seat of Berkeley's democracy with flexible meeting spaces, and supportive and vision-aligned city services and educational uses.

Note: All drawings are illustrative and conceptual. Further landscape and architectural design is required in future specific design phases.



Veterans Memorial Building
A Community Arts Center, run by the City, with performance venues, teaching and exhibit space, accessible by all in the community.

Civic Center Park & Surrounding Streets
A safe nature-based urban oasis for all of Berkeley. The park design will support community use throughout the day, evening and weekend for strolling, relaxing, having lunch, visiting, and attending an impromptu gathering or organized event.

5.2 MLK Jr Civic Center Park & Surrounding Streets

5.2

Design Goals

MLK Jr Civic Center Park and Surrounding Streets

Civic Center Park has the potential to be an urban oasis for residents and visitors to Berkeley's Downtown, and also provide a central gathering place for civic life - from outdoor performances to political demonstrations.

The design concept for Civic Center Park builds from the existing organization of the park, and layers in new design elements and programs that support the desired everyday vibrancy of the Park. The proposed design concept also simplifies the layout and reclaims underutilized space to accommodate new activity areas where possible.

The design concept is based on six key design goals to be achieved through targeted reconfiguration and refurbishment of the Park.

All of these goals point towards a future for Civic Center Park that the public is asking for: **a place of natural and architectural beauty that provides both calm retreat and invitation to participate in public life**, both through everyday activities and special events.



1

Preserve and build upon Civic Center Park's strengths

2

Improve pedestrian safety and usability of paths

3

Enhance natural features, promote biodiversity and green design

4

Expand invitations for a variety of everyday uses

5

Enhance the potential of the Park to host weekly and special events

6

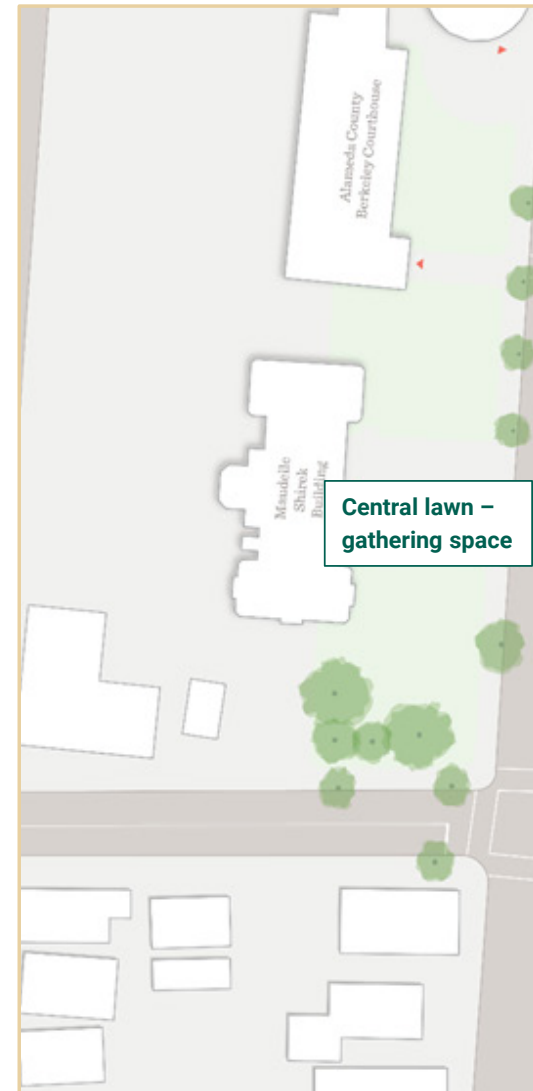
Study feasibility and tradeoffs of daylighting Strawberry Creek

1

Preserve and build upon the strengths of Civic Center

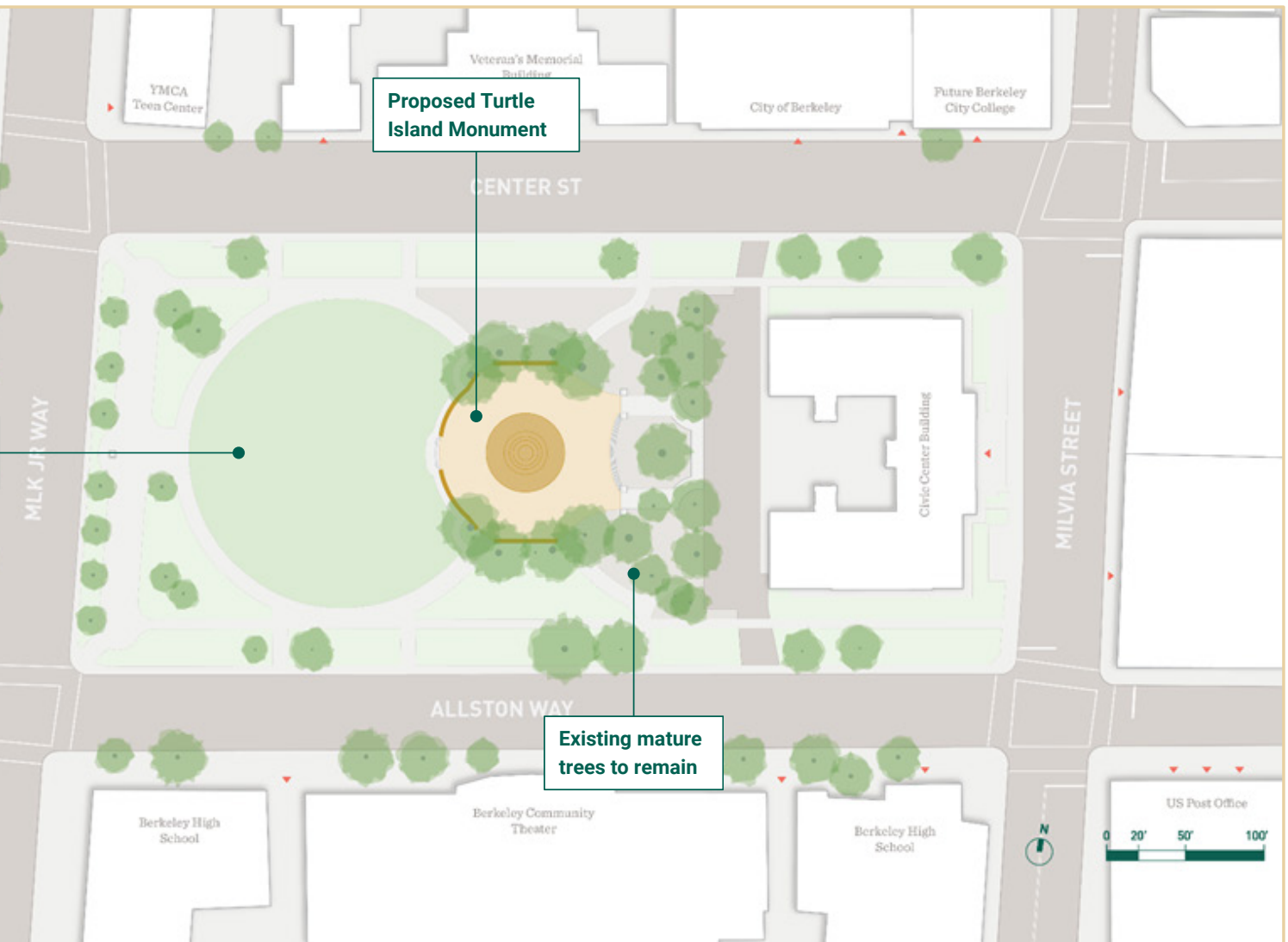
The design process for the Park and surrounding streets began with a thorough analysis of the existing elements in the Park to **determine what needs to remain and what should be improved**. This was also informed by insights into what aspects of the Park were performing well and could be enhanced through public realm upgrades.

This led to a design approach that **maintains the overall structure of the park**, and **preserves existing mature trees, important monuments and memorials, and the main central gathering space - the lawn**. Any upgrades to the Park will also need to be reviewed by the Landmarks Preservation Commission.



Mature Trees, MLK Jr Civic Center Park

Note: All drawings are illustrative and conceptual, further landscape design will be required.



Site Plan with Existing Elements to Remain



Peace Wall and site of future Turtle Island Monument



Central Lawn, MLK Jr Civic Center Park

Learning from feedback on the 2020 Vision Plan

During the 2019/2020 Vision and Implementation Plan effort, multiple alternative design concepts were developed for the park and neighboring buildings, shown on the opposite page. These options varied in levels of intervention and big moves that organized the park.

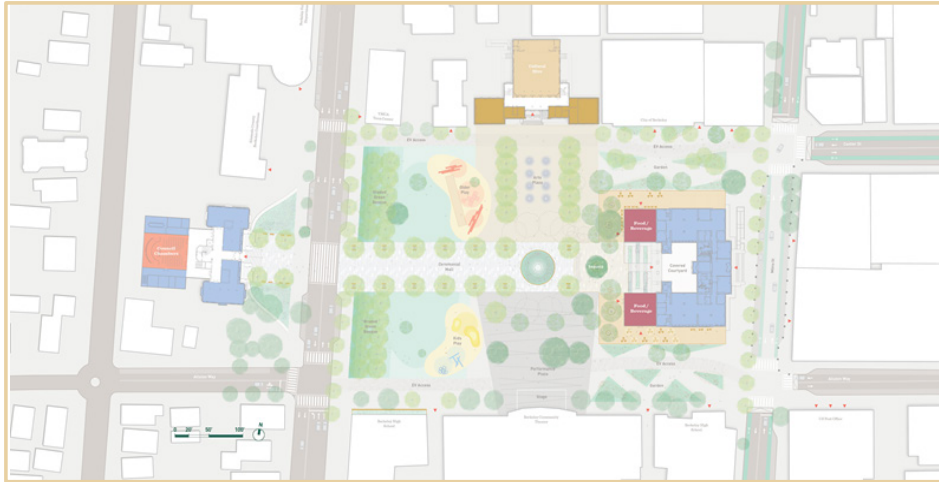
While the overall vision statement was supported and accepted, the recommended design concept was not adopted or instructed to move forward.

For this design concept effort, the design team employed a lighter touch towards the park, seeking a balance between retaining the historic character and key elements with park enhancements for everyday vitality and user experience.

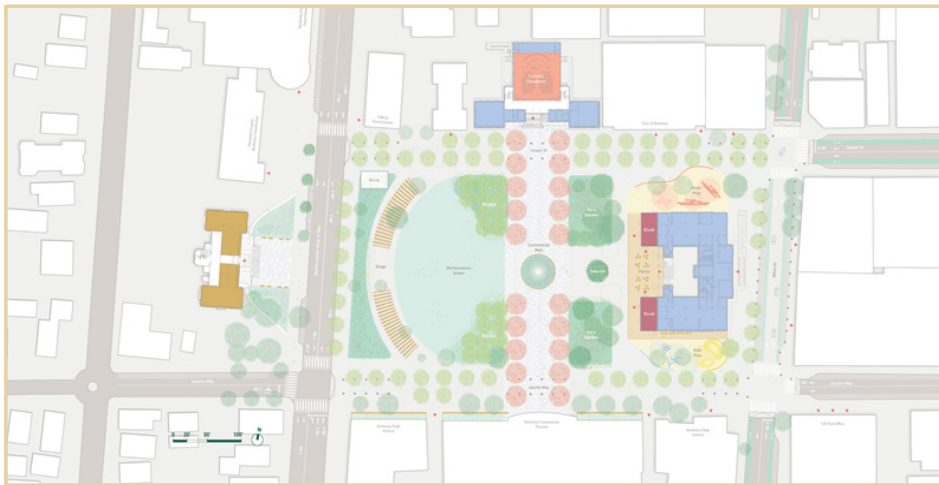
Key guidance from the feedback received during the Vision Plan process was applied to the updated design concept:

- ➔ Avoid introducing too much new hardscaping and retain as much green space and softscape as possible.
- ➔ Avoid removing existing trees if possible, especially mature trees that help create the iconic canopy and support biodiversity
- ➔ Keep Allston Way open for vehicle circulation as a key east-west connection through Berkeley

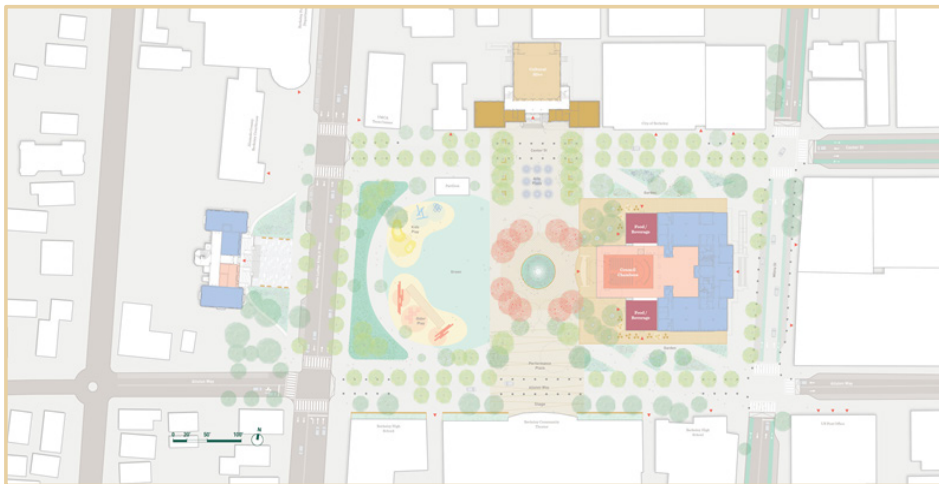
A



B



C

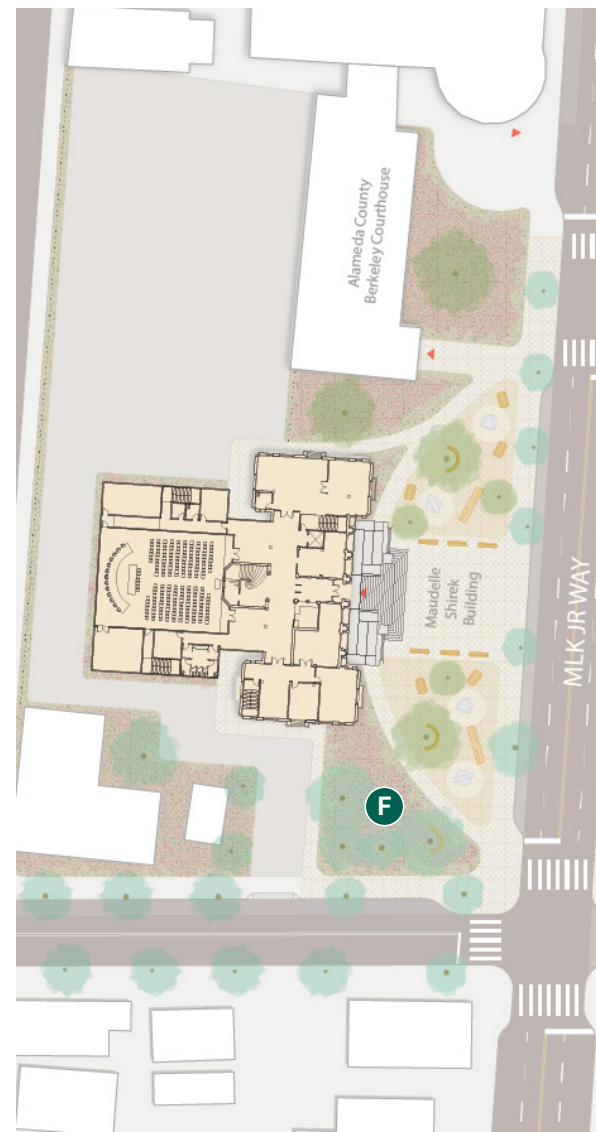


2019/2020 Vision Plan Alternative Site Plans

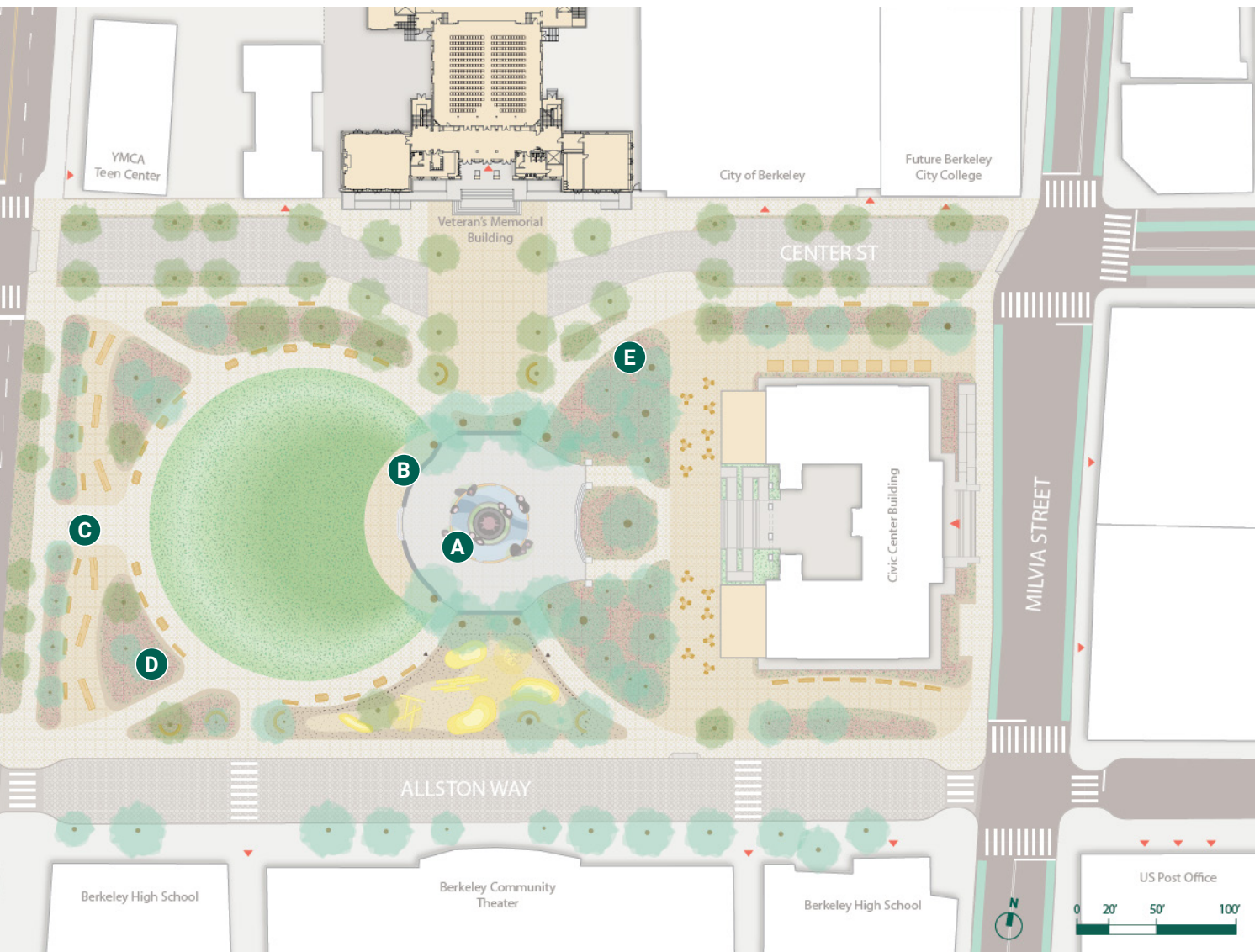
Monuments and Memorials

The emerging design concept proposes keeping the following monuments and memorials in their current locations:

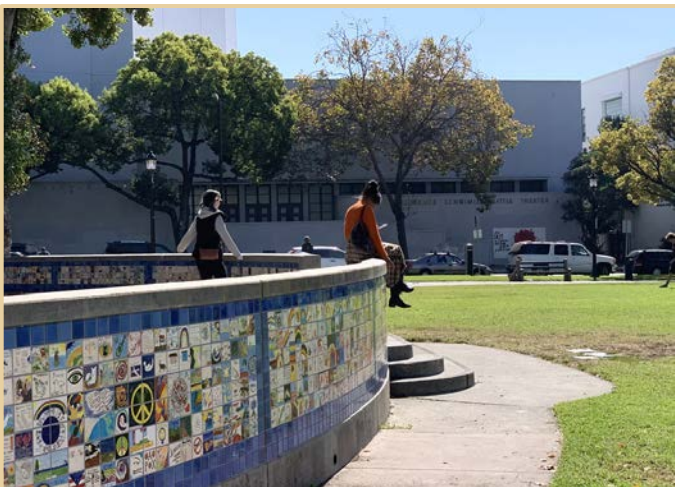
- A Turtle Island Monument**
A proposed indigenous monument that will restore the center of the park and reintroduce water to the fountain.
- B Peace Wall**
Perimeter wall at fountain terrace, with mosaic of individually decorated tiles, rebuilt in 1988.
- C Existing Flag Pole**
One of the first elements of the park. It was relocated to its current position in 2006.
- D Strawberry Tree Memorial**
Two trees and a plaque were placed to honor Irish students who died in a nearby balcony collapse.
- E Peace Marker**
A small marker was placed here as part of the Peace Pole Project, date unknown.
- F Old City Hall Markers**
This area has a few ground marking plaques. A proposed sculpture is also to be installed in this area.



Turtle Island Monument, MLK Jr Civic Center Park (early concept rendering, PGAdesign)



Site Plan with Monuments and Memorials



Peace Wall, MLK Jr Civic Center Park



Flag Pole, MLK Jr Civic Center Park

2 Improve pedestrian safety and usability of paths

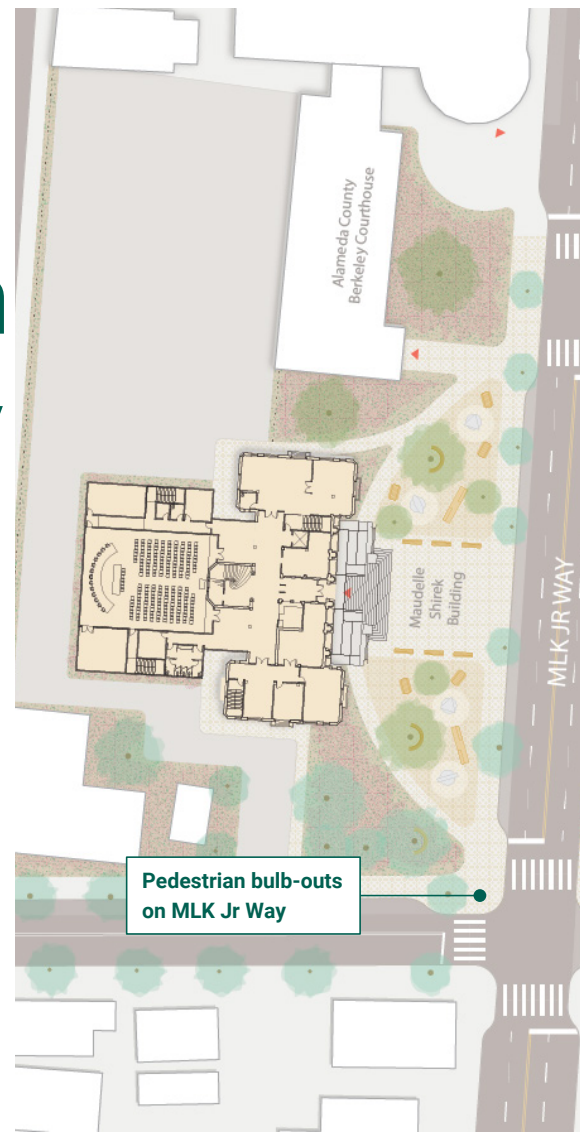
In order to better connect the park to its surrounding context and invite more pedestrian activity, the design concept shows a number of treatments to **increase safety and enhance the pedestrian experience.**

Key elements of these treatments may include:

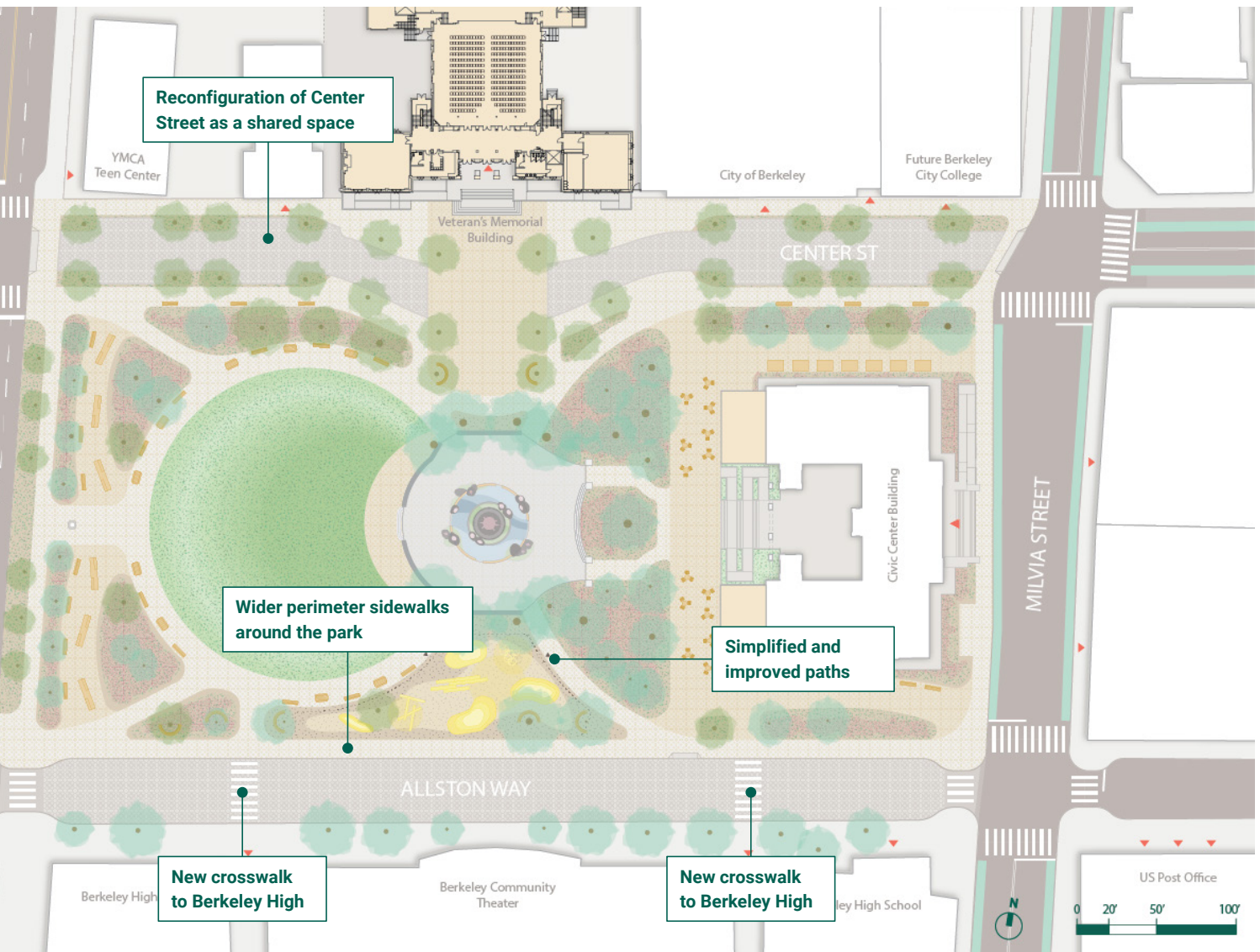
- > **pedestrian bulb-outs at intersections** on MLK Jr Way,
- > **new crosswalks** between Berkeley High School and the Park at Allston Way
- > **a new flush-surface, shared street** on Center Street.

These proposals and other traffic calming approaches, such as raised pedestrian crosswalks or tables on MLK Jr Way at Center and Allston, will be considered in an area-wide traffic study recommended by this report.

Another pivotal change is the **realignment of the park path network, elimination of the secondary interior paths, and widening of the perimeter sidewalks** to allow for a more comfortable walking experience.



 Funnycross, Madrid

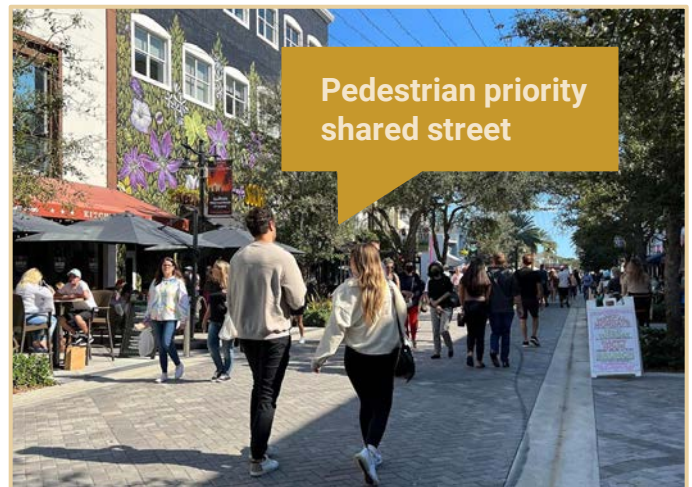


Site Plan with Pedestrian Improvements



Inviting and wider paths

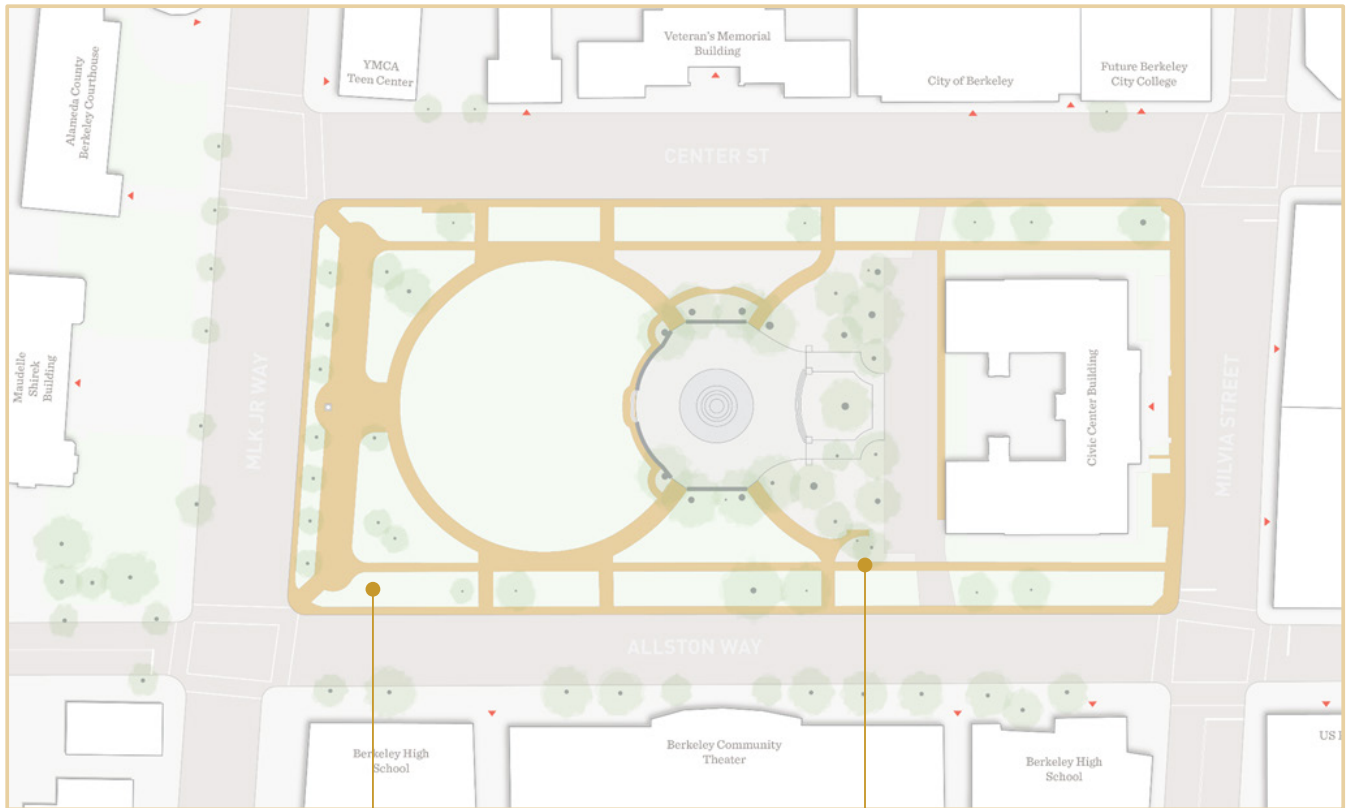
HtO Park, Toronto



Pedestrian priority shared street

Clematis Street, West Palm Beach

Design Concept - MLK Jr Civic Center Park & Surrounding Streets

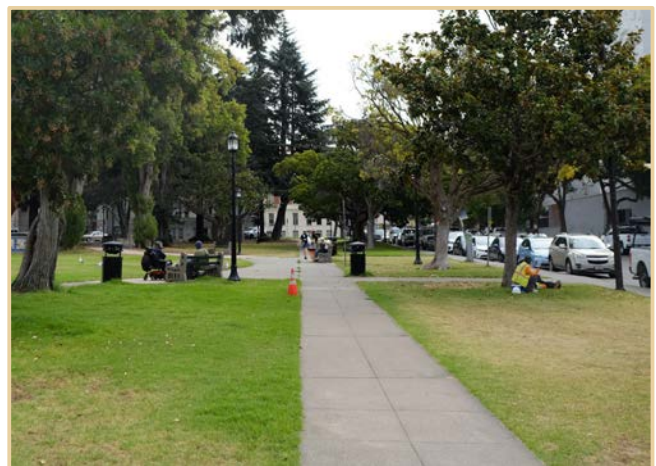


Small open spaces left between path divisions

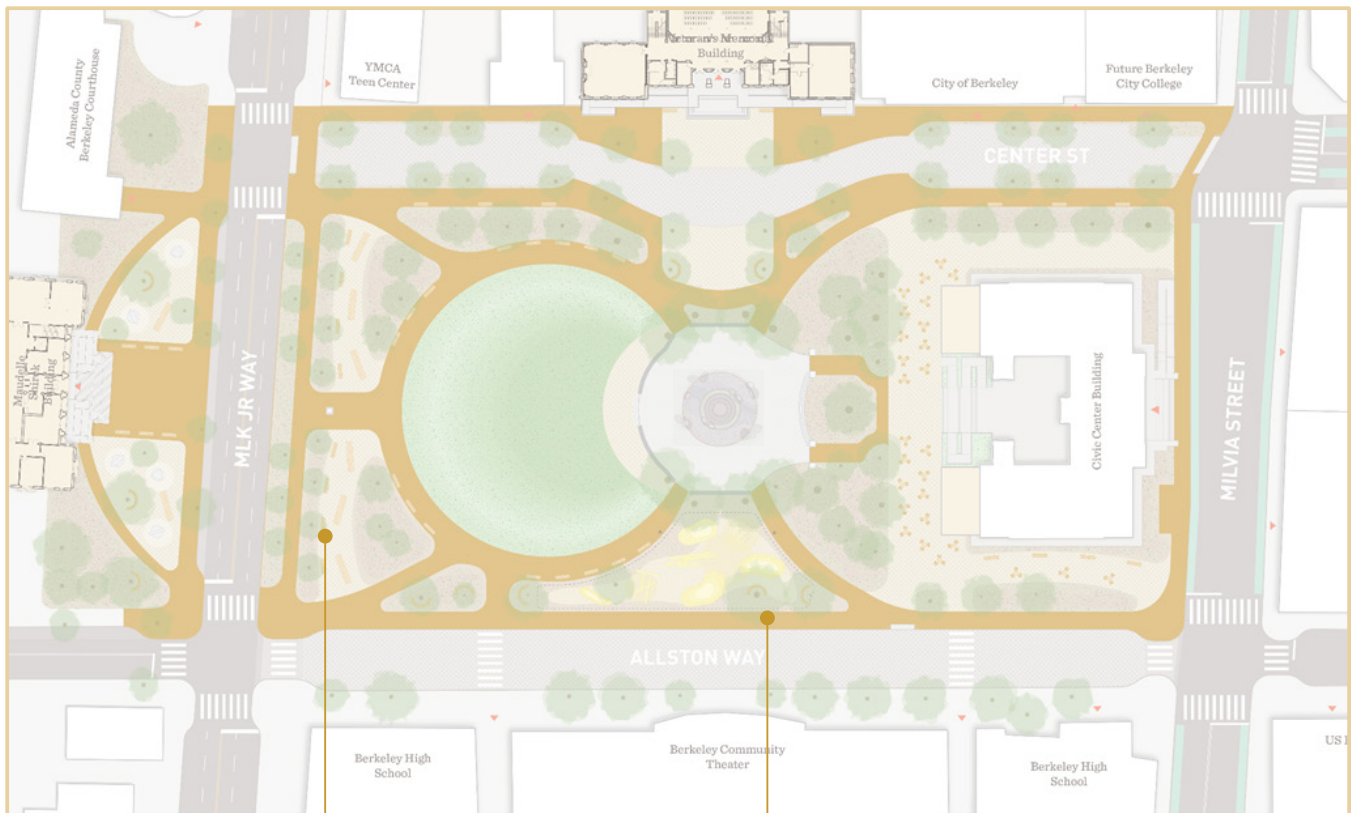
Parallel network of narrow perimeter paths

Existing Path System

The existing path system is notably defined by the narrow perimeter sidewalk and redundant parallel path running nearby. While the original intent was to encourage more people to walk within the park, both sets of narrow paths end up providing a substandard pedestrian experience. Additionally, this layout carves the park into a multitude of small spaces that are harder to occupy and program.



MLK Jr Civic Center Park, Present



Consolidated program areas between fewer paths

Wider sidewalks around the perimeter of MLK Jr Civic Center Park

Proposed Path System

The proposed path network eliminates redundant internal parallel paths while widening both the perimeter sidewalk and the remaining internal pathways. This provides a better pedestrian experience while creating larger program areas between the paths. It also better accommodates furnishings for pop-up programming.



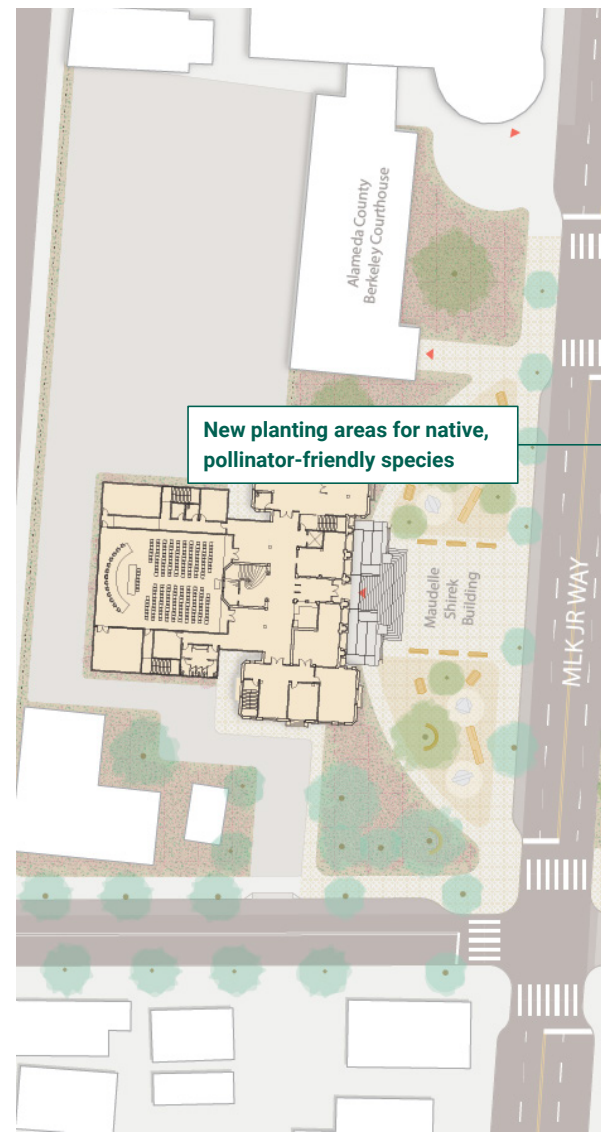
Remiseparken, Copenhagen

3

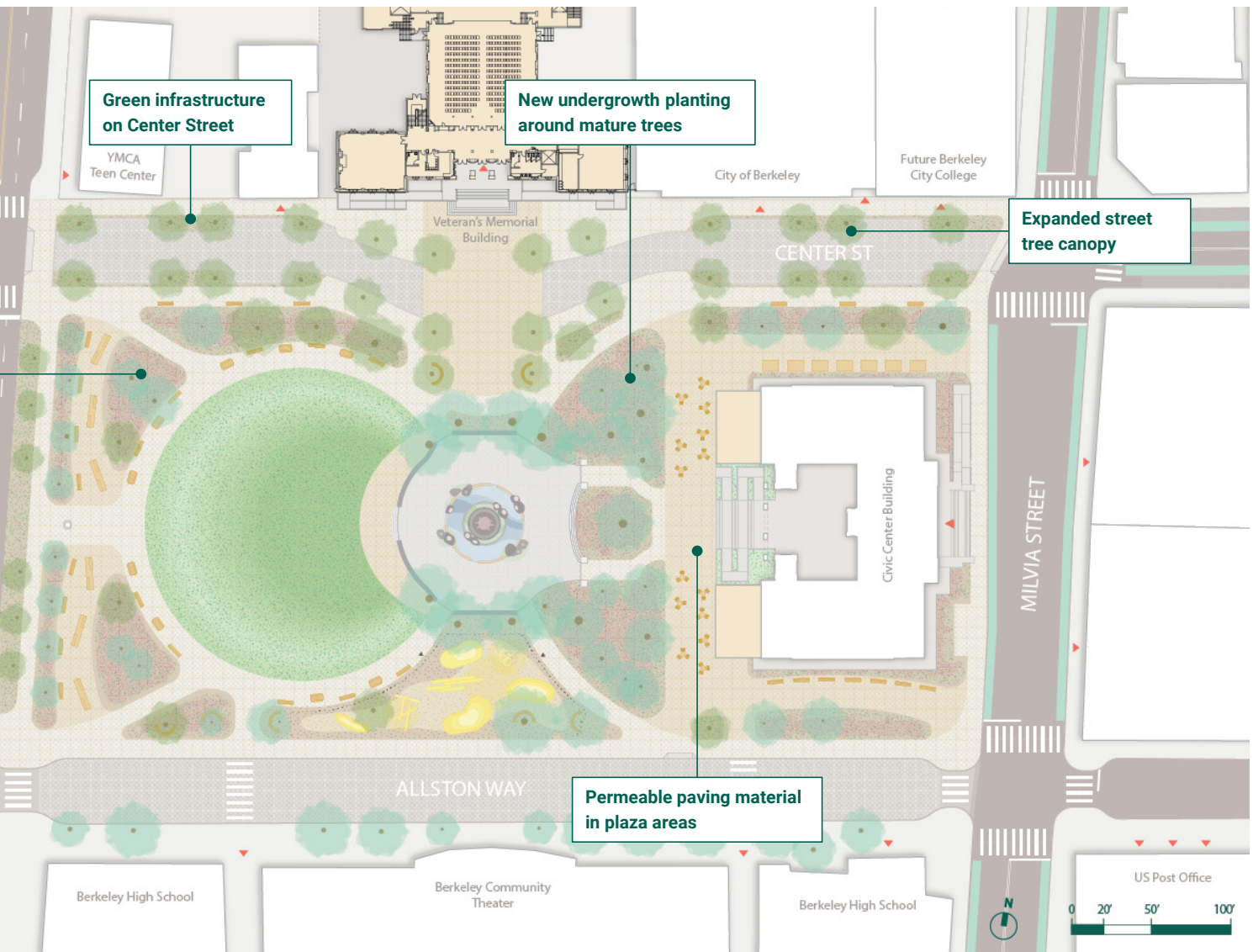
Enhance natural features, promote biodiversity and green design

During the 2022/23 Design Concept public engagement process, participants were very clear about **prioritizing nature** in the MLK Jr Civic Center Park.

The design concept incorporates this commitment to nature in multiple ways, including the retention of almost all existing mature trees and a **“Green” Center Street** that features **stormwater infrastructure and bioswales**. Woven throughout the park between pathways and the more active open green and plaza areas are enhanced plantings that introduce **more pollinator-friendly, native, and less water-intensive softscape to the park**, adding color and habitat while protecting the roots of the trees they surround from heavy foot-traffic and over-watering.



Existing Giant Sequoia and other mature trees, Civic Center Park



Site Plan with improved plantings & green infrastructure



Bioswales and permeable paving for stormwater runoff



Pollinator-friendly, native plantings

SW 12th Avenue, Portland, OR

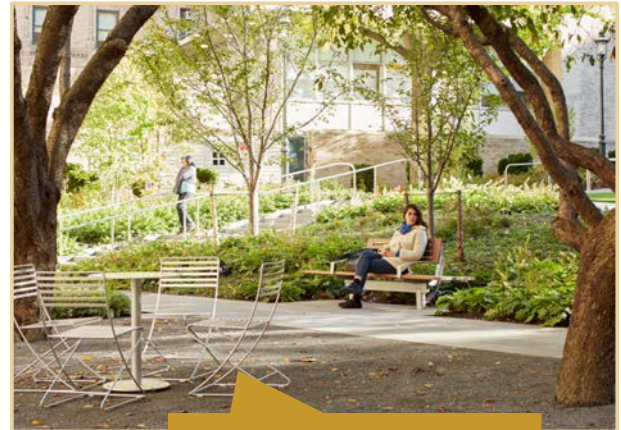
California Native Plant Society

Landscape and Planting Palette

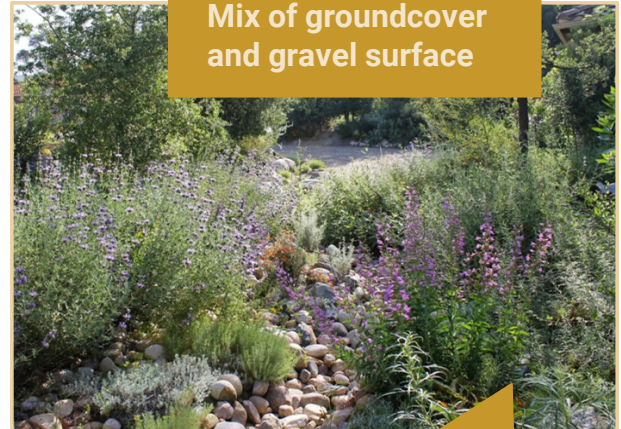
While the mature tree canopy is an irreplaceable asset for the Park that will be retained in the design concept, other existing softscape and planting areas leave room for improvement.

