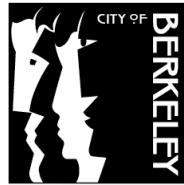


# AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, June 15, 2021  
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

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

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

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

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

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/87908681987>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) and enter Meeting ID: 879 0868 1987. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

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

*To submit a written communication for the City Council's consideration and inclusion in the public record, email [council@cityofberkeley.info](mailto:council@cityofberkeley.info).*

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

## Preliminary Matters

### Roll Call:

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

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

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

## Consent Calendar

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

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

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

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

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

## Consent Calendar

- 1. Lease Agreement: 2010 Addison Street at Center Street Garage with Vito Loconte and Alexie LeCount DBA Lexie's Frozen Custard**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,763-N.S. authorizing the City Manager to execute a lease agreement for 2010 Addison Street at the Center Street Garage with Vito Loconte and Alexie LeCount DBA Lexie's Frozen Custard, a sole proprietorship, for an initial term of ten (10) years with one optional five-year lease extension AND approve payment of a commission of \$9,331.23 to Colliers International for commercial brokerage fees for locating a tenant for the premises.  
**First Reading Vote:** All Ayes  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 2. Amend BMC 14.72.105**  
**From: Councilmember Wengraf (Author)**  
**Recommendation:** Adopt second reading of Ordinance No. 7,764-N.S. amending BMC 14.72.105 Neighborhood-Serving Community Facility Permits, to allow a broader range of community facilities to be eligible for parking permits.  
**First Reading Vote:** All Ayes  
**Financial Implications:** See report  
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
- 3. Systems Alignment Proposal** *(Continued from May 18, 2021. Item Contains Supplemental Material.)*  
**From: City Manager**  
**Recommendation:** Review the proposal for systems alignment and provide edits and suggestions in order to compile Council feedback for the purpose of drafting a revised proposal for adoption.  
**Financial Implications:** See report  
**Contact:** Dave White, City Manager's Office, (510) 981-7000
- 4. Temporary Appropriations FY 2022**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing a temporary appropriation in the sum of \$50,000,000 to cover payroll and other expenses from July 1, 2021, until the effective date of the FY 2022 Annual Appropriations Ordinance.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300

## Consent Calendar

- 5. FY 2022 Tax Rate: Fund Debt Service on Neighborhood Branch Library Improvements Project General Obligation Bonds (Measure FF, November 2008 Election)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2022 tax rate for funding the debt service on the Neighborhood Branch Library Improvements Project General Obligation Bonds (Measure FF, November 2008 Election) at 0.0059%.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 6. FY 2022 Tax Rate: Fund Debt Service on 2015 Refunding General Obligation Bonds (Measures G, S & I)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2022 tax rate funding the debt service on the 2015 consolidation of Measures G, S and I (General Obligation Bonds - Elections of 1992, 1996 and 2002) at 0.0135%.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 7. FY 2022 Tax Rate: Fund the Debt Service on the Affordable Housing General Obligation Bonds (Measure O, November 2018 Election)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2022 tax rate funding the debt service on the Affordable Housing General Obligation Bonds (Measure O, November 2018) at 0.0088%.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 8. FY 2022 Tax Rate: Business License Tax on Large Non-Profits**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2022 tax rate for Business License Tax on large non-profits at \$0.7041 (70.41 cents) per square foot of improvements.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300

## Consent Calendar

- 9. FY 2022 Tax Rate: Fund Firefighting, Emergency Medical Response and Wildfire Prevention (Measure FF)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2022 tax rate for funding Firefighting, Emergency Medical Response and Wildfire Prevention (Measure FF) in the City of Berkeley at an annual rate of \$0.1047 (10.47 cents) per square foot of improvements and \$0.15705 (15.705 cents) for the 18-month period from January 1, 2021 to June 30, 2022.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300, Abe Roman, Fire, (510) 981-3473
- 10. FY 2022 Tax Rate: Fund the Maintenance of Parks, City Trees and Landscaping**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2022 tax rate for funding all improvements for the maintenance of parks, City trees, and landscaping in the City of Berkeley at \$0.1896 (18.96 cents) per square foot of improvements.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 11. FY 2022 Special Tax Rate: Fund the Provision of Library Services**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2022 tax rate for funding the provision of Library Services in the City of Berkeley at \$0.2402 (24.02 cents) per square foot for dwelling units and \$0.3632 (36.32 cents) per square foot for industrial, commercial, and institutional buildings.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300, Tess Mayer, Director of Library Services, (510) 981-6195
- 12. FY 2022 Tax Rate: Fund Emergency Services for the Severely Disabled (Measure E)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2022 tax rate for funding the provision of emergency services for the disabled at \$0.02378 (2.378 cents) per square foot of improvements.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300

## Consent Calendar

- 13. FY 2022 Tax Rate: Fund the Debt Service on the Infrastructure and Facilities General Obligation Bonds (Measure T1, November 2016 Election)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2022 tax rate funding the debt service on the Infrastructure and Facilities Improvements General Obligation Bonds (Measure T1, November 2016) at 0.0170%.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 14. FY 2022 Tax Rate: Fund the Debt Service on the Street and Watershed Improvements General Obligation Bonds (Measure M, November 2012 Election)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2022 tax rate funding the debt service on the Street and Integrated Watershed Improvements General Obligation Bonds (Measure M, November 2012) at 0.0077%.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 15. FY 2022 Tax Rate: Fund Fire Protection and Emergency Response and Preparedness (Measure GG)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2022 tax rate for funding Fire Protection and Emergency Response and Preparedness in the City of Berkeley at the rate of \$0.05818 (5.818 cents) per square foot of improvements for dwelling units and setting the rate for all other property at \$0.08804 (8.804 cents) per square foot of improvements.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300, Abe Roman, Interim Fire Chief, (510) 981-5500
- 16. FY 2022 Tax Rate: Fund the Provision of Emergency Medical Services (Paramedic Tax)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2022 tax rate for funding the provision of emergency medical services to Berkeley residents at \$0.0412 (4.12 cents) per square foot of improvements.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 17. Designate the Line of Succession for the Director of Emergency Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the designated line of succession to the position of Director of Emergency Services in the event of an officially declared disaster, and rescinding Resolution No. 69,245-N.S.  
**Financial Implications:** None  
Contact: Abe Roman, Fire, (510) 981-3473

## Consent Calendar

- 18. Revenue Grant: Funding Support from Alameda County to Public Health Infrastructure Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to submit grant agreements to Alameda County, to accept the grant, and execute any resultant revenue agreements and amendments to conduct public health promotion, protection, and prevention services for the Public Health Infrastructure Program in the projected amount of \$32,080 for Fiscal Year (FY) 2022.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 19. Housing Trust Fund Predevelopment Loan Advance for Maudelle Miller Shirek Community (2001 Ashby Avenue)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: 1. Authorizing an advance of \$1.5 million in Measure O funds to Maudelle Shirek L.P. for costs related to predevelopment of the Maudelle Miller Shirek Community, located at 2001 Ashby Avenue. 2. Clarifying that the City may execute the development contract for Maudelle Miller Shirek Community for the remaining Measure O funds prior to the second issuance of the bond. 3. Authorizing the City Manager to execute all original or amended documents or agreements to effectuate this action.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 20. \*\*\*Item Removed by City Manager\*\*\* Contract No. 31900254 Amendment: Easy Does It to Provide Emergency Disability Services and Audit Recommendation Update for Fiscal Year 2022 – 2023**  
**From: City Manager**  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 21. Revenue Grant Agreement: Funding Support from the State of California for the Tuberculosis Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to submit grant agreements to the State of California, to accept the grant, and execute any resultant revenue agreements and amendments to conduct public health promotion, protection, and prevention services for the Tuberculosis Control Program in the projected amount of \$14,000 for Fiscal Year (FY) 2022.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Consent Calendar

- 22. Revenue Contract: Community Services Block Grant Discretionary Funding for Contract Number 21F-4403 to Provide Services for Low-Income People**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to: 1. Accept the Community Services Block Grant (CSBG) Contract Number 21F-4403 for the amount of \$28,250 to provide services for low-income people for the period June 1, 2021 through May 31, 2022, and 2. Execute one or more expenditure contracts totaling \$28,250 assistance and services for homeless households, including flexible funding for rental assistance, move-in costs for clients assisted with rental assistance, hygiene services and supports such as portable toilets and handwashing stations or shower and laundry services, supplies for unhoused residents distributed by outreach teams, and/or other COVID-19-related services for low-income individuals as needed.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 23. Contract No. 32100044 Amendment: Renne Public Law Group LLP for Chief Labor Negotiator Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32100044 increasing contract amount by \$100,000 with Renne Public Law Group LLP for Chief Labor Negotiator services, for a revised total contract amount not to exceed \$150,000.  
**Financial Implications:** General Fund - \$100,000  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
- 24. Contract No. 10851 Amendment: Bryce Consulting, Inc. for Professional Classification Studies, Compensation Surveys and Desk Audits**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10851 increasing the contract amount by \$53,000 with Bryce Consulting, Inc. for Professional Classification Studies, Compensation Surveys and Desk Audit services, for a revised total contract amount not to exceed \$102,999 through December 31, 2023.  
**Financial Implications:** General Fund - \$53,000  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
- 25. Contract No. 9649D Amendment: Sloan Sakai, LLP for Chief Labor Negotiator Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9649D increasing the contract amount by \$215,000 with Sloan Sakai, LLP for Chief Labor Negotiator services, for a revised total contract amount not to exceed \$665,000.  
**Financial Implications:** General Fund - \$215,000  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800



## Consent Calendar

- 26. Memorandum Agreement: International Brotherhood of Electrical Workers Local 1245**  
**From: City Manager**  
**Recommendation:** Adopt one Resolution approving a new two-year Memorandum Agreement with the International Brotherhood of Electrical Workers Local 1245 (hereinafter referred to as the “Union”) with a term of June 28, 2020 through June 30, 2022, authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the Memorandum Agreement.  
**Financial Implications:** See report  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
- 27. Adopt Tentative Agreement with SEIU Local 1021 Community Services Unit And Part-Time Recreation Leaders Association related to the Inclusion of the Legislative Assistants into the Unit**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the terms and conditions related to the Legislative Assistant classification’s inclusion into the existing Memorandum of Understanding (hereafter referred to as “MOU”) with SEIU Local 1021 Community Services Unit And Part-Time Recreation Leaders Association (hereafter referred to as the “Union”), and authorizing the City Manager to direct staff to execute and implement the terms and conditions of employment set forth in the Tentative Agreement dated May 18, 2021. Also, authorize the City Manager to make edits to the format and language of the Memorandum of Understanding in alignment with the Tentative Agreement, and conforming to legal requirements, when the parties ultimately reach agreement regarding the successor MOU currently under negotiation with the larger CSU bargaining unit.  
**Financial Implications:** See report  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
- 28. Contract: Get IT Tech for a New Electronic Gate System at the Waterfront**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract with Get IT Tech to provide a new electronic gate system at the Waterfront in an amount not-to-exceed of \$73,458, which includes a contract amount of \$61,215 and a 20% contingency in the amount of \$12,243.  
**Financial Implications:** Marina Fund - \$73,458  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Consent Calendar

- 29. Contract: Community Conservation Centers, Inc. for Processing and Marketing Services of Recyclable Materials**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a new Contract with Community Conservation Centers, Inc. (CCC) for the sorting and marketing of residential and commercial curbside collected recyclables, and the recycling drop-off and buyback centers. The contract term is five (5) years, commencing July 1, 2021 through June 30, 2026, with an option to extend by mutual agreement for another five (5) years, commencing July 1, 2026 through June 30, 2031, for a total contract amount not to exceed \$30,080,793 for a ten year period.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 30. Contract: Ecology Center, Inc. for the Residential Curbside Recycling Collection**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a new contract with Ecology Center, Inc. for the collection of residential curbside recycling and delivery of these recyclable materials to Berkeley Recycling for processing and marketing. The contract term is five (5) years, commencing July 1, 2021 through June 30, 2026, with an option to extend by mutual agreement for another five (5) years, commencing July 1, 2026 through June 30, 2031, for a total contract not to exceed amount of \$54,518,752 for the ten year period.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 31. Contract No. 111976-1 Amendment: HF&H Consultants, LLC for the Study of the City Providing Commercial Collection Services and Development and Update of Rate Model**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 111976-1 with HF&H Consultants, LLC to increase the current contract by \$50,000 for a total not to exceed amount of \$250,000 and to extend the contract term to June 30, 2023 for the Development and Update of a Zero Waste Rate Model.  
**Financial Implications:** Zero Waste Fund - \$50,000  
Contact: Liam Garland, Public Works, (510) 981-6300

## Consent Calendar

**32. Contract No. 120470-1 Amendment: Fairbanks Scales, Inc. for Preventative Maintenance and Repairs at the City's Solid Waste Management and Transfer Station**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No.120470-1 with Fairbanks Scales, Inc. for preventative maintenance and repairs on the various scales at the City's Solid Waste Management and Transfer Station, extending the contract term by two years to June 30, 2025, and increasing the contract amount by \$150,000 for a total contract amount not to exceed \$340,000.

**Financial Implications:** Zero Waste Fund - \$150,000

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

**33. Support of Assembly Bills 881, 1454 & 1276**

**From: Zero Waste Commission**

**Recommendation:**

1. Support Assembly Bill 881 (Plastic Waste Exports) which closes an existing loophole in California law that allows mixed plastic exports to be counted as recycling regardless of their ultimate destination, which is often overseas landfills, incinerators, or waterways, and send a letter expressing the City Council's support to Assemblymember Gonzalez.

2. Support Assembly Bill 1454 (Bottle Bill Modernization) which helps keep recycling centers open and provides much-needed support for new centers to open in areas where there are not enough centers to serve consumers, including rural and urban areas, and send a letter expressing the City Council's support to Assemblymember Bloom.

3. Support Assembly Bill 1276 (Unnecessary Food Serviceware) which expands plastic straws upon-request law to include other single-use food accessories, other food facilities, and third-party delivery platforms – including food that is taken away, delivered, or served on-site - and send a letter expressing the City Council's support to Assembly Member Carrillo.

**Financial Implications:** None

Contact: Heidi Obermeit, Commission Secretary, (510) 981-6300

## Council Consent Items

**34. Support for AB-279 (Muratsuchi) Intermediate Care Facilities and Skilled Nursing Facilities: COVID-19**

**From: Councilmember Bartlett (Author), Councilmember Harrison (Co-Sponsor)**

**Recommendation:** Adopt a Resolution in support of AB-279 (Muratsuchi) Intermediate Care Facilities and Skilled Nursing Facilities: COVID-19 and send copies of the Resolution letters supporting AB-279 to the Senate Health Committee, Senator Skinner, Assemblymembers Muratsuchi, Santiago, Wicks, and Governor Newsom.

**Financial Implications:** None

Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

**35. Letter of Opposition Unless Amended on SB 9**

**From: Councilmember Wengraf (Author), Councilmember Harrison (Author), Councilmember Hahn (Co-Sponsor)**

**Recommendation:** Pass a resolution and send a letter to Senators Atkins, Caballero, Rubio, Wiener and Skinner, Assemblymember Wicks and Governor Newsom, expressing the Berkeley City Council's concerns about SB 9: Housing development: Approvals (Atkins) as drafted, and state our opposition to the bill unless it is amended to address these specific concerns.

**Financial Implications:** None

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

## Action Calendar

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

*The Presiding Officer will request that persons wishing to speak use the "raise hand" function to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.*

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

## Action Calendar – Public Hearings

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

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

## Action Calendar – Public Hearings

*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.*

- 36. Levy and Collection of Fiscal Year 2022 Street Lighting Assessments**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and upon conclusion adopt two Resolutions confirming the assessment for the Berkeley Street Lighting Assessments District No. 1982-1 and the Street Lighting Assessment District 2018, approving the Engineer’s Reports, and authorizing the levying and collection of assessments in Fiscal Year 2022.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300

## Action Calendar – New Business

- 37. City Council Comments on the FY 2022 Proposed Biennial Budget**  
**From: City Manager**  
**Recommendation:** Provide comments on the FY 2022 Proposed Biennial Budget.  
**Financial Implications:** See report  
Contact: Rama Murty, Budget Office, (510) 981-7000
- 38. Referral Response: Path to Permanence: Outdoor Dining and Commerce in the Public Right-of-Way**  
**From: City Manager**  
**Recommendation:** Take the following actions to allow for increased outdoor dining and commerce to be permitted permanently in the public right-of-way:  
1. Adopt first reading of an Ordinance revising BMC Section 14.48.190 Parklets and BMC Section 16.18 Right of Way Encroachments and Encroachment Permits to simplify the permitting process for the conversion of temporary parklets and outdoor commerce installations after a declared local emergency; and  
2. Adopt first reading of an Ordinance revising BMC Section 14.48.150 Sidewalk Seating to expand the areas and scope of activities that may be permitted via a sidewalk seating permit (a type of engineering permit) after a declared local health emergency, implement a new fee for the use of parking spaces for commercial activity; and  
3. Adopt a Resolution empowering the City Manager to implement a fee schedule for structures and activities permitted in the public right of way permitted under BMC Sections 14.48.190 Parklets, 14.48.150 Sidewalk Seating after the declaration of a local emergency lapses or is revoked. The resolution extends the current fee waivers for application, review, and use fees for structures and activities permitted in the public right of way permitted under BMC Sections 14.48.190 Parklets, 14.48.150 Sidewalk Seating and 13.44 Street Events and Block Parties from June 30, 2021, to instead coincide with the cessation of the declared local health emergency.  
**Financial Implications:** See Report  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530

## Information Reports

39. **City Council Short Term Referral Process – Quarterly Update**  
**From: City Manager**  
Contact: Mark Numainville, City Clerk, (510) 981-6900
40. **Update on the Implementation of FIP Task Force Recommendations**  
**From: City Manager**  
Contact: Jennifer Louis, Police, (510) 981-5900
41. **Animal Care Commission 2021/2022 Work Plan**  
**From: Animal Care Commission**  
Contact: Amelia Funghi, Commission Secretary, (510) 981-6600
42. **Planning Commission Work Plan 2021-2022**  
**From: Planning Commission**  
Contact: Alene Pearson, Commission Secretary, (510) 981-7400

## Public Comment – Items Not Listed on the Agenda

### Adjournment

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

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

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

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

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

Agendas and agenda reports may be accessed via the Internet at

<http://www.cityofberkeley.info/citycouncil>

**COMMUNICATION ACCESS INFORMATION:**

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



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

*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 3, 2021.*

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

Mark Numainville, City Clerk

## **Communications – June 15, 2021**

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

### **Item #15: FY 2022 Tax Rate: Fund Fire Protection and Emergency Response and Preparedness (Measure GG)**

1. Disaster and Fire Safety Commission

### **Item #35: Letter of Opposition Unless Amended on SB 9**

2. Sally Nelson
3. Sandra Bernard
4. Judy Bebelaar
5. Summer Brenner
6. Lisa Bruce (2)
7. Tony Corman
8. John Harris
9. Sara Hartley
10. Laura Klein
11. Thomas Luce
12. Michelle Pasternack
13. Elaine Chan
14. Paul Newacheck
15. Dawn Thomas
16. Barbara Fisher

17. Lynda Caesara
18. Doris Nassiry
19. Greysonne Coomes
20. Pamela Ormsby
21. John Rice
22. Theresa Gensler
23. Tobey Wiebe
24. Janice Schroeder
25. Andrew Reichart
26. Mukta Vie
27. Juliet Lamont
28. Gianna Ranuzzi

**Item #37: City Council Comments on the FY 2022 Proposed Biennial Budget**

29. Hayley Carrier, on behalf of TransForm

**Hiring a Police Chief**

30. Jack Kurzwell
31. 13 similarly-worded form letter

**Electrification Plan**

32. Phoebe Sorgen

**Homelessness and Crime**

33. Alex Know, Executive Director of the Telegraph Business Improvement District
34. Rohini Haar
35. Wende Williams Micco
36. Katya Hancock
37. Christopher Riess

**Bike Park**

38. Steve Matous
39. Tetsu Tokunaga

**Zoning**

40. Christiine Simon
41. Madeleine Shearer (2)

**Certificate of Service**

42. Judy Hunt

**Town Halls Broadcasts on Facebook**

43. David Lerman (2)

**Palestine**

44. Russbumper (2)



**People's Park**

45. Russbumper

**BART Housing**

46. Lee Bishop

47. Matthew Lewis

48. Reynaldo Santa Cruz

49. Jason Warriner

50. Marla and Rick Faszholz

51. Carol Hirth

52. Walter Wood

**Security Cameras**

53. Elana Auerbach

**Meeting Procedures**

54. Christopher Kohler

**Communications**

55. Barbara Gilbert

**AB 537 and SB 556 Bills**

56. Sue Johnson

**Minimum Wage – High Rental Cost and Homelessness**

57. Christopher La Combe

**Mobile Crisis Response Teams**

58. John Caner, on behalf of Downtown Berkeley Association

**Reimbursement of COVID Expenditures to Measure GG**

59. Disaster and Fire Safety Commission

**Pathway STAIR Center and 746 Grayson Accessibility**

60. Homeless Commission

**Tulsa Riots of 1921**

61. Carol Wyatt

**Lack of Park Maintenance**

62. Bob Flasher

**Rights of Nature**

63. Amy Berlin

### **Mayor's Working Group on Fair and Impartial Policing**

64. Ismail Ramsey, Kitty Calavita, Mansour Id-Deen, Hector Malvido, Nathan Mizell, Jim Chanin, Elliot Halpern, Moni Law

### **TOPA (Tenants Opportunity to Purchase Act)**

65. Janice Stockwell
66. Sharon Robinson
67. @bhghome.com
68. Foresta Sieck-Hill
69. Daniel Rollingher
70. Debbie Sanderson
71. Akilah Browne
72. Mark Bell
73. Betsy Thagard
74. Tom Athanasiou and Rachel Sommerville
75. Ilona Clark
76. LZ Zephyr
77. Nancy Pakter
78. Linda Lipscomb
79. Leah Simon-Weisberg
80. Jack Lebeau
81. Brittney Goodman (2)
82. Brian Ort
83. Debra Ballinger
84. Zoe Polk
85. Greg San Martin
86. Rahel Smith
87. Tuan Ngo
88. Michelle Bergtraun, Alex Bergtraun, Piera Segre
89. Joann Sullivan
90. Catherine Stern
91. Alice Armstrong
92. Kathy Snowden
93. Kevin Rose-Williams
94. Francis McIlveen
95. Wendi Lelke-Wallway
96. Alan Block (2)
97. Cecilia Lunaparra
98. Edward Lau
99. Peter Muzio
100. Taptango
101. Sheila Goldmacher
102. Jeremy Ehrlich
103. Cameron Hess
104. Maureen Kildee
105. Marc Janowitz

106. Linda Lipscomb
107. Barbara Henry
108. Linda Keilch
109. Mary Lai
110. Evita Chavez
111. Kiran Shenoy (2)
112. Riya Master
113. Alfred Twu
114. Sylvia
115. Gail Mandella
116. M. Waitling
117. Ted Stroll
118. Erin Le
119. Joaquin Pochat
120. 8 similarly-worded form letters
121. 71 similarly-worded form letters
122. 77 similarly-worded form letters
123. 84 similarly-worded form letters

### **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. 7,763-N.S.

LEASE AGREEMENT: LEXIE'S FROZEN CUSTARD AT THE CENTER STREET GARAGE, 2010 ADDISON STREET

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

Section 1. FINDINGS:

The City owns the Center Street Garage, and Vito Loconte and Alexie LeCount d.b.a Lexie's Frozen Custard, a sole proprietorship, seeks to lease 2010 Addison Street at the premises for the purpose of operating a retail food service business.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO LEASE AT 2010 Addison Street, Berkeley, CA:

The City Manager is hereby authorized to enter into a ten (10) year lease agreement with one optional five-year lease extension with Lexie's Frozen Custard for real property located at 2010 Addison Street, a ground floor retail space in the City of Berkeley Center Street Garage. Such lease shall be on substantially the terms set forth in Exhibit A.

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 May 25, 2021, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

**CENTER STREET GARAGE LEASE**

This lease is made on \_\_\_\_\_ 2021 (“Lease Approval Date”), between the CITY OF BERKELEY ("Landlord"), a Charter City organized and existing under the laws of the State of California and VITO LOCONTE III AND ALEXIS LECOUNT DBA LEXIE’S FROZEN CUSTARD ("Tenant"), a SOLE PROPRIETORSHIP, who agree as follows:

*This lease is made with reference to the following facts and objectives:*

A. Landlord is the owner of the real property consisting of approximately 480 square feet of leasable space located at 2010 Addison Street, Berkeley, California, ("**Premises**") as further described in Exhibit A-1, attached to and made a part of this lease.

B. Tenant is willing to lease the Premises from Landlord pursuant to the provisions stated in this lease.

C. Tenant wishes to lease the Premises for the purpose of operating a retail dessert cafe.

D. Tenant has examined the Premises and is fully informed of the condition thereof.

**1. DESCRIPTION OF PREMISES**

Landlord leases to Tenant and Tenant leases from Landlord the Premises described above.

**2. TERM**

- a. Lease Approval Date. The date City Council gives approval for the City Manager to execute the Lease.
- b. Lease Commencement Date. The date City Council specifies the Tenant may take possession of the space for the purpose of beginning tenant improvements in coordination with the Department of Public Works.
- c. Lease Term Commencement Date. The first day of the month following completion of the City’s improvements to and for the Tenant’s space as outlined in Section 11 (d) of this lease. This is the date that begins the initial ten (10) year term and the first of four months of free rent. The term shall be for a period of ten (10) years plus an option to extend for one (1) five- year term as outlined in Section 32 of this lease.
- d. Rent Commencement Date. The first day of the month following four months of free rent (or four months after the Lease Term Commencement Date). Following the completion of Landlord’s work prerequisite to Tenant’s improvements to the Premises, Landlord and Tenant agree to sign and date Exhibit B, *Agreement Specifying Term of Lease* attached hereto and acknowledge the Lease Commencement Date, Lease Term

Commencement Date, Rent Commencement Date, and Expiration Date of the initial term of the lease.

3. **RENT**

- a. Tenant shall pay to Landlord as monthly rent, without deduction, setoff, prior notice, or demand, the sum of \$1,560.00 per month in advance of the first day of each month, commencing on the date the term commences, and continuing during the term. Rent for the first four (4) months after the Lease Term Commence Date shall be abated. Monthly rent for the fifth month shall be paid on the Rent Commencement Date and continue until the Lease Expiration Date as agreed to in Exhibit B, *Agreement Specifying Term of Lease*. Monthly rent for any partial month shall be prorated at the rate of 1/30th of the monthly rent per day. All rent shall be paid to Landlord at the address to which notices to Landlord are given.
- b. In accordance with California Civil Code 1947.3, Tenant may pay the monthly rent by check or by electronic transfer of funds from their bank account into a bank account of the Landlord. If Tenant plans to pay by electronic transfer of funds then Tenant will request this in writing to Landlord and together the parties shall provide the necessary information for this to happen.

4. **PERIODIC RENT INCREASES**

The monthly rent shall be increased at the commencement of the second year, one year after the Lease Term Commencement and each year thereafter ("the adjustment date") to the monthly rent in effect immediately preceding the adjustment date plus two and seven fifth percent (2.75%).

5. **SECURITY DEPOSIT**

- a. As security for the full and faithful performance by Tenant of each and every term, provision, covenant, and condition of this lease, Tenant shall deposit with Landlord cash in an amount equal to one month's payment of rent. Such security shall be deposited on or before the effective date of the Ordinance authorizing this lease.
- b. If Tenant defaults in respect to any of the terms, provisions, covenants and conditions of this lease, including but not limited to the payment of rent, Landlord may use the security deposit or any portion of it to cure the default or compensate the Landlord for all damage sustained by Landlord resulting from Tenant's default. If Landlord so uses any portion of the security deposit, Tenant will restore the security deposit to its original amount within ten (10) days after written demand from Landlord.

c. Landlord will not be required to keep the security deposit separate from its own funds and Tenant shall not be entitled to interest on the security deposit. The security deposit will not be a limitation on Landlord's damages or other rights under this lease, or a payment of liquidated damages, or an advance payment of the rent. If Tenant pays the rent and performs all of its other obligations under this lease, Landlord shall return the unused portion of the security deposit to Tenant within sixty (60) days after the end of the term; however, if Landlord has evidence that the security deposit has been assigned to an assignee of the Tenant, Landlord shall return the security deposit to the assignee. Landlord may deliver the security deposit to a purchaser of the Premises and be discharged from further liability with respect to it. Tenant waives the provisions of California Civil Code section 1950.7, and all laws in force or that become in force after the date of execution of this Lease, that provide that Landlord shall return the security deposit no later than thirty (30) days after the Landlord receives possession of the premises.

d. Tenant waives the provisions of California Civil Code section 1950.7, and all laws in force or that become in force after the date of execution of this Lease, that provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant, or to clean the Premises.

## **6. LATE CHARGES**

Tenant acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this lease, the exact amount of which will be extremely difficult to ascertain. Therefore, if any installment of rent or any other sum due from Tenant is not received by Landlord within ten (10) days after such amount is due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to ten percent (10%) of such overdue amount. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to it.

## **7. USE OF PREMISES; OPERATION**

a. Tenant will use the Premises for the purpose of a retail dessert café and agrees to continuously and uninterruptedly occupy and use the entire leased Premises for said purpose and to maintain adequate personnel for the efficient service of clients or customers. Tenant shall not use nor permit the use of the whole or any part of the Premises for any other purpose without the Landlord's prior written consent.

b. Business may be conducted with the public on the leased premises at any time on any day, provided that, 1) to do business after 10:00 p.m. on any day Tenant shall have obtained any permit required by federal, state or local law; and 2) Tenant hours of operation, including vacation, holiday, and



seasonal schedule changes and/or closures (if any) have been approved of the Director of Public Works or his/her designee.

c. Tenant agrees to abide by all facility “Rules and Regulations.” The current version is attached hereto as Exhibit B, and may be amended by the City from time to time.

d. In addition to Tenant’s agreement to abide by all other restrictions on Tenant’s use. Tenant agrees that any violation of use restriction shall constitute a default by Tenant under the lease, and that Landlord’s notice to Lessee of this or any use restriction shall not be deemed a waiver by Landlord of any other use restriction imposed on the Tenant for the use of the demised premises.

## **8. TAXES AND ASSESSMENTS**

a. Tenant recognizes and understands that this lease may create a possessory interest subject to property taxation and assessment and utility taxation, and that the Tenant will be responsible for the payment of any property taxes and assessments, and utility taxes levied on such interest.

b. Tenant shall pay all taxes on its personal property, fixtures and on its leasehold or possessory interest in the leased Premises and any other assessment that may be lawfully levied.

## **9. UTILITIES**

Tenant agrees to pay any and all charges for telephone, water, and other utilities used in the Premises. Tenant shall arrange for basic refuse collection services by the City of Berkeley. Landlord agrees to pay for electricity and basic refuse collection services. If Tenant’s business exceeds the basic refuse collection service, then Tenant shall be responsible and pay for any additional charges associated with its usage.

## **10. MAINTENANCE AND REPAIR**

a. Tenant is responsible for ensuring that the Premises meet all applicable City of Berkeley codes prior to occupancy under this lease.

b. Tenant shall keep and maintain in good order, condition and repair (except for reasonable wear and tear) all portions of the Premises including without limitation, all fixtures, interior walls, floors, ceilings, plumbing, glass, roof, heating, ventilating and sewage facilities serving the leased Premises, landscaping, and the sidewalk adjacent to the Premises.

c. Tenant shall make all required repairs upon demand by Landlord. Failure to make such

repairs within thirty (30) days of the Landlord's demand shall constitute a default by Tenant.

**11. IMPROVEMENTS**

a. Tenant shall not erect additions or structures nor make nor cause to be made any alterations, improvements, additions, or fixtures that affect the exterior or interior of the Premises nor shall Tenant mark, paint, drill or in any way deface any floors, walls, ceilings, or partitions of the Premises, without first providing thirty (30) days' written notice to Landlord. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed.

b. Tenant shall require all contractors to provide a labor and materials bond for the full amount of the contract. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant, in, at, upon or about the leased Premises and which may be secured by any mechanic's, materialmen's or other lien against the Premises or Landlord's interest therein.

c. All alterations, improvements or additions that are now or in the future attached permanently to the Premises shall be the property of Landlord and remain with the Premises at the termination of this lease, except that Landlord can elect within thirty (30) days of the termination of the lease to require Tenant, at its cost, to remove any alterations, improvements or additions Tenant has made to the Premises.

d. Tenant shall pay for any heat and air conditioning equipment to be installed in the Premises and shall be responsible for any repairs and maintenance of said equipment during the Term of this lease and during any extension periods and Landlord agrees to install a water meter for the leased Premises and install a finished concrete floor with conduit for a water drain, as provided by Tenant's design of the leased Premises.

e. Tenant shall have the right, but not the obligation, at any time during the term of this lease, to install a back door to the Premises, subject to the approval of Director of Public Works or his/her designee, and City's Planning Department and the Fire Marshall.

**12. INDEMNIFICATION**

Tenant shall indemnify, defend and hold Landlord, its officers, agents, volunteers and employees harmless from: 1) all claims of liability for any damage to property or injury or death to any person occurring in, on, or about the Premises; 2) all claims of liability arising out of Tenant's failure to perform any provision of this lease, or any act or omission by Tenant, its agents, contractors, invitees or employees; and 3) all damages, liability, fines, penalties, and any other consequences arising from any noncompliance or violation of any laws, Ordinances, codes, or regulations, including but not limited to the Occupational Safety and Health Act of 1979 and the Americans with Disabilities Act of 1990.

Except, however, that Landlord shall hold Tenant harmless from all claims of liability for damage resulting from the acts or omissions of Landlord or its authorized representatives.

**13. INSURANCE**

a. Tenant at its cost shall maintain public liability and property damage insurance with a single combined liability limit of \$2,000,000, and property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision, insuring against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use or occupancy of the Premises. All such insurance shall insure performance by Tenant of the preceding indemnity provisions. All insurance shall name the City of Berkeley, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.

b. If the insurance referred to above is written on a Claims Made Form, then following termination of this lease, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this lease.

c. Tenant at its cost shall maintain on all its personal property, tenant's improvements, and alterations, in on, or about the Premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and the proceeds from any such policy shall be used by Tenant for the replacement of personal property or the restoration of tenant's improvements or alterations.

d. If Tenant employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the Landlord. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days prior written notice to the Landlord; provide for a waiver of any right of subrogation against Landlord to the extent permitted by law; and be approved as to form and sufficiency by the Landlord's Risk Manager.

e. Tenant shall forward all insurance documents to: Department of Public Works, Real Property Division, 1947 Center Street, Fifth Floor, Ste. 521, Berkeley, California, 94704.

**14. COMPLIANCE WITH LAW AND SAFETY**

a. Tenant shall observe and comply with all applicable laws, Ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the Tenant's activities, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal, and local safety regulations. All Tenant's activities must be in accordance with these laws, Ordinances,

codes, and regulations.

b. If a death, serious personal injury, or substantial property damage occurs in, on, or about the Premises, Tenant shall immediately notify the Landlord's Risk Management Office by telephone. If any accident occurs on the Premises, Tenant shall promptly submit a written report to Landlord, in such form as Landlord may require. This report shall include the following information: 1) name and address of the injured or deceased person(s), (2) name and address of Tenant's contractor, if any, (3) name and address of Tenant's liability insurance carrier, and (4) a detailed description of the accident.

c. Tenant shall report all existing hazardous materials handled at the site and any hazardous wastes generated at the site to the Toxics Management Division (TMD) on an annual basis and abide by all requirements of the TMD and other state and local environmental agencies. Upon release of hazardous materials or hazardous waste at the property or adjacent to the property, Tenant shall immediately notify the City of Berkeley Toxics Management Division. If the release is significant, the Tenant must report it to the 911 and the Office of Emergency Services.

d. To Landlord's actual knowledge, neither the common area of the Building nor the Premises have undergone inspection by a Certified Access Specialist (CASp). The foregoing disclosure does not affect Landlord's or Tenant's respective responsibilities for compliance of construction-related accessibility standards as provided under this lease. A CASp can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, Landlord may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant, if requested by 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 Premises.

e. Landlord represents to Tenant that, as of the Lease Approval Date, the restrooms in the building will be available to Tenant and its customers and invitees.

15. **NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES**

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

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

16. **CITY NON-DISCRIMINATION ORDINANCE**

Tenant agrees to comply with the provisions of Berkeley Municipal Code Chapter 13.26 as amended from time to time. In the performance of this lease, the Tenant agrees as follows:

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

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

17. **NUCLEAR FREE BERKELEY**

Tenant agrees to comply with Berkeley Municipal Code Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

18. **OPPRESSIVE STATES**

a. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the term of this Lease to forego contractual relations to provide personal services to or to purchase, sell, lease or distribute commodities in the conduct of business with, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.

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

b. For purposes of this lease, the Tibet Autonomous Region and the provinces of Amdo, Kham, and U-Tsang shall be deemed oppressive states.

c. Tenant's failure to comply with this section shall constitute a default of this lease and Landlord may terminate this lease pursuant to Section 26. In the event that the City terminates this lease due to a default under this provision, City may deem Tenant a non-responsible bidder for five (5) years from the date this lease is terminated.

#### **19. BERKELEY LIVING WAGE ORDINANCE**

a. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six (6) or more part-time, full-time or stipend employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

b. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance (LWO). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased property, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in sections 27 and 28 herein.

c. If Tenant is subject to the LWO, Tenant shall include the requirements of the Ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject Premises. Subtenants shall be required to comply with this Ordinance with regard to any employees who spend 25% or more of their compensated time on the leased property.

d. If Tenant fails to comply with the requirements of this the LWO and this lease, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 28.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

**20. BERKELEY EQUAL BENEFITS ORDINANCE**

a. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

b. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be considered a default, subject to the provisions of Sections 27 and 28 of this lease.

c. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 28.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

**21. SANCTUARY CITY CONTRACTING ORDINANCE**

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

- a. “Data Broker” means either of the following:  
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;  
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:  
The City’s computer-network health and performance tools;  
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.

## **22. CONFLICT OF INTEREST PROHIBITED**

- a. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Lease.
- b. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 et seq.,) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).
- c. Interpretation of this paragraph shall be governed by the definitions and provisions use in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.



**23. PESTICIDES**

All use of pesticides on the Premises shall be in compliance with the City of Berkeley's Pesticide Use Policy as it exists at the time of such use.