The design concept proposes a series of planting areas that ring the main open space, enhance the existing mature tree root zones, and help create a strong buffer along MLK Jr Way.

These planting areas will balance spaces for nature with quiet spaces for people, mixing a variety of species and programs - from quiet seating under mature trees to pollinator gardens to bioswales managing stormwater.

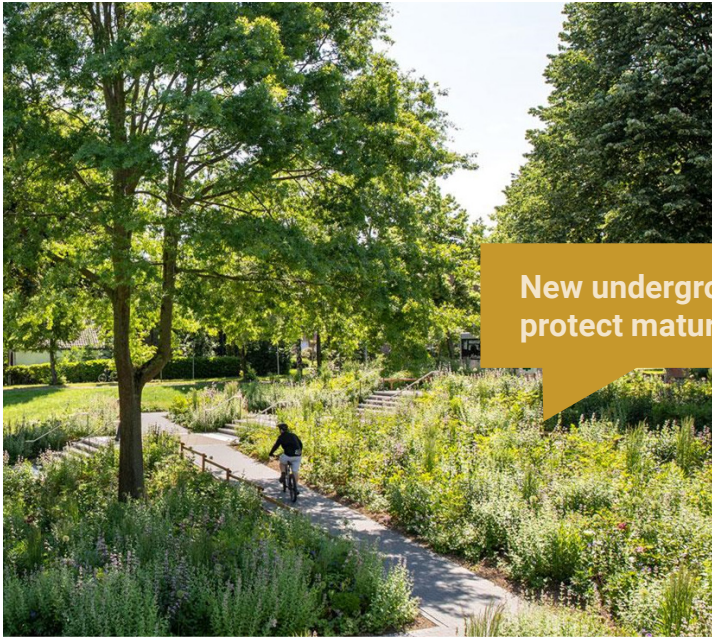


Mix of groundcover and gravel surface



Native, pollinator, friendly species





New undergrowth to protect mature trees



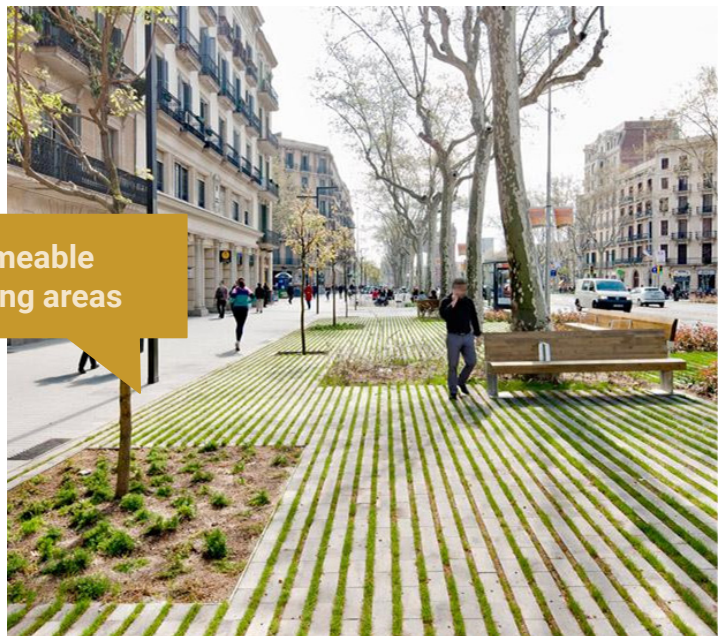
Expanded street tree canopy



Green infrastructure for stormwater management



Permeable paving areas



Design Concept - MLK Jr Civic Center Park & Surrounding Streets

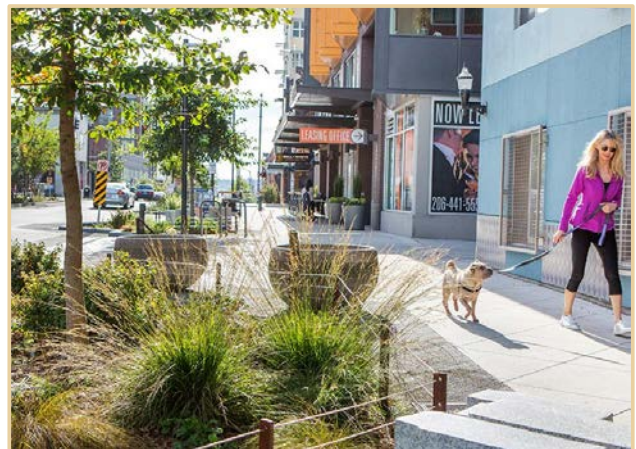


B “Green” Center Street

A space for all modes of transportation that prioritizes pedestrians and landscaping, aligned with the City’s Streets and Open Space Improvement Plan. An area-wide traffic study including the redesigned Center Street is recommended by this report.



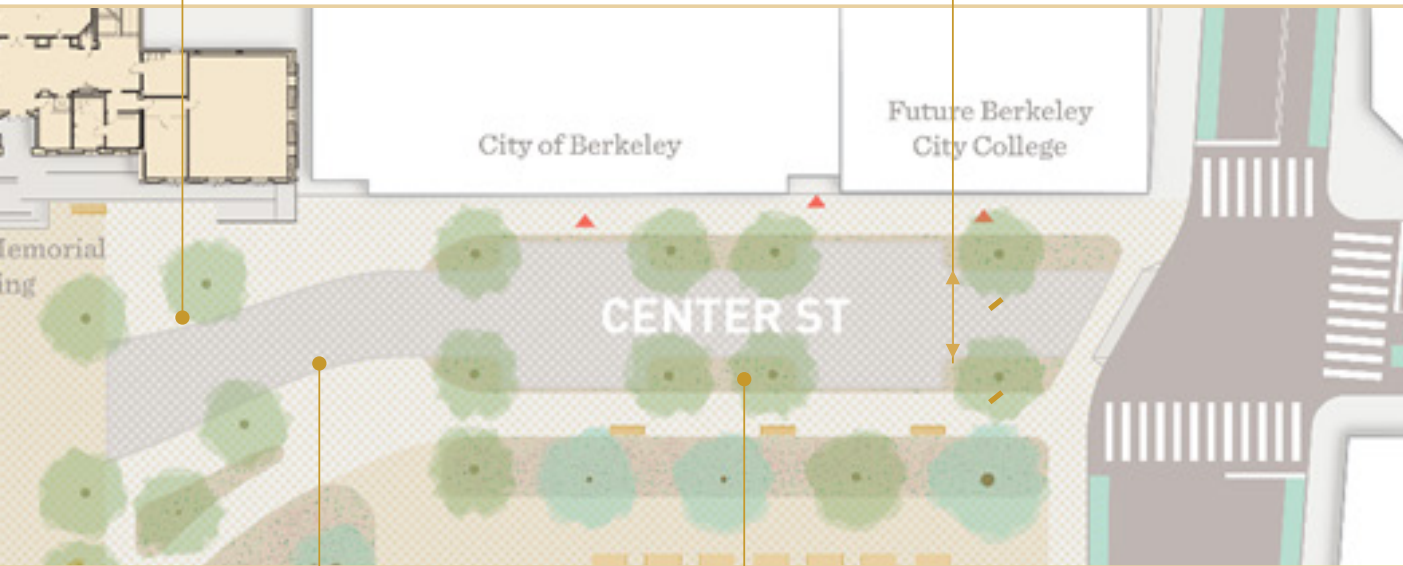
Bell Street Park, Seattle



Bell Street Park, Seattle

Realignment to create plaza space in front of Veterans Memorial Building

Maintain 26' clear for emergency access



Flush, curbless transition from street to sidewalk

Green infrastructure and bioswales for stormwater management and greening



Occidental Ave, Seattle



Woonerf, Odense

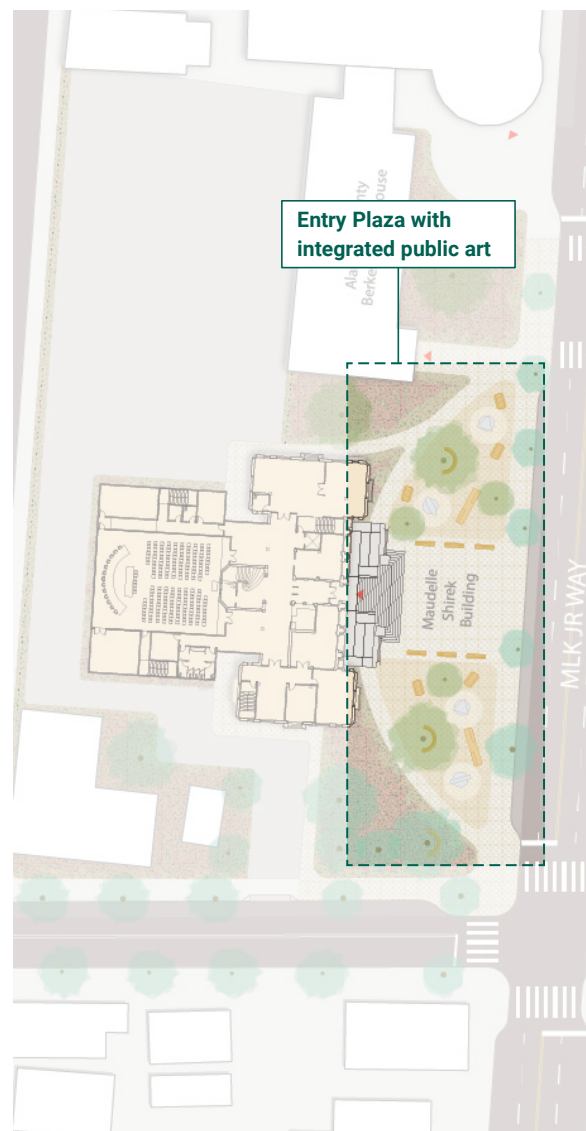
4

Expand invitations for a variety of everyday uses

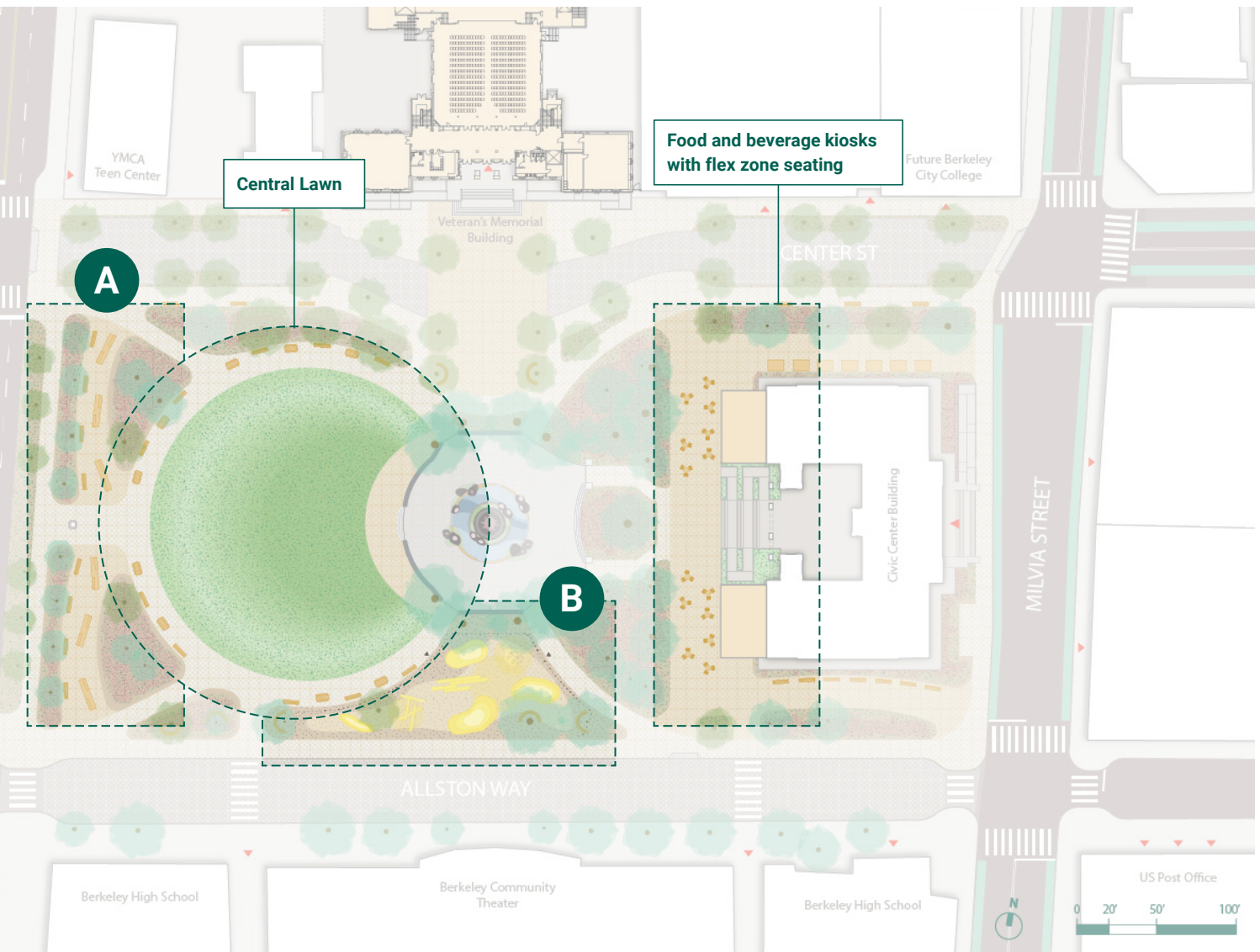
While the existing park is well-activated a few times a year for large events and festivals, it lacks furnishings and sufficient programs to enliven it on a daily basis.

Through upgrading existing park activity areas like the skate spot and lawn, and introducing new programs like food and beverage and a multi-age play area, the design concept expands the everyday potential of the space.

Along with these key program areas, upgrading and adding seating and lighting will make the park a safer and more inviting space.

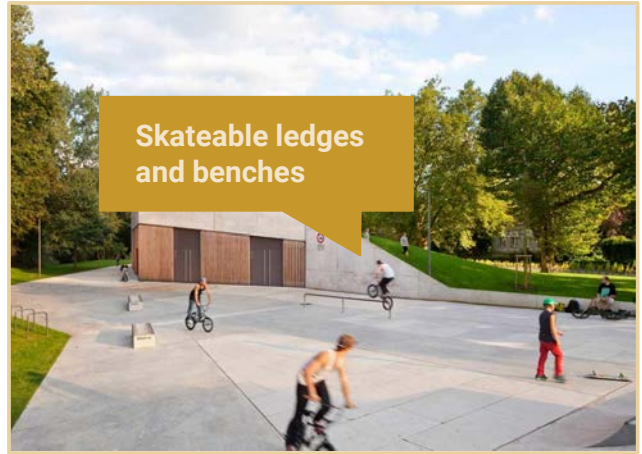


 Berggruen Museum, Berlin



Site Plan with improvements for everyday uses





■ Youth Centre, Oberhausen, Germany



■ Skate Plaza, Torroella, Spain

A

Skate Spot

A plaza area with skateable features and furnishings mixed with general seating and plantings.



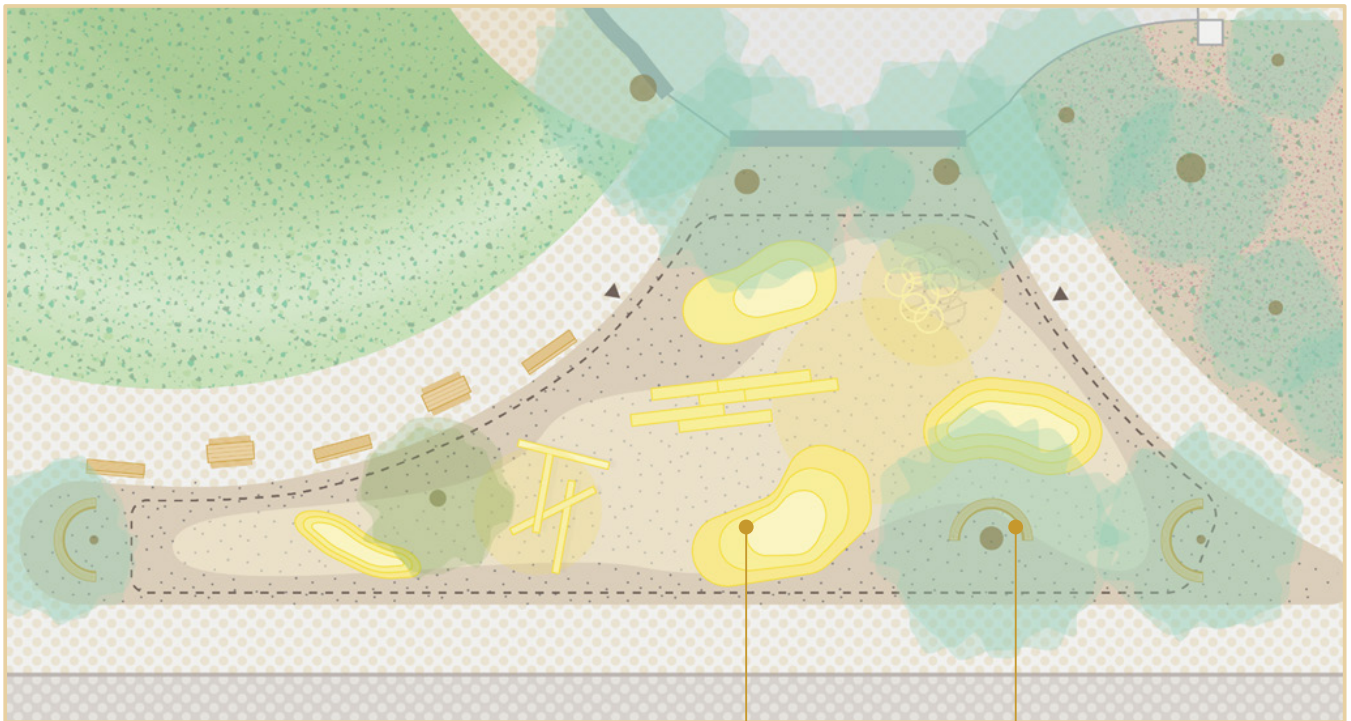
Nature-based play

Tunnel Tops Park, San Francisco



Dynamic play elements

Osdorp Oever, Amsterdam



B Playground

A natural play area for children mixed with landscaping and trees.

Nature-inspired play features

New benches to protect tree root zones

Seating and Furnishings

One of the key components of the design concept is the desire to expand invitations for people to use and stay in the Park by increasing the amount, variety, and quality of furnishings available.

Fixed benches in activity areas, cafe seating near new food and beverage options, and possibly larger signature seating fixtures will create space for a variety of users - from farmer's market attendees to Berkeley High students on their lunch break. Additionally, well-designed benches can be placed under mature trees to protect the roots while providing a quiet place of repose.

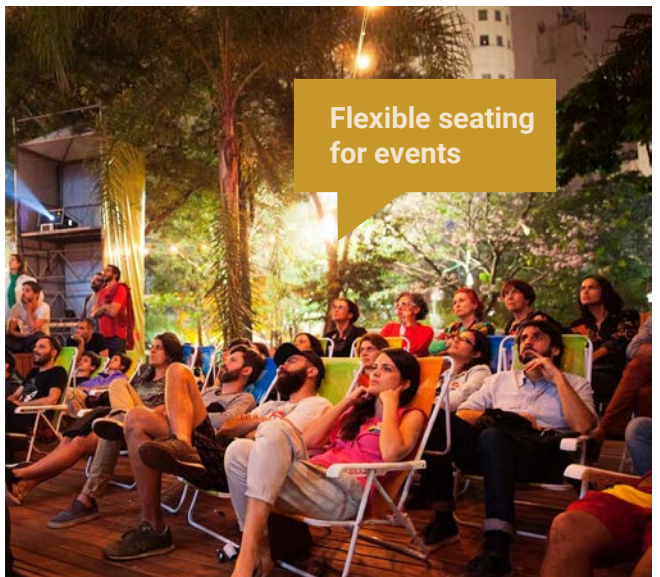
Beyond seating, other key opportunities to improve the level of comfort and safety for park users include upgrading lighting, signage, art installations, and trash receptacles. Lighting is to be carefully located and designed to provide safe pathways and gathering areas while reducing impact on adjacent neighborhoods and complying with dark-sky requirements.



Play spaces for all ages



Comfortable microclimates



5

Enhance the potential of the park to host weekly and special events

Along with the everyday experience, the Park also needs to accommodate a variety of weekly and special events.

The design concept focuses on a few key areas that are able to **flex between everyday activity and the special gatherings** that happen at Civic Center, from outdoor music performances to craft fairs.

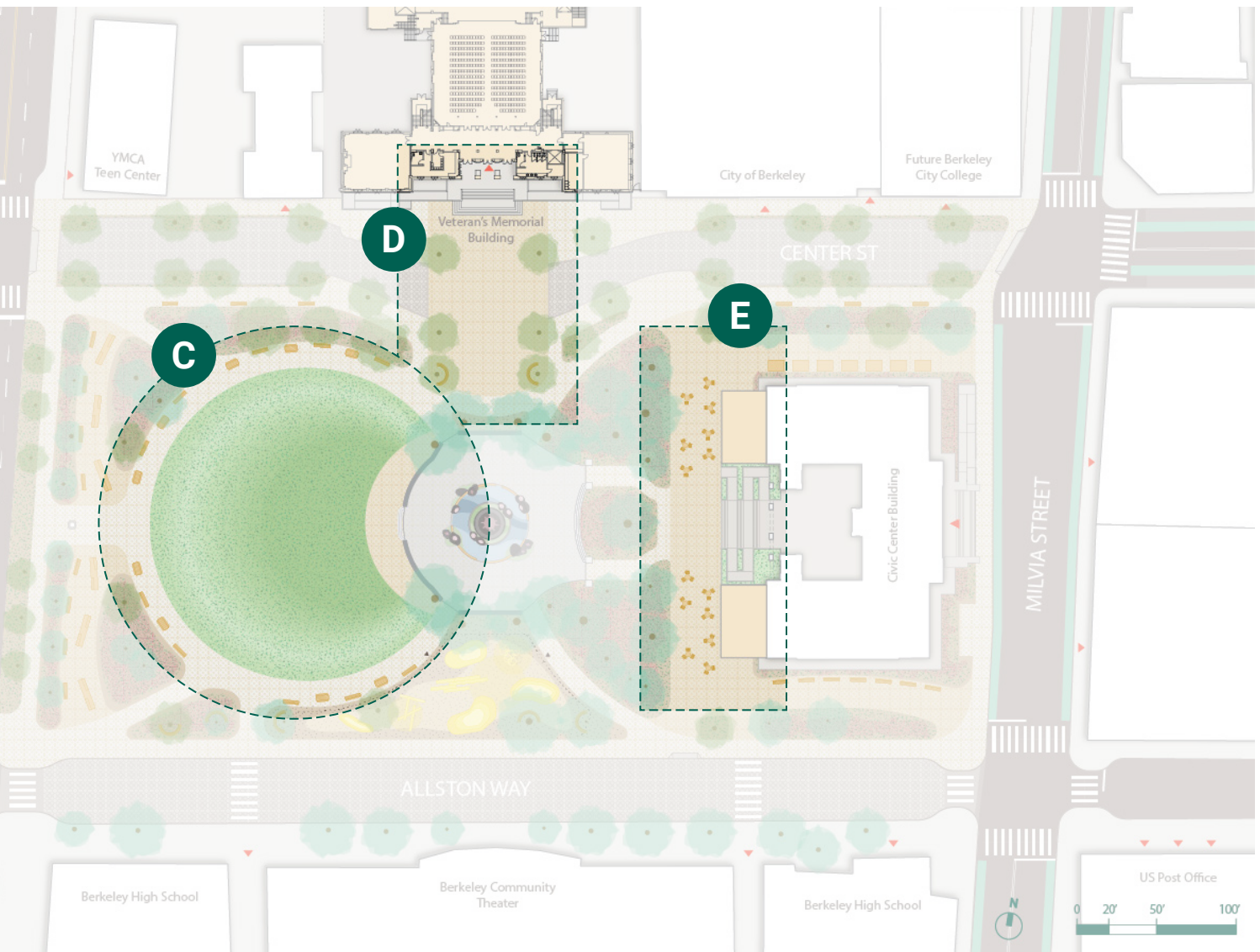
There is also an opportunity to **rethink the relationship between the farmer's market and the Park**, and create a more integrated experience between the two.



Central green for events and performances



MFA Concerts in the Courtyard, Boston



Site Plan with improvements for special events

Flexible space for markets and fairs

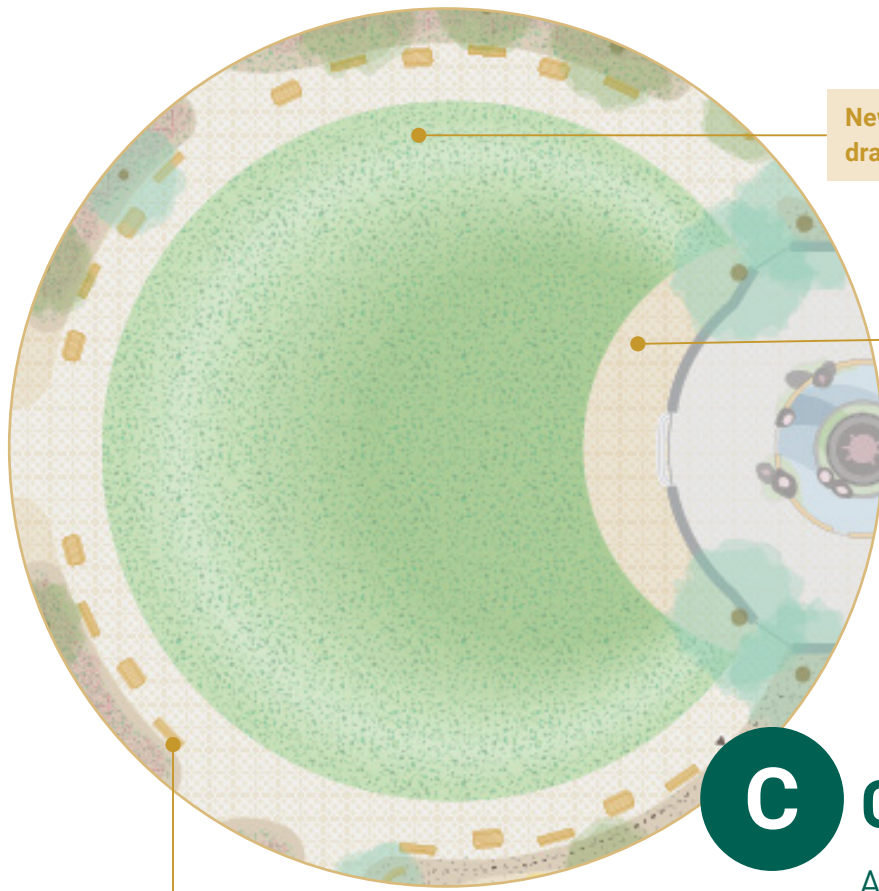


La Placita, Mission, San Francisco

Seating for everyday social gatherings



Grand Park, Los Angeles



Newly graded lawn to improve drainage and seating configuration

Performance area with carefully designed sound & light infrastructure to minimize impact on neighborhood

New seating and space for pop-up activation around perimeter paths

C Central Lawn

A flexible, open green space for daily recreation and public gatherings.



Expansive green for everyday and special events

Queens Park, Toronto



Seating along path edges

Brunnsparcken, Gothenburg

Space for markets and commerce



Bell Street Park, Seattle

Performance areas

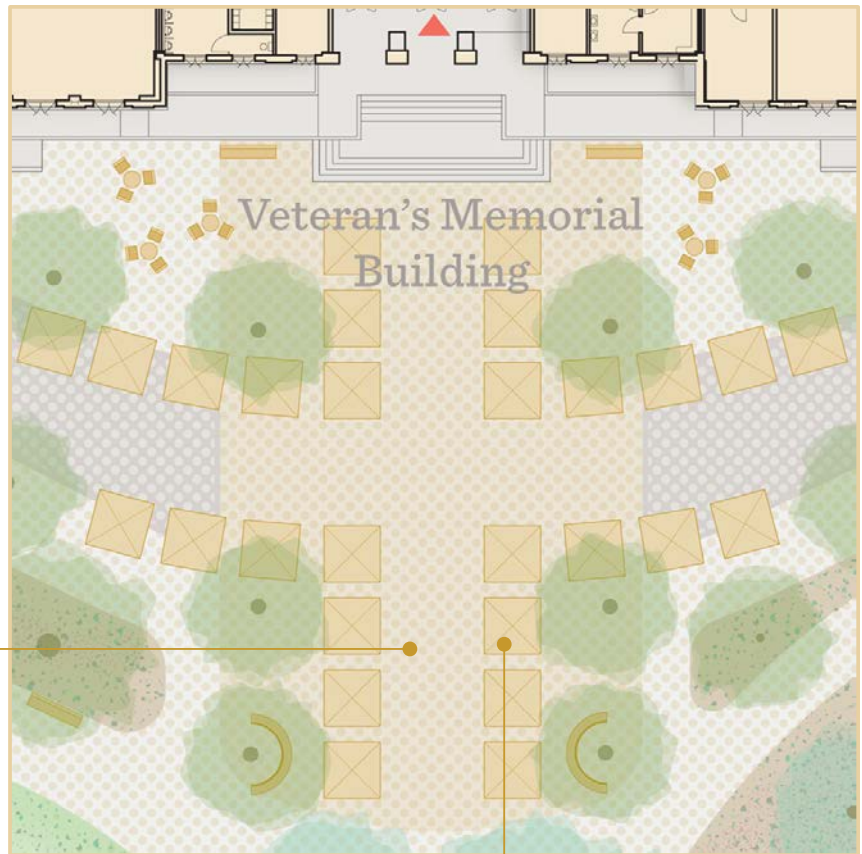


The Porch at 30th, Philadelphia

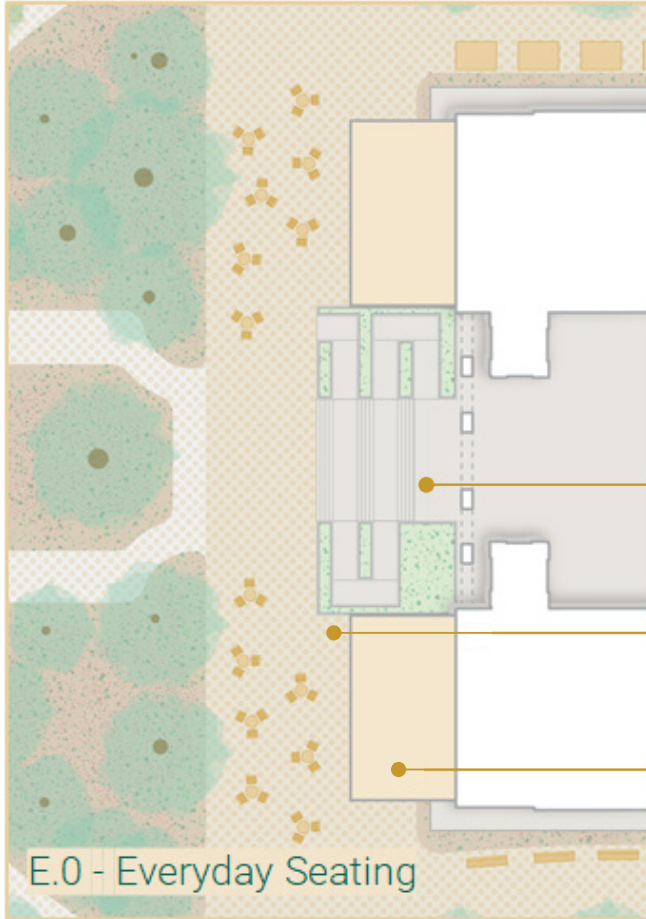
D Arts and Market Plaza

A dignified accessible entrance to the Veterans Memorial Building that integrates Center Street and the park.

Permeable paving surface



Space to allow the farmer's market to expand into the park



Flex Zone

Replace existing parking lot with a space for food, beverage, and outdoor seating that can flexibly accommodate events, performances, deliveries, and support functions for the park.

New open back stair and entrance to 2180 Milvia

Permeable, drivable paving treatment to accommodate a variety of uses

New food and beverage kiosks at rear of building



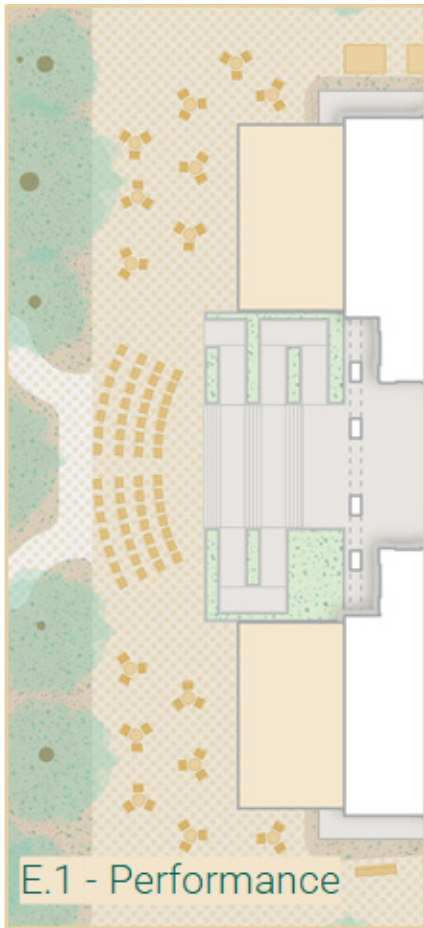
Accessible garden ramps

Lower Sproul Plaza, Berkeley

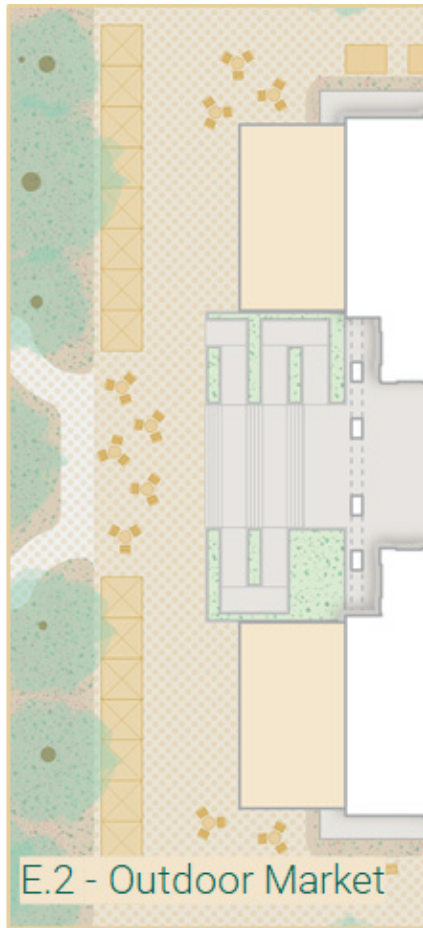


Flexible cafe seating

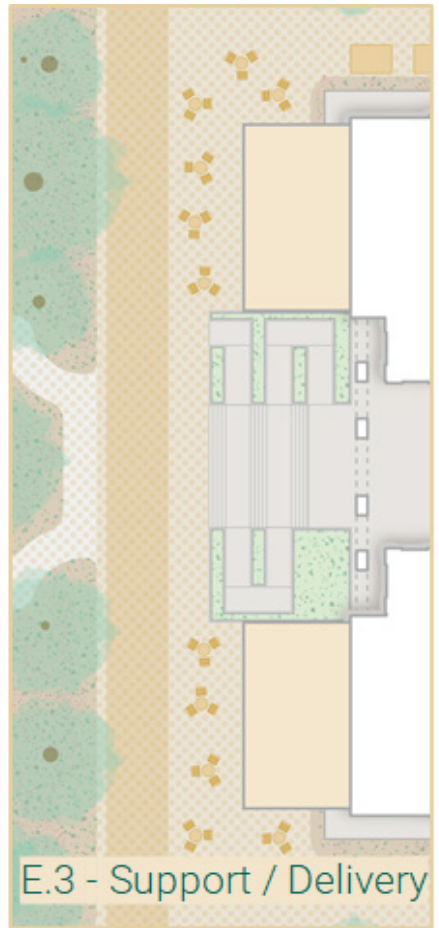
Monash University, Melbourne



E.1 - Performance



E.2 - Outdoor Market



E.3 - Support / Delivery



Lincoln Center, New York



Flower Market, Barcelona

6

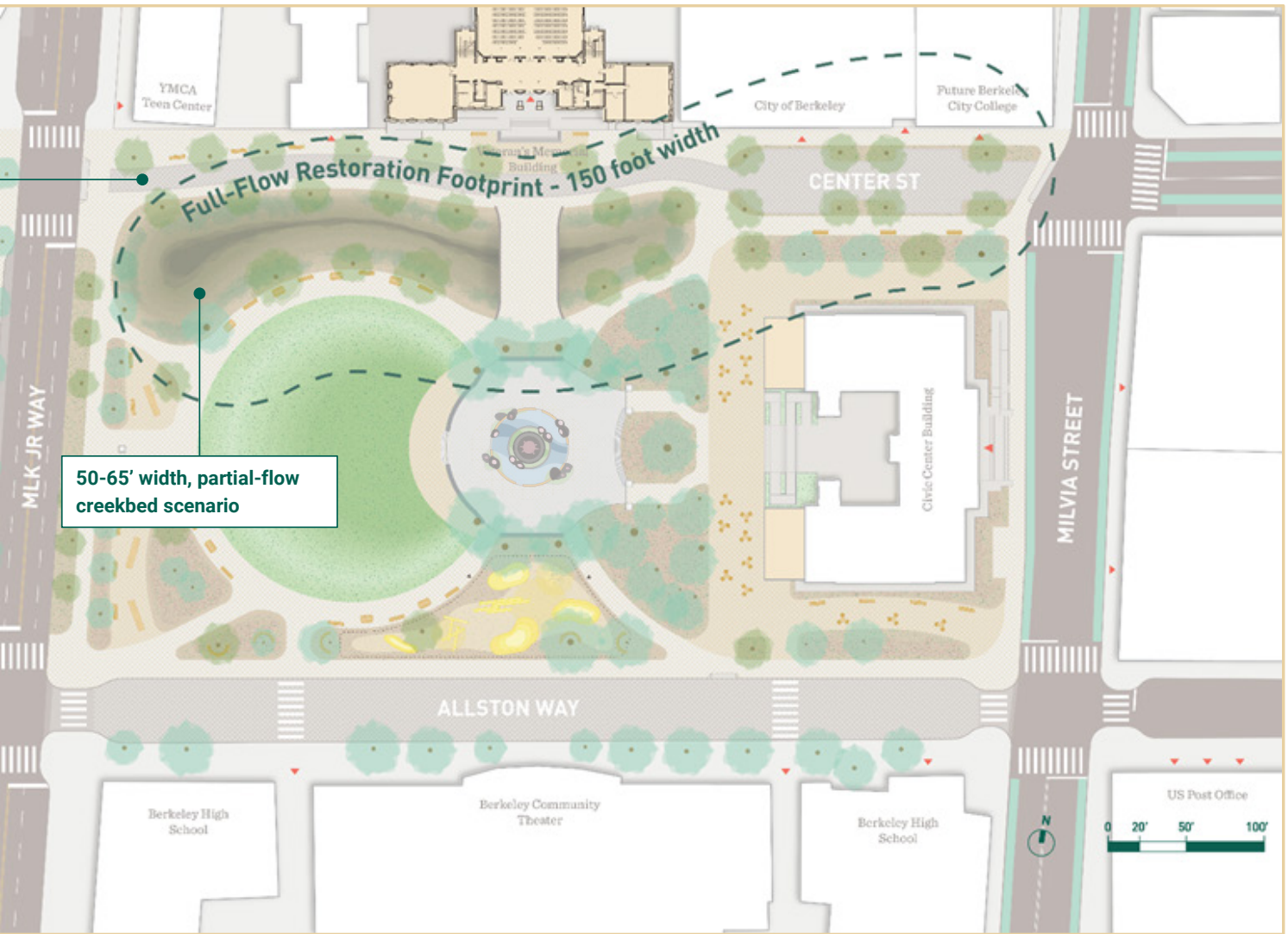
Study feasibility and tradeoffs of daylighting Strawberry Creek

While public engagement revealed a consistent desire to daylight Strawberry Creek, it also brought up concerns of feasibility, cost, maintenance, and spatial constraints.

This alternate design concept illustrates **a partial-flow daylighting scenario** that minimizes disruption to the overall park layout and key monuments, while reducing Center St to a minimum-required driving lane for emergency and service access. Deliveries and drop-off to the Veterans Memorial Building would be impacted, and need further study. The size of the Arts & Market Plaza has been reduced to a bridge spanning the daylit creek, and the farmer's market would need to be relocated to another site. Extending the daylit creek into the block west of Martin Luther King Jr Way was also mentioned by some in the community, and needs further study.



Strawberry Creek, Berkeley



Site Plan with partial flow daylit Strawberry Creek



Rockridge-Temescal Greenbelt, Oakland



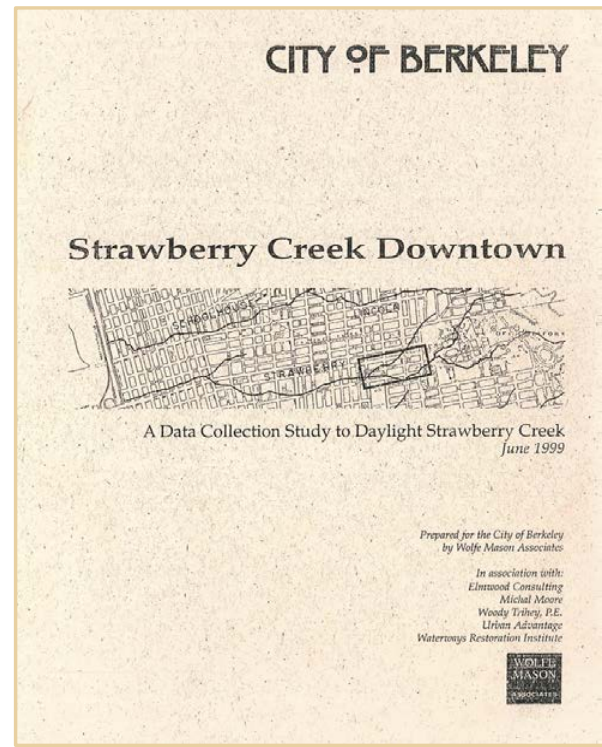
Los Angeles State Historic Park, LA

Daylighting Considerations

A 1999 Creek Study prepared by Wolf Mason included investigation of various daylighting scenarios for Strawberry Creek in Downtown Berkeley, including a partial flow scenario at MLK Jr Civic Center Park. Key takeaways from the report and its implications on the Park are:

- ➔ The existing culvert is estimated to be roughly 18' under the surface of the park, sloping down to the west. Because of this depth, a full restoration of a natural creek bed would require over 150' of width, which is considered infeasible.
- ➔ Partial-flow scenarios require retaining the existing culvert and introducing a flow control structure somewhere downstream of the BART line, most likely near the northeast corner of Civic Center Park.

Further study will be required to ultimately determine feasibility for daylighting the creek, including studies of the creek hydrology, traffic impacts, emergency access and public use.



Wolfe Mason Report Cover, 1999

Further community outreach is needed to stakeholders such as the Ecology Center, festival operators, Berkeley High School, Berkeley City College, Civic Arts groups, the YMCA Teen Center, and other nearby property owners.

Once a specific project is identified, additional studies will be needed to determine impact and comply with the CEQA process. A strategy for long-term maintenance and management will need to be proposed.

While this process continues, some park upgrades may be completed outside of the area of impact of the creek.



Existing Strawberry Creek culvert location in Downtown Berkeley
(based on Wolfe Mason Study From 1999)

5.3 Maudelle Shirek Building

5.3

Maudelle Shirek Building- Seat of Berkeley's Democracy

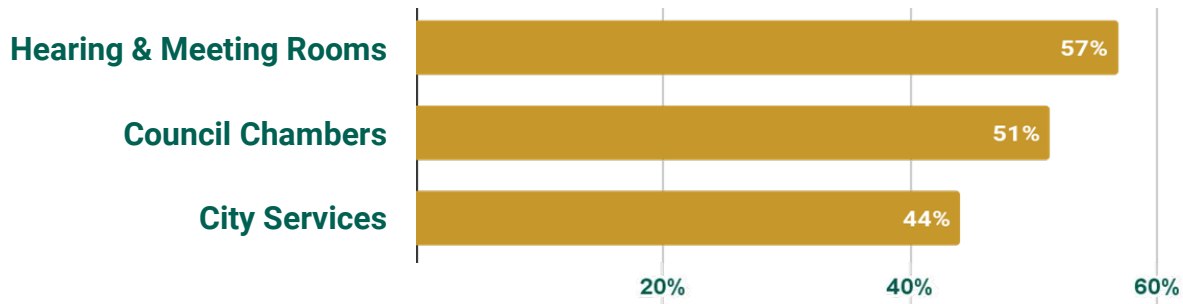
As the historic seat of government in Berkeley, this project proposes returning city functions back to the Maudelle Shirek Building. Input from public engagement scored Hearing & Meeting Rooms, Council Chambers, and public-facing city services as priority uses for the building.

Returning these functions to the heart of Berkeley's Civic Center will bring citizens to the area throughout the day and into the evening to attend meetings, hearings, and gatherings.

In order to return the highest and best use to this site, the Maudelle Shirek Building required additions, modern amenities, seismic upgrades, and other repairs.

"Active use of meeting rooms for organizing events and activism, attending City Council meetings and public meetings."

"Its use should honor the memory of Maudelle Shirek with progressive social action, women's leadership, and racial justice."





View to Maudelle Shirek Building from roof of Veterans Memorial Building

Additions & Improvements

Main Entry

The main entry to the Maudelle Shirek Building is up an inaccessible flight of stairs. This plan proposes an improved plaza and universally accessible ramps leading up to the main entry on the first floor. The ramps curve from the two crossings at Martin Luther King Jr Way towards the central entry terrace, creating a gracious way for all to access the building through the same main entry.



Conceptual Ramp Approach

Rear Addition

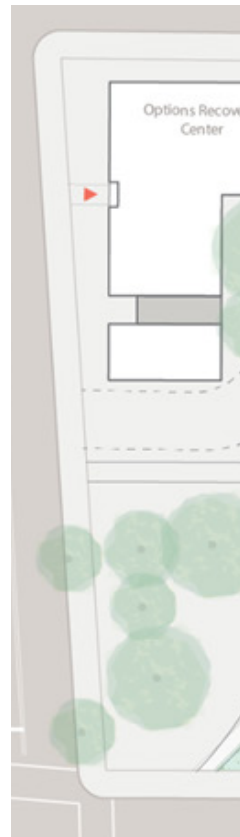
The design concept includes an addition at the rear of the building, creating space for a modern and appropriately sized multi-purpose gathering room that can serve the community as a space for large public events and City Council meetings.



Existing Rear Addition

The addition replaces the ahistorical rear additions, and is sited on the southern portion of the Public Service Building's controlled parking lot.

A study of the police and fire departments parking capacity and needs is required to confirm that they can be met on this site or nearby.





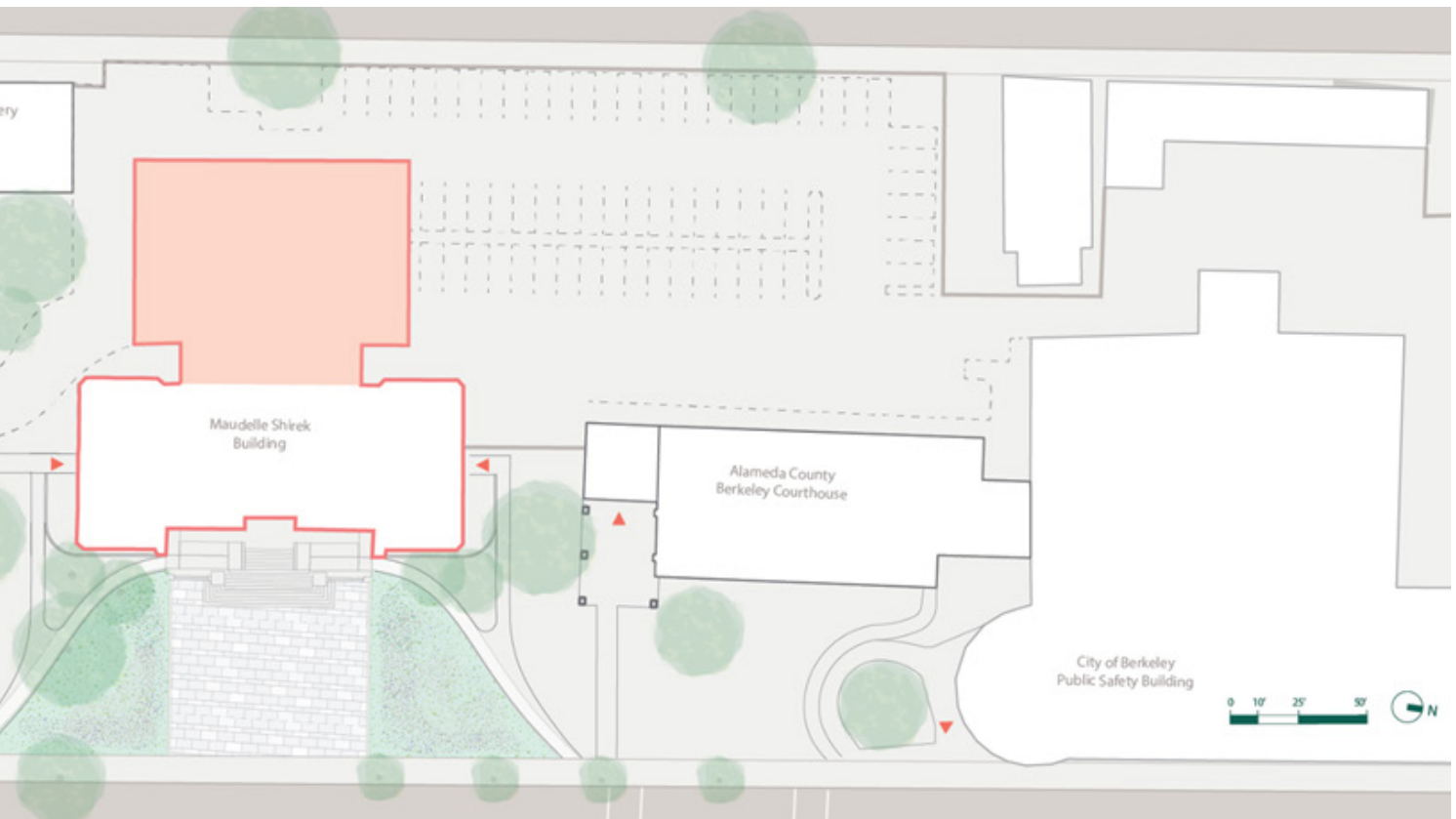
Addition at the Exploratorium, San Francisco



St. Johns Library, Winnipeg, Canada



East Bay Performing Arts Center, Richmond



Site Plan - Proposed Addition Location

Seismic Improvements: Damage Control + to Immediate Occupancy

Approach: The City's Public Works Department recommends a seismic upgrade for the Maudelle Shirek Building to the level of Damage Control Plus (DC+) at the historic structure and the new addition be built to the Immediate Occupancy [IO] level.

At the DC+ level of seismic retrofit, the Maudelle Shirek Building would be occupiable weeks to months after a major seismic event. The addition, built at the IO level, could be re-opened days after a major seismic event.

Discussion: This combined DC+/IO structure will provide flexibility for City and public use of this asset now and in the future. After a major seismic event, the combined structure is likely to experience minimal damage. The IO addition should be designed to operate independently of the historic portion, so it can reopen quickly after inspections and minor repairs. The historic structure may need to remain closed pending further repairs, depending on the results of the inspection. With this level of improvement, the building can function

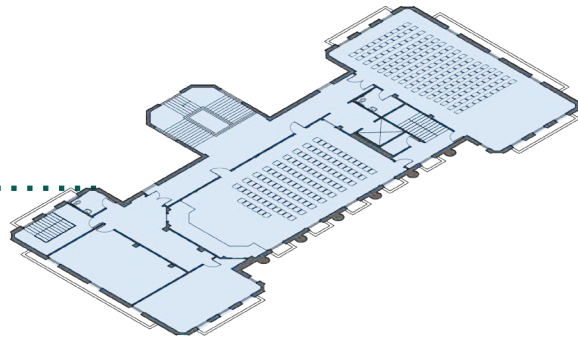
as an operations and service center in the event of natural disasters or other emergencies.

As part of the 2020 Vision Plan, the City investigated an IO solution that featured base isolators either at or below the ground level of the Maudelle Shirek Building. This approach represents a significant cost and potential impacts on usable space.

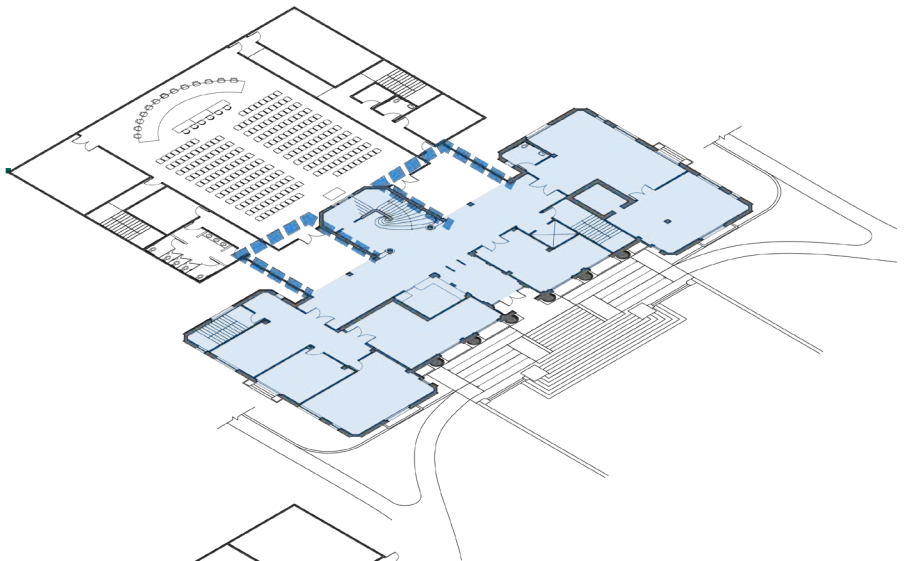
Tipping Structural Engineers developed a concept for achieving DC+ to near IO levels by addressing structural deficiencies related to lateral and shear strength through additions. This scheme would also involve strengthening individual beams and columns in shear, likely using fiber reinforced polymer sheets. Their study is documented in a report on the Civic Center buildings submitted to Council in August 2021.

Further refinement of this approach to minimize impact on historic finishes while optimizing performance and cost considerations will be required as part of the development of a specific design for the historic building and addition.

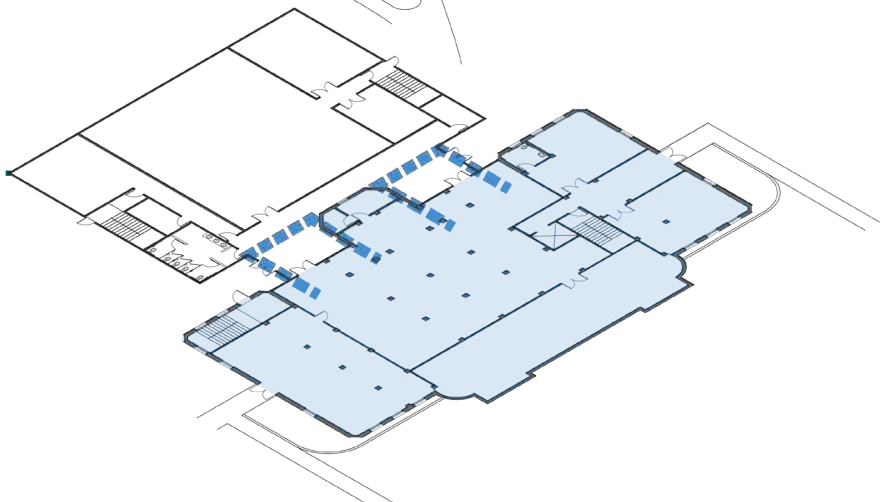
SECOND FLOOR (6,500 SF)



FIRST FLOOR (14,400 SF)



GROUND FLOOR (16,350 SF)



Seismic Improvement Locations

Other Improvements

Beyond the additions, a specific design will need to address other required improvements. These include addressing the mechanical, electrical, lighting and plumbing systems to bring them into compliance with current building code and City policy. The City of Berkeley is committed to converting buildings to be all-electric, including this historic structure. Relatedly, energy production through solar panels on the roof of the addition should be explored. A building assessment report was completed in 2021 by Allana Buick and Bers to identify needed improvements and repairs to the building envelope (enclosure), and their recommendations should be integrated into a future project. All of this work taken together results in a more sustainable and resilient building.

Along with the improved entrance, accessibility upgrades will be required throughout including: adjusting door widths and locations, clearing accessible

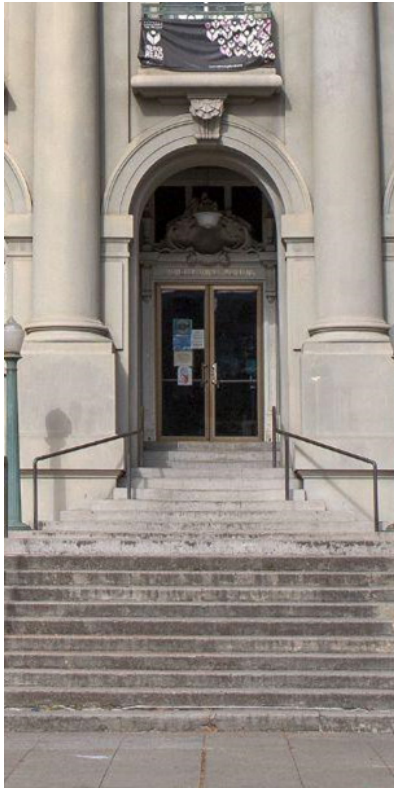
pathways, installing a modern elevator core, and modifying elements to meet accessible reach requirements.

Egress from the building does not comply with modern fire codes. Proper exit separations and paths will need to be added, as will additional stair cores and exits from the building for the increased occupancy.

An existing attic space could be upgraded to serve as storage space with improvements to the vertical circulation. This will require further study in a specific design phase.

All of these changes will need to be addressed while respecting the historic nature of the building, and meeting Secretary of the Interior standards for historic preservation. As a part of that effort, the beautiful historic finishes will need repairs and restoration, and non-historic elements will be replaced with modern, healthy and resilient materials.

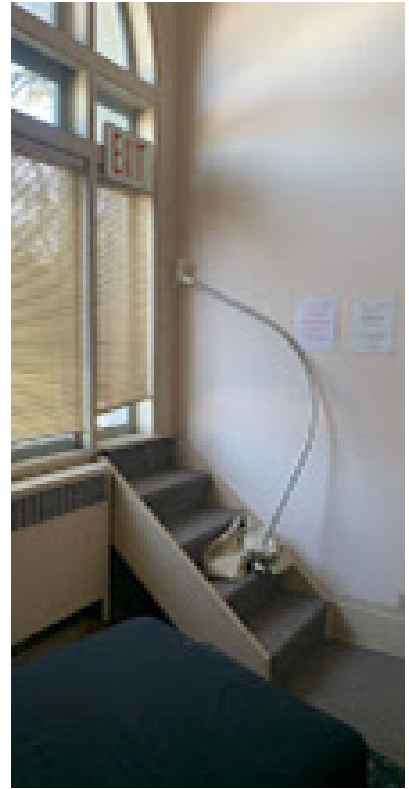
Accessibility



Finishes



Egress/Safety



System Upgrades



Building Performance



"...upgrade to LEED standards, include solar panels...advanced MERV/HVAC...light filled with natural materials."

"...it was a pain to get to and move between rooms and floors"

"...accessibility through the front door is important."

Space Use

Meeting & Hearing Rooms

Between Council, Commissions and Boards, the City hosts over 350 public meetings every year. Currently City Council meetings are held at the BUSD board room on Addison Street, and most other meetings are held in various locations around Berkeley. Providing new meeting spaces in Civic Center will create a central building in the City of Berkeley that is a symbol of citizen involvement in governance.

Creation of a multi-purpose hearing room or meeting space similar in size to that of BUSD's Board Room will require an addition to the Maudelle Shirek Building, best located on the west side or behind the building.

As a two-story structure, this new addition could house the large multi-purpose hearing room with flexible seating for over 200, plus an expanded public lobby on the first floor. This level could also contain multiple support spaces for the hearing room - closed session meeting rooms, AV support, restrooms, storage, and more. Near the entry, two small meeting rooms can be used by City staff, commissions, and the public.

The historic meeting room on the second floor could be refurbished for smaller meetings of around 70 people. A proposed second small hearing room on the north wing could hold over 100 occupants and the south wing could be divided into two additional meeting rooms.



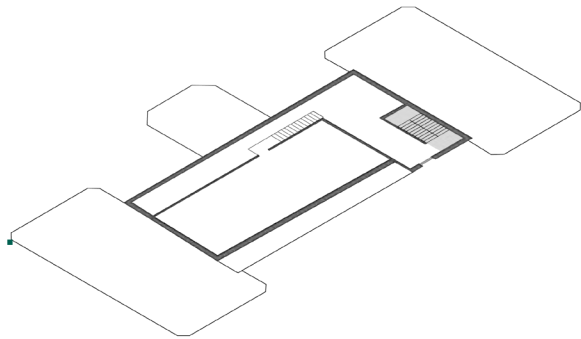
Uppsala Town Hall, Sweden

51%
of respondents
support returning
Council
Chambers



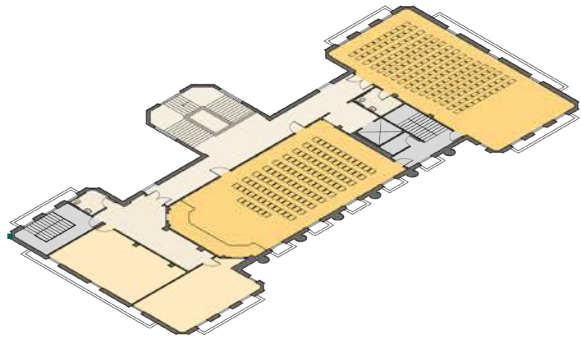
Historic Hearing Room, Maudelle Shirek Building

ATTIC (2,500 SF)



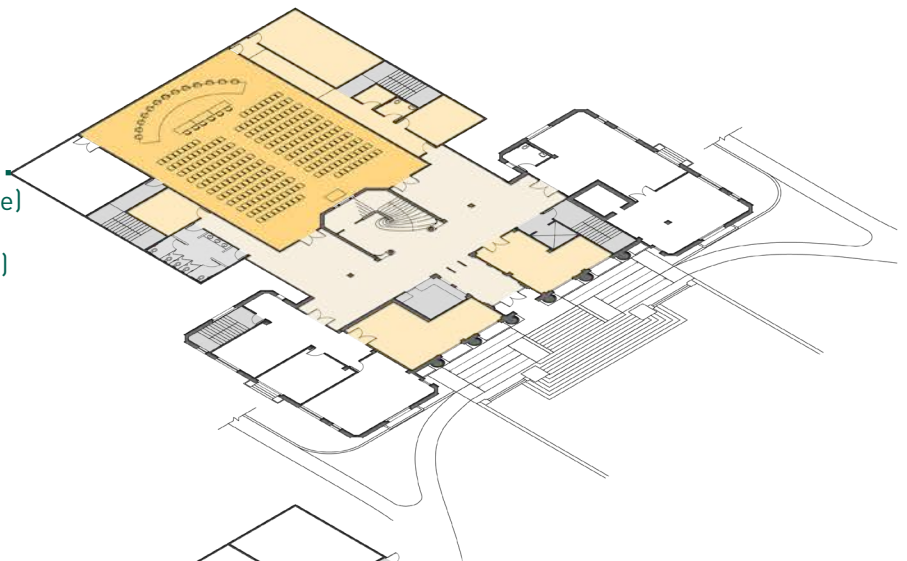
SECOND FLOOR (6,500 SF)

- Small Hearing Rooms (70-120 people)
- Large Meeting Rooms (20-30 people)



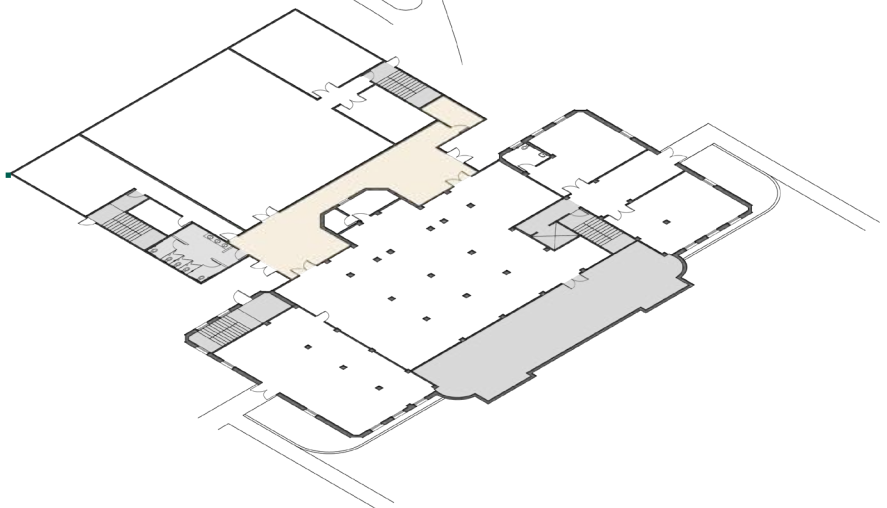
FIRST FLOOR (14,400 SF)

- Large Hearing Room (200-300 people)
- Council Support Spaces
- Small Meeting Rooms (10-20 people)



GROUND FLOOR (16,350 SF)

- Mechanical
- Vertical Circulation
- Restrooms



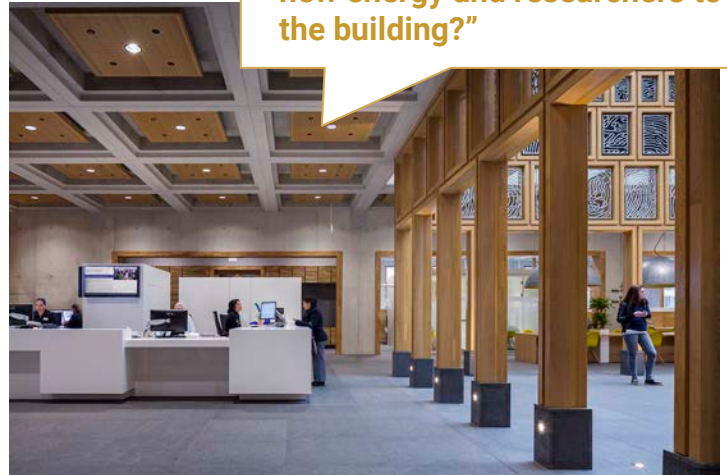
Flexible Office/Meeting Space

The north and south wings on the first (or main) floor of the historic Maudelle Shirek Building offer high-ceiling spaces. During the engagement process the public expressed support for uses such as public-facing city services, offices, and other interactive city functions in this building as a way to bring foot-traffic to the building throughout the day. These first floor wing spaces are optimal for these types of uses.

A detailed spatial programming effort during a specific design phase is necessary to determine the appropriate uses, some ideas for consideration include:

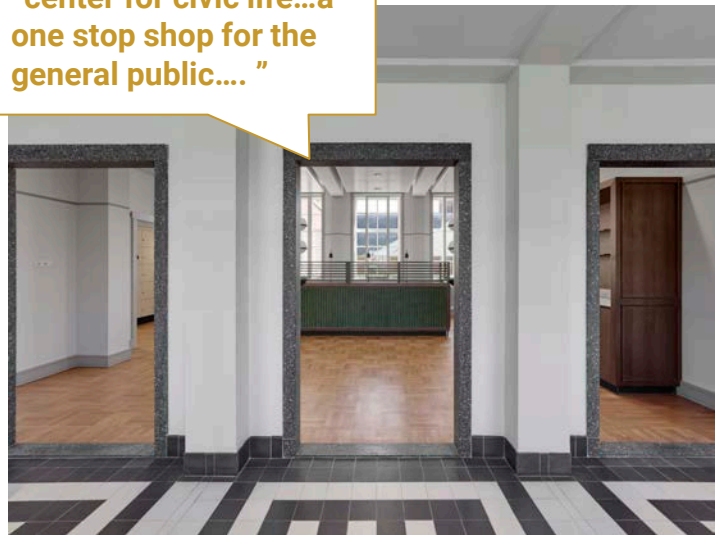
- City Customer Service Counter - interface with City staff and get help with City processes
- Building administration offices - support spaces for running the daily operations of the meeting spaces and public services in the building.
- Public Policy Institute - partnership with local educational institutions to support the development of future decision makers

"I'd like to see see more active uses...perhaps some sort of partnership with UC to bring new energy and researchers to the building?"



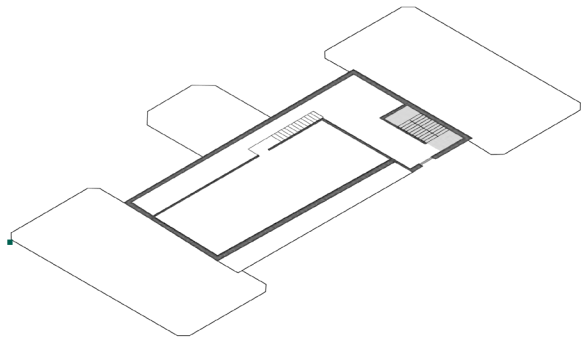
Public Lobby at Deventer City Hall, Netherlands

"center for civic life...a one stop shop for the general public...."

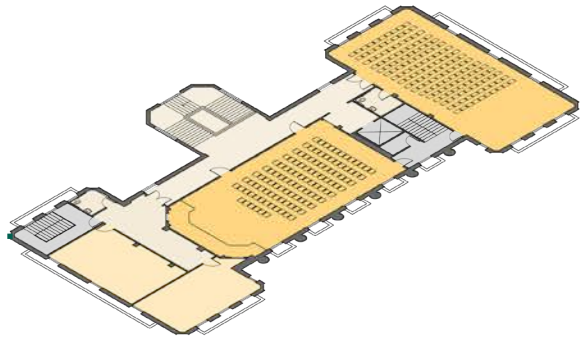


Leiden City Hall Lobby, Netherlands

ATTIC (2,500 SF)

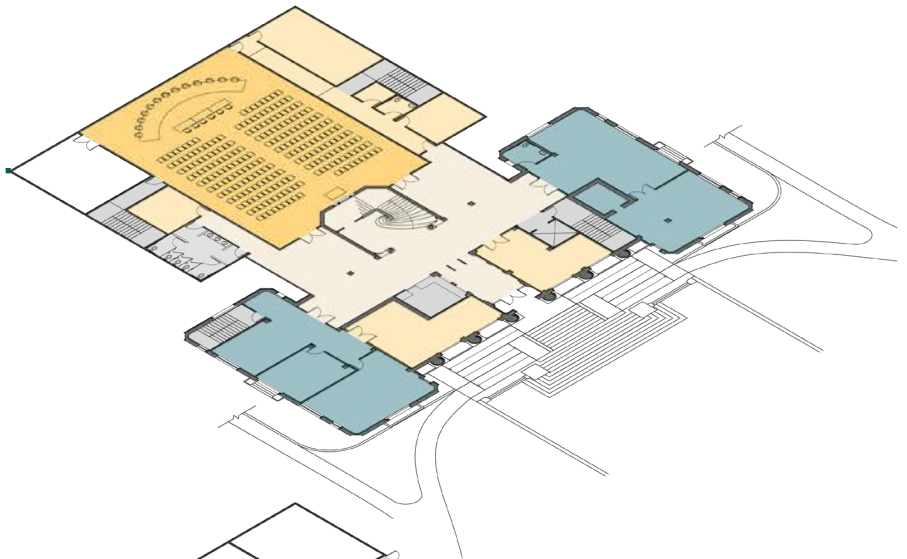


SECOND FLOOR (6,500 SF)

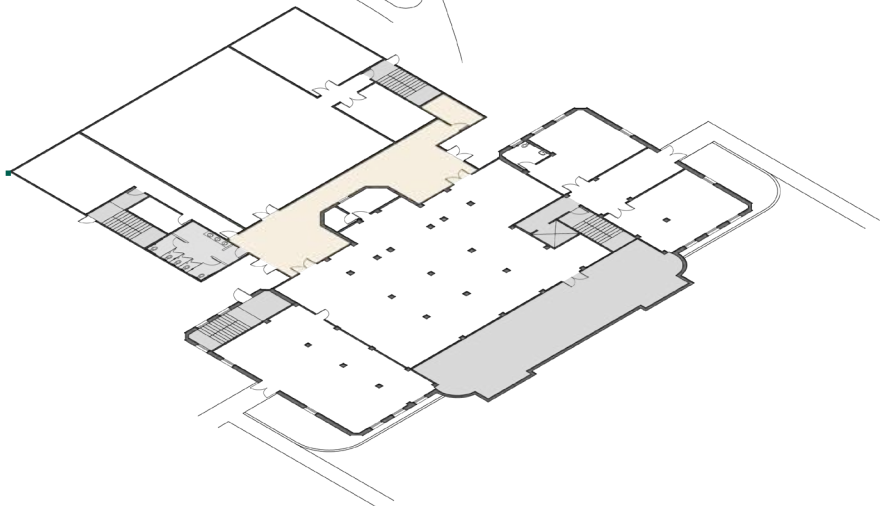


FIRST FLOOR (14,400 SF)

- Reception/Counter Areas
- Offices
- Conference/Meeting Rooms
- Support Spaces



GROUND FLOOR (16,350 SF)



Berkeley Historical Society & Museum

The Historical Society envisions a museum that “engages visitors of all ages in learning what has made Berkeley ‘Berkeley,’ and showcases the City as a place where ideas emerge that influence the rest of the country and the world.”

Providing a source of information and inspiration for the current participants in the City’s government is a strong use of the space that aligns with the vision of the Civic Center as the heart of civic life in Berkeley. The public halls and lobbies of the Maudelle Shirek Building could host rotating exhibits that can be explored either as a visitor or while waiting to attend a public meeting or for a turn at the customer service desk.

On the ground floor, a permanent exhibit, research room, offices, and exhibit preparation room are proposed. Archival storage could be located either off-site, in an improved attic, or on the ground floor of the building, depending on other space needs.

Controlling access between the exhibits and more secure spaces of the building could present a conflict, and would need to be carefully managed. Sources for funding a museum expansion should be further studied.

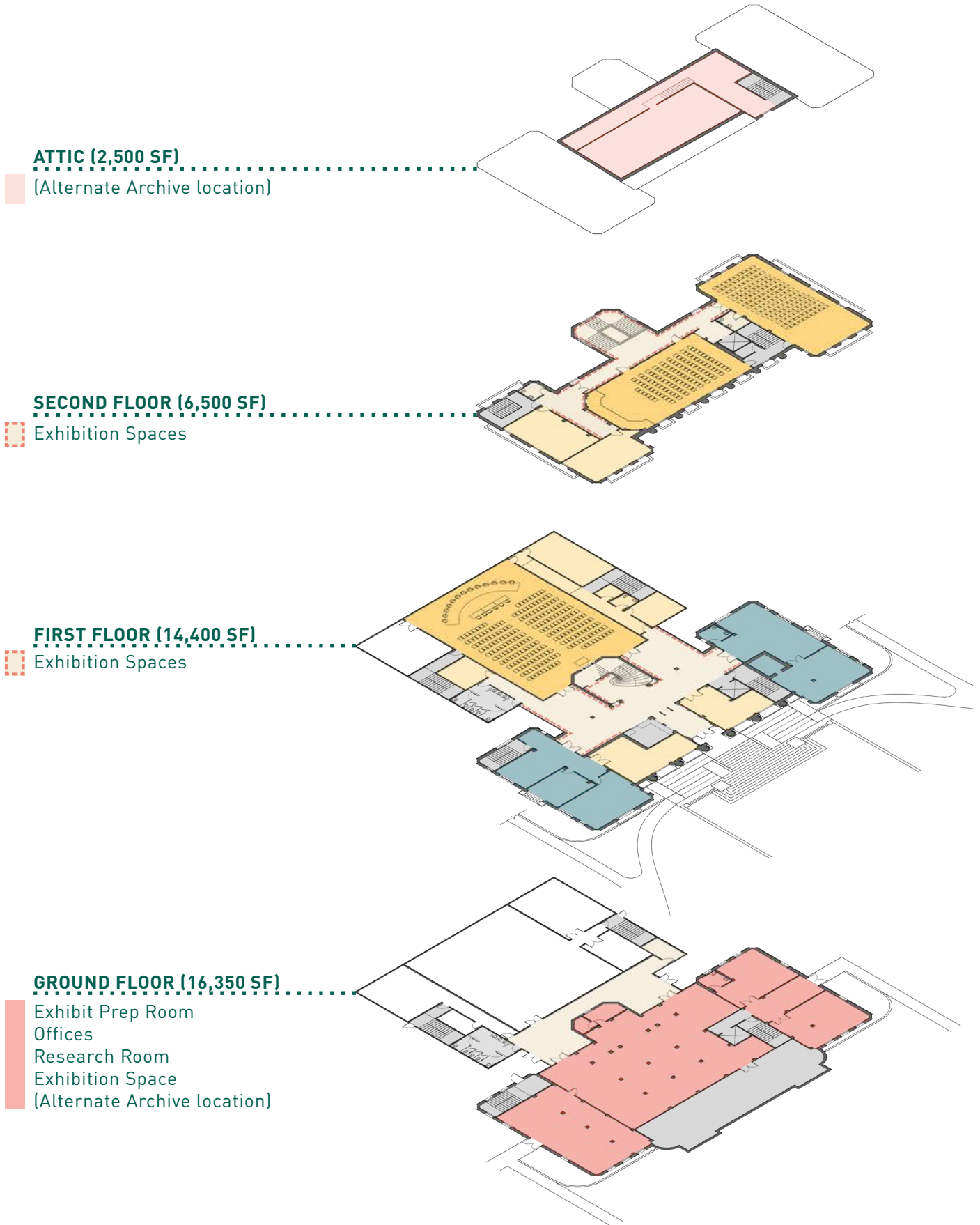
70%
of respondents
support Berkeley
Historical Society
& Museum at
MSB



African American Museum & Library, Oakland CA



Square Headquarters, San Francisco CA



Berkeley Community Media

BCM serves multiple functions related to the city government. They broadcast city meetings, including Council, ZAB and Rent Stabilization meetings; they work with governmental non-profits and politicians; and they offer support in developing Public Service Announcements. Their internship program teaches students media literacy and production technology.

BCM's space needs are substantial, and many of them are single-use. They currently operate mostly through funding from the City and grants. Their mission and function are well aligned with returning public meeting spaces to the building, and with the larger vision of the Civic Center.

BCM's space needs include a broadcast studio which can double as a press conference room which is a complementary use to Council Chambers with similar controlled access requirements. BCM also needs smaller studio spaces, editing suites, offices, lounge and kitchenette.

44%
of respondents
support
Berkeley
Community
Media at MSB

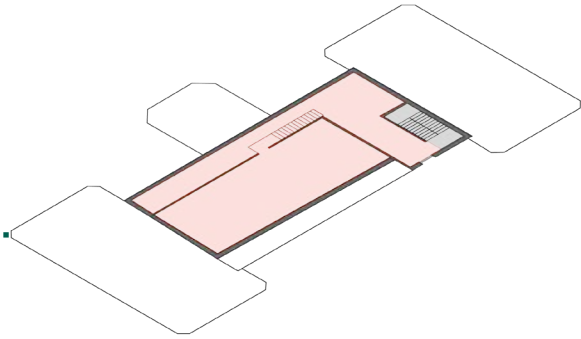


Marwen Classroom, Chicago IL

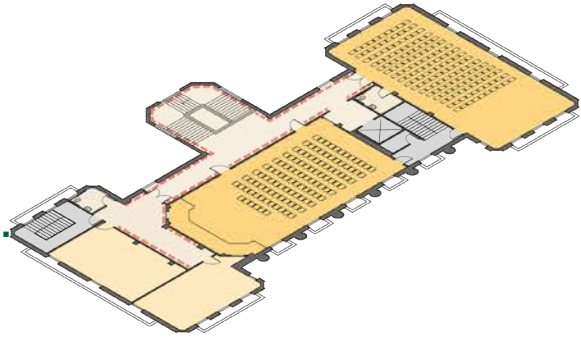


David Brower Center, Berkeley CA

ATTIC (2,500 SF)

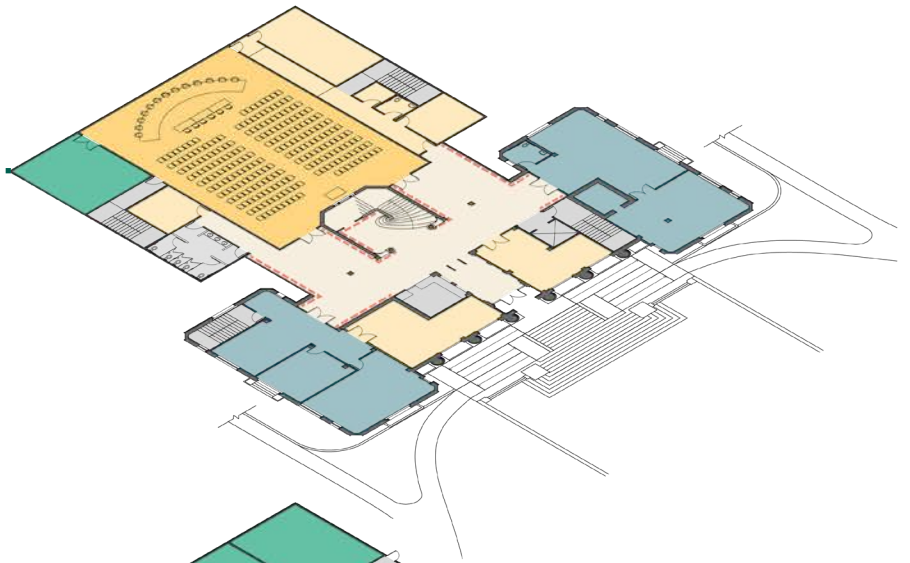


SECOND FLOOR (6,500 SF)



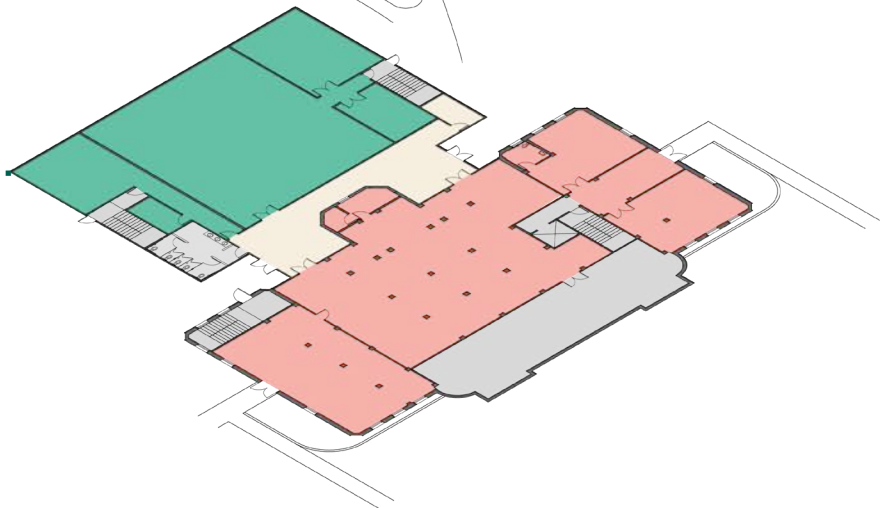
FIRST FLOOR (14,400 SF)

Broadcast Studio



GROUND FLOOR (16,350 SF)

Offices
Editing Suite
Small Studios
Lounge/Kitchenette



5.4 Veterans Memorial Building

5.4

Veterans Memorial Building- Community Arts Center

The public, Berkeley's arts community, Civic Arts Commission, and the Civic Arts Program broadly support the use of the Veterans Memorial Building as a Community Arts Center. To ensure that the building is a shared resource and platform for creative expression accessible to all, the Community Arts Center would be owned and operated by the City of Berkeley for the benefit of our community. Community need demonstrates that the Veterans Memorial Building could be active throughout the day, every day of the week, presenting and hosting all types of arts organizations and artists across all disciplines including music, theater, dance, visual arts, literary arts, and more.

New art functions may require additions, particularly related to the stage. Further study with arts organizations, Civic Arts staff, related commissions and the interested public is required to determine the detailed space needs and the best way to meet them. In a survey with local arts organizations who expressed interest

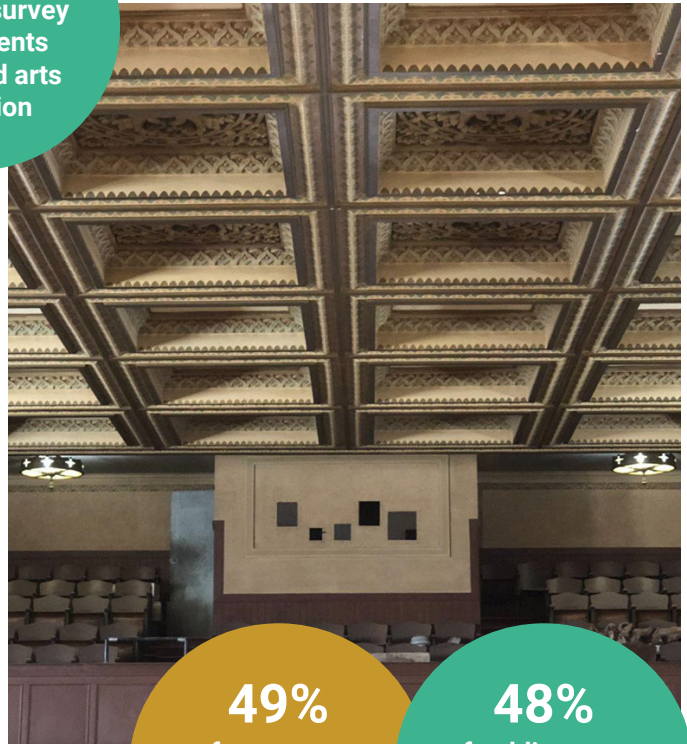
in using the building, many expressed interest in utilizing all the spaces that the VMB has to offer for public programming. These takeaways align with the perception of need in the general public survey responses.

Veterans Memorial Building is very desirable as an arts center:

- Downtown, central location near arts district and transit is very appealing to arts groups.
- Multi-unit residential buildings are located nearby; VMB is accessible by walking.
- Historic structure with tall ceilings and natural light. Architectural features worth preserving.
- Unique flexible spaces and smaller performance spaces for 100–200 audience members.
- Adjacent to park, where outdoor performances could be located
- Relationship to nearby educational facilities – BHS and BCC.

42%
of arts survey
respondents
support
exhibition space

45%
of public survey
respondents
prioritized arts
exhibition



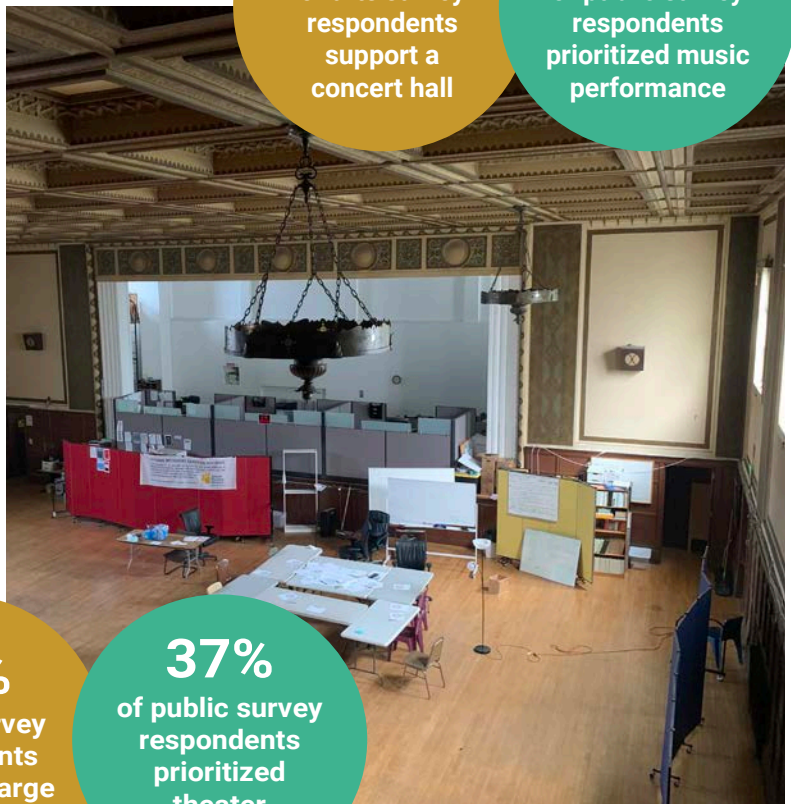
49%
of arts survey
respondents
support a
concert hall

48%
of public survey
respondents
prioritized music
performance



47%
of arts survey
respondents
support a large
auditorium

37%
of public survey
respondents
prioritized
theater
performance



Existing Conditions

Additions & Improvements

Seismic Improvements: Building Performance Objective for New Buildings Plus

Approach: The City's Public Works Department recommends a seismic upgrade for the Veterans Memorial Building to the level of Building Performance Objective for New Buildings Plus (BPON+).

At this level of seismic retrofit, the building would be reoccupied several months to a year after a major seismic event.

Discussion: Improving the building to the level of BPON+ will provide a low risk of injury in a major seismic event. After such an event, there may be some localized structural damage that would require repairs prior to re-opening. This level of improvement is above code required minimums, providing additional protection to the historic asset.

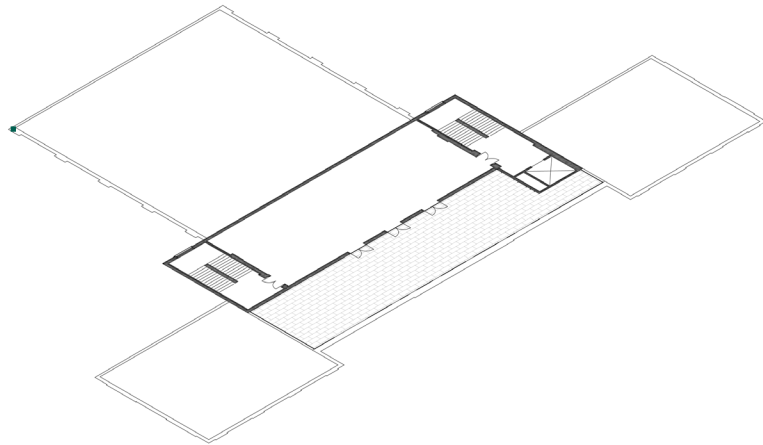
As part of the 2020 Vision Plan, the City investigated two approaches - Building Performance Objective for Existing Buildings (BPOE), and Immediate Occupancy (IO). The IO approach

represented significant cost, and the BPOE approach is a step lower than what is expected of new buildings designed to current code.

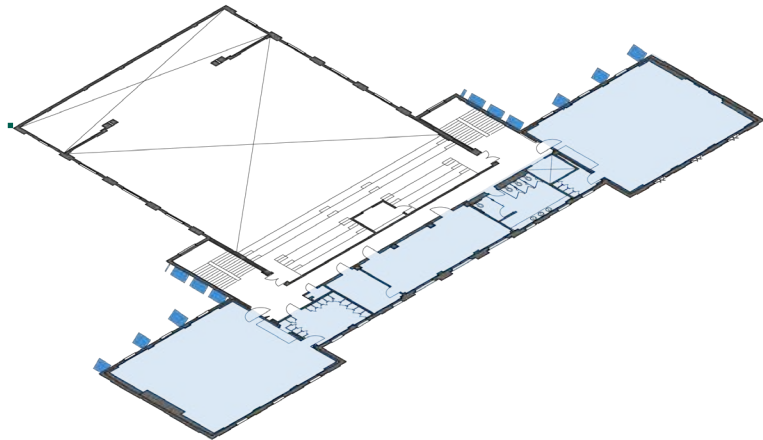
A second seismic report was submitted to City Council by Tipping Structural Engineers in August 2021, proposing a Building Performance Objective for New Building (BPON+) retrofit that addresses a lack of lateral strength and deficient strength at the roof-wall and floor-wall connections. This scheme strengthens the existing diaphragms, improves floor-to-wall and wall-to-roof connections, and reinforces select areas with shotcrete or carbon fiber.