**24. SIGNS**

Tenant shall not install or letter any signs on the Premises without the prior written consent of the Director of Public Works or his/her designee. All signs on the Premises shall conform to the provisions of Berkeley Municipal Code Chapter 20.04.

**25. DAMAGE OR DESTRUCTION**

If the Premises are totally or partially destroyed from any cause, rendering the Premises totally or partially inaccessible or unusable, Landlord may elect to terminate this lease or continue this lease in effect by giving notice to Tenant within thirty (30) days of the date of destruction. If Landlord elects to continue this lease in full force and effect, then Landlord shall restore the Premises and the rent shall be abated, from the date of destruction until the date restoration is completed, in an amount proportionate to the extent to which the destruction interferes with Tenant's use of the Premises. If Landlord fails to give notice of its decision to terminate or continue this lease within the period stated, Tenant may elect to terminate this lease. Tenant waives the provisions of Civil Code sections 1932(2) and 1933(4) with respect to any destruction of the Premises.

**26. EMINENT DOMAIN**

If the whole or any portion of the Premises is taken by any paramount public authority under the power of eminent domain, then the rights and obligations of the parties shall be determined as follows: If the Premises are totally taken by condemnation, this lease shall terminate on the date of taking. If any portion of the Premises is taken by condemnation, Tenant shall have the right to either terminate this lease or to continue in possession of the remainder of the Premises under the terms of this lease. Such right to terminate must be exercised by notifying Landlord within thirty (30) days after possession of the part taken by eminent domain. If Tenant does not terminate this lease within the thirty (30) day period, this lease shall remain in full force and effect except that the fixed rent shall be reduced in the same proportion that the square footage of the Premises taken bears to the square footage of the Premises immediately before the taking. All damages awarded for such taking shall belong to and be the property of Landlord; provided, however, that Landlord shall not be entitled to any portion of the award made for loss of business and of business installations or improvements made by Tenant in accordance with this lease.

**27. DEFAULT BY TENANT**

a. The occurrence of any of the following shall constitute a default by Tenant:

1. Failure to pay rent when due, if the failure continues for 10 days after notice has been given to Tenant.
2. Abandonment and vacation of the Premises (failure to occupy and operate the Premises for 14 consecutive days, without prior written notice from Tenant of a planned closure, shall be deemed an abandonment and vacation).
3. Failure to perform any other provision of this lease if the failure to perform is not cured within 30 days after notice has been given to Tenant. If the default cannot reasonably be cured within 30 days, Tenant shall not be in default of this lease if Tenant commences to cure the default within the 30-day period and diligently and in good faith continues to cure the default.

b. Notices given under this paragraph shall specify the alleged default and the applicable lease provisions, and shall demand that Tenant perform the provisions of this lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this lease unless Landlord so elects in the notice. The purpose of the notice requirements set forth in this section is to extend the notice requirements of the unlawful detainer statutes of California.

**28. LANDLORD'S REMEDIES**

Landlord shall have the following remedies if Tenant commits a default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law.

a. Tenant's Right to Possession Not Terminated. Landlord can continue this lease in full force and effect, and the lease will continue in effect as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect rent when due. During the period Tenant is in default, Landlord can enter the Premises and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises. Reletting can be for a period shorter or longer than the remaining term of this lease. Tenant shall pay to Landlord the rent due under this lease on the dates the rent is due, less the rent Landlord receives from any reletting. No act by Landlord allowed by this paragraph shall terminate this lease unless Landlord notifies Tenant that Landlord elects to terminate this lease. After Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the Premises, Tenant shall have the right to assign or sublet its interest in this lease if Tenant obtains Landlord's consent, but Tenant shall not be released from liability.

If Landlord elects to relet the Premises as provided in this paragraph, rent that Landlord receives from reletting shall be applied to the payment of: first, any indebtedness from Tenant to Landlord other than rent due from Tenant; second, all costs, including for maintenance, incurred by Landlord in reletting; third, rent due and unpaid under this lease. After deducting the payments referred to in this paragraph, any sum remaining from the rent Landlord receives from reletting shall be held by Landlord and applied in payment of future rent as rent becomes due under this lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on the date rent is due under this lease, the rent received from the reletting is less than the rent due on that date, Tenant shall pay to Landlord, in addition to the remaining rent due, all costs, including for maintenance, Landlord incurred in reletting that remain after applying the rent received from the reletting as provided in this paragraph.

b. Termination of Tenant's Right to Possession. Landlord can terminate Tenant's right to possession of the Premises at any time. No act by Landlord other than giving notice to Tenant shall terminate this lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to recover from Tenant:

i. The worth, at the time of award, of the unpaid rent that had been earned at the time of termination of this lease;

ii. The worth, at the time of award, of the amount by which the unpaid rent that would have been earned after the date of termination of this lease until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided;

iii. The worth, at the time of award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and

iv. Any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

"The worth, at the time of award," as used in i and ii of this section, is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. "The worth, at the time of award," as referred to in iii of this section, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1%.

c. Appointment of Receiver. If Tenant is in default of this lease Landlord shall have the right to have a receiver appointed to collect rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by

Landlord to terminate this lease.

d. Landlord's Right to Cure. Landlord, at any time after Tenant commits a default, can cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

**28. ASSIGNMENT AND SUBLETTING**

Tenant shall not voluntarily assign or encumber its interest in this lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity (except Tenant's authorized representative) to occupy or use all or any part of the Premises, without first obtaining Landlord's consent. Assignment, encumbrance, or sublease shall not be permitted if Tenant is behind on Rent payments or is otherwise in default of this Lease. Any assignments, encumbrance, or sublease without Landlord's consent shall be voidable and, at Landlord's election, shall constitute a default. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

**29. ENTRY**

Landlord and its authorized representatives shall have the right to enter the Premises at all reasonable times, provided Landlord gives a 24-hour prior notice to Tenant, for any of the following purposes: to determine whether the Premises are in good condition and whether Tenant is complying with its obligations under the lease; to do any acts that may be necessary to protect Landlord's interest in the Premises; or to perform Landlord's duties under this lease. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the Premises as provided in this section, except damage resulting from the acts or omissions of Landlord or its authorized representatives.

**30. NOTICES**

A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this lease and either: i) deposits it with the U.S. Postal Service, registered mail, postage prepaid; or ii) emails it to the other party followed, no later than the next business day, by depositing it with the U.S. Postal Service for delivery by regular mail. For purposes of this lease, notices shall be addressed as follows, as appropriate:

To the Landlord: City of Berkeley

Department of Public Works,  
2180 Milvia Street, Third Floor  
Berkeley, CA 94704

With a copy to: City of Berkeley  
Real Property Division  
1947 Center Street, Fifth Floor  
Berkeley, CA 94704  
Email Address: real\_property@cityofberkeley.info

To the Tenant: Vito LoConte III                      with a copy to: Lexie's Frozen Custard  
Alexis LeCount                                      2010 Addison Street  
834 Talbot Avenue                                Berkeley, CA 94704  
Albany, CA 94706  
Telephone: 415-846-6973  
Email Address: lexiesfrozenscustard@gmail.com

**30. WAIVER**

No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the lease.

No act or conduct of Landlord, including, without limitation, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the term. Only a notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the lease.

Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

**31. EXCUSABLE DELAYS**

If the performance of any act required of Landlord or Tenant is prevented or delayed by reason of strikes, lockouts, labor disputes, act of God, acts of the public enemy, fire, floods, epidemics, freight embargoes or other cause beyond the control of the party required to perform an act, the performance of such act shall be excused for the period of the delay and the period for the performance of

such act shall be extended for one hundred and eighty (180) days and if the performance of such act is further delayed, Landlord or Tenant may terminate this lease by giving a thirty (30) day written notice to the other party. Prior to the Rent Commencement Date, and during any delay in performance as described above, Tenant shall be excused from the payment of any rent due under this Lease.

**32. OPTION TO RENEW**

a. Option Period. So long as Tenant is not in default under this lease, either at the time of exercise or at the time the extended term commences, Tenant will have the option to extend the initial term of this lease for an additional period of five (5) years (the "option period") on the same terms, covenants, and conditions of this lease, except that the initial monthly rent and yearly rent increases during the option period will be determined as described below. In order to exercise this option, Tenant must give written notice of its election to do so to Landlord at least 180 days, but not more than one year, prior to the expiration date of the initial lease term. Tenant shall have no other right to extend the term beyond the option period.

b. Option Period Monthly Rent. The Monthly Rent at the commencement of the first year of the Option Period and each year thereafter will be the monthly rent in effect at the end of the initial Term of this Lease plus two and three quarters percent (2.75%).

**33. HOLDING OVER**

If Tenant remains in possession of the Premises with Landlord's consent after the expiration of the term of this lease without having exercised any option to renew this lease, or after the termination of any such option period, such possession by Tenant shall be construed to be a tenancy from month-to-month, terminable on thirty (30) days' notice given at any time by either party. All provisions of this lease, except those pertaining to term, shall apply to the month-to-month tenancy.

**34. SURRENDER OF PREMISES, REMOVAL OF PERSONAL PROPERTY**

At the termination of this lease, Tenant shall: 1) give up and surrender the Premises, in as good state and condition as reasonable use and wear and tear thereof will permit, damage by fire and the elements excepted; and 2) remove all property which is not a fixture of or permanent attachment to the Premises and which is owned and was installed by Tenant during the term of this lease.

**35. TERMS BINDING ON SUCCESSORS**

All the terms, covenants and conditions of this lease shall inure to the benefit of and be binding upon the successors and assigns of the parties to this lease. The provisions of this section shall not be deemed as a waiver of any of the conditions against assignment set forth above.

36. **TIME OF ESSENCE**

Time shall be of the essence of each provision of this lease.

37. **COVENANTS AND CONDITIONS**

Each term and each provision of this lease performable by Tenant shall be construed to be both a covenant and condition.

38. **GOVERNING LAW**

The laws of the State of California shall govern this lease.

39. **ENTIRE AGREEMENT, AMENDMENTS**

This lease and all exhibits attached and any documents expressly incorporated by reference contain the entire agreement between the parties regarding the lease of the Premises described herein and shall supersede any and all prior agreements, oral or written, between the parties regarding the lease of these Premises. This lease cannot be altered or otherwise modified except by a written amendment.

40. **CONSENT OF PARTIES**

Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

41. **BUSINESS LICENSE**

Tenant certifies that it has obtained or applied for a City of Berkeley business license number as required by Berkeley Municipal Code Chapter 9.04; or Tenant claims that it is exempt from the provisions of B.M.C. Ch. 9.04 and has written below the specific B.M.C. section under which it is exempt.

IN WITNESS WHEREOF, Landlord and Tenant have executed this lease as of the date written on the first paragraph of this lease.

LANDLORD  
CITY OF BERKELEY

By:  
City Manager

THIS LEASE HAS BEEN  
APPROVED AS TO FORM  
BY THE CITY ATTORNEY  
OF THE CITY OF BERKELEY  
Date: \_\_\_\_\_

REGISTERED BY:

City Auditor

ATTEST:

Deputy City Clerk

TENANT  
VITO LOCONTE III AND ALEXIS LECOUNT  
DBA LEXIE'S FROZEN CUSTARD,  
A Sole Proprietorship

Signature \_\_\_\_\_  
Title \_\_\_\_\_ 2/21/21

Signature \_\_\_\_\_  
Title Alexis LeCount 2/21/21  
owner

City of Berkeley Business License No. 000664



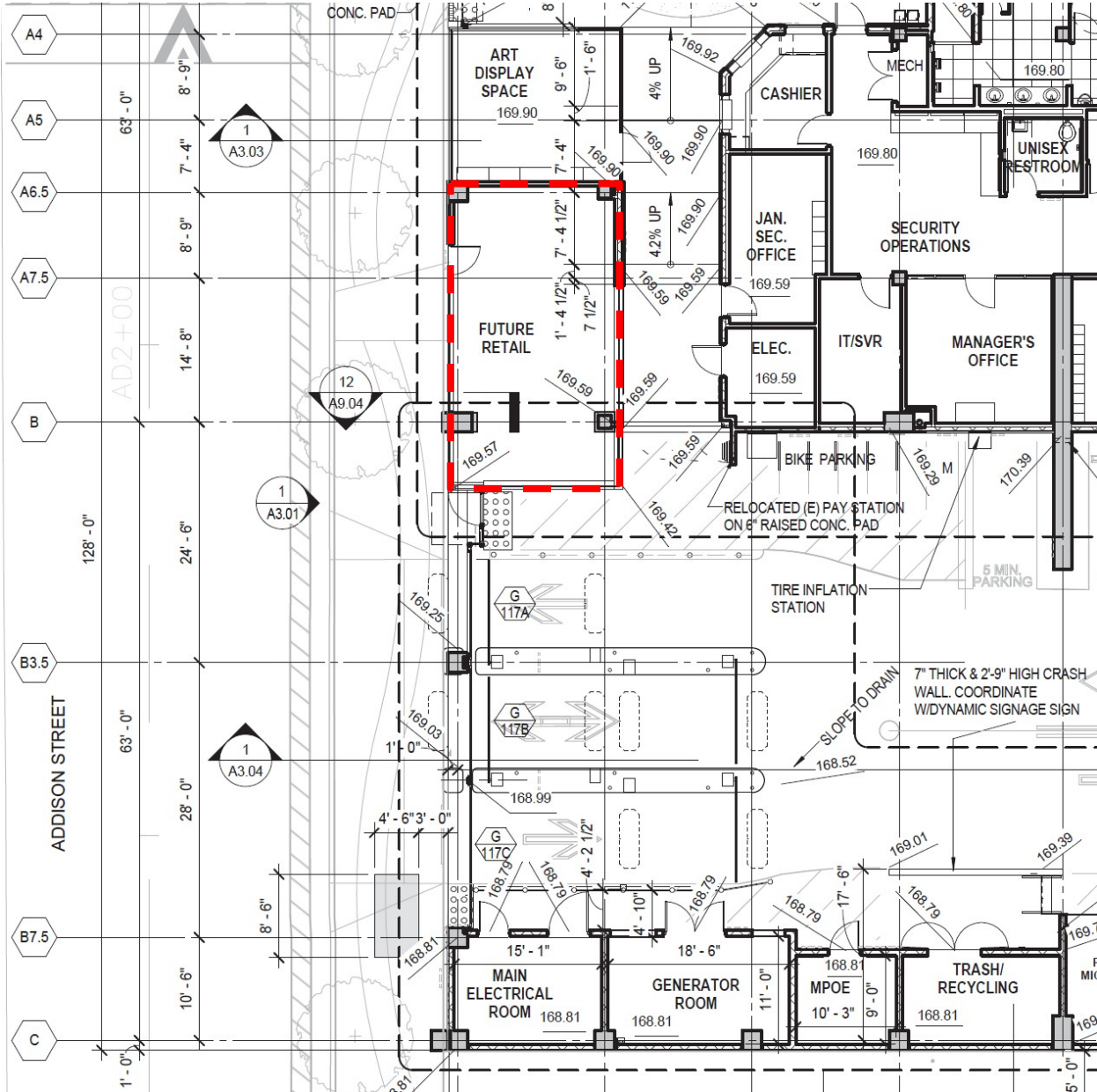
EXHIBIT A  
TO  
LEASE

Location of Garage



EXHIBIT A-1  
TO LEASE

Site Plan of Premises (Lease Space outlined in bold dash marks)



- Occupation of 480 square feet retail space;
- Use of public restrooms at the Garage; and
- Use of the shared Trash/Recycling Room located on the west wall of the first floor of garage.

**EXHIBIT B  
TO  
LEASE**

Agreement Specifying Term of Lease

Attached to and made part of the Lease approved on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, ("Lease Approval Date") by and between the CITY OF BERKELEY, a municipal corporation, as Landlord, and VITO LOCONTE III AND ALEXIS LECOUNT D.B.A., LEXIE'S FROZEN CUSTARD, a sole proprietorship, as Tenant ("**Lease**"). Landlord and Tenant do hereby confirm and acknowledge the following dates:

Lease Commencement Date is \_\_\_\_\_, 20\_\_\_\_, the date City Council specifies the Tenant may take possession of the space for the purpose of beginning tenant improvements in coordination with the Department of Public Works.

Lease Term Commencement Date is \_\_\_\_\_, 20\_\_\_\_, the first day of the month following completion of the City's improvements to and for the Tenant's space.

Rent Commencement Date is \_\_\_\_\_, 20\_\_\_\_, the first day of fifth month after the Lease Term Commencement Date.

Expiration Date is \_\_\_\_\_, 20\_\_\_\_, subject to extension as provided in the Lease.

This Agreement shall be binding on the parties hereto, their successor and assigns and all subtenants of Tenant and any other party claiming under or through Tenant. The Lease is in full force and effect as of the date hereof in accordance with its terms, and Tenant is in possession of the Premises. Landlord has fulfilled all of its obligations under the Lease that were required to be fulfilled by Landlord on or prior to the Rent Commencement Date and Tenant has no claim or right of set-off against any Rent (as defined in the Lease) under the Lease.

This Agreement was entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**ATTEST/WITNESS:**

**LANDLORD:**

CITY OF BERKELEY, a municipal corporation

By: \_\_\_\_\_  
Its: City Manager

By: \_\_\_\_\_  
Its: City Attorney

By: \_\_\_\_\_  
Its: City Auditor

**ATTEST/WITNESS:**

**TENANT:**

LEXIE'S FROZEN CUSTARD  
a Sole Proprietorship.

By: \_\_\_\_\_  
Vito Loconte III

By: \_\_\_\_\_  
Alexis LeCount

**LEASE PAYMENT SCHEDULE FOR 2010 ADDISON**

	YEAR	1	2	3	4	5	6	7	8	9	10
MONTH	1	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	2	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	3	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	4	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	5	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	6	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	7	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	8	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	9	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	10	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	11	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
MONTH	12	\$ 1,560.00	\$ 1,602.90	\$ 1,646.98	\$ 1,692.27	\$ 1,738.81	\$ 1,786.63	\$ 1,835.76	\$ 1,886.24	\$ 1,938.11	\$ 1,991.41
		\$ 18,720.00									
		\$ (6,240.00)	(FOUR MONTH RENT FREE)								
<b>ANNUAL TOTAL:</b>		<b>\$ 12,480.00</b>	<b>\$ 19,234.80</b>	<b>\$ 19,763.76</b>	<b>\$ 20,307.26</b>	<b>\$ 20,865.71</b>	<b>\$ 21,439.52</b>	<b>\$ 22,029.10</b>	<b>\$ 22,634.90</b>	<b>\$ 23,257.36</b>	<b>\$ 23,896.94</b>
										<b>TEN YEAR TOTAL:</b>	<b>\$ 205,909.36</b>

ANNUAL INCREASE: 2.75%

MONTH 1 DATE: \_\_\_\_\_

LEASE TERMINATION DATE: \_\_\_\_\_

**EXHIBIT C  
TO  
LEASE**

Restrictions and Prohibited Uses

Tenant shall not use or permit the use of the Premises for any other business or purpose, except as set forth in this Lease and in strict accordance with the Rules and Regulations. No part of the exterior shall be used for an automatic teller machine. No part of the Premises shall be used for any use that would increase the demand or requirement for parking in the Garage in excess of that required by the Permitted Use. No part of the Premises shall be used in a way that endangers the health or safety of any user of the Garage. **THESE PROHIBITIONS AND RESTRICTIONS SHALL NOT BE DEEMED TO APPLY TO LANDLORD, BUT ONLY TO TENANT UNDER THIS LEASE.** Landlord shall have the right, in Landlord's sole and absolute discretion, to waive all or any of the prohibitions set forth herein upon such matters, terms and conditions as Landlord, in its sole discretion, may determine.

**EXHIBIT D  
TO  
LEASE**

Center Street Garage Rules and Regulations

Landlord has the right to change Center Street Garage Rules and Regulations at any time.

**A. Tenant shall be obligated to do the following:**

- i. Keep the Premises, including both sides of all glass clean, orderly and sanitary;
- ii. Keep the outside areas adjacent to the Premises clean, orderly and free of debris, rubbish, obstructions and merchandise;
- iii. Display the certificate of occupancy (if required by applicable law) for the Premises in the Premises and provide Landlord with a copy of the Certificate of Occupancy (or jurisdictional equivalent) for the Premises;
- iv. Keep the Premises free of garbage and trash and remove the same from the Premises to containers approved by Landlord;
- v. Maintain the Premises free of insects, rodents, vermin and other pests;
- vi. Keep all mechanical apparatus free of vibration and noise -- live music or any other use of amplifiers or speakers is prohibited;
- vii. Procure and maintain at its sole cost and expense any permits and licenses required in the transaction of Tenant's business;
- viii. Conduct its business in all respects in a manner in accordance with first-class store operations;
- ix. Load and unload goods at such times in the areas and through such entrances as may be designated by Landlord;
- x. Keep its show windows dressed, using only professionally prepared signage which must be submitted to Landlord for approval prior to installation;
- xi. Keep its show windows and exterior signs illuminated from dusk to 10:00 p.m. every day;
- xii. No office equipment of any kind (other than normal office equipment) shall be operated by Tenant without Landlord's prior written consent, nor shall Tenant use or keep in the Retail Space any flammable or explosive fluid or substance.

- xiii. Landlord will not be responsible for lost or stolen personal property, money or jewelry from the Premises or Common Areas.
- xiv. Restrooms, toilets, urinals and wash basins shall not be used for any purpose other than those for which they were constructed, and no rubbish, newspapers, food or other substance of any kind shall be thrown into them. Tenant shall not mark, drive nails, screw or drill into, paint or in any way deface the exterior walls, floor foundations, bearing walls or pillars without the prior written consent of Landlord. The expense of repairing any breakage, stoppage or damage resulting from a violation of this rule shall be borne by Tenant.
- xv. Tenant shall not sell merchandise from vending machines or allow any coin or token operated vending machine on the Premises, except those provided for the convenience of Tenant's employees and pay telephones provided for the convenience of its customers.
- xvi. Landlord has the right to require that Tenant provide a copy of the key to the Premises for access by Landlord, or as otherwise required by applicable Laws.
- xvii. Abide by all Rules and Regulations set forth in this **Exhibit D** as may be changed by Landlord from time to time provided that such change not materially impact Tenant's rights or responsibilities under the Lease.

**B. Tenant agrees not to do the following:**

- i. Display any sign visible outside the Premises without first having obtained Landlord's written permission;
- ii. Use the Premises or any other part of the Garage for any use other than allowed by the Lease;
- iii. Cause the accumulation of garbage, trash, rubbish or refuse in the Premises or the Garage;
- iv. Display or store merchandise outside the Premises;
- v. Distribute hand bills or other advertising matter or solicit business in the Common Area;
- vi. If parking is otherwise expressly permitted pursuant to the Lease, permit parking of any vehicle for more than 24 hours;
- vii. Attach any awning, antenna, or other projection to the roof or the outside walls of the Premises or the Garage;  
and
- viii. Use or permit the use of objectionable advertising mediums such as loud speakers or other mediums that irritate or have the tendency to irritate other tenants within the Retail Space or their customers or invitees.





## ORDINANCE NO. 7,764-N.S.

AMEND BMC 14.72.105  
NEIGHBORHOOD-SERVING COMMUNITY FACILITY PERMITS

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

Section 1. That Berkeley Municipal Code BMC 14.72.105 is amended to read as follows:

## 14.72.105 Neighborhood-serving community facility permits

- A. The Department of Finance may issue neighborhood-serving community facility enterprise permits with a term not to exceed one-year subject to the requirements set forth in this section and in administrative rules and regulations issued pursuant to this chapter.
- B. A neighborhood-serving community facility parking permit may be issued to representatives of the following neighborhood- serving community facilities: churches, schools, senior centers and alcohol and drug rehabilitation facilities. The issuance of permit can occur no sooner than 30 days after implementation of a residential permit parking area and the following criteria shall be used in establishing eligibility of an enterprise and the number of permits to be issued any enterprise:
  1. An enterprise for which there is inadequate off-street parking and no financially feasible way of creating adequate off-street parking on the site of the enterprise;
  2. An enterprise for which there is no off-street parking available nearby for lease or rental;
  3. The total number of permits issued does not exceed the number representing 60% of the enterprise's employees;
  4. The total number of permits issued to a Berkeley Unified School District (BUSD) school that is not within 1/2 mile of a Bay Area Rapid Transit (BART) Station, and not within 1/4 mile from a rapid transit bus stop, and not within 1/4 mile from two bus routes that run at a frequency of 20 minutes or less does not exceed 70% of the enterprise's employees;
  5. Distribution of permits shall be through a designated representative of the enterprise who will be responsible for allocation of the permits to employees, or in the case of the senior centers, to users of the enterprise; and

Compile Chapter

1. Degree of impact on parking conditions for residents and merchants in the area. (Ord. 7580-NS § 1, 2017: Ord. 6762-NS § 4 (part), 2003: Ord. 5972-NS § 1, 1990: Ord. 5803-NS § 2 (part), 1987)

At a regular meeting of the Council of the City of Berkeley held on May 25, 2021, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.



Office of the City Manager

CONSENT CALENDAR

June 15, 2021

*(continued from May 18, 2021)*

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: David White, Deputy City Manager

Subject: Systems Alignment Proposal

RECOMMENDATION

Review the proposal for systems alignment and provide edits and suggestions in order to compile Council feedback for the purpose of drafting a revised proposal for adoption.

SUMMARY

The City Council discussed the Systems Alignment proposal at a Worksession on May 18, 2021. The item was continued to June 15 to allow Councilmembers to submit suggestions and changes to the original plan. The Mayor will consolidate the input from the Council and the public and return with a revised proposal for discussion and adoption at a later date.

FISCAL IMPACTS OF RECOMMENDATION

While the recommendation of this report would not entail fiscal impacts, if adopted, the proposal would have budgetary effects. Broadly speaking, the proposal is designed to better ensure adequate financial and staffing resources are identified and approved with any adopted significant legislation<sup>1</sup> (Major Item).

CURRENT SITUATION AND ITS EFFECTS

This report proposes a process to integrate various systems (e.g., budget, Strategic Plan, prioritization of referrals, etc.) to ensure that resources are appropriately allocated, to focus the organization and employees on those priorities established by the City Council and City Manager, and to enhance legislative and budget processes. Ultimately, aligning systems will help ensure our community's values as reflected in the policies of our City Council are implemented completely and efficiently, with increased fiscal prudence, while supporting more meaningful service delivery. In light of the economic and financial impacts of COVID-19 and resource constraints, it is imperative to improve

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<sup>1</sup> New significant legislation is defined, with some explicit exceptions, as "any law, program, or policy that represents a significant change or addition to existing law, program, or policy, or is likely to call for or elicit significant study, analysis, or input from staff, Councilmembers or members of the public". See Council Rules of Procedure, [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/City%20Council%20Rules%20of%20Procedure.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/City%20Council%20Rules%20of%20Procedure.pdf).

vetting and costing of new projects and legislative initiatives to ensure success. In addition, the purpose of this proposal will align our work with the budget process.

The proposed changes outlined in this memorandum will better guide and inform budget development, clarify tradeoffs by identifying operational impacts, and develop a more effective and time-efficient path to implementation. These changes support a clear and full realizing of City Council policies, programs, and vision. The major features of the proposal are:

- Changing the order of the legislative process to ensure that Major Items (defined below) passed by Council are funded, as well as folded into staff workplans and staffing capacity,
- Making the City Council Rules of Procedure Appendix B guidelines mandatory,
- Ensuring that Major Items that are adopted by City Council are vetted and clearly identify the resources needed for implementation,
- Consolidating and simplifying reporting and tracking of Major Items, and
- Creating a deadline for each year's Major Items that allows for alignment with prioritization, the Strategic Plan, and the budget process.

Additionally, the proposed Systems Alignment would advance the City's Strategic Plan goal to provide an efficient and financially-health City government.

## **PROPOSED PROCESS**

The proposed process outlined in this memorandum replaces the current system of referrals (short and long term, as well as Commission referrals), directives, and new proposed ordinances, that is, all Major Items, regardless of "type" or origin will be subject to this process.

### **Step 1: Major Item Determination**

The systems alignment proposal outlines a process for Major Items.

#### ***Defined in Council Rules of Procedure***

Major Items are "new significant legislation" as defined in Appendix D of the [City Council Rules of Procedure](#):

Except as provided below, "new significant legislation" is defined as any law, program, or policy that represents a significant change or addition to existing law, program, or policy, or is likely to call for or elicit significant study, analysis, or input from staff, Councilmembers or members of the public.

The exceptions to the definition of new significant legislation and process state:

New significant legislation originating from the Council, Commissions, or Staff related to the City's COVID-19 response<sup>2</sup>, including but not limited to health and

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<sup>2</sup> If this proposal is adopted, "COVID-19" should be replaced with "declared emergency response" in the exception language.

economic impacts of the pandemic or recovery, or addressing other health and safety concerns, the City Budget process, or other essential or ongoing City processes or business will be allowed to move forward, as well as legislative items that are urgent, time sensitive, smaller, or less impactful.

The Agenda & Rules Committee, in consultation with the City Manager, will make the initial determination of whether something is a Major Item, using the Major Item Determination Checklist (see attachment 1). At any time in the process, if evidence demonstrates that the initial determination of the proposal as a Major Item proves incorrect, then it is no longer subject to this process. Additionally, if any legislation it originally deemed not to be a Major Item, the author or City Manager may appeal to the Agenda and Rules Committee or to the full Council and present evidence to the contrary.

### ***Required Conformance and Consultation***

All Major Items must use the agenda guidelines in Appendix B of the Council Rules, which require more detailed background information and analysis. The Agenda and Rules Committee can send the item back to the author if it is not complete and/or does not include all of the information required in Appendix B. The author must make a good faith effort to ensure all the guideline prompts are completed in substance not just in form.

Major Items must include a section noting whether the author has initially consulted with the City Manager or city staff regarding their proposed Major Item and the substance of those conversations, and initial staff input.

### ***Required Submission Date***

A Major Item must be submitted in time to appear on the agenda of an Agenda & Rules Committee meeting occurring no later than April 30 of every year. Any item submitted after that deadline, that does not meet an exemption, will be continued to the following year's legislative process.

Major Items will be referred by the Agenda & Rules committee on a rolling basis.

### **Step 2: Policy Committee Review**

A Major Item, once introduced and deemed complete and in conformance by the Agenda and Rules Committee, will be referred to one of City Council's Policy Committees (i.e., Health, Life Enrichment, Equity and Community, Public Safety, etc.), for review, recommendation, and high-level discussion of implementation (i.e., ideas, rough cost estimates, benefits, etc.). Per the [\*Council Rules of Procedure\*](#),<sup>3</sup> the Policy

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<sup>3</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/City%20Council%20Rules%20of%20Procedure%20-%20Feb%2011%202020%20-%20FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/City%20Council%20Rules%20of%20Procedure%20-%20Feb%2011%202020%20-%20FINAL.pdf)

Committee will review the Major Item and the completed Major Item Determination Checklist to confirm Agenda & Rules initial determination that the Major Item is complete in accordance with Section III.B.2 and aligns with Strategic Plan goals. If the Major Item receives a positive or qualified positive recommendation, then it will go to an Implementation Conference (See step 3, Vetting and Costing).

If the Major Item receives a negative or qualified negative recommendation, then it will be returned to the Agenda and Rules Committee to be placed on a City Council Agenda. When heard at a City Council meeting, the author can advocate for the Major Item to be sent to an Implementation Conference. If the Major Item does not receive a vote by the majority of City Council at this step, it becomes inactive for that year's legislative calendar but may be reintroduced for the next year's calendar.

City Council Policy Committees must complete review of all Major Items assigned to them no later than June 30 of each year.

### **Step 3: Implementation Conference (Vetting and Costing)**

At an Implementation Conference, the primary author will meet with the City Manager or designee, City Manager-selected staff subject matter experts, and the City Attorney or designee.

### ***Identifying Fiscal, Operational and Implementation Impacts***

The intended outcome of an Implementation Conference is a strong analysis containing all of the considerations and resources necessary to support implementation should Council choose to approve the Major Item.

The Implementation Conference is an informal meeting where the primary author can collaborate with the City Manager, City Attorney, and staff to better define the Major Item and identify more detailed fiscal and operational impacts, as well as implementation considerations. The information discussed during the Implementation Conference will be summarized in the Council Report as part of newly required sections (see attachment 2), in conformance with Appendix B:

- *Initial Consultation*, which
  - Lists internal and external stakeholders that were consulted, including whether item was concurrently submitted to a Commission for input,
  - Summarizes and confirms what was learned from consultation,
  - Confirms legal review addressing any legal or pre-emption issues, ensuring legal form,<sup>4</sup>
- *Implementation, Administration, and Enforcement*, which
  - Identifies internal and external benefits and impacts, and

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<sup>4</sup> While consultation with the City Attorney is mentioned in Appendix B, the legal review and "confirmations" recommended in this proposal is a more specific and robust requirement.

- Considers equity implications, launch/initiation of Major Item and its ongoing administration, and
- *Fiscal & Operational Impacts*, which
  - Summarizes any operational impacts,
  - Identifies necessary resources, including specific staff resources needed and costs.<sup>5</sup>

As part of the Implementation Conference, staff will provide a high level work plan, indicating major deliverables/milestones and dates. This information can be collected and recorded using the Implementation Conference Worksheet (see attachment 2).

Implementation Conferences will be date certain meetings held in July.

### ***Revising the Major Item***

After the Major Item's author revises the original Council Report based on information from the Implementation Conference, the Major Item will be submitted to the Council agenda process. If additional full time equivalent employee(s) (FTE) or fiscal resources are needed, the Major Item must include a referral to the budget process and identify the amount for implementation of the policy or program.

### **Step 4: Initial Prioritization**

At their first meetings in September, Policy Committees must complete the ranking of the Major Items which were referred to them and also completed the Implementation Conference. The Policy Committees will provide these rankings in the form of a recommendation to the City Council. The Policy Committees prioritization will use the Policy Committee Ranking Form (see attachment 3) to standardize consideration of Major Items across Policy Committees. The Policy Committee priority rankings will be submitted to the City Council when the Council is considering items to move forward in the budget and Strategic Plan process.

### **Step 5: City Council Approval and Final Prioritization**

Under this proposal, all Major Items that the City Council considers for approved prioritization must have:

1. Received a City Council Policy Committee review and recommendation,
2. Received a City Council Policy Committee prioritization,
3. Completed the Implementation Conference, and
4. Been placed on the Agenda for a regular or special Council meeting in October for approval and inclusion in the RRV process.

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<sup>5</sup> Appendix B does require a Fiscal Impacts section, but the inclusion of operational impacts and specific noting of required staff resources and costs recommended in this proposal is a more specific and robust requirement.

At the designated Council meeting in October, staff will provide the Council with a list of all approved Major Items, including the initial prioritization by Policy Committee. The Council will consider each Major Item for approval. All approved Major Items then will be added to the RRV process (i.e., with other items, referrals, etc) and ranked. The RRV ranking will begin in late October. These rankings will be adopted by Council and used to inform the development of the draft budget. Approved and ranked Major Items have multiple opportunities to be approved for funding, when the biennial budget or mid-cycle budget is adopted in June or when the Annual Appropriations Ordinances are adopted in May and November.

If a Major Item *does not receive the endorsement* of City Council at this step, it becomes inactive for that year's legislative calendar and may be reintroduced for the next year's calendar.

City Council must complete its Major Items approval, and RRV process no later than the final meeting in December of each year.<sup>6</sup> This ensures that staff is able to develop the budget starting from and based on Council priorities.

#### **Step 6: Budget & Strategic Plan Process**

The Council's rankings are also forwarded to the Budget and Finance Committee for consideration as part of budget development. If the proposal is not ultimately funded in the biennial budget, mid-cycle budget or the Annual Appropriations Ordinance (mid-year budget amendment), then it does not move forward that year and will be added to a list of unfunded proposals for the future budget process.

During December and January, city staff will prepare budget proposals that incorporate the ranked City Council Major Items, Strategic Plan, and work plan development. In the late winter/early spring, the City Manager and Budget Office will present the draft budget to Council. This will be followed by department presentations to the Budget and Finance Policy Committee. From late March and through early May, Council and staff will refine the budget. Council will hold budget hearings in May and June, with adoption of the budget by June 30. Although the legislative process (i.e., Policy Committee review, Implementation Conference, Prioritization) is annual, staff recommends the budget process remain biennial. A significant mid-cycle budget update can easily accommodate additions to or changes in priorities arising through the legislative process.

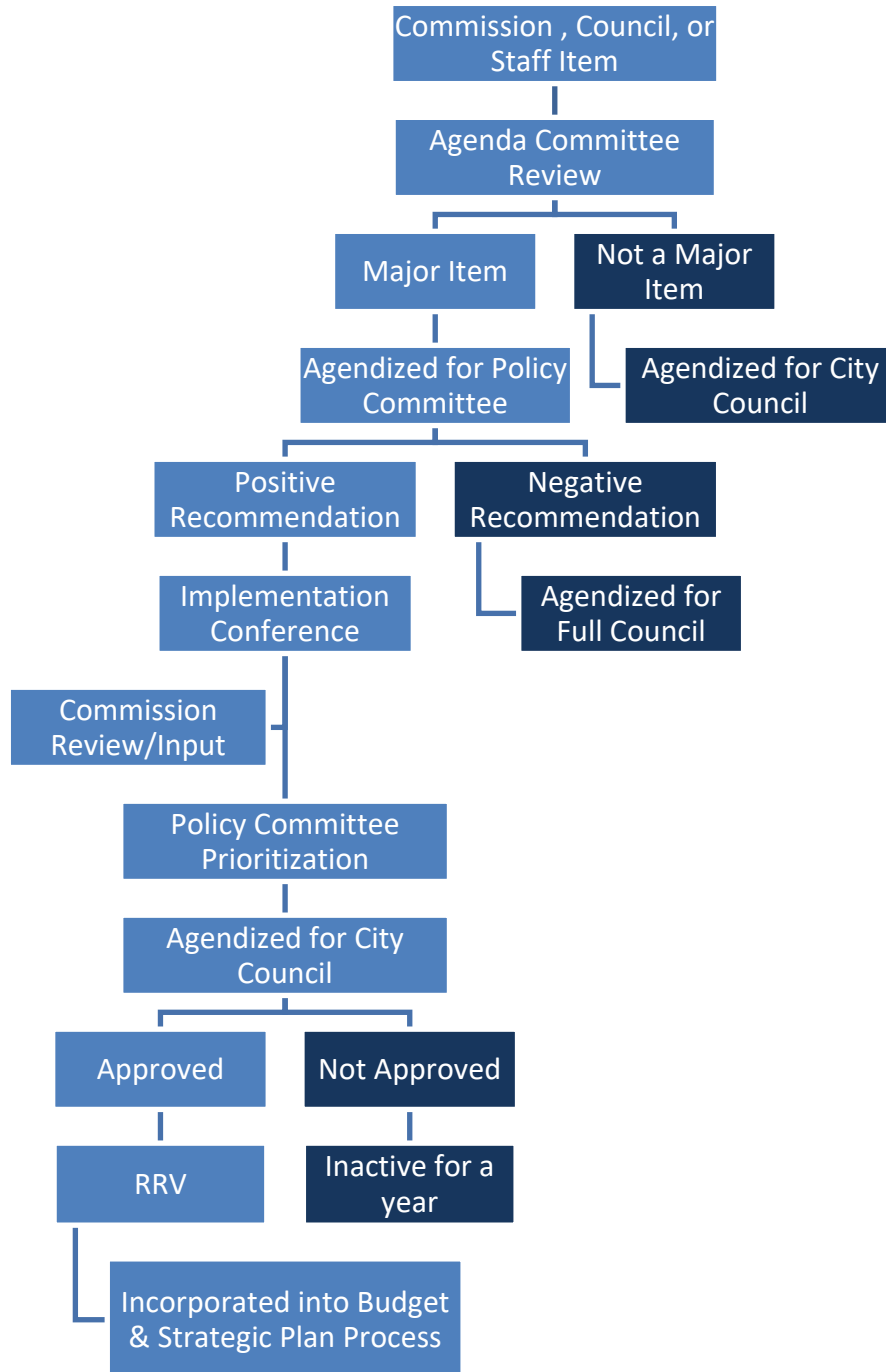
The proposed process is depicted in Figure 1 and the proposed launch calendar in Figure 2.