During a specific design phase for the building, further study would be done to locate seismic improvements, including considering exterior fin buttresses at the rear, with the goal of minimizing the impact on historic finishes while optimizing performance and cost.

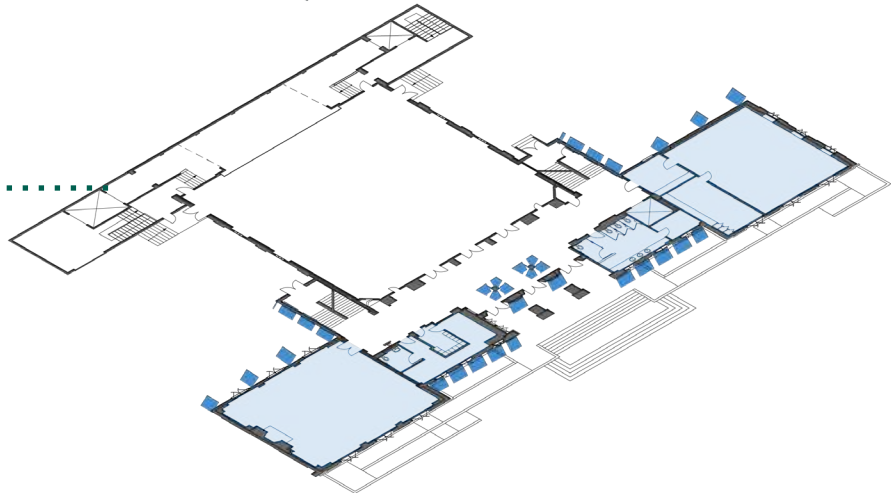
ROOFTOP (4,000 SF)



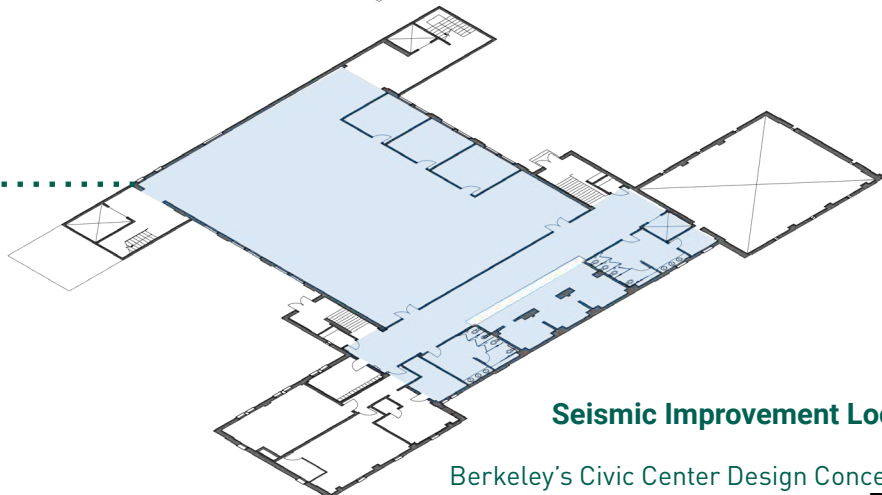
SECOND FLOOR (6,400 SF)



FIRST FLOOR (11,300 SF)



BASEMENT (10,300 SF)



Seismic Improvement Locations

Additions

The results of arts organization engagement showed a real need for additional space on either side of the stage in the large auditorium. Proposed uses include a loading dock, additional backstage and greenroom spaces, a new vertical access core to the basement level, and storage for scenery. The design concept shows a possible configuration accommodating these uses. A specific design phase will need to refine the proposed additions, and confirm if any other spaces are needed, such as additional class or practice rooms.

Other Improvements

A specific design will need to address other required improvements. These include new mechanical, electrical, lighting and plumbing systems to bring them into compliance with current building code and City policy. The City of Berkeley is committed to converting buildings to all-electric, including this historic structure. Relatedly, energy production through solar panels on the roof should be explored. A building assessment report was completed in 2021 by Allana Buick and Bers to identify needed improvements and repairs to the building envelope (enclosure), and their recommendations should be integrated into a future project. All of this work taken together will result in a more sustainable and resilient building.

Accessibility upgrades will be required throughout the building, including a new and more gracious accessible entry ramp sequence, a modern elevator core, and adjustment of doors and other elements to meet accessible clearance and reach requirements.

Egress from the building does not comply with modern fire codes, in particular from the basement level, and should be addressed during the specific design phase to provide proper exiting paths once space uses are confirmed. Additional exits from areas determined to have assembly uses will need to be provided, with access to the public right of way or an area of refuge.

All of these changes will need to be addressed while respecting the historic nature of the building, and meeting Secretary of the Interior standards for historic preservation. As a part of that effort, the historic finishes will need repairs and restoration, and non-historic elements will be replaced with modern, healthy and resilient materials.

Accessibility



Finishes



Egress/Safety



System Upgrades



Building Performance



"Please make sure gender-neutral bathrooms are included."

"it needs to appear more open, accessible, inviting and welcoming"

"...refurbish front doors and restrooms so visitors have a more pleasant experience."

Space Use

Program Spaces

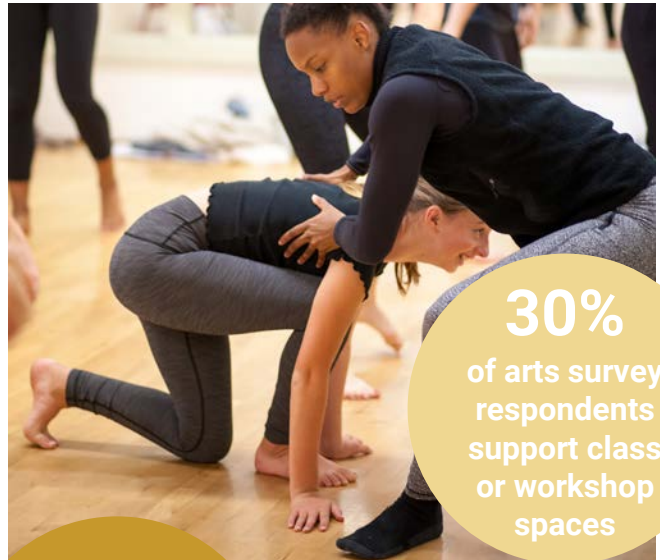
Arts Survey participants and the public all noted a need for multi-disciplinary spaces available to rent by the larger community.

During the focus group session, participants more specifically described a need for flexible, multi-use spaces that can support all types of performances, exhibitions, classes, screenings, studios, conferences, panel discussions, and readings.

The layout of the large auditorium should be carefully considered to maintain flexibility. Ideas discussed include lowering the stage, creating additions to the east and west for more backstage space, and deployable risers to allow for many performance configurations.

Some of the smaller lodge rooms on the first floor might have specific functions - a municipal gallery on the west side and a classroom that supports visual arts with storage and sinks on the east side. Others can remain flexible open spaces.

Discussions with the Veterans group during the Vision Phase showed that they were also interested in rentable spaces for classes or meetings of their own.



30%
of arts survey respondents support class or workshop spaces

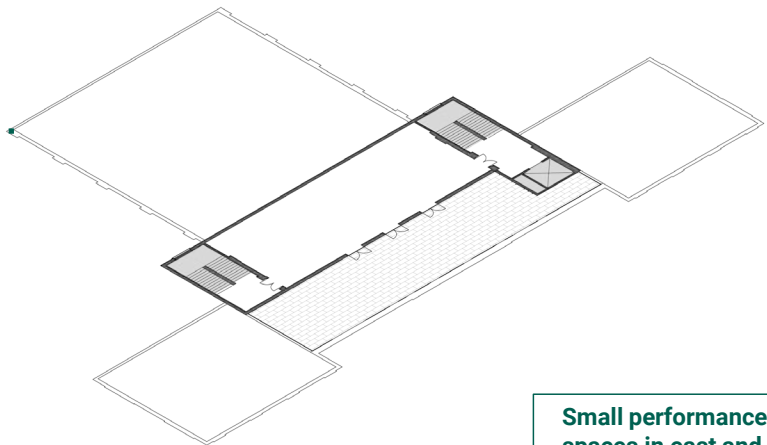
Shawl-Anderson Dance Company

44%
of arts survey respondents support rehearsal space



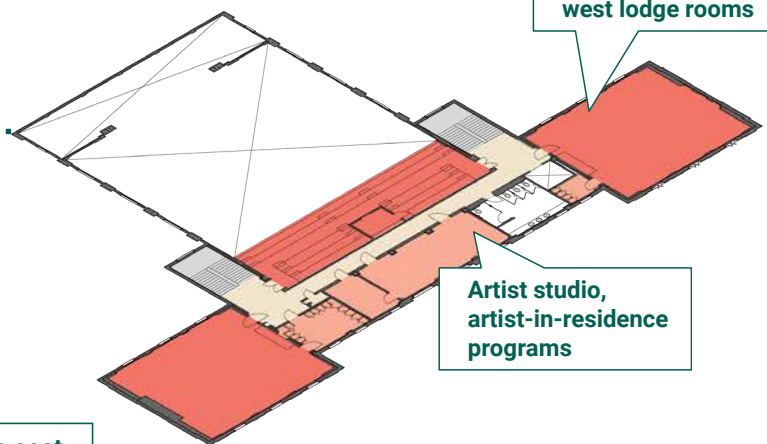
View to stage at Veterans Memorial Building

ROOFTOP (4,000 SF)



SECOND FLOOR (6,400 SF)

- Dressing Rooms
- Learning Lab/ Artist Workspace
- Small Performance/ Practice
- Balcony Seating



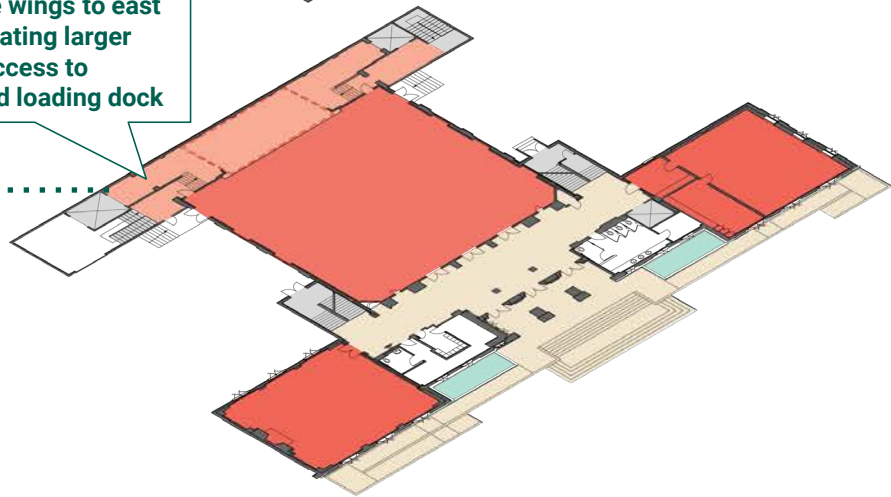
Small performance spaces in east and west lodge rooms

Artist studio, artist-in-residence programs

Expand stage wings to east and west, creating larger backstage, access to basement and loading dock

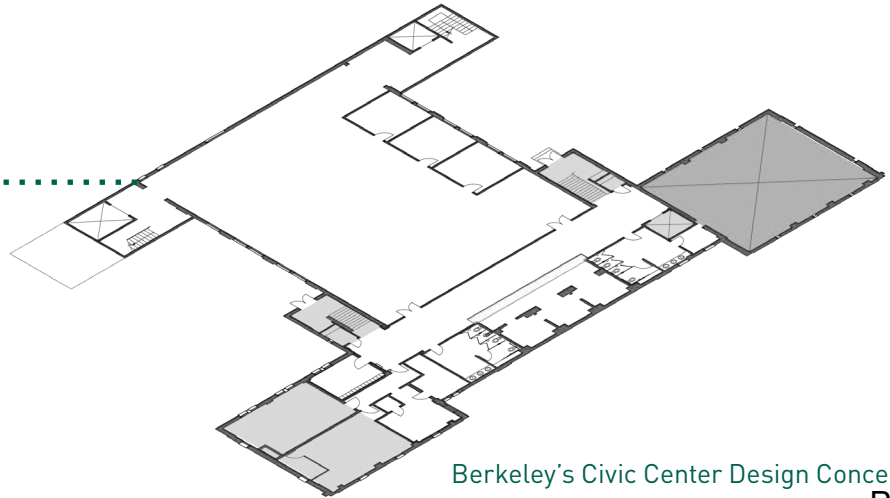
FIRST FLOOR (11,300 SF)

- Auditorium
- Gallery/ Visual Arts Rooms
- Stage/ Backstage



BASEMENT (10,300 SF)

- Mechanical/Crawl Space



Support Spaces

Transforming the Veterans Memorial Building into a successful arts center will require significant and high-quality space dedicated to support functions.

One major support function mentioned by the participants in the focus group was the ability to host donor events in a large downtown space. During the 2020 Vision Plan, a rooftop event space was suggested, and is shown in this design concept, to be further studied during the specific design phase.

Spaces between the east and west wings on the first and second floor can accommodate offices, restrooms, storage, and other support spaces required for hosting classes, events, and performances in the venue.

The large open area on the basement level could be repurposed for any number of back-of-house functions including a stage shop and additional backstage and practice spaces for groups renting the large auditorium.

Back-of-house types of uses include:

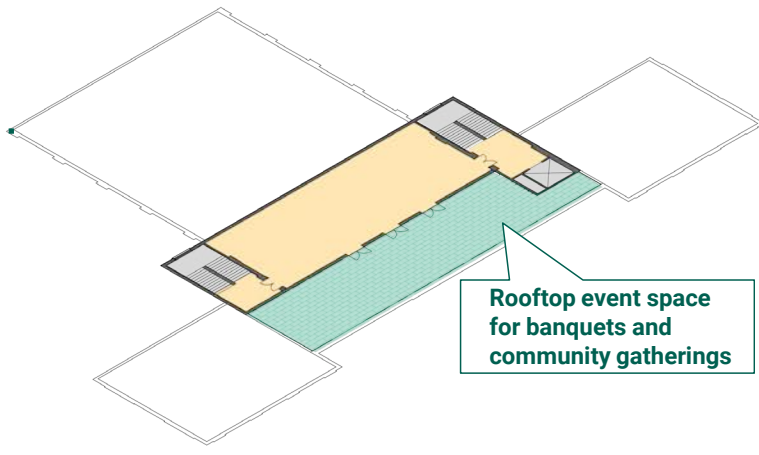
- Dressing/Changing rooms
- Offices
- Rehearsals
- Storage for productions and facility
- Storage for City's public art collection



Studio Gang Island in the Sky, Chicago IL

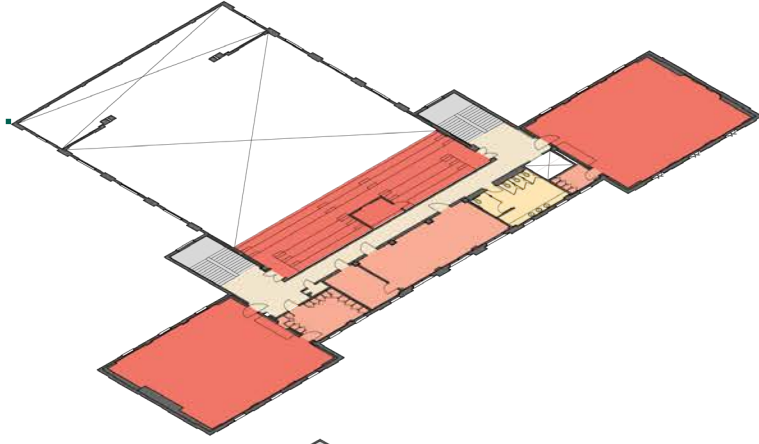
ROOFTOP (4,000 SF)

- Event Space
- Rooftop Terrace



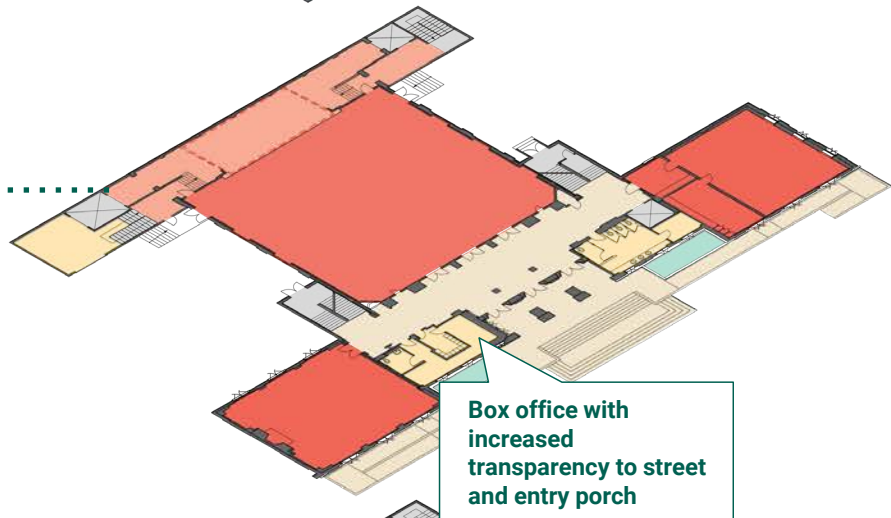
SECOND FLOOR (6,400 SF)

- Storage Space
- Restrooms



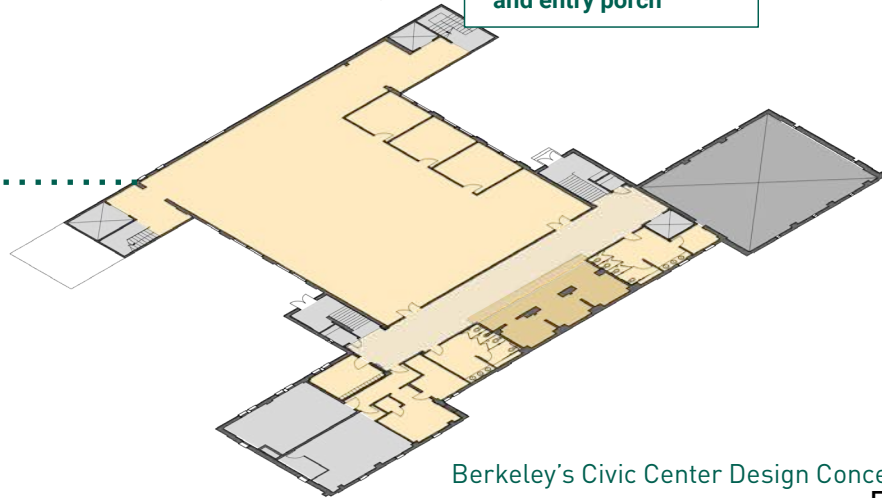
FIRST FLOOR (11,300 SF)

- Box Office/Administration
- Restrooms
- Loading Dock
- Main Lobby



BASEMENT (10,300 SF)

- Storage
- Dressing Rooms
- Stage/Scenery Shop
- Restrooms
- Lower Lobby
- Commercial Kitchen





Cost Summary

6.1 Preliminary Cost Ranges

Cost Summary - Preliminary Cost Ranges

6.1

Preliminary Cost Ranges

Construction Costs

Preliminary construction cost ranges provided in this report are based on the March 2023 Draft Berkeley Civic Center Design Concept Report, the 2021 Civic Center Buildings Study by Tipping Structural Engineers, and guidance from the City of Berkeley Public Works Department. See Appendix A for a full list of exclusions.

	Low (x \$1,000)	High (x \$1,000)
Maudelle Shirek Building - 27,500 GSF Existing + 15,000 GSF Addition	\$ 51,200	\$ 62,600
Seismic Retrofit - Damage Control+ to near Immediate Occupancy	\$ 13,400	\$ 16,400
Envelope & Systems (Electrification, Accessibility, upgrades, finishes)	\$ 15,500	\$ 18,900
Two-story addition on West side	\$ 19,000	\$ 23,200
PVs at new addition, panels & infrastructure	\$ 600	\$ 800
Site Improvement & Utilities	\$ 2,700	\$ 3,300
Veterans Memorial Building - 28,000 GSF Existing + 5,950 GSF Addition	\$ 26,300	\$ 36,900
Seismic Retrofit - Building Performance Objective for New Buildings	\$ 6,300	\$ 7,700
Envelope & Systems (Electrification, Accessibility, upgrades, finishes)	\$ 15,800	\$ 19,400
New Addition at Stage	\$ 2,900	\$ 3,500
Roof Terrace (in high range only)	(excluded)	\$ 4,600
PVs at new addition, panels & infrastructure	\$ 500	\$ 700
Site Improvement & Utilities	\$ 800	\$ 1,000
Martin Luther King Jr. Civic Center Park & Streets	\$ 16,470	\$ 20,130
Paths/paving, planting/irrigation, new trees/tree protection, utilities	\$ 14,670	\$ 17,930
Site Improvements to 2180 Milvia entry, VMB entry, restrooms	\$ 1,800	\$ 2,200
ESTIMATED CONSTRUCTION COSTS	\$ 93,970	\$119,630
+ Construction Contingency (10%)	\$ 9,783	\$ 11,957
TOTAL ESTIMATED CONSTRUCTION COSTS	\$103,753	\$131,587

Other City Costs

Leading up to and during construction, the City will incur costs related to technical studies, existing conditions, design, planning approvals, permitting and management, to name a few. These costs will be further refined in future efforts as more is defined about review process, design requirements and parameters, funding and financing, and timeline.

	Low (x \$1,000)	High (x \$1,000)
Other City Costs (estimated at 20% of construction costs)	\$ 21,523	\$ 26,305
TOTAL ESTIMATED CONSTRUCTION COSTS + OTHER CITY COSTS	\$125,276	\$157,892

Operations & Maintenance Costs

Utilizing the 2023 annual Operations & Maintenance budget from the 1947 Center Street building, a \$/SF annual cost was determined for O&M at the common and occupied spaces in city-owned buildings. That was applied to the areas of the Maudelle Shirek and Veterans Memorial Building to arrive at the following annual Operations & Maintenance budgets:

Maudelle Shirek Building	\$1,234,389
Occupied Space -	\$1,167,936
Common Space -	\$ 66,453
Veterans Memorial Building	\$1,069,860
Occupied Space -	\$1,012,900
Common Space -	\$ 56,690



Implementation

7.1 Organizational Management Structure

7.2 Funding Strategies

7.3 Recommended Next Steps

7.1

Organization Management Structures

Maudelle Shirek Building - The Seat of Berkeley's Democracy

With the primary uses being city and public meeting rooms, control of the Maudelle Shirek Building should remain with the City. This will ensure that the meeting spaces are available to all citizens of Berkeley, aligning with the Vision Statement's ideal of *a place of shared resources and platform for free expression for all*.

As with other buildings in the Civic Center, the Maudelle Shirek Building will be managed through the Public Works Department. Tenants, whether they be City Departments or outside non-profit entities, will enter into lease agreements for space within the building, and pay into the Building Maintenance Fund. The Public Works Department utilizes those funds to provide baseline services including building maintenance, electrical and communications systems, and janitorial services.

Tenant improvements to the spaces, including interior wall alterations, furniture, equipment, and interior finish improvements, are the responsibility of the tenant Department or non-profit. That includes design, permitting, and management of contractors, installers, deliveries, or other third-parties involved in the improvements. Proposed improvements are reviewed and approved by the Public Works department prior to execution.

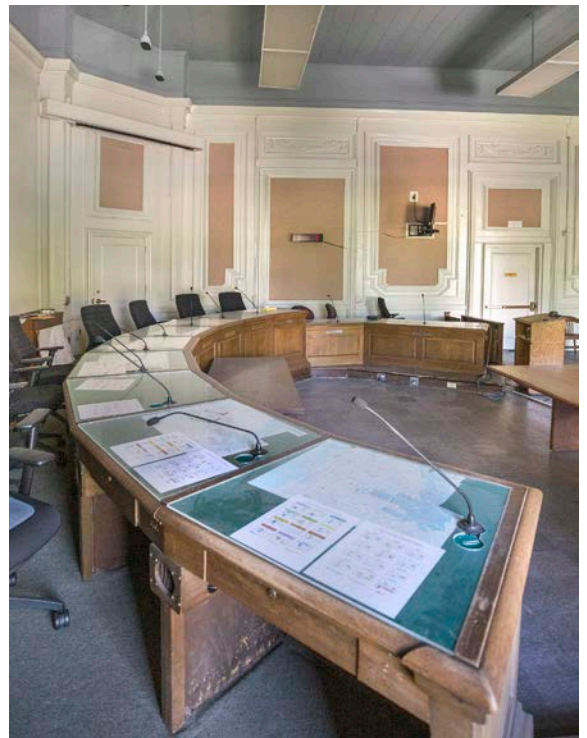
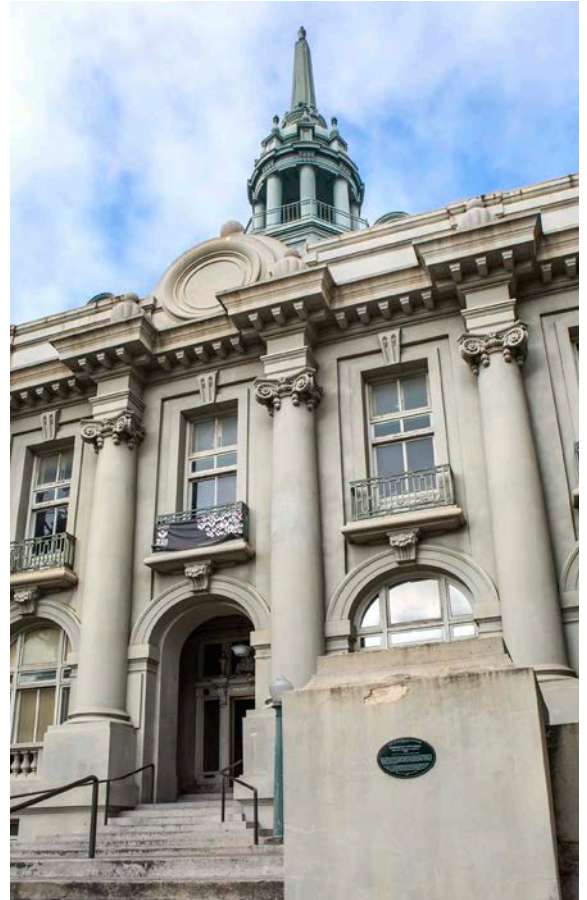
To proceed into a specific design phase, the City should create memorandums of understanding with the selected departments and vision-aligned non-profits. How space is allocated in the final design will be impacted by both the space needs and available funding of the future tenants, and will need to be finalized before lease agreements are signed.



Baltmannsweiler Council Chambers , Germany



Geldrop-Mierlo Town Hall, Netherlands



Existing Conditions at Maudelle Shirek

Veterans Memorial Building - Municipal Arts Center

A shared resource and platform for creative expression accessible to all.

The community-serving Municipal Arts Center will be the artistic destination in the heart of Berkeley serving as a shared resource and platform for creative expression for people of all ages across all disciplines including music, theater, dance, visual arts, literary arts, and more. The Center will be accessible to all Berkeley residents and the regional Bay Area community.

The project team recommends a City-owned and operated model for the Veterans Memorial Building.

The design team and Civic Arts staff explored two approaches to the management of the Veterans Memorial Building: a City-run arts space or an anchor tenant-run arts space. Civic Arts staff and the project team held outreach meetings with several local privately-run and municipal-run cultural and arts centers to understand their operating models. This included discussions with operators and/or developers from the Palo Alto Art Center (PAAC), Walnut Creek's Leshner Center for the Arts (LCA),

"A public arts space open to all artists."

"..bring in revenue to maintain the building."

"...a space for community arts of all kinds - and for all age groups"

Oakland's Kaiser Convention Center, Livermore Valley Performing Arts Center, and San Francisco's Yerba Buena Center for the Arts (YBCA).

The key finding from this initial research was that operating an art center as a City-run facility ensures that it remains accessible to the entire community while also ensuring that building uses and programming aligns with City values.

The Civic Arts staff and design team also met with lease management staff in the Parks, Recreation and Waterfront and Public Works departments to discuss successful models and lessons learned from other City-owned and operated facilities and programs. From these conversations, the project

team has researched how others have operated and maintained spaces that are accessible to the community for use while also generating revenue to support operations. The research includes revenue-generating programs and offerings, required level of staffing and management, selection of programs & performances, and operating budgets.

Value Proposition/Offerings

Taking into consideration the public support for an open and accessible arts center for the Berkeley community, the Vision Statement, and the desire to maximize the activation of the Civic Center, the Arts Center will offer performances in the evenings and on weekends, classes for adults and students during the day, and afterschool and weekend programs for adults, teens and children, and provide space resources to local arts organizations and artists.

The Arts Center may also include a roof top café, as well as numerous potential rental spaces including auditorium rentals for performances and rehearsals, galleries and large rooms for lectures,

panels and exhibitions, as well as other event space for rent.

The Arts Center will attract, engage, and retain paying presenters, audiences and other local and regional visitors to participate in a unique cultural synergy expressive of Berkeley's values and spirit. Importantly, the Arts Center will provide a much needed venue for local arts organizations who currently rent event, exhibition, performance and rehearsal space in other Bay Area cities because local facilities are not available.



Livermore Valley Performing Arts Center

Revenue Model

The revenue model is a multi-prong approach. One revenue stream could be generated from space rentals for arts presentations by local arts organizations and arts programming, such as classes. Revenue could be generated as a share of ticket sales for performances. Rental revenue can also be earned for community gatherings and events, particularly the rooftop event space. The second revenue stream is generated through fundraising by the nonprofit public benefit corporation whose mission is to support the Arts Center's mission and to act as the fundraising arm & fiscal agent.

Operating Structure

We envision that the Veterans Memorial Building will be managed by the City's Civic Arts program in partnership with the Public Works Department. Management of arts-specific facilities requires knowledge of the programmatic needs of the various arts disciplines. Rental agreements for space within the building would ensure that funds are paid into the Building Maintenance Fund

to be utilized by Civic Arts to maintain arts related equipment and by Public Works Department s to provide baseline services including building maintenance, electrical and communications systems, and janitorial services. In addition, a nonprofit public benefit corporation will be formed whose mission is to support the Arts Center's mission and to function as the fundraising arm & fiscal agent. This public-private partnership will be essential to support strategic planning, programming, education & community engagement, and funding of the Center. This to-be-formed organization will support costs related to fundraising, marketing, furniture/fixtures/equipment, event production, security, and auxiliary staffing.

Civic Arts staff will continue to hold additional outreach meetings with local examples of municipal-run cultural and arts centers to refine the operating model. The long-term management and staffing of Veterans Memorial Building and its associated programs will be defined through further study.



Palo Alto Art center



Leshor Center for the Arts, Walnut Creek

7.2

Funding Strategies

With an approved design concept, this project would move into its next phase of additional recommended studies, environmental reviews, and initiating specific design projects. This work is estimated to cost around \$15 million and take 2-3 years.

A variety of funding sources could contribute to the City's approach to funding. The first approach would involve many different sources of funding all leading to one large project, phased in over the course of years. The following funding sources might contribute to the project:

- **Federal Infrastructure Funding.** staff and consultants have not yet been able to find a category within the current funding stream that is a strong fit for this project, but that may change as future opportunities arise. Grant match requirements vary.
- **FEMA/Cal OES Hazard Mitigation Grants.** These grants require a cost/benefit calculation that makes the BPON+ standard more likely to qualify for a grant. For that reason, the Veteran's Building is more likely to benefit. Grants require a 25% match.
- **Sustainability/Resiliency Grants:** the state and federal government offer grants that might help fund the electric conversion, green infrastructure, permeable paving, etc. Grant match requirements vary.
- **Urban Greening Grant/Coastal Conservancy Grant:** these grants may fund a feasibility study of daylighting the creek. Grant match requirements vary.
- **Congressionally Directed Spending Requests** (aka earmarks). These are typically in the range of \$750,000-\$1.5 million. The City has submitted a request to our federal legislators for this project and should learn in the fall whether the earmark is successful. If so, funding would commence in calendar year 2024. There is no match requirement.

- **City Funding.** The City’s General Fund, a future tax measure, or Certificate of Participation could contribute to the project. In addition, traffic safety and stormwater elements of the project might get contributions from Measure BB, Gas Tax, and/or the City’s Storm Fund.
- **Foundations and/or Private Individuals.** Given the Civic Center’s history and importance, private foundations and individuals might be a component to the overall funding strategy.
- **Bonding Capacity/Debt Service**
 - Using early construction costs estimates, and the general fund as collateral, assuming the Maudelle Shirek Building has a project cost of ~\$54M, the annual debt service would be ~\$3,900,000/year (30 year amortization). A ~\$71M project cost would have debt service of ~\$4,900,000/year. For the Veterans Memorial Building, a project cost of ~\$34M would have annual debt

service of ~\$2,400,000 and a project cost of ~\$41M would have annual debt service of ~\$2,900,000. There would be a reduction in annual debt service of approximately \$50,000/year if both projects were financed together.

An alternative, more opportunistic approach would be to identify specific project components that would be good fits for available grants, and when successful in gaining grants, move those elements forward, e.g., the project’s raised sidewalks and bulbouts. This approach would likely take more time, involve more project cost overall (less efficiencies of scale), but might be more realistic.

Regardless, this project will be significantly more attractive for funding with an adopted design concept. Recognizing that strong plans need funding, and funding is attracted to strong plans, and staff are excited to work with City Council on moving this project forward.

7.3

Recommended Next Steps

As the City continues to develop a funding and long-term implementation plans for the Civic Center Park, surrounding streets, the Maudelle Shirek Building and the Veterans Memorial Building, immediate steps for improvements are offered as a way to initiate improvements and enhance the Civic Center experience.

Some of these steps can be undertaken in collaboration with vision-aligned partners and non-profit organizations. Future studies and longer term efforts are also offered with the goals of developing specific plans that launch the Berkeley Civic Center into its improved future.

Early Activation Projects

To offer a better experience of the Civic Center Park, the City and City partners could fund early activation projects that reinvigorate the Park in advance of more significant future improvements, including:

- Installation of new furnishings, including tables and seating or picnic tables with benches, specifically selected and placed for lunch time use
- Introduction of pop-up food vendor events and/or food trucks during the weekdays
- Installation of new tree protection elements
- Biodiversity enhancement through new plantings
- Lighting and path repairs and upgrades
- Restroom repairs and upgrades
- Review of current special events needs and lease agreements for Civic Center Park, considering changes to agreements specific to this Park
- Increase funding for Park operations and maintenance

Future Studies

Additional information is needed to support specific design projects for the Civic Center Park, surrounding streets, Maudelle Shirek Building and Veterans Memorial Building. These include:

- Topographic Survey of the Civic Center Park, surrounding streets and building sites
 - Updated Arborist Report for Civic Center and surrounding street trees, and Tree Succession Plan
 - As-Built drawings & Existing Condition reports for buildings
 - Traffic Study to identify the impacts on traffic flow/circulation/delays on adjacent city blocks, impacts on intersection capacity, emergency response times and parking of introducing traffic calming devices such as: a flush-surface shared street on Center; bulb-outs on MLK Jr Way; reduced parking on MLK Jr Way and Center; raised crosswalks or tables on MJK Jr Way at Center and Allston; and crosswalks, either raised or flush with pavers, on Allston between the existing Berkeley High School gates and Civic Center Park.
- A grant pre-application was submitted to the California Coastal Conservancy for funding of the Strawberry Creek daylighting effort. While the application reviewers were excited about the project “because of the ecological and community benefits”, they suggested the City apply to the Urban Greening program at the California Natural Resources Agency. Members of the CCCC and others are pursuing this and other grant funding opportunities. The City will need to be the lead on any formal grant applications. Creek grant applications should include:
 1. A detailed description of the project location and park features - a large green for civic gatherings, festivals and recreation; Turtle Island Monument and Plaza; Mature trees (redwoods, poplars, camphors, magnolias, oaks, and the signature Sequoia) many of which were planted 80+ years ago; and pedestrian and vehicular paths and parking areas.

Implementation - Next Steps

2. The need for the project and benefits to the area, which is an urban setting.
3. Community-led planning and engagement, involving stakeholders such as surrounding property owners, and primary park users such as BHS, BCC, City of Berkeley, Ecology Center, festival hosts and others.
4. Plans for technical and hydrological studies for daylighting Strawberry Creek in the Civic Center area.
5. Plans for a traffic study to identify impacts to traffic flow/circulation, emergency response times and parking of daylighting the creek.
6. The process for applying for and securing permits, including the necessary studies for the CEQA process.
7. A long-term maintenance and management plan for the creek and impacted areas of the park.
8. Preliminary budget including all technical studies, design efforts, permitting efforts, and construction costs.

Longer Term Efforts

Prior to the implementation of specific project design and construction efforts, the City may consider:

- Establish relationships with potential non-profit partners and funding entities to engage in a capital improvement campaign
- Develop funding plans for each of the constituent projects – the Park, surround streets and the historic structures
- Building assessment reports were prepared for the historic structures in 2021 identifying repairs needed as part of the future project. In the interim, City staff continues to monitor the buildings. Dependent on the project schedule, the City may need to stabilize the structures should risk of further deterioration arise before construction begins.
- Initiate specific design projects, including documentation of detailed spatial programming
- Identify entitlement/approvals path for specific designs including CEQA requirements and discretionary reviews.



Berkeley Civic Center

Design Concept ROM Cost Plan

Berkeley, California

Based on review & analysis of:

Berkeley's Civic Center Design Concept Report

Report Prepared for:

Siegel & Strain Architects

May 9, 2023 rev3

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BASIS OF ESTIMATE

REFERENCE DOCUMENTATION

This Construction Cost Estimate was produced from the following documentation. Design and engineering changes occurring subsequent to the issue of these documents have not been incorporated in this estimate.

Document	Date
Seismic Evaluation and Conceptual Retrofit Design by Tipping Structural Engineers	8/2/2021
Berkeley Civic Center Design Concept Report by Siegel & Strain Architects	3/10/2023
BCC2 Cost Estimate markup from Siegel & Strain Architects	4/19/2023
Discussions with and review comments from design team	various

PROJECT DESCRIPTION

The scope of work comprises a master plan for redevelopment of the old City Hall building and the Berkeley Veterans Memorial Building and the Civic Center Park around the City Civic Center in Berkeley. The summary page for each part shows the square foot area of each existing building as well as the new proposed program area. A midrange of the likely cost per square foot for the proposed scale of work is provided along with the resulting dollar cost in the current market. The two adjoining columns to the right show the dollar costs at 10% lower and 10% higher than the midrange. The Estimated Total Construction Costs Range are escalated assuming start of construction in 2028 with a project duration of 4 years. At this point in time there is no information about phasing or the scenarios that might be chosen, so current costs provide the most appropriate cost ranges in accordance with the Design Concept by the design architect.

Component cost models have been provided for some of the buildings earmarked for renovation. These are provided as a guide to how some representative costs/sf have been derived. The cost models develop \$/SF costs for building systems based upon other similar building types adjusted for time and location. The cost scenarios that entail renovation benefit from existing floor plans that enable some approximate quantification of building metrics such as the total length of exterior wall, roof area, and partition length.

The general description of renovated spaces cites the updating of a percentage of finishes and equipment. Unit pricing assumes that this scope will be accompanied by some reconfiguration of spaces, and that some structural work will also be triggered. Some corresponding work to building skin and roofing is also assumed. The general contractor markups for supervision, general requirements, bonds and insurance, and fee are typical for the type of projects being considered, but will vary depending on the entire scope of work under contract.

Site costs are also included. TBD Consultants has provided some allowances for utility work that may be required, to cover the case of new buildings in new locations, as well as the reconfiguration of site layouts or upgrades to existing infrastructure.

The cost of phasing any of the projects is excluded. The basis of pricing assumes the general contractor will have full access to the unoccupied buildings and site area subject to the scope of work for the duration of any discrete project.

BASIS FOR PRICING

This estimate reflects the fair construction value for this project and should not be construed as a prediction of low bid. **Prices are based on local prevailing wage construction costs in Q1 of 2023.** Pricing assumes a procurement process with competitive bidding for all sub-trades of the construction work, which is to mean a minimum of 3 bids for all subcontractors and materials/equipment suppliers. If fewer bids are solicited or received, prices can be expected to be higher. Conversely in the current competitive market should a larger number of sub-bids be received (i.e. 6 and above) pricing can be expected to be lower than the current estimate.

Subcontractor's markups have been included in each line item unit price. Markups cover the cost of field overhead, home office overhead and subcontractor's profit. Subcontractor's markups typically range from 15% to 25% of the unit price depending on market conditions.

General Contractor's/Construction Manager's Site Requirement costs are calculated on a percentage basis. General Contractor's/Construction Manager's Jobsite Management costs are also calculated on a percentage basis.

Site Requirements	7.0%
Jobsite Management	15.0%
Phasing	0.0%

General Contractor's/Construction Manager's overhead and fees are based on a percentage of the total direct costs plus general conditions, and covers the contractor's bond, insurance, site office overheads and profit.

Insurance & Bonding	2.50%
General Contractor Bonding	
Sub-Contractor Bonding	
OSIP	
Fee (G.C. Profit)	5.0%

BASIS OF ESTIMATE

Additional conditions of construction

- The general contract will be by CM/GC method or competitively bid with qualified general and main subcontractors
- The entire scope of work for each scenario will be bid as one contract
- There will not be small business set-aside and equal opportunity employment requirements
- The contractor will be required to pay prevailing wages
- The contractor will have full access to the site during working hours; buildings will be unoccupied
- Unless identified otherwise, the cost of such items as overtime, shift premiums and construction phasing are not included in the line item unit price.

This cost plan is based on standard industry practice, professional experience and knowledge of the local construction market costs. TBD Consultants have no control over the material and labor costs, contractors methods of establishing prices or the market and bidding conditions at the time of bid. Therefore TBD Consultants do not guarantee that the bids received will not vary from this cost estimate.

CONTINGENCY

Design Contingency 20.0%

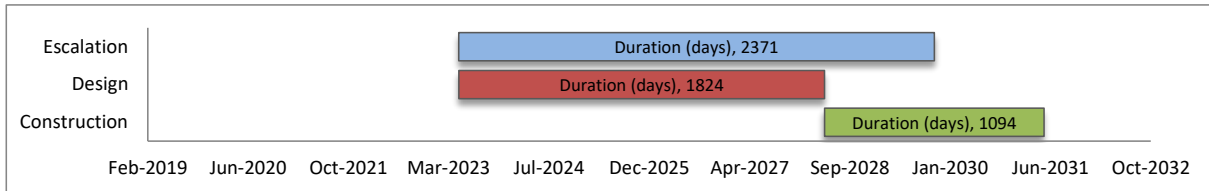
The Design Contingency is carried to cover scope that lacks definition and scope that is *anticipated* to be added to the Design. As the Design becomes more complete the Design Contingency will reduce.

Construction/Owners Contingency 10.0% *Carried "below the line" of Construction Costs*

The Construction Contingency has not been carried to cover the unforeseen during construction execution and Risks that do not currently have mitigation plans. (As Risks are mitigated, Construction Contingency can be reduce, but should not be eliminated.)

An owners contingency has not been included in this construction cost estimate, but it is advised that the owner carry additional contingency to cover scope change, bidding conditions, claims and delays.

CONSTRUCTION SCHEDULE & ESCALATION



Construction Start Date	May-2028	Construction End Date	Apr-2031
Mid-date of Construction	Oct-2029	Construction Duration	36 months
Escalation Period	78	Escalation End Date	Construction Mid-Point

ESCALATION

Escalation is required to the midpoint of construction which is assumed to be 78 months from May 9, 2023 rev3

Escalation:	32.77%	<i>Compounded Rate</i>	<i>Based on a cumulative escalation over 7 years</i>
Year 1	5.50%		
Year 2	5.00%		
Year 3	4.50%		
Year 4	4.00%		
Year 5	4.00%		
Year 6	4.00%		
Year 7	4.00%		

This calculation does not account for adverse bidding conditions and a separate Bid Contingency should be carried if there are limited qualified bidders or if a market research study indicates.