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<sup>6</sup> Due to noticing requirements, an RRV process completed by November 30 may not appear on a City Council Agenda for adoption until January.



Figure 1, Proposed Process<sup>7</sup>

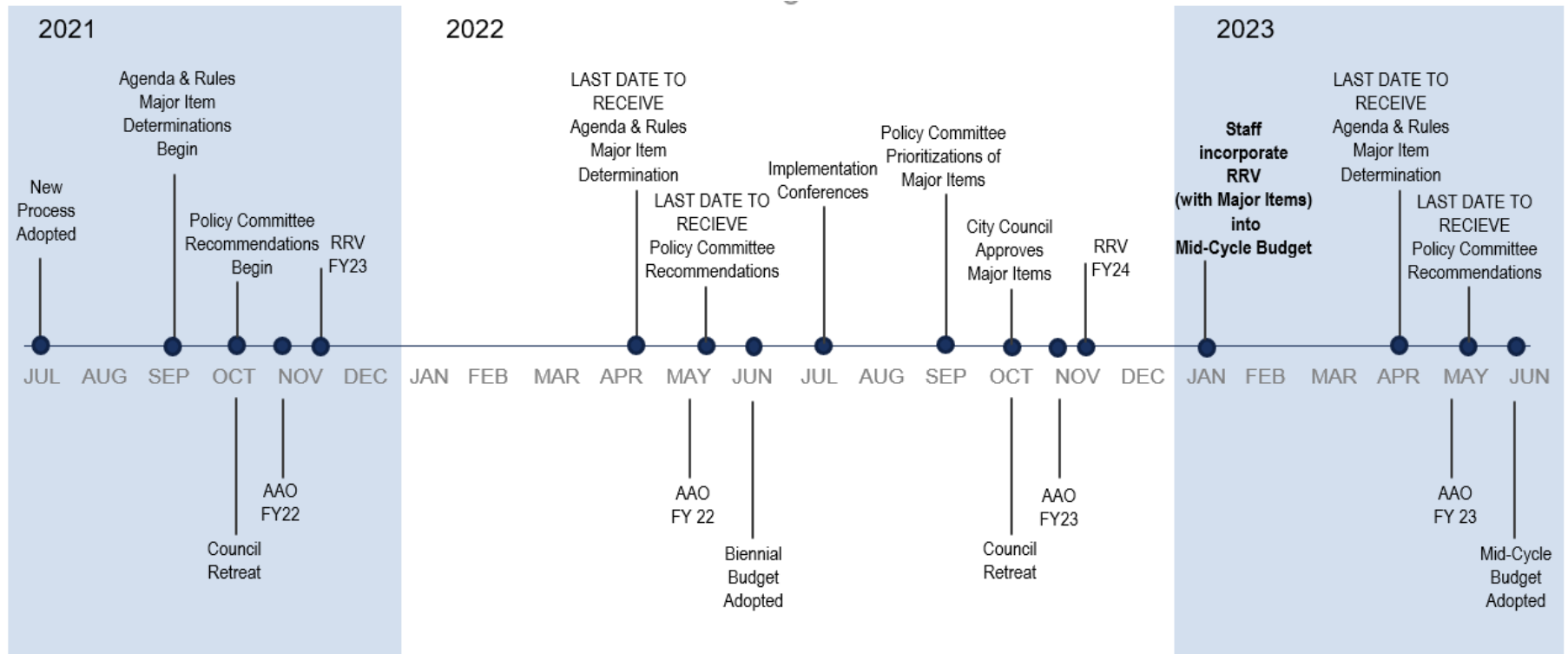


<sup>7</sup> Major Items that are ordinances will need to be examined on a case-by-case basis. Once adopted, ranked, and, if requiring resources, budgeted, the ordinance will need to be given an effective date and scheduled for first and second readings at Council.



Office of the City Manager

Figure 2, Proposed Launch





Office of the City Manager

### **Next Steps**

Staff will reach out to legislative aides for input and the City Manager will meet individually with Councilmembers to discuss this proposal. Staff will incorporate Council input from the worksession, and from subsequent input into a resolution and return to Council with a final Systems Alignment item for adoption by July 2021.

### **Benefits**

The addition of an Implementation Conference will ensure that Major Items considered by Council are properly resourced, improving our City's responsible management of fiscal resources. Analysis from the Implementation Conference will help Council to balance and consider each Major Item within the context of related programs and potential impacts (positive and negative). When considered holistically, new policy implementation can be supportive of existing work and service delivery.

Since the proposed process places the City Council prioritization of Major Items immediately before budget preparation, the Prioritization will guide and inform budget development, including components such as the Strategic Plan and work plans. Fixing the sequencing of the process is a key benefit. Currently, with prioritization occurring in May and June, the budget process is nearing completion when City Council's priorities are finally decided. This leads to inconsistencies between adopted priorities and budgeting for those priorities.

Under the current process, an idea may go into prioritization, proceed to the short term referral list or referred to the budget process. However, the resulting Major Item may not have addressed operational considerations. Adding such items to a department's work at any given time of the year may lead to staff stopping or slowing work on other prioritized projects in order to develop and implement new Major Items. Also, it may be difficult for staff to prioritize their projects: is stopping/slowing of work that is already underway in order to address new items the preference of the full Council?

Also, because consideration of implementation currently occurs after the adoption of a Major Item, features of the adopted language may unintentionally constrain effective implementation, complicating and slowing progress on the Major Item and hindering the effectiveness of the new program or regulation.

With the proposed process, a Major Item does not go through prioritization until there is an opportunity for staff to identify operational considerations. Finally, since implementation only occurs after operational considerations are reported, and funds are

allocated, the resulting Major Item should move more quickly from idea to successful completion.

### BACKGROUND

In October 2019, City Council held a half-day worksession to discuss systems realignment and provide direction on potential changes to the city's legislative process. The purpose of the meeting was to develop recommendations for how various systems (e.g., budget, Strategic Plan, RRV, etc) could better work together to ensure that the organization is able to focus on the priorities established by the City Council. The City Manager took direction from that meeting and worked with department directors and the Budget Office to create this proposal.

### ENVIRONMENTAL SUSTAINABILITY

By improving efficiency, ensuring adequate resources, and strengthening implementation, this proposal would increase the speed and full adoption of new significant legislation, including sustainability work.

### RATIONALE FOR RECOMMENDATION

The City of Berkeley is unique in comparison to many cities. It considers and approves many more policies, often at the cutting edge, than a typical city and especially for a city of its size. This proposal is a hybrid, incorporating city processes while mirroring State and Federal legislative processes which accommodate a larger number of policies and items in a given cycle. The disadvantage of this proposal is that it introduces additional steps, such as the implementation conference. The advantages of this proposal, are:

- Ensuring adopted legislation is adequately resourced, in terms of both staffing and budget;
- Providing adequate context for Council to balance and consider items in relation to potential positive and negative impacts; and
- Strengthening the effectiveness and efficiency of policy implementation.

### ALTERNATIVE ACTIONS CONSIDERED

At the Council retreat in October 2019, a variety of approaches and ideas were discussed and considered. Additionally, the original version of this proposal was substantively revised through the Policy Committee process.

If the Council takes no action on this item, the existing process will continue to result in inadequately resourced adopted legislation and inefficient and complicated implementation.

### CONTACT PERSON

David White, Deputy City Manager, (510) 981-7012

**Attachments:**

- 1: Major Item Determination Checklist
- 2: Council Report Template and Implementation Conference Worksheet
- 3: Policy Committee Ranking Form
- 4: Vice Mayor Droste Supplemental



# Major Item Determination Checklist

Item Name:

Item Author:

### Is this a Major Item?

- |                          |                          |  |
|--------------------------|--------------------------|--|
| Yes                      | No                       |  |
| <input type="checkbox"/> | <input type="checkbox"/> | Item represents a significant change to existing law, program, or policy.  |
| <input type="checkbox"/> | <input type="checkbox"/> | Item represents a significant addition to existing law, program, or policy.  |
| <input type="checkbox"/> | <input type="checkbox"/> | Item is likely to call for or elicit significant study, analysis or input from staff, Councilmembers, or members of the public |

### Is this eligible for an Exemption?

- |                          |                          |   |
|--------------------------|--------------------------|---|
| Yes                      | No                       |   |
| <input type="checkbox"/> | <input type="checkbox"/> | Item is related the City's COVID-19 response.                       |
| <input type="checkbox"/> | <input type="checkbox"/> | Item is related to the City Budget process.                         |
| <input type="checkbox"/> | <input type="checkbox"/> | Item is related to essential or ongoing City processes or business. |
| <input type="checkbox"/> | <input type="checkbox"/> | Item is urgent.   |
| <input type="checkbox"/> | <input type="checkbox"/> | Item is time-sensitive.   |
| <input type="checkbox"/> | <input type="checkbox"/> | Item is smaller.  |
| <input type="checkbox"/> | <input type="checkbox"/> | Item is less impactful.   |

### Agenda Committee Determination:

Major Item  Exempted

Indicate name and date below.

Per Committee Member \_\_\_\_\_

Per Committee Member \_\_\_\_\_

Per Committee Member \_\_\_\_\_

### Policy Committee Confirmation:

Determination Confirmed  Sent back to be agendized for full Council consideration

Indicate name and date below.

Per Committee Member \_\_\_\_\_

Per Committee Member \_\_\_\_\_

Per Committee Member \_\_\_\_\_



[First Lastname]  
Councilmember District [District No.]

[CONSENT OR ACTION]  
CALENDAR  
[Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council

From: [Councilmember (lastname)]

Subject: [Brief Report Title (No underline and not all caps.)]

RECOMMENDATION

Adopt a Resolution...  
or Support ...  
or write a letter to \_\_\_ in support of \_\_\_\_\_...  
or other recommendation....

FINANCIAL-FISCAL & OPERATIONAL IMPACTS IMPLICATIONS

*This section must include operational impacts, identify any staff resources (full time exempt employee/FTE) required, and financial costs.*

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

*This section must describe benefits and impacts to both internal and external stakeholders. It should also consider equity; the launch or initiation of the item; and its ongoing administration once implemented.*

CURRENT SITUATION AND ITS EFFECTS

*For items that relate to one of the Strategic Plan goals, include a standard sentence in the Current Situation and Effects or Background section:*

[Insert project name] is a Strategic Plan Priority Project, advancing our goal to [pick one:]

- provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.
- provide an efficient and financially-health City government.
- foster a dynamic, sustainable, and locally-based economy.
- create affordable housing and housing support service for our most vulnerable community members.
- create a resilient, safe, connected, and prepared city.
- champion and demonstrate social and racial equity.
- be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

[Title of Report]

CALENDAR

Macrobutton NoMacro [Meeting Date (MM dd, yyyy)]

- be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.
- attract and retain a talented and diverse City government workforce.

BACKGROUND

INITIAL CONSULTATION

*This section should list the external and internal stakeholders, indicate whether the item was submitted to a commission for input, and summarize what was learned from consulting with stakeholders.*

ENVIRONMENTAL SUSTAINABILITY

CONTACT PERSON

Councilmember [First Lastname] Council District [District No.] 510-981-[XXXX]

Attachments: [Delete if there are NO Attachments]

1: Resolution

    Exhibit A: [Title or Description of Exhibit]

    Exhibit B: [Title or Description of Exhibit]

2: [Title or Description of Attachment]

3: [Title or Description of Attachment]



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

SHORT TITLE OF RESOLUTION HERE

WHEREAS, (Whereas' are necessary when an explanation or legislative history is required); and

WHEREAS, (Insert Additional 'Whereas Clauses' as needed); and

WHEREAS, enter text here; and

WHEREAS, enter text here; and

WHEREAS, (The last "Whereas" paragraph should contain a period (.) .

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that (Action to be taken) - ends in a period (.).

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

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

A: Title of the Exhibit

B: Title of the Exhibit



## Implementation Conference Worksheet

**Item Name:**

**Item Author:**

### AUTHOR SECTION

The author of the item may complete this section to help record required information for the report.

Descriptive title:
Is this for Consent, Action, or Information Calendar?
Recommendation:
Summary statement:
Background (history, circumstances and concerns to be addressed by the item):
Plans, programs, policies and/or laws were taken into consideration:
Actions/alternatives considered:
Internal stakeholders consulted:
Name/date of Commission(s) item submitted to for input:
List of external stakeholders consulted:

Summary of what was learned from consulting stakeholders:
Rationale for recommendation:
Internal Benefits of Implementation:
Internal Impacts of Implementation:
External Benefits of Implementation:
External Impacts of Implementation:
Equity Considerations:
Launch and Implementation Milestones (see staff section)
Environmental Impacts:
Operational Impacts:
Staff Resources Needed:  Number of FTE/hours: Type of staff resource needed:
Costs:  Amount(s): Funding Source:

**STAFF SECTION**

Staff may complete section to provide required information for the report.

Estimated Launch/implementation Deliverables/Dates:	
<i>Month/Year</i>	<i>Deliverable</i>
Estimated Administration Deliverables/Dates:	
<i>Month/Year</i>	<i>Deliverable</i>

**Legal Consultation:**

Confirmed

Name/Date \_\_\_\_\_

**Staff Consultation:**

Confirmed

Name(s)/Date(s) \_\_\_\_\_



## Policy Committee Ranking Form

Starting on the right, think about and then indicate whether each consideration is high (H), medium (M) or low (L). Then rank the list of priorities. The highest priority would be “1”, the next highest “2” and so on.

Priority 1 is highest	Major Item Name	Major Item Author	Considerations H high M medium L low		
			Staff Resources	Cost	Benefits/Savings

### Policy Committee Determination:

Indicate name and date below.

Per Committee Member \_\_\_\_\_

Per Committee Member \_\_\_\_\_

Per Committee Member \_\_\_\_\_



Lori Droste  
Vice Mayor District 8

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 3**

**Meeting Date:** May 18, 2021

**Item Number:** 2

**Item Description:** Systems Realignment

**Submitted by:** Vice Mayor Lori Droste

**Subject:** Comments on Systems Realignment



Lori Droste  
Vice Mayor District 8

To: Mayor and Council  
From: Vice Mayor Lori Droste  
Subject: Comments on the Systems Realignment

P. 13- what is “smaller” and “less impactful” and how is that determined?

P. 14- the council item template should include a problem definition and frontload the evidence (background, consultation, review) and include criteria considered. Strategic plan alignment, fiscal and operational impacts, environmental sustainability can be embedded under this heading. I would also argue that “Benefit” or “Effectiveness” should be included in Criteria Considered. Also, equity and administrative feasibility are separate criteria to be considered. Council is not involved in enforcement so I recommend that it be eliminated. Furthermore, as currently written the Current Situation and Its Effects describes the Strategic Plan goals and not the status quo situation.

General Template Outline:

- 1) Recommendation
- 2) Problem Statement
- 3) Background and Consultation
- 4) Current Situation and Its Effects
- 5) Criteria Considered (*new heading*)
  - a) Benefit or Effectiveness (*new*)
  - b) Fiscal Considerations
  - c) Strategic Plan Alignment (pick a goal)
  - d) Environmental Sustainability
  - e) Equity
  - f) Operational and Administrative Considerations (*moved operational considerations to a separate category*)
- 6) Rationale for Recommendation (*new*)

P. 15 Implementation Conference Worksheet

I recommend reducing the amount of redundant components in the implementation conference worksheet and specifying what “impact” means. Does it mean benefit? Does it mean tradeoff? In either case, I believe it is covered by other elements of this worksheet.

P. 19- There is no description of *how* policy committee members' rankings will be aggregated. Furthermore, the "ranking" is orthogonal and could be completely contradictory to the staffing, benefit, and costs. Scoring legislative items instead of ranking them will allow for easier prioritization. A cardinal voting system like this is more expressive, accurate and easier to understand. It also lessens vote splitting.



[CONSENT OR ACTION] CALENDAR [Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council From: [Councilmember (lastname)]

Subject: [Brief Report Title (No underline and not all caps.)]

RECOMMENDATION Adopt a Resolution... or Support ... or write a letter to \_\_\_ in support of \_\_\_\_\_... or other recommendation....

### **PROBLEM STATEMENT**

**This section should identify the problem with specifics and enough context to explain why it merits public amelioration.**

*(Background and Evidence Should be Provided At the Beginning)*

BACKGROUND **AND** INITIAL CONSULTATION This section should list the external and internal stakeholders, indicate whether the item was submitted to a commission for input, and summarize what was learned from consulting with stakeholders.

### **CURRENT SITUATION AND ITS EFFECTS**

*This section should explain the status quo and how it attempts to address the defined problem.*

### **CRITERIA CONSIDERED**

- FINANCIAL FISCAL & OPERATIONAL IMPACTS IMPLICATIONS This section must include operational impacts, identify any staff resources (full time exempt employee/FTE) required, and financial costs.

~~IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT This section must describe benefits and impacts to both internal and external stakeholders. It should also consider equity; the launch or initiation of the item; and its ongoing administration once implemented. Equity should be a standalone category separate from administrative feasibility. Rename this section Operational and Administrative Considerations~~

- ~~CURRENT SITUATION AND ITS EFFECTS~~ For items that relate to one of the Strategic Plan goals, include a standard sentence in the Current Situation and Effects or Background section: [Insert project name] is a Strategic Plan **Alignment** Priority Project, advancing our goal to [pick one:]
  - provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.
  - provide an efficient and financially-health City government.
  - foster a dynamic, sustainable, and locally-based economy.
  - create affordable housing and housing support service for our most vulnerable community members.
  - create a resilient, safe, connected, and prepared city.
  - champion and demonstrate social and racial equity.

- be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.
- be a customer-focused organization that provides excellent, timely, easily accessible service and information to the community.
- attract and retain a talented and diverse City government workforce.
- ENVIRONMENTAL SUSTAINABILITY

**RATIONALE FOR RECOMMENDATION**

This section should describe how the author landed on the recommendation using the criteria considered. This section can also describe other alternatives considered.

CONTACT PERSON

Councilmember [First Last Name] Council District [District No.] 510-981-[XXXX]

Attachments: [Delete if there are NO Attachments]

1: Resolution Exhibit A: [Title or Description of Exhibit] Exhibit B: [Title or Description of Exhibit]

2: [Title or Description of Attachment]

3: [Title or Description of Attachment]

Implementation Conference Worksheet

Descriptive Title
Consent Action or Information
Recommendation
<b><u>Problem</u></b> Statement
Background, etc
Plans, etc.
<b><u>Current Situation and Its Effects</u></b>
Actions/Alternatives Considered
<b><u>Stakeholders Consultation and Results</u></b>
Internal Stakeholders Consulted
Name/date of Commission(s) item submitted to for input
List of external stakeholders consulted
Summary of what was learned from consulting stakeholders
Rationale for Recommendation <i>should go at the end after evaluative criteria</i>
<b><u>Policy Benefit</u></b>
Internal Benefits of Implementation:
Internal Impacts of Implementation:
External Benefits of Implementation:
External Impacts of Implementation:
Equity Considerations
Environmental Considerations
Operational Impacts
<b><u>Strategic Plan Goal Alignment</u></b>
Staff Resources Needed (Number of FTE/hours, Type of staff resource needed):
Costs (Amount(s), Funding Source):
<b><u>Rationale for Recommendation</u></b> <i>(after analysis)</i>





Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance Department

Subject: Temporary Appropriations FY 2022

RECOMMENDATION

Adopt a Resolution authorizing a temporary appropriation in the sum of \$50,000,000 to cover payroll and other expenses from July 1, 2021, until the effective date of the FY 2022 Annual Appropriations Ordinance.

FISCAL IMPACTS OF RECOMMENDATION

The financial implications are already stated in the Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

A temporary appropriation of funds is required to permit expenditures until the effective date of the Annual Appropriation Ordinance, which occurs 30 days after the second reading. Section 54, Article X of the Charter of the City of Berkeley authorizes such temporary appropriations.

ENVIRONMENTAL SUSTAINABILITY

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

BACKGROUND

The budget is scheduled for adoption on June 29, 2021, and the Annual Appropriations Ordinance is to be passed on the same day with a required second reading on July 13 2021. A temporary appropriation of funds is required to permit expenditures until the effective date of the Annual Appropriations Ordinance, which occurs approximately 30 days after the second reading (i.e., August 13). The sum appropriated, when expended, shall be chargeable to the Annual Appropriations Ordinance for FY 2022 when the budget has been adopted, and said Ordinance has been passed.

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, (510) 981-7326

Attachments:

1: Resolution

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

AUTHORIZING A TEMPORARY APPROPRIATION FOR PAYROLL AND OTHER EXPENSES FROM JULY 1, 2021 UNTIL THE EFFECTIVE DATE OF THE FISCAL YEAR 2022 ANNUAL APPROPRIATIONS ORDINANCE

WHEREAS, the City Charter of the City of Berkeley grants authority to the City Council to annually adopt an appropriations ordinance, to pay the expenses of conducting the business of City government for the next ensuing fiscal year; and

WHEREAS, the Annual Appropriations Ordinance to be passed on June 29, 2021 will not be effective earlier than August 12, 2021.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that \$50,000,000 be appropriated from available funds for payroll and other expenses from July 1, 2021 until the effective date of the FY 2022 Annual Appropriations Ordinance, chargeable to the appropriations for FY 2022.

BE IT FURTHER RESOLVED that it is the purpose and intent of this Resolution to make available funds as provided by Section 54, Article X, of the Charter of the City of Berkeley pending final adoption of the Annual Appropriations Ordinance for FY 2022.

BE IT FURTHER RESOLVED that the sum hereby appropriated shall, when expended, be chargeable to the appropriations of said fiscal year, when said Ordinance has been finally passed and adopted.

BE IT FURTHER RESOLVED that temporary inter-fund transfers be made as necessary to make funds available to carry out said purposes and intent of this resolution pending final adoption of said Ordinance.



Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance Department

Subject: FY 2022 Tax Rate: Fund Debt Service on Neighborhood Branch Library Improvements Project General Obligation Bonds (Measure FF, November 2008 Election)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2022 tax rate for funding the debt service on the Neighborhood Branch Library Improvements Project General Obligation Bonds (Measure FF, November 2008 Election) at 0.0059%.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended 0.0059% will result in estimated collections of \$1,350,000. This amount (along with existing funds on hand) is sufficient to make the debt service payments on March 1, 2022 and September 1, 2022.

CURRENT SITUATION AND ITS EFFECTS

The 0.0059% tax rate for FY 2022 being set by the City Council is based on the debt service, the estimated FY 2022 assessed values for all rolls (secured, unsecured and utility), a delinquency reserve of 5%, and the surplus remaining in the fund. Since Alameda County does not release final assessed value figures until early August, the City is using preliminary values. Staff is confident that the preliminary values will not be materially different from the County's final figure. The City must establish a tax rate that will be sufficient to make debt service payments even if there are unusual levels of delinquency. The tax rate in FY 2022 is a decrease in the rate charged in FY 2021.

Because all taxes collected from the general obligation levy will be deposited in a special fund, and collections not used to pay debt service for the FY 2022 bond year will be retained in the fund to pay future obligations, the tax impact of any over-collection will be credited against future debt service payments and the required levy.

It is recommended that the City Council authorize a FY 2022 tax rate of 0.0059% which will result in the following cost to the average homeowner during FY 2022, as compared to FY 2021:

Annual Tax		
Assessed Value	FY 2021 Tax	FY 2022 Tax
\$150,000	\$10.50	\$8.85
250,000	17.50	14.75
300,000	21.00	17.70
400,000	28.00	23.60
500,000	35.00	29.50
600,000	42.00	35.40
700,000	49.00	41.30
800,000	56.00	47.20
900,000	63.00	53.10
1,000,000	70.00	59.00

**ENVIRONMENTAL SUSTAINABILITY**

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

**BACKGROUND**

In November 2008, the residents of Berkeley voted for and approved Ballot Measure FF, in the sum of \$26,000,000 of General Obligation Bonds to renovate, expand, and make seismic and access improvements at the four neighborhood branch libraries (excluding the Central Library).

The indebtedness on the total bonds issued of \$26,000,000 is payable solely from the levy of an ad valorem tax against taxable property in the City. The proceeds of the bonds were used to renovate, expand, and make seismic and access improvements at the four neighborhood branch libraries (excluding the Central Library).

\$10,000,000 of the \$26,000,000 in authorized bonds were issued in 2009, and the remaining \$16,000,000 of bonds were issued in 2010. The tax rate above reflects the debt service payments for the fiscal year.

**CONTACT PERSON**

Henry Oyekanmi, Director, Finance Department, (510) 981-7326

Attachments:

1: Ordinance



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

SETTING THE FY 2022 TAX RATE FOR FUNDING THE DEBT SERVICE ON THE NEIGHBORHOOD BRANCH LIBRARY IMPROVEMENTS PROJECT GENERAL OBLIGATION BONDS (MEASURE FF, NOVEMBER 2008 ELECTION) IN THE CITY OF BERKELEY

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

Section 1. The FY 2022 tax rate for the debt service on the General Obligation Bonds is set at 0.0059%.

Section 2. The Tax Rate will be based on the estimated assessed values for all rolls (secured, unsecured, and utility) and will become a part of the FY 2022 property tax bill.

Section 3. This Tax Rate will result in estimated total collections of \$1,350,000 needed to make the March 1, 2022 and September 1, 2022 debt service payments on the outstanding General Obligation Bonds.

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





Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance Department

Subject: FY 2022 Tax Rate: Fund Debt Service on 2015 Refunding General Obligation Bonds (Measures G, S & I)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2022 tax rate funding the debt service on the 2015 consolidation of Measures G, S and I (General Obligation Bonds - Elections of 1992, 1996 and 2002) at 0.0135%.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended 0.0135% will result in estimated collections of \$3,100,000. This amount (along with existing funds on hand) is sufficient to make the debt service payments on March 1, 2022 and September 1, 2022.

CURRENT SITUATION AND ITS EFFECTS

The 0.0135% tax rate for FY 2022 being set by the City Council is based on the current debt service, the estimated FY 2022 assessed values for all rolls (secured, unsecured, and utility), a delinquency reserve of 5%, and the surplus remaining in the fund. Since Alameda County does not release final assessed value figures until early August, the City is using preliminary values. Staff is confident that the preliminary values will not be materially different from the County's final figure. The City must establish a tax rate that will be sufficient to make debt service payments even if there are unusual levels of delinquency. The tax rate in FY 2022 is a decrease in the rate charged in FY 2021.

Because all taxes collected from the general obligation levy will be deposited in a special fund, and collections not used to pay debt service for the FY 2022 bond year will be retained in the fund to pay future obligations, the tax impact of any over-collection will be credited against future debt service payments and the required levy.

It is recommended that the City Council authorize a FY 2022 tax rate of 0.0135% which will result in the following cost to the average homeowner during FY 2022, as compared to FY 2021:

Annual Tax		
Assessed Value	FY 2021 Tax	FY 2022 Tax
\$150,000	\$21.00	\$20.25
250,000	35.00	33.75
300,000	42.00	40.50
400,000	56.00	54.00
500,000	70.00	67.50
600,000	84.00	81.00
700,000	98.00	94.50
800,000	112.00	108.00
900,000	126.00	121.50
1,000,000	140.00	135.00

**ENVIRONMENTAL SUSTAINABILITY**

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

**BACKGROUND**

**Measure G**

On November 3, 1992, the voters of the City of Berkeley approved the incurring of bonded indebtedness for fire safety and seismic improvements to emergency facilities (Measure G). This indebtedness was not to exceed an aggregate principal amount of \$55,000,000. The Series A Bonds in the amount of \$8,000,000 were issued on June 1, 1993; Series B Bonds in the amount of \$14,000,000 were issued on July 25, 1995; and Series C bonds in the amount of \$10,500,000 were issued on July 1, 1997.

The indebtedness on the total bonds issued of \$32,500,000 is payable solely from the levy of an ad valorem tax against taxable property in the City. The proceeds of the bonds were used to pay for, among other things, “repairing and seismic retrofitting of existing fire stations, the Public Safety Building, which contains the City communication center, and the Emergency Operations Center (EOC).”

On November 1, 2002, the City issued \$17,865,000 in General Obligation refunding bonds to refund the 1993 Measure G (Series A) and 1995 Measure G (Series B) General Obligation bonds. In May 2007, the City issued \$4,340,000 in refunding bonds to refund the 1997 Measure G, (Series C) General Obligation bonds.

### Measure S

On November 5, 1996, the voters of the City of Berkeley approved incurring a total of \$49,000,000 bonded indebtedness to ensure the safety of its public and employees and to revitalize downtown.

The indebtedness is payable solely from the levy of an *ad valorem* tax against taxable property in the City. The proceeds were used to restore, expand and make the Main Library earthquake-safe and improve disabled access to it; to internally retrofit and increase disabled accessibility to Martin Luther King Jr., Civic Center Building; and to install landscaping, street improvements, street lighting, and other related capital improvements within the downtown area of Berkeley.

On June 4, 1997 Series A Bonds in the amount of \$10,000,000 were issued; on December 1, 1998 Series B Bonds in the amount of \$25,000,000 were issued; and on August 1, 1999 Series C Bonds in the amount of \$14,000,000 were issued. In May 2007, the City issued \$41,245,000 in refunding bonds to refund the 1997, 1998, and 1999 Measure S (Series A, B, and C) General Obligation bonds.

### Measure I

In November 2002, the residents of Berkeley voted for and approved Ballot Measure I, in the sum of \$7,200,000 of General Obligation Bonds to acquire property, if necessary, and to construct or rehabilitate a building for an animal shelter that meets the requirements of state law.

The indebtedness on the total bonds issued of \$7,200,000 is payable solely from the levy of an *ad valorem* tax against taxable property in the City. The proceeds of the bonds were used to acquire property, and to construct a building for an animal shelter that meets the requirements of state law.

The General Obligation Bonds in the amount of \$7,200,000 were issued on January 9, 2008.

All bonds were consolidated in a refinancing completed on July 15, 2015 which included the issuance of \$36,680,000 in general obligation refunding bonds.

The tax rate above reflects the debt service payments for the fiscal year.

### CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, (510) 981-7326

Attachments:  
1: Ordinance

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

SETTING THE FY 2022 TAX RATE FOR FUNDING THE DEBT SERVICE ON THE  
2015 REFUNDING GENERAL OBLIGATION BONDS

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

Section 1. The FY 2022 Tax Rate for the debt service on the 2015 Refunding General Obligation Bonds - Measures G, S and I (General Obligation Bonds - Elections of 1992, 1996 and 2002) at 0.0135%.

Section 2. The Tax Rate will be based on estimated assessed values for all rolls (secured, unsecured, and utility) and will become a part of the FY 2022 property tax bill.

Section 3. This Tax Rate will result in estimated total collections of \$3,100,000 needed to make the March 1, 2022 and September 1, 2022 debt service payments on Refunding General Obligation Bonds.

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



Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance Department  
 Subject: FY 2022 Tax Rate: Fund the Debt Service on the Affordable Housing  
 General Obligation Bonds (Measure O, November 2018 Election)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2022 tax rate funding the debt service on the Affordable Housing General Obligation Bonds (Measure O, November 2018) at 0.0088%.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended 0.0088% will result in estimated collections of \$2,000,000. This amount will be sufficient to make the debt service payments on the Series A Bonds with debt service due March 1, 2022 and September 1, 2022.

CURRENT SITUATION AND ITS EFFECTS

The 0.0088% tax rate for FY 2022 being set by the City Council is based on the debt service of the Series A Bonds, the estimated FY 2022 assessed values for all rolls (secured, unsecured and utility), a delinquency reserve of 5%, and the surplus remaining in the fund. Since Alameda County does not release final assessed value figures until early August, the City is using preliminary values. Staff is confident that the preliminary values will not be materially different from the County's final figure. The City must establish a tax rate that will be sufficient to make debt service payments even if there are unusual levels of delinquency.

Because all taxes collected from the general obligation levy will be deposited in a special fund, and collections not used to pay debt service for the FY 2022 bond year will be retained in the fund to pay future obligations, the tax impact of any over-collection will be credited against future debt service payments and the required levy.

It is recommended that the City Council authorize a FY 2022 tax rate of 0.0088% which will result in the following cost to the average homeowner during FY 2022:

Annual Tax		
Assessed Value	FY 2021 Tax	FY 2022 Tax
\$150,000	\$13.50	\$13.20
250,000	22.50	22.00
300,000	27.00	26.40
400,000	36.00	35.20
500,000	45.00	44.00
600,000	54.00	52.80
700,000	63.00	61.60
800,000	72.00	70.40
900,000	81.00	79.20
1,000,000	90.00	88.00

**ENVIRONMENTAL SUSTAINABILITY**

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

**BACKGROUND**

In November 2018, the residents of Berkeley voted for and approved Ballot Measure O, for the sum of \$135,000,000 of General Obligation Bonds to create and preserve affordable housing for low-income households, working families, and individuals including teachers, seniors, veterans, the homeless, and persons with disabilities.

The first series of bonds was issued in April 2020.

**CONTACT PERSON**

Henry Oyekanmi, Director, Finance Department, (510) 981-7326

**Attachments:**

- 1: Ordinance



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

SETTING THE FISCAL YEAR 2022 TAX RATE FOR FUNDING THE DEBT SERVICE ON THE AFFORDABLE HOUSING GENERAL OBLIGATION BONDS (MEASURE O, NOVEMBER 2018 ELECTION) IN THE CITY OF BERKELEY

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

Section 1. The FY 2022 tax rate for debt service on the General Obligation Bonds is set at 0.0088%.

Section 2. The Tax Rate will be based on the estimated assessed values for all rolls (secured, unsecured, and utility) and will become a part of the FY 2022 property tax bill.

Section 3. This Tax Rate will result in estimated total collections of \$2,000,000 needed to make the March 1, 2022 and September 1, 2022 debt service payments on the proposed General Obligation Bonds.

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





Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance Department  
 Subject: FY 2022 Tax Rate: Business License Tax on Large Non-Profits

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2022 tax rate for Business License Tax on large non-profits at \$0.7041 (70.41 cents) per square foot of improvements.

FISCAL IMPACTS OF RECOMMENDATION

The increase in the tax rate from \$0.6659 (66.59 cents) per square foot of improvements in FY 2021 to \$0.7041 (70.41 cents) per square foot of improvements in FY 2022, based on the Personal Income Growth (PIG) of 5.730% will result in estimated total collections of approximately \$514,008 from \$486,152 in FY 2021.

CURRENT SITUATION AND ITS EFFECTS

The non-profit organizations with over 120,000 square feet of business improvements were taxed at a rate of \$0.6659 (66.59 cents) in FY 2021, as approved by the voters with Measure S on November 2, 2010. That measure also approved the indexing of tax for inflation, based on the higher of Personal Income Growth or the Consumer Price Index in May. The PIG reported in May 9, 2021 was 5.730% while the CPI reported on May 12, 2021 by the U.S. Department of Labor's Bureau of Labor Statistics was 3.806%.

BACKGROUND

In 1994, the voters of California adopted Article XIII, Section 26 of the California Constitution, which prohibits local governments from taxing non-profit organizations based on their gross receipts. Prior to this date, the City's business license tax ordinance had imposed a gross receipts tax on non-profit organizations, which raised approximately \$250,000 per year. Article XIII, Section 26 does not prohibit local agencies from taxing non-profit organizations on bases other than gross receipts. On November 3, 1998, the voters approved Measure G with over 61% of the votes cast. Measure G amended the City's business license tax ordinance to impose a charge of \$0.51 (51 cents) on the square footage of business improvements over the first 120,000 square feet, and would be indexed for inflation, according to the cost of living in the immediate San Francisco Bay Area in May.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, (510) 981-7326

Attachments:

1: Ordinance

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

SETTING THE FY 2022 MUNICIPAL TAX RATE FOR THE CITY OF BERKELEY FOR  
BUSINESS LICENSE TAX ON LARGE NON-PROFITS

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

Section 1. The rate of tax for the FY 2022 business license tax on large non-profits is as follows:

\$0.7041 per square foot of improvements over 120,000 square feet

Section 2. This tax rate will result in estimated total collections of \$514,008.

Section 3. This Ordinance shall take effect and be in full force from and after its final passage.

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





Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance Department  
Abraham Roman, Interim Fire Chief, Fire Department

Subject: FY 2022 Tax Rate: Fund Firefighting, Emergency Medical Response and Wildfire Prevention (Measure FF)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2022 tax rate for funding Firefighting, Emergency Medical Response and Wildfire Prevention (Measure FF) in the City of Berkeley at an annual rate of \$0.1047 (10.47 cents) per square foot of improvements and \$0.15705 (15.705 cents) for the 18-month period from January 1, 2021 to June 30, 2022.

FISCAL IMPACTS OF RECOMMENDATION

The annual tax rate of \$0.1047 per square foot of improvements is projected to yield approximately \$12.75 million in revenues for an 18-month period of time. It is estimated that the tax will cost taxpayers the following amounts for FY 2021 and FY 2022.