BASIS OF ESTIMATE

EXCLUSIONS FROM TOTAL ESTIMATED CONSTRUCTION COSTS

- Costs for phasing for all projects
- All City costs (i.e. soft costs, permitting and fees, inspections, design fees, technical reports, construction and project management, and financing costs)
- Preconstruction services
- Surge & moving costs
- Premium foundation systems (drilled piers, micro piles, etc.)
- Over excavation & recompaction of site soils
- Delays in construction due to environmental mitigation measures
- Artwork / Public art
- Utility connection fees and charges
- Furniture, fixtures and equipment (FF&E) except fixed seating in auditorium space if applicable
- Land acquisition, feasibility studies, financing costs and all other owner costs
- Hazardous materials abatement
- Construction/Owner's contingency
- Costs for LEED certification
- Operations and maintenance costs
- Creek daylighting

OVERALL SUMMARY (TOTAL PROJECT COSTS)	BUILDING / SITE AREA	\$/SF MIDRANGE	MID-RANGE	LOW (-10%)	HIGH (+10%)	COMMENTS
PRELIMINARY ORDER OF MAGNITUDE COST ESTIMATE			X \$1,000	X \$1,000	X \$1,000	
Maudelle Shirek Building - 27,500 GSF Existing + 15,500 GSF Addition						
Seismic Retrofit - (Damage Control+) to (Near Immediate Occupancy)	27,500	\$542	\$14,900	\$13,400	\$16,400	
Envelope Systems including electrification, Accessibility, all other building upgrade and finishes	27,500	\$625	\$17,200	\$15,500	\$18,900	
Two story addition on West side	15,500	\$1,361	\$21,100	\$19,000	\$23,200	
PVs at new addition, Panels & infrastructure	7,750	\$90	\$700	\$600	\$800	
Site improvement & utilities	18,600	\$161	\$3,000	\$2,700	\$3,300	
Maudelle Shirek Building - 27,500 GSF Existing + 15,500 GSF Addition - TOTAL	43,000	\$1,323	\$56,900	\$51,200	\$62,600	
Veterans Memorial Building - 28,000 gsf existing + 4,000 sf roof terrace						
Seismic Retrofit - BPON+ (or Better Performance Objective for New Buildings)	28,000	\$250	\$7,000	\$6,300	\$7,700	
Envelope Systems including electrification, Accessibility, all other building upgrade and finishes	28,000	\$629	\$17,600	\$15,800	\$19,400	
New Additions to either side of Stage	1,950	\$1,641	\$3,200	\$2,900	\$3,500	
Roof Terrace (including 1,500 sf enclosure + 2,500 sf roof deck) in High range only	4,000	\$1,050	\$4,200	excluded	\$4,600	
PVs at new addition, Panels & infrastructure	7,000	\$86	\$600	\$500	\$700	
Site Improvements (paved areas in back for loading/service) & utilities	5,500	\$164	\$900	\$800	\$1,000	
Veterans Memorial Building - 28,000 gsf existing + 4,000 sf roof terrace - TOTAL	33,950	\$987	\$33,500	\$26,300	\$36,900	
Martin Luther King Jr. Civic Center Park & Streets						
Paths and paving, planting and irrigation, new trees and tree protection, utilities	203,000	\$80	\$16,300	\$14,670	\$17,930	
Site Improvements to 2180 Milvia Western entry, VMB entry and public restrooms in Park	20,000	\$100	\$2,000	\$1,800	\$2,200	
Martin Luther King Jr. Civic Center Park & Streets - TOTAL	223,000	\$82	\$18,300	\$16,470	\$20,130	
TOTAL ESTIMATED CONSTRUCTION COST	76,950	\$1,413	\$108,700	\$93,970	\$119,630	
ADD CONSTRUCTION CONTINGENCY	10%	\$141	\$10,870	\$9,783	\$11,957	
TOTAL CONSTRUCTION COST INCLUDING 10% CONSTRUCTION CONTINGENCY	76,950	\$1,554	\$119,570	\$103,753	\$131,587	
ADD CITY COSTS including permitting, inspections, design fees, technical reports, consultants, CM, PM. This excludes environmental studies, FF&E, financing	20%	\$311	\$23,914	\$21,523	\$26,305	
TOTAL CONSTRUCTION COSTS TO CITY	76,950	\$1,865	\$143,484	\$125,276	\$157,892	

NOTES:

Estimates provided are based on information from:
March 10, 2023 BCC Vision & Implementation Plan
Tipping Structural Engineers
Berkeley Public Works Department

EXCLUSIONS FROM TOTAL ESTIMATED CONSTRUCTION COSTS:

- Costs for phasing for all projects
- All City costs (i.e. soft costs, permitting and fees, inspections, design fees, technical reports, construction and project management, and financing costs)
- Preconstruction services
- Surge & moving costs
- Premium foundation systems (drilled piers, micropiles, etc.)
- Over excavation & recompaction of site soils
- Delays in construction due to environmental mitigation measures
- AV, telecommunications, and security equipment
- Artwork / Public art
- Utility connection fees and charges
- Furniture, fixtures and equipment (FF&E) except fixed seating in auditorium space if applicable
- Land acquisition, feasibility studies, financing costs and all other owner costs
- Hazardous materials abatement
- Construction/Owner's contingency
- Operations and maintenance costs
- Costs for LEED certification
- Creek daylighting



BERKELEY CIVIC CENTER - ROM COST DETAIL

ITEMIZED ROM COST DETAILS	GROSS FLOOR AREA	\$/SF	Direct Const Cost	Gen Rqmt / Gen Cond	Bond & Insurance	General Ctor Fee	Design Contingency	Subtotal	Subtotal \$/SF	Escalation	Total Construction Cost	COMMENTS
			22.0%	2.50%	5.0%	20.0%				32.8%	209%	
PRELIMINARY ORDER OF MAGNITUDE			X \$1,000	X \$1,000	X \$1,000	X \$1,000	X \$1,000			X \$1,000	X \$1,000	
MAUELLE SHIREK BECOMES THE BERKELEY CENTER / BERKELEY THINK												
MAUELLE SHIREK BUILDING												
Functions as New Council Meeting Hall / City Offices / Community / Meeting Spaces												
Enhanced Seismic Retrofit (DC+)	27,500	\$260.00	7,150	1,573	218	436	1,875	11,253	\$409	3,688	14,900	
Renovate existing building	27,500	\$300.00	8,250	1,815	252	503	2,164	12,984	\$472	4,255	17,200	
Two story new construction	15,500	\$650.00	10,075	2,217	307	615	2,643	15,856	\$1,023	5,196	21,100	
PVs at new addition, Panels & infrastructure	7,750	\$40.00	310	68	9	19	81	488	\$63	160	700	flat roof area for PV panels & system
Landscape/Exterior Improvements	18,600	\$60.00	1,116	246	34	68	293	1,756	\$94	576	2,300	
Site Utilities	18,600	\$18.00	335	74	10	20	88	527	\$28	173	700	
MAUELLE SHIREK BUILDING - TOTAL	43,000	\$633.39	27,236	5,992	831	1,661	7,144	42,864	\$997	14,047	56,900	
VETERANS MEMORIAL BUILDING - to be Converted into an "Arts Hub"												
VETERANS MEMORIAL BUILDING												
Function as Cultural Hive												
Seismic Retrofit ROM (BPN+)	28,000	\$120.00	3,360	739	102	205	881	5,288	\$189	1,733	7,000	
Renovate existing building	28,000	\$300.00	8,400	1,848	256	512	2,203	13,220	\$472	4,332	17,600	
Addition to either side of Stage	1,950	\$780.00	1,521	335	46	93	399	2,394	\$1,228	784	3,200	connect to back stage + new elevators & stairs
New Roof Enclosure	1,500	\$750.00	1,125	248	34	69	295	1,771	\$1,180	580	2,400	
Roof Terrace	2,500	\$350.00	875	193	27	53	230	1,377	\$551	451	1,800	
PVs at new addition, Panels & infrastructure	7,000	\$40.00	280	62	9	17	73	441	\$63	144	600	flat roof area for PV panels & system
Landscape/Exterior Improvements	5,500	\$60.00	330	73	10	20	87	519	\$94	170	700	
Site Utilities	5,500	\$18.00	99	22	3	6	26	156	\$28	51	200	
VETERANS MEMORIAL BUILDING - TOTAL	33,950	\$470.99	15,990	3,518	488	975	4,194	25,165	\$741	8,247	33,500	
Martin Luther King Jr. Civic Center Park & Streets												
Program Room / Storage / Food / Café / Restaurant												
Site paths and paving, planting and irrigation, new trees and tree protection, utilities, furnishings and bollards, infrastructure and lighting, playground and skate spot, bulb outs, green infrastructure and crosswalks	203,000	\$38.33	7,780	1,712	237	475	2,041	12,245	\$60	4,013	16,300	
Improvements to 2180 Milvia western entry, VMB entry and public restrooms in Park	20,000	\$48.50	970	213	30	59	254	1,527	\$76	500	2,000	
MLK JR. CIVIC CENTER PARK & STREETS - TOTAL	223,000	\$39.24	8,750	1,925	267	534	2,295	13,771	\$62	4,513	18,300	



BERKELEY CIVIC CENTER PARK - SITE IMPROVEMENTS

CIVIC CENTER PARK ROM ESTIMATE	GROSS AREA	\$/SF MIDRANGE	Direct Construction Cost	COMMENTS
PRELIMINARY ORDER OF MAGNITUDE			X \$1,000	
BERKELEY CIVIC CENTER PARK - LANDSCAPING				
LANDSCAPE CONCEPT DESIGN				
Grass / Open Green	32,000	\$6.50	208	
Hardscape	93,000	\$35.00	3,255	
Planting	27,000	\$16.80	454	
Playscape	13,000	\$22.40	291	
Pedestrian space / paths / shared street	38,000	\$25.70	977	
Rough Grading & Site Demolition	203,000	\$4.00	812	
Street Improvement + Crossings	24,500	\$17.00	417	
New Tree Planting	60	\$3,000	180	
Special feature allowance	1	\$280,000	280	
Turtle Island Monument	2,000	\$50	100	
Peace Wall	180	\$200	36	
Misc. park furniture / benches	203,000	\$1.00	203	allowance
Site lighting	203,000	\$2.80	568	
LANDSCAPE CONCEPT DESIGN - TOTAL				
	203,000	\$38.33	7,780	
ENTRY/RESTROOM IMPROVEMENTS				
2180 Milvia western entry	11,500	\$30.00	345	
VMB entry	7,500	\$30.00	225	
Public restroom in park	1,000	\$400.00	400	
ENTRY/RESTROOM IMPROVEMENTS - TOTAL				
	20,000	\$48.50	970	



Sophie Hahn
District 5 Councilmember

To: Honorable Mayor and Members of the City Council

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

Subject: Dedicated Public Comment Time for City of Berkeley Unions

RECOMMENDATION

Adopt a Resolution (Attachment 3 + Exhibits A and B) revising the City Council Rules of Procedure and Order: Section IV. Conduct of the Meeting to:

1. Create a period of public comment reserved for officially designated representatives of City of Berkeley employee unions, immediately following the existing initial ten-minute period of public comment on non-agenda items.
2. Rescind Resolution No. 70,725–N.S.

CURRENT SITUATION

The City of Berkeley is experiencing a high staff vacancy rate across the entire organization. Over the long-term, high vacancy rates decrease the efficiency of services provided to the community and have a substantial impact on the morale of staff members asked to take on additional tasks working beyond their expected capacity.

On February 22, 2023, to help combat this trend, the City Council adopted the City Manager's [Employer of Choice](#) Roadmap. Among many priorities, it states a target goal of no more than 5 percent staff vacancies, recognizing the status quo needs to change. The roadmap states:

“The City of Berkeley is at a crucial point in its need to both retain our valued staff and attract the best candidates for positions within the organization. To this end,

we must transform our processes and implement new tools to be an Employer of Choice.”

The initiative funds additional HR professionals to accelerate hiring and new communications efforts to brand the City as an Employer of Choice. It also states that the retention of current employees is as important as hiring new employees, and that employees feeling seen and heard is key to retention:

“A comprehensive employee retention program can play a vital role in both attracting and retaining key employees, as well as in reducing turnover and its related costs. Retaining employees starts during the onboarding and socialization process to the organization. *Recognition, appreciation, and employee engagement are central to building culture and having employees feel seen, heard, and valued.* (Emphasis added).”

First-hand knowledge of the circumstances driving staff turnover and retention and impacting staff morale and success is crucial to fully understand the current situation, and for long term management of the organization. Towards these ends, the City of Berkeley should create a dedicated comment time at regular City Council meetings to hear from unions representing City employees. In adopting this practice, the City will follow the lead of the Berkeley Unified School District (BUSD) and the Berkeley Board of Library Trustees (BOLT), which already provide dedicated Union comment periods as part of their standing agendas.

City of Berkeley employees are currently represented by seven unions which would be eligible to participate in Union Comment Periods.

SEIU Local 1021 • Community Services and Part-Time Recreation Activity Leaders
SEIU Local 1021 • Maintenance and Clerical Chapters.
Berkeley Chief Fire Officers Association • IAFF • Local 1227
Berkeley Fire Fighters Association • I.A.F.F. • Local 1227”
Berkeley Police Association
IBEW • Local 1245
Public Employees Union • Local 1

BACKGROUND

Dedicated comment times for Unions representing agency workers are already standard operating procedure for BUSD and BOLT.

BOLT Policy (see Attachment 4) establishes a reserved 15-minute comment period for union members as part of the public comment period, shared proportionally between any unions representing library employees present at meetings to provide comment:

“For regular meetings of the BOLT, representatives from the three unions representing Library employees may address BOLT, with a total time limit of 15 minutes. If all three (3) unions have representatives present and wish to speak, each union shall receive 5 minutes to address BOLT. If only two (2) unions have representatives present and wishing to speak, each union shall receive 7.5 minutes to address BOLT, for a total of 15 minutes. If only one (1) union has representatives present and wishing to speak, that union shall receive 15 minutes to address BOLT.”

The BUSD Board of Trustees similarly provides a dedicated Union Comment Period on each of their agendas (see Attachment 5):

“9. Union Comments The chair (or designee) of each District union that includes members of the public is given the opportunity to address the Board on any issue. 5 minutes per union.”

The City of Berkeley should adopt a similar policy.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Sophie Hahn Council District 5 510-981-7150

ATTACHMENTS

1. Exhibit A: Revised City Council Rules of Procedure and Order (for adoption)
2. Exhibit B: Existing City Council Rules of Procedure and Order
3. Resolution
4. BOLT Meeting Policies
5. BUSD Agenda

The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. ~~70,725~~ _____ –N.S.

Effective ~~March 14, 2023~~ July 11, 2023

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I. DUTIES

A. Duties of Mayor

The Mayor shall preside at the meetings of the Council and shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order. In the Mayor's absence, the Vice President of the Council (hereafter referred to as the Vice-Mayor) shall preside.

B. Duties of Councilmembers

Promptly at the hour set by law on the date of each regular meeting, the members of the Council shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition.

C. Motions to be Stated by Chair

When a motion is made, it may be stated by the Chair or the City Clerk before debate.

D. Decorum by Councilmembers

While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council, use personal, impertinent or slanderous remarks, nor disturb any other member while that member is speaking or refuse to obey the orders of the presiding officer or the Council, except as otherwise provided herein.

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak. The Presiding Officer may set a limit on the speaking time allotted to Councilmembers during Council discussion.

The presiding officer has the affirmative duty to maintain order. The City Council will honor the role of the presiding officer in maintaining order. If a Councilmember believes the presiding officer is not maintaining order, the Councilmember may move that the Vice-Mayor, or another Councilmember if the Vice-Mayor is acting as the presiding officer at the time, enforce the rules of decorum and otherwise maintain order. If that motion receives a second and is approved by a majority of the Council, the Vice-Mayor, or other designated Councilmember, shall enforce the rules of decorum and maintain order.

E. Voting Disqualification

No member of the Council who is disqualified shall vote upon the matter on which the member is disqualified. Any member shall openly state or have the presiding officer announce the fact and nature of such disqualification in open meeting, and shall not be subject to further inquiry. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the member affected, be

decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to recuse themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

F. Requests for Technical Assistance and/or Reports

A majority vote of the Council shall be required to direct staff to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual council member.

II. MEETINGS

A. Call to Order - Presiding Officer

The Mayor, or in the Mayor's absence, the Vice Mayor, shall take the chair precisely at the hour appointed by the meeting and shall immediately call the Council to order. Upon the arrival of the Mayor, the Vice Mayor shall immediately relinquish the chair. In the absence of the two officers specified in this section, the Councilmember present with the longest period of Council service shall preside.

B. Roll Call

Before the Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

C. Quorum Call

During the course of the meeting, should the Chair note a Council quorum is lacking, the Chair shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the meeting shall be deemed automatically adjourned.

D. Council Meeting Conduct of Business

The agenda for the regular business meetings shall include the following: Ceremonial Items (including comments from the City Auditor if requested); Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public. Presentations and workshops may be included as part of the Action Calendar. The Chair will determine the order in which the item(s) will be heard with the consent of Council.

Upon request by the Mayor or any Councilmember, any item may be moved from the Consent Calendar or Information Calendar to the Action Calendar. Unless there is an objection by the Mayor or any Councilmember, the Council may also move an item from the Action Calendar to the Consent Calendar.

A public hearing that is not expected to be lengthy may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious and lengthy and/or the Council's regular meeting schedule is heavily booked, the Agenda & Rules Committee, in conjunction with the staff, will schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing.

E. Adjournment

1. No Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific agenda items to be covered and shall specify in which order these items shall be handled.
2. Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

F. Unfinished Business

Any items not completed by formal action of the Council, and any items not postponed to a date certain, shall be considered Unfinished Business. All Unfinished Business shall be referred to the Agenda & Rules Committee for scheduling for a Council meeting that occurs within 60 days from the date the item last appeared on a Council agenda. The 60 day period is tolled during a Council recess.

G. City Council Schedule and Recess Periods

Pursuant to the Open Government Ordinance, the City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.

Regular meetings of the City Council shall be held generally two to three Tuesdays of each month except during recess periods; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

Regular City Council meetings shall begin no later than 6:00 p.m.

A recess period is defined as a period of time longer than 21 days without a regular meeting of the Council.

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary for the immediate preservation of the public peace, health or safety; the authority to extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall have the aforementioned authority beginning the day after the Agenda & Rules Committee meeting for the last regular meeting before a Council recess and this authority shall extend up to the date of the Agenda & Rules Committee meeting for the first regular meeting after the Council recess.

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

H. Pledge of Allegiance to the Flag

At the first meeting of each year following the August recess and at any subsequent meeting if specifically requested before the meeting by any member of the Council in order to commemorate an occasion of national significance, the first item on the Ceremonial Calendar will be the Pledge of Allegiance.

I. Ad Hoc Subcommittees

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Councilmembers may be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from residents, related commissions, and other groups, as appropriate to the charge or responsibilities of such subcommittee. Ad hoc subcommittees must be reviewed annually by the Council to determine if the subcommittee is to continue.

Upon creation of an ad hoc subcommittee, the Council shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the Council.
2. A target date must be established for a report back to the Council.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the Council.

Subcommittees shall conduct their meetings in locations that are open to the public and meet accessibility requirements under the Americans with Disabilities Act. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular Council meetings except that subcommittee agendas may be posted with 24-hour notice. The public will be permitted to comment on agenda items but public comments may be limited to one minute if deemed necessary by the Committee Chair. Agendas and minutes of the meetings must be maintained and made available upon request.

Ad hoc subcommittees will be staffed by City Council legislative staff. As part of the ad hoc subcommittee process, City staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item(s) under consideration. Staff analysis at ad hoc subcommittees is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two.

Ad hoc subcommittees may convene a closed session meeting pursuant to the conditions and regulations imposed by the Brown Act.

III. AGENDA

A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the agenda of the meeting and posted in accordance with Section III.D.2. Exceptions to this rule are limited to circumstances listed in Section III.D.4.b and items continued from a previous meeting and published on a revised agenda.

B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if the Mayor or a Councilmember so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter. Council agenda items are limited to a maximum of four Authors and Co-Sponsors, in any combination that includes at least one Author.

Authors must be listed in the original item as submitted by the Primary Author. Co-Sponsors may only be added in the following manner:

- In the original item as submitted by the Primary Author
 - In a revised item submitted by the Primary Author at the Agenda & Rules Committee
 - By verbal request of the Primary Author at the Agenda & Rules Committee
 - In a revised item submitted by the Primary Author in Supplemental Reports and Communications Packet #1 or #2
 - By verbal or written request of the Mayor or any Councilmember at the Policy Committee meeting or meeting of the full Council at which the item is considered
2. Agenda items shall contain all relevant documentation, including the information listed below:
 - a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report;
 - b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;

- c) Recommendation of the report's Primary Author that describes the action to be taken on the item, if applicable;
 - d) Fiscal impacts of the recommendation;
 - e) A description of the current situation and its effects;
 - f) Background information as needed;
 - g) Rationale for recommendation;
 - h) Alternative actions considered;
 - i) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items);
 - j) Person or persons to contact for further information, with telephone number;
 - k) Additional information and analysis as required. It is recommended that reports include the points of analysis in Appendix B - Guidelines for Developing and Writing Council Agenda Items.
3. "Author" means the Mayor or other Councilmembers who actually authored an item by contributing to the ideas, research, writing or other material elements.
4. "Primary Author" means the Mayor or Councilmember listed first on the item. The Primary Author is the sole contact for the City Manager with respect to the item. Communication with other Authors and Co-Sponsors, if any, is the responsibility of the Primary Author.
5. "Co-Sponsor" means the Mayor or other Councilmembers who wish to indicate their strong support for the item, but are not Authors, and are designated by the Primary Author to be co-sponsors of the council agenda item.
6. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.
7. "Packet" means the agenda plus all its corresponding agenda items.
8. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:
- a) A work stoppage or other activity which severely impairs public health, safety, or both;
 - b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency

matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.

9. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier.
10. "Old Business" Items carried over from a prior agenda of a meeting occurring more than 11 days earlier.

C. Procedure for Bringing Matters Before City Council

1. Persons Who Can Place Matters on the Agenda.

Matters may be placed on the agenda by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items are subject to review, referral, and scheduling by the Agenda & Rules Committee pursuant to the rules and limitations contained herein. The Agenda & Rules Committee shall be a standing committee of the City Council.

The Agenda & Rules Committee shall meet 15 days prior to each City Council meeting and shall approve the agenda of that City Council meeting. Pursuant to BMC Section 1.04.080, if the 15th day prior to the Council meeting falls on a holiday, the Committee will meet the next business day. The Agenda & Rules Committee packet, including a draft agenda and Councilmember, Auditor, and Commission reports shall be distributed by 5:00 p.m. four days before the Agenda & Rules Committee meeting.

The Agenda & Rules Committee shall have the powers set forth below.

a) Items Authored by the Mayor, a Councilmember, or the Auditor.

As to items authored by the Mayor, a Councilmember, or the Auditor, the Agenda & Rules Committee shall review the item and may take the following actions:

- i. Refer the item to a commission for further analysis (Primary Author may decline and request Policy Committee assignment).
- ii. Refer the item to the City Manager for further analysis (Primary Author may decline and request Policy Committee assignment).
- iii. Refer the item back to the Primary Author for adherence to required form or for additional analysis as required in Section III.B.2 (Primary Author may decline and request Policy Committee assignment).
- iv. Refer the item to a Policy Committee.
- v. Schedule the item for the agenda under consideration or one of the next three full Council agendas.

For referrals under Chapter III.C.1.a.i, ii, or iii, the Primary Author must inform the City Clerk within 24 hours of the adjournment of the Agenda & Rules Committee meeting whether they prefer to:

- 1) re-submit the item for a future meeting with modifications as suggested by the Agenda & Rules Committee; or
- 2) pull the item completely; or
- 3) re-submit the item with revisions as requested by the Agenda & Rules Committee within 24 hours of the adjournment of the Agenda & Rules Committee meeting for the Council agenda under consideration; or
- 4) accept the referral of the Agenda & Rules Committee in sub paragraphs III.C.1.a. i, ii, or iii, or request Policy Committee assignment.

If the Primary Author requests a Policy Committee assignment, the item will appear on the next draft agenda presented to the Agenda & Rules Committee for assignment.

In the event that the City Clerk does not receive guidance from the Primary Author of the referred item within 24 hours of the Agenda & Rules Committee's adjournment, the item will appear on the next draft agenda for consideration by the Agenda & Rules Committee.

Items held for a future meeting to allow for modifications will be placed on the next available Council meeting agenda at the time that the revised version is submitted to the City Clerk.

- b) **Items Authored by the City Manager.** The Agenda & Rules Committee shall review agenda descriptions of items authored by the City Manager. The Committee can recommend that the matter be referred to a commission or back to the City Manager for adherence to required form, additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

If the City Manager determines that the matter should proceed notwithstanding the Agenda & Rules Committee's action, it will be placed on the agenda as directed by the Manager. All City Manager items placed on the Council agenda against the recommendation of the Agenda & Rules Committee will automatically be placed on the Action Calendar.

- c) **Items Authored by Boards and Commissions.** Council items submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the Commissioners' Manual. The content of commission items is not subject to review by the Agenda & Rules Committee unless referred for policy review to the Agenda & Rules Committee.
- i) For a commission item that does not require a companion report from the City Manager, the Agenda & Rules Committee may act on an agendaized commission report in the following manner:
1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.
 2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.
 3. Refer the item to a Policy Committee for review.
 4. Allow the item to proceed as submitted.
- ii) For any commission report that requires a companion report, the Agenda & Rules Committee may schedule the item on a Council agenda. The Committee must schedule the commission item for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the Agenda & Rules Committee. A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.
- d) The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E.

2. Scheduling Public Hearings Mandated by State, Federal, or Local Statute.

The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.

3. Submission of Agenda Items.

- a) **City Manager Items.** Except for Continued Business and Old Business, as a condition to placing an item on the agenda, agenda items from departments, including agenda items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.

- b) **Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and City Council is 5:00 p.m. on Monday, 22 days before each Council meeting.
- c) **Time Critical Items.** A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published agenda.

The Primary Author of the report shall bring any reports submitted as Time Critical to the meeting of the Agenda & Rules Committee. Time Critical items must be accompanied by complete reports and statements of financial implications. If the Agenda & Rules Committee finds the matter to meet the definition of Time Critical, the Agenda & Rules Committee may place the matter on the Agenda on either the Consent or Action Calendar.

- d) The City Clerk may not accept any agenda item after the adjournment of the Agenda & Rules Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.

4. **Submission of Supplemental and Revised Agenda Material.**

Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an agenda item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:

- a) Supplemental and revised agenda material shall be submitted to the City Clerk no later than 5:00 p.m. seven calendar days prior to the City Council meeting at which it is to be considered. Supplemental and revised items that are received by the deadline shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. five calendar days prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation.

- b) Supplemental and revised agenda material submitted to the City Clerk after 5:00 p.m. seven days before the meeting and no later than 12:00 p.m. one day prior to the City Council meeting at which it is to be considered shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. one day prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Council evaluation.
- c) After 12:00 p.m. one calendar day prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 42 copies of the supplemental/revised material to the City Clerk for distribution at the meeting. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda item in order for the material to be considered.

5. Submission of Late Urgency Items Pursuant to Government Code Section 54954.2(b)

Late Urgency Items are items proposed for submission to the Council Agenda pursuant to Government Code Section 54954.2(b)

All items to be submitted for consideration for addition to an agenda as Late Urgency Items shall be accompanied by a cover sheet that includes 1) boxes to check for the Author to affirm whether the item is submitted under the Emergency or Immediate Action Rule (and a short explanation of what is required to meet each rule, as well as the vote threshold required for the item to be placed onto the agenda by the City Council); 2) a disclaimer in BOLD 14pt. CAPS stating that the item is not yet agendized and may or may not be accepted for the agenda as a Late Urgency Item, at the City Council's discretion according to Brown Act rules; 3) a prompt requiring the author to list the facts which support consideration of the item for addition to the agenda as either an Emergency or Immediate Action item; and 4) a copy of the City Attorney memo on Late Urgency Items.

Late Items must be submitted to the City Clerk no later than 12:00 p.m. (noon) the day prior to the meeting.

All complete Late Items submitted by the deadline will be distributed with Supplemental Communication Packet #2 by 5:00 p.m. the day before the Council meeting. A Late Item is not considered "complete" and will not be distributed unless submitted with the required cover sheet, filled out in a complete manner.

Very Late Urgency Items of an extremely urgent nature (e.g., earthquake, severe wildfire, pandemic) may be submitted for addition to the agenda after the deadline of 12:00 p.m. the day before the meeting to accommodate unforeseeable, extreme and unusual circumstances. A Very Late Urgency Item will be distributed at the Council meeting prior to any vote to add it to the agenda and the Presiding Officer may provide an appropriate break to allow Councilmembers and the public to review the item before voting on whether to add it to the agenda and possibly again, at the Presiding Officer's discretion, before the item is voted on.

The required cover sheet should be included with the Very Late Urgency Item unless extremely exigent circumstances underlie the Very Late Urgency Item submission and a written cover sheet could not be prepared (for example, power is out and printing or emailing is not possible), in which case the individual "walking in" the item should be ready to provide all required information verbally at the meeting before a vote is taken to add or not add the item to the Agenda.

6. Scheduling a Presentation.

Presentations from staff are either submitted as an Agenda Item or are requested by the City Manager. Presentations from outside agencies and the public are coordinated with the Mayor's Office. The Agenda & Rules Committee may adjust the schedule of presentations as needed to best manage the Council Agenda. The Agenda & Rules Committee may request a presentation by staff in consultation with the City Manager.

D. Packet Preparation and Posting

1. Preparation of the Packet.

Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the packet, which shall include the agenda plus all its corresponding agenda items. No item shall be considered if not included in the packet, except as provided for in Section III.C.4 and Section III.D.4.

2. Distribution and Posting of Agenda.

- a) The City Clerk shall post each agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each agenda of a special meeting at least 24 hours in advance of the meeting in the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each agenda.
- b) The City Clerk shall also post agendas and annotated agendas of all City Council meetings and notices of public hearings on the City's website.
- c) No later than 11 days prior to a regular meeting, copies of the agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.

3. Distribution of the Agenda Packet.

The Agenda Packet shall consist of the Agenda and all supporting documents for agenda items. No later than 11 days prior to a regular meeting, the City Clerk shall:

- a) distribute the Agenda Packet to each member of the City Council;
- b) post the Agenda Packet to the City's website;
- c) place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and
- d) make the Agenda Packet available to members of the press.

4. Failure to Meet Deadlines.

- a) The City Clerk shall not accept any agenda item or revised agenda item after the deadlines established.
- b) Matters not included on the published agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:
 - A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.8.
 - Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.
- c) Matters listed on the printed agenda but for which supporting materials are not received by the City Council on the eleventh day prior to said meeting as part of the agenda packet, shall not be discussed or acted upon.

E. Agenda Sequence and Order of Business

The Council agenda for a regular business meeting is to be arranged in the following order:

1. Preliminary Matters: (Ceremonial, Comments from the City Manager, Comments from the City Auditor, Non-Agenda Public Comment, [Public Comment by Employee Unions](#))
2. Consent Calendar
3. Action Calendar
 - a) Appeals
 - b) Public Hearings
 - c) Continued Business
 - d) Old Business

e) New Business

4. Information Reports
5. Non-Agenda Public Comment
6. Adjournment
7. Communications

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

The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in this section.

F. Closed Session Documents

This section establishes a policy for the distribution of, and access to, confidential closed session documents by the Mayor and members of the City Council.

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.
2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.
3. Removal of confidential materials from a binder is prohibited.
4. Duplication of the contents of a binder by any means is prohibited.
5. Confidential materials shall be retained in the binders for at least two years.
6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

G. Regulations Governing City Council Policy Committees

1. Legislative Item Process

All agenda items begin with submission to the Agenda & Rules Committee.

Full Council Track

Items under this category are exempt from Agenda & Rules Committee discretion to refer them to a Policy Committee. Items in this category may be submitted for the agenda of any scheduled regular meeting pursuant to established deadlines (same as existing deadlines). Types of Full Council Track items are listed below.

- a. Items submitted by the City Manager and City Auditor
- b. Items submitted by Boards and Commissions
- c. Resolutions on Legislation and Electoral Issues relating to Outside Agencies/Jurisdictions
- d. Position Letters and/or Resolutions of Support/Opposition
- e. Donations from the Mayor and Councilmember District Office Budgets
- f. Referrals to the Budget Process
- g. Proclamations
- h. Sponsorship of Events
- i. Information Reports
- j. Presentations from Outside Agencies and Organizations
- k. Ceremonial Items
- l. Committee and Regional Body Appointments

The Agenda & Rules Committee has discretion to determine if an item submitted by the Mayor or a Councilmember falls under a Full Council Track exception or if it will be processed as a Policy Committee Track item.

Policy Committee Track

Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda & Rules Committee on a draft City Council agenda.

The Agenda & Rules Committee must refer an item to a Policy Committee at the first meeting that the item appears before the Agenda & Rules Committee. The Agenda & Rules Committee may only assign the item to a single Policy Committee.

For a Policy Committee Track item, the Agenda & Rules Committee, at its discretion, may either route item directly to 1) the agenda currently under consideration, 2) one of the next three full Council Agendas (based on completeness of the item, lack of potential controversy, minimal impacts, etc.), or 3) to a Policy Committee.

Time Critical Track

A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the Mayor or Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published agenda.

The Agenda & Rules Committee retains final discretion to determine the time critical nature of an item.

- a) Time Critical items submitted on the Full Council Track deadlines, that would otherwise be assigned to the Policy Committee Track, may bypass Policy Committee review if determined to be time critical. If such an item is deemed not to be time critical, it may be referred to a Policy Committee.
- b) Time Critical items on the Full Council Track or Policy Committee Track that are submitted at a meeting of the Agenda & Rules Committee may go directly on a council agenda if determined to be time critical.

2. Council Referrals to Committees

The full Council may refer any agenda item to a Policy Committee by majority vote.

3. Participation Rules for Policy Committees Pursuant to the Brown Act

- a. The quorum of a three-member Policy Committee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.
- b. Two Policy Committee members may not discuss any item that has been referred to the Policy Committee outside of an open and noticed meeting.
- c. Notwithstanding paragraph (b) above, two members of a Policy Committee may be listed as Authors or Co-Sponsors on an item provided that one of the Authors or Co-Sponsors will not serve as a committee member for consideration of the item, and shall not participate in the committee's discussion of, or action on the item. For purposes of the item, the appointed alternate, who also cannot be an Author or Co-Sponsor, will serve as a committee member in place of the non-participating Author or Co-Sponsor.
- d. All three members of a Policy Committee may not be Authors or Co-Sponsors of an item that will be heard by the committee.
- e. Only one Author or Co-Sponsor who is not a member of the Policy Committee may attend the committee meeting to participate in discussion of the item.

- f. If two or more non-committee members are present for any item or meeting, then all non-committee members may act only as observers and may not participate in discussion. If an Author who is not a member of the committee is present to participate in the discussion of their item, no other non-committee member Councilmembers, nor the Mayor, may attend as observers.
- g. An item may be considered by only one Policy Committee before it goes to the full Council.

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 agendaized for a committee meeting within 60 days of the referral date.

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.

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.

5. Number and Make-up of Committees

Six committees are authorized, each comprised of three Councilmembers, with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The Mayor shall be a member of the Agenda and Rules Committee. The committees are as follows:

1. Agenda and Rules Committee
2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

The Agenda & Rules Committee shall establish the Policy Committee topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

All standing Policy Committees of the City Council are considered “legislative bodies” under the Brown Act and must conduct all business in accordance with the Brown Act.

6. Role of City Staff at Committee Meetings

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

IV. CONDUCT OF MEETING

A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- At the first regular meeting of the month, Aa period of public comment reserved for officially designated representatives of City of Berkeley employee unions, with five minutes allocated per union if representatives of three or fewer unions wish to speak and up to three minutes per union if representatives of four or more unions wish to speak.
- Public comment on the Consent and Information Calendars.
- Public comment on the Action Calendar at the onset of the Action calendar with the exception of appeals, public hearings, and quasi-judicial matters requiring public comment for due process purposes.
- Public comment on action items by those who did not speak in the earlier Action Calendar public comment period, any appeals, public hearings, and/or other quasi-judicial matters requiring extended public comment for due process purposes as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

Except in the case of public comment by employee unions, sSpeakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall identify themselves, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

With respect to public comment by employee unions, each union's allocated time may be shared between more than one representative, and representatives and other members of unions may speak during other public comment periods in the same manner as members of the public.

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry, or unless the individual is speaking with respect to a public hearing, a quasi-judicial matter, and/or any other item requiring extended public comment as a matter of due process.

1. Public Comment on Consent Calendar and Information Items.

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

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. 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, the Mayor or 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.

2. Public Comment on Action Items.

After the initial ten minutes of public comment on non-agenda items, [reserved public comment by employee unions](#), public comment on consent and information items, and adoption of the Consent Calendar, the public may comment on each remaining item listed on the agenda for action. Public comment will occur for each Action item—excluding public hearings, appeals, and/or quasi-judicial matters—in separate but consecutive public comment periods before the Action Calendar is discussed by Council and staff and as the item is taken up. The Presiding Officer will open and close the public comment period for each Action Item, and each period will occur based on the order of the items on the agenda, or based on the discretion of the Presiding Officer.

During the public comment period for each Action Item, the Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking on an individual Action Item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking on an item, the Presiding Officer may limit the public comment for all speakers on the item 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.

This procedure also applies to public hearings except those types of public hearings specifically provided for in this section, below.

3. Appeals Appearing on Action Calendar.

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the “Action” section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the “Action” section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the “Public Hearings” section of the Council Agenda.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of proposed special assessment lien, the appellant shall have seven minutes to comment.

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

4. Public Comment on Non-Agenda Matters.

Immediately following Ceremonial Matters and the City Manager Comments and prior to ~~reserved public comment by employee unions, the Consent Calendar,~~ persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, 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. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

Pursuant to this document, no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the Agenda & Rules Committee for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

5. Ralph M. Brown Act Pertaining to Public Comments.

The Brown Act prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

B. Consent Calendar

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, Councilmembers, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.

It is the policy of the Council that the Mayor or Councilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of consent calendar items can be minimized.

Consent Calendar items may be moved to the Action Calendar by the Council. Action items may be reordered at the discretion of the Chair with the consent of Council.

C. Information Reports Called Up for Discussion

Reports for Information designated for discussion at the request of the Mayor or any Councilmember shall be added to the appropriate section of the Action Calendar and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of Mayor or any Councilmember a Report for Information may be acted upon by the Council.

D. Written Communications

Written communications from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. The Mayor or a Councilmember may refer a communication to the City Manager for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

Communications related to an item on the agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.C.4.

E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, each speaker 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. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. 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.

F. Work Sessions

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent agenda under the Action portion of the Council agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking, each speaker 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.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

G. Protocol

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a Councilmember except through the Presiding Officer.

V. PROCEDURAL MATTERS

A. Persons Authorized to Sit at Tables

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

B. Decorum

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council.

C. Enforcement of Decorum

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the presiding officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

D. Precedence of Motions

When a question or motion is before the Council, no motion shall be entertained except:

1. To adjourn;
2. To fix the hour of adjournment;
3. To lay on the table;
4. For the previous question;
5. To postpone to a certain day;
6. To refer;
7. To amend;
8. To substitute; and
9. To postpone indefinitely.

These motions shall have precedence in order indicated. Any such motion, except a motion to amend or substitute, shall be put to a vote without debate.

E. Robert's Rules of Order

Robert's Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall supersede.

F. Rules of Debate**1. Presiding Officer May Debate.**

The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

2. Getting the Floor - Improper References to be avoided.

Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themselves to the question under debate.

3. Interruptions.

A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

4. Privilege of Closing Debate.

The Mayor or Councilmember moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the Mayor or Councilmember moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

5. Motion to Reconsider.

A motion to reconsider any action taken by the Council may be made only during the same session such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made by a member on the prevailing side, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

6. Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.

Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

G. Debate Limited

1. Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of Information Reports; provided that either of the following two not debatable motions shall be in order:
 - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
 - b) If there are one or more motions on the floor, a motion for the previous question, which, if passed by a 2/3 vote, shall require an immediate vote on pending motions.
2. The time limit set forth in subparagraph 1 hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.
3. In the interest of expediting the business of the City, failure by the Chair or any Councilmember to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any Councilmember may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in Section D hereof is made and is passed.

H. Motion to Lay on Table

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

I. Division of Question

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

J. Addressing the Council

Under the following headings of business, unless the presiding officer rules otherwise, any interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

1. Written Communications.

Interested parties or their authorized representatives may address the Council in the form of written communications in regard to matters of concern to them by

submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.C.4.

2. Public Hearings.

Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

3. Public Comment.

Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

K. Addressing the Council After Motion Made

When a motion is pending before the Council, no person other than the Mayor or a Councilmember shall address the Council without first securing the permission of the presiding officer or Council to do so.

L. Use of Cellular Phones and Electronic Devices

The use of cell phones during City Council meetings is discouraged for the Mayor and Councilmembers. While communications regarding Council items should be minimized, personal communications between family members and/or caregivers can be taken outside in the case of emergencies. In order to acknowledge differences in learning styles and support tactile learners, note-taking can continue to be facilitated both with a pen and paper and/or on electronic devices such as laptop computers and tablets.

The use cell phones during Closed Session Meetings is explicitly prohibited for the Mayor and Councilmembers.

VI. FACILITIES

A. Meeting Location Capacity

Attendance at council meetings shall be limited to the posted seating capacity of the meeting location. Entrance to the meeting location will be appropriately regulated by the City Manager on occasions when capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the meeting room except to address the Council, and sitting on the floor shall not be permitted.

B. Alternate Facilities for Council Meetings

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the Board Room.

C. Signs, Objects, and Symbolic Materials

Objects and symbolic materials such as signs which do not have sticks or poles attached or otherwise create any fire or safety hazards will be allowed within the meeting location during Council meetings.

D. Fire Safety

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and/or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

E. Overcrowding

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the meeting location has reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.

APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

Purpose

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

Objective

- A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

Section 1 – Lead Commission

The City Council designates the following commissions as the ‘Lead Commissions’ in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

Board of Library Trustees

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

Section 2 – General Policy

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

- A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
- D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
- E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
- F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
 - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
 - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
 - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the Agenda & Rules Committee to request that the Primary Author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt Authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
 - a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
 - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
 - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
 - d. Fiscal impacts of the recommendation;
 - e. A description of the current situation and its effects;
 - f. Background information as needed;
 - g. Rationale for recommendation;
 - h. Alternative actions considered;
 - i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
 - j. Person or persons to contact for further information, with telephone number. If the Primary Author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

Guidelines for City Council Items:

1. Title
 2. Consent/Action/Information Calendar
 3. Recommendation
 4. Summary Statement/Current situation and its effects
 5. Background
 6. Review of Existing Plans, Programs, Policies and Laws
 7. Actions/Alternatives Considered
 8. Consultation/Outreach Overview and Results
 9. Rationale for Recommendation
 10. Implementation, Administration and Enforcement
 11. Environmental Sustainability
 12. Fiscal Impacts
 13. Outcomes and Evaluation
 14. Contact Information
 15. Attachments/Supporting Materials
-

1. **Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

2. **Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

3. **Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

4. Summary Statement/ “Current situation and its effects”

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):
Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.

5. Background

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

6. Review of Existing Plans, Programs, Policies and Laws

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

7. Actions/Alternatives Considered

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

8. Consultation/Outreach Overview and Results

- Review/list external and internal stakeholders that were consulted
 - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
 - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

9. Rationale for Recommendation

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,

but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

10. Implementation, Administration and Enforcement

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

11. Environmental Sustainability

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

12. Fiscal Impacts

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

13. Outcomes and Evaluation

State the specific outcomes expected, if any (i.e., *"it is expected that 100 homeless people will be referred to housing every year"*) and what reporting or evaluation is recommended.

14. Contact Information

15. Attachments/Supporting Materials

APPENDIX C. TEMPORARY RULES FOR THE CONDUCT OF CITY COUNCIL MEETINGS THROUGH VIDEO CONFERENCE DURING THE COVID-19 EMERGENCY

Mayor and Councilmember Speaking Time on Agenda Items

For the Consent Calendar, the Mayor and Councilmembers will initially have up to five minutes each to make comments. After all members of the Council have spoken (or passed) and after public comment, members will each have two additional minutes to discuss the Consent Calendar.

For non-Consent items, the Mayor and Councilmembers will have two minutes each to make initial comments on an agenda item, except for the author of an agenda item who will have five minutes to initially present the item. After every Councilmember has spoken or declined and after public comment, Councilmembers will each have another five minutes per person to address an item. Debate may be extended beyond a second round of Council comments by a majority vote (5 votes).

Time will toll during staff answers to questions; Councilmembers are urged to ask their questions of city staff before the meeting or in writing.

Procedure for Pulling Items from Consent or Information Calendar

Three (3) members of the City Council must agree to pull an item from the Consent or Information Calendar for it to move to Action. Absent three members concurring, the item will stay on Consent or Information Calendar and, with respect to Consent items, the Mayor or Councilmembers will be allowed to record their aye, nay or abstain votes on individual items or the entire Consent Calendar.

Moving an item from the Action Calendar to the Consent Calendar requires the unanimous consent of the entire City Council.

Public Comment Speaking Time

With the exception of prescribed times in the Rules of Procedure for public hearings [and public comment by employee unions](#), the amount of time for each speaker during public comment is limited to two minutes maximum and that speakers can only address an agenda item once, however the Presiding Officer has the discretion to reduce speaker time if needed in order to allow the orderly conduct of the meeting, subject to the consent of a majority of the City Council. Speakers may yield their time for a maximum of four minutes per individual. If a speaker wishes to yield their time, they must indicate so when called on by the Presiding Officer and state who they are yielding their speaker time to. The Presiding Officer will keep a list with the names and amount of time yielded to individuals.

In order to inform members of the public of their place in the speaker's queue, the Presiding Officer will call the names of 5 speakers at a time.

Public Comment on Non-Agenda Matters will be conducted in the order of hands raised on the Zoom platform, and will be limited to either the first 10 speakers during the initial round of Non-Agenda public comment, as well as all hands raised during the closing round of Non-Agenda public comment at the conclusion to the meeting, until such time that the

meeting adjourns. If there are five or fewer speakers with hands raised for Public Comment on Non-Agenda Matters, each speaker will have two minutes to address the City Council. If there are more than five speakers with their hands raised then speaker time will be limited to one minute per person. The procedure for selection of Non-Agenda speakers prescribed in the Rules of Procedure by random draw is suspended for videoconference meetings where there is no physical meeting location.

The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. 70,725–N.S.

Effective March 14, 2023

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I. DUTIES

A. Duties of Mayor

The Mayor shall preside at the meetings of the Council and shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order. In the Mayor's absence, the Vice President of the Council (hereafter referred to as the Vice-Mayor) shall preside.

B. Duties of Councilmembers

Promptly at the hour set by law on the date of each regular meeting, the members of the Council shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition.

C. Motions to be Stated by Chair

When a motion is made, it may be stated by the Chair or the City Clerk before debate.

D. Decorum by Councilmembers

While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council, use personal, impertinent or slanderous remarks, nor disturb any other member while that member is speaking or refuse to obey the orders of the presiding officer or the Council, except as otherwise provided herein.

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak. The Presiding Officer may set a limit on the speaking time allotted to Councilmembers during Council discussion.

The presiding officer has the affirmative duty to maintain order. The City Council will honor the role of the presiding officer in maintaining order. If a Councilmember believes the presiding officer is not maintaining order, the Councilmember may move that the Vice-Mayor, or another Councilmember if the Vice-Mayor is acting as the presiding officer at the time, enforce the rules of decorum and otherwise maintain order. If that motion receives a second and is approved by a majority of the Council, the Vice-Mayor, or other designated Councilmember, shall enforce the rules of decorum and maintain order.

E. Voting Disqualification

No member of the Council who is disqualified shall vote upon the matter on which the member is disqualified. Any member shall openly state or have the presiding officer announce the fact and nature of such disqualification in open meeting, and shall not be subject to further inquiry. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the member affected, be

decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to recuse themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

F. Requests for Technical Assistance and/or Reports

A majority vote of the Council shall be required to direct staff to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual council member.

II. MEETINGS

A. **Call to Order - Presiding Officer**

The Mayor, or in the Mayor's absence, the Vice Mayor, shall take the chair precisely at the hour appointed by the meeting and shall immediately call the Council to order. Upon the arrival of the Mayor, the Vice Mayor shall immediately relinquish the chair. In the absence of the two officers specified in this section, the Councilmember present with the longest period of Council service shall preside.

B. **Roll Call**

Before the Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

C. **Quorum Call**

During the course of the meeting, should the Chair note a Council quorum is lacking, the Chair shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the meeting shall be deemed automatically adjourned.

D. **Council Meeting Conduct of Business**

The agenda for the regular business meetings shall include the following: Ceremonial Items (including comments from the City Auditor if requested); Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public. Presentations and workshops may be included as part of the Action Calendar. The Chair will determine the order in which the item(s) will be heard with the consent of Council.