FY 2021 and FY 2022 Taxpayer Assessments			
Square Feet	FY 2021	FY 2022	Total
	01/01/21 to 06/30/21 @ \$0.05235 (\$0.1047 x .5)	07/01/21 to 6/30/22 @ \$0.1047	01/01/21 to 06/30/22 @ \$0.15705
1,200	\$ 62.82	\$ 125.64	\$ 188.46
1,500	78.52	157.05	235.57
1,900	99.46	198.93	298.39
3,000	157.05	314.10	471.15
3,900	204.16	408.33	612.49
10,000	523.50	1,047.00	1,570.50

CURRENT SITUATION AND ITS EFFECTS

Measure FF, the special parcel tax for firefighting, emergency medical response and wildfire prevention, limits the annual tax rate to \$0.1047 per square foot of improvements, and requires an increase based on the greater of the increase in the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in California.

BACKGROUND

Measure FF would authorize a special parcel tax for the purpose of funding firefighter and emergency medical response, upgrades to the 9-1-1 dispatch system, hazard mitigation, and wildfire prevention and preparedness activities.

In 2008, voters passed Measure GG to stop fire stations from being closed and services from being reduced, in the context of a major economic downturn. Measure GG designated the Disaster and Fire Safety Commission a formal oversight role, the duties of which are replicated, with respect to Measure FF, through the passage of this Council item.

Now, with rising challenges from climate change and fires, bigger demands on our emergency services, and the worst economic downturn since the Great Depression, Measure FF was placed on the November 2020 ballot by a unanimous vote of the City Council and it was approved by voters, to provide funds to modernize the City's 9-1-1 dispatch system, upgrade equipment, hire additional paramedics, improve emergency alert systems and continue to clear fire fuels, among other things.

The effective date for the tax is January 1, 2021. As a result, the City will raise approximately \$4.25 million for FY 2021 (January 1, 2021 to June 30, 2021) and \$8.5 million for FY 2022.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, (510) 981-7326  
Abraham Roman, Interim Fire Chief, (510) 981-5500

Attachments:

1: Ordinance



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

SETTING THE FISCAL YEAR 2022 SPECIAL TAX RATE TO FUND FIREFIGHTING, EMERGENCY MEDICAL RESPONSE AND WILDFIRE PREVENTION (MEASURE FF) IN THE CITY OF BERKELEY

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

Section 1. The rate of tax for FY 2022 (to cover an 18-month period of time), to provide for the costs incurred for the firefighting, emergency medical response and wildfire prevention (Measure FF) is hereby fixed and apportioned upon the square feet of improvements as defined in the Ordinance as follows:

\$0.15705 per square foot of improvements for 18 months (\$0.1047 annually)

FY 2021 and FY 2022 Taxpayer Assessments			
Square Feet	FY 2021	FY 2022	Total
	01/01/21 to 06/30/21 @ \$0.05235 (\$0.1047 x .5)	07/01/21 to 6/30/22 @ \$0.1047	01/01/21 to 06/30/22 @ \$0.15705
1,200	\$ 62.82	\$ 125.64	\$ 188.46
1,500	78.52	157.05	235.57
1,900	99.46	198.93	298.39
3,000	157.05	314.10	471.15
3,900	204.16	408.33	612.49
10,000	523.50	1,047.00	1,570.50

Section 2. The cost to taxpayers during FY 2022 will be \$188.46 for a 1,200 square foot dwelling and \$471.15 for a 3,000 square foot dwelling.

Section 3. This tax rate will result in estimated total collections of \$12,750,000.

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





Office of the City Manager

CONSENT CALENDAR  
June 15, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance Department  
 Subject: FY 2022 Tax Rate: Fund the Maintenance of Parks, City Trees and Landscaping

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2022 tax rate for funding all improvements for the maintenance of parks, City trees, and landscaping in the City of Berkeley at \$0.1896 (18.96 cents) per square foot of improvements.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended \$0.1896 per square footage will result in estimated collections of \$15,320,468 for the Park Tax Fund. The increase in the tax rate of \$0.0103 per square foot will result in a \$19.57 annual increase for the citywide average 1,900 square foot home.

CURRENT SITUATION AND ITS EFFECTS

The FY 2021 tax of \$0.1793 is being adjusted by the Personal Income Growth of 5.730% as authorized on November 3, 2020, by voter approved Measure LL.

It is recommended that City Council authorize the levy of a special tax of \$0.1896 per square foot of all improvements in the City of Berkeley. The tax will result in a cost to taxpayers in the following average amounts during FY 2022, as compared with the amounts for FY 2021:

Square Feet	Annual Tax	
	FY 2022	FY 2021
1,200	\$227.52	\$215.16
1,500	284.40	268.95
1,900	360.24	340.67
3,000	568.80	537.90
3,900	739.44	699.27
10,000	1,896.00	1,793.00

BACKGROUND

On May 6, 1997, the voters of the City of Berkeley approved a special tax solely to provide funding for the direct cost of acquisition and maintenance of improvements related to parks and landscaping in the City of Berkeley. As a result of the requirements of State Proposition 218, this special tax replaced the annual revenue previously generated by the Citywide Landscape Assessment District.

On November 3, 2020, over 81% of Berkeley voters approved Measure LL to re-authorize the City, for a period of four (4) years through FY 2024, to spend the Parks Maintenance tax as approved by the voters.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, (510) 981-7326

Attachments:

1: Ordinance

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

SETTING THE FISCAL YEAR 2022 SPECIAL TAX RATE TO FUND MAINTENANCE  
OF PARKS, CITY TREES AND LANDSCAPING IN THE CITY OF BERKELEY

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

Section 1. The FY 2022 Tax Rate for the maintenance of parks, City trees and landscaping is set at \$0.1896 per square foot of taxable improvements.

Section 2. The cost to the taxpayer during FY 2022 will be \$227.52 for a 1,200 square foot home and \$568.80 for a 3,000 square foot home.

Section 3. This Tax Rate will result in estimated total collections of \$15,320,468.

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.





Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Tess Mayer, Director of Library Services  
 Henry Oyekanmi, Director of Finance  
 Subject: FY 2022 Special Tax Rate: Fund the Provision of Library Services

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2022 tax rate for funding the provision of Library Services in the City of Berkeley at \$0.2402 (24.02 cents) per square foot for dwelling units and \$0.3632 (36.32 cents) per square foot for industrial, commercial, and institutional buildings.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended \$0.2402 for dwelling units and \$0.3632 for industrial, commercial, and institutional buildings will result in estimated collections of \$21,704,603 for the Library Tax Fund. The increase in the tax rate of \$0.0130 for dwelling units and \$0.0197 for industrial, commercial, and institutional buildings will result in an increase of \$24.74 for the citywide average 1900 square foot dwelling and \$37.43 for all other property of similar size.

CURRENT SITUATION AND ITS EFFECTS

The FY 2022 tax of \$0.2402 for dwelling units and \$0.3632 for all other property are being adjusted by the per capita Personal Income Growth factor in California of 5.73%, as the voters approved the greater of that or the Consumer Price Index in the immediate San Francisco Bay Area of 3.806%. In addition, by adoption of BOLT Resolution: R21-95 on May 26, 2021, the Board of Library Trustees recommends that the City Council adjust the tax rate by 5.73%.

It is recommended that the City Council authorize the levy of a special tax of \$0.2402 per square foot for dwelling units and of \$0.3632 for all other property in the City of Berkeley. The tax will result in a cost to taxpayers in the following average amounts during FY 2022, as compared with amounts for FY 2021:

Square Feet	Annual Tax – Dwelling Units		Annual Tax – All Other Properties	
	FY22	FY21	FY22	FY21
1,200	\$288.24	\$272.68	\$435.84	\$412.26
1,500	360.30	340.85	544.80	515.32
1,900	456.38	431.75	690.08	652.74
3,000	720.60	681.71	1,089.60	1,030.64
3,900	936.78	886.22	1,416.48	1,339.83
10,000	2,402.00	2,272.36	3,632.00	3,435.47

**BACKGROUND**

The Central Library and neighborhood branch libraries received approximately 98% of their FY 2021 funding through a citywide special tax (referred to as the Library Relief Act of 1980) of \$0.2272 per square foot on all improvements to residential real property in the City of Berkeley, and \$0.3435 per square foot on all improvements to industrial, commercial, and institutional real property. The purpose of this voter-approved tax is to provide a stable revenue source to assure the provision of library services at the level which permits library operations six days a week at branch libraries, seven days a week at the Central Library, and which permits the purchase of library materials at levels which are commensurate with the libraries’ hours of service, staffing and patron needs.

On November 3, 2020, over 81% of Berkeley voters approved Measure LL to re-authorize the City, for a period of four (4) years through FY 2024, to spend the Library Services tax as approved by the voters.

**RATIONALE FOR RECOMMENDATION**

Adopting the per capita Personal Income Growth factor in California would contribute an incremental increase of approximately \$394,965 to projected FY 2022 revenue over that of the April Consumer Price Index in the immediate San Francisco Bay Area.

**ALTERNATIVE ACTIONS CONSIDERED**

The fiscal impact on the Library Tax Fund of adopting the April Consumer Price Index in the immediate San Francisco Bay Area of 3.806% instead of the per capita Personal Income Growth factor in California of 5.73% would be a reduction of \$394,965 in projected FY 2022 library tax receipts.

The fiscal impact on the Library Tax Fund of forgoing for a second consecutive fiscal year an adjustment to the fiscal year’s library tax rates instead of the per capita Personal Income Growth factor in California of 5.73% would be a reduction of \$1,176,273 in projected FY 2022 library tax receipts.

**CONTACT PERSON**

Henry Oyekanmi, Director of Finance, (510) 981-7326  
Tess Mayer, Director of Library Services, (510) 981-6195



FY 2022 Special Tax Rate:  
Fund the Provision of Library Services

CONSENT CALENDAR  
June 15, 2021

Attachments:  
1: Ordinance

ORDINANCE NO. -N.S.

SETTING THE FISCAL YEAR 2022 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 2022 Tax Rate to support usual and current expenses of operating library services is set at \$0.2402 per square foot for dwelling units and \$0.3632 per square foot for industrial, commercial and institutional buildings.

Section 2. The cost to taxpayers during FY 2022 will be \$360.30 for a 1,500 square foot dwelling and \$544.80 for all other property of similar size.

Section 3. This tax rate will result in estimated total collections of \$21,704,603.

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.



Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance Department

Subject: FY 2022 Tax Rate: Fund Emergency Services for the Severely Disabled (Measure E)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2022 tax rate for funding the provision of emergency services for the disabled at \$0.02378 (2.378 cents) per square foot of improvements.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended \$0.02378 will result in estimated collections of \$1,451,853 for the fund. The increase in the tax rate of \$0.0013 per square foot will result in a \$2.45 annual increase for the citywide average 1900 square foot home.

CURRENT SITUATION AND ITS EFFECTS

The FY 2021 tax of \$0.02249 is being adjusted by the Personal Income Growth of 5.730% (or \$0.0013) as the voters approved the greater of the Consumer Price Index in the immediate San Francisco Bay Area of 3.806% or Personal Income Growth increase in California of 5.73%

It is recommended that the City Council authorize the levy of a special tax of \$0.02378 per square foot of all improvements in the City of Berkeley. The tax will result in a cost to taxpayers in the following average amounts during Fiscal Year 2022, as compared with amounts for FY 2021:

Square Feet	Annual Tax	
	FY 2022	FY 2021
1,200	\$28.54	\$26.99
1,500	35.67	33.74
1,900	45.18	42.73
3,000	71.34	67.47
3,900	92.74	87.71
10,000	237.80	224.90

BACKGROUND

The Emergency Services for the Severely Disabled Tax (Measure E) was passed by the voters in November 1998. The tax is used to provide emergency services and incidental case management for severely physically disabled persons. The City Council is authorized to increase the tax rate by the greater of the Consumer Price Index in the immediate San Francisco Bay Area or Personal Income Growth in California.

On November 3, 2020, over 81% of Berkeley voters approved Measure LL to re-authorize the City, for a period of four (4) years through FY 2024, to spend the emergency services for the severely disabled tax.

ALTERNATIVE ACTIONS CONSIDERED

The City Council may consider maintaining the current tax rate of \$0.02249 with projected revenue of \$1,373,170 and no increase to property owners. Or, the City Council may consider increasing the tax rate by the Consumer Price Index in the immediate San Francisco Bay Area of 3.806% in California. This would result in projected revenue of \$1,425,433, and an increase of \$1.62 for the citywide average 1900 square foot home.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, (510) 981-7326

Attachments:

1: Ordinance

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

SETTING THE FISCAL YEAR 2022 SPECIAL TAX RATE TO FUND EMERGENCY SERVICES FOR THE SEVERELY DISABLED IN THE CITY OF BERKELEY

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

Section 1. The FY 2022 Tax Rate to fund emergency services for severely disabled persons is set at \$0.02378 per square feet of improvements.

Section 2. The cost to taxpayers during FY 2022 will be \$28.54 for a 1,200 square foot home and \$71.34 for a 3,000 square foot home.

Section 3. This tax rate will result in estimated total collections of \$1,451,853.

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





Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance Department

Subject: FY 2022 Tax Rate: Fund the Debt Service on the Infrastructure and Facilities General Obligation Bonds (Measure T1, November 2016 Election)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2022 tax rate funding the debt service on the Infrastructure and Facilities Improvements General Obligation Bonds (Measure T1, November 2016) at 0.0170%.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended 0.0170% will result in estimated collections of \$3,900,000. This amount will be sufficient to make the debt service payments on the outstanding general obligation bonds issued in 2017 and the proposed 2021 Series B Bonds with debt service on March 1, 2022 and September 1, 2022.

CURRENT SITUATION AND ITS EFFECTS

The 0.0170% tax rate for FY 2022 being set by the City Council is based on the current debt service of the Series A Bonds issued in September 2017 for \$35,000,000, and the proposed 2021 Series B Bonds for \$45,000,000, the estimated FY 2022 assessed values for all rolls (secured, unsecured and utility), a delinquency reserve of 5%, and the surplus remaining in the fund. Since Alameda County does not release final assessed value figures until early August, the City is using preliminary values. Staff is confident that the preliminary values will not be materially different from the County's final figure. The City must establish a tax rate that will be sufficient to make debt service payments even if there are unusual levels of delinquency. The tax rate in FY 2022 is an increase in the rate charged in FY 2021.

Because all taxes collected from the general obligation levy will be deposited in a special fund, and collections not used to pay debt service for the FY 2022 bond year will be retained in the fund to pay future obligations, the tax impact of any over-collection will be credited against future debt service payments and the required levy.

It is recommended that the City Council authorize a FY 2022 tax rate of 0.0170% which will result in the following cost to the average homeowner during FY 2022, as compared to FY 2021:

Annual Tax		
Assessed Value	FY 2021 Tax	FY 2022 Tax
\$150,000	\$24.00	\$25.50
250,000	40.00	42.50
300,000	48.00	51.00
400,000	64.00	68.00
500,000	80.00	85.000
600,000	96.00	102.00
700,000	112.00	119.00
800,000	128.00	136.00
900,000	144.00	153.00
1,000,000	160.00	170.00

**ENVIRONMENTAL SUSTAINABILITY**

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

**BACKGROUND**

In November 2016, the residents of Berkeley voted for and approved Ballot Measure T1, for the sum of \$100,000,000 of General Obligation Bonds to make infrastructure and facility improvements. The pace of financing and tax rate will be determined based on the overall growth of the City’s assessed value and the total outstanding general obligation bond debt service such that the total combined tax rate (for general obligation bond repayment will not exceed 0.0492% which represents the 10-year historical tax rate as of June 2016).

**CONTACT PERSON**

Henry Oyekanmi, Director, Finance Department, (510) 981-7326

**Attachments:**

- 1: Ordinance



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

SETTING THE FISCAL YEAR 2022 TAX RATE FOR FUNDING THE DEBT SERVICE ON THE INFRASTRUCTURE AND FACILITIES IMPROVEMENTS GENERAL OBLIGATION BONDS (MEASURE T1, NOVEMBER 2016 ELECTION) IN THE CITY OF BERKELEY

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

Section 1. The FY 2022 tax rate for debt service on the General Obligation Bonds is set at 0.0170%.

Section 2. The Tax Rate will be based on the estimated assessed values for all rolls (secured, unsecured, and utility) and will become a part of the FY 2022 property tax bill.

Section 3. This Tax Rate will result in estimated total collections of \$3,900,000 needed to make the March 1, 2022 and September 1, 2022 debt service payments on the proposed General Obligation Bonds.

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





Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance Department

Subject: FY 2022 Tax Rate: Fund the Debt Service on the Street and Watershed Improvements General Obligation Bonds (Measure M, November 2012 Election)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2022 tax rate funding the debt service on the Street and Integrated Watershed Improvements General Obligation Bonds (Measure M, November 2012) at 0.0077%.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended 0.0077% will result in estimated collections of \$1,750,000. This amount (along with existing funds on hand) is sufficient to make the debt service payments on March 1, 2022 and September 1, 2022.

CURRENT SITUATION AND ITS EFFECTS

The 0.0077% tax rate for FY 2022 being set by the City Council is based on the current debt service, the estimated FY 2022 assessed values for all rolls (secured, unsecured and utility), a delinquency reserve of 5%, and the surplus remaining in the fund. Since Alameda County does not release final assessed value figures until early August, the City is using preliminary values. Staff is confident that the preliminary values will not be materially different from the County's final figure. The City must establish a tax rate that will be sufficient to make debt service payments even if there are unusual levels of delinquency. The tax rate in FY 2022 is a decrease in the rate charged in FY 2021.

Because all taxes collected from the general obligation levy will be deposited in a special fund, and collections not used to pay debt service for the FY 2022 bond year will be retained in the fund to pay future obligations, the tax impact of any over-collection will be credited against future debt service payments and the required levy.

It is recommended that the City Council authorize a FY 2022 tax rate of 0.0077% which will result in the following cost to the average homeowner during FY 2022, as compared to FY 2021:

Annual Tax		
Assessed Value	FY 2021 Tax	FY 2022 Tax
\$150,000	\$12.00	\$11.55
250,000	20.00	19.25
300,000	24.00	23.10
400,000	32.00	30.80
500,000	40.00	38.50
600,000	48.00	46.20
700,000	56.00	53.90
800,000	64.00	61.60
900,000	72.00	69.30
1,000,000	80.00	77.00

**ENVIRONMENTAL SUSTAINABILITY**

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

**BACKGROUND**

In November 2012, the residents of Berkeley voted for and approved Ballot Measure M, for the sum of \$30,000,000 of General Obligation Bonds to accelerate street repaving and rehabilitation consistent with the 5-Year Street Rehabilitation Plan, integrating green infrastructure to the extent feasible. Green infrastructure includes but is not limited to: (a) surface level bio-retention measures (rain gardens, swales, bio-retention cells, permeable paving, etc.) within the parking strip, planter area of sidewalks, red zone curb-extensions, and in street medians as feasible; and (b) large underground storage pipes, which would fill during storm events and then discharge metered flows into the existing storm drain pipelines.

\$15,000,000 of the \$30,000,000 in authorized bonds were issued in 2014, and the remaining \$15,000,000 of bonds were issued in 2016. The tax rate above reflects the debt service payments for the fiscal year.

**CONTACT PERSON**

Henry Oyekanmi, Director, Finance Department, (510) 981-7326

Attachments:

1: Ordinance

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

SETTING THE FISCAL YEAR 2022 TAX RATE FOR FUNDING THE DEBT SERVICE ON THE STREET AND WATERSHED IMPROVEMENTS GENERAL OBLIGATION BONDS (MEASURE M, NOVEMBER 2012 ELECTION) IN THE CITY OF BERKELEY

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

Section 1. The FY 2022 tax rate for debt service on the General Obligation Bonds is set at 0.0077%.

Section 2. The Tax Rate will be based on the estimated assessed values for all rolls (secured, unsecured, and utility) and will become a part of the FY 2022 property tax bill.

Section 3. This Tax Rate will result in estimated total collections of \$1,750,000 needed to make the March 1, 2022 and September 1, 2022 debt service payments on the outstanding General Obligation Bonds.

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





Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance Department  
Abraham Roman, Interim Fire Chief, Fire Department

Subject: FY 2022 Tax Rate: Fund Fire Protection and Emergency Response and Preparedness (Measure GG)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2022 tax rate for funding Fire Protection and Emergency Response and Preparedness in the City of Berkeley at the rate of \$0.05818 (5.818 cents) per square foot of improvements for dwelling units and setting the rate for all other property at \$0.08804 (8.804 cents) per square foot of improvements.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended \$0.05818 per square foot of improvements for dwelling units and \$0.08804 per square foot of improvements. This will result in estimated collections of \$5,258,335 for the fund. The tax rate will result in no increase in the citywide average 1900 square foot dwelling and same for all other property from FY 2021.

CURRENT SITUATION AND ITS EFFECTS

The FY 2021 tax rates of \$0.05818 for dwelling units and \$0.08804 for all other property will not be adjusted by the per capita Personal Income Growth in California that was reported at 5.73% or the Consumer Price Index (CPI) increase in the immediate San Francisco Bay Area was reported at 3.806%. The voters approved increasing the Measure GG tax rate annually by up to the greater of the Consumer Price Index increase in the immediate San Francisco Bay Area or the per capita Personal Income Growth in California.

At their regular meeting on May 26, 2021, the Disaster and Fire Safety Commission voted to recommend opposing an increase the Measure GG tax rate assessment. Action: M/S (Couzin/Stein) Vote: Ayes: Couzin, Dean, Bradstreet, Degenkolb, Bedolla, Rader, Simmons, Stein; Noes- None; Absent- None; Abstain- None.

It is recommended that the City Council authorize the levy of a special tax of \$0.05818 per square foot for dwelling units and \$0.08804 for all other property in the City of

Berkeley. The tax will result in same cost to taxpayers in the following average amounts during Fiscal Year 2022, as compared with amounts for FY 2021, no increase:

**FY 2022**

<b>Square Feet</b>	<b>Dwelling Units</b>	<b>All Other Properties</b>
1,200	\$69.81	\$105.64
1,500	87.27	132.06
1,900	110.54	167.27
3,000	174.54	264.12
3,900	226.90	343.35
10,000	581.80	880.40

**FY 2021**

<b>Square Feet</b>	<b>Dwelling Units</b>	<b>All Other Properties</b>
1,200	\$69.81	\$105.64
1,500	87.27	132.06
1,900	110.54	167.27
3,000	174.54	264.12
3,900	226.90	343.35
10,000	581.80	880.40

**BACKGROUND**

In the November 2008 election, Berkeley voters approved Measure GG, which authorized the levying of a special tax. The tax proceeds will be used first to eliminate rotating closures of operating fire stations, and to provide advanced life support personnel (paramedics) and equipment on all first responder vehicles (ambulances, fire engines and ladder trucks). The funds would also be used to (1) hire a training officer to provide Emergency Medical Service training for first responders; (2) hire staff to conduct Community Emergency Response Training and other similar public disaster training and preparedness efforts and for neighborhood emergency preparedness caches; and (3) to acquire and maintain equipment to enhance emergency preparedness, including equipment to allow compatible radio communications throughout the City and with outside public safety agencies. On November 3, 2020, over 81% of Berkeley voters approved Measure LL to re-authorize the City, for a period of four (4) years through FY 2024, to spend the Fire Protection and Emergency Response and Preparedness tax.



ALTERNATE CONSIDERATIONS

The City Council may consider adjusting the current recommended tax rate of \$0.05818 per square foot

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, (510) 981-7326  
Abraham Roman, Interim Fire Chief, (510) 981-5500

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

SETTING THE FISCAL YEAR 2022 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 2022 Tax Rate for the Fire Protection and Emergency Response and Preparedness (Measure GG) is set at:

\$0.05818 per square foot of improvements for dwellings  
\$0.08804 per square foot of improvements for all other properties

Section 2. The cost to taxpayers during FY 2022 will be \$69.81 for a 1,200 square foot dwelling and \$174.54 for a 3,000 square foot dwelling.

Section 3. This tax rate will result in estimated total collections of \$5,258,335.

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.



Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance Department

Subject: FY 2022 Tax Rate: Fund the Provision of Emergency Medical Services (Paramedic Tax)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2022 tax rate for funding the provision of emergency medical services to Berkeley residents at \$0.0412 (4.12 cents) per square foot of improvements.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended \$0.0412 per square footage will result in estimated total collections of \$3,330,634 for the Emergency Medical Services fund. The increase in the tax rate of \$0.0015 per square foot will result in a \$2.85 annual increase for the citywide average 1900 square foot home.

CURRENT SITUATION AND ITS EFFECTS

The FY 2021 tax of \$.0397 is being adjusted by the increase in the Consumer Price Index in the immediate San Francisco Bay Area of 3.806%, as authorized by the voters on May 6, 1997.

It is recommended that the City Council authorize the levy of a special tax of \$0.0412 per square foot of all improvements in the City of Berkeley. The tax will result in a cost to taxpayers in the following average amounts during Fiscal Year 2022, as compared with amounts for FY 2021:

Square Feet	Annual Tax	
	FY 2022	FY 2021
1,200	\$49.44	\$47.64
1,500	61.80	59.55
1,900	78.28	75.43
3,000	123.60	119.10
3,900	160.68	154.83
10,000	412.00	397.00

BACKGROUND

On May 6, 1997, the voters authorized the City to replace the Emergency Medical Services Assessment District, with an Emergency Medical Services Tax. On November 3, 2020, over 81% of Berkeley voters approved Measure LL to re-authorize the City, for a period of four (4) years through FY 2024, to spend the Emergency Medical Services tax.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, (510) 981-7326

Attachments:

1: Ordinance

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

SETTING THE FISCAL YEAR 2022 SPECIAL TAX RATE TO FUND THE PROVISION  
OF EMERGENCY MEDICAL SERVICES FOR THE CITY OF BERKELEY

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

Section 1. The FY 2022 Tax Rate for Emergency Medical Services is set at \$0.0412 per square foot of taxable improvements.

Section 2. The cost to taxpayers during FY 2022 will be \$49.44 for a 1,200 square foot home and \$123.60 for a 3,000 square foot home.

Section 3. This tax rate will result in estimated total collections of \$3,330,634.

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





Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Subject: Designate the Line of Succession for the Director of Emergency Services

RECOMMENDATION

Adopt a Resolution approving the designated line of succession to the position of Director of Emergency Services in the event of an officially declared disaster, and rescinding Resolution No. 69, 245-N.S.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Municipal Code (BMC) requires that the City Manager, who is the Director of Emergency Services, designate the order of succession to that office in the event the director is unavailable to attend meetings and otherwise perform their duties during an emergency. Additionally, the City Council must approve the order of succession. (BMC Section 2.88.040)

BACKGROUND

On January 21, 2020 the City Council adopted Resolution No. 69,245-N.S. designating the line of succession to the position of Director of Emergency Services in the event the Director is unavailable to perform his or her duties during an emergency. Since that time, changes in personnel necessitate that a new designation be approved as set forth in the attached Resolution.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Abe Roman, Interim Fire Chief, (510) 981-3473

Attachments:

1: Resolution

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

APPROVING THE DESIGNATED LINE OF SUCCESSION TO THE DIRECTOR OF EMERGENCY SERVICES POSITION AND RESCINDING RESOLUTION NO. 69,245-N.S.

WHEREAS, Berkeley Municipal Code Section 2.88.030 designates the City Manager as the Director of Emergency Services; and

WHEREAS, Dee Williams-Ridley, in her position as City Manager, serves as the Director of Emergency Services; and

WHEREAS, pursuant to Berkeley Municipal Code Section 2.88.040, it is necessary to establish a line of succession for the Director of Emergency Services in the event that the Director is unavailable to attend meetings or otherwise perform his or her duties during an emergency.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following order of succession to the position of Director of Emergency Services in the event the Director is unavailable to attend meetings or otherwise perform his or her duties during an emergency is hereby confirmed and approved:

1. Paul Buddenhagen, Deputy City Manager
2. David White, Deputy City Manager
3. Abraham Roman, Interim Fire Chief
4. Jennifer Louis, Interim Chief of Police

BE IT FURTHER RESOLVED that Resolution No. 69,245-N.S. is hereby rescinded.





Office of the City Manager

CONSENT CALENDAR  
June 15, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services  
 Subject: Revenue Grant: Funding Support from Alameda County to Public Health Infrastructure Program

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to submit grant agreements to Alameda County, to accept the grant, and execute any resultant revenue agreements and amendments to conduct public health promotion, protection, and prevention services for the Public Health Infrastructure Program in the projected amount of \$32,080 for Fiscal Year (FY) 2022.

FISCAL IMPACTS OF RECOMMENDATION

The City of Berkeley will receive funds in the amount of \$32,080 from Alameda County for FY 2022 for the Public Health Infrastructure Program to support public health staffing: Alameda County Grants Fund Revenue 326-51-506-559-2053-000-000-433110- and Expenditure Codes 326-51-501-503-2053-000-451-- various. There is no local match required for this grant. However, the City does provide a significant amount of general fund to support public health programs. This contract has been entered into the citywide contract management system database.

Spending of grant funds is subject to Council approval of the budget for each fiscal year and the Annual Appropriations Ordinances. Depending on the timing of when the grant is officially awarded and the amounts are determined, the grant budget will be adjusted as part of a future amendment to the FY 2022 Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

As a local health jurisdiction, the City of Berkeley provides a broad range of public health programs and services to the community with the goals of addressing health inequities, promoting healthy environments and behaviors, protecting residents from disease, and preventing illness, disability, and premature death. Alameda County revenue is an important source of support for these City public health programs. There are no significant changes to this support in FY 2022.

The Public Health Infrastructure Program improves the core of the Public Health Officer Unit by conducting epidemiological surveillance as well as ongoing data management

and analysis to monitor health in the Berkeley community. Additionally, these funds are used in public health program evaluations; including assessment of health inequities and priorities identified in the Health Status Report.

BACKGROUND

The City of Berkeley receives funding from many sources annually to complete work related to improving the health of the community. As a local health jurisdiction, the City receives specific funding through Alameda County to meet core public health objectives. The Department of Health, Housing and Community Services is committed to providing services to the community to promote healthy environments and prevent the spread of disease.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

These funds provide necessary revenue to support vital services related to the City of Berkeley's mandates as a public health jurisdiction. They also support the Department's work to reduce health inequities in Berkeley and improve the health of our community.

ALTERNATIVE ACTIONS CONSIDERED

The Public Health Officer Unit assesses each funding source to ensure that it supports the City's mission and goals. The alternative action of not seeking any of these funding sources would be a significant reduction in public health services to the community.

CONTACT PERSON

Alexandra Deitch, Sr. Health Services Program Specialist, Office of the Director, HHCS  
(510) 981-5379

Attachments:

- 1: Resolution: Public Health Infrastructure Program

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

GRANT AGREEMENT WITH ALAMEDA COUNTY FOR THE PUBLIC HEALTH  
INFRASTRUCTURE PROGRAM FOR FISCAL YEAR 2022

WHEREAS, the City of Berkeley Public Health Officer Unit of the Department of Health, Housing and Community Services is committed to providing necessary support to analyze data, plan and disseminate information, and provide general public health education; and

WHEREAS, the City of Berkeley Department of Health, Housing and Community Services provides a broad range of public health services to the community; and

WHEREAS, the City of Berkeley Department of Health, Housing and Community Services works to promote healthy environments and behaviors, protect residents from disease, and prevent illness, disability, and premature death; and

WHEREAS, the City of Berkeley Public Health Officer Unit seeks to eliminate health inequities; and

WHEREAS, the City of Berkeley should seek outside funding wherever possible to fund vital health services.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to submit a grant agreement to Alameda County for fiscal year 2022 funding for the Public Health Infrastructure Program to accept the grant; execute any resultant revenue agreements and amendments; and implement the projects and appropriation of funding in the amount of \$32,080 for related expenses, subject to securing the grant. Alameda County Grant Fund Budget Codes (Revenue): 326-51-501-503-2053-000-433110- (Expenditure): 326-51-501-503-2053-000-451-- various. A record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
June 15, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing, and Community Services  
 Subject: Housing Trust Fund Predevelopment Loan Advance for Maudelle Miller Shirek Community (2001 Ashby Avenue)

RECOMMENDATION

Adopt a Resolution:

1. Authorizing an advance of \$1.5 million in Measure O funds to Maudelle Shirek L.P. for costs related to predevelopment of the Maudelle Miller Shirek Community, located at 2001 Ashby Avenue.
2. Clarifying that the City may execute the development contract for Maudelle Miller Shirek Community for the remaining Measure O funds prior to the second issuance of the bond.
3. Authorizing the City Manager to execute all original or amended documents or agreements to effectuate this action.

FISCAL IMPACTS OF RECOMMENDATION

On December 10, 2019, City Council reserved \$15.432 million in Measure O Bond funds for Maudelle Miller Shirek Community with Resolution 69,231-N.S. This action would not change the amount of the existing reservation, but would allow the City to disburse up to \$1.5 million of the reserved funds to support predevelopment activities. There are sufficient funds available from the first issuance of Measure O to cover this advance. This action will also allow the City to execute the development loan agreement for the project's remaining Measure O reservation prior to the second issuance of the bond, since funds will be available from the second issuance by the time the project is ready to draw them.

CURRENT SITUATION AND ITS EFFECTS

In March 2021, Resources for Community Development (RCD) requested that the City amend its existing predevelopment loan to advance \$1.5 million of its Measure O reservation to support predevelopment activities. Maudelle Shirek, L.P. is an affiliate of RCD, and is the borrower in the City's existing predevelopment loan contract and future development contract. Council's December 2019 funding reservation for Maudelle Miller

Shirek Community was conditioned on RCD securing entitlements and financing within thirty-six months. RCD secured its entitlements, and secured funding from the following state programs: Infill Infrastructure Grant, Affordable Housing and Sustainable Communities, and No Place Like Home. The nonprofit will apply for 4% tax credits and a tax-exempt bond in May 2021, and if successful will be in a position to start construction in early 2022. RCD continues to accrue predevelopment costs for the project, including design, environmental review, and permitting costs. RCD could get a bank loan to cover costs in the short term, but a private loan will have a higher interest rate than a City loan, and will add to the overall costs of the project.

The December 2019 reservation includes Measure O bond funds from the second issuance, which is expected to be sold around April 2022. While RCD understands that City funds coming from the second issuance will not be available for disbursement until at least that time, RCD has requested that the City execute its development loan along with the project's other construction financing, around February 2022. Other development lenders, including banks and the State, expect that all funding needed during the construction period be in contract at construction start.

During construction, Housing Trust Fund borrowers draw funds each month for costs incurred during that period. Funds are not all disbursed at the start. The City will include specific language in its development loan regarding the timing of the Measure O funds. RCD can structure its financing so the City funds aren't needed until later in the construction phase.

Supporting Maudelle Miller Shirek Community with additional predevelopment funding is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

#### BACKGROUND

RCD applied for funding through the 2019 Housing Trust Fund Request for Proposals. The project will have 87 units of affordable housing, for households with incomes from 20-80% of the area median income. Twelve units will be reserved for formerly homeless households.

#### ENVIRONMENTAL SUSTAINABILITY

RCD intends to construct Maudelle Miller Shirek Community to third-party green building standards, and will seek GreenPoint Gold certification.

#### RATIONALE FOR RECOMMENDATION

Maudelle Miller Shirek Community meets local needs and priorities by adding 87 new units of affordable housing to the City's inventory. The City loan has a lower interest rate than a conventional predevelopment loan, and will reduce carrying costs as RCD secures the project's remaining financing.

ALTERNATIVE ACTIONS CONSIDERED

Predevelopment loans are generally a higher risk type of loan than development loans since there are more outstanding issues to address during this time period. RCD's capacity and experience, and the project's land use entitlements and funding awards mitigate the risks inherent in the larger advance requested. If the City's funds are not available to support predevelopment costs, RCD will have higher carrying costs which will add to the overall cost to develop the project.

CONTACT PERSON

Jenny Wyant, Community Development Project Coordinator, HHCS, (510) 981-5228

Attachments:

1: Resolution

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

HOUSING TRUST FUND PREDEVELOPMENT LOAN ADVANCE FOR MAUELLE MILLER SHIREK COMMUNITY (2001 ASHBY AVENUE)

WHEREAS, the City Council established a Housing Trust Fund (HTF) program to assist in the development and expansion of housing affordable to low- and moderate-income persons who either work or reside within the City of Berkeley, and authorized the City Manager to implement the HTF program; and

WHEREAS, there is a great need for affordable and special needs housing in the City of Berkeley as stated in the General Plan Housing Element and the City of Berkeley's Consolidated Plan; and

WHEREAS, on November 6, 2018, Berkeley voters passed Measure O, a \$135 million bond measure to support the development and preservation of affordable housing; and

WHEREAS, on June 11, 2019 the City Council approved issuing a Request for Proposals (RFP) through the HTF program to allocate the first issuance of Measure O bond funds; and

WHEREAS Resources for Community Development (RCD) submitted a proposal through the RFP requesting \$15.432 million in City funds for the development of Maudelle Miller Shirek Community (2001 Ashby Avenue); and

WHEREAS, on December 10, 2019, the City Council reserved \$15.432 million to Maudelle Miller Shirek Community, conditioned on RCD securing all entitlements and project funding within three years of the reservation; and

WHEREAS, RCD secured the project entitlements and is in the process of securing the remaining project financing, and if successful, may be in a position to start construction of Maudelle Miller Shirek Community in early 2022; and

WHEREAS, RCD expects to close its construction financing, including the City development loan, around February 2022; and

WHEREAS, the second issuance of the Measure O bond is currently planned for April 2022; and

WHEREAS, RCD (through its affiliate Maudelle Shirek, L.P.) has an existing predevelopment loan for Maudelle Miller Shirek Community; and

WHEREAS, in March 2021, RCD requested that the City consider an advance of \$1.5 million of its development reservation for Maudelle Miller Shirek Community to be added to its predevelopment loan; and



June 15, 2021

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council authorizes an advance of \$1.5 million to Maudelle Shirek LP to support predevelopment costs for Maudelle Miller Shirek Community.

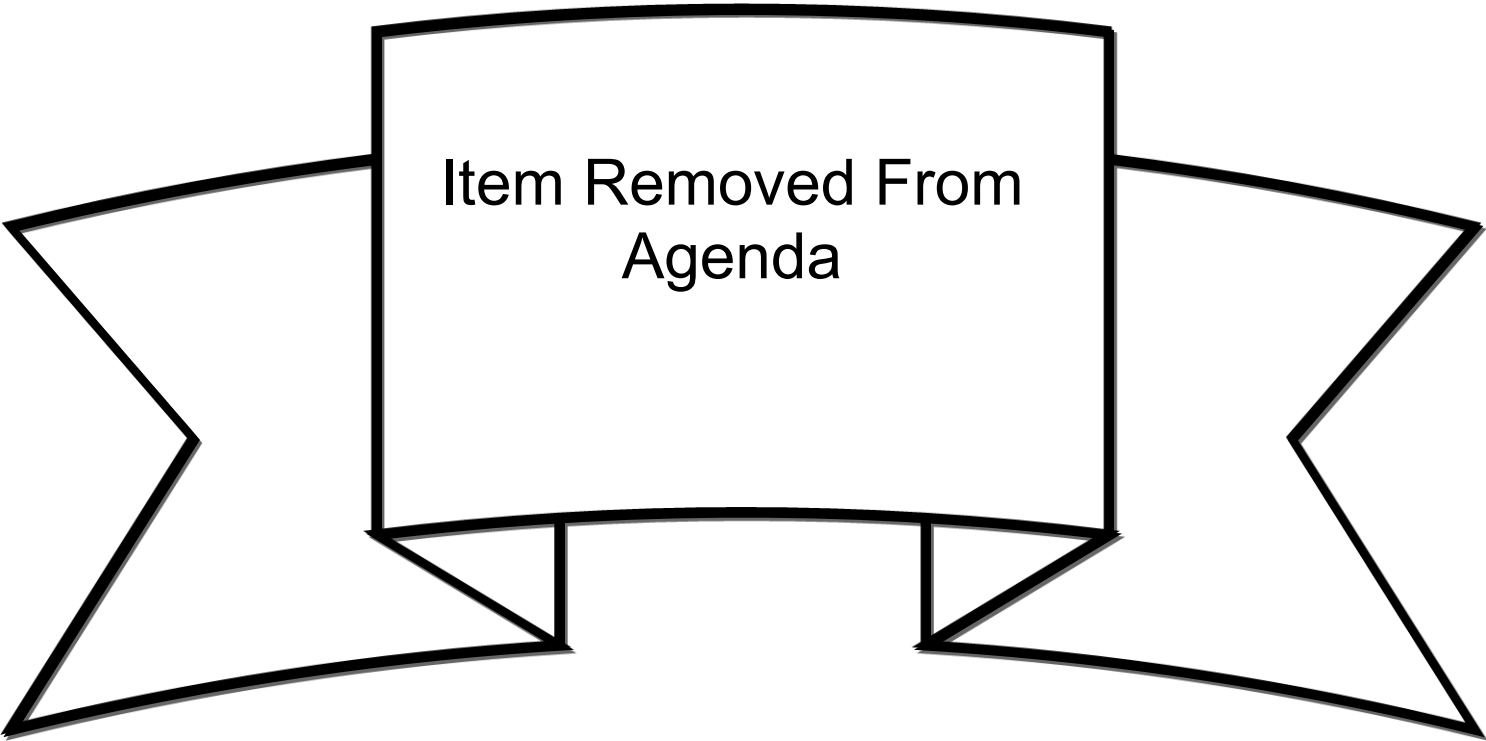
BE IT FURTHER RESOLVED that the City may execute the development loan for Maudelle Miller Shirek Community in advance of the second issuance of Measure O bond funds, with the understanding that a portion of the City funds will not be available for disbursement until after that issuance.

BE IT FURTHER RESOLVED that the funding reservation is conditioned upon the completion of the environmental review process, except as authorized by 24 CFR, Part 58, and that should HOME and/or CDBG funds constitute a portion of the funding for the project, a final commitment of HOME and/or CDBG funds shall occur only upon the satisfactory completion of the appropriate level of environmental review and also upon the receipt of approval of the request for release of funds and related certification from the U.S. Department of Housing and Urban Development, when applicable. The funding reservation for a HOME and/or CDBG funded project is conditioned upon the City of Berkeley's determination to proceed with, modify, or cancel the project based on the results of subsequent environmental review under the National Environmental Policy Act.

BE IT FURTHER RESOLVED that the making of the loan shall be contingent on and subject to such other appropriate terms and conditions as the City Manager or her designee may establish.

BE IT FURTHER RESOLVED the City Manager, or her designee, is hereby authorized to execute all original or amended documents or agreements to effectuate this action; a signed copy of said documents, agreements and any amendments will be kept on file in the Office of City Clerk.





Item Removed From  
Agenda

This item has been removed from the agenda by the City Manager.

If you have questions regarding this report, please contact the person noted on the agenda.

**City Clerk Department**

2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**The City of Berkeley, City Council's Website**

<http://www.cityofberkeley.info/citycouncil/>





Office of the City Manager

CONSENT CALENDAR  
June 15, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing & Community Services  
 Subject: Revenue Grant Agreement: Funding Support from the State of California for the Tuberculosis Program

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to submit grant agreements to the State of California, to accept the grant, and execute any resultant revenue agreements and amendments to conduct public health promotion, protection, and prevention services for the Tuberculosis Control Program in the projected amount of \$14,000 for Fiscal Year (FY) 2022.

FISCAL IMPACTS OF RECOMMENDATION

The City of Berkeley will receive funds in the estimated amount of \$14,000 from the State of California for FY 2022 for the Tuberculosis Control Program. There is no match required and this contract is expected to be for \$14,000 in FY 2022. The State mechanism for distribution of Tuberculosis Control funding is dependent upon the number and complexity of active tuberculosis cases and may be significantly different from anticipated levels if there are fewer or more qualifying cases.

Spending of all referenced grant funds is subject to Council approval of the budget for each fiscal year and the Annual Appropriations Ordinances. Depending on the timing of when grants are officially awarded and the amounts are determined, the grant budgets will be adjusted as part of a future amendment to the FY 2022 Annual Appropriations Ordinance.

The grant award will be deposited and expensed from the Health (General) Fund. (Revenue): 312-51-501-503-2077-000-000-432110 and (Expense): 312-51-501-503-2077-000-451- various.

CURRENT SITUATION AND ITS EFFECTS

As a local health jurisdiction, the City of Berkeley provides a broad range of public health program and services to the community, with the goals of addressing health inequities, promoting healthy environments and behaviors, protecting residents from disease, and preventing illness, disability, and premature death.

### BACKGROUND

The City of Berkeley receives funding from many sources annually to complete work related to improving the health of the community. As a local health jurisdiction, the City is entitled to specific State funding to meet core public health objectives. The Public Health Officer Unit is committed to providing essential services to the community to prevent the spread of disease and to promote healthy environments.

The Tuberculosis Control Program of the Communicable Disease Prevention and Control Program conducts public health tuberculosis control and prevention activities and provides related services such as providing food, shelter, and incentives to enhance treatment adherence. The overall goal of this program is to reduce morbidity and mortality of Tuberculosis by increasing compliance and breaking the chain of transmission.

### ENVIRONMENTAL SUSTAINABILITY

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

### RATIONALE FOR RECOMMENDATION

These funds support vital services related to our mandates as a public health jurisdiction and local initiatives designed to address health inequities in Berkeley and improve the health of Berkeley residents. These non-competitive grants support the Department's mission and provide the City with funding to continue working to protect and improve the health of the community.

### ALTERNATIVE ACTIONS CONSIDERED

The Public Health Officer Unit assesses each funding source to ensure that it supports the City's mission and goals. The alternative action of not seeking any of these funding sources would be a significant reduction in public health services to the community.

### CONTACT PERSON

James Allard, Supervising Public Health Nurse, HHCS, (510) 981-5377

### Attachments:

1. Resolution: Tuberculosis Control Program

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

GRANT AGREEMENT: STATE OF CALIFORNIA FOR THE TUBERCULOSIS CONTROL PROGRAM FOR FISCAL YEAR 2022

WHEREAS, the City of Berkeley Department of Health, Housing & Community Services is committed to conducting public health tuberculosis control and prevention activities and providing related services to ensure adherence to State and Federal standards; and

WHEREAS, the City of Berkeley Department of Health, Housing & Community Services is committed to protecting residents of Berkeley from tuberculosis especially unidentified and untreated tuberculosis infections and disease; and

WHEREAS, the City of Berkeley Department of Health, Housing & Community Services provides a broad range of needed public health program services to the community; and

WHEREAS, the City of Berkeley Department of Health, Housing & Community Services works to promote healthy environments and behaviors, protect residents from disease, and prevent illness, disability, and premature death; and

WHEREAS, the City of Berkeley Department of Health, Housing & Community Services seeks to eliminate health inequities; and

WHEREAS, the City of Berkeley should seek outside funding wherever possible to fund vital public health services.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to submit a grant agreement to the State of California for funding for fiscal year 2022 for the Tuberculosis Control Program: to conduct public health tuberculosis control and prevention activities and provide related services; to accept the grant; execute any resultant revenue agreements and amendments; and implement the projects and appropriation of funding in the estimated amount of \$14,000 for related expenses, subject to securing the grant. Funds will be deposited and expensed from the Health (General) Fund. (Revenue): 312-51-501-503-2077-000-000-432110 - (Expenditure) 312-51-501-503-2077-000-451- various. A record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.







Office of the City Manager

CONSENT CALENDAR  
June 15, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services  
 Subject: Revenue Contract: Community Services Block Grant Discretionary Funding  
 for Contract Number 21F-4403 to Provide Services for Low-Income  
 People

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to:

1. Accept the Community Services Block Grant (CSBG) Contract Number 21F-4403 for the amount of \$28,250 to provide services for low-income people for the period June 1, 2021 through May 31, 2022, and
2. Execute one or more expenditure contracts totaling \$28,250 assistance and services for homeless households, including flexible funding for rental assistance, move-in costs for clients assisted with rental assistance, hygiene services and supports such as portable toilets and handwashing stations or shower and laundry services, supplies for unhoused residents distributed by outreach teams, and/or other COVID-19-related services for low-income individuals as needed.

FISCAL IMPACTS OF RECOMMENDATION

Berkeley's Community Services Block Grant (CSBG) received additional discretionary funding for the period June 1, 2021 through May 31, 2022 in the amount of \$28,250. The CSBG allocation amount is included in the City's anti-poverty Community Action Fund and supports oversight and management of anti-poverty funds within the Health, Housing and Community Services Department. These discretionary funds are recommended to be used for assistance and services for homeless households, including flexible funding for rental assistance, move-in costs for clients assisted with rental assistance, hygiene services and supports such as portable toilets and handwashing stations or shower and laundry services, supplies for unhoused residents distributed by outreach teams, and/or other COVID-19-related services for low-income individuals as needed.

### CURRENT SITUATION AND ITS EFFECTS

On January 19, 2021 City Council authorized the City Manager and her designee to execute CSBG Contract Number 21F-4001 for the amount of \$275,106 (Resolution No. 69,686-N.S.). On March 16, 2021, the State Department of Community Services and Development (CSD) issued a letter, stating that the City will receive additional discretionary funding in the amount of \$28,250 as a separate contract. The City Manager recommends that these discretionary funds be used for assistance and services for homeless households, including flexible funding for rental assistance, move-in costs for clients assisted with rental assistance, hygiene services and supports such as portable toilets and handwashing stations or shower and laundry services, supplies for unhoused residents distributed by outreach teams, and/or other COVID-19-related services for low-income individuals as needed

### ***Human Welfare and Community Action Commission Action***

The Human Welfare and Community Action Commission (HWCAC) acts as the tripartite advisory Board for CSBG funding. As such, it is responsible for reviewing performance of funded programs, reviewing compliance with the implementation of the community action program, and advising Council on CSBG funding decisions. The Berkeley City Council is responsible for all final CSBG funding decisions. City staff shared the recommendation for the use of the additional funds with the HWCAC at its April 21, 2021 meeting. The HWCAC discussed the City Manager recommendation, and agreed with the recommendation that the discretionary funds be used to fund assistance and services for homeless households, including flexible funding for rental assistance, move-in costs for clients assisted with rental assistance, hygiene services and supports such as portable toilets and handwashing stations or shower and laundry services, supplies for unhoused residents distributed by outreach teams, and/or other COVID-19-related services for low-income individuals as needed. This motion passed (M/S/C: Kohn/Dunner. Ayes: Sood, Kohn, Omodele, Bookstein, Behm-Steinberg, Yun, Romo, Sim, Pelley, Hill, Dunner. Noes: None. Abstain: Omodele, Behm-Steinberg. Absent: None).

### BACKGROUND

The City of Berkeley is a Community Action Agency (CAA) and therefore receives federal Community Services Block Grant funds (CSBG) to support anti-poverty programs. CSBG funds are part of the federal Department of Health and Human Services budget passed through the state to local CAAs. Historically, the City of Berkeley has awarded Community Services Block Grant funds to community service programs.

### ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The Community Services Block Grant is necessary to support the provision of services for residents living in poverty in Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered as rejecting CSBG funding would result in reduced funding for services to low-income Berkeley residents.

CONTACT PERSON

Mary-Claire Katz, Associate Management Analyst, HHCS, (510) 981-5414

Attachments:

1: Resolution

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

DISCRETIONARY REVENUE CONTRACT: 2021 COMMUNITY SERVICES BLOCK GRANT (CSBG)

WHEREAS, the City of Berkeley is a Community Action Agency and receives CSBG funds as the Berkeley Community Action Agency to support anti-poverty programs; and

WHEREAS, the Human Welfare and Community Action Commission (HWCAC) acts as an advisory tri-partite Board to the Council providing public participation in the governing process; and

WHEREAS, at the April 21, 2021 HWCAC meeting a motion was passed recommending that the City accept the Community Service Block Grant Funds; and

WHEREAS, this CSBG revenue contract Number 21F-4403 covers of the period June 1, 2021 through May 31, 2022 for a contract amount of \$28,250; and

WHEREAS, the funds have historically been used to support anti-poverty services and to support City of Berkeley oversight and management of anti-poverty programs.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to accept Community Service Block Grant Contract Number 21F-4403 for the amount of \$28,250, and execute any resultant agreements and amendments including amendments that may increase the contract amount or change the contract period to provide low-income services for the time period June 1, 2021 through May 31, 2022.

BE IT FURTHER RESOLVED that the City Manager or her designee is authorized to identify the service provider(s), and execute new or amend any contract(s) with said service provider(s), for assistance and services for homeless households, including flexible funding for rental assistance, move-in costs for clients assisted with rental assistance, hygiene services and supports such as portable toilets and handwashing stations or shower and laundry services, supplies for unhoused residents distributed by outreach teams, and/or other COVID-19-related services for low-income individuals as needed in accordance with CSBG guidelines. A record signature copy of said agreement and any amendments shall be on file in the office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Director of Human Resources

Subject: Contract No. 32100044 Amendment: Renne Public Law Group LLP for Chief Labor Negotiator Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32100044 increasing the contract amount by \$100,000 with Renne Public Law Group LLP for Chief Labor Negotiator services, for a revised total contract amount not to exceed \$150,000.

FINANCIAL IMPLICATIONS

The contract amendment with Renne Public Law Group LLP for Chief Labor Negotiator services will add \$100,000 to the existing contract through end of the year 2021. Funding for the proposed amendment is available in the Fiscal Year budget under the General Fund for Human Resources. Funding for this contract amendment will come from the approved carryover adjustment and appropriation of \$470,000 for ongoing labor negotiations in the First Annual Appropriations Ordinance (AAO#1) Amendment for FY 2021.

Current Contract Amount	\$50,000
Proposed Increase (this amendment)	\$100,000
<b>Total New Contract Amount</b>	<b>\$150,000</b>

CURRENT SITUATION AND ITS EFFECTS

Under the direction of the City Council and the City Manager, the Human Resources Department is responsible for labor relations activities including serving as the City's Chief Spokesperson for collective bargaining, preparing contract language, researching and analyzing union proposals, analyzing survey data, costing proposals, and preparing presentations to the City Council. The City Attorney's Office provides consultation to the Human Resources Department in the collective bargaining process. Staff negotiates successor Memoranda of Understanding / Memorandum Agreements (MOU/MA) with the labor organizations pursuant to the labor-management provisions of the Meyers-Milius Brown Act. There are seven (7) labor organizations representing the majority of City staff:

Labor Organization	Term of MOU
Service Employees International Union, Local 1021 Maintenance and Clerical Chapters	June 2020 – June 2021
Service Employees International Union, Local 1021 Community Services & Part-Time Recreation Leaders Association	June 2020 – June 2021
International Brotherhood of Electrical Workers, Local 1245	October 2018 – June 2020
Berkeley Police Association	June 2020 – June 2021
Berkeley Fire Fighters Association Local 1227 I.A.F.F.	July 2020 – June 2021
Berkeley Chief Fire Officers Association Local 1227 I.A.F.F.	June 2020 – June 2021
Public Employees Union Local 1	October 2018 – June 2020

Due to workload and staffing changes in the Human Resources Department, the City entered into contract with the law firm of Renne Public Law Group for the services of Jon Holtzman, an experienced labor negotiator with various other local public agencies

**BACKGROUND**

Renne Public Law Group LLP was selected through a competitive bidding process. Since March 2020, Mr. Holtzman has served as Lead Negotiator for the City with Berkeley Police Association and legal support to the Police Charter Amendment. His services include meeting with the City Manager and other staff to analyze and prepare the City's proposals and to analyze union proposals. In addition, Mr. Holtzman will meet in closed session with the Mayor and Council. Mr. Holtzman is an effective negotiator and established good professional relationships with both labor and management representatives and was instrumental in negotiating a fair and equitable agreement with Berkeley Police Association.

Currently, Renne Public Law Group LLP's contract with the City expires on June 30, 2024 and is close to reaching the total limit of \$50,000. This contract amendment will allow the City to continue to utilize Mr. Holtzman's services as Lead Negotiator in MOU /MA negotiations with Berkeley Police Association throughout the 2021 negotiations period.

**ENVIRONMENTAL SUSTAINABILITY**

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

**RATIONALE FOR RECOMMENDATION**

Renne Public Law Group, LLP offers the City a professional and cost-effective solution to the City's labor relations requirements.

ALTERNATIVE ACTIONS CONSIDERED

Conduct collective bargaining with existing staff, which would negatively impact the Human Resources Department's ability to meet other service demands given that all of the City's labor contracts expire at the same time.

CONTACT PERSON

LaTanya Bellow, Director of Human Resources, (510) 981-6807

Attachment:

1: Resolution

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

CONTRACT NO. 32100044 AMENDMENT: RENNE PUBLIC LAW GROUP LLP FOR  
CHIEF LABOR NEGOTIATOR SERVICES

WHEREAS, the City is required by law to meet and confer in good faith with labor organizations representing City staff in an attempt to reach agreement on successor Memoranda of Understanding; and

WHEREAS, on October 20, 2020, the City entered into a contract with Rene Public Law Group LLP (Contract No. 32100044) for attorney Jon Holtzman to perform Chief Labor Negotiator services in the City's negotiations with the Berkeley Police Association; and

WHEREAS, Rene Public Law Group LLP was selected through a competitive bidding process; and

WHEREAS, Mr. John Holtzman has been the City's Chief Labor Negotiator since the City and Berkeley Police Association began meet and confer and as legal support to the Police Charter Amendment March 2020; and

WHEREAS, the City is close to reaching its contract limit of \$50,000 and unless the contract amount is increased, the City would be without the services of a Chief Labor Negotiator; and

WHEREAS, funding for this amendment is available in the current year budget in budget code General Fund for Human Resources Personnel 011-34-343-000-0000-000-412-612990.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that City Manager is authorized to execute an amendment to Contract No. 32100044 with Renne Public Law Group LLP for Chief Labor Negotiator services and to increase the amount by \$100,000, for a total not to exceed \$150,000. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
June 15, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Director of Human Resources

Subject: Contract No. 10851 Amendment: Bryce Consulting, Inc. for Professional Classification Studies, Compensation Surveys and Desk Audits

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10851 increasing contract amount by \$53,000 with Bryce Consulting, Inc. for Professional Classification Studies, Compensation Surveys and Desk Audit services, for a revised total contract amount not to exceed \$102,999 through December 31, 2023.

FINANCIAL IMPLICATIONS

The contract amendment with Bryce Consulting, Inc. for Professional Classification Studies, Compensation Surveys and Desk Audit Services will add \$53,000 to the existing contract through end of the year 2023. Funding for the proposed amendment is available in the Fiscal Year 2021 Human Resources Department General Fund budget. Funding for this contract amendment will come from the approved carryover adjustment and appropriation of \$102,443 for Class and Compensation Studies for Labor Negotiations in the First Annual Appropriations Ordinance (AAO#1) Amendment to the FY 2021.

Current Contract Amount	\$49,999
Proposed Increase (this amendment)	\$53,000
<b>Total New Contract Amount</b>	<b>\$102,999</b>

CURRENT SITUATION AND ITS EFFECTS

Under the direction of the City Council and the City Manager, the Human Resources Department is responsible for labor relations activities including conducting a full-range of Classification Studies, Compensation Surveys, and Desk Audit Services including development of classification concepts and structures, job audits, allocation of positions in the appropriate classification, and the development or revision of classifications specifications. The consultant has also assisted with class and compensation studies for Police Accountability Director, City Attorney, and an audit of resources expended on labor.

BACKGROUND

Bryce Consulting, Inc. is a human resource consulting firm with twenty-five years of experience in providing management consulting services to local government clients. They offer a comprehensive range of human resources services, which include classification and compensation studies, organizational and management review and analysis, workforce planning, as well as a variety of other services utilized by government agencies.

Over the past several years, the City has contracted with Bryce Consulting, Inc. to complete its compensation surveys which are used for labor negotiations, assist with data gathering for succession planning, classification studies, as well as other services related to human resources.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

Over the years, Bryce Consulting, Inc. has demonstrated a high level of competence and professional quality in their field and in their service to the City. In addition, the firm has institutional knowledge of the City's organizational structure, as well as those of many comparable agencies in the region, which assures the City remains competitive in the labor market.

Bryce Consulting, Inc. offers the City a professional and cost-effective solution to the City's classification studies, compensation surveys, desk audit requirements, as well as a variety of other services utilized by government agencies. These services are mandated under the collective bargaining agreements between the City and the employee organizations.

#### ALTERNATIVE ACTIONS CONSIDERED

Conduct classification studies, compensation surveys, desk audit requirements with existing staff, which would negatively impact the Human Resources Department's ability to meet other service demands given that all of the City's labor contracts expire at the same time.

#### CONTACT PERSON

LaTanya Bellow, Director of Human Resources, (510) 981-6807

Attachment:

1: Resolution

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

CONTRACT NO. 10851 AMENDMENT: BRYCE CONSULTING, INC. FOR  
PROFESSIONAL CLASSIFICATION STUDIES, COMPENSATION SURVEYS AND  
DESK AUDITS

WHEREAS, the City is mandated under the collective bargaining agreements between the City and the employee organizations to conduct classification studies, compensation surveys and desk audits in accordance with labor organizations memorandums of understand in attempt to provide accurate negotiations data; and

WHEREAS, on March 15, 2018, the City entered into a contract with Bryce Consulting, Inc. (Contract No. 10851) for Bryce Consulting to perform professional classification studies, compensation surveys and desk audits; and

WHEREAS, Bryce Consulting, Inc. is a human resource consulting firm with twenty-five years of experience in providing management consulting services to local government clients; and

WHEREAS, the City is close to reaching its contract limit of \$49,999 and unless the contract amount is increased, the City would be without the professional classification studies, compensation surveys and desk audits; and

WHEREAS, funding for this amendment is available in the current year Human Resources Department General Fund budget.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that City Manager is authorized to execute an amendment to Contract No. 10851 with Bryce Consulting, Inc. for professional classification studies, compensation surveys and desk audits and to increase the amount by \$53,000, for a total not to exceed \$102,999. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Director of Human Resources

Subject: Contract No. 9649D Amendment: Sloan Sakai, LLP for Chief Labor Negotiator Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9649D increasing the contract amount by \$215,000 with Sloan Sakai, LLP for Chief Labor Negotiator services, for a revised total contract amount not to exceed \$665,000.

FINANCIAL IMPLICATIONS

The contract amendment with Sloan Sakai, LLP for Chief Labor Negotiator services will add \$215,000 to the existing contract through end of the year 2021. Funding for the proposed amendment is available in the Fiscal Year budget under the General Fund for Human Resources Personnel. Funding for this contract amendment will come from the approved carryover adjustment and appropriation of \$470,000 for ongoing labor negotiations in the First Annual Appropriations Ordinance (AAO#1) Amendment for FY 2021.

Current Contract Amount	\$450,000
Proposed Increase (this amendment)	\$215,000
<b>Total New Contract Amount</b>	<b>\$665,000</b>

CURRENT SITUATION AND ITS EFFECTS

Under the direction of the City Council and the City Manager, the Human Resources Department is responsible for labor relations activities including serving as the City's Chief Spokesperson for collective bargaining, preparing contract language, researching and analyzing union proposals, analyzing survey data, costing proposals, and preparing presentations to the City Council. The City Attorney's Office provides consultation to the Human Resources Department in the collective bargaining process. Staff negotiates successor Memoranda of Understanding / Memorandum Agreements (MOU/MA) with the labor organizations pursuant to the labor-management provisions of the Meyers-Milias Brown Act. There are seven (7) labor organizations representing the majority of City staff:

Labor Organization	Term of MOU
Service Employees International Union, Local 1021 Maintenance and Clerical Chapters	June 2020 – June 2021
Service Employees International Union, Local 1021 Community Services & Part-Time Recreation Leaders Association	June 2020 – June 2021
International Brotherhood of Electrical Workers, Local 1245	October 2018 – June 2020
Berkeley Police Association	June 2020 – June 2021
Berkeley Fire Fighters Association Local 1227 I.A.F.F.	July 2020 – June 2021
Berkeley Chief Fire Officers Association Local 1227 I.A.F.F.	June 2020 – June 2021
Public Employees Union Local 1	October 2018 – June 2020

Due to workload and staffing changes in the Human Resources Department, the City entered into contract with the law firm of Sloan Sakai, LLP for the services of Dania Torres-Wong, an experienced labor negotiator with various other local public agencies.

**BACKGROUND**

Sloan Sakai, LLP was selected through a competitive bidding process. Since May 2015, Ms. Torres-Wong has served as Lead Negotiator for the City with Service Employees International Union Local 1021 Maintenance and Clerical Chapters (SEIU Local 1021MC) as well as with the Service Employees International Union Local 1021 Community Services and Part-Time Recreation Leaders Association (SEIU Local 1021CSU/PTRLA). Her services include meeting with the City Manager and other staff to analyze and prepare the City's proposals and to analyze union proposals. In addition, Ms. Torres-Wong will meet in closed session with the Mayor and Council. Ms. Torres-Wong is an effective negotiator and established good professional relationships with both labor and management representatives and has been instrumental in negotiating a fair and equitable agreements with SEIU Local 1021.

Currently, Sloan Sakai, LLP's contract with the City expires on December 31, 2021 and is close to reaching the total limit of \$215,000. This contract amendment will allow the City to continue to utilize Ms. Torres-Wong's services as Lead Negotiator in MOU/MA negotiations with SEIU Local 1021 M&C and CSU/PTRLA throughout the 2021 negotiations period.

**ENVIRONMENTAL SUSTAINABILITY**

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

RATIONALE FOR RECOMMENDATION

Sloan Sakai, LLP offers the City a professional and cost-effective solution to the City's labor relations requirements.

ALTERNATIVE ACTIONS CONSIDERED

Conduct collective bargaining with existing staff, which would negatively impact the Human Resources Department's ability to meet other service demands given that all of the City's labor contracts expire at the same time.

CONTACT PERSON

LaTanya Bellow, Director of Human Resources, (510) 981-6807

Attachment:

1: Resolution

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

CONTRACT NO. 9649 AMENDMENT: SLOAN SAKAI, LLP FOR CHIEF LABOR  
NEGOTIATOR SERVICES

WHEREAS, the City is required by law to meet and confer in good faith with labor organizations representing City staff in an attempt to reach agreement on successor Memoranda of Understanding; and

WHEREAS, on May 22, 2014, the City entered into a contract with Sloan Sakai, LLP (Contract No. 9649) for attorney Dania Torres-Wong to perform Chief Labor Negotiator services in the City's negotiations with the Service Employees International Union Local 1021 Maintenance and Clerical Chapter; and Service Employees International Union Local 1021 Community Services and Part-Time Recreation Leaders Association; and

WHEREAS, Sloan Sakai, LLP was selected through a competitive bidding process; and

WHEREAS, Ms. Torres-Wong has been the City's Chief Labor Negotiator since the City and SEIU Local 1021 began meet and confer in May 2015; and

WHEREAS, the City is close to reaching its contract limit of \$450,000 and unless the contract amount is increased, the City would be without the services of a Chief Labor Negotiator; and

WHEREAS, funding for this amendment is available in the current year budget in budget code General Fund for Human Resources Personnel 011-34-343-000-0000-000-412-612990.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that City Manager is authorized to execute an amendment to Contract No. 9649 with Sloan Sakai, LLP for Chief Labor Negotiator services and to increase the amount by \$215,000, for a total not to exceed amount of \$665,000. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Director of Human Resources

Subject: Memorandum Agreement: International Brotherhood of Electrical Workers Local 1245

RECOMMENDATION

Adopt one Resolution approving a new two-year Memorandum Agreement with the International Brotherhood of Electrical Workers Local 1245 (hereinafter referred to as the "Union") with a term of June 28, 2020 through June 30, 2022, authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the Memorandum Agreement.

FISCAL IMPACTS OF RECOMMENDATION

The terms of the new Memorandum Agreement provide for a 0% salary increase with a "me too" clause that if the City reaches agreement with the largest bargaining unit or extends the Unrepresented employees an across the board Cost of Living Adjustment (COLA) increase, wage increase, lump sum payment, or other benefit increase during the term of this agreement, the City agrees to apply the same increases to the Union; increase in Medicare eligible retiree premium assistance for single and two-party coverage to \$50 and \$100 per month, respectively; Thirty-two hours of Additional Floating Holiday effective the of first full pay period after Council adoption. The additional floating holiday hours are in direct response to the COVID 19 pandemic and expire, effective June 30, 2021.

The cumulative total cost for the new Memorandum Agreement is approximately \$54,840 over the term of the agreement (Fiscal Years 2021 & 2022). The funding for this Memorandum Agreement comes from the General Fund and other funding sources.

CURRENT SITUATION AND ITS EFFECTS

The City's labor contract with the Union expired and was fully terminated as of June 28, 2020. In an effort to reach agreement on a successor Memorandum Agreement, representatives of the City and representatives of the Union held approximately 14 negotiating sessions beginning in May 5, 2020. The parties reached agreement on all outstanding economic issues on May 14, 2021.

While the labor contract expired and fully terminated on June 28, 2020, the laws governing collective bargaining agreements provide that the terms and conditions set forth in the

expired contract remain in full force and effect until modified through the collective bargaining process. The collective bargaining process has now been completed and the parties have reached tentative agreement on all outstanding issues.

**BACKGROUND**

There are 15 budgeted positions represented by IBEW Local 1245 in one representational unit (Unit C). IBEW Local 1245 represents employees in the electrical occupations in the Public Works Department.

The City’s philosophy during negotiations with IBEW Local 1245 was to follow City Council policies to protect the City’s short and long-range economic health. City Council policies for labor negotiations include, but are not limited to, the following:

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

Major provisions of the new labor contract are as follows:

Term	June 28, 2020 through June 30, 2022
Salary Increase	0% increase
Retiree Medical	Increase in Medicare eligible monthly premium assistance to \$50 for single and \$100 for two-party plans
Additional Floating Holidays	32 hours of additional floating holiday expiring June 30, 2021
Binding Arbitration	Binding arbitration for non-disciplinary grievances

**ENVIRONMENTAL SUSTAINABILITY**

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

**RATIONALE FOR RECOMMENDATION**

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

I believe this settlement is in keeping with City Council's direction to staff and is fair and equitable to the members of the Union.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

LaTanya Bellow, Director of Human Resources, Human Resources, (510) 981-6800

Attachments:

1. Resolution - Memorandum Agreement: IBEW Local 1245
  - Exhibit A: Memorandum Agreement between the City of Berkeley and the International Brotherhood of Electrical Workers Local 1245 – A.F.L. – C.I.O. June 28, 2020 through June 30, 2022 (Edited Version)
  - Exhibit B: Memorandum Agreement between the City of Berkeley and the International Brotherhood of Electrical Workers Local 1245 – A.F.L. – C.I.O. – June 28, 2020 through June 30, 2022 (Clean Version)

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

MEMORANDUM AGREEMENT: INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL 1245

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

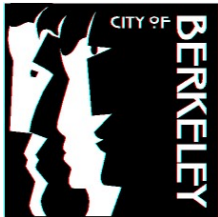
WHEREAS, representatives of the City and the International Brotherhood of Electrical Workers, Local 1245 have met and conferred in good faith and have reached agreement on a new Memorandum Agreement that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum Agreement for the period June 28, 2020 through June 30, 2022 with the International Brotherhood of Electrical Workers, Local 1245, including changes in certain benefits on dates specified in the Memorandum of Understanding which is attached hereto, made a part hereof and marked Exhibit B.

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

Exhibit A: Memorandum Agreement between the City of Berkeley and the International Brotherhood of Electrical Workers Local 1245 – A.F.L. – C.I.O - June 28, 2020 through June 30, 2022 (Edited Version)

Exhibit B: Memorandum Agreement between the City of Berkeley and the International Brotherhood of Electrical Workers Local 1245 – A.F.L. – C.I.O. – June 28, 2020 through June 30, 2022 (Clean Version)



**MEMORANDUM AGREEMENT**

**Between the**

**CITY OF BERKELEY**

**and the**

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS  
LOCAL 1245 - A.F.L. - C.I.O.**

**October 21, 2018~~June 28, 2020~~ to ~~June 27, 2020~~June 30, 2022**

RESOLUTION NO. 68,670-N.S.

MEMORANDUM AGREEMENT: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 1245

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

WHEREAS, representatives of the City and the International Brotherhood of Electrical Workers Local 1245 have met and conferred in good faith and have reached agreement on a new Memorandum Agreement that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum Agreement for the period October 21, 2018 through June 27, 2020 with the International Brotherhood of Electrical Workers Local 1245, including changes in certain benefits on dates specified in the Memorandum Agreement which is attached hereto, made a part hereof and marked Exhibit A.

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

The foregoing Resolution was adopted by the Berkeley City Council on November 27, 2018 by the following vote:

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

Noes: None.

Absent: Bartlett.

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

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

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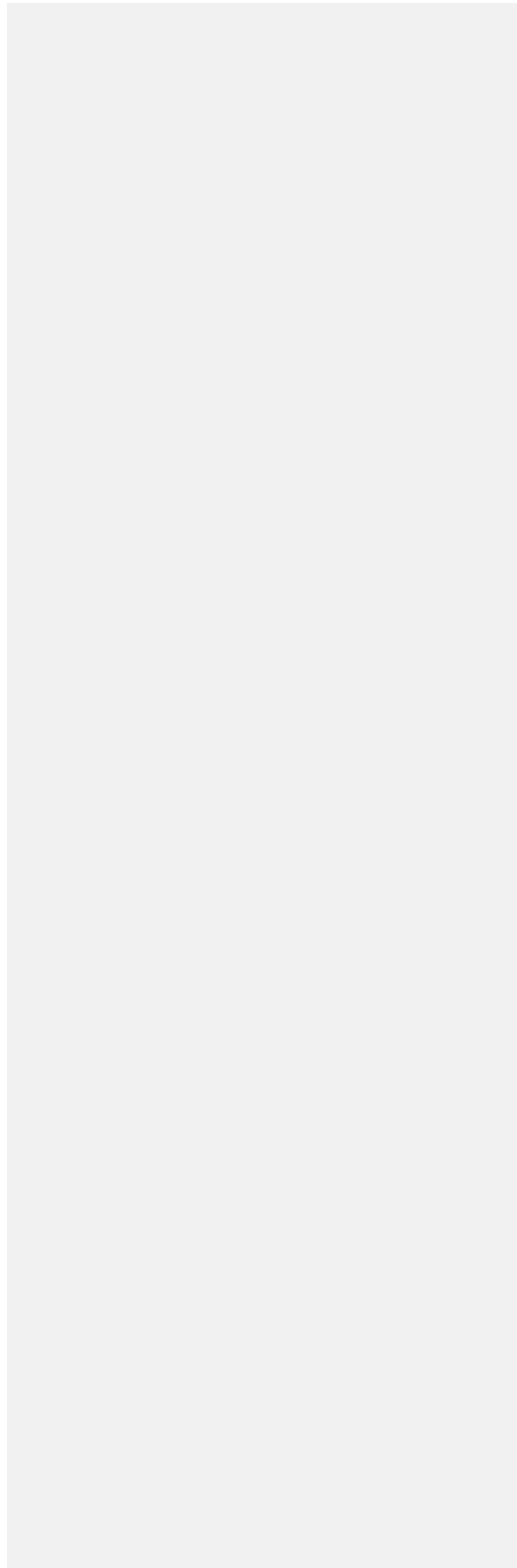
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**MEMORANDUM AGREEMENT**  
**Between**  
**CITY OF BERKELEY**  
**and the**  
**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**  
**LOCAL 1245**

**ARTICLE 1 - ADMINISTRATION**

**SECTION 1: RECITALS**

- 1.1 This Memorandum Agreement is entered into pursuant to the Meyers-MiliasBrown Act (Government Code, Sections 3500-3511), as amended, and has been jointly prepared by the parties.
- 1.2 The City Manager is the representative of the City of Berkeley (hereinafter referred to as "the City") in employer-employee relations as provided in Resolution No. 43,397-N.S., adopted by the City Council on October 14, 1969.
- 1.3 International Brotherhood of Electrical Workers, Local 1245, is the recognized employee organization for Representation Unit C (Electrical Occupations), which organization has been certified as such pursuant to said Resolution No. 43,397N.S. The employee positions in such Representation Unit are hereinafter set forth in Exhibit A attached hereto and made a part hereof, and International Brotherhood of Electrical Workers, Local 1245 (hereinafter referred to as "the Union") is recognized as the sole representative of employees assigned to such positions.
- 1.4 The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees in said Representation Unit C, have exchanged freely information, opinions, and proposals, and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees.
- 1.5 This Memorandum Agreement shall be presented to the City Council as the joint recommendation of the undersigned.
- 1.6 Section titles in this Memorandum Agreement are for identification purposes only and are not to be used for the purpose of interpreting either the intent or the meaning of the language of any section.

**SECTION 2: PARTIES TO THE AGREEMENT**

**2.1 Exclusive Representation**

The Union is the exclusive representative of all employees within Representation Unit C (Electrical Occupations) and shall continue to be recognized as such unless, in accordance with the provisions of Resolution No. 43,397-N.S. or said Resolution may be amended, the Union is no longer certified as the Recognized Employee Organization for employees in Representation Unit C.