Upon request by the Mayor or any Councilmember, any item may be moved from the Consent Calendar or Information Calendar to the Action Calendar. Unless there is an objection by the Mayor or any Councilmember, the Council may also move an item from the Action Calendar to the Consent Calendar.

A public hearing that is not expected to be lengthy may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious and lengthy and/or the Council's regular meeting schedule is heavily booked, the Agenda & Rules Committee, in conjunction with the staff, will schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing.

E. Adjournment

1. No Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific agenda items to be covered and shall specify in which order these items shall be handled.
2. Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

F. Unfinished Business

Any items not completed by formal action of the Council, and any items not postponed to a date certain, shall be considered Unfinished Business. All Unfinished Business shall be referred to the Agenda & Rules Committee for scheduling for a Council meeting that occurs within 60 days from the date the item last appeared on a Council agenda. The 60 day period is tolled during a Council recess.

G. City Council Schedule and Recess Periods

Pursuant to the Open Government Ordinance, the City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.

Regular meetings of the City Council shall be held generally two to three Tuesdays of each month except during recess periods; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

Regular City Council meetings shall begin no later than 6:00 p.m.

A recess period is defined as a period of time longer than 21 days without a regular meeting of the Council.

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary for the immediate preservation of the public peace, health or safety; the authority to extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall have the aforementioned authority beginning the day after the Agenda & Rules Committee meeting for the last regular meeting before a Council recess and this authority shall extend up to the date of the Agenda & Rules Committee meeting for the first regular meeting after the Council recess.

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

H. Pledge of Allegiance to the Flag

At the first meeting of each year following the August recess and at any subsequent meeting if specifically requested before the meeting by any member of the Council in order to commemorate an occasion of national significance, the first item on the Ceremonial Calendar will be the Pledge of Allegiance.

I. Ad Hoc Subcommittees

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Councilmembers may be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from residents, related commissions, and other groups, as appropriate to the charge or responsibilities of such subcommittee. Ad hoc subcommittees must be reviewed annually by the Council to determine if the subcommittee is to continue.

Upon creation of an ad hoc subcommittee, the Council shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the Council.
2. A target date must be established for a report back to the Council.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the Council.

Subcommittees shall conduct their meetings in locations that are open to the public and meet accessibility requirements under the Americans with Disabilities Act. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular Council meetings except that subcommittee agendas may be posted with 24-hour notice. The public will be permitted to comment on agenda items but public comments may be limited to one minute if deemed necessary by the Committee Chair. Agendas and minutes of the meetings must be maintained and made available upon request.

Ad hoc subcommittees will be staffed by City Council legislative staff. As part of the ad hoc subcommittee process, City staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item(s) under consideration. Staff analysis at ad hoc subcommittees is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two.

Ad hoc subcommittees may convene a closed session meeting pursuant to the conditions and regulations imposed by the Brown Act.

III. AGENDA

A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the agenda of the meeting and posted in accordance with Section III.D.2. Exceptions to this rule are limited to circumstances listed in Section III.D.4.b and items continued from a previous meeting and published on a revised agenda.

B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if the Mayor or a Councilmember so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter. Council agenda items are limited to a maximum of four Authors and Co-Sponsors, in any combination that includes at least one Author.

Authors must be listed in the original item as submitted by the Primary Author. Co-Sponsors may only be added in the following manner:

- In the original item as submitted by the Primary Author
 - In a revised item submitted by the Primary Author at the Agenda & Rules Committee
 - By verbal request of the Primary Author at the Agenda & Rules Committee
 - In a revised item submitted by the Primary Author in Supplemental Reports and Communications Packet #1 or #2
 - By verbal or written request of the Mayor or any Councilmember at the Policy Committee meeting or meeting of the full Council at which the item is considered
2. Agenda items shall contain all relevant documentation, including the information listed below:
 - a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report;
 - b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;

- c) Recommendation of the report's Primary Author that describes the action to be taken on the item, if applicable;
 - d) Fiscal impacts of the recommendation;
 - e) A description of the current situation and its effects;
 - f) Background information as needed;
 - g) Rationale for recommendation;
 - h) Alternative actions considered;
 - i) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items);
 - j) Person or persons to contact for further information, with telephone number;
 - k) Additional information and analysis as required. It is recommended that reports include the points of analysis in Appendix B - Guidelines for Developing and Writing Council Agenda Items.
3. "Author" means the Mayor or other Councilmembers who actually authored an item by contributing to the ideas, research, writing or other material elements.
4. "Primary Author" means the Mayor or Councilmember listed first on the item. The Primary Author is the sole contact for the City Manager with respect to the item. Communication with other Authors and Co-Sponsors, if any, is the responsibility of the Primary Author.
5. "Co-Sponsor" means the Mayor or other Councilmembers who wish to indicate their strong support for the item, but are not Authors, and are designated by the Primary Author to be co-sponsors of the council agenda item.
6. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.
7. "Packet" means the agenda plus all its corresponding agenda items.
8. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:
- a) A work stoppage or other activity which severely impairs public health, safety, or both;
 - b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency

matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.

9. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier.
10. "Old Business" Items carried over from a prior agenda of a meeting occurring more than 11 days earlier.

C. Procedure for Bringing Matters Before City Council

1. Persons Who Can Place Matters on the Agenda.

Matters may be placed on the agenda by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items are subject to review, referral, and scheduling by the Agenda & Rules Committee pursuant to the rules and limitations contained herein. The Agenda & Rules Committee shall be a standing committee of the City Council.

The Agenda & Rules Committee shall meet 15 days prior to each City Council meeting and shall approve the agenda of that City Council meeting. Pursuant to BMC Section 1.04.080, if the 15th day prior to the Council meeting falls on a holiday, the Committee will meet the next business day. The Agenda & Rules Committee packet, including a draft agenda and Councilmember, Auditor, and Commission reports shall be distributed by 5:00 p.m. four days before the Agenda & Rules Committee meeting.

The Agenda & Rules Committee shall have the powers set forth below.

a) Items Authored by the Mayor, a Councilmember, or the Auditor.

As to items authored by the Mayor, a Councilmember, or the Auditor, the Agenda & Rules Committee shall review the item and may take the following actions:

- i. Refer the item to a commission for further analysis (Primary Author may decline and request Policy Committee assignment).
- ii. Refer the item to the City Manager for further analysis (Primary Author may decline and request Policy Committee assignment).
- iii. Refer the item back to the Primary Author for adherence to required form or for additional analysis as required in Section III.B.2 (Primary Author may decline and request Policy Committee assignment).
- iv. Refer the item to a Policy Committee.
- v. Schedule the item for the agenda under consideration or one of the next three full Council agendas.

For referrals under Chapter III.C.1.a.i, ii, or iii, the Primary Author must inform the City Clerk within 24 hours of the adjournment of the Agenda & Rules Committee meeting whether they prefer to:

- 1) re-submit the item for a future meeting with modifications as suggested by the Agenda & Rules Committee; or
- 2) pull the item completely; or
- 3) re-submit the item with revisions as requested by the Agenda & Rules Committee within 24 hours of the adjournment of the Agenda & Rules Committee meeting for the Council agenda under consideration; or
- 4) accept the referral of the Agenda & Rules Committee in sub paragraphs III.C.1.a. i, ii, or iii, or request Policy Committee assignment.

If the Primary Author requests a Policy Committee assignment, the item will appear on the next draft agenda presented to the Agenda & Rules Committee for assignment.

In the event that the City Clerk does not receive guidance from the Primary Author of the referred item within 24 hours of the Agenda & Rules Committee's adjournment, the item will appear on the next draft agenda for consideration by the Agenda & Rules Committee.

Items held for a future meeting to allow for modifications will be placed on the next available Council meeting agenda at the time that the revised version is submitted to the City Clerk.

- b) **Items Authored by the City Manager.** The Agenda & Rules Committee shall review agenda descriptions of items authored by the City Manager. The Committee can recommend that the matter be referred to a commission or back to the City Manager for adherence to required form, additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

If the City Manager determines that the matter should proceed notwithstanding the Agenda & Rules Committee's action, it will be placed on the agenda as directed by the Manager. All City Manager items placed on the Council agenda against the recommendation of the Agenda & Rules Committee will automatically be placed on the Action Calendar.

- c) **Items Authored by Boards and Commissions.** Council items submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the Commissioners' Manual. The content of commission items is not subject to review by the Agenda & Rules Committee unless referred for policy review to the Agenda & Rules Committee.
- i) For a commission item that does not require a companion report from the City Manager, the Agenda & Rules Committee may act on an agendaized commission report in the following manner:
 - 1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.
 - 2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.
 - 3. Refer the item to a Policy Committee for review.
 - 4. Allow the item to proceed as submitted.
- ii) For any commission report that requires a companion report, the Agenda & Rules Committee may schedule the item on a Council agenda. The Committee must schedule the commission item for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the Agenda & Rules Committee. A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.
- d) The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E.

2. Scheduling Public Hearings Mandated by State, Federal, or Local Statute.

The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.

3. Submission of Agenda Items.

- a) **City Manager Items.** Except for Continued Business and Old Business, as a condition to placing an item on the agenda, agenda items from departments, including agenda items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.

- b) **Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and City Council is 5:00 p.m. on Monday, 22 days before each Council meeting.
- c) **Time Critical Items.** A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published agenda.

The Primary Author of the report shall bring any reports submitted as Time Critical to the meeting of the Agenda & Rules Committee. Time Critical items must be accompanied by complete reports and statements of financial implications. If the Agenda & Rules Committee finds the matter to meet the definition of Time Critical, the Agenda & Rules Committee may place the matter on the Agenda on either the Consent or Action Calendar.

- d) The City Clerk may not accept any agenda item after the adjournment of the Agenda & Rules Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.

4. Submission of Supplemental and Revised Agenda Material.

Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an agenda item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:

- a) Supplemental and revised agenda material shall be submitted to the City Clerk no later than 5:00 p.m. seven calendar days prior to the City Council meeting at which it is to be considered. Supplemental and revised items that are received by the deadline shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. five calendar days prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation.

- b) Supplemental and revised agenda material submitted to the City Clerk after 5:00 p.m. seven days before the meeting and no later than 12:00 p.m. one day prior to the City Council meeting at which it is to be considered shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. one day prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Council evaluation.
- c) After 12:00 p.m. one calendar day prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 42 copies of the supplemental/revised material to the City Clerk for distribution at the meeting. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda item in order for the material to be considered.

5. Submission of Late Urgency Items Pursuant to Government Code Section 54954.2(b)

Late Urgency Items are items proposed for submission to the Council Agenda pursuant to Government Code Section 54954.2(b)

All items to be submitted for consideration for addition to an agenda as Late Urgency Items shall be accompanied by a cover sheet that includes 1) boxes to check for the Author to affirm whether the item is submitted under the Emergency or Immediate Action Rule (and a short explanation of what is required to meet each rule, as well as the vote threshold required for the item to be placed onto the agenda by the City Council); 2) a disclaimer in BOLD 14pt. CAPS stating that the item is not yet agendized and may or may not be accepted for the agenda as a Late Urgency Item, at the City Council's discretion according to Brown Act rules; 3) a prompt requiring the author to list the facts which support consideration of the item for addition to the agenda as either an Emergency or Immediate Action item; and 4) a copy of the City Attorney memo on Late Urgency Items.

Late Items must be submitted to the City Clerk no later than 12:00 p.m. (noon) the day prior to the meeting.

All complete Late Items submitted by the deadline will be distributed with Supplemental Communication Packet #2 by 5:00 p.m. the day before the Council meeting. A Late Item is not considered "complete" and will not be distributed unless submitted with the required cover sheet, filled out in a complete manner.

Very Late Urgency Items of an extremely urgent nature (e.g., earthquake, severe wildfire, pandemic) may be submitted for addition to the agenda after the deadline of 12:00 p.m. the day before the meeting to accommodate unforeseeable, extreme and unusual circumstances. A Very Late Urgency Item will be distributed at the Council meeting prior to any vote to add it to the agenda and the Presiding Officer may provide an appropriate break to allow Councilmembers and the public to review the item before voting on whether to add it to the agenda and possibly again, at the Presiding Officer's discretion, before the item is voted on.

The required cover sheet should be included with the Very Late Urgency Item unless extremely exigent circumstances underlie the Very Late Urgency Item submission and a written cover sheet could not be prepared (for example, power is out and printing or emailing is not possible), in which case the individual "walking in" the item should be ready to provide all required information verbally at the meeting before a vote is taken to add or not add the item to the Agenda.

6. Scheduling a Presentation.

Presentations from staff are either submitted as an Agenda Item or are requested by the City Manager. Presentations from outside agencies and the public are coordinated with the Mayor's Office. The Agenda & Rules Committee may adjust the schedule of presentations as needed to best manage the Council Agenda. The Agenda & Rules Committee may request a presentation by staff in consultation with the City Manager.

D. Packet Preparation and Posting

1. Preparation of the Packet.

Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the packet, which shall include the agenda plus all its corresponding agenda items. No item shall be considered if not included in the packet, except as provided for in Section III.C.4 and Section III.D.4.

2. Distribution and Posting of Agenda.

- a) The City Clerk shall post each agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each agenda of a special meeting at least 24 hours in advance of the meeting in the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each agenda.
- b) The City Clerk shall also post agendas and annotated agendas of all City Council meetings and notices of public hearings on the City's website.
- c) No later than 11 days prior to a regular meeting, copies of the agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.

3. Distribution of the Agenda Packet.

The Agenda Packet shall consist of the Agenda and all supporting documents for agenda items. No later than 11 days prior to a regular meeting, the City Clerk shall:

- a) distribute the Agenda Packet to each member of the City Council;
- b) post the Agenda Packet to the City's website;
- c) place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and
- d) make the Agenda Packet available to members of the press.

4. Failure to Meet Deadlines.

- a) The City Clerk shall not accept any agenda item or revised agenda item after the deadlines established.
- b) Matters not included on the published agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:
 - A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.8.
 - Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.
- c) Matters listed on the printed agenda but for which supporting materials are not received by the City Council on the eleventh day prior to said meeting as part of the agenda packet, shall not be discussed or acted upon.

E. Agenda Sequence and Order of Business

The Council agenda for a regular business meeting is to be arranged in the following order:

1. Preliminary Matters: (Ceremonial, Comments from the City Manager, Comments from the City Auditor, Non-Agenda Public Comment)
2. Consent Calendar
3. Action Calendar
 - a) Appeals
 - b) Public Hearings
 - c) Continued Business
 - d) Old Business
 - e) New Business

4. Information Reports
5. Non-Agenda Public Comment
6. Adjournment
7. Communications

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

The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in this section.

F. Closed Session Documents

This section establishes a policy for the distribution of, and access to, confidential closed session documents by the Mayor and members of the City Council.

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.
2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.
3. Removal of confidential materials from a binder is prohibited.
4. Duplication of the contents of a binder by any means is prohibited.
5. Confidential materials shall be retained in the binders for at least two years.
6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

G. Regulations Governing City Council Policy Committees

1. Legislative Item Process

All agenda items begin with submission to the Agenda & Rules Committee.

Full Council Track

Items under this category are exempt from Agenda & Rules Committee discretion to refer them to a Policy Committee. Items in this category may be submitted for the agenda of any scheduled regular meeting pursuant to established deadlines (same as existing deadlines). Types of Full Council Track items are listed below.

- a. Items submitted by the City Manager and City Auditor
- b. Items submitted by Boards and Commissions
- c. Resolutions on Legislation and Electoral Issues relating to Outside Agencies/Jurisdictions
- d. Position Letters and/or Resolutions of Support/Opposition
- e. Donations from the Mayor and Councilmember District Office Budgets
- f. Referrals to the Budget Process
- g. Proclamations
- h. Sponsorship of Events
- i. Information Reports
- j. Presentations from Outside Agencies and Organizations
- k. Ceremonial Items
- l. Committee and Regional Body Appointments

The Agenda & Rules Committee has discretion to determine if an item submitted by the Mayor or a Councilmember falls under a Full Council Track exception or if it will be processed as a Policy Committee Track item.

Policy Committee Track

Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda & Rules Committee on a draft City Council agenda.

The Agenda & Rules Committee must refer an item to a Policy Committee at the first meeting that the item appears before the Agenda & Rules Committee. The Agenda & Rules Committee may only assign the item to a single Policy Committee.

For a Policy Committee Track item, the Agenda & Rules Committee, at its discretion, may either route item directly to 1) the agenda currently under consideration, 2) one of the next three full Council Agendas (based on completeness of the item, lack of potential controversy, minimal impacts, etc.), or 3) to a Policy Committee.

Time Critical Track

A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the Mayor or Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published agenda.

The Agenda & Rules Committee retains final discretion to determine the time critical nature of an item.

- a) Time Critical items submitted on the Full Council Track deadlines, that would otherwise be assigned to the Policy Committee Track, may bypass Policy Committee review if determined to be time critical. If such an item is deemed not to be time critical, it may be referred to a Policy Committee.
- b) Time Critical items on the Full Council Track or Policy Committee Track that are submitted at a meeting of the Agenda & Rules Committee may go directly on a council agenda if determined to be time critical.

2. Council Referrals to Committees

The full Council may refer any agenda item to a Policy Committee by majority vote.

3. Participation Rules for Policy Committees Pursuant to the Brown Act

- a. The quorum of a three-member Policy Committee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.
- b. Two Policy Committee members may not discuss any item that has been referred to the Policy Committee outside of an open and noticed meeting.
- c. Notwithstanding paragraph (b) above, two members of a Policy Committee may be listed as Authors or Co-Sponsors on an item provided that one of the Authors or Co-Sponsors will not serve as a committee member for consideration of the item, and shall not participate in the committee's discussion of, or action on the item. For purposes of the item, the appointed alternate, who also cannot be an Author or Co-Sponsor, will serve as a committee member in place of the non-participating Author or Co-Sponsor.
- d. All three members of a Policy Committee may not be Authors or Co-Sponsors of an item that will be heard by the committee.
- e. Only one Author or Co-Sponsor who is not a member of the Policy Committee may attend the committee meeting to participate in discussion of the item.

- f. If two or more non-committee members are present for any item or meeting, then all non-committee members may act only as observers and may not participate in discussion. If an Author who is not a member of the committee is present to participate in the discussion of their item, no other non-committee member Councilmembers, nor the Mayor, may attend as observers.
- g. An item may be considered by only one Policy Committee before it goes to the full Council.

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, 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.

5. Number and Make-up of Committees

Six committees are authorized, each comprised of three Councilmembers, with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The Mayor shall be a member of the Agenda and Rules Committee. The committees are as follows:

1. Agenda and Rules Committee
2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

The Agenda & Rules Committee shall establish the Policy Committee topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

All standing Policy Committees of the City Council are considered “legislative bodies” under the Brown Act and must conduct all business in accordance with the Brown Act.

6. Role of City Staff at Committee Meetings

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

IV. CONDUCT OF MEETING

A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- Public comment on the Consent and Information Calendars.
- Public comment on the Action Calendar at the onset of the Action calendar with the exception of appeals, public hearings, and quasi-judicial matters requiring public comment for due process purposes.
- Public comment on action items by those who did not speak in the earlier Action Calendar public comment period, any appeals, public hearings, and/or other quasi-judicial matters requiring extended public comment for due process purposes as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall identify themselves, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry, or unless the individual is speaking with respect to a public hearing, a quasi-judicial matter, and/or any other item requiring extended public comment as a matter of due process.

1. Public Comment on Consent Calendar and Information Items.

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

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and

Information items. 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, the Mayor or 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.

2. Public Comment on Action Items.

After the initial ten minutes of public comment on non-agenda items, public comment on consent and information items, and adoption of the Consent Calendar, the public may comment on each remaining item listed on the agenda for action. Public comment will occur for each Action item—excluding public hearings, appeals, and/or quasi-judicial matters—in separate but consecutive public comment periods before the Action Calendar is discussed by Council and staff and as the item is taken up. The Presiding Officer will open and close the public comment period for each Action Item, and each period will occur based on the order of the items on the agenda, or based on the discretion of the Presiding Officer.

During the public comment period for each Action Item, the Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking on an individual Action Item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking on an item, the Presiding Officer may limit the public comment for all speakers on the item 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.

This procedure also applies to public hearings except those types of public hearings specifically provided for in this section, below.

3. Appeals Appearing on Action Calendar.

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the "Action" section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the "Public Hearings" section of the Council Agenda.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of proposed special assessment lien, the appellant shall have seven minutes to comment.

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

4. Public Comment on Non-Agenda Matters.

Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, 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. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

Pursuant to this document, no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the Agenda & Rules Committee for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

5. Ralph M. Brown Act Pertaining to Public Comments.

The Brown Act prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

B. Consent Calendar

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, Councilmembers, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.

It is the policy of the Council that the Mayor or Councilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of consent calendar items can be minimized.

Consent Calendar items may be moved to the Action Calendar by the Council. Action items may be reordered at the discretion of the Chair with the consent of Council.

C. Information Reports Called Up for Discussion

Reports for Information designated for discussion at the request of the Mayor or any Councilmember shall be added to the appropriate section of the Action Calendar and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of Mayor or any Councilmember a Report for Information may be acted upon by the Council.

D. Written Communications

Written communications from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. The Mayor or a Councilmember may refer a communication to the City Manager for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

Communications related to an item on the agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.C.4.

E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, each speaker 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. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. 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.

F. Work Sessions

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent agenda under the Action portion of the Council agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking, each speaker 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.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

G. Protocol

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a Councilmember except through the Presiding Officer.

V. PROCEDURAL MATTERS

A. Persons Authorized to Sit at Tables

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

B. Decorum

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council.

C. Enforcement of Decorum

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the presiding officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

D. Precedence of Motions

When a question or motion is before the Council, no motion shall be entertained except:

1. To adjourn;
2. To fix the hour of adjournment;
3. To lay on the table;
4. For the previous question;
5. To postpone to a certain day;
6. To refer;
7. To amend;
8. To substitute; and
9. To postpone indefinitely.

These motions shall have precedence in order indicated. Any such motion, except a motion to amend or substitute, shall be put to a vote without debate.

E. Robert's Rules of Order

Robert's Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall supersede.

F. Rules of Debate**1. Presiding Officer May Debate.**

The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

2. Getting the Floor - Improper References to be avoided.

Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themselves to the question under debate.

3. Interruptions.

A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

4. Privilege of Closing Debate.

The Mayor or Councilmember moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the Mayor or Councilmember moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

5. Motion to Reconsider.

A motion to reconsider any action taken by the Council may be made only during the same session such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made by a member on the prevailing side, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

6. Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.

Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

G. Debate Limited

1. Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of Information Reports; provided that either of the following two not debatable motions shall be in order:
 - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
 - b) If there are one or more motions on the floor, a motion for the previous question, which, if passed by a 2/3 vote, shall require an immediate vote on pending motions.
2. The time limit set forth in subparagraph 1 hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.
3. In the interest of expediting the business of the City, failure by the Chair or any Councilmember to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any Councilmember may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in Section D hereof is made and is passed.

H. Motion to Lay on Table

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

I. Division of Question

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

J. Addressing the Council

Under the following headings of business, unless the presiding officer rules otherwise, any interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

1. Written Communications.

Interested parties or their authorized representatives may address the Council in the form of written communications in regard to matters of concern to them by

submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.C.4.

2. Public Hearings.

Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

3. Public Comment.

Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

K. Addressing the Council After Motion Made

When a motion is pending before the Council, no person other than the Mayor or a Councilmember shall address the Council without first securing the permission of the presiding officer or Council to do so.

L. Use of Cellular Phones and Electronic Devices

The use of cell phones during City Council meetings is discouraged for the Mayor and Councilmembers. While communications regarding Council items should be minimized, personal communications between family members and/or caregivers can be taken outside in the case of emergencies. In order to acknowledge differences in learning styles and support tactile learners, note-taking can continue to be facilitated both with a pen and paper and/or on electronic devices such as laptop computers and tablets.

The use cell phones during Closed Session Meetings is explicitly prohibited for the Mayor and Councilmembers.

VI. FACILITIES

A. Meeting Location Capacity

Attendance at council meetings shall be limited to the posted seating capacity of the meeting location. Entrance to the meeting location will be appropriately regulated by the City Manager on occasions when capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the meeting room except to address the Council, and sitting on the floor shall not be permitted.

B. Alternate Facilities for Council Meetings

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the Board Room.

C. Signs, Objects, and Symbolic Materials

Objects and symbolic materials such as signs which do not have sticks or poles attached or otherwise create any fire or safety hazards will be allowed within the meeting location during Council meetings.

D. Fire Safety

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and/or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

E. Overcrowding

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the meeting location has reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.

APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

Purpose

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

Objective

- A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

Section 1 – Lead Commission

The City Council designates the following commissions as the ‘Lead Commissions’ in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

Board of Library Trustees

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

Section 2 – General Policy

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

- A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
- D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
- E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
- F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
 - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
 - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
 - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the Agenda & Rules Committee to request that the Primary Author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt Authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
 - a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
 - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
 - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
 - d. Fiscal impacts of the recommendation;
 - e. A description of the current situation and its effects;
 - f. Background information as needed;
 - g. Rationale for recommendation;
 - h. Alternative actions considered;
 - i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
 - j. Person or persons to contact for further information, with telephone number. If the Primary Author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

Guidelines for City Council Items:

1. Title
2. Consent/Action/Information Calendar
3. Recommendation
4. Summary Statement/Current situation and its effects
5. Background
6. Review of Existing Plans, Programs, Policies and Laws
7. Actions/Alternatives Considered
8. Consultation/Outreach Overview and Results
9. Rationale for Recommendation
10. Implementation, Administration and Enforcement
11. Environmental Sustainability
12. Fiscal Impacts
13. Outcomes and Evaluation
14. Contact Information
15. Attachments/Supporting Materials

1. Title

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

2. Consent/Action/Information Calendar

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

3. Recommendation

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

4. Summary Statement/ “Current situation and its effects”

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):
Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.

5. Background

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

6. Review of Existing Plans, Programs, Policies and Laws

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

7. Actions/Alternatives Considered

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

8. Consultation/Outreach Overview and Results

- Review/list external and internal stakeholders that were consulted
 - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
 - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

9. Rationale for Recommendation

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,

but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

10. Implementation, Administration and Enforcement

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

11. Environmental Sustainability

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

12. Fiscal Impacts

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

13. Outcomes and Evaluation

State the specific outcomes expected, if any (i.e., *"it is expected that 100 homeless people will be referred to housing every year"*) and what reporting or evaluation is recommended.

14. Contact Information

15. Attachments/Supporting Materials

APPENDIX C. TEMPORARY RULES FOR THE CONDUCT OF CITY COUNCIL MEETINGS THROUGH VIDEO CONFERENCE DURING THE COVID-19 EMERGENCY

Mayor and Councilmember Speaking Time on Agenda Items

For the Consent Calendar, the Mayor and Councilmembers will initially have up to five minutes each to make comments. After all members of the Council have spoken (or passed) and after public comment, members will each have two additional minutes to discuss the Consent Calendar.

For non-Consent items, the Mayor and Councilmembers will have two minutes each to make initial comments on an agenda item, except for the author of an agenda item who will have five minutes to initially present the item. After every Councilmember has spoken or declined and after public comment, Councilmembers will each have another five minutes per person to address an item. Debate may be extended beyond a second round of Council comments by a majority vote (5 votes).

Time will toll during staff answers to questions; Councilmembers are urged to ask their questions of city staff before the meeting or in writing.

Procedure for Pulling Items from Consent or Information Calendar

Three (3) members of the City Council must agree to pull an item from the Consent or Information Calendar for it to move to Action. Absent three members concurring, the item will stay on Consent or Information Calendar and, with respect to Consent items, the Mayor or Councilmembers will be allowed to record their aye, nay or abstain votes on individual items or the entire Consent Calendar.

Moving an item from the Action Calendar to the Consent Calendar requires the unanimous consent of the entire City Council.

Public Comment Speaking Time

With the exception of prescribed times in the Rules of Procedure for public hearings, the amount of time for each speaker during public comment is limited to two minutes maximum and that speakers can only address an agenda item once, however the Presiding Officer has the discretion to reduce speaker time if needed in order to allow the orderly conduct of the meeting, subject to the consent of a majority of the City Council. Speakers may yield their time for a maximum of four minutes per individual. If a speaker wishes to yield their time, they must indicate so when called on by the Presiding Officer and state who they are yielding their speaker time to. The Presiding Officer will keep a list with the names and amount of time yielded to individuals.

In order to inform members of the public of their place in the speaker's queue, the Presiding Officer will call the names of 5 speakers at a time.

Public Comment on Non-Agenda Matters will be conducted in the order of hands raised on the Zoom platform, and will be limited to either the first 10 speakers during the initial round of Non-Agenda public comment, as well as all hands raised during the closing round of Non-Agenda public comment at the conclusion to the meeting, until such time that the

meeting adjourns. If there are five or fewer speakers with hands raised for Public Comment on Non-Agenda Matters, each speaker will have two minutes to address the City Council. If there are more than five speakers with their hands raised then speaker time will be limited to one minute per person. The procedure for selection of Non-Agenda speakers prescribed in the Rules of Procedure by random draw is suspended for videoconference meetings where there is no physical meeting location.

RESOLUTION #####-N.S.

**RE-ADOPTING THE CITY COUNCIL RULES OF PROCEDURE AND ORDER AND
RESCINDING RESOLUTION NO. 70,725–N.S.**

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the revised City Council Rules of Procedure and Order attached hereto as Exhibit A shall replace wholesale the existing City Council Rules of Procedure and Order attached hereto as Exhibit B.

BE IT FURTHER RESOLVED that the revised City Council Rules of Procedure and Order (Exhibit B as amended by Exhibit A) shall govern all proceedings of the City Council therein described, subject to the exceptions 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 and Order.

BE IT FURTHER RESOLVED that the Council shall review its Rules of Procedure and Order in March of each odd-numbered year per April 26, 2016 City Council action.

BE IT FURTHER RESOLVED that Resolution No 70,725–N.S. is hereby rescinded.

**BERKELEY PUBLIC LIBRARY
POLICIES**

**SUBJECT: Board of Library Trustees (BOLT)
Meeting Policy**

ORIGINAL DATE:	05/11/2016
REVISED DATE:	12/06/2017
BOLT Resolution #:	R17-071
PAGE:	1 of 3

A. Public Comment

Any member of the public or Library staff may address BOLT during the period set aside on the meeting agenda for "Public Comment". At a regular BOLT meeting, any topic pertaining to Library business may be addressed; however at a Special Meeting of BOLT, public comment is limited to items listed on the agenda.

BOLT may not discuss or take action on an issue raised during public comment. However, any BOLT member may ask a brief clarifying question or may refer a matter raised in public comment to the BOLT Secretary for follow-up or reporting back at a future date.

1. Speaker Cards

Persons wishing to speak need to submit a speaker card. Persons submitting speaker cards are not required to list their name, however they must list some identifying information or alternate name in order to be called to speak. Speaker cards will not be accepted after Public Comment has begun.

2. Time Allotment for Public Comment

Speakers are allowed 3 minutes each for up to 10 speakers; if more than 10 individuals have filled out and submitted cards to speak, the time for all speakers will be reduced to 2 minutes per person and if more than 20 individuals have submitted speaker's cards, the time per person will be reduced to one minute each, for a maximum of one hour of public comment.

3. Ceding Time during Public Comment

When up to 10 people wish to speak, and therefore the time limit per speaker is 3 minutes, one person may cede time to another for a total of 6 minutes of speaking time for that individual. When the time limit is 2 minutes, up to 2 people may cede their time to a third individual, for a total of 6 minutes for that speaker. When the time limit is 1 minute, up to three people may cede their time to a fourth person, giving that speaker a total of 4 minutes.

When an individual is called to speak, that person may cede their time to another person who has filled out a speaker's card, but has not yet been called to speak. An individual whose name has not yet been called may cede time to an individual whose name has just been called to speak. Time may not be ceded to an unspecified individual, an individual who has not filled out a speaker's card, an individual who has already spoken, or an individual who has already received the maximum amount of ceded time.

B. Comment from Library Unions

"For regular meetings of the BOLT, representatives from the three unions representing Library employees may address BOLT, with a total time limit of 15 minutes. If all three (3) unions have representatives present and wish to speak, each union shall receive 5 minutes to address BOLT. If only two (2) unions have representatives present and wishing to speak, each union shall receive 7.5 minutes to address BOLT, for a total of 15 minutes. If only one (1) union has representatives present and wishing to speak, that union shall receive 15 minutes to address BOLT. The Secretary shall, at the start of the Comment from Library Union item, ask union representatives who wish to speak to identify themselves

and which union they represent. The Secretary shall then determine the appropriate allocation of speaking time according to the rules stated herein." The time allotment for union comment will not be diminished in the event of large numbers of speakers present for public comment, and cannot be ceded from one union to another.

C. Comment from Board Trustees

Time will be set aside on the agenda for brief comments and announcements from BOLT Trustees. BOLT Trustees may not engage in discussion of items raised during the Trustee Comment period but may make a referral to the BOLT Secretary of an item for follow up or for reporting back at a future date.

D. Order and Decorum

1. Presiding Officer

The Presiding Officer has the affirmative duty to maintain order. The BOLT will honor the role of the Presiding Officer in maintaining order.

2. Trustee Conduct.

While the BOLT is in session, the Trustees will practice civility and decorum in their discussions and debate. BOLT Trustees will value each other's time and will preserve order and decorum. A Trustee shall not delay or interrupt the proceedings of the BOLT, use personal, impertinent or slanderous remarks, or disturb any other member while that member is speaking, or refuse to obey the orders of the Presiding Officer of the BOLT.

All Trustees have the opportunity to speak and agree to disagree but no Trustee shall speak twice on any given subject unless all other Trustees have been given the opportunity to speak. All Trustee remarks shall be addressed to the BOLT as a body and not to any member thereof. No question shall be asked of or by a BOLT Trustee except through the Presiding Officer.

3. Conduct of Public in Attendance

Persons attending the meeting shall observe the rules and procedures of the BOLT and shall not disrupt Trustee business, for example: by shouting, making disruptive noises, such as boos or hisses; creating or participating in a physical disturbance; speaking out of turn or in violation of the BOLT's procedures or rules; preventing or attempting to prevent others who have the floor from speaking; preventing others from observing the meeting; entering into or remaining in an area of the meeting room that is not open to the public; or approaching the BOLT table without consent. Any message to or contact with any member of the BOLT while it is in session shall be through the Board Secretary.

Members of the public who do not follow the rules for decorum may be asked to leave the meeting. If a member of the public creates a significant physical disruption to the conduct of the meeting or acts in a threatening manner toward another member of the public, staff, or BOLT Trustee, law enforcement personnel may be called to remove the individual from the premises.

Reviewed by:	<u>Eelit Wann</u> Director of Library Services	<u>12/14/17</u> Date
Approved by:	<u>Diane Lee Dawang</u> President, Board of Library Trustees	<u>12/6/2017</u> Date



Board of Education:
Laura Babitt, President
Ana Vasudeo, Vice President
Jennifer Shanoski, Clerk
Ka'Dijah Brown, Director
Mike Chang, Director
Ian Segall, Student Director, BHS
Teairra Brown/Jamaria Pickens, Student Directors, BTA

BOARD OF EDUCATION

Meeting Location: 1231 Addison Street, Berkeley, CA 94702

Meeting Location for Director Ka'Dijah Brown: Highway A1 Mountain Spring Trelawny, Montego Bay, Jamaica

Regular Meeting Agenda
Wednesday, June 14, 2023

The Berkeley Unified School District intends to provide reasonable accommodations in accordance with the Americans with Disabilities Act of 1990. If a special accommodation is desired, please contact the Superintendent's Office in writing 48 hours prior to the meeting at superintendent@berkeley.net

El Distrito Escolar Unificado de Berkeley tiene la intención de proporcionar adaptaciones especiales en conformidad con el *Americans with Disabilities Act of 1990* (Ley de Americanos con Discapacidades de 1990). Si usted desea una adaptación especial, por favor comuníquese por correo electrónico con el personal de la Oficina del Superintendente 48 horas antes de la reunión a superintendent@berkeley.net.

Notice of Non-Discrimination

The Berkeley Unified School District does not discriminate on the basis of race, color, national origin, sex, disability, age, religious creed, gender, sexual orientation, gender expression, marital or parental status, ancestry, national origin, ethnic group identification, disability, medical condition, homelessness or foster status, in its programs and activities, and provides equal access to the Boy Scouts and other designated youth groups. Discrimination based on protected class includes sexual harassment, sexual violence, and bullying. All inquiries or concerns regarding BUSD's nondiscrimination policy 5145.3 or the filing of discrimination complaints should contact:

Jasmina Viteskic
District Compliance Officer & Title IX Coordinator
2020 Bonar St., Room 117
Berkeley, CA 94702
Phone: 510.486.9352
Email: nondiscrimination@berkeley.net

To access this agenda online, go to: <https://berkeley.agendaonline.net/public/>

1. Call to Order - 5:30 P.M.

The presiding officer will call the meeting to order at 5:30 PM. The regular meeting will convene at 7:00 P.M.

2. Closed Session Public Testimony

Public Testimony related to closed session items is limited to 15 minutes with a 3-minute limit per speaker per topic, although the time allotted per speaker may be reduced to 2 minutes at the discretion of the President.

3. Closed Session

The Board may recess into Closed Session before or after the public meeting under the authority of the Brown Act (including but not limited to Government Code sections 54954.5, 54956.8, 54956.9, 54957, 54957.6, as well as 35146) Under Government Code section 54954.3, members of the public may address the board on an item on the Closed Session agenda.

3.1	Existing Litigation - Conference with Legal Counsel (Gov't Code Section 54956.9(d)(1))
	3.1.1 BUSD 202324-01
	3.1.2 WC No. 20-127598
3.2	Public Employee Appointment (Government Code Section 54957)
	3.2.1 Appointment of Vice Principal, Longfellow Middle School
	3.2.2 Appointment of Literacy Coordinator
3.3	Superintendent's Evaluation (Government Code Section 54597)

4. Call to Order - 7:00 P.M.

5. Approve Regular Meeting Agenda for June 14, 2023

6. Report Out on Closed Session

7. Open Session Public Testimony

Public Testimony is strictly limited to 30 minutes with a 3-minute limit per speaker per topic, although the time allotted per speaker is likely to be reduced at the discretion of the President depending on how many people wish to speak.

8. Committee Comments

Representatives from [District Committees](#) that include members of the public are given the opportunity to address the Board on any issue. 5 minutes per committee.

9. Union Comments

The chair (or designee) of each District union that includes members of the public is given the opportunity to address the Board on any issue. 5 minutes per union.

Berkeley Federation of Teachers (BFT)
Berkeley Council of Classified Employees (BCCE)
Union of Berkeley Administrators (UBA)
Local 21

10. Board Member and Superintendent Comments

Board members and the Superintendent are given the opportunity to address any issue.

11. Consent Calendar

11.1	Approval of Human Resources Report
11.2	Approval of Position Control Changes Report
11.3	Approval of Changes to Union of Berkeley Administrators Manager Calendar & Salary Schedule
11.4	Approval of 2023-2024 Classified Salary Schedules
11.5	Appointment of Vice Principal, Longfellow Middle School
11.6	Appointment of Literacy Coordinator
11.7	Approval of Out of State Travel Request(s)
11.8	Approval of Resolution 23-039 to Authorize the Superintendent to Hire During the Board's Summer Break
11.9	Approval of Agents and Authorized Signers for Signature Card and Official Documents and Reports for the Berkeley Unified School District
11.10	Approval of Listings of Fiscal Warrants Issued in May 2023
11.11	Approval of Contracts/Purchase Orders for Services Contracts
11.12	Approval of Mental Health Support – Bay Area Community Resources (BACR)
11.13	Approval of Mental Health Support – Child Therapy Institute (CTI)
11.14	Approval of Expenditures for Xerox for Duplicating and Print Management Equipment and Services.
11.15	Approval for Cost of an Alternative Third-Party Provider for Non-Public School (NPS) Transportation Service for the 2022-2023 Extended School Year

11.16	Approval of Acceptance of Gifts/Donations
11.17	Approval of Entering a Contract with Colbi Technologies to Provide Software for the Facilities Program for FY 2023-2024
11.18	Approval of a Contract for HMC Group for the Berkeley High School Capacity and Expansion Project
11.19	Approval of a GMP for Alten Construction for the Longfellow Modernization Project and Resolution No. 23-037
11.20	Approval to Determine Two Projects are Categorically Exempt under CEQA and Requesting Board Approval to File the Notice of Exemption
11.21	Acceptance of the Citizens' Construction Oversight Committee Annual Report
11.22	Approval of the 2023/24 Measure H Annual Plan
11.23	Approval of Resolution No. 23-040– Disposition of Surplus Property
11.24	Approval of the CalSHAPE Grant Application and Resolution No. 23-041
11.25	Approval of Board Policy 7152.2 Public Art Policy
11.26	Approval Memorandum of Understanding between Elevo Learning Coast to Coast and Berkeley Unified School District for the 2023-2024 School Year
11.27	Approval of Memorandum of Understanding between Maxim Healthcare Services and Berkeley Unified School District for the 2023-2024 School Year
11.28	Approval of Memorandum of Understanding between CORE Reading and Berkeley Unified School District for the 2023-2024 School Year
11.29	Approve Contract with Problem Solving Solutions, Kim Gibbons, Literacy Improvement Plan 2023-2024
11.30	Approval of Recommendation for K-3 Science Adoption
11.31	Course Approval - Software Engineering: Advanced Topics in Computer Science.
11.32	Course Approval - Advanced Digital Sound Engineering
11.33	Approval of Memorandum of Understanding between Concerned Parents Alliance and Berkeley Unified School District
11.34	Approval of Memorandum of Understanding between Choose College Educational Foundation and Berkeley Unified School District

11.35	Approval of Memorandum of Understanding between R.T. Fisher Educational Enterprises and Berkeley Unified School District
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12. Presentation

12.1	Gender Equity Sexual Harassment Advisory Committee Presentation - 20 min
12.2	BSEP Measure Planning Update - 20 min

13. Discussion

13.1	Discussion Regarding Surplus Property Options for 1130 Oxford Street, Berkeley CA 94707 - 20
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14. Action

14.1	Approval of the 2023-24 Local Control Accountability Plan (LCAP) - 20
14.2	Approval of 2023-24 Budget, 2022-23 Estimated Actuals, and Budget Priorities - 20

15. Information

15.1	Update on Classification & Compensation Study Progress
15.2	2023-2024 Consolidated Application for Funding Categorical Aid Programs

16. Public Comment (2nd Opportunity)

17. Extended Board Comments

18. Adjournment

GOVERNANCE TEAM COMMITMENTS

- Practice humility and self-reflection and ask for feedback;
- Create safe non-judgemental space to get to know each other as people;
- Be honest and candid with each other;
- Lead with curiosity (e.g., "Could you say more about what you mean by X?". Ask questions for deeper understanding so as to avoid assumptions;
- Prioritize direct communication with each other when there is a negative impact during a discussion or disagreement. Initiate 1:1 conversations via phone, email or text to request time via phone, video-chat, or in-person.) Use impact statements (e.g., "When you said X, I felt Y ...") ;
- Understand that our experiences, opinions, and perspectives are shaped by our positions and privilege in life, and be mindful of the impact the we have on others;
- Appreciate each others' strengths, experience and contributions, and the positive work carried out in the District;
- Embrace disagreement when respectfully articulated; this is a sign of a healthy governance team comprised of people with shared values but different perspectives;
- Commit to being a team player - be respectful about the way we discuss our colleagues and their views, even when we disagree. Strive to support each other, avoid disparaging each other publicly or privately and organizing against each other;
- Ensure clarity of our roles as they relate to Governance/Operations;
- Adhere to confidentiality of closed session discussions to comply with law, build trust with the governance team, and foster a safe space for candid discussion;
- Show public respect for the will of the Board even when in the minority on a decision;
- Be responsible and accountable to each other: do what you say you're going to do and acknowledge when expectations weren't met;
- Be responsive to all voices in the district and seek to elevate the voices heard less frequently; and,
- Emulate/model the values and culture we strive for in the District.



Berkeley City Council
Health, Life Enrichment, Equity & Community Committee

To: Honorable Mayor and Members of the City Council

From: Health, Life Enrichment, Equity & Community Committee

Subject: De-Prioritizing the enforcement of laws imposing criminal penalties for Entheogenic/Psychedelic plants and fungi for personal use

RECOMMENDATION

Approve the Resolution presented and passed with a qualified positive recommendation at the June 12, 2023 meeting of the Health, Life Enrichment, Equity & Community Committee (Attachment 1), in lieu of the Resolutions provided in the originally referred item and by the Community Health Commission.

POLICY COMMITTEE RECOMMENDATION

On June 12, 2023, the Health, Life Enrichment, Equity, & Community Committee adopted the following action: M/S/C (Humbert/Taplin) to send the item to Council with a qualified positive recommendation to approve the Resolution in the form and as amended by the committee. There is no “mark-up” of the CHC resolution because what the Committee decided to pass is a full rewrite. Vote: All Ayes.

CURRENT SITUATION

The Health, Life Enrichment, Equity & Community Committee (the “Health-Life Committee”) took public comment at its May 8, 2023 meeting and solicited feedback from community leaders, policy experts, and community stakeholders. In her role as Committee Chair, Councilmember Hahn synthesized input received at Committee and consulted with the Police Department, City staff, and subject matter experts to draft and propose a restated Resolution.

At their June 12, 2023 meeting, the Health-Life Committee considered the restated resolution, took testimony from subject matter experts, and accepted edits from Councilmembers. Minor amendments were made to the restated Resolution, and the

Committee voted unanimously to recommend the restated resolution to Council. (Attachment 1).

BACKGROUND

On September 10, 2019, the City Council passed an item Authored by Councilmembers Robinson and Davila titled *Decriminalizing Entheogenic Plants* (Attachment 2) with instructions to:

“Refer to the Community Health Commission to consider the possibility of deprioritizing enforcement of laws relating to entheogenic plants and fungi by persons over 21 years of age. Consider potential health and community benefits and concerns, as well as possible policy variations with regard to possession, use, growing/production, and sales; quantities involved; use while driving; use during pregnancy and other possible ‘special circumstances considerations.’”

The Community Health Commission reviewed the referral, accepted public comment and engaged in their process of policy review. On November 29, 2022 the Community Health Commission passed an updated item titled *Responsible Psychedelic Drug Policy Reform in Berkeley* (Attachment 3).

The Commission’s Referral Response was submitted by the City Manager and referred by the Agenda Committee at their April 10, 2023 for review by the Health-Life Committee. The Health-Life Committee took action to send a qualified positive recommendation to the City Council to approve the fully restated Resolution unanimously approved by the Committee.

FINANCIAL IMPLICATIONS

Minimal. No significant impact.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No significant impact.

CONTACT PERSON

Councilmember Sophie Hahn, Chair of the Health-Life Committee 510-981-7150

ATTACHMENTS

1. Resolution passed by the Health, Life Enrichment, Equity & Community Committee
2. Decriminalizing Entheogenic Plants: 9/10/2019 City Council Referral from Councilmembers Robinson and Davila
3. Community Health Commission Referral Response from 11/29/22

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

RESOLUTION DE-PRIORITIZING THE ENFORCEMENT OF LAWS IMPOSING CRIMINAL PENALTIES FOR ENTHEOGENIC/PSYCHEDELIC PLANTS AND FUNGI AND THEIR BIOSYNTHESIZED COMPOUNDS FOR PERSONAL USE

WHEREAS, entheogens, also known as “psychedelic drugs” or “psychedelics,” are a subset of compounds that are considered to exert psychoactive and physiological effects and are reported to induce extra-ordinary, altered states of consciousness involving changes in thought, feeling, and perception; and

WHEREAS, individuals and groups are known to use entheogens in a wide variety of ways including for recreational, medical, therapeutic, spiritual, and religious purposes; and

WHEREAS, entheogenic plants and fungi have a long history of use in some indigenous societies, with this use typically occurring within intentional, structured, time-tested ceremonial containers that include the guidance of trained practitioners, integration practices, and occur within cultural contexts that differ significantly from contemporary American society; and

WHEREAS, in recent years, there has been a resurgence of scientific research into the use of psychedelic-assisted psychotherapies for treating mental health conditions such as depression and substance abuse, with some studies showing promising preliminary evidence¹⁵ for therapeutic benefits, in controlled clinical settings; and

WHEREAS, while psychedelic therapies have not been approved by the FDA, the federal government, through the Substance Abuse and Mental Health Services Administration, has stated that it is “exploring the prospect of establishing a Federal Task Force to monitor and address the numerous complex issues associated with emerging substances;” and

WHEREAS, there is a long history of public health authorities implementing harm reduction efforts to mitigate risks associated with use of both legal and illegal drugs, to improve the physical, mental, and social well-being of drug users, and in recent years public health authorities have increasingly focused on harm reduction approaches to drug use, with, for example, the Centers for Disease Control launching a harm reduction campaign to address the fentanyl crisis, and the City of Berkeley Public Health Division maintaining a longstanding partnership with Needle Exchange Emergency Distribution (NEED); and

WHEREAS, given this public health precedent, it would be appropriate for the City of Berkeley Public Health Division to support a harm reduction effort for entheogenic/psychedelic drug use in the Berkeley community; and

WHEREAS, while the possession, production, and transfer of psychedelic substances are illegal at the federal level in the United States, arrests and prosecutions for engaging in psychedelic drug offenses are usually grounded in state law, with enforcement occurring at the local level; and

WHEREAS, several local jurisdictions have de-prioritized the enforcement of laws prohibiting psychedelic-drug-related activities such as possession and production of psychedelic drugs for personal use; and

WHEREAS, there are criminal justice concerns associated with investigating, arresting, and incarcerating people for personal use of entheogens/psychedelics, and it is important to balance criminal justice concerns with public health concerns when crafting just and responsible policy; and

WHEREAS, in order to balance these concerns and avoid the development of gray and illicit markets, the City of Berkeley should only de-prioritize the enforcement of laws imposing criminal penalties for the possession of plant or fungus biosynthesized psychedelics for personal use (except Peyote) and laws imposing criminal penalties for the cultivation, processing, and preparation of psychedelic-drug-containing plants and fungi for personal use (except Peyote), while maintaining enforcement of laws prohibiting the possession of psychedelic drugs produced through artificial synthesis and enforcement of laws prohibiting the transfer of all categories of psychedelic drugs; and

WHEREAS “plant or fungus-biosynthesized psychedelic drugs” for purposes of this resolution means drugs that were produced by plants or fungi through biosynthesis, rather than produced in a laboratory through artificial synthesis, and “psychedelic-containing plants and fungi” refers to plants and fungi, living or not, that contain psychedelic drugs that the plants or fungi have themselves produced through biosynthesis; and

WHEREAS, “personal use of plant or fungus biosynthesized psychedelic drugs” for purposes of this resolution means an individual self-ingesting or self-administering plant or fungus biosynthesized psychedelic drugs; and

WHEREAS, “possession of plant or fungus biosynthesized psychedelic drugs for personal use” for purposes of this resolution means an individual possessing plant or fungus biosynthesized psychedelic drugs for the purpose of being ingested or self-administered by that same individual, and not by any other person or people; and

WHEREAS, “cultivation, processing, and preparation of psychedelic-containing plants and fungi for personal use” for purposes of this resolution means an individual cultivating, processing, and preparing any of these plants and fungi for the purpose of the resulting material being self-ingested or self-administered by that same individual, and not by any other person or people; and

WHEREAS, an individual can produce their own personal use plant or fungus-biosynthesized entheogenic/psychedelic drugs through home cultivation without engaging with illicit markets or sources; and

WHEREAS, the City Council wishes to enable Berkeley Public Health Division staff to engage with reputable experts developing harm reduction strategies that can be disseminated within Berkeley; and

WHEREAS, the City of Berkeley should de-emphasize expending City resources to assist in the enforcement of laws imposing criminal penalties for the possession of plant or fungus biosynthesized psychedelic drugs for personal use, and for the cultivation, processing, and preparation of psychedelic-containing plants and fungi for personal use;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it shall be the policy of the City of Berkeley to de-emphasize the use of City funds and resources to assist in the enforcement of laws imposing criminal penalties for the possession of plant- or fungus-

biosynthesized psychedelic drugs for personal use and for the cultivation, processing, and preparation of psychedelic-drug-containing plants and fungi for personal use. This de-prioritization policy does not apply to the mescaline-containing cactus Peyote (*Lophophora williamsii*), or to mescaline that was biosynthesized by the Peyote cactus, due to sustainability and poaching concerns raised by the National Council of Native American Churches and the Indigenous Peyote Conservation Initiative, who have released a statement requesting that decriminalization policies not include this species.

BE IT FURTHER RESOLVED that this resolution does not authorize or enable any of the following activities: giving away, sharing, distributing, transferring, dispensing, or administering of plant or fungus biosynthesized or other psychedelic drugs to another individual.

BE IT FURTHER RESOLVED that the City of Berkeley declares its support for a transparent, comprehensive public conversation about the potential to open access to psychedelic drugs in ways that might be safe, beneficial, ethical, and equitable, and urges the California State Legislature to take part in this conversation and consider passing legislation that addresses the relevant issues.

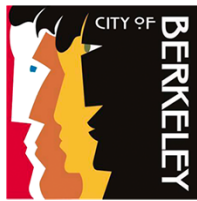
BE IT FURTHER RESOLVED that the City Council hereby enables the Public Health Division to make themselves available to academic and other reputable institutions to discuss opportunities for resources addressing use of psychedelics to be made available to the Berkeley community.

BE IT FURTHER RESOLVED that any organization or individual who may collaborate with the City to provide resources addressing use of psychedelics shall not, through their work with the City, facilitate access to psychedelic drugs or psychedelic administration sessions.

BE IT FURTHER RESOLVED that the City Council hereby enables the Public Health Division to make themselves available to academic and other reputable institutions to potentially assist in a strategy for collecting and analyzing public health data on psychedelic use in Berkeley.

BE IT FURTHER RESOLVED that the City of Berkeley encourages other public health departments and authorities, including at state and federal levels, to explore implementing psychedelic harm reduction and public health data collection efforts.

BE IT FURTHER RESOLVED that this resolution does not rely upon nor accept as fact assertions made in materials submitted with the original item or in the Community Health Commission Referral Response.



CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

CONSENT CALENDAR
September 10, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Rigel Robinson and Cheryl Davila
Subject: Decriminalizing Entheogenic Plants

RECOMMENDATION

Refer to the Community Health Commission for feedback regarding the aAdoption of a Resolution decriminalizing Entheogenic Plants and Fungi such as mushrooms, cacti, iboga containing plants, and/or extracted combinations of plants similar to Ayahuasca; and limited to those containing the following types of compounds: indole amines, tryptamines, phenethylamines, by restricting any city funds or resources to assist in the enforcement of laws imposing criminal penalties for the use and possession of Entheogenic Plants by adults age 21 and over.

POLICY COMMITTEE RECOMMENDATION

On July 17, 2019, the Public Safety Committee adopted the following action: M/S/C (Robinson/Wengraf) to send the item to the full Council with a Qualified Positive Recommendation that the author revise the report to refer the item to the Community Health Commission for further discussion. Vote: All Ayes.

BACKGROUND

Currently, Psilocybe mushrooms, peyote, and other hallucinogens are classified as schedule 1 drugs in the United States. This categorization indicates that there is “no currently accepted medical use [for them] and a high potential for abuse.” However, the federal drug schedule does not align with current medical research or scientific consensus; this is evident when considering that marijuana, which has been used for years by over 900,000 Californians in the legitimate treatment of mental and physical health conditions, is still a schedule 1 substance. In recent years numerous studies have provided promising evidence for the usefulness of Entheogenic Plants in treating addiction, depression, recidivism, trauma, post-traumatic stress symptoms, chronic depression, severe anxiety, end-of-life anxiety, grief, diabetes, cluster headaches, and other conditions. This research comes at a crucial time when addiction and mental health issues such as veteran suicides are becoming an increasingly pressing problem (Cox, Billy). Many of these therapies are even able to improve psychological health in patients whose conditions are extremely treatment-resistant, making them a vital innovation for numerous struggling citizens.

Restrictions on natural psychedelics are not internationally consistent. The official position of the United Nations is that “No plants are currently controlled under the

Conventions. Preparations made from plants containing those active ingredients are also not under international control... Examples of such plants or plant material include ayahuasca, a preparation made from plants indigenous to the Amazon basin of South America, mainly a jungle vine (*Banisteriopsis caapi*) and another tryptamine-rich plant (*Psychotria viridis*) containing a number of psychoactive alkaloids, including DMT; the peyote cactus (*Lophophora williamsii*), containing mescaline; *Psilocybe* mushrooms, which contain psilocybin and psilocin; and iboga (*Tabernanthe iboga*), a plant that contains ibogaine and is native to the western part of Central Africa.” Additionally, different Entheogenic plants are decriminalized or legalized in various countries, such as Brazil, Jamaica, Portugal, Gabon, New Zealand, South Africa, Mexico, Costa Rica, and the Netherlands. In particular, Portugal’s decriminalization of all drugs in 2001 decreased addiction and drug-related deaths without leading to a significant increase in drug usage, and can be used as an informative model for how to effectively treat drug issues in society (Felix, Sonia et. al).

In the U.S., Denver voters recently passed Initiative 301 decriminalizing *Psilocybin*-containing mushrooms, and Oakland recently passed a resolution similar to this proposal decriminalizing involvement with and usage of Entheogenic Plants. In New Mexico, the cultivation of mushrooms is not prohibited by law as a result of the 2005 court case *State v. Pratt*. Certain groups also have explicit permission to use Entheogenic Plants for ceremonial and sacramental use under the Religious Freedom Restoration Act of 1993 and various court decisions, including *O Centro Espírita Beneficente União do Vegetal* (ayahuasca), the Church of the Holy Light of the Queen (ayahuasca), and the Native American Church (peyote).

In October of 2018, the FDA granted breakthrough therapy designation to psilocybin, acknowledging that it shows promise for treating resistant conditions such as depression and allowing more involved study. Internationally, investment is growing quickly in research companies focusing on psychedelic therapies for mental health such as that being done by Compass, which supports scientific and academic research into such therapies (Farr, Christina). This signals a paradigm shift in the way the global community regards the medical viability of psychedelics, as well as a promising future for further federal and international deregulation. Domestically Similarly, New York, Vermont, and Iowa have all proposed bills in the past four years allowing further research on Ibogaine as an addiction treatment, demonstrating that American attitudes towards psychedelics as therapeutic medicines are evolving nationwide as well.

Though currently illegal in the U.S., Entheogenic Plants are increasingly showing promise in clinical research for treating myriad serious conditions. Recent research on *Psilocybin* for depression shows that it significantly reduces symptoms, and has promise for treating alcohol and drug addiction as well as general and end of life anxiety. Mushrooms have also historically been used to facilitate beneficial personal and spiritual growth: a John Hopkins study on neurotypical participants revealed that over 75% of the respondents considered their psilocybin experience to be among the top five most meaningful experiences of their lives. Mushrooms are also fairly low risk, with no noted addictive properties and direct overdose practically impossible, and a

2000 study by the Center for Assessment and Monitoring of New Drugs concluded that the risk to public order, individual health, and public health was low.

Other Entheogens are also showing promise for the treatment of various health issues. Ibogaine, the active ingredient in Iboga, is already used with medical supervision in countries like Mexico as an opioid addiction treatment, and a 2016 study (Brown, Thomas Kingsley and Alper, Kenneth) found that withdrawal symptoms and opioid use were significantly lessened in addicts that underwent ibogaine therapy. Ayahuasca can have profound impacts on mental outlook and hopefulness, and a 2013 study (Thomas, Gerald et. al) showed that usage significantly reduced tobacco, alcohol, and cocaine dependence as well. Peyote has been used without harm in Native American religious ceremonies for decades, and research (Halpern, John H. et. al) has shown that such usage did not result in neurophysiological impairment. Anecdotally, peyote use is associated with reduced rates of alcoholism in Native American populations, providing a promising avenue for further research into the use of peyote in treating alcohol abuse. Other promising directions for Entheogenic Plants as medicinal aids include the treatment and amelioration of cluster headaches, recidivism and intimate partner violence, diabetes, grief, and PTSD.

Unfortunately, laboratory produced compounds based on Entheogens are not yet a viable treatment for those suffering from physical and mental conditions. Furthermore, if and when they do become available they are likely to be prohibitively expensive--synthetic psilocybin can range from \$7,000-10,000 per gram--raising concerns about access and equity for low income and uninsured populations. Decriminalizing the use, possession, cultivation, distribution, and transportation of Entheogens allows individuals rather than the pharmaceutical establishment to control their interaction with these powerful psychedelics, empowering and bonding communities as a result.

In this process, the organization Decriminalize Nature (decriminalizenature.org) has worked with Oakland, and now Berkeley, to further the movement to decriminalize natural Entheogens. Their mission is to enable every person to decide on their own how to engage with traditional Entheogenic Plants, and help restore the connection between nature, individuals, and communities in the process. It is intended that this resolution empowers Berkeley residents to be able to grow their own entheogens, share them with their community, and choose the appropriate setting for their intentions instead of having to rely exclusively on the medical establishment, which is slow to adapt and difficult to navigate for many. As this national conversation on entheogens grows, is essential to influence the debate and take a stand now for disenfranchised communities who may be left out of the dominant model by opening a way for individual and community access.

FINANCIAL IMPLICATIONS

Adoption of the resolution may slightly reduce ongoing City expenditures associated with the enforcement of criminal penalties relating to Entheogenic Plant usage by adults. Some staff time to implement the resolution.

ENVIRONMENTAL SUSTAINABILITY

Small to none, although allowing personal cultivation of peyote specifically could help to counteract its current classification as a vulnerable endangered plant, contributing to long-term ecological sustainability.

CONTACT PERSON

Councilmember Robinson, Council District 7, 510-981-7170

Courtney Baldwin, Intern for District 7, cbaldwin@cityofberkeley.info

Attachments:

1: Resolution

2: References

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

RESOLUTION SUPPORTING ENTHEOGENIC PLANT PRACTICES AND
DECLARING THAT THE INVESTIGATION AND ARREST OF INDIVIDUALS
INVOLVED WITH THE ADULT USE OF ENTHEOGENIC PLANTS ON THE FEDERAL
SCHEDULE 1 LIST BE AMONGST THE LOWEST PRIORITY FOR THE CITY OF
BERKELEY

WHEREAS, Entheogenic Plants, based on the term "entheogen", were originally conceived by Ott, Ruck, and other colleagues from a working group of anthropologists and ethnobotanists in 1979; ~~and defined herein as to include~~ the full spectrum of plants, fungi, and natural materials ~~deserving reverence and respect from the perspective of the individual and the collective,~~ that can inspire personal and spiritual well-being¹, can benefit psychological² and physical³ wellness, and can reestablish human's inalienable and direct relationship to nature; and

WHEREAS, substance abuse⁴, addiction, recidivism⁵, trauma, post-traumatic stress symptoms, chronic depression, severe anxiety⁶, end-of-life anxiety, grief⁷, diabetes⁸, cluster headaches⁹, and other conditions are plaguing our community and that the use of Entheogenic Plants has been shown to be potentially beneficial to the health and well-being of individuals and communities in addressing these afflictions via scientific and clinical studies and within continuing traditional practices, which can catalyze profound experiences of personal and spiritual growth; and

WHEREAS, practices with Entheogenic Plants have long existed and have been considered to be sacred to human cultures and human interrelationships with nature for thousands of years¹⁰, and continue to be enhanced and improved to this day by religious and spiritual leaders, practicing professionals, mentors, and healers throughout the world, many of whom have been forced underground; and

WHEREAS, those seeking to improve their health and well-being through the use of Entheogenic Plants use them in fear of arrest and prosecution; and

WHEREAS, the Entheogenic Plant practices of certain groups are already explicitly protected in the U.S. under the doctrine of religious freedom -- the Native American

¹ See Entheogens for Personal and Spiritual Growth

² See Entheogens and Psychological Wellness

³ See Entheogens and Physical Wellness

⁴ See Entheogens and Substance Abuse

⁵ See Entheogens and Recidivism

⁶ See Entheogens and Anxiety

⁷ See Entheogens and Grief

⁸ See Ayahwasca and Diabetes

⁹ See Entheogens and Cluster Headaches

¹⁰ See Historical Use of Entheogens

Church's use of peyote and the use of ayahuasca by two other churches, a Santo Daime congregation and the Uniao do Vegetal; and

WHEREAS, The United Nations considers Entheogenic Plant material used for ritual purposes as excluded from Schedule 1 substances; and

WHEREAS, Entheogenic plants containing ibogaine, for example, have been shown to alleviate treatment resistant cases of opiate and methamphetamine addiction even when other treatments have been ineffective¹¹. In addition, ibogaine is reported to be beneficial for addiction therapy related to specific work-related PTSD encountered by first responders such as EMT, police, and firefighters, as well as military veterans; and

WHEREAS, Entheogenic Plants or combinations of plants such as ayahuasca that contain forms of DMT, a naturally occurring compound in the human body that is listed as a Schedule 1 substance, can lead to experiences that are reported as mystical or experientially similar to near death experiences,¹² and that can be demonstrably beneficial in treating addiction¹³, depression¹⁴, and PTSD¹⁵, and ~~in that some have found to catalyzing-catalyze~~ profound experiences of personal¹⁶ and spiritual¹⁷ growth; and

WHEREAS, Entheogenic cacti that contain phenethylamine compounds such as mescaline can be beneficial in healing drug and alcohol addiction¹⁸ and for individual spiritual growth¹⁹, and have been utilized in sacred initiation and community healing by diverse religious and cultural traditions for millennia and continuing use as religious sacraments in modern times; and

WHEREAS, psilocybin, naturally occurring in Entheogenic mushrooms, can alleviate end-of-life anxiety for hospice and terminal cancer patients²⁰, can reduce prison recidivism²¹, and can effectively treat substance abuse, depression²², cluster headaches²³; and

¹¹ See [Iboga/Ibogaine for Addiction Therapy](#)

¹² See [Ayahuasca Experience Similar to Near-Death Experience](#)

¹³ See [Ayahuasca for Addiction Therapy](#)

¹⁴ See [Ayahuasca and Depression](#)

¹⁵ See [Ayahuasca and PTSD](#)

¹⁶ See [Ayahuasca and Personal Growth](#)

¹⁷ See [Ayahuasca and Spiritual Growth](#)

¹⁸ See [Peyote for treatment of alcohol and drug dependence](#)

¹⁹ See [Peyote](#)

²⁰ See [Psilocybin for End-of-Life Anxiety](#)

²¹ See [Entheogens and Reduced Recidivism](#)

²² See [Psilocybin and Treatment-Resistant Depression](#)

²³ See [Psilocybin and Cluster Headaches](#)

~~WHEREAS, a Johns Hopkins University study on "healthy normals" found that psilocybin can occasion mystical-type experiences, which were considered one of the top five most meaningful experiences in a subject's life for over 75% of their subjects within the first year after the study, and found continuing positive life-style changes after a 14-month follow-up; and~~

~~WHEREAS, the following principles, when adhered to, help to ensure safe and responsible use of entheogenic plants:~~

- ~~1. **Entheogens are not for everyone.** Knowledgeable clinicians caution that some people should not take entheogenic plants or fungi, including people with a personal or family history of schizophrenia or bipolar disorder or who are taking certain medications or using other recreational drugs. See <https://adf.org.au/drug-facts/psychedelics/> for more information.~~
- ~~2. **Always conduct thorough research before using entheogens or other drugs.** Side effects, interactions, and long term consequences are possible with any drug, including but not limited to permanent brain and personality changes.~~
- ~~3. **If someone has a serious condition like major depression or PTSD, they would do well to get serious, professional help before using an entheogen** and to ask that caregiver's advice. Some counselors and therapists are glad to work with a client before and after an entheogenic journey.~~
- ~~4. **Unless you have expert guidance, it's best to start with small amounts,** using more only after you become familiar with the material and the terrain.~~
- ~~5. **Don't go solo.** Have at least one trusted friend (called sitter, guide, or facilitator) be with you, sober during the entire journey, and commit in advance to honor that person's instructions if he or she tells you not to do something. Entheogens can amplify the whole range of human emotions, including anxiety, which can sometimes lead to panic. Having a sitter gives you a certain comfort and mental freedom, and can help keep things safe.~~
- ~~6. **Reverence reduces risks and can help lead to positive outcomes.** In cultures that have long used entheogenic substances beneficially, that use is approached with great respect, not haphazardly, and for life-enhancing purposes.~~

~~;~~ and

WHEREAS, the City of Berkeley wishes to declare its desire not to expend City resources in any investigation, detention, arrest, or prosecution arising out of alleged violations of state and federal law regarding the use of Entheogenic Plants.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Mayor and City Council hereby declare that it shall be the policy of the City of Berkeley

that no department, agency, board, commission, officer or employee of the city, including without limitation, Berkeley Police Department personnel, shall use any city funds or resources to assist in the enforcement of laws imposing criminal penalties for the use and possession of Entheogenic Plants by adults of at least 21 years of age. For the purposes of this resolution, Entheogenic Plants are defined as plants and natural sources such as mushrooms, cacti, iboga containing plants and/or extracted combinations of plants similar to ayahuasca; and limited to those containing the following types of compounds: indole amines, tryptamines, phenethylamines.

BE IT FURTHER RESOLVED that this resolution does not authorize or enable any of the following activities: commercial sales or manufacturing of these plants and fungi, possessing or distributing these materials in schools, driving under the influence of these materials; or public disturbance.

BE IT FURTHER RESOLVED that the Council urges all those who decide to use entheogenic plants to consult their doctor beforehand and take the utmost medical precaution when doing so, and that no part of this resolution constitutes medical advice or a recommendation or endorsement of any drug or product.

BE IT FURTHER RESOLVED that the City Council directs the City Manager to work with the City's lobbyists to support the decriminalization of all Entheogenic Plants and plant-based compounds that are listed on the Federal Controlled Substances Schedule 1.

BE IT FURTHER RESOLVED that the City Council hereby declare that it shall be the policy of the City of Berkeley that the investigation and arrest of adult persons for planting, cultivating, purchasing, transporting, distributing, engaging in practices with, and/or possessing Entheogenic Plants or plant compounds on the Federal Schedule 1 list shall be amongst the lowest law enforcement priority for the City of Berkeley.

BE IT FURTHER RESOLVED that the City Council call upon the Alameda County District Attorney to cease prosecution of persons involved in the use of Entheogenic Plants or plant-based compounds on the Federal Schedule 1 List.

~~BE IT FURTHER RESOLVED that the City Council directs the City Manager to return to Council and present an assessment of community impacts and benefits within a year of passage of this resolution.~~

BE IT FURTHER RESOLVED that if any provision of this resolution is declared by a court of competent jurisdiction to be contrary to any statute regulation or judicial decision or its applicability to any agency person or circumstances is held invalid the validity of the remainder of this resolution and its applicability to any other agency person or circumstance shall not be affected.

BE IT FURTHER RESOLVED that a copy of this resolution shall be sent to Alameda County Supervisor Keith Carson, Assemblymember Buffy Wicks, State Senator Nancy Skinner, Congresswoman Barbara Lee, Senator Dianne Feinstein, and Senator Kamala Harris, and that the Berkeley City Council formally requests that they take action to decriminalize Entheogenic plants through their respective legislative bodies.

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ACTION CALENDAR
December 13th, 2022

To: Honorable Mayor and Members of the City Council
 From: Community Health Commission
 Submitted by: Andy Katz, Chairperson, Community Health Commission
 Subject: Responsible Psychedelic Drug Policy Reform in Berkeley

RECOMMENDATION

Adopt a Resolution that refers to the City Manager to work with external organizations to provide psychedelic harm reduction, education, and support resources to the Berkeley Community, refers to the City Manager work with City Departments and external organizations to create, and return to the City Council with, a policy for collecting public health data on psychedelic drug use in the City, and deprioritizes the enforcement of laws that impose criminal penalties for the possession of psychedelic drugs for personal use (with the exception of Peyote), and laws that impose criminal penalties for the cultivation, processing, and preparation of psychedelic-containing plants and fungi for personal use (with the exception of Peyote).

SUMMARY

- The purpose of this report is to make a recommendation to the City Council regarding psychedelic drug policy reform in the City.
- Public perceptions of psychedelic drugs have dramatically shifted in the past few years, with mainstream media outlets reporting enthusiastically about the beneficial potential of psychedelic drug use (sometimes touting the substances as miracle cures or magic bullets), psychedelic drug policy reforms being proposed and often passed in various jurisdictions throughout the United States, billions of dollars of investment pouring into the psychedelic space, a trend towards increasing use of psychedelic drugs within the population, and a wave of interest in receiving psychedelic treatments. Given these rapid changes, there is a need for the provision of unbiased, evidence-informed psychedelic harm reduction, education, and support resources to the public, as well as for the collection of public health data on psychedelic drug use.
- This report recommends that the City Council adopt a resolution that refers to the City Manager to work with external organizations to provide psychedelic harm reduction, education, and support resources to the Berkeley Community, refers to the City Manager work with City Departments and external organizations to create, and return to the City Council with, a policy for collecting public health data on

psychedelic drug use in the City, and deprioritizes the enforcement of laws that impose criminal penalties for the possession of psychedelic drugs for personal use (with the exception of Peyote), and laws that impose criminal penalties for the cultivation, processing, and preparation of psychedelic-containing plants and fungi for personal use (with the exception of Peyote).

- This recommended action would help provide the needed resources to the Berkeley Community, create a policy for public health data collection regarding psychedelic drug use in the City (which is particularly important for policy-tracking going forward), and prevent the possibility of individuals facing criminalization for the personal use of the substances in the City. The recommended resolution would serve as an example or template for other jurisdictions to follow.
- Implementing the recommended action would only cost the City in terms of staff time, and in terms of resources such as the use of City webpages, community spaces such as libraries, etc. All of the psychedelic harm reduction, education, and support resources would be provided to the Berkeley community for free by external organizations who are working in collaboration with the City.
- No specific funding is required for implementing the recommended action.

BACKGROUND

“Psychedelic drugs” (or “classical psychedelics”) are LSD, psilocybin, DMT, mescaline, and other compounds that exert similar psychoactive effects by stimulating a specific subtype of serotonin receptor (5-HT_{2A}) on nerve cells in the brain and elsewhere in the body.

Although ketamine, MDMA, and ibogaine are often called “psychedelic drugs,” these substances produce different psychoactive (and physiological) effects through different pharmacological mechanisms of action, and are not considered “psychedelic drugs” in this resolution.

Psychedelic drugs can induce extra-ordinary, altered states of consciousness, involving significant changes in thought, feeling, and perception, with these psychoactive effects becoming more intense and unpredictable when the drugs are taken in higher doses. Psychedelic drug use has the potential to produce positive effects and beneficial outcomes (such as a sense of spiritual well-being, and improvements in the symptoms of mental health disorders), and to produce adverse effects and negative outcomes (such as intense confusion, fear, and panic, and even erratic behavior that can lead to harming oneself or others).

The acute effects and outcomes of psychedelic drug use are dependent in part on individual personality trait, medical health, and mental health factors. Psychedelic drug use can be beneficial for one person, but dangerous for another. Individuals with particular contraindications are known to face an increased likelihood of adverse effects and negative outcomes; for example, individuals who have a history of or predisposition

to psychotic disorders are at risk for triggering the onset of psychosis as a result of psychedelic drug ingestion.

The acute effects and the outcomes of psychedelic drug use are also extremely dependent on “container,” which is the particular context/conditions/circumstances within which the substance is used. “Container” includes the user’s “Set,” which in addition to the user’s personality traits and health conditions, is all of the expectations, intentions, emotions, beliefs, etc. that the user brings to the situation, and the “Setting,” which is the physical, interpersonal, social, cultural, etc. environment, or external conditions, within which the use occurs (including what the sitter, guide, facilitator, therapist, etc. brings into the situation, if they are present in the situation).

While there is still much to learn about the factors that contribute to how individuals react to psychedelic drugs and how these factors relate to acute effects and outcomes of use, it is clear that adverse effects and negative outcomes are significantly less likely to occur and beneficial effects and outcomes are more likely to occur when psychedelic drugs are used within containers that are intentional, structured, and include the support of trained, competent, and well-intentioned sitters, guides, facilitators, therapists, etc. It is also clear that adverse effects and negative outcomes are significantly more likely, and beneficial effects and outcomes less likely, when the drugs are used outside of these containers (for example, when the user decides to use the substance spontaneously without intentional preparation, when they are alone, in a chaotic or unpredictable environment, etc.).

The outcomes of psychedelic drug use are also dependent on “integration,” which refers to the process of unpacking and exploring the meaning of one’s psychedelic experience and applying it to one’s life, with integration being vital not only because it helps one fulfill the beneficial potential of one’s experience, but also because the absence of integration can create risks and lead to negative outcomes, such as in scenarios when trauma surfaces in the experience, but is not integrated afterwards.

A variety of plants and fungi contain psychedelic drugs, and many have been used for religious and medicinal purposes by indigenous groups for at least hundreds of years. A variety of species of psilocybin-containing fungi, the LSA-containing seeds of morning glory species (ipomoea tricolor and turbina corymbosa), Ayahuasca (a brew of DMT-containing and MAOI-containing plants, with the latter being included to allow the DMT to be absorbed through oral ingestion), and mescaline-containing cacti such as San Pedro (echinopsis pachanoi), Peruvian Torch (echinopsis peruviana), and Peyote (lophophora williamsii) all have well-documented histories of indigenous and syncretic traditional use in the Americas, and all continue to be used in a variety of traditional contexts to this day. This use often occurs (though not always) within highly intentional, structured, time-tested ceremonial containers that include the guidance of trained practitioners, followed by integration practices, and occurring within cultural contexts that differ quite significantly from that of contemporary American society.

Some religious groups with a history of traditional ceremonial use of psychedelic-containing plants and fungi have been granted religious-use protections in the United States, such as the Brazil-based Ayahuasca-using churches “Uniao do Vegetal” (UDV) and “Santo Daime,” and the Peyote-using Native American Church (NAC), which arose in the North American Southwest. Peyote currently only grows wild in South Texas, and the population is very fragile, which is why the National Council of Native American Churches and the Indigenous Peyote Conservation Initiative released a statement requesting that decriminalization and legalization policies do not include this species, to prevent the possibility of increased poaching threats to the wild population.

The history of psychedelic drug use in Western society is closely tied to the discovery and proliferation of LSD (lysergic acid diethylamide). The Swiss scientist Albert Hoffman accidentally discovered the psychoactive effects of the substance in 1943, in his work for Sandoz Laboratories. Following Hoffman’s discovery, Sandoz Laboratories believed that LSD had potential for clinical applications, and encouraged researchers to experiment with the substance to explore its potential. For about 15 years, LSD was the focus of extensive research and testing, but this first wave of scientific experimentation was derailed when LSD began to gain popularity among countercultural groups, and utopian-minded psychedelic-drug-use-evangelicals such as Timothy Leary began to publicly call for widespread use of the substance (and other psychedelics). As the use of LSD became more visible, associated with countercultural and activist movements, associated with recreational use, and associated with adverse reactions such as psychosis and erratic behavior, jurisdictions moved to ban the substance. In 1970, the federal government of the United States moved to classify LSD as Schedule 1, which is a category of controlled substances that supposedly have been found to have “a high potential for abuse,” “no currently accepted medical use in treatment,” and “a lack of accepted safety for use under medical supervision.” Other psychedelic drugs such as psilocybin, DMT, and mescaline, were also classified as Schedule 1 controlled substances along with LSD. For a long time after this, psychedelic drugs and psychedelic drug use became a stigmatized topic in much of Western society, and legal research ceased for many years. After psychedelic drugs became illegal and stigmatized, use of the substances continued underground, including in the context of underground psychedelic-assisted therapy, psychedelic ceremonies, and other psychedelic practices.

While the discovery and proliferation of LSD was incredibly important to the history of psychedelic drug use in Western society (especially in that first wave from 1943 to 1970), it is important to note that Western interest in psilocybin-containing mushrooms and the traditional ceremonial use of psychedelics was invigorated by Gordon Wasson’s 1957 Time article documenting his visit to the Mazatec curandera Maria Sabina, who used psilocybin-containing mushrooms in her practice. This article ultimately led to a flood of tourists visiting Maria Sabina’s village and other areas of Mexico, seeking to experience psilocybin-containing mushrooms, which was not Maria Sabina’s intention in

sharing her knowledge with Wasson. The unwanted attention created severe problems for Maria Sabina, for her community, and for other curanderos and indigenous communities who traditionally used psilocybin-containing mushrooms. In the 1960s, however, psilocybin-containing mushrooms were not used by Westerners at anywhere near the same rate that LSD was used. LSD was being produced in massive amounts in (eventually illicit) laboratories, and was easily transported and distributed (largely because an active dose of LSD is a miniscule amount of material). Techniques for cultivating psilocybin-containing mushrooms were not developed or available until the 1970s, and foraging for the mushrooms could not create enough of a supply to in any way compete with LSD. Things have changed, however. A survey study that investigated contemporary psychedelic drug use found that psilocybin-containing mushroom use accounted for half of all psychedelic drug use reported by participants.

Legal scientific research into psychedelic drugs in the United States started up again in the 1990s when Rick Strassman was able to successfully secure approval to conduct experiments with DMT on human subjects. DMT is an endogenous compound (meaning it occurs naturally in the human body), so it was much easier to convince the appropriate authorities that this substance was worthy of scientific study (compared to LSD or other non-endogenous psychedelic drugs). Although Strassman eventually stopped his DMT research before he fully completed the project, his work was crucial to putting the gears in motion again for legal psychedelic research. After Strassman's successful securing of approval for his DMT research, "the door was open for further human experimentation with psychedelic drugs," because the FDA was now "more willing to accept protocols for psychedelic research."

In the 2000s and onward, a number of research teams began to increasingly study the therapeutic applications of psychedelic drugs, primarily psilocybin, showing promising initial results. This generated more scientific and medical interest in psilocybin and psychedelics in general, leading to more and more studies being approved, funded, and conducted. This new wave of psychedelic research was fueled in part by the availability of new tools and models for studying the pharmacology and neuroscience of psychedelic drugs, as well as by the development of new ways to collect and analyze quantifiable data about research subjects' psychedelic experiences.

In the past several years, the resurgence of psychedelic research has only accelerated. There has been an explosion of research into the use of psychedelic-assisted psychotherapies for treating mental health conditions such as major depressive disorder and substance use disorder, with a number of studies showing promising preliminary evidence for therapeutic benefits when screened, prepared patients are administered with the substances within structured, clinical containers, with the support of trained therapists, and with integration following the administration sessions. These promising preliminary findings led the FDA to issue "breakthrough therapy" designations to psilocybin-assisted treatments, expediting the process of review and approval. While psychedelic therapies have not yet been demonstrated to be safe and effective

treatments for any health condition, and have not yet been approved by the FDA, this year, the federal government created an interagency task force to study and address issues related to the projected approval, rollout, and regulation of psychedelic medicine in the United States, with the goal of creating a “framework for the responsible, accountable, safe, and ethical deployment of psychedelic therapies for mental health disorders when the FDA approves their use.”

While psychedelic drug use has been highly stigmatized in Western society, especially since the beginning of the Drug War in the United States, public perceptions have dramatically shifted in the past few years, with mainstream media outlets reporting enthusiastically about the beneficial potential of psychedelic drug use, psychedelic drug policy reforms being proposed and often passed in various jurisdictions throughout the United States, billions of dollars of investment pouring into the psychedelic space, first from a small number of wealthy psychedelic-enthusiasts, and now increasingly from commercial/industry/venture capital interests, a trend towards increasing use of psychedelic drugs within the population, and a wave of interest in receiving psychedelic treatments. This wave of interest in receiving psychedelic treatments has been referred to as the “Michael Pollan Effect” (in reference to the social and cultural impact of Pollan’s book and docuseries) and is evidenced by the massive increase in the number of individuals seeking to participate in the limited number of active or recruiting psychedelic clinical trials.

David B. Yaden and some other researchers in the psychedelic research field have argued that we have become trapped in a “psychedelic hype bubble” that is “driven largely by media and industry interests.” They note that the term “bubble” is “often applied to something of value that has become overvalued in popular perception,” typically when a “rapid increase in extreme visibility and expectations” leads to “a peak of inflated expectations,” which is then followed by “an equally steep decline in which highly inflated expectations are dashed.” Yaden et al. argue that psychedelics are “currently cresting” the peak of inflated expectations, citing the observation that “in the past few years, a disturbingly large number of [mainstream media] articles have touted psychedelics as a cure or miracle drug.”

It is important to remain aware of the possibility that we are indeed in the midst of a “psychedelic hype bubble,” and of the fact that psychedelic research, and our understanding of psychedelic drugs and psychedelic practices, are still in the early stages. Psychedelic drugs are clearly very powerful tools, and contemporary American society is only beginning to understand how they work, what they are capable of, and how to use them safely, beneficially, and ethically. Psychedelics and psychedelic practices may be beneficial for some people in some contexts, and not for others in other contexts, and we must be careful about allowing expectations of the substances’ universal beneficial potential and safety to become excessively inflated.

Psychedelic drug reform policies are, in part, public health policies. In order to craft evidence-based public health policies regarding psychedelic drug use, we must look to the available scientific research into the individual and public health outcomes of psychedelic drug use, and seek accurate, comprehensive public health data, and avoid basing policy decisions on rapidly-shifting, media-influenced (and possibly, at this time, overly-enthusiastic) public perceptions of the substances' safety and efficacy. However, we must consider public perceptions of the substances when evaluating the potential need for the provision of psychedelic harm reduction, education, and other support resources. Furthermore, we must consider long-term equitable access concerns in our psychedelic public health policy decision-making.

Psychedelic drug reform policies are also, in part, criminal justice policies. In order to craft appropriate criminal justice policies regarding psychedelic drug use, we must take into account a number of issues, such as the current laws, the actual enforcement situation on the ground in the jurisdiction in question and its criminalization consequences for members of the community, the human rights concerns that are at stake, the actual consequences (particularly unintended consequences) of psychedelic drug reform policies in other jurisdictions, and the various (public health) trade-offs involved in different policy options.

RATIONALE FOR RECOMMENDATION

This resolution deprioritizes the enforcement of laws imposing criminal penalties for the possession of psychedelic drugs for personal use (with the exception of Peyote), and laws imposing criminal penalties for the cultivation, processing, and preparation of plants and fungi containing psychedelic drugs for personal use (with the exception of Peyote). This resolution DOES NOT deprioritize the enforcement of laws against giving away, sharing, distributing, transferring, dispensing, or administering of psychedelic drugs to other people, and does not authorize these activities in any way.

The decision to limit deprioritization to possession of psychedelic drugs for personal use, and cultivation, processing, and preparation of psychedelic-containing plants and fungi for personal use was motivated by examining the trade-offs involved in the different policy options.

Deprioritizing the enforcement of laws against possession of psychedelic drugs for personal use in Berkeley would prevent individuals from being investigated, arrested, prosecuted, or imprisoned for engaging in this activity in Berkeley. According to reports from BPD sources (BPD was unable to provide data after a request was sent), the police department very, very rarely investigates or arrests individuals for offenses involving psychedelic drugs, and when this does occur, it is virtually always for commercial distribution, rather than possession for personal use, or cultivation, processing, and preparation of psychedelic-containing plants and fungi for personal use. This suggests that very few people face the risk of criminal consequences for offenses

involving psychedelic drugs in Berkeley, with the main risk being to those who sell the substances.

Given that very, very few (if any) people are already subject to investigation or arrest in Berkeley for possession of psychedelic drugs for personal use, this policy option would probably not have significant concrete criminal justice consequences for members of the Berkeley community, although it would prevent the highly unlikely (and blatantly unjust) scenario in which someone was indeed investigated and/or arrested for possession of psychedelic drugs for personal use in Berkeley. However, this policy option sends a symbolic message about the importance of decriminalizing possession of psychedelic drugs for personal use, particularly to jurisdictions where individuals actually do face a significant risk of criminalization for this activity.

The deprioritization of investigation and enforcement of laws against giving away, sharing, or distributing psychedelic drugs to other individuals has, in jurisdictions such as Oakland, CA, demonstrably led to the emergence of unregulated gray markets for psychedelic drugs. In these gray markets, we see enterprising entrepreneurs opening commercial operations such as delivery services (advertised with fliers and posters), storefront dispensaries, pop-ups, and outdoor market booths, sometimes asking for “suggested donations,” and sometimes not bothering at all with the pretense that they are merely “giving away” the substances. For example, at least one convenience store in Oakland is now openly offering psilocybin mushroom chocolate bars for sale. This deprioritization policy has also demonstrably opened access to unregulated facilitated psychedelic dosing sessions (with practitioners and groups accepting payment for their services), including one-on-one psychedelic-assisted practices and group practices such as ceremonies (often with public-facing websites and other promotional materials). It is important to carefully consider the implications and potential public health consequences of opening this kind of access to the substances at this time.

While there is much we do not know yet about the individual and public health consequences of psychedelic drug use, we do know that these are very powerful psychoactive substances (far more powerful than cannabis) that can present serious risks, especially for some individuals, and when used in different circumstances. While many of these risks can be mitigated when use occurs within an intentional, supportive, guided “container,” there is still much to learn about how specific individual and container factors are connected to safety and benefit, and about how to create safe and beneficial containers for different individuals, and for different purposes (e.g. treating depression, PTSD, etc.). Additionally, the use of psychedelic drugs under the guidance or supervision of another person places the user in a highly vulnerable position in which they are susceptible to (conscious or unconscious) manipulation, exploitation, and abuse at the hands of their sitter, facilitator, guide, therapist, etc. Without having effective safeguards in place, opening unregulated access to psychedelic drugs and psychedelic services would create a dangerous situation, particularly for individuals with contraindications, and individuals who are members of vulnerable populations.

While there is a body of promising scientific research into the potential therapeutic applications of psychedelic drugs, the findings from this research are still quite limited and preliminary. However, psychedelic drugs are increasingly perceived by the public as being safe and effective “medicines,” despite the current lack of FDA approval, and despite the large gaps in our scientific knowledge about the substances’ risk/benefit profiles and long-term effects (for different individuals and populations, when used in different contexts, and when used in the treatment of different health conditions). Governments have public health imperatives to develop and implement policies that fully acknowledge these complex (and rapidly-changing) circumstances. Policies must be developed and implemented with the understanding that psychedelic drug policy reform involves unique issues that are not present when considering (for example) methamphetamine or fentanyl policy reform, in part because these other substances, unlike psychedelics, are generally perceived by the public as being dangerous, addictive, recreational drugs, rather than as safe and effective “medicines” that will supposedly be the magic-bullet solution to the mental health crisis.

Because psychedelic drugs are increasingly promoted as being actively beneficial substances with great therapeutic, medical, or even spiritual and societal value, this is generating significant and unique demand for psychedelic drugs and psychedelic services. Deprioritizing the enforcement of laws against giving away, sharing, distributing, transferring, dispensing, or administering of psychedelic drugs to other people opens the door for individuals and groups to provide an unregulated supply to meet this demand. Some of these individuals and groups, even those with entirely good intentions, would likely end up presenting or marketing their goods and services in ways that are not accurate or evidence-based, and that make misleading or unfounded claims about the safety and efficacy of what they are providing. This situation, again, would be dangerous, particularly for individuals with contraindications, and for vulnerable populations (such as severely depressed people who are desperate for a solution to their suffering).

We carefully considered issues related to long-term equitable access to psychedelic drugs and psychedelic services in our policy-making decision process. One often-raised concern is that if local jurisdictions and states do not decriminalize (or even legalize) the unrestricted giving away, sharing, or administering of psychedelic drugs right now, that future regulatory frameworks will inevitably become overly-restrictive, and shaped by corporate interests, making access expensive and inequitable.

In response to this concern, we argue that immediately opening unregulated gray markets for psychedelic drugs and psychedelic services, at least without first establishing a robust and widely-accessible safety/harm reduction/education/support scaffolding, represents inequitable public health policy. For example, if unregulated gray market access was opened without any safeguards in place, individuals who have more time, education, experience, skills, resources, etc. to conduct their own research/educate themselves (e.g. about using psychedelics within a safe container,

about contraindications, about detecting red flags that may indicate abusive guides, etc.) would likely be able to make safer and more beneficial decisions about using the substances, about selecting a guide, etc. These individuals would presumably be more likely to experience positive outcomes and less likely to experience negative outcomes from accessing psychedelic drugs or psychedelic services, which is an inequitable situation (and vulnerable populations in particular would be subject to inequitable levels of risk). This is one of the reasons it is necessary to include a safety scaffolding in psychedelic drug policy, and to fully establish this safety scaffolding before opening widespread access.

Furthermore, we are optimistic that a transparent, comprehensive public conversation about the issues, with the participation of representatives of different communities and impacted groups, a variety of interdisciplinary experts, etc. will lead to the development and implementation of psychedelic drug reform policies that promote equitable access to psychedelic drugs and psychedelic services (whatever those policies may ultimately look like). We are optimistic that the people of the State of California, either through their representatives in the legislature or through ballot initiatives, will in the (probably near) future approve psychedelic drug policies that create access that is equitable, safe, beneficial, and ethical. We can learn from mistakes with cannabis legalization, and work to prevent corporate and other commercial interests from shaping psychedelic policy decisions towards their own interests.