**2.2 Management Rights**

The Union recognizes that the management of the City and its business and the direction of its working forces are vested exclusively in the City, and this includes, but it not limited to, the following: to direct and supervise the work of its employees, to hire, promote, demote, transfer, suspend, and discipline or discharge employees for just cause; to plan, direct, and control operations; to lay off employees because of lack of work or for other legitimate reasons; to introduce new or improved methods or facilities, provided, however, that all of the foregoing shall be subject to the provisions of this Agreement, arbitration decisions, or letters of agreement, or memorandums of understanding clarifying or interpreting this Agreement.

The City shall not by reason of the execution of this Agreement (a) abrogate or reduce the scope of any present plan or rule beneficial to employees, such as its vacation and sick leave policies or its retirement plan, or (b) reduce the wage rate of any employee covered hereby, or change the conditions of employment of any such employee to his disadvantage. The foregoing limitation shall not limit City in making a change in a condition of employment if such change has been negotiated and agreed to by City and Union.

**SECTION 3: NO DISCRIMINATION**

The City and Union agree that they will not discriminate against employees based on race, creed, color, ethnicity, ancestry, religion, political affiliation, gender, sexual orientation, age, national origin, marital or domestic partner status, gender identity or gender expression, parental status, pregnancy, disability or medical condition, Acquired Immune Deficiency (AIDS/HIV) or AIDS related condition, or any other status protected by applicable state or federal law, or protected Union activity. Furthermore, the City and Union agree to comply with all applicable federal, state and local laws pertaining to nondiscrimination and equal employment opportunity.

The Union agrees that it will support programs for making members of minority groups and women aware of employment opportunities within the City's jurisdiction, and that it will work with the City to increase recruitment efforts of such minorities and women into

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City service. The Union recognizes and supports the City of Berkeley's commitment to equal employment opportunity.

**SECTION 4: UNION SECURITY**

**4.1 Union Security**

4.1.1 An employee included in Unit C, may become and remain a member in good standing of the Union; or pay to the Union an initial fee equal to the regular initiation fee and, thereafter, a monthly fair share service fee equal to the regular monthly union dues and general assessments.

4.1.2 **Contracting Out:** The City will not hire any contractors, firm or individual which will result in the layoff of any employees covered under this Agreement.

4.1.3 **Subcontracting:** If the City intends to subcontract any electrical or communication work, the City will notify the Union in advance of any bid solicitation whose value is estimated to be \$25,000 or more. The City will notify the Union in advance by mailing a copy of the City Council Bid Notifications Report to the Union Stewards. Information will be sent to the Union at the same time it is forwarded to the City Council and will include nature of project, the name of department requesting the work, and the budget code. Upon written request from the Union, the City will provide a copy of the actual bid specifications.

For electrical or communication work estimated to cost less than \$25,000, the City will provide the Union Stewards a copy of the Council Awarded Contracts Report on a monthly basis.

4.2.3 **Indemnification:** The Union shall indemnify and save harmless the City, its officers and employees, from and against any and all loss, damages, costs, expenses, claims, attorneys' fees, demands, actions, suits, judgments and other proceedings arising out of any claims made by Unit C employees for deductions made in reliance on information provided by the Union.

4.2.4 **Union Reports:** The City shall furnish the Union, on a monthly basis, the name, date of hire, salary, classification and work location of all newly-hired employees subject to this Agreement.

**4.3 New Employee Orientation**

This provision shall apply to new hire employees appointed to classifications covered by this Agreement.

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**4.3.1 Onboarding:** The parties acknowledge that the City provides a new employee orientation (onboarding) to each new employee hired by the City. As such, the Union will be provided with not less than 10 calendar days' advanced notice of the time, date, and location of the onboarding of any new employee represented by the Union. The Union will be given 30-minutes at the start of the new employee onboarding in a room designated by the City for no more than one (1) representative to present Union membership information. The City representative will excuse him or herself during the Union portion of the onboarding. The Union agrees in its portion of the onboarding not to engage in speech that could cause disruption or material interference with City activities.

The City will provide 30 minutes of Union Release Time to the Union representative presenting the Union membership information during the scheduled onboarding. The Union shall provide the Union representative's immediate supervisor with the Union representative's name at least five (5) days prior to the onboarding. The Union representative shall be released for this purpose unless unusual operation needs interfere with such release in which case the Union representative's immediate supervisor will provide a written explanation of why release could not be approved. If the Union representative is not released due to department operational needs, the Union representative may arrange an alternative date and time to meet with the newly hired employee within the first two (2) weeks of employment, subject to the 30-minutes onboarding and Union Release Time requirements as stipulated above.

**4.3.2 Information Provided:** On a quarterly basis (March, June, September, and December), the City will provide the Union with a digital file via email to the email address designated by the Union. The Union acknowledges and understands that the City is working diligently and in good faith to update its contact information database functionality to incorporate all the fields of contact information listed below. As a result, the City may not initially be able to provide the employee's work telephone number, personal phone number, and personal email address until the completion and implementation of the City's new Enterprise Resource Management Application (ERMA) system.

The City will provide the Union with the following information on file, to the extent the City has it on file:

- Name.
- Job Title.
- Department.
- Work Location.



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- Home telephone number.
- Home address.
- Personal cellular telephone number (new hires hired on or after October 1, 2017).
- Work telephone number (*upon implementing ERMA*).
- Personal email addresses on file with the City (*upon implementing ERMA*).

Notwithstanding the foregoing, limited to the express purpose of the requirements of Government Code section 3558 only, an employee may opt out via written request to the City (copy to the Union) to direct the City to withhold disclosure of the employee's: Home address; home telephone number; personal cellular telephone number; personal email address; and date of birth.

**SECTION 5: DEDUCTION OF UNION DUES**

**5.1 Deductions**

The City shall deduct, once monthly, the amount of Union regular and periodic dues, service fees, or insurance premiums as may be specified by the Union under the authority of written notification by the Union certifying that the employee has provided written affirmed consent for deduction of union membership dues or fair share service fees.

Such deductions, together with a written statement of the names and amounts deducted, shall be forwarded promptly to the Union office.

**5.2 Revocation**

Upon receipt of a written notice from the Union to the Human Resources Department, the City shall cease deducting membership dues or fair share service fees from the designated employee.

**5.3 Authorization Forms**

The City may request verification of employee's authorization form giving affirmed consent to deduct dues or fees only if a legitimate dispute arises about the existence or term of the authorization.

**5.4 Notice**

Union agrees to give reasonable notice of dues change.

**SECTION 6: UNION REPRESENTATIVES**

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**6.1 Number of Representatives**

The City shall allow two (2) representatives of the Union reasonable time off from work, without loss of compensation or other benefits, to represent its members in disputes which involve the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect memoranda of understanding which may result from the meeting and conferring process, and to represent its members in meeting and conferring in good faith for amendments to this Memorandum Agreement in the future, subject to the conditions set forth in Sections 6.2 (Maximum Representatives) and 6.3 (Notification).

All release time shall be recorded on time sheets and time cards with appropriate codes.

**6.2 Maximum Representatives**

Two (2) Union representatives shall be the maximum number who will be allowed concurrent time off.

**6.3 Notification**

The representatives shall notify the first non-bargaining supervisor a minimum of one workday in advance before leaving their work assignments except for emergency situations which require the immediate attention of said representatives (an emergency is defined as a safety problem or hazardous condition), but in no case shall an employee leave his or her job without notification of the first non-bargaining supervisor. Such request shall include the location, and area of activity, the approximate time needed and the general nature of the union business involved. Such request shall not be unreasonably denied. Failure to comply with notification and time recording rules may be grounds for denial of leave.

**6.4 Union/Management Meetings**

Quarterly meetings shall be held between the union and management. Release time shall be granted for up to two union representatives. Agendas for such meetings shall be set one week in advance between the Business Representative of the Union and the City Manager or their designees. Meetings within department may be held at the discretion of the department head.

**6.5 Union Training**

Conditional upon prior approval of the course content and upon receipt of certification of completion, if the employee is an elected official or steward of the Union, the City shall reimburse the employee for up to one-half of his or her regular work time spent in such training at the employee's permanent rate of pay, not to exceed twenty (20) hours of paid leave in a calendar year.

**SECTION 7: SEPARABILITY OF PROVISIONS**

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

**SECTION 8: EXISTING MEMORANDUM AGREEMENT**

Pursuant to Section A of the Memorandum of Understanding dated August 9, 1972 by and between the City and the Union, this Memorandum Agreement shall supersede all existing Memoranda of Understanding between the City and the Union. There is no guarantee that working conditions and practices will be continued if they are not included in this Memorandum Agreement or have not been or are not hereafter specifically authorized by ordinance or by resolution or the City Council.

**SECTION 9: FINALITY OF RECOMMENDATIONS**

The recommendations set forth herein are final. No changes or modifications shall be offered, urged, or otherwise presented by the Union, or the City Manager prior to October 20, 2018; provided, however, that nothing herein shall prevent the parties to this Memorandum Agreement from meeting and conferring and making modifications herein by mutual consent.

**SECTION 10: DURATION**

This Memorandum Agreement shall be effective upon ratification by the City Council except for those provisions which have been assigned other effective dates as herein set forth, and shall remain in full force and effect up to and including ~~October 20, 2018~~June 30, 2022. This Memorandum Agreement and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at midnight ~~October 20, 2018~~June 30, 2022.

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

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**SECTION 11: SALARIES**

**11.1 Salary Rates**

Salary rates for the period of ~~October 21, 2018~~June 28, 2020 through ~~June 27, 2020~~June 30, 2022, for all classes of positions in Representation Unit C shall be set according to the classifications and salary ranges assigned to those classifications listed in Exhibit "A" and attached hereto and made part hereof.

~~A.) 11.1.1 Salary Increase upon Council Approval: Effective the first full pay period after Union ratification and Council approval on its regular agenda, the salary ranges for those classifications covered by this MA as listed in Exhibit A will receive a salary increase of three percent (3.0%) and shall be shown in Exhibit B.~~

~~Effective October 20, 2019, the salary ranges for those classifications covered by this MA as listed in Exhibit A will receive a salary increase of two (2) percent (2.0%) and shall be shown in Exhibit B. The salary ranges for those classifications covered by this Agreement which went into effect on October 20, 2019, shall remain in effect through June 30, 2022 and are listed in Exhibit B unless the following occurs:~~

~~If during any fiscal year during the term of this agreement, the City reaches agreement with the largest bargaining unit or extends the unrepresented employees an across the board Cost of Living Adjustment (COLA) increase, wage increase, lump sum payment, or other benefits increase the City agrees to apply these same increases to the salary ranges and/or benefits for those classifications covered by this MA as listed in Exhibit B.~~

~~11.1.2 One Time Payment: Effective the first full pay period after Union ratification and Council approval on its regular agenda, all benefitted employees who are subject to this MA and are in paid status as of date of Council Approval, shall receive a one-time lump sum payment via separate check, of two thousand dollars (\$2,000), minus applicable local, state and/or federal taxes, and prorated for less than full time benefitted employees. The parties agree that this lump sum provision does not create or bind the City to any precedent or past practice.~~

**11.2 Step Placement**

Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's class as set forth in Exhibit "B". The minimum rate for the class shall apply to employees upon original appointment to

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the position except as may be determined by the City Manager within the negotiated wage ranges. Employees who have been laid-off and are rehired to the same classification shall be placed on the same wage step they were in when laid-off. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit "B" and employed or working on a part-time basis shall be paid in proportion to the time worked and described in their appointment.

**11.3 Maximum Salary Rate**

No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City and shall depend upon increased service value of an employee to the City as exemplified by recommendations of the department head, performance record, special training, length of service, and other pertinent evidence.

**11.4 Effect of Leaves**

An employee's pay increase shall not be affected by any leave of absence without pay if the employee is off the payroll for less than one hundred sixty (160) consecutive hours. If the employee is off the payroll for more than one hundred sixty (160) consecutive hours, the total amount of time off shall be made up before the employee shall be entitled to such pay increase.

**11.6 Y-Rate**

Any employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary, or occupying a position in a class, the salary rate or range for which is reduced, shall continue to receive his present salary. Such salary shall be designated as a Y rate. When an employee on a Y rate vacates his or her position, subsequent appointments to that position shall be made in accordance with Section 11.1 (Salary Rates).

**11.7 Pay Frequency**

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

11.7.1 **Full-Time:** Bi-weekly payment to full-time employees shall be made on the basis of the hourly rate, as set forth in Exhibit B, multiplied by the number of hours worked during the pay period.

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11.7.1.1 **40 Hour Week:** For employees on a forty (40) hour week schedule, the annual salary shall be the product of the hourly salary times 2,080 hours.

11.7.1.2 **37.5 Hour Week:** For employees on a thirty seven and onehalf (37.5) hour work week schedule, the annual salary shall be the product of the hourly salary times 1,950 hours.

11.7.1.3 **Monthly Salary:** The monthly salary shall be the quotient of the annual salary divided by 12.

11.7.2 **Part-Time:** Bi-weekly payment to part-time employees in a class for which a monthly salary rate has been herein established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period. The hourly rate for such part-time employees shall be computed in the same manner as for full-time employees.

11.7.3 **Intermittent:** Bi-weekly payment to intermittent employees in a class for which a monthly salary rate has been established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period. The hourly rate for such intermittent employees shall be computed in the same manner as for full-time employees.

11.7.4 **Bi-Weekly Daily Rate:** Bi-weekly payment to employees in a class for which a daily rate rather than a monthly rate has been herein established shall be made on the basis of the actual days worked during the biweekly pay period multiplied by the daily rate.

11.7.5 **Bi-Weekly Hourly Rate:** Bi-weekly payment to employees in a class for which an hourly rate rather than a monthly rate has been herein established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period.

**11.8 Higher Classification**

The Department Head will work all employees within their career classifications. The departments may specifically assign an employee to work in a higher class. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments over one (1) week shall be approved in advance by the City Manager or his or her designee. Blanket authorizations for department will be issued on a yearly basis for applicable positions. To be eligible for higher-class pay, the employee must work a minimum of four (4) hours, meet the minimum qualifications, and perform the duties of the higher class. Employees meeting these requirements will be compensated at the lowest step of the higher classification which provides at least a five percent (5%) differential. The journeylevel employees will rotate the assignment on a monthly basis and perform

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the necessary duties. In the event the offer of higher class is declined by the journey-level employee assigned for that month, volunteers will be asked according to the rotation list. If there are no volunteers, the journey-level employee assigned for that month will be required to perform the necessary duties.

**11.9 Temporary Appointment**

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

**11.10 Step Increases for Provisional Employees**

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

**11.11 End of Year Pay Period**

For all salary and benefit purposes, the parties agree that the last day of the last pay period ending in the calendar year shall be the end of the year. For excess leave only, the end of the year shall be treated as the last day of the pay period nearest March 31st.

**11.12 Overtime Underpayment**

The City will include any payment of overtime, which was inadvertently omitted or miscalculated, in the following pay period's check.

**11.13 Equity Studies**

A list of comparison jurisdictions is established for the purpose of salary equity studies: Alameda County, Contra Costa County, Oakland, Palo Alto, Richmond, San Francisco, San Jose, San Leandro, Santa Clara, and Vallejo. Other jurisdictions may be added as required by agreement between the parties. Job classifications which fall below the median for these jurisdictions may be reviewed. It is the policy of the City that within available funding limits, equity adjustments which are in the interests of the service will be considered.

**11.14 Step Increase**

Step increases shall be effective for payroll purposes only on the first day of the pay period nearest to the actual anniversary date. Personnel records will maintain actual dates and will be used to resolve any discrepancies or questions that may arise.

**11.15 Effective Date of Salary Adjustment**

Any general future salary adjustments will be set to become effective on the first day of the pay period.

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**11.16 Reclassification**

In the event the City reclassifies a position based on an employee initiated review from a lower level classification to a higher level classification, an incumbent occupying such position shall be reclassified without competitive examination provided he or she has performed the duties of the new classification for one (1) year and has not received an unsatisfactory evaluation during that period. All other employees shall be required to pass an examination for the higher classification and shall serve the normal probationary period. If a position is reclassified, the employee shall receive salary compensation retroactive to the date the position description questionnaire is submitted and verified as having been received by the department head. Position description questionnaires will be provided by the City. Employees may request one (1) job audit one (1) year after an initial job audit has been completed on their position. Thereafter one (1) job audit will be permitted every two (2) years.

Reclassification or reallocation of positions shall not be used as a mechanism, the sole purpose of which is to improperly circumvent the provisions of this Agreement, including provisions relating to layoff, transfer, demotion or promotion.

**11.17 Premium Pay Differential - Working at Heights of 60 Feet or More**

Assignments for working at heights of 60 feet or more will be on a voluntary basis. However, if all qualified employees decline the assignment, the City will be free to contract the work out to an outside service provider.

Employees who work at heights of 60 feet or more, including but not limited to performing maintenance of lights at San Pablo Park, shall receive Height Premium Pay Differential of one and one-half times (1½) times the normal hourly rate for all time performing such work. The Height Premium Pay Differential shall be reported to CalPERS as Height Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

**11.18 Commercial Driver's License Premium**

Employees required to possess and maintain a valid California Class A or Class B Commercial Driver's License as a condition of employment shall receive three percent (3%) differential to hourly rate. This differential shall be reported to CalPERS as Special Class Driver's License Pay. However, any hours worked on overtime are excluded from CalPERS reported "Compensation earnable" in California Government Code Section 20636.

**11.19 Longevity Pay**

Effective July 3, 2016, employees completing twenty five (25) years of service shall receive a three percent (3.0%) differential beginning with the anniversary date of beginning of the twenty fifth (25<sup>th</sup>) year of service and shall apply to all hours in a



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paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

**SECTION 12: HOURS AND DAYS OF WORK**

**12.1 Hours and Days of Work**

Hours and days of work shall be governed by rules established by the City Manager. (At the present time, the hours and days of work are as shown in Exhibit E (Hours and Days of Work))

**12.2 Sunday and Graveyard Shifts**

Regularly scheduled Sunday shifts and "graveyard" shifts, as defined in Section 14 (Shift Differential), shall be for eight (8) consecutive hours, including up to onehalf (1/2) hour for lunch.

**12.3 Shift Assignment**

Within a given classification, shift assignments shall first be offered to employees by classification seniority on a voluntary basis. In the event shift assignments are not filled voluntarily, such assignments will be made on the basis of inverse classification seniority.

**12.3.1 Types of Shifts:**

- a. **Swing shift** means authorized work schedules regularly assigned in which at least four (4) hours worked are between the hours of 5:00 p.m. and 12:00 midnight of each workday.
- b. **Night shift** means authorized work schedules regularly assigned in which at least four (4) hours worked are between the hours of 12:00 midnight and 7:00 a.m. of each workday.
- c. **Day shift** means any authorized work schedules between the hours of 7:00 a.m. and 5:00 p.m.

**12.4 Classes during Shift Assignments**

If an employee assigned to the swing or graveyard shift wishes to attend classes during the day, the employee shall notify the first non-bargaining supervisor of his or her intention to enroll in classes during the day and the completion date of the classes. The City will review the work program and advise the employee within 14 days whether or not the day classes will interfere with the shift assignments. If no conflict exists, the City will not change the shift assignment until after the semester ends provided that the employee continues to be actively enrolled in the class.

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**12.5 Rest Period**

Each employee shall be entitled to a rest period of fifteen (15) minutes during each one-half (½) shift worked.

**12.6 Daylight Saving Time**

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

12.6.2 **Fall:** In the Fall when transitioning from DST, employees working during the one (1) hour transition will be paid for all hours worked including overtime at one and one-half (1½) times the straight-time rate of pay for hours worked in excess of the regular workweek as set forth in Section 13 (Overtime) of this Agreement.

**SECTION 13: OVERTIME**

Employees required to work in excess of their basic work week or in excess of 8 hours in one day (excepting voluntary regular schedules of 9 or 10 hours) during any one week shall be compensated for such overtime services as follows:

**13.1 Rate**

The overtime rate shall be one and one-half (1½) times the regular hourly salary for the first four (4) hours of such excess and at two (2) times the regular hourly salary for the balance of such excess.

**13.2 Department Head Discretion**

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

13.2.1 **Compensatory Time Off:** Compensatory time off may be earned in lieu of overtime pay at the rate of one and one-half (1½) hours for each overtime hour worked up to a maximum of sixty (60) hours of such compensatory time. Accumulation of compensatory time off in excess

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of sixty (60) hours may be allowed at the discretion of the department head. Utilization of compensatory time shall be at the discretion of the employee's department head. The times during the calendar year at which an employee shall take his or her compensatory time off shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the service. As used herein, sixty (60) hours is equivalent to ninety (90) hours of time off work.

**13.3 Payoff of Overtime**

In the event that an employee resigns or is terminated, he or she shall be entitled to compensation for his or her accumulated overtime.

**13.4 FLSA Workweek**

For the purpose of computing overtime, the work week shall be defined as beginning at 12:01 a.m. Sunday and ending at 12:00 midnight Saturday. Any applied benefited leave shall be included in the calculation of overtime.

**13.5 Emergency Overtime**

Employees who are called from their living quarters for emergency work or duty on days other than normal workdays, or on normal workdays outside of their regular work hours, shall be paid emergency overtime compensation for actual time worked; provided, however, that in any case of emergency overtime as herein provided the minimum time for which such overtime compensation shall be paid shall be four (4) hours; and provided further that if such overtime work is performed prior to the beginning of the regularly scheduled work period and such overtime continues into such regularly scheduled work period without a break in service, compensation shall be paid only for the actual time worked.

**13.5.1 Overtime Earned Rest Period**

If an employee has worked four (4) hours or more of overtime between the hours of 10:30 p.m. and 6:30 a.m. preceding the beginning of his/her regular work hours on a workday, he/she shall be entitled, except in an emergency, to a rest period to include two (2) hours of his/her workday without loss of his/her regular straight-time pay. If the overtime work period extends for six (6) hours or more of overtime between the hours of 10:30 p.m. and 6:30 a.m. preceding the beginning of his/her regular work hours on a workday, he/she shall be entitled, except in an emergency, to a rest period to include five (5) hours of his/her workday without loss of his/her regular straight-time pay. In the event that an employee, due to operational need, is required to work during an earned rest period during regular work hours, the employee will be paid for the earned rest period in addition to wages earned for hours worked.

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**13.6 Meals**

The City will provide meals to employees during emergency assignments and when the employees work continuously for two (2) or more hours immediately before or after their regular shift of eight (8) or nine (9) hours for a total of ten (10) or eleven (11) hours. The employee shall earn an additional meal for every four (4) hours of continuous work after the first meal is earned or taken.

The City will reimburse the employees for the costs of the meal up to twenty five dollars (\$25) if no meals are provided.

**13.7 Standby Pay**

An employee assigned to standby shall receive ten (10) hours of overtime compensation in addition to any overtime worked while on standby.

**13.7.1 Standby Week:** For the purpose of this Section 13.7.1 (Standby Week), a week shall mean the seven (7) consecutive calendar days following assignment to standby service. In the case of emergencies, the Senior Supervisor or Superintendent may assign another employee to complete the standby week for the originally assigned employee. In that case, the ten (10) hours standby compensation will be pro-rated between the employees.

**13.7.2 Missed Assignment while on Standby:** If an employee misses an overtime assignment while on standby duty, he or she will not receive the standby pay for that day. If he or she misses a second call during the same standby period, he or she will forfeit all the standby pay for that period.

**13.7.3 Consequences:** If an employee develops a pattern of failing to perform the service when called, they will be subject to disciplinary action and the Union reserves the right to appeal any action.

**13.7.4 Standby Vehicle:** The City will provide the employee on standby duty with a vehicle. Said employee shall be responsible for taking all reasonable steps to insure the safety of the tools and equipment on that vehicle.

**13.8 Emergency Overtime Assignments**

All emergency overtime assignments including calling an employee other than the employee on scheduled standby status will be paid the minimum overtime compensation as defined in Section 13.5 (Emergency Overtime). In the event that the employee on scheduled standby is not called, and another employee has been called to perform the emergency overtime assignment, both the employee who

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performed the assignment and the employee on scheduled standby status will receive the minimum overtime compensation.

- 13.8.1 Scheduled Overtime during Standby:** The employee who is on scheduled standby status may perform scheduled overtime tasks on a voluntary basis. The standby premium shall not be pro-rated. If an emergency call occurs during the time that the employee is performing scheduled overtime tasks that call shall be paid at the time and one-half rate and not at the call back rate set forth in Section 13.5 (Emergency Overtime). If other City electrical employees are concurrently performing scheduled overtime tasks, the Senior Electrical Supervisor may, at his or her discretion, assign the work to electrical employees present within the City performing the scheduled overtime tasks at the regular overtime rate of pay. The employee who is on scheduled standby status who chooses to perform scheduled overtime shall defer to other employees who choose schedule overtime assignments pursuant to Section 13.9 (Overtime Offers).

**13.9 Overtime Offers**

The Department will offer Scheduled Overtime on a voluntary basis to employees with the least amount of overtime worked in accordance with the following provisions:

- 13.9.1 Posting of Overtime:** The Department will post a Scheduled Overtime Sign-up List on the Division's bulletin board once every two weeks. Employees who wish to be considered for scheduled overtime during that time period must sign the list.
- 13.9.2 Scheduled Overtime Definition:** Scheduled Overtime shall be defined as an overtime assignment scheduled at least 24 hours in advance.
- 13.9.3 Overtime Report:** The Department will prepare and post a Report of Overtime Worked for employees on a calendar year basis beginning with a zero balance on January 1. The report will be updated after each pay period.
- 13.9.4 Overtime Assignments:** As scheduled overtime assignments occur, the Department will offer the assignment to individuals on the list for the applicable time period beginning with the person on the sign-up list with the least amount of overtime worked during the calendar year. Notification of scheduled overtime assignments shall be made during work hours at the work place, and employees must be present at the work place to receive the overtime work assignment.

13.9.5 **Overtime Assignment Tie Breaker:** If employees have equal amounts of overtime, the scheduled overtime assignment shall be offered to employees in the same order as their names appear on the sign-up list.

## **SECTION 14: SHIFT DIFFERENTIAL**

### **14.1 Swing Shift**

Employees who regularly work a full shift of seven and a half (7½) hours or more on swing shift as defined in Section 12.3.1 (Types of Shifts), which includes more than four (4) hours between the hours of 5:00 p.m. and 12:00 midnight, shall be paid their regular salary plus seven and a half percent (7½%) of their regular monthly salary per month.

### **14.2 Night Shift**

Employees who regularly work a full shift of seven and a half (7½) hours or more on night shift as defined in Section 12.3.1 (Types of Shifts), which includes more than four (4) hours between the hours of 12:00 midnight and 7:00 a.m. (night shift), shall be paid their regular salary plus ten percent (10%) of their regular monthly salary per month; provided, however, that in the case of any such employee who is regularly assigned to such night-shift work for less than an entire work week, the additional payment shall be made only for the portion of the work week worked on the night-shift assignment.

## **SECTION 15: NATURAL DISASTER/DECLARED EMERGENCY**

If an emergency is formally declared by the City, county, state or national authority:

### **15.1 Call Outside Normal Working Hours**

If an employee is called outside of normal working hours, the employee gets time and one-half (1½) the normal rate of pay for the first whole shift regardless of the number of hours worked. If the employee is not called from home the regular rules apply (i.e., overtime for hours worked above eight in a day).

### **15.2 Shift Differential**

Thereafter, the first eight hours at regular rate and 7½% for hours worked between 5:00 p.m. and midnight; 10% for hours worked from midnight to 7:00 a.m. For hours greater than eight in a shift, the employee gets time and one-half (1½) the normal rate of pay but no shift differential on those hours above eight.

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**15.3 Reduction in Hours**

There will be no reduction in the number of hours in the regular work week schedule.

**15.4 Change in Assignments**

If an employee is at work during the day when an emergency is declared and is assigned to work a night shift and is sent home, the employee will be compensated as follows:

15.4.1 If an employee has been at work for up to but not more than two (2) hours the employee will be paid for two (2) hours at the straight time rate.

15.4.2 If an employee has been at work for more than two (2) hours but not more than four (4) hours the employee will be paid for four (4) hours at the straight time rate.

15.4.3 If an employee has been at work for more than four (4) hours the employee will be paid for eight (8) hours at the straight time rate.

**15.5 Hours Worked in Excess of 12-hours**

An employee working more than twelve (12) hours in one continuous shift will be compensated at two (2) times the normal hourly rate.

**ARTICLE 3 - LEAVES**

**SECTION 16: VACATION**

**16.2 Vacation Approval**

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. Wherever practical, employees working in the same classifications within a division shall be given preference of vacation time by seniority. If the requirements of the service are such that a department head cannot permit an employee within his or her department to take an annual vacation leave or any part of such leave within a particular calendar year, the City Manager may permit such employee to take the deferred vacation during the following year.

**16.3 Use of Incremental Vacation**

Employees may, with advance supervisory approval, use vacation leave in increments of one hour.

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**16.4 Accrual Rate as of December 8, 1987**

Effective December 8, 1987, the vacation accrual rate shall be modified as follows:

Vacation Accrual Schedule	Authorized Annual Workweeks of Vacation	Vacation Leave Credits in Work Days per Month of Service	Vacation Leave Credits in Hours Earned per Month of Service
Through the first three (3) calendar years of service (except as provided in Section 16.4 (Accrual Rates as of December 8, 1987) and 16.5	2 work weeks	0.833	6.667
Fourth (4 <sup>th</sup> ) through eleventh (11 <sup>th</sup> ) calendar years of service (except as provided in Section 16.5 below)	3 work weeks	1.25	10.00
Twelfth (12 <sup>th</sup> ) through seventeenth (17 <sup>th</sup> ) calendar years (except as provided in Section 16.5	4 work weeks	1.667	13.33
Eighteenth (18 <sup>th</sup> ) through twenty-fourth (24 <sup>th</sup> ) calendar years (except as provided in Section 16.5	5 work weeks	2.083	16.667
Twenty-fifth (25 <sup>th</sup> ) and subsequent calendar years (except as provided in Section 16.5	6 work weeks	2.5	20.00

The authorized annual vacation leave for prior years is set forth in Exhibit D attached hereto and made a part hereof.

**16.5 Accrual, Use, and Limitation for Employees with Less than 6-Months of Service**

Each employee, during that portion of the calendar year in which he or she is originally appointed and during the next succeeding year, shall be entitled to vacation leave credits at the rate of 0.833 work days for each calendar month of service. Each such employee shall be entitled to take during these two (2) calendar years only such annual vacation leave as he or she earns.

**16.6 Vacation Eligibility for Part-time, Intermittent, Leave Without Pay or Reemployed Employees**

For an employee who has worked on a part-time or intermittent basis or who has been on leave of absence without pay for a total of six (6) months or more or who has been terminated and subsequently reemployed, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5) and six (6) weeks' rate.



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

**16.6.2 Effect of Military Leave on Vacation Eligibility:** For the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5) or six (6) weeks' rate, time spent on extended military leave shall be counted as time spent in the service of the City.

**16.7 Maximum Vacation Accumulation**

Employees may accrue vacation earned up to a maximum cumulative total of 320 hours.

Once an employee accrues 320 hours vacation, the employee shall not accrue any additional vacation leave hours until his or her vacation leave balance is below the maximum 320 hours. Under no circumstances will an employee be allowed to accrue more than 320 hours vacation leave. As provided below, the City will advise employees and their supervisors when the employee has attained an accumulation of 280 hours. Supervisors should be flexible in granting vacation requests from employees who reach 280 hours. Provided further that with regard to employees who have reached 280 hours, no vacation request by such employee shall be unreasonably denied. No employee shall be denied vacation leave such that it causes him or her to reach the 320 hour limit.

**Notification:** To assist employees to remain below the 320 hours vacation leave maximum accumulation, the parties agree that no later than October 1 of each year of this Agreement, the City will provide the Union and Department Heads with a report identifying accumulated vacation hours of all employees. The City also agrees to notify all employees who have accrued 280 hours of vacation leave, as of this date, that they must take vacation leave to reduce their vacation leave to avoid reaching the 320 hour maximum accrual.

**16.8 Prorated Vacation due to Extended Absence, Reemployment or Reinstatement**

An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which he or she returns to the City service, to a prorated vacation based upon the total years of service with the City and upon the total number of months of actual service with the City during the said calendar year. For succeeding calendar years, his or her vacation leave shall be as provided elsewhere in this Section 16 (Vacation).

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An employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred sixty (160) consecutive hours shall be entitled to a full vacation. If such an employee is off the payroll for one hundred sixty (160) consecutive hours, his or her vacation shall be as provided in the preceding paragraph of this Section 16.8 (Prorated Vacation due to Extended Absence, Reemployment or Reinstatement) or Section 16.9 (Payment of Vacation upon Termination or Extended Leave after Six Months of Service).

**16.9 Payment of Vacation upon Termination or Extended Leave after Six Months of Service**

If an employee, is terminated, or is granted an extended military leave or other extended leave of absence without pay, such employee, or his or her estate, shall be paid for vacation credits in excess of the actual amount of vacation leave taken or such employee, or his or her estate, shall reimburse the City for the actual amount of vacation leave taken in excess of vacation leave credits, as the case may be.

**16.10 Calculation and Payment or Reimbursement of Vacation Credits upon Termination or Extended Leave**

Upon termination, extended military leave, or other extended leave of absence without pay, vacation leave credits shall be totaled, and the actual amount of vacation leave taken, including any that may have been taken during the year in which the termination, extended military leave, or other extended leave of absence without pay occurs, shall be deducted from the total credits. If the credits exceed the actual amount of vacation leave taken, such employee, or his or her estate, shall be paid for the excess of credits on the basis hereinafter set forth. If the actual amount of vacation leave taken exceeds the credits, such employee, or his or her estate, shall reimburse the City on the same basis.

The basis for such payment by the City or for such reimbursement to the City shall be as follows:

The employee's hourly pay rate at date of termination, extended military leave, or other extended leave of absence without pay, multiplied by the excess of credits over vacation leave actually taken or excess of vacation leave actually taken over credits, as the case may be.

**16.11 Lump Sum Payment of Vacation**

Upon termination, extended military leave or other extended leave of absence without pay, payment for excess of vacation leave credits shall be made in one lump sum at time of termination, extended military leave, or other extended leave of absence without pay, or as soon thereafter as possible; provided, however, that an employee may elect to use excess vacation leave credits prior to termination, extended military leave, or other extended leave of absence without pay, to the extent permitted by this Section 16 (Vacation), and receive a lump sum payment

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for the balance of leave credits, if any. An employee, or his or her estate, shall not be paid for vacation leave credits in excess of eight (8) calendar weeks. Notwithstanding the foregoing, accumulated but unearned vacation credit at the time of retirement shall be paid off in a lump sum.

**16.12 Calculation of Vacation Based on Actual Paid Hours**

All vacation benefits shall be calculated upon actual paid hours of work. This provision shall go into effect immediately upon implementation of necessary data processing and programming changes.

**16.13 Vacation Accounting Procedures**

The City may revise vacation accumulation provisions in order to standardize accounting procedures without effect on the amount of employees' vacation, subject to review and approval by the union.

**16.14 Voluntary Time Off**

The City will implement a voluntary time off (VTO) program, which may include a year-end holiday closure. It is understood by the parties that employee participation is completely voluntary and that employees who wish to work during such periods will be permitted to do so.

**SECTION 17: HOLIDAYS****17.1 Holidays**

Recognized holidays for employees in Representation Unit C shall be:

- 17.1.1 New Year's Day
- 17.1.2 Martin Luther King's Birthday (3rd Monday of January)
- 17.1.3 Lincoln's Birthday
- 17.1.4 Washington's Birthday (observed on the third Monday in February)
- 17.1.5 Malcolm X's Birthday (observed on Monday or Friday nearest May 19th)
- 17.1.6 Memorial Day (observed on the last Monday in May)
- 17.1.7 Independence Day
- 17.1.8 Labor Day (observed on the first Monday in September)
- 17.1.9 Indigenous Peoples' Day (observed on the second Monday in October)
- 17.1.10 Veteran's Day
- 17.1.11 Thanksgiving Day
- 17.1.12 Day after Thanksgiving Day
- 17.1.13 Christmas Day
- 17.1.14 Effective January 9, 2000, each employee shall be granted three (3) floating holidays each calendar year.

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**17.2 Floating Holidays**

Any employee shall be granted three (3) floating holidays each calendar year. The days selected shall be by mutual agreement between the employee and the department head (or his or her designee). In the event mutual agreement cannot be reached on the selection of floating holidays, the employee shall have the three (3) days added to his or her accrued vacation time. Employees may take Floating Holidays in one (1) hour increments.

17.2.1 Additional Floating Holidays

For employees who were required to remain in the workplace from March 17, 2020 - June 1, 2020, the City will provide 8 hours of floating holidays for every 40 hours of regularly scheduled hours worked in the workplace up to a maximum of 32 hours of floating holiday. The City will credit these floating holiday hours in the first full pay period after adoption of the MOU.

City will use a specific pay code for the additional floating holiday, hours will be available June 30, 2021. These additional 32 hours of floating holiday shall have no cash value and may not roll over to vacation if not used by June 30, 2021.

**17.3 Floating Holiday Accrual upon Employment**

In the first calendar year of employment, an employee hired before May 1 shall be entitled to three (3) floating holidays; and an employee hired on or after May 1, but before September 1, shall be entitled to two (2) floating holidays; and an employee hired on or after September 1, shall be entitled to one (1) floating holiday in that first calendar year.

**17.4 Limitations**

No monetary award shall be authorized for unused accumulated Floating Holidays for employees who terminate employment prior to the completion of six (6) months of continuous City service.

**17.5 Holidays for Employees whose Work Week is Other than Monday through Friday**

Employees whose work week is Monday through Friday shall be allowed all holidays with pay which fall within such work week. Those employees whose work week is other than Monday through Friday shall be entitled to the same number of holidays, with pay, during each calendar year as are allowed to employees whose work week is Monday through Friday. The procedure for allowing holidays for employees whose workweek is other than Monday through Friday shall be established by the City Manager. The provisions of this Section 17.5 (Holidays for Employees whose Work Week is Other than Monday through Friday) are not applicable to intermittent employees.

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**17.6 Work during a Holiday**

An employee required to work on any day which is a holiday for employees whose work week is Monday through Friday shall be paid for the number of hours worked during such day at the rate of one and one-half (1½) times the straight-time rate, based upon his or her regular monthly salary, or shall be granted compensatory time off in an amount equal to one and one-half (1½) times the number of hours worked on such holiday. Any employee who works on Christmas day or Thanksgiving Day shall be paid double time for that day. The hours worked on such holiday and paid at the rate herein provided shall not be credited in computing the hours worked in the week for overtime purposes.

The holiday pay provided for shall be in addition to an employee's regular salary. In the event that the time worked on such a holiday is also overtime, as provided in Section 13 (Overtime) of this Memorandum Agreement, payment will be made for the hours worked either as overtime under said Section 13 (Overtime), or as holiday pay under this Section 17 (Holidays), but will not be made under both Sections.

**17.7 Holidays for Part-Time Employees**

Regularly scheduled part-time employees 1) who are assigned to a regular schedule of twenty (20) or more hours per week; 2) who have worked for the City as regular or part-time employees for one (1) or more years; and 3) who during such period of time have worked a minimum of 1,000 hours shall be entitled to the holiday pay for the number of hours which such employee would have worked had the holiday not occurred, provided such holiday occurs on a day which such employee is regularly scheduled to work.

**SECTION 18: SICK LEAVE**

**18.1 Eligibility**

Any employee shall be entitled to take sick leave with full pay in case of sickness, disability, or serious illness within the immediate family of the employee in accordance with the provisions of Sections 18.2 (Sick Leave Accrual) to 18.12 (Cessation of Accrual).

**18.2 Sick Leave Accrual**

Each employee shall be credited with one (1) working day of sick leave with full pay for each month of service.

For the purposes of this Section 18 (Sick Leave), a month of service shall mean thirty (30) consecutive calendar days in the case of employees working on a fulltime or

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part-time basis, and shall mean 163 hours of work in the case of employees working on an intermittent basis.

**18.3 Pro-rated Sick Leave for Part-Time Employees**

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

**18.4 Sick Leave for Intermittent Employees**

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

**18.5 Maximum Accumulation**

Such sick leave as provided in Section 18.2 (Sick Leave Accrual), when not used, shall be cumulative; but the accumulated unused period of sick leave shall not exceed two hundred (200) working days, regardless of the length of service. When the maximum of two hundred (200) working days has been reached, and thereafter part of said maximum has been used, the used part of said maximum may subsequently be replenished at the applicable rate provided in Section 18.2 (Sick Leave Accrual).

**18.6 Payment upon Retirement/Termination**

All accumulated sick leave shall be canceled when an employee terminates or is terminated, except as provided below for employees hired on or before June 30, 2013.

**18.6.1 Employees Hired on or Before June 30, 2013:** For employees hired on or before June 30, 2013 who retire or voluntarily terminate with a vested pension, and with between twenty (20) years and twenty-eight (28) years of benefited service shall be entitled to receive payment in an amount equal to thirty eight percent (38%) of their accrued sick leave days up to a maximum of the two hundred (200) day maximum accumulation. Provided further that any employee retiring on permanent disability arising out of and incurred in the course and scope of his employment with the City shall be entitled to receive payment at retirement for thirty eight percent (38%) of accumulated unused sick leave days but not, in any event, more than thirty eight percent (38%) of the two hundred (200) day maximum accumulation.

**18.6.2 Payment After 28 Years of Service for Employees Hired on or Before June 30, 2013:** Employees who were hired on or before June 30, 2013, who

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terminate with at least twenty-eight (28) years of benefited 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 (28) years of benefited service shall be entitled to receive payment in an amount equal to fifty percent (50%) of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days.

**18.6.3 Sick Leave Payout to 401(a) Plan for Employees Hired on or Before June 30,**

**2013:** The City and the Union have met and conferred on an Internal Revenue Code Section 401(a) plan and trust agreement to address the liquidation of sick leave at time of retirement. This plan and trust agreement was originally negotiated with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 and has been submitted to the Internal Revenue Service for a Determination Letter and a Private Letter Ruling which are pending. If the City receives a positive response from the Internal Revenue Service, the plan and trust agreement will be extended to the employees in the bargaining unit. This will provide the employees with an irrevocable option to defer accrued but unused sick leave at time of retirement into a 401(a) plan or be paid out the balance of the accrued but unused sick leave less withholding of applicable federal and state taxes.

**18.7 Annual Payment for Hours in Excess of Maximum for Employees Working Half-Time or More for Employees Hired on or Before June 30, 2013**

Employees who regularly work one-half ( $\frac{1}{2}$ ) time or more and who have attained the one hundred fifty (150) day maximum sick leave accumulation shall be entitled to receive payment for one-third ( $\frac{1}{3}$ ) of the first twelve (12) days of sick leave for which they become eligible but do not use and would otherwise forfeit because of the one hundred fifty (150) 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 January 22 of the following year. Such payment shall be made at the employee's salary rate in effect on the preceding December 31 and shall be made only in units of whole days and not for any fraction of a day.

**18.8 Restoration of Sick Leave if Reemployed within Two Years**

Accumulated sick leave, which has been canceled by reason of an employee's termination, shall be credited back to such employee if the employee returns to City employment within two (2) years of such termination.

**18.9 Sick Leave Use/Family Illness**

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

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more than fifteen (15) working days in any calendar year may be taken as sick leave because of the illness of a member of the employee's immediate family, except for serious medical conditions covered under the provisions of Administrative Regulation 2.4 (Family Care Leave). The immediate family of an employee, for the purpose of this Section, shall be defined as: spouse, domestic partner, son, daughter, parent or dependent.

**18.10 Prohibition for Use with Outside Employment**

No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that such injury is covered by the Workers' Compensation laws of the State of California, or other provision for payment for time off because of such injury is made by such other employer. In the event such injury is not covered by the Workers' Compensation laws of the State of California and no other provision for payment for time off because of injury is made by such other employer, sick leave in accordance with the provisions of this Section shall be allowed only if such outside employment has been approved by the City.

**18.11 Notification Requirement**

In order to receive compensation while absent on sick leave, the employee shall notify his department head prior to or within four (4) hours after the time set for beginning his or her daily duties, or as may be approved by the head of his or her department. The Union and the City recognize it is advantageous to both parties that calls should normally be made prior to the beginning of the work shift. Leave for non-emergency doctors' appointments shall be requested in advance. In specific instances the City may by written notice require an employee (s) to call in prior to the beginning of their shift in order to be eligible for sick leave.

**18.12 Cessation of Accrual**

An employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred-sixty consecutive hours shall receive his or her earned sick leave credit. If the employee is off the payroll for one hundred-sixty (160) consecutive hours or more, he or she shall not earn sick leave credit for each two successive pay periods that he or she is off the payroll.

**18.13 Workers' Compensation**

All probationary and permanent employees of the City and provisional employees who have worked a total of four (4) months or more for the City, who have suffered any disability arising out of and in the course of their employment as defined by the Worker's Compensation Insurance and Safety Act of the State of California, and who are receiving or shall receive compensation from the insurance carrier for such disability, and during the first seven (7) days after such disability when compensation is not paid by the insurance carrier shall be entitled to remain absent from duty with pay until such time as they are able to return to duty or some other final disposition is made of their case; provided, however, that provisional



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employees who have worked a total of four (4) months or more for the City shall be entitled to remain absent from duty with pay for the period they would have been permitted to remain provisional employees under their employment at the time of injury.

All employees, other than probationary and permanent employees and provisional employees who have worked a total of four (4) months or more, shall be entitled to such compensation as may be allowed them by the Workers' Compensation Insurance and Safety Act of the State of California.

**18.13.1 Workers' Compensation Payments:** Payments from the insurance carrier for disability arising out of and in the course of employment shall be paid to the employee. The amount of such payment or payments shall be deducted from the monies, which the employee received from the City. Payments from the insurance carrier, plus the monies paid to the employee by the City, shall be equivalent to the employee's regular full pay.

**18.13.2 Workers' Compensation Leave and Salary Continuation:** Payments under the Workers' Compensation law for temporary disability, or a recurrence thereof, arising out of and in the course of employment shall be paid for a period not to exceed 365 days at a maximum payment of the employee's pre-disability net pay but shall not exclude any salary adjustments to which the employee is entitled. Thereafter, the employee will continue to receive only the temporary disability payments provided under state law, and the City will cease to pay the difference. However, salary continuation payments above the statutorily required temporary disability payments shall not be reported by the City to CalPERS as compensation. No time worked shall be part of the 365 calendar days of salary supplement paid by the City. This change shall not affect employees who are currently off the job with a work-related injury which occurred prior to July 1, 1979.

**18.13.3 Calculation:** The City shall continue to calculate salary continuation at pre-disability gross pay. The City may calculate salary continuation payments at pre-disability net pay at such time when they develop the capacity to administer it equitably. Any change in calculation shall not reduce employees' combination of disability payments and salary continuation payments below employees' pre-disability net pay.

The change in calculation shall not affect employees who are off the job with a work-related injury prior to the new calculation method being implemented.

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18.13.4 **Workers' Compensation Related Absence of Less than Four (4)**

**Hours:** An employee who is absent from work for a medical appointment or physical therapy for less than four (4) hours will have ½ day charged against his or her 365 day maximum period for receipt of salary continuation pre-disability net pay.

18.13.5 **Workers' Compensation Related Absence of Four (4) Hours or More:**

An employee who is absent from work for a medical appointment or physical therapy for 4 hours or more will have 1 day charged against his or her 365 day maximum period for receipt of salary continuation pre-disability net pay.

18.13.6 **Calculation Based on Actual Paid Hours:** All sick leave benefits shall be calculated upon actual paid hours.

**18.14 Light Duty**

Assignments for temporarily disabled employees.

An employee who is absent by reason of industrial disability may be returned to work and given temporary light duties within his or her ability to perform. The duration of any such period of temporary work should be determined by the City. Employees should be compensated at the rate of pay of their regular classification while engaged in such temporary duties, and such work assignments are to incorporate the following provisions:

18.14.1 **Modified Duty Accommodation:** The City shall accommodate, when feasible, employees covered by this memorandum under the provisions of workers' compensation, and such work assignments are to incorporate the following provision:

18.14.1.1 The assignment shall be consistent with medical limitations as determined by the physician of record.

18.14.1.2 The Assignment shall be within the City of Berkeley and may include hours and days of work other than the employee's regular assignment.

18.14.2 **Modified Duty Accommodation for Non-Industrial Disabilities:** The City may accommodate an employee disabled with a non-industrial disability by providing a modified work assignment in that employee's classification. To be eligible for such a modified assignment, the employee must provide the Human Resources Department with a medical statement from his or her treating physician that clearly states the medical limitations and abilities of the employee. If modification of

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that position does not serve the best interests of the City, other classifications may be considered, subject to the approval of the Human Resources Director. Compensation will be provided at the level of the classification in which the temporarily disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.

18.14.3 **Modified Duty for Pregnancy-Related Disability:** In the case of a medically certified, pregnancy-related disability, in which the normal duties clearly threaten the health and safety of the employee or the unborn child, the Human Resources Department will endeavor to place the employee in a position which best serves the interest of the City with no loss of pay, but in no event will such placement exceed 5 months in duration.

18.14.4 **Light Duty Assignments:** Availability of light duty job assignments shall be discussed upon request at the monthly Labor-Management Meetings.

**18.15 Control Program for Sick Leave Use**

The City may establish a reasonable program for the control of abuse of sick leave and absenteeism, subject to Union review and comment.

**18.16 Bonus Time for Unused Sick Leave**

For every six (6) months of perfect sick leave attendance the employee will receive eight (8) hours of bonus time. A leave of absence from work pursuant to workers' compensation is counted as an absence from work in the same manner as sick leave for the purpose of this bonus. This bonus time will be prorated for part-time employees. Such bonus time can be used for any leave purpose covered by this Memorandum Agreement. Such bonus time shall be counted as vacation leave credits for purposes of determining eligibility for carry-over and cash payment.

**18.17 State Disability Insurance**

Except as provided in 18.17.1.3 below, any employee who is absent due to personal illness for more than 7 calendar days (or for any period of time if hospitalized) may apply for State Disability Insurance Benefits.

18.17.1 **State Disability Integration:** After such employee has been absent from work due to personal illness for six (6) consecutive work days, if the employee applies and is eligible for State Disability Insurance, the City shall integrate the employee's pay with the employee's State Disability benefits in the following way:

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18.17.1.1 The City will determine the weekly SDI benefit amount based on the amount of wages earned with the City of Berkeley in the SDI base period.

18.17.1.2 The weekly SDI benefit will be subtracted from the employee's normal weekly wages and the amount necessary to bring the total of State Disability plus wages to 100% will be deducted from any accumulated sick leave, vacation leave and compensatory time available to the employee. The integration with vacation leave and compensatory time is optional but will be automatically implemented after sick leave has expired unless written notification is received from the employee, as discussed below.

18.17.1.3 The employee must notify the payroll clerk, in writing, to stop integration of State Disability Insurance payments with vacation leave or compensatory time. Upon receipt of notification, the payroll clerk will cease integration of any future leave for that incident of illness.

18.17.1.4 The employee must show the State of California form (Disability Insurance Notice of Computation) to his or her payroll clerk to verify dates covered by SDI and the amount to be paid. The employee must inform their payroll clerk of all SDI payments. Any employee entitled to State Disability Insurance shall receive in addition thereto such portion of his or her accumulated leave as will meet, but not exceed, the standard earnings of the employee for his or her normal workweek, up to a maximum of five (5) days.

**SECTION 19: FUNERAL LEAVE**

In the case of death within the immediate family of an employee (who is not excluded from such benefit pursuant to Chapter 4.04.120 of the Berkeley Municipal Code (Personnel Ordinance) which is attached hereto as Exhibit C (City of Berkeley Municipal Code Chapter 4.04.120) and made a part hereof, such employee shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service for a period not exceeding three (3) working days or, in the case of a funeral or memorial service conducted out of the State of California, for a period not exceeding five (5) working days. For the purpose of this Section, the immediate family of an employee shall be defined as: husband, wife, domestic partner, mother, father, sister, brother, child, grandmother, grandfather, grandchildren, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, and daughter-in-law, step-parent, step-sibling, step-child, aunts and uncles, nieces and nephews.

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Leave of absence with pay because of death in an employee's immediate family is allowed for the purpose of attending the funeral or memorial services, and such leave shall not be charged against vacation or sick leave that an employee may be entitled to but shall be in addition thereto. Employees may request, and the City will make reasonable efforts to accommodate requests, for employees to supplement bereavement leave by using accrued vacation, compensatory time, or floating holiday. All accrued leave (and/or sick leave, if applicable) shall be utilized prior to taking a leave of absence without pay.

**Funeral Leave for Persons Other than Immediate Family:** In special cases, with the approval of the department head, the City Manager may grant a death leave to allow an employee to attend funeral or memorial services because of a death of a person not included within the definition of the immediate family.

**SECTION 20: MILITARY AND MARITIME LEAVE**

Military and Maritime Leave shall be governed by the provisions of the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA) and any regulations promulgated to implement the Act and the California Military and Veteran's Code.

If an employee voluntarily extends his or her military leave in excess of two (2) weeks, the amount of pay received by the employee for his or her military duty shall be deducted from his or her regular pay for such period.

**SECTION 21: PARENTAL LEAVE**

**21.1 Eligibility:**

Employees with one (1) or more years of employment with the City (or equivalent in the case of part-time employees) shall be entitled to parental leave as follows:

A continuous parental leave of up to one year will be granted to any employee with one year (full-time) or more years of employment with the City (or equivalent in the case of part-time employees) upon the birth of a child or the legal adoption of a child who is five years or younger, provided that:

**21.1.1 Commencement of Parental Leave:** The one year parental leave must commence no later than 13 months from the date of birth or adoption and must expire no later than 25 months from the date of birth or adoption, and.

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21.1.2 **Notice Requirement:** Employees exercising their rights under this provision must provide the City at least 45 calendar days notice prior to the anticipated commencement date of the parental leave, unless a shorter notice is approved for good cause.

21.1.3 **Use of Sick Leave:** The employee, at his or her option, may request that all or any portion of sick leave (up to a maximum of two hundred (200) days) or vacation leave that he or she has accumulated be paid in the same manner as it would if he or she had been absent due to illness or on vacation during the leave. In the event both parents are employed by the City, nothing in the Personnel Rules and Regulations shall prohibit both employees from taking simultaneous parental leave.

21.1.4 **Verification Requirement:** The foregoing leave shall be granted upon medical certification of pregnancy or the presentation of legal evidence of adoption.

21.1.5 **Life and Health Insurance Coverage Upon Exhaustion of Leave:** During approved parental leave, after all earned leaves are exhausted, (except sick leave) the City agrees to maintain life and health insurance coverage for duration of the approved leave subject to any regular participation requirement of the employee. Thereafter the City agrees to continue coverage for the employee at the employee's expense.

**SECTION 22: LEAVE OF ABSENCE WITHOUT PAY**

**22.1 Department Head Authority**

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

**22.2 Union Sponsored Training**

A leave of absence without pay shall be granted at the request of an employee and the Union for the purpose of the employee's attending a training course sponsored by the Union. The maximum duration of such leave shall not exceed two (2) consecutive payroll periods in a calendar year.

**22.3 Exhaustion of Accrued Time**

Leaves of absence without pay shall be granted only after the employee has utilized all accrued vacation and any other time owed to the employee, except sick leave.

**SECTION 23: JURY DUTY LEAVE**

An employee who is called or required to serve as a trial juror shall be entitled to be absent from work with pay during the period of jury service or while required to be present in court as a result of a call to jury duty. An employee is required to be present at work when not serving as a trial juror or as a member of a jury selection panel. An employee will notify his or her supervisor of any unusual constraints (e.g., time to call in, time to report for jury service) made by the court that affect the employee's ability to simultaneously fulfill his or her jury duty service and employment obligations; and the supervisor will attempt to accommodate the employee based on the operational needs of the department. Absence from work to perform jury duty service shall apply to employees who work swing and graveyard shifts for those days on jury duty. An employee who serves jury duty on his or her day off shall be granted an equivalent number of days off during his or her normal workweek. Employees are required to submit a written proof of jury duty service issued by the court in order to receive payment for Jury Duty Leave. The employee will keep any payment received for jury service including mileage reimbursement.

**23.1 Court Time**

The City will guarantee a minimum of three (3) hours pay for every court appearance required by an employee in the conduct of official City of Berkeley job duties on the employee's scheduled day off and three (3) hours minimum if on a workday but outside scheduled working hours. In addition, employees assigned to court phone standby in the conduct of official City of Berkeley job duties will be compensated by earning compensatory time as follows: Duty day, outside of scheduled working hours, one hour minimum compensatory time and hour for hour thereafter. Day off, two-hour minimum compensatory time and hour for hour thereafter.

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

### **SECTION 24: HOSPITAL-MEDICAL, DENTAL, AND VISION COVERAGE**

#### **24.1 Medical Coverage**

The City shall pay the cost of health insurance coverage for employees who are not excluded from such benefit pursuant to Chapter 4.04.120 of the Berkeley Municipal Code (Personnel Ordinance) which is attached hereto as Exhibit C (City of Berkeley Municipal Code Chapter 4.04.120) and made a part hereof, and who have such coverage under any group health insurance plan authorized by the City Council. The present level of benefits under the Kaiser Plan shall be maintained at City expense for the duration of this Memorandum Agreement. Medical benefits are extended to full-time employees, spouse of the employee or domestic partner, and IRS dependent up to age 26.

The City is committed to providing at least one fully paid employer provided health insurance option for employees and eligible dependents. The Union acknowledges the City's policies as stated above.

#### **24.2 Maximum Medical Premium Payments**

24.2.1 Effective January 1, 2003, the City will transfer employees who chose to maintain Kaiser medical plan coverage from the Kaiser V-5 Plan into the Kaiser S-1 Plan. Effective January 1, 2003, the City will transfer employees who chose to maintain Health Net HMO coverage from the Health Net W-2 Plan to the Health net C9A Plan.

24.2.2 For employees hired on or after January 1, 2003, the maximum amount the City shall be required to pay for medical insurance premiums shall be the applicable Kaiser rate (i.e., single party, two-party, or family) regardless of the City sponsored health plan selected by the employee.

24.2.3 For employees in a probationary or career benefited status as of January 1, 2003, the City will continue to pay 100% of the health care premium costs (employee and any dependents) for the health plan the employee is enrolled in as of this date as long as the employee remains employed in the bargaining unit. After January 1, 2003, if the employee transfers health coverage to a different health plan, the employee will assume responsibility for paying the difference, if any, between the Kaiser monthly premium rate (i.e., single-party, two-party, or family) and the plan chosen by the employee from that date forward.



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24.2.4 Effective January 1, 2009, the amount the City contributes each calendar year toward the payment of health insurance premiums, in accordance with Section 24.2 (Maximum Medical Premium Payment), will increase by the lesser of twenty percent (20%) (single, two-party, family) or the amount of the Kaiser HMO premium amount (single, twoparty, family) in effect on that date.

24.2.5 Effective January 1, 2014, for those employees who are enrolled on October 31, 2012 in the Health Net Point of Service (POS) health plan (Payroll Benefit Code Description HJ, HK, and HL) the City shall pay medical insurance premiums at the applicable rate for the Health Net HMO plan (i.e., single; 2-party, or family). If the employee chooses to remain enrolled in the Health Net POS Plan on or after January 1, 2014, the employee will assume responsibility for paying the difference between the Health Net POS and the Health Net HMO monthly premium rate (single; 2-party, or family). Provided further that if at any time after January 1, 2014 the employee transfers health coverage from Health Net POS to the Kaiser health plan, the maximum amount the City shall be required to pay for medical insurance premiums shall be the applicable Kaiser rate (i.e., single 2-party; or family) even if the employee subsequently enrolls in a different City sponsored health plan.

24.2.6 **Meet & Confer:** The Parties agree to meet and confer with the City, commencing no sooner than January 1, 2017. The negotiations shall be on developing comparable and less expensive health plan options as a means of reducing or ensuring that the City shall not be required to pay any penalties associated with the Excise Tax. This meet and confer process will be subject to normal rules of collective bargaining, including applicable impasse, strike or lock-out procedures.

Any changes resulting from a review of employee health insurance or other health related benefits will be subject to meet and confer between the Union and the City, except as otherwise provided in Section 24.5 (Change in Insurance Carrier).

**24.3 Dental Coverage**

The City shall provide a dental care program for employees who are not excluded from such benefit by Chapter 4.04.120 of the Berkeley Municipal Code (Personnel Ordinance) which is attached hereto as Exhibit C (City of Berkeley Municipal Code Chapter 4.04.120) and made a part hereof. The present level of benefits under the Dental Program shall be maintained at City expense for the duration of this Memorandum. Dental benefits are extended to full-time employees, spouse of the employee or domestic partner, and IRS dependents up to age 26.

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24.3.1 Effective January 1, 2000, the dental plan is improved from 90% coverage to 100% coverage.

24.3.2 Effective January 1, 2003, the annual maximum dental benefit will be increased to \$4000 per year, the lifetime maximum orthodontia benefit will be increased to \$4000, and the annual cleanings will be increased from two (2) to four (4). Effective January 1, 2016, the number of annual cleanings will be decreased from four (4) to three (3).

**24.4 Vision Coverage**

Effective January 1, 2003, the City shall provide a Vision Care Program for employees covered by this Agreement. The annual maximums for this benefit are as follows:

Benefit	Benefit Frequency
Exam	12-Months
Lenses	12-Months
Frames	24-Months
Contact Lenses**	12-Months
**Note: Benefits for Contact Lenses are in lieu of benefits for lenses and frames.	

The maximum amount the City shall be required to pay for the Vision Care Program shall be the applicable Vision Services Plan (\$25 Plan B) rate (i.e., employee only, employee plus spouse, employee plus one (1) child; employee plus family).

If during the term of this Agreement the premiums for such Vision Care Program are increased, the amount the City contributes shall increase no more than five percent (5%) above the previous calendar year's contribution amount towards the payment of the monthly premium.

Recognizing that the "vision exam" portion of the Vision Care Program duplicates existing benefit provided under Medical Coverage Section 24.1 (Medical Coverage) and 24.2 (Maximum Medical Premium Payments), the Union and the City agree to revisit the Vision Care Program during the term of this Agreement with the expectation that it may be possible to identify a plan that provides a "Hardware Only" benefit (Lenses every 12-months; Frames every 24-months). Such "Hardware Only" plan shall be at a lower City and employee cost than the present Vision Services Plan (\$25 Plan B).

**24.5 Change in Insurance Carrier**

Before the City acts to change an insurance carrier during the term of this Agreement, the City shall give the Union thirty (30) days notice of its intention to change carriers and shall, upon written request, meet with the Union to discuss the reasons for

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such change. The final determination of insurance carriers shall be at the sole discretion of the City.

**24.6 Domestic Partner Coverage**

If an employee chooses to complete and submit an Affidavit of Domestic partnership and sign up for medical and/or dental benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

**24.7 Part-Time Employees and Prorated Benefits**

All career and grant-funded, benefited employees working less than full time shall receive prorated rather than full fringe benefits and shall pay, by payroll deduction, a pro rata portion of the health and dental insurance premiums.

**24.8 Commencement of Medical, Dental, and Vision Benefits**

Medical, dental, and vision 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.

**24.9 Health Insurance In-Lieu Payments**

Effective January 1, 2019, for employees who show proof of alternate medical coverage, the City will compensate the employee \$576.00 per month, prorated for less than full-time employees, as provided in Section 24.7 (Part-Time Employees and Prorated Benefits). [In order to include in-lieu payments in the regular rate of pay for the correct overtime calculation, the City must provide in-lieu payments on the bi-weekly payroll cycle.](#) This benefit shall be frozen at this amount for the term of this agreement.

**24.10 Group Life Insurance**

Effective January 1, 2016, the City shall provide group life insurance, by a carrier of the City's choice, in the amount of \$100,000 which shall include a standard accidental death and dismemberment provision of a like amount. In addition, the employee may purchase additional life insurance up to a maximum of \$300,000 at a rate offered by the City's insurance carrier and subject to any medical exam as required by the insurance carrier. Life insurance shall become effective the first day of the calendar month following the date of hire, and shall continue until the last day of the calendar month in a pay status.

**24.11 Pre-Tax Status**

When employees are required to contribute to the cost for medical, dental, or vision insurance, those contributions will continue to qualify as pre-tax expenses under the provisions of IRS Section 125.

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**SECTION 25: RETIREE MEDICAL COVERAGE**

The City and Union have agreed that the City will make available retiree health insurance coverage under certain terms and conditions described below. The retiree medical benefit described below is the plan tentatively agreed to during multi-union bargaining during the summer of 1998. The terms and conditions of this benefit shall be set forth in a separate document which shall contain a full plan description and shall control the administration of the retiree medical plan.

The City will begin to provide the retiree medical coverage set forth in this Section on July 1, 1998. An employee's entitlement to any and all benefits provided by the City under this retiree medical cover plan are subject to the funding limitations set forth in sub-Section 25.8 (City Funding of Retiree Health Benefit).

**25.1 Amendment of Retiree Health Premium Assistance Plan III, effective January 23, 1998, Restated and Amended effective March 22, 2011**

Employees who retire on or after June 21, 2015, shall be permitted, at their discretion, to enroll in non-City sponsored health plans. After Council approval of the successor Memorandum of Understanding, the City shall amend the Retiree Health Premium Assistance Plan III as soon as practicable to allow enrollment in non-City sponsored health plans. In the event a retiree elects to enroll in a non-City sponsored health plan, the City shall make medical insurance premium payments directly to the health insurance provider in an amount equal to what the City would contribute to the City sponsored health plan. Retiree shall be solely responsible for all aspects of the requirements to enroll in a non-City sponsored health plan and maintain eligibility for such a plan; the City's sole obligation is to pay the medical insurance premium contribution required under this Section, as directed by the retiree to a non-City sponsored health plan. The City shall not be responsible for any excess cost differentials associated with the direct payment of premiums to non-City sponsored plans. The City will only make payments through its third party administrator to provide medical insurance premium payments for an individual plan and will not make payments for a group plan. The retiree and/or surviving spouse or domestic partner that enroll in non-City sponsored health plans shall be solely responsible for paying the administrative set up fee, the monthly administrative fee, and/or any other fees established by the third party administrator, and said fees will be deducted directly from the retiree's monthly contribution. No cash payments will be paid directly to the retiree and/or the retiree's spouse/domestic partner. There shall be no cash in lieu payments made under this benefit.

The City and the Union agree that the City will also amend the Retiree Premium Assistance Plan III to allow eligible retirees who retired prior to June 21, 2015 to enroll in a non-City sponsored health plan.

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**25.2 Eligibility**

An employee is eligible for the retiree health insurance coverage set forth in subSection 26.2 (Provisional Appointments to a Higher Classification) below if he or she meets all the following criteria:

- 25.2.1 retires on or after July 1, 1998,
- 25.2.2 is vested with CalPERS,
- 25.2.3 has at least eight (8) years of CalPERS qualifying service with the City,
- 25.2.4 is at least age 55.

**25.3 Pre Age 65 Retiree Health Insurance**

25.3.1 **Beginning July 1, 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. 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	Percent of City Contribution
8	30%
9	40%
10	50%
11	58%
12	66%
11	58%
12	66%
13	74%
14	82%
15	90%
16	92%
17	94%
18	96%
19	98%
20	100%

The employee will pay the difference between the City's monthly contribution and the actual monthly insurance premium charged by the health plan he or she has elected for retiree medical coverage. If during the term of this Agreement, the premiums for such health insurance are increased, the

amount the City contributes shall increase no more than 4.5% above the previous year's contribution. No increases in the amount the City contributes shall occur before July 1, 1999. Thereafter, any increase in the amount contributed by the City will occur on July 1 each year thereafter.

- 25.3.2 **Effective June 28, 2009:** For employees who retire on or after June 28, 2009, the City will pay on the employee's behalf no more than \$358.19 per month for an employee electing single party health coverage and no more than \$716.38 per month for an employee electing two party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.
- 25.3.3 **Effective June 27, 2010:** For employees who retire on or after June 27, 2010, the City will pay on the employee's behalf no more than \$424.31 per month for an employee electing single party health coverage and no more than \$848.61 per month for an employee electing two party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.
- 25.3.4 **Effective June 26, 2011:** For employees who retire on or after June 26, 2011, the City will pay on the employee's behalf no more than \$468.40 per month for an employee electing single party health coverage and no more than \$936.80 per month for an employee electing two party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.
- 25.3.5 **Effective June 24, 2012:** For employees who retire on or after June 24, 2012, the City will pay on the employee's behalf no more than \$589.48 per month for an employee electing single party health coverage and no more than \$1,178.96 per month for an employee electing two-party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.
- 25.3.6 **Effective June 23, 2013:** For employees who retire on or after June 23, 2013, the City will pay on the employee's behalf no more than \$666.00 per month for an employee electing single party health coverage and no more than \$1,332.01 per month for an employee electing two-party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.

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25.3.7 **Effective June 22, 2014:** For employees who retire on or after June 22, 2014, the City will pay on the employee's behalf no more than \$720.97 per month for an employee electing single party health coverage and no more than \$1441.94 per month for an employee electing two-party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.

**25.3.7.1 Retiree Health Premium Assistance Plan Benefit as of June 30, 2017:**

As of June 30, 2017, the maximum amount the City will pay the health care service provider, which were increased in accordance with Section 25.3 (Pre Age 65 Retiree Health Insurance), total \$1,517.40 for two party coverage for the retiree and spouse or domestic partner or \$758.70 for single party coverage.

**25.4 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 subSection 25.3 (Pre Age 65 Retiree Health Insurance) ceases. On reaching age 65, the City will make available health insurance coverage in addition to Medicare. When an employee or retiree reaches age 65, the City will contribute no more than ~~\$16,1750.00~~ per month on the employee's behalf for single party health insurance coverage and no more than ~~\$32,34100.00~~ per month for two party health coverage. If during the term of this Agreement, the premiums for such health insurance are increased, the amount the City contributes shall increase no more than 4.5% above the previous year's contribution.

The City will take such actions under the provisions of Section 218(g) of the Social Security Act to permit employees who are not currently paying employee portion of the Medicare Tax with a one-time opportunity to choose to be covered by the Medicare Tax. If the employee chooses to be covered by the Medicare Tax the choice cannot be revoked at a later date.

The City shall include in its next actuarial request, the impact on the City if the City were to amend its Retiree Health Premium Assistance Plan III to provide the following benefit levels:

Single Party Health: \$200.00  
Two Party Health: \$400.00

~~The Parties agree to meet and Confer over the increased benefits no later than June 30, 2019.~~

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**25.4.1 Retiree Health Premium Assistance Plan Benefit as of June 30, 2017:**

As of June 30, 2017, the maximum amount the City will pay the health care service provider, which were increased in accordance with Section 25.4 (Retiree Benefits for Employees Age 65 and Over), total \$62.59 for two party coverage for the retiree and spouse or domestic partner or \$31.30 for single party coverage.

**25.5 Termination by City of Retiree Medical Benefit**

Failure of the retiree or surviving spouse to pay their monthly share of the health insurance premium will result in termination of the retiree medical benefit and relieve the City of any further obligation to provide any further benefits under this Section.

**25.6 Retiree Medical Benefit for Employees Retiring Between the Ages of 50 and 55**

An employee who is at least 50 years of age, but less than 55, and has at least eight years of CalPERS qualifying employment with the City will retain eligibility for the retiree medical benefits provided in sub-Section 25.3 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his 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.

**25.7 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 sub-Section 25.3 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his 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.

**25.8 City Funding of Retiree Health Benefit**

City contributions to the retiree medical benefit will begin on July 1, 1998. Funding of this benefit will be set aside in a trust to be established by the City.

The retiree medical benefit will be funded by a charge of 0.25% of payroll in each year of this Agreement, so that contributions are at 1% of the payroll in the fourth year of the Agreement. The City will fund the benefit at approximately 1% of the payroll



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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 June 28, 2009, a total charge of twenty six thousand, six hundred and forty (\$26,640) of employee payroll will be charged in the final three years of the Agreement so that contributions are at 1.764% in the final year of the Agreement. The purpose of the 0.764% increase in payroll contributions is to fund Pre Age 65 Retiree Health Insurance.

**25.9 Actuarial Study**

The Union understands and acknowledges that the City conducted an actuarial study to determine the percentage of payroll it needed to set aside each year and the rate of return of 7% it must achieve to fund the retiree health benefit provided in this Section. The City will conduct an actuarial study by an outside actuary of the retiree medical plan prior to June 30, 2002. After that time, the City will conduct an actuarial study by the outside actuary of the retiree medical plan every two to three years to review the funding status of the program. The outside actuary will be selected by mutual agreement of the parties. The Union and City agree that if the Actuary concludes that the City's funding of this benefit by contribution of 1% of the payroll for all miscellaneous employees is insufficient to fully fund the retiree medical benefits, the City shall not be required to increase its funding for this benefit to more than 1% of the payroll for miscellaneous employees. In the event that there are insufficient funds in the trust to cover all retirees' monthly health premiums, the City and the Union agree to meet and confer regarding the City's distribution of its 1% contribution.

**ARTICLE 5 – TERMS AND CONDITIONS OF EMPLOYMENT**

**SECTION 26: PROBATIONARY PERIOD**

**26.1 Duration and Effect of Military Leave on Probationary Period**

Original and promotional appointments from employment lists shall be tentative and subject to a probationary period of: one (1) year (full time equivalent exclusive of all leave and light duty completed within 18 months) upon original appointment to the unit; employees promoted within the unit are subject to a probationary period of six (6) months (half time equivalent exclusive of all leave and light duty completed within one year); in addition, employees in trainee programs with specified training, evaluation or probation periods shall be governed by the applicable provisions of such program. Probationary employees who are granted military leaves of absence shall complete the balance of their probationary period within a period of six (6) months following their return to City service. No provision of this Section shall be interpreted to preclude the City from establishing new classifications, which may require a probationary period of more than six (6) months.

**26.2 Provisional Appointments to a Higher Classification**

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

**26.3 Report Requirement**

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

**26.4 Rejection during Probationary Period**

During the probationary period, an employee may be rejected at any time without right of appeal or hearing in any manner. An employee rejected from a position to which he has been promoted shall be reinstated to the position from which he was promoted unless charges are filed and he is discharged as provided in Section 31 (Discharge). Career City employees who are rejected during their probationary period in a promotional position or fail to complete the training requirements of a training program (academics or OJT) shall revert to their prior classification.

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**26.5 Rejections Subject to Disciplinary Appeal**

A promoted employee may not grieve his or her rejection from probationary period/training. However, an employee disciplined for cause while on promotional probationary period shall have access to the disciplinary appeal procedure.

**26.6 Probationary or Temporary Employee Assignments**

No probationary or temporary employee will be assigned as the only ground worker with an Electrician until such employee has completed one (1) month of familiarization with aerial truck equipment.

**SECTION 27: TRANSFER**

A transfer may be made at any time by the City Manager. Transfer shall not be used to effect a promotion, demotion, advancement, or reduction, each of which may be accomplished only as provided elsewhere in this Memorandum Agreement. No person shall be transferred to a position for which he or she does not possess the minimum qualifications. An employee with permanent status who is transferred from one class to another class shall assume permanent status in the class to which the employee is transferred.

**SECTION 28: PROMOTION**

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

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

**Interview of Employees:** A City employee who is on a closed promotional or open competitive list shall have the option to interview for the vacancy. A City employee who is unsuccessful and who so requests shall be advised of steps he or she may take to increase his or her competitive standing for future promotional opportunities.

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Employees who have qualified for promotional lists shall be considered for promotion based on the following factors: previous work performance, previous training and experience, merit, ability, and seniority.

**SECTION 29: DEMOTION**

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

Notice of the demotion shall be given the employee not later than four (4) weeks prior to the effective date of demotion and a copy of said notice filed with the Director of Human Resources. Any employee who has been demoted shall be entitled to receive a written statement of the reasons for such action.

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

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

**SECTION 30: SUSPENSION**

The City Manager may suspend an employee from his position at any time for the good of the service, for a disciplinary purpose, or for other just cause. Suspension without pay shall not exceed twenty (20) working days, nor shall any employee be penalized by suspension for more than twenty (20) days in any fiscal year. Any employee who has been suspended shall be entitled to receive a written statement of the reasons for such action.

For the good of the service, a department head may suspend an employee for not more than three (3) working days for any one offense. Such suspension shall be reported immediately to the City Manager.

**SECTION 31: DISCHARGE**

An employee may be discharged at any time by the City Manager, but if the probationary period has been completed then such discharge must be for just cause. Any employee

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who has been discharged shall be entitled to receive a written statement of the reasons for such action.

**SECTION 32: RESIGNATION**

An employee wishing to leave the competitive service in good standing shall file with the department head, at least two (2) weeks before leaving the service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the Director of Human Resources with a statement by the department head as to the resigned employee's service performance and other pertinent information concerning the cause for resignation. Failure of the employee to give the notice required shall be entered on the service record of the employee and may be cause for denying future employment by the City. The resignation of an employee who fails to give notice shall be reported by the department head immediately.

**SECTION 33: REINSTATEMENT**

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

**SECTION 34: NOTICE OF TERMINATION**

Department head shall notify the Director of Human Resources of all terminations of employment before or within two (2) days after the termination has taken place. Such notice shall be on forms provided by the Director of Human Resources and shall indicate the effective date and reasons for termination and a statement certifying whether or not the employee's services have been satisfactory.

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

**SECTION 35: GRIEVANCES**

**35.1 Definition**

A grievance is any dispute which involves the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the

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City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect memorandum agreements which result from the meeting and conferring process.

A grievant may be any member of the bargaining unit covered by the terms of this Agreement, or the grievant may designate the Union to act on his or her behalf, or the Union itself may file a grievance on behalf of a member or group of members. Grievances must be filed in a timely manner. Grievances that are filed by the Union on behalf of a member or group of members, or when a grievant designates the Union to act on his or her behalf, are subject to settlement at any step of the grievance procedure at the Union's sole discretion.

A member of the bargaining unit that files a grievance where the Union is not representing or acting on the grievant's behalf, may only utilize this grievance procedure through step 3. The Union retains the sole discretion to refer which, if any, grievances to move to arbitration.

The parties agree that disclosure to the other party of all relevant information available to them is critical to the successful resolution of grievances at the lowest possible step of the grievance procedure. The parties therefore agree to disclose to each other the relevant information in their possession related to the grievance. Further, the parties agree to comply with reasonable grievance related information requests from the other party in a timely manner.

**35.2 Procedure**

Grievances shall be processed in the following manner:

**35.2.1 Informal Step:** An employee who believes that he or she has a grievance (and / or the employee's steward or Union representative) may discuss the complaint with the Deputy Director of Public Works, or with such subordinate management official as the Deputy Director may designate. If the issue is not resolved informally, the formal procedures hereinafter specified may be invoked.

**35.2.2 First Formal Step:** Any informal grievance which has not been resolved by the Deputy Director of Public Works or his or her designee, must be filed in writing to the Deputy Director of Public Works within thirty (30) days from the date the informal discussion was initiated. The written grievance must state specific issues involved, the decision rendered at the informal step, and the remedy sought. The Deputy Director or his or her designee shall have five (5) days to respond in writing to the formal, written grievance.

35.2.3 **Second Formal Step:** Any formal grievance which has not been resolved by the Deputy Director of Public Works or his or her designee, may be referred to the Director of Public Works or his or her designee within thirty (30) days from the date of the Deputy Director's formal written response, or if more than five (5) days have elapsed since the grievance was presented at the Deputy Director's level.

35.2.3.1 **Referral to Department Director:** The grievance may be referred to the Director's level and shall include a copy of the original grievance, the decision rendered at the Deputy Director's level, and a clear, concise statement of the reasons for the referral.

The Director of Public Works may designate a personnel representative to investigate the merits of the complaint, to meet with the complaining employee (and/or the employee's steward or Union representative); if the grievant is not the Union itself, to meet with the officials of the Union; and to settle such grievance or to make recommendations thereon to the City Manager in his or her capacity as an employee relations officer. The Director of Public Works shall issue a formal written decision within five (5) days of receipt of the grievance or if a meeting is held with the employee and his or her Union, the meeting must be held within ten (10) days of receiving the referral. The Director of Public Works or his or her designee shall issue a written decision within five (5) days from his or her meeting with the complaining employee and/or Union representative. If the issue is not resolved the grievance may be referred to the Third Formal Step within thirty (30) days of receipt of the response from the Director of Public Works.

35.2.4 **Third Formal Step:** Any grievance which has not been resolved by the procedures hereinabove set forth may be referred to the City Manager by the grievant, the Union, or the Director of Public Works. Any such referral shall be in writing including a copy of the original grievance, the decision rendered at the Director's level, and a clear, concise statement of the reasons for the referral. The City Manager shall designate a Human Resources representative to investigate the merits of the complaint, and upon request from the employee or the union, that representative to meet with the complaining employee (and/or the employee's steward or Union representative), if the grievant is not the Union itself, to meet also with the officials of the Union, and to settle such

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grievance or to make recommendations thereon to the City Manager in his or her capacity as an employee relations officer.

The City Manager shall issue a decision within ten (10) days of receipt of the grievance referral or within ten (10) days of the meeting, or if a meeting is held with the employee and/or the Union, the meeting must be held within ten (10) days of the referral. Grievances filed by a bargaining member where the Union is not representing or acting on the grievant's behalf, shall end at this step and no further right of appeal exists. The City Manager's decision shall be final.

**Union controlled grievances:** If the issue is not resolved, the grievance may be referred to Arbitration by the Union pursuant to Section 35.2.5 (Arbitration: The Union retains the sole discretion to move a grievance to arbitration) below within thirty (30) days of receipt of the City Manager's response. Provided further that the Union shall forward to the City the Union's portion of the State Mediation and Conciliation Services (SMCS) fee within sixty (60) days of receipt of the City Manager's response. Failure by the Union to meet this sixty (60) days deadline for both referral to Arbitration and payment of the SMCS fee shall be deemed as a full and complete waiver by the Union to appeal the City Manager decision to Arbitration and the City Manager decision shall be final and binding on all parties.

**35.2.5 Arbitration: The Union retains the sole discretion to move a grievance to arbitration.** Any grievance which has not been resolved by the procedures hereinabove set forth may be referred by the Union, or the City to an impartial arbitrator who shall be designated by mutual agreement between the Union and the City—, using the State Mediation and Conciliation Services (SMCS) to provide a list of five (5) arbitrators. The City and the Union will alternately strike a name until one remains. The remaining name will be the arbitrator. The fees and expenses of the arbitrator, the State Mediation and Conciliation Services (SMCS) and of the court reporter shall be shared equally by the Union and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any. Arbitrator decisions on matters properly before them shall be final and binding on both parties. Arbitrator decisions on matters before them which do not pertain to the suspension or discharge of an employee shall be in the form of a recommendation to the City Manager who may accept or reject said decision. In the event of said rejection then, as to that particular grievance, and the fees and expenses of the arbitrator, SMCS, and of the court reporter shall not be shared by the Union, and full payment thereof shall be the sole responsibility of the City.



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The arbitrator may hear testimony, receive written briefs, interview witnesses, and conduct any investigation she or he deems appropriate, and shall render a final and binding decision to the parties which will end the formal grievance process.

35.2.5.1 **Arbitrator Jurisdiction:** No arbitrator shall entertain, hear, decide, or make recommendations on any dispute involving a position over which a formally recognized employee organization has jurisdiction unless such dispute falls within the definition of a grievance as hereinabove set forth in Section 35 (Grievances).

35.2.5.2 **No Modifications:** Proposals to add to or change this Memorandum Agreement or written agreements or addenda supplementary hereto shall not be arbitrable, and no proposal to modify, amend, or terminate this Memorandum Agreement, nor any matter arising out of or in connection with such proposal, may be referred for arbitration under this Section; and no arbitrator shall have the power to amend or modify or recommend amendment or modification of this Memorandum Agreement or any written agreements or addenda supplementary hereto or to establish or recommend establishment of any new terms and conditions of employment.

35.2.5.3 **Timeliness of Award:** No arbitrator will be selected hereunder who does not agree to render an award not later than thirty (30) calendar days after the close of the hearing. By mutual agreement between the City and the Union, the arbitrator may render an award immediately upon the conclusion of the presentation of evidence.

### 35.3 EEO Complaints

Any grievance which in any way affects the implementation of the City's Equal Employment Opportunity Policy shall not be subject to arbitration. The decision as to whether or not implementation of the Equal Employment Opportunity Policy is in any way involved shall be made by the City Manager in his or her sole discretion. If, in his or her judgment, any grievance which involves the Equal Employment Opportunity Policy, the Equal Employment Opportunity and Diversity Officer shall notify the Union to that effect in writing within seven (7) days of the date upon which the grievance is received in the Human Resources Department and, in such notification, refer to that Section of the Equal Employment Opportunity Complaint Investigation & Resolution Procedure which is involved; provided, however, that

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such notice may come at any time prior to arbitration if additional factors come to the attention of the Equal Employment Opportunity and Diversity Officer on the basis of which he or she considers it appropriate to change his or her original determination.

**35.4 Compensation Complaints**

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources. In such cases, no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation. Only grievants which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understanding contained in any Memorandum Agreement which has resulted from the meeting and conferring process shall be considered as grievances. Any other matters of compensation are to be resolved in the meeting and conferring process and, if not detailed in the memorandum agreement which results from such meeting and conferring process, shall be deemed withdrawn until the meeting and conferring process is next open for such discussion.

**35.4.1 Response Time Limits:** The Director of Human Resources or his or her designee shall issue a decision in writing within twenty (20) days from the time he or she received the compensation grievance in writing. The grievant or the Union may refer the decision to the Third Formal Step (Section 35.2.4 - Third Formal Step) of this Memorandum Agreement) within twenty (20) days of receipt of the written decision.

**35.5 Changes or Interpretations**

No changes in this Memorandum Agreement or interpretation thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Union.

**35.6 Extension of Timelines**

Timelines noted in this Section may be extended for cause upon mutual agreement between the City and the Union.

**35.7 Days**

All references in this Section 35 (Grievances) to "days" shall mean normal working days except as otherwise noted.

**35.8 Grievances Challenging Disciplinary Action**

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- 35.8.1 Any grievance involving any disciplinary action up to as three (3) day suspension will be filed at the Director level.
- 35.8.2 All grievances involving demotion, discharge, or suspension of greater than three (3) days will be filed at the City Manager's level of the grievance procedure. If the issue is not resolved within fifteen (15) days of referral to this step, the procedures hereinafter specified may be invoked.
- 35.8.3 No grievance involving the suspension or discharge of an employee will be entertained unless it is filed in writing with the City Manager within five (5) working days of the time at which the affected employee was notified of such action in writing. If the City Manager, in pursuance of the procedures outlined in Section 35.2.4 (Third Formal Step) above, resolves a grievance which involves suspension or discharge, he or she may agree to payment for lost time or to reinstatement with or without payment for lost time.
- 35.8.4 Arbitrator decisions on matters properly before them which pertain to the suspension or discharge of an employee shall be final and binding on both parties, to the extent permitted by the Charter of the City.

## **ARTICLE 7 – GENERAL PROVISIONS**

### **SECTION 36: GENERAL PROVISIONS**

#### **36.1 Personal Conduct**

- 36.1.1 No employee shall accept appointment to the deputyship or assistantship of any county or state office or position, or otherwise incur an obligation of civil public service outside his or her regular municipal employment without first obtaining the recommendation of the head of his or her department and of the City Manager.
- 36.1.2 No employee shall be disciplined for off-the-job activities which do not affect his or her job performance.
- 36.1.3 Employees shall so arrange their personal financial affairs so that the demands of creditors and collection agencies shall not impose a recurring burden upon the offices of the City Manager, the department head, or the Director of Human Resources for the purpose of making collections.
- 36.1.4 Full-time City employees may not carry on concurrently with their public service any private business or undertaking, attention to which affects the time or quality of their work or which casts discredit upon or creates embarrassment for the City government.
- 36.1.5 No official or employee who wears a badge or other official insignia as evidence of his or her authority and identity shall permit such badge or insignia to be used or worn by any other person of the same or another department or otherwise to leave his possession without approval by the head of this department. The department head shall not grant such approval except as to persons regularly and formally appointed by the City Manager to the position designated by the badge or insignia.

#### **36.2 Rain Gear**

The City will provide rain gear for employees in Representation Unit C assigned to work in inclement weather.

#### **36.3 Tools**

Each employee shall continue to be responsible for providing tools of the trade or other equipment, but shall receive a flat annual tool replacement allowance each July 1.

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New employees hired before or after July 1 will be entitled to a prorated tool replacement allowance payable the following July 1 after employment.

36.3.1 **Allowance:** Effective July 1, 2015, the tool replacement is five hundred dollars (\$500). Tool allowances shall be paid at the end of the fiscal year in which they are earned.

**36.4 Shoes**

Effective June 18, 2017, all classifications covered by this MA shall be eligible for reimbursement of up to two hundred dollars (\$200.00) per fiscal year for the cost of safety shoes. Employees receiving this reimbursement must wear safety shoes on duty.

36.4.1 **Reimbursement:** Employees shall be required to submit a reimbursement request, along with receipts verifying the purchase of safety shoes within sixty (60) days of purchase. Reimbursements will be paid within forty-five (45) days of complete reimbursement requests.

**36.5 Training**

36.5.1 **Responsibility:** Responsibility for developing training programs for employees shall be assumed by the City Manager. Such training programs may include lecture courses, demonstrations, assignment of reading matter, or such other devices as may be available for the purpose of improving the efficiency and broadening the knowledge of municipal employees in the performance of their duties. The City shall endeavor to provide training for all new technology purchased by the City and maintained by members of this Agreement.

36.5.2 **Advancement/Promotional Consideration for Special Training Courses:** Participation in and successful completion of special training courses may be considered in making advancements and promotions. Evidence of such activity shall be filed with the Director of Human Resources by the department head.

36.5.3 **Mileage and Tuition Reimbursement:** The City shall reimburse all employees for mileage and tuition expenses related for attendance at job-related courses. Provided that the employee must have prior authorization from his or her department head and the course has been approved by the City.

36.5.4 **Education Leave:** The City shall allow up to forty (40) hours off with pay per year to employees:

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36.5.4.1 Who are required to obtain a license (excluding Class C driver's licenses) issued by the State of California and, in order to do so, must take courses which were not offered as a part of their basic curriculum or,

36.5.4.2 Who are required to obtain continuing education as a condition of license renewal; provided the license is required by the City for the employment or continued employment of the employee and that no more hours than are required by the State shall be granted. Employees seeking time off to take courses for an initial license must provide verification that the course was not offered as a part of their basic curriculum.

Employees who take classes during non-scheduled work hours in order to retain a job required license or to meet continuing education requirements shall be allowed time off from work on an hour-for-hour basis without loss of compensation or other benefits.

36.5.4.3 To obtain education and training related to job skills to enhance performance, or to qualify for promotion, at the discretion of the department head.

**36.5.5 Management/Union Meetings:** The City and Union agree that it is beneficial to both parties to discuss and develop training for all classifications. The Director of Public Works and the Union shall meet on a quarterly basis to discuss and review progress made in addressing initial employee orientation, new equipment training, and vendor training.

**36.5.6 Commercial Driver's License:** The City shall provide the necessary training for employees to obtain a California Class B driver's license when such license is a requirement of their job classification and a condition of employment. Employees who fail to obtain the required California Class B driver's license after training will be subject to rejection from the probationary period pursuant to Section 26.4 (Rejection during Probationary Period) of this Memorandum Agreement.

**36.6 Use of Automobiles**

The City Manager shall govern the use of City-owned automotive equipment and privately-owned automotive equipment by such rules and regulations as he or she may establish. Compensation shall be given in the form of a cash allowance for the use of private-owned automobiles on City business if such use has been

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authorized in advance by the City Manager. The cash allowance will be equal to the amount established by the Internal Revenue Service, and will change as necessary to comply with IRS Standard Mileage Rate.

**36.7 Safety**

36.7.1 **Safety Committee:** The City and the Union will make every effort to maintain excellent health and safety standards. No employee shall be required to perform work with unsafe equipment or in situations which are injurious to his or her health or safety. To further these purposes, the City shall maintain an ongoing safety program which shall include committees comprised of representatives from the Union and appropriate supervisory personnel.

36.7.2 **Rainy Weather Assignments:** The City shall endeavor to avoid assigning non-emergency, routine work in rainy weather, which would constitute a safety hazard.

**36.8 YMCA Group Membership**

The City shall offer employees a low or no-cost group membership in the Berkeley Central YMCA. As of July 1, 1999, the City will pay 75% of the membership fee. If the monthly fee is increased to more than \$60, the employee share will be capped at \$30 per month; the City will pay the balance. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding.

Use of the YMCA membership by a City of Berkeley employee, as provided for in this Agreement, is non-compensable, is not a part of the employee's work-related duties, is not required for employment and is not condoned as part of a physical fitness program, or required to remain top physical conditioning for the employee's job performance.

The City of Berkeley or its Claims Administrator may not be liable for any injury that arises out of a City of Berkeley employee's participation in and use of a YMCA membership.

**36.9 Annual Performance Evaluation**

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

**ARTICLE 8 - PUBLIC EMPLOYEES RETIREMENT SYSTEM****SECTION 37: PAYMENT OF EMPLOYEES' PERS CONTRIBUTIONS****37.1 Miscellaneous Designation**

The City shall continue participation under the Miscellaneous Employees Plan of the California Public Employees' Retirement System, (CalPERS).

**37.2 "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).

**37.3 "New Member" Definition**

"New Members are as defined in the Public Employees' Pension Reform Act of 2013 (PEPRA), Government Code Section 7522.04(f).

**37.4 CalPERS Retirement Formula for "New Members" as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA)**

"New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the retirement formula set forth in PEPRA.

**37.5 CalPERS Retirement Formula and Employer Paid Member Contribution for Classic Employees (i.e. current employees and employees who do not qualify as "New Members" under PEPRA)**

Current employees and other employees who do not qualify as "New Members" under PEPRA shall continue to be entitled to the 2.7% at age 55 retirement formula benefit, and the City shall continue the contribution of eight percent (8%) to CalPERS on behalf of the employee.

**37.6 CalPERS New Members Normal Share of Cost**

New Members as defined by PEPRA who are hired on or after January 1, 2013 shall pay 50% of the normal share of cost required by PEPRA. New Members shall receive any other additional optional CalPERS benefits that the City provides to Classic Employees as allowed by PEPRA.

**37.7 Reporting of Contributions**

Effective July 3, 1994, contributions made pursuant to Section 37.5 above have been 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.



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The member contributions made by the City shall not be considered as a part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked, or education incentive pay; nor shall such contribution be taken into account in determining the level of any other benefit which is a function of or percentage of salary. Pursuant to California Government Code Section 20691, the City shall not increase, reduce or eliminate payments of the normal contributions on behalf of the employee without engaging in the meet and confer process with the Union.

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.

**37.8 City Contracts with CalPERS**

The City's contract with CalPERS includes the following optional benefits:

**37.8.1 Classic Employees – One Year of Final Compensation:** Classic Employees as defined in Section 37.2 ("Classic Employees" Definition) above and as provided in Government Code Section 20042 (July 9, 1978).

**37.8.2 New Members – Three Years Final Compensation:** Provided further that New Members as defined by PEPRA hired on or after January 1, 2013 shall be eligible to receive retirement allowance based on three (3) highest consecutive years of compensation under the plan as provided under the California Public Employees' Pension Reform Act of 2013, or as subsequently amended.

**37.8.3 Post Retirement Survivor Allowance** as provided in Sections 21624, 21626 and 21628 (December 16, 1973).

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

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

**37.8.6 1959 Survivor Benefits to Surviving Spouse at Age 60** as provided in Section 21580 (December 16, 1973).

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

37.8.8 2% @ 55 for Local Miscellaneous Members as provided in Section 21354 (June 30, 1992).

37.8.9 Military Service Credit as Public Service as provided in Section 21024 (April 9, 1999).

37.8.10 Public Service Credit for Peace Corps or AmeriCorps/VISTA Service as Provided in Section 21023.5 (April 14, 2000).

**37.9 Index Level 1959 Survivor Benefit**

The City intends to amend its contract with CalPERS to provide the Indexed Level of the 1959 Survivor Benefit as provided in Section 21574.5 when administratively feasible.

**37.10 Classic Members' Pension Contribution through 20516 a Contract Amendment**

37.10.1 **July 3, 2016:** Effective July 3, 2016, employees will contribute one and one-quarter percent (1.25%) 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, in exchange for the City granting the salary increase set forth in Section 11.1.5 (July 3, 2016 - Salary/PERS Exchange) of this MA. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.

**37.11 New Members' Pension Contributions through 20516 a Contract Amendment**

37.11.1 **July 3, 2016:** Effective July 3, 2016, in addition to the contributions in Section 37.4 (CalPERS Retirement Formula for "New Members" as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA)), New Members will contribute one and one-quarter percent (1.25%) towards the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions as pre-tax via automatic payroll deduction, in exchange for the City granting the salary increase set forth in Section 11.1.5 (July 3, 2016 - Salary/PERS Exchange) of this MA. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.

37.11.2 The parties recognize that the CalPERS 20516 amendment that allows employee contributions toward the employer rate is in addition to the

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required 50% of the normal cost of "New Members" benefits and made in consideration of additional salary increases in Section 11.1.5 (July 3, 2016 - Salary/PERS Exchange) above (a total of 1% salary increases in exchange for employees paying a total of 1.25% towards CalPERS pension cost).

**SECTION 38: SUPPLEMENTAL RETIREMENT/DISABILITY INSURANCE PLAN**

Effective January 1, 1983, the majority of miscellaneous employees under the City's contract with the State of California Public Employees Retirement System who were covered by the integrated Social Security Program voted to withdraw from participation in the Federal Social Security Program. In lieu of Social Security payments, the City has agreed to pay an amount equal to that percent of individual pay (6.7% payable on the first \$32,400 of salary paid in the calendar year) which had been paid by the City to Social Security as of December 31, 1982 to a Supplemental Retirement and Income and Long Term Disability Insurance Plan for those employees previously covered under the integrated PERS/Social Security Plan. Provisions of this plan are described in Berkeley Municipal Code Chapter 04.36.101 (Supplemental Retirement and Income Plan I) as amended and Berkeley Municipal Code Chapter 04.38.101 (Supplemental Retirement and Income Plan II) as amended. All employees hired after July 22, 1988 are in SRIP II. All employees hired prior to July 22, 1988 are in SRIP I unless they chose to enroll in SRIP II prior to December 17, 1988.

**ARTICLE 9 - LAYOFF PROCEDURE****SECTION 39: LAYOFF**

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

**39.1 Announcement of Layoff**

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

39.1.2 **Freezing of Vacancies:** Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the competitive service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, benefited, temporary positions which are expected to last six (6) months or more, and notify all department heads that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Section 39.6 (Flexible Placement Program).

**39.2 Seniority Service Date**

39.2.1 All service in the employ of the City shall be counted toward the establishment of an employee's seniority service date, including, for example, permanent, probationary, provisional, temporary (full-time and intermittent), seasonal, and exempt employment, as well as leaves of absence for obligatory military service while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the seniority service date. Time off as a result of formal disciplinary action will be subtracted from the seniority service date.

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- 39.2.2 The auditor's office will maintain up-to-date and current seniority dates for all City employees holding probationary and permanent appointments.

**39.3 Establishment of Seniority Lists**

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

39.3.2 The names of all City employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by seniority service date. Employees on both lists shall be laid off on the basis of their seniority service date, i.e., employees with the least amount of total service shall be laid off first. All emergency, temporary, and provisional employees working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the probationary seniority list for a specific classification will be laid off prior to employees on the permanent seniority list for that classification.

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

39.3.4 If two (2) or more employees on a seniority list have an identical seniority service date, the tie shall be broken in the following order:

- 39.3.4.1 Time in classification - the employee having least time in the classification shall be released first;

- 39.3.4.2 By lot.

**39.4 Employee Retreat Rights**

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

39.4.2 In the process of retreating, the same rules concerning the length of service, classification seniority lists, etc., apply as in the first stage of the layoff process. In order to retreat, the targeted employee must be higher on the seniority list for the classification into which he or she is retreating than at least one of the incumbents on the probationary or permanent seniority list for that classification.

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

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

**39.5 Employee Notification**

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

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

39.5.3 Permanent, probationary, and career-exempt employees should be notified individually in writing of pending layoffs as soon as possible, with no less

than thirty (30) calendar days notification if targeted for release or reassignment.

If an employee fails to accept a bona fide offer of reassignment within ten (10) calendar days after the offer has been made, he or she forfeits further right to employment retention. Acceptance of a reassignment does not remove the right of appeal under Section 39.9 (Appeal Procedure).

35.5.4 An employee who is transferred in lieu of layoff when his or her position has been eliminated shall have automatic return rights to the previous position if it is restored within one (1) year of the date of the transfer. If an employee with a full time position is offered a reduction in hours in that position or in a lower classification, the employee may elect to be targeted for layoff for purpose of consideration under Section 39.6 (Flexible Placement Program.) If there is no flexible placement available for the employee, the employee may accept the reduction in hours, in lieu of layoff.

**39.6 Flexible Placement Program**

39.6.1 In order to minimize the negative impact of layoff, the City Manager will, as previously stated in Section 39.1.2 (Freezing of Vacancies), impose a citywide freeze on all appropriate vacancies as soon as it has been determined that a layoff of career City employees may be necessary.

39.6.2 Following the release of all emergency, temporary, and provisional employees in classes similar to those targeted for layoff, and as soon as employees targeted for layoff have been identified and the provisions under Sections 39.4 (Employee Retreat Rights) have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standards, and/or the substitution of related experience and education may be made, with an understanding on the part of management and supervisory personnel that adequate on-the-job training, which can be completed within no more than six (6) months, will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards if that has occurred.

This shall be called the qualification period. The employee shall be advised of their progress after two months and four and six months in the new classification. If at the end of the qualification period the department head notifies the Human Resources Department that the employee is

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unable to adequately perform the assignment or fails a test for the position administered by Human Resources then the employee shall be subject to the layoff process.

39.6.3 Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off, except that the City Manager may authorize the offer of a flexible placement to position with a maximum salary of no more than five (5) percent above the salary range as the classification from which layoff is targeted, when it is in the best interest of the City service to do so. Whenever flexible placement is made to a classification with a greater salary range, the appointment shall be probationary, in accordance with the terms of that classification.

39.6.4 Offers to positions under the Flexible Placement Program shall be made according to seniority service date and in accordance with the probationary and permanent seniority list certification process outlined in Section 39.3 (Establishment of Seniority Lists). All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review at all times.

39.6.5 If an employee fails to accept a bona fide written offer of an alternative job within ten (10) calendar days after the offer has been made, he or she forfeits further rights to employment retention. Acceptance of an alternative job under the Flexible Placement Program in no way jeopardizes an employee's standing on the reemployment priority lists on which his or her name has been placed in accordance with Section 39.7 (Reemployment Lists).

**39.7 Reemployment Lists**

39.7.1 The names of all probationary and permanent employees released from positions in the competitive service as a result of layoff must be placed on reemployment priority lists for those classifications from which they were separated, as well as all other classifications to which they have retreat rights in accordance with Section 39.4 (Employee Retreat Rights).

39.7.2 A reemployment priority list shall remain in effect for three (3) years.

39.7.3 Departments with vacancies in any classification for which there is an active reemployment priority list must use the reemployment priority list to fill their positions and may not use any other recruitment or appointment



method to fill a vacancy until appropriate reemployment lists have been exhausted.

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

39.7.5 If a former employee fails to accept a bona fide written offer of reemployment within fifteen (15) calendar days, his or her name will be removed permanently from the reemployment priority list from which the offer was made. Failure to accept an offer of reemployment to the classification with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all reemployment priority lists. However, the employee may decline (or accept) reemployment to lower salary range classifications without jeopardizing his or her standing on the reemployment priority list for the classification from which he or she was originally terminated.

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

### **39.8 Career Exempt Employees**

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

### **39.9 Appeal Procedures**

Any permanent, probationary, or career-exempt employee who is laid off, demoted, or reassigned as a result of layoff who believes that the layoff procedure has been improperly administered as it pertains to the employee's case may appeal the action under Section 35 (Grievances). In addition, employees may, at all times before, during, and subsequent to layoff, review all records, including seniority lists, reemployment priority lists, documentation pertaining to appointments under the Flexible Placement Program, etc., which pertain to their classification and their rights under the provisions of the layoff policy.

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**39.10 Reemployment Priority Rights**

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

**SIGNATURE PAGE**

Executed this \_\_\_ day of \_\_\_\_\_, 2021, by the Employer and Employee representatives whose signatures appear below for their respective organizations.

FOR INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS, LOCAL 1245

FOR THE CITY OF BERKELEY

\_\_\_\_\_  
Tom Dalzell, Business Manager

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

\_\_\_\_\_  
Charley Souders, Business Representative

\_\_\_\_\_  
LaTanya Bellow, Director of Human Resources

\_\_\_\_\_  
Greg Marwick, Steward

\_\_\_\_\_  
Andrew Brozyna, Deputy Director of Public Works

\_\_\_\_\_  
Tom Hartman, Negotiation Committee

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**EXHIBIT A - Hourly Salary Schedule****As of December 2, 2018 (3.0% Salary Increase)**

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
32020	C	COMMUNICATIONS TECHNICIAN	N	0	0	44.2005	46.3264	48.4402
52180	C	ELECTRICAL PARTS TECHNICIAN	N	0	32.3190	34.4065	36.2108	37.1260
51030	C	ELECTRICIAN	N	0	0	44.2005	46.3264	48.4402
51100	C	LEAD COMMUNICATION TECHNICIAN	N	0	0	47.2545	49.3934	51.7651
51080	C	LEAD ELECTRICIAN	N	0	0	47.2545	49.3934	51.7651

**EXHIBIT B - Hourly Salary Schedule****As of October 20, 2019 (2.0% Salary Increase)**

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
32020	C	COMMUNICATIONS TECHNICIAN	N	0	0	45.0845	47.2529	49.4090
52180	C	ELECTRICAL PARTS TECHNICIAN	N	0	32.9654	35.0947	36.9350	37.8686
51030	C	ELECTRICIAN	N	0	0	45.0845	47.2529	49.4090
51100	C	LEAD COMMUNICATION TECHNICIAN	N	0	0	48.1996	50.3813	52.8004
51080	C	LEAD ELECTRICIAN	N	0	0	48.1996	50.3813	52.8004

Note: Employee's monthly salary will depend upon the number of hours worked. Employees hired before January 9, 2000, have an option (discussed in detail in Exhibit E (Hours and Days of Work) to work either a 37.5-hour work week or a 40-hour work week. Employees hired after January 9, 2000 work a 40-hour per week schedule.

**EXHIBIT C**

**CITY OF BERKELEY  
MUNICIPAL CODE CHAPTER 4.04.120**

**4.04.120 Exemption from Career Service (At-Will Employees).**

The provisions of this chapter shall apply to all positions in the service of the city except:

- A. The city manager, assistant city manager, deputy city manager, assistant to the city manager, police review commission officer, police review commission investigator, and assistant to the mayor;
- B. Assistant, associate and senior management analyst when appointed to the city manager's department or to the Budget Unit of the Management and Administrative Services Agency; and secretary to the mayor, administrative secretary and secretary when appointed to the mayor's office;
- C. All department heads, health officer, and supervising psychiatrist;
- D. Persons employed seasonally in the summer camps;
- E. Persons employed as reserve or emergency employees during the period of national emergency as provided in the ordinance creating such employment;
- F. All persons who are paid at an hourly rate with the exception of library aides. Persons appointed as hourly Library Aides shall be part of the career service with the exception of those hired to fill temporary positions of six months or less.

Persons appointed to these positions which are exempt from the career service shall serve at the pleasure of the appointing authority and may be demoted, suspended, or otherwise rejected at any time without cause and without right of appeal or hearing in any manner. Except that, any employee in the career service promoted or transferred to a position not included in the career service and made exempt from the career service shall be reinstated to his or her career appointment from which he or she was promoted or transferred if within six months of appointment to a position not included in the career service, action is taken to dismiss him or her, unless charges are filed and the employee is discharged in accordance with this chapter and the rules established hereunder for positions in

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the career service. All employments designated in this Section shall be entitled to only those benefits provided for at-will employees in the personnel rules and regulations or in applicable memoranda agreements.

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**EXHIBIT D – Service Vacation Leave**

<b>Years During Which Service Rendered</b>	<b>Number of Years of Service</b>	<b>AUTHORIZED ANNUAL VACATION LEAVE (IN CALENDAR WEEKS)</b>
All years prior to 01/01/1950		2
01/01/1950 through 12/31/1956	First 10 years of service	2
	Years of service in excess of 10	3
01/01/1957 through 12/31/1961	First 5 years of service	2
	6 through 25 years of service	3
	Years in excess of 25	4
01/01/1962 through 12/31/1965	First 5 years of service	2
	6 through 20 years of service	3
	Years of service in excess of 20	4
01/01/1966 through 06/30/1970	First 5 years of service	2
	6 through 20 years of service	3
	21 through 25 years of service	4
	Years of service in excess of 25	5
Subsequent to 06/30/1970	First 5 years of service	2
	6 through 15 years of service	3
	16 through 25 years of service	4
	Years of service in excess of 25	5
Effective 01/01/1981	First 4 years of service	2
	5 through 12 years of service	3
	13 through 20 years of service	4
Effective 07/01/1984	First 3 years of service	2
	4 through 11 years of service	3
	12 through 17 years of service	4
	18 and subsequent years of service	5
Effective 12/08/1987	First 3 years of service	2
	4 through 11 years of service	3
	12 through 17 years of service	4
	18 through 24 years of service	5
	25 and subsequent years of service	6

## **EXHIBIT E - HOURS AND DAYS OF WORK**

The hours and days of work applicable to employees in Representation Unit C, as set by the City Manager, are presently as follows:

### **1. Hours per Day**

Field Operations: Working arrangements may vary as to daily schedules under the reduced workweek.

Flexible Hours: On a job-by-job basis, with prior approval of the Senior Electrical Supervisor, a crew may schedule a workday, or workdays, other than the normal workday schedule of 7:00 a.m. to 3:30 p.m.

### **2. Hours per Week (Basic)**

Field Operations: 40 hours. However, employees in Representation Unit C as of January 9, 2000 have the option of retaining a 37.5-hour per week work schedule. An employee will have an option to change his work schedule to 40 hour per week at the beginning of a payroll period. An employee will have a one-time option to revert to a 37.5 hour per week work schedule at the beginning of a payroll period. After exercising this one time option, if the employee chooses to change his work schedule to 40 hours per week, the employee must maintain this work schedule for the balance of his career in this Representation Unit. All persons hired on or after January 9, 2000 will work a 40-hour per week schedule and will not be permitted to change his or her work schedule to 37.5 hours per week.

The parties may agree in writing to alternative work schedules other than those set forth in this Agreement, such as a 9-80 work schedule which produces an 80-hour pay period with the hours worked in nine work days. The City will take into consideration its operational needs, including the impact of potential overtime, in deciding whether to approve an alternate work schedule. However, such alternate work schedule will not be unreasonably denied.

### **3. Work Week**

The work week will begin at 12:01 a.m., Sunday and end at Saturday midnight. Regular days off will be considered to be Saturday and Sunday.



**EXHIBIT F - IMPLEMENTING THE REDUCED WORK SCHEDULE**

**NOTE:** This Exhibit F applies only to employees hired before January 9, 2000 who are permitted to work a 37.5 hour per week work schedule subject to the conditions set forth in Exhibit E (Hours and Days of Work).

The City and the Union agree that the implementation of the reduced work schedule which is to be effective June 29, 1986 will be as follows:

That one-fourth of the Electrical Division employees will be off every fourth Monday on a staggered basis. This time would be treated as a scheduled day off and could not be adjusted or moved. A yearly schedule would be set up at the beginning of the year so that each employee would know what days he would have off. Since the agreed upon reduced work schedule does not calculate evenly into one day off every four weeks, it is proposed that an additional day off (Friday) be given once every 16 weeks. This agreement very closely approximates the reduced work schedule. Any discrepancies would be credited to the employee's vacation at the end of the contract year.

For Fair Labor Standards Act purposes, the workweek is defined as 40 hours.

Sick leave, vacation, and other compensable leaves of absences shall be based on the 40 hour work week.

When a scheduled day off falls on a holiday, the next regularly scheduled work day shall be observed as the scheduled day off.

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Office of the City Manager

**EXHIBIT G**  
**DIRECTIVE PROHIBITING UNAUTHORIZED CONSTRUCTION**

July 31, 2001

To: Department Directors  
From: Weldon Rucker *WR* City Manager  
Subject: **DIRECTIVE PROHIBITING UNAUTHORIZED CONSTRUCTION  
OR FACILITY MAINTENANCE WORK IN CITY FACILITIES**

It has come to my attention that some construction, building maintenance and electrical work is being improperly performed at various facilities that are either owned or leased by the City. Because this work can affect the health and safety of all City employees and can result in a significant potential liability for the City, it is absolutely essential that any such work be done by competent and experienced individuals. Even if licensed contractors are brought in to do the work, they may not be fully aware of how their work will impact other City projects or facilities. Furthermore, already scarce City funds are wasted when Public Works has to correct improper or hazardous work performed by unauthorized individuals or contractors. Accordingly, such construction and maintenance work must only be performed by properly trained and supervised Public Works maintenance staff or contractors selected by, and under the direction of, the Public Works Department.

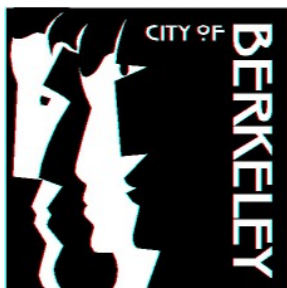
Therefore, I am reminding and directing all department directors to ensure that absolutely no construction, building maintenance or electrical work be performed in any City owned or leased facilities by contractors or anyone else not under the direction of Public Works. All construction and facility maintenance work is to be referred to the Public Works Department.

For routine maintenance, minor repairs, or minor physical modifications, contact the Public Works Customer Service representative at 644-6620. For larger construction projects, contact Public Works Capital Improvement Projects at 981-6330. Public Works can then make appropriate decisions as to whether construction or maintenance work should be performed by City employees or by outside contractors, utilities, or agencies.

Thank you, in advance, for your full compliance with this direction.

cc: City Manager's Office

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.7000 TDD: 510.981.6903 Fax: 510.981.7099  
E-mail: manager@ci.berkeley.ca.us



## **MEMORANDUM AGREEMENT**

**Between the**

**CITY OF BERKELEY**

**and the**

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS  
LOCAL 1245 - A.F.L. - C.I.O.**

**June 28, 2020 to June 30, 2022**

RESOLUTION NO. 68,670-N.S.

MEMORANDUM AGREEMENT: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 1245

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

WHEREAS, representatives of the City and the International Brotherhood of Electrical Workers Local 1245 have met and conferred in good faith and have reached agreement on a new Memorandum Agreement that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum Agreement for the period October 21, 2018 through June 27, 2020 with the International Brotherhood of Electrical Workers Local 1245, including changes