Moving on from public health concerns, we identified and analyzed several criminal justice concerns that may provide reasons in favor of deprioritizing the enforcement of laws against giving away, sharing, distributing, transferring, dispensing, or administering of psychedelic drugs to other people in the City of Berkeley. One criminal justice reason to select this policy option would be to prevent individuals from being investigated, arrested, prosecuted, and incarcerated for engaging in these activities in Berkeley. However, as stated previously, very few people are investigated or arrested in Berkeley for offenses involving psychedelic drugs, with the rare cases involving the sale of the substances. Therefore, including giving away, sharing, etc. in our deprioritization policy would not have a significant impact on keeping individuals from being criminalized for the psychedelic-involved activities they are already engaging in, because these individuals are not currently at significant risk for investigation or arrest in Berkeley. If we did include giving away, sharing, etc. in our deprioritization policy, we would, however, be actively opening the gates for a widely-accessible, but completely unregulated gray market to emerge in Berkeley. We see the need to avoid this unintended consequence (and its public health implications) as outweighing the criminal justice value of deprioritizing enforcement of laws against giving away, sharing, etc. of psychedelic drugs.

Another relevant criminal justice concern we considered is the imperative to respect and protect the right to religious freedom. It has been argued that the right to religious freedom entails that every individual has the right to use psychedelics in religious

practices, particularly in community with others, free from government restriction or interference. If this is the case, then this would provide reason to deprioritize enforcement of laws against giving away, sharing, distributing, transferring, dispensing, or administering of psychedelic drugs to other people *within the context of religious practices*.

We decided that while the right to religious freedom may entail that every individual has the right to use psychedelic drugs in religious practices, including in community with others, there are many problems involved in identifying “religious practices” and distinguishing them from other activities, such that it would be intractably difficult to write a religious use protection into the resolution without creating many ambiguities and easily-exploited loopholes (for commercial activity, insincere religious practice, etc.). Additionally, deprioritizing enforcement of laws against possession of psychedelic drugs for personal use would allow individuals to engage in psychedelic religious practices in community with others, as long as everyone brought their own substances to these gatherings. Furthermore, because psychedelic practices involve the use of powerful drugs that place users in highly vulnerable positions in which they are susceptible to (conscious or unconscious) manipulation, exploitation, and abuse, we are concerned that our attempts to specifically open the door for religious use any further at this time would open the door to these dangers, particularly when charismatic leaders and guru-figures are involved in the psychedelic practices.

When making the decision to omit giving away, sharing, distributing, transferring, dispensing, or administering of psychedelic drugs to other people from the resolution’s deprioritization policy, we considered the public health concerns along with the criminal justice concerns. We determined that the public health reasons to refrain from opening unregulated gray-market access at this time (at least without first fully establishing a robust safety scaffolding) outweigh the criminal justice reasons in favor of deprioritizing enforcement of laws against giving away, sharing, administering, etc. of psychedelic drugs to other people.

An essential part of this resolution is referring to the City Manager to work with external organizations (including the Fireside Project) to provide accurate, evidence-informed, and widely-accessible psychedelic education, harm reduction, and other support resources to the Berkeley community. The goal here is to help individuals make informed and responsible decisions about using psychedelic drugs, and if they choose to use the drugs, to help them do so as safely and beneficially as possible. We are seeing this component of the resolution as being particularly important right now due to the marked shift in public perceptions of psychedelic drugs, and due to the increasing interest in and use of the substances (and unregulated gray market access in Oakland). We believe that the provision of psychedelic harm reduction, education, and support resources is essential for providing a “safety scaffolding” for psychedelic drug use within the City, and that this safety scaffolding must be fully in place before we can consider

opening widespread, unregulated access to psychedelic drugs and psychedelic services.

The final element of this resolution is referring to the City Manager to create, and return to the City Council with, a policy for collecting public health data regarding psychedelic drug use in the City. As of right now, the City of Berkeley has no policy for psychedelic drug use public health data collection, and no City department collects any of this data. There are extremely significant gaps in our knowledge of current patterns of psychedelic drug use and the public health outcomes of use generally, so improved data collection is needed to arrive at a better understanding of psychedelic drug use in the population and its effects on public health in the City, particularly for the purpose of preparing for policy tracking and for crafting evidence-based psychedelic public health policies in the future.

In creating the “safety scaffolding” and the public health data collection policy, we also aim to send a message to other jurisdictions about the necessity of including these elements in responsible psychedelic drug reform policies.

ALTERNATIVE ACTIONS CONSIDERED

- We considered the resolution that the advocacy group Decriminalize Nature proposed in 2019, which is very similar to the policy passed in Oakland, CA and a number of other jurisdictions. This proposed Berkeley resolution would have opened the door for the emergence of an unregulated gray market in Berkeley, without first establishing a safety scaffolding and a policy for public health data collection. For the reasons discussed in the above “rationale” section, we chose a different policy approach.
- We decided against the “no action” option because there is so much public interest in psychedelic drug use right now, and we believe that it is crucial for the City of Berkeley to address this topic in a responsible, public-health-focused manner.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

- Possession, cultivation, processing, and preparation of Peyote (*Lophophora williamsii*) for personal use is being omitted from this resolution’s deprioritization policy, in order to protect the sustainability of the endangered plant’s population in the Southwest. The National Council of Native American Churches and the Indigenous Peyote Conservation Initiative have asked for this plant to be excluded from psychedelic decriminalization and legalization proposals for this reason.

FISCAL IMPACTS OF RECOMMENDATION

- Adoption of this resolution may very, very slightly reduce City expenditures associated with enforcement of laws imposing criminal penalties for possession of psychedelic drugs for personal use, and laws imposing criminal penalties for

the cultivation, processing, and preparation of psychedelic-containing plants and fungi for personal use.

- Adoption of this resolution would decrease any present and future City expenditures associated with addressing adverse reactions to and negative health outcomes of psychedelic drug use, as a result of provision of psychedelic harm reduction, education, and support resources.
- Adoption of this resolution would require the use of City resources (including City staff time) to work with the external organizations to provide the psychedelic harm reduction, education, and support resources and to create and implement a public health data collection policy. However, because the City would be partnering with external organizations who would provide these resources (and collaborate in creating the data collection policy) for free, the costs to the City would be quite limited.

CITY MANAGER

The City Manager [TYPE ONE] concurs with / takes no position on the content and recommendations of the Commission's Report. [OR] Refer to the budget process.

CONTACT PERSON

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Attachments:

- 1: Resolution
- 2: References

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

RESOLUTION CALLING FOR THE PROVISION OF EVIDENCE-INFORMED PSYCHEDELIC HARM REDUCTION, EDUCATION, AND SUPPORT RESOURCES TO THE BERKELEY COMMUNITY, CALLING FOR THE CREATION OF A POLICY FOR COLLECTING PUBLIC HEALTH DATA ON PSYCHEDELIC DRUG USE IN THE CITY, AND DEPRIORITIZING THE ENFORCEMENT OF LAWS THAT IMPOSE CRIMINAL PENALTIES FOR THE POSSESSION OF PSYCHEDELIC DRUGS FOR PERSONAL USE AND LAWS THAT IMPOSE CRIMINAL PENALTIES FOR THE CULTIVATION, PROCESSING, AND PREPARATION OF PSYCHEDELIC-CONTAINING PLANTS AND FUNGI FOR PERSONAL USE

WHEREAS, “psychedelic drugs” (or “classical psychedelics”) are LSD, psilocybin, DMT, mescaline, and other compounds that exert similar psychoactive effects by stimulating a specific subtype of serotonin receptor (5-HT_{2A}) on nerve cells in the brain and elsewhere in the body;¹ and

WHEREAS, psychedelic drugs can induce extra-ordinary, altered states of consciousness, involving significant changes in thought, feeling, and perception,^{1,2} with these psychoactive effects becoming more intense and unpredictable when the drugs are taken in higher doses;¹ and

WHEREAS, psychedelic drugs have the potential to produce positive effects and beneficial outcomes (such as a sense of spiritual well-being, and improvements in the symptoms of mental health disorders),¹⁻⁴ and to produce adverse effects and negative outcomes (such as intense confusion, fear, and panic, and even erratic behavior that can lead to harming oneself or others),¹⁻⁴ and individuals with particular contraindications face an increased likelihood of adverse effects and negative outcomes, with those who have a history of or predisposition to psychotic disorders being at risk for triggering the onset of psychosis as a result of psychedelic drug use;⁴⁻⁵ and

WHEREAS, the acute effects and the outcomes of psychedelic drug use are extremely dependent on “container,”¹⁻⁶ which is the particular context/conditions/circumstances within which the substance is used, including “Set” (the user’s expectations, intentions, mood, beliefs, medical and health conditions, etc.) and “Setting” (the physical, interpersonal, social, cultural, etc. environment within which the use occurs);¹⁻⁶ and

WHEREAS, while there is still much to learn about the factors that contribute to how individuals react to psychedelic drugs and how these factors relate to acute effects and outcomes of use,¹⁵ it is clear that adverse effects and negative outcomes are significantly less likely to occur and beneficial effects and outcomes are more likely to occur when psychedelic drugs are used within containers that are intentional, structured, and include the support of trained, competent, and well-intentioned sitters, guides, facilitators, therapists, etc.,¹⁻⁶ and that adverse effects and negative outcomes are significantly more

likely, and beneficial effects and outcomes less likely, when the drugs are used outside of these containers (for example, when the user decides to use the substance spontaneously without intentional preparation, when they are alone, in a chaotic or unpredictable environment, etc.);¹⁻⁶ and

WHEREAS, the outcomes of psychedelic drug use are also dependent on “integration,” which refers to the process of unpacking and exploring the meaning of one’s psychedelic experience and applying it to one’s life,⁷ with integration being vital not only because it helps one fulfill the beneficial potential of one’s experience, but also because the absence of integration can create risks and lead to negative outcomes, such as in scenarios when trauma surfaces in the experience, but is not integrated afterwards; and

WHEREAS, psychedelic-containing plants and fungi have a long history of traditional use in some indigenous societies,^{6,7} with this use typically occurring within highly intentional, structured, time-tested ceremonial containers that include the guidance of trained practitioners, followed by integration practices, and occurring within cultural contexts that differ quite significantly from that of contemporary American society;^{6,7} and

WHEREAS, in recent years, there has been resurgence of scientific research into the use of psychedelic-assisted psychotherapies for treating mental health conditions such as major depressive disorder and substance use disorder,⁸ with a number of studies showing promising preliminary evidence¹⁵ for therapeutic benefits when screened, prepared patients are administered with the substances within structured, clinical containers, with the support of trained therapists, and with integration following the administration sessions;⁸ and

WHEREAS, at this time, while psychedelic therapies have not yet been demonstrated to be safe and effective treatments for any health condition, and have not yet been approved by the FDA,^{8,15} the federal government has created an interagency task force to study and address issues related to the projected approval, rollout, and regulation of psychedelic medicine in the United States, with the goal of creating a “framework for the responsible, accountable, safe, and ethical deployment of psychedelic therapies for mental health disorders when the FDA approves their use;”⁹ and

WHEREAS, while psychedelic drug use has been highly stigmatized in Western society, especially since the beginning of the Drug War in the United States, public perceptions have dramatically shifted in the past few years,^{8-12,15} with mainstream media outlets reporting enthusiastically about the beneficial potential of psychedelic drug use (sometimes touting the substances as miracle cures or magic bullets),^{8,10-12,15} psychedelic drug policy reforms being proposed and often passed in various jurisdictions throughout the United States,^{7,12,15} billions of dollars of investment pouring into the psychedelic space, first from a small number of wealthy psychedelic-enthusiasts and now from commercial/industry/venture capital interests,^{10,15} a trend towards increasing use of psychedelic drugs within the population,^{12,13} and a wave of interest in receiving

psychedelic treatments,¹¹ which has been referred to as the “Michael Pollan Effect,”¹¹ and is evidenced by the massive increase in the number of individuals seeking to participate in the limited number of active or recruiting psychedelic clinical trials;¹¹ and

WHEREAS, given the profile of use for this class of drug, and given recent shifts in public perception and policy, the City of Berkeley has a responsibility to make efforts, through collaborations with external organizations, to provide accurate, unbiased, evidence-informed, and widely-accessible psychedelic harm reduction, education, and other support resources to the Berkeley community, to help individuals make informed and responsible decisions about using psychedelic drugs, and if they choose to use the drugs, to help them do so safely and beneficially; and

WHEREAS, there are extremely significant gaps in our knowledge of current patterns of psychedelic drug use and the public health outcomes of use,^{12,14,15} so improved data collection is needed to arrive at a better understanding of psychedelic drug use in the population and its effects on public health, particularly for the purpose of preparing for policy tracking and for crafting evidence-based psychedelic public health policies in the future; and

WHEREAS, while the possession of psychedelic drugs for personal use is illegal at the federal level in the United States, arrests and prosecutions for engaging in psychedelic drug offenses almost always follow state law, and laws and penalties vary widely between different states, with possession of psychedelic drugs for personal use being considered in California to be a misdemeanor, punishable by up to one year of imprisonment; and

WHEREAS, arresting, prosecuting, and incarcerating people for the possession of psychedelic drugs for personal use and for the cultivation, processing, and preparation of psychedelic-containing plants and fungi for personal use is unjust, needlessly harmful to individuals and communities, represents a waste of resources, and does not promote public health; and

WHEREAS, deprioritization of investigation and enforcement of laws against giving away, sharing, or distributing psychedelic drugs to other individuals has, in jurisdictions such as Oakland, CA, demonstrably led to the emergence of unregulated gray markets for psychedelic drugs, with enterprising entrepreneurs opening (sometimes “donation”-based) commercial operations such as delivery services, storefront dispensaries, pop-ups, and outdoor market booths, and now with at least one convenience store in Oakland openly offering psilocybin mushroom chocolate bars for sale; and

WHEREAS, the deprioritization of investigation and enforcement of laws against giving away, sharing, distributing, or administering psychedelic drugs to other individuals has, in jurisdictions such as Oakland, CA, demonstrably opened access to unregulated psychedelic administration/dosing sessions (with practitioners and groups soliciting payment for their services), including one-on-one psychedelic-assisted therapy and group

practices such as ceremonies (often with public-facing websites and other promotional materials), and while some of these practices appear to operate in ways that are largely safe, ethical, and responsible, others do not, and are not required to, operate by the same standards, guidelines, and procedures; and

WHEREAS, at this stage, given the present circumstances in our society, the City of Berkeley's perspective is that it is prudent public health policy to pass a psychedelic drug reform proposal that does not lead to the unintended consequences of the emergence of an unregulated gray market for psychedelic drugs and the opening of access to unregulated psychedelic administration/dosing sessions, without first fully establishing a robust psychedelic harm reduction, education, and support scaffolding, without first creating a policy for public health data collection on psychedelic drug use, and without having a transparent, comprehensive public conversation, involving a variety of interdisciplinary experts, representatives of different communities and impacted groups, etc., about opening access to psychedelic drugs in a way that is safe, beneficial, ethical, and equitable, including discussion of the potential role of religious, ceremonial, and traditional use protections, public education campaigns, harm reduction programs, possible regulatory frameworks, consumer and client protections, licensing or certification systems for therapists and facilitators etc.; and

WHEREAS, the City of Berkeley wishes to declare its desire to create a psychedelic education, harm reduction, and support scaffolding for the community, to create a policy for collecting public health data on psychedelic drug use within the community, and to not expend City resources to assist in the enforcement of laws imposing criminal penalties for the possession for personal use of psychedelic drugs, or for the cultivation, processing, and preparation of psychedelic-containing plants and fungi for personal use; and

WHEREAS, a foundational part of the psychedelic harm reduction infrastructure is the "Psychedelic Peer Support Line," operated by a Bay Area-based nonprofit organization called Fireside Project, which has provided free, confidential peer-to-peer emotional support by phone and text message to over 5,000 people during and after psychedelic experiences, and has averted thousands of emergency room visits and calls to 911, and it is imperative that every member of the Berkeley community become aware of the Psychedelic Peer Support Line before they take any psychedelic substance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Mayor and City Council hereby declare that it shall be the policy of the City of Berkeley that no department, agency, board, commission, officer, or employee of the city, including without limitation, Berkeley Police Department personnel, shall use any city funds or resources to assist in the enforcement of laws imposing criminal penalties for the possession of psychedelic drugs for personal use, or laws imposing criminal penalties for the cultivation, processing, and preparation of psychedelic-drug-containing plants and fungi for personal use. For the purposes of this resolution, "psychedelic drugs" refers to

the “classical psychedelics” LSD, psilocybin, DMT, mescaline, and all other compounds that exert similar psychoactive effects through stimulation of the 5-HT_{2A} receptor. This resolution’s deprioritization policy does not apply to the mescaline-containing cactus Peyote (*Lophophora williamsii*), due to sustainability and poaching concerns raised by the National Council of Native American Churches and the Indigenous Peyote Conservation Initiative, who have released a statement requesting that decriminalization policies do not include this species.

BE IT FURTHER RESOLVED that this resolution defines the “personal use of psychedelic drugs” as an individual ingesting or self-administering psychedelic drugs.

BE IT FURTHER RESOLVED that this resolution defines “possession of psychedelic drugs for personal use” as an individual possessing psychedelic drugs for the purpose of being ingested or self-administered by that same individual, and not by any other person or people.

BE IT FURTHER RESOLVED that this resolution defines the “cultivation, processing, and preparation of psychedelic-containing plants and fungi for personal use” as an individual cultivating, processing, and preparing any of these plants and fungi for the purpose of the resulting material being ingested or self-administered by that same individual, and not by any other person or people.

BE IT FURTHER RESOLVED that this resolution does not authorize or enable any of the following activities: giving away, sharing, distributing, transferring, dispensing, or administering of psychedelic drugs to another individual.

BE IT FURTHER RESOLVED that the City of Berkeley shall, in the future, consider adopting policy that deprioritizes enforcement of laws imposing criminal penalties for the possession of MDMA, ketamine, ibogaine, and other psychedelic-adjacent compounds for personal use.

BE IT FURTHER RESOLVED that the City of Berkeley declares its support for a transparent, comprehensive public conversation about opening access to psychedelic drugs and psychedelic administration/dosing sessions in a way that is safe, beneficial, ethical, and equitable, including discussion of the potential role of religious, ceremonial, and traditional use protections, public education campaigns, harm reduction programs, possible regulatory frameworks, consumer and client protections, licensing or certification systems for therapists and facilitators, etc., and that the City urges the California State Legislature to take part in this conversation, and consider passing legislation that addresses the relevant issues.

BE IT FURTHER RESOLVED that the City Council refers to the City Manager to work with external organizations such as non-profits and academic institutions to provide and promote unbiased, evidence-informed psychedelic harm-reduction, education, and

support resources to the Berkeley community, including but not limited to the harm reduction-based drug education curriculum for high school students, Safety First, educational materials, workshops and other resources such as those provided by Fireside Project, DanceSafe, and other organizations for adults generally, as well as for adults who use the drugs in relevant settings, such as within nightlife, at festivals, and the use of drug purity/adulteration checking technologies, etc.

BE IT FURTHER RESOLVED that the City Council refers to the City Manager to collaborate with the non-profit organization Fireside Project to ensure that every citizen of Berkeley becomes aware of the Psychedelic Peer Support Line before consuming psychedelic drugs. Such collaboration may include but is not limited to sharing the Psychedelic Peer Support Line's number - 62-FIRESIDE | 623-473-7433 - with law enforcement and other City employees who may come into contact with people who may use psychedelic drugs, posting this information on City websites; encouraging schools to share this information with their students, and encouraging business such as bars, clubs, concert halls, and nightlife venues to share this information with their customers.

BE IT FURTHER RESOLVED that any organization or individual who works with the City to provide psychedelic education, harm reduction, or support resources shall not, through their work with the City, actively facilitate access to psychedelic drugs or psychedelic administration sessions, while current State law is in place. If an organization or individual is found to be acting in violation of this provision of the resolution, the City shall review the partnership with the organization or individual, and consider ending the partnership, depending on circumstances of the violation.

BE IT FURTHER RESOLVED that the City Council refers to the City Manager to collaborate with the Public Health Department, other City Departments, and external organizations and individuals to create, and return to the City Council with, a policy for collecting public health data on psychedelic use in the City.

BE IT FURTHER RESOLVED that the City of Berkeley urges other local jurisdictions to pass proposals that would establish psychedelic education, harm reduction, and support scaffoldings for their communities, create policies for collecting public health data on psychedelic drug use within their communities, and deprioritize the enforcement of laws imposing criminal penalties for the possession of psychedelic drugs (except Peyote) for personal use, and for the cultivation, processing, and preparation of psychedelic-containing plants and fungi (except Peyote) for personal use.

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Landmarks Preservation Commission

INFORMATION CALENDAR
July 11, 2023

To: Honorable Mayor and Members of the City Council
 From: Landmarks Preservation Commission
 Submitted by: Charles Enchill, LPC Chairperson
 Subject: Annual Report on Landmarks Preservation Commission (LPC) Actions

INTRODUCTION

LPC has prepared a report on its activities during the period June 2022 through May 2023; see Attachment 1, "Annual Report on Landmarks Preservation Commission Actions." Reports on the Commission's activities are required on an annual basis, in accordance with Berkeley Municipal Code Chapter 3.24.090 - *Annual Report Required*.

CURRENT SITUATION AND ITS EFFECTS

On June 1, 2023, the Commission voted to approve the attached report and to forward it to City Council. Vote: 8-0-0-1; Yes: Adams, Crandall, Enchill, Finacom, Linvill, Montgomery, Schwartz, Twu; No: none; Abstain: none; Absent: Leuschner.

BACKGROUND

Staff prepared a draft report summarizing LPC's actions and then presented it for the Commission's consideration at the meetings on May 4 and June 1, 2023. The Commission received the report favorably and voted to adopt it and to forward it to City Council in accordance with the BMC requirement.

The Commission held a total of 11 meetings during this reporting period. In March of this year, the Commission seamlessly returned to in-person meetings.

Among numerous accomplishments, the Commission:

- Designated one property as Structure of Merit.
- Granted 12 Structural Alteration Permits for existing properties on the City's register of historic properties.
- Recommended that City Council enter into Mills Act tax reduction contracts for the rehabilitation to two private residences.
- Considered 14 demolition referrals from the Zoning Adjustments Board.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Historic preservation practices encourage the adaptive re-use and rehabilitation of cultural resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The LPC will continue to submit an annual report on its activities in accordance with the BMC requirement.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no fiscal impacts associated with this reporting activity.

CONTACT PERSON

Fatema Crane, LPC Secretary, 510-981-7413

Attachments:

1: Annual Report of Landmarks Preservation Commission (LPC) Activities



L A N D M A R K S
P R E S E R V A T I O N
C O M M I S S I O N

R E P O R T T O C I T Y C O U N C I L

**Annual Report on
Landmarks Preservation Commission (LPC)
Actions**

Reporting Period: June 2022 through May 2023
Due Date: June 30, 2023

Presented to City Council
By the LPC Secretary
On behalf of the LPC Chairperson and the Commission
In accordance with Berkeley Municipal Code Section 3.24.090

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Part 1:	Introduction
Part 2:	Meetings Held
Part 3:	Actions Undertaken in Accordance with Regulatory Compliance
Part 4:	Discussions Held
Part 5:	Presentations Received

Part 1: Introduction

In accordance with Berkeley Municipal Code Section 3.24.090, the LPC shall report its actions to City Council on an annual basis. The report must arrive not later than June 30 of each year.

Herein City Council will find summaries of all LPC activities for the current reporting period. The summary lists are arranged in categories reflecting LPC’s compulsory duties, such as public meetings and quasi-judicial reviews, as well as other efforts that further cultural resource preservation in Berkeley.

Part 2: LPC Meetings Held

Meeting Body	Date
Landmarks Preservation Commission (LPC)	June 2, 2022*
	August 4, 2022*
	September 1, 2022*
	October 6, 2022*
	November 3, 2022*
	December 1, 2022*
	January 5, 2023*
	February 2, 2023*
	March 2, 2023
	March 30, 2023
	May 4, 2023
LPC Ad Hoc Subcommittee: City Projects on City LM, SOM or District Sites	November 8, 2022
	February 8 & 10, 2023

* Held via video conference in accordance with Government Code Section 54953 (e) and the state-declared emergency.

Part 3: LPC Regulatory Actions

Activity	Property Address	Application Number	Action Date
Landmark & Structure of Merit Designations BMC Section 3.24.150	2119 Marin Avenue	#LMIN2022-0002	September 1, 2022
	60 Panoramic Way	#LMIN2023-0001	May 4, 2023
Structural Alteration Permits BMC Section 3.24.240	2200-block of Piedmont Avenue	#LMSAP2019-0009	June 2, 2022
	2733 Buena Vista Way	#LMSA2022-0004	
	2065 Kittredge Street	#LMSAP2021-0004	June 2, August 4, 2022
	1325 Arch Street	#LMSAP2022-0007	August 4, 2022
	2081 Center Street	#LMSAP2022-0006	August 4, October 10, 2022
	1960 San Antonio Avenue	#LMSAP2022-0005	August 4, 2022 & March 3, 2023
	2109 Kala Bagai Way	#LMSAP2022-0008	October 6, 2022
	1581 Le Roy Avenue	#LMSAP2022-0009	November 3, 2022
	1767 Alcatraz Avenue	#LMSAP2022-0010	
	2113-2115 Kittredge Street	#LMSAP2022-0011	December 1, 2022
	1325 Arch Street	#LMSAP2022-0013	January 5, 2023
	1919 Addison Street	#LMSAP2022-0010	February 2 & March 2, 2023
	1915 Fourth Street	#LMSAP2022-0014	February 2, 2023
	0 Center Street – Civic Center Park	#LMSAP2023-0001	March 30, 2023
Use Permit Demolition Referrals BMC 23C.08.050	1650 Shattuck Avenue	#ZP2020-0022	June 2, August 4, 2022
	742 Grayson Street	#ZP2021-0161	June 2, 2022
	1820-1828 San Pablo Avenue	#ZP2021-0186	
	2403-2407 San Pablo Avenue	#ZP2021-0220	August 4, 2022
	1752 Shattuck Avenue	#ZP2022-0011	September 1, 2022
	2555 College Avenue	#ZP2022-0019	November 3, 2022
	2720 Hillegass Avenue	#ZP2022-0095	
	1652-1658 University Avenue	#ZP2022-0110	January 5, 2023
	2900-2920 Shattuck Avenue	#ZP2022-0116	February 2, 2023
	1548 University Avenue	#ZP2022-0099	
	1598 University Avenue	#ZP2022-0099	
	2800 Telegraph Avenue	#ZP2022-0107	March 3, 2023
	3030 Telegraph Avenue	#ZP2022-0170	March 30, 2023
2132-2154 Center Street	#ZP2022-0135	March 30 & May 4, 2023	

Activity	Property Address	Application Number	Action Date
Mill Act Contract Applications City Council Resolution 59,355	2523 Piedmont Avenue	#LMMA2022-0001	August 4, 2022
	2119 Marin Avenue	#LMMA2022-0002	September 1, October 6, 2022
Design Review Referrals BMC 23E.12.020.B	None		
National Preservation Act Section 106 Referrals	None		

Part 4: LPC Agenda Discussions Held

Topic	Discussion	Outcome	Date(s)
Toverii Tuppa Building – 1819 Tenth Street	Received a correspondence from a concerned party about the poor condition of the building and roof.	Provided direction and advice to interested parties.	September 1 and October 10, 2022
Land Acknowledgement Practice	Discussed the October 21, 2022 memorandum on the Land Acknowledgement Statement Resolution from the City Council, and considered including the Land Acknowledgement in LPC meeting practices.	Adopted the practice.	December 1, 2022 and January 5, 2023
Request to Initiate City Landmark or Structure of Merit Designation for 910 Indian Rock Avenue	Consider the information presented by nearby residents.	Pending	May 4, 2023
Request to Initiate City Landmark or Structure of Merit Designation for 2531 Ridge Road	Consider the information presented by local historian.		
Berkeley Civic Center Vision & Implementation Plan	Consider drafting a Correspondence to City Council.		

Part 5: LPC Agenda Presentations Received

Topic	Presenter	Date
Longfellow School Modernization Project – 1500 Derby Street	Berkeley Unified School District consultant team provided information and solicited feedback on conceptual plans for a K-12 facilities improvement project.	August 4, 2022
Turtle Island Monument Conceptual Design	Parks, Recreation & Waterfront staff presented the conceptual design for the proposed installation of commemorative artwork at the Civic Center Park Fountain (prior to formal SAP submittal).	December 1, 2022
Pacific Steel Casting Zoning & General Plan Amendments & Environmental Impact Report Scoping	Land Use Planning staff presented information about the City's consideration of new zoning standards and General Plan amendments for an industrial neighborhood in West Berkeley.	February 2, 2023
Hopkins Corridor Improvements Project	Public Works Transportation staff presented information and solicited comments about a pending pedestrian and cycling improvement plan for the City right-of-way.	March 30, 2023



BERKELEY CITY AUDITOR

INFORMATION CALENDAR

July 11, 2023

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor *JW*

Subject: City Auditor Fiscal Year 2024 Audit Plan

INTRODUCTION

The Berkeley City Charter requires the City Auditor to provide the City Council with a planned audit schedule by the beginning of each fiscal year and to notify the Council when audits are added. In deciding what to audit, our office considers suggestions from the City Manager, staff, the City Council, the Rent Stabilization Board, commissioners, and other community members. We examine risks that might prevent the City from reaching its goals, including strategic, financial, regulatory, operational, and reputational risks.

CURRENT SITUATION AND ITS EFFECTS

As required by the City Charter, we are notifying the Council of our annual audit plan. The following plan assumes being fully staffed to conduct these audits.

For Fiscal Year 2024, we have identified areas we hope to address in the upcoming year:

- Homelessness (in progress)
- Measure FF (in progress)
- Rent Stabilization Board
- Public health
- Follow-up on prior audit recommendations
- Short-term projects
- Whistleblower Program

BACKGROUND

The mission of the Berkeley City Auditor is to promote transparency and accountability in Berkeley government. This is achieved through independent evaluations of City programs and activities. The FY 2024 Audit Plan reflects our office's commitment to continuous improvement by enhancing the value, products, staffing, communications, and overall impact of the Berkeley City Auditor's Office on behalf of Berkeley residents, businesses, and visitors.

ENVIRONMENTAL SUSTAINABILITY

This report is not associated with identifiable environmental effects or opportunities.

POSSIBLE FUTURE ACTION

Our future audit recommendations will address the risks that could prevent the City from providing efficient, effective, and equitable service delivery. We will be asking the Council to accept those recommendations and request that the City Manager report on their actions to implement them. We may also make recommendations requiring Council action.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Audit work leads to new or enhanced revenue, cost recovery, and increased efficiency, with economic impact well beyond the audit costs. Long-range financial benefits of our audits result in significant improvements to internal controls and service delivery.

Ensuring timely implementation of audit recommendations could result in additional savings and risk reduction, including fraud risk. Reducing fraud risk more than protects money; it builds trust in government. Maintaining a strong audit function and fiscal management will reduce future costs and enhance public trust.

CONTACT PERSON

Jenny Wong, City Auditor, 510-981-6750

Attachment:

1. Audit Plan Fiscal Year 2024

Audit Plan Fiscal Year 2024

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Auditor's Authority



BERKELEY CITY AUDITOR

Letter from the Auditor



As the Berkeley City Auditor, I am pleased to present to you the audit plan for fiscal year 2024. This plan outlines the key areas of focus for the City Auditor's Office, including ongoing work, new initiatives, and the allocation of resources to ensure transparency, accountability, and effective governance.

Our office conducts performance audits of city functions, where we evaluate city programs to determine their effectiveness and compliance with local laws and regulations. Our goal with each audit is to ensure that the City is using taxpayer dollars efficiently and equitably to deliver high-quality services. We aim to initiate the engagements identified in the audit plan during the fiscal year. Our capacity to initiate and complete projects this fiscal year will be dependent on available

resources.

In the past fiscal year, my office has achieved significant milestones, including issuing the audit *Staff Shortages: City Services Constrained by Staff Retention Challenges and Delayed Hiring*, launching the [Audit Recommendations Dashboard](#), and receiving the national Exemplary Knighton Award for our audit *Berkeley Police: Improvements Needs to Manage Overtime and Outside Security Work for Outside Entities*.

Building upon these accomplishments, we have developed the fiscal year (FY) 2024 audit plan to address areas of concern and further strengthen the governance of the City of Berkeley. In FY 2024, we will continue our audits of homelessness and Measure FF that were initiated in FY 2023. We plan to initiate new audits related to public health and the City's Rent Stabilization Board.

We will continue to perform follow-up work on audit recommendations to determine if the City has properly implemented them. This year, I will devote office resources to implementing the City's Auditor's Whistleblower Program. The Whistleblower Program will be designed to provide a confidential and secure channel for individuals to report suspected fraud, waste, or abuse within Berkeley city government. I believe that incorporating our Whistleblower Program into our efforts to promote transparency and accountability, we can uncover potential misconduct, prevent future wrongdoing, and ultimately enhance the overall integrity of Berkeley government.

I am dedicated to upholding our mission of promoting transparency and accountability in the Berkeley government. Together, with the implementation of the Whistleblower Program and our existing audit initiatives, we can strengthen transparency, accountability, and public trust in Berkeley government, fostering an environment where effective governance thrives. I remain committed to fostering strong relationships with city departments, officials, and community stakeholders to effectively carry out our mandate.

Respectfully,

JENNY WONG
City Auditor

Planned Engagements FY 2024

Rent Stabilization Board

The Auditor’s office will conduct an audit examining the Rent Stabilization Board’s finances or operations.

Public Health

The Auditor’s office will conduct an audit in an area of public health.

Follow-Up

The Auditor’s office will continue to track and follow up on all audit recommendations to determine if they are properly implemented. We will continue to publish an online public [dashboard](#) to increase transparency and accountability of the implementation status of open audit recommendations.¹ See page 4 for more details.

Short-Term Projects

In order to be responsive to the needs of the City and the public, we may engage in short-term projects to provide timely and relevant information and analysis to the City and community.

Ongoing Engagements

The Auditor’s Office will continue our analysis of homelessness and Measure FF that were both initiated during fiscal year 2023.

Whistleblower Program Implementation and Anti-Fraud Focus

The Auditor’s Office will implement a Whistleblower Program for employees and members of the public to report fraud, waste, or abuse by city departments, employees, or persons under contract with the City. This fiscal year we will focus on building out the program, including hiring and training staff; designing reporting and response processes; and creating educational materials to educate staff and the public on fraud and the Whistleblower Program. See page 5 for more details.

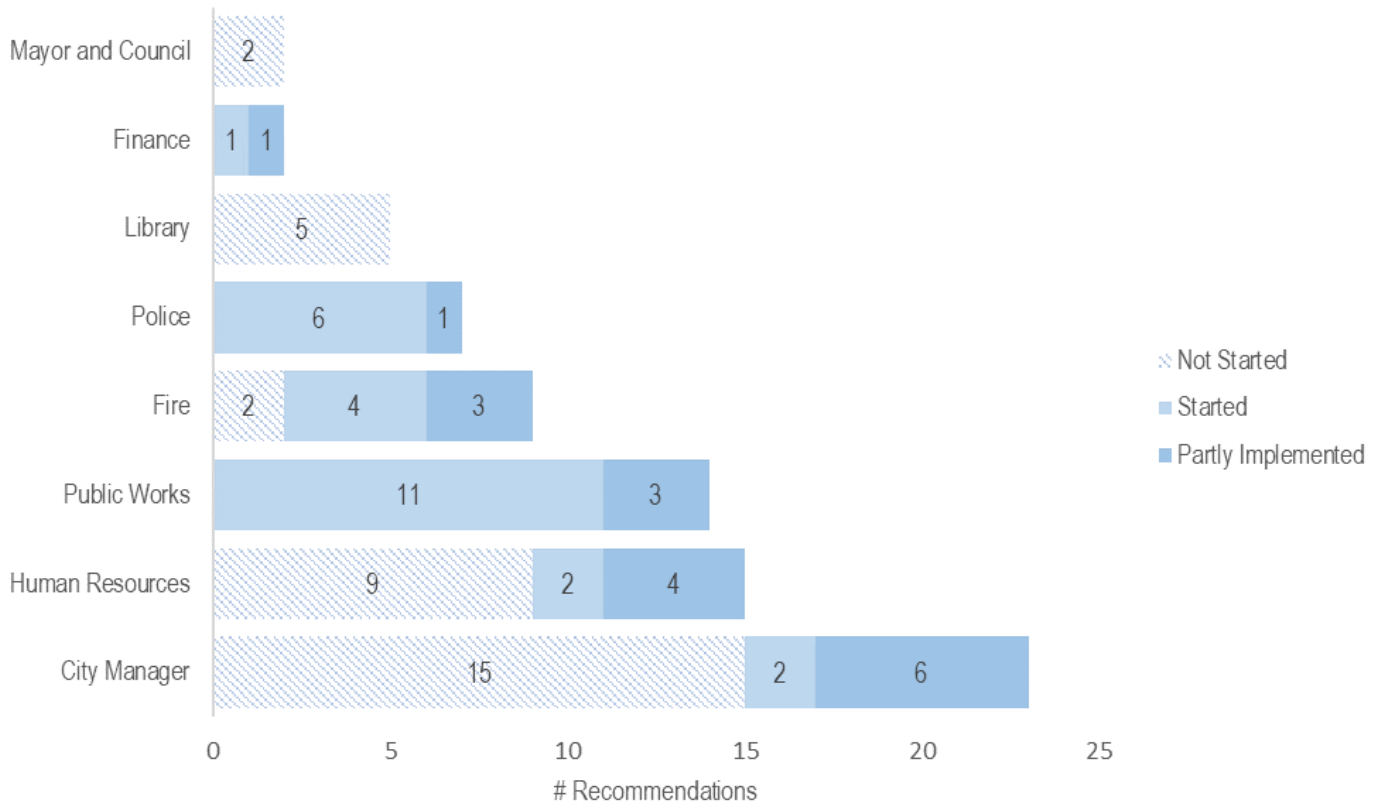
¹ City Auditor’s Recommendation Dashboard—bit.ly/AuditRecDashboard

Follow-Up

In fiscal year 2024, the Auditor’s Office will follow up on 77 open recommendations from 10 audits. We will use the following statuses to report on the implementation of audit recommendations:

- **Implemented:** auditee has addressed the audit risk by completely implemented the recommendation.
- **Partly implemented:** auditee has implemented 50 percent or more of the recommendation.
- **Started:** the auditee has started to address the recommendation but has not reached the 50 percent threshold.
- **Not started:** auditee has not yet taken action to implement the recommendation.
- **Dropped:** the auditee has accepted the risk to the city that the recommendation is meant to address and is unable or unwilling to implement the recommendation. Additionally, all open recommendations will be reported as dropped if they are not implemented within five years of audit issuance.

As of June 22, 2023, there are 77 open recommendations from 10 audits across 7 departments.



Source: Berkeley City Auditor

Whistleblower Program

The Whistleblower Program will include a confidential hotline for reporting fraud, waste, and abuse in city government 24/7/365 days of the year. This hotline will be available to all city employees, contractors, vendors, and residents. Additionally, to protect whistleblowers, there is a city policy that protects city employees from retaliatory acts.

Authority and Independence

State legislation encourages cities to specifically focus on fraud, waste, and/or misuse of city resources through whistleblower programs led by city auditors. In 2009, California Government Code Section 53087.6 went into effect, which enabled local government auditors to establish whistleblower programs and to provide whistleblower protections. Local auditors are authorized under Section 53087.6 to create whistleblower programs with the approval of their respective legislative bodies, and have discretion in how to operate their programs. At the June 6th meeting, City Council adopted resolution 70,881–N.S endorsing the City Auditor's plan to implement the Whistleblower Program.

The Berkeley City Auditor maintains a level of structural independence well-suited for a whistleblower program, as they are elected by the public and do not report to the City Manager or Council. The City Auditor is well-positioned due to their role in providing objective information on the operations of government programs and helping ensure full accountability to the public.

Implementation Plan

	Phase 1	Phase 2	Phase 3	Phase 4	Phase 5
Activity	Resources	Reporting Mechanism	Response Mechanism	Education and Awareness	Program Launch
	Hire Whistleblower Program Manager	Determine appropriate methods and platforms for whistleblower reporting	Design a process for responding to and referring complaints	Develop written procedures and educational material	Receive and respond to complaints according to established procedures
Outcome	Resources	Reporting Mechanism	Response Mechanism	Education and Awareness	Program Launch
	Determine funding needed for remaining steps of the implementation plan and ongoing operations	Design intake forms and procedures	Obtain necessary access rights to data systems for investigations	Disseminate educational materials	Develop mechanisms for ongoing assessments of program effectiveness including the development of metrics to benchmark across time or against similar organizations
Outcome	Resources	Reporting Mechanism	Response Mechanism	Education and Awareness	Program Launch
	Staff and funding secured to successfully manage program	Multiple channels for employees and outside parties to report complaints 24 hours a day, 365 days of the year	Ability to prioritize, investigate, refer, and follow up on complaints received	Potential whistleblowers understand how the program works, why it is important, and how they will be supported	A more accountable Berkeley government through the prevention and investigation of suspected fraud, waste, and abuse.

Plan Description

The mission of the Berkeley City Auditor is to promote transparency and accountability in Berkeley government. This is achieved through independent evaluations of city programs and activities. The Fiscal Year 2024 Audit Plan reflects the office's steadfast commitment to continuous improvement by enhancing the value, products, staffing, communications, and overall impact of the Berkeley City Auditor's Office on behalf of Berkeley residents, businesses, and visitors.

Auditing Under the City Charter

The Charter provides that the Auditor shall have the authority to conduct:

- Performance and financial audits or special studies of all phases of the City of Berkeley government in accordance with government auditing standards;
- Financial, compliance, efficiency and economy, and program results auditing; and
- Examinations of payrolls, bills, and other claims and demands made against the City.

The FY 2024 Audit Plan ensures broad audit coverage throughout the City while also addressing specific performance, financial, contractual, and system risks. Audit resources are limited, thus prohibiting one hundred percent coverage each year. This significant limiting factor is inherent in the concept of using risk assessment to help prioritize audits. According to the City Charter, the ultimate decision to perform any audit shall be at the sole discretion of the Auditor. Our approach to scheduling audits is flexible and subject to change throughout the year based on newly identified risks.

Audit Follow-Up Program

Audit follow-up activities are conducted for every audit to assess whether city personnel implemented the agreed-upon audit recommendations. The Auditor's Office issues follow-up audit reports to City Council on the status of our recommendations. We also maintain a public [dashboard](#) with the status of audit recommendations. Our office measures the audit recommendation implementation rate as an indicator of the degree to which the City is using information provided by our audit reports to mitigate identified risks and to enhance efficiency, effectiveness, and economy of operations. Our expectation is that the City should take no more than two years to implement our audit recommendations, unless specified.

Focus on Integrity, Independence, Impact, and Inclusion

The concepts of integrity, independence, impact, and inclusion are core tenets of operations within the Berkeley City Auditor's Office. Although the Auditor operates independently from other city entities, Auditor Wong and staff meet regularly with the Mayor, City Council, city personnel, neighborhood groups, and civic leaders to solicit input regarding risks. The objective of this strategy is to improve services and stewardship of city resources.

Audit Selection Process

Developing an annual Audit Plan is an iterative process, conducted by assembling ideas from a variety of internal and external stakeholders, examining a broad range of City programs and activities, and assessing risk factors together with additional considerations. This approach results in a diverse list of departments, programs, and activities that are examined to determine whether they are operating efficiently, effectively, and in accordance with the law and other requirements.

In developing a list of potential audits, ideas come from a variety of sources:

- Input from the community, elected officials, department staff, and City management;
- Assessment of operations and controls in previous audit reports;
- Assessment of citywide risks;
- Consideration of current local events, financial conditions, capital improvement projects, and public policy issues; and
- Consideration of risks identified in other government audits that could emerge in Berkeley.

Our office identifies and prioritizes potential audits and other assessments using a risk-based approach that examines a variety of factors that may expose the City to fraud, misuse of funds, waste, liability, or reputational harm. The following risk factors are used to determine the audits included in the audit plan:

- Perception of risk from management, City Council, the community, and audit staff;
- Economic factors such as financial impact, volume of transactions, number of personnel, and revenue generated;
- Changes in organization, management, key personnel, and information systems; and
- Time since last audit.

After the plan is finalized, new information may come to light; events, initiatives, priorities, and risks within the City may change. The flexible nature of the Audit Plan as a living document provides the ability to change course when it is in the best interest of the City.

Auditor's Authority

The Berkeley City Auditor's Office provides independent oversight of city operations. Audits, conducted by the Office, provide the City Manager, City Council, and the public with objective, timely, and accurate information about city program performance. By providing this information and making recommendations for improvement, the Office helps to hold government accountable in its stewardship of public resources. Berkeley City Charter, Section 61, establishes this independence and provides for the Auditor's general authority and duties. The Charter also establishes the duty to present a planned audit schedule to City Council at the beginning of each fiscal year.

Several key components serve as the cornerstone for Berkeley's auditing framework. These elements provide the Auditor with the independence that results in the office's ability to conduct high-impact audits.

Elected Auditor — The City of Berkeley has an elected Auditor who is independent from all other elected officials and City management.

Comprehensive Access — The City Charter and Municipal Code authorize the Auditor to have unrestricted access to all officials, employees, records, and reports maintained by the City, and to all external entities, records, and personnel related to contracted business interactions with the City.

Audit Response Requirements — City Municipal Code requires that City management formally respond to all audit findings and recommendations, establishing the Auditor's ability to work in conjunction with audited departments while maintaining independence.

Recommendation Follow-up Requirements — City Municipal Code requires that city management report back to Council on the status of audit recommendations every six months until all recommendations are implemented, establishing the Auditor's ability to determine the adequacy, effectiveness, and timeliness of management's actions to correct reported issues and recommendations.

Adherence to Professional Auditing Standards — The Auditor's Office conducts all audits in accordance with Generally Accepted Government Auditing Standards produced by the United States Government Accountability Office.



BERKELEY CITY AUDITOR

2180 Milvia Street, 3rd Floor, Berkeley, California 94704

510-981-6750

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



Communications

All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

City Clerk Department

2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

Records Online

<https://records.cityofberkeley.info/>

To search for communications associated with a particular City Council meeting using Records Online:

1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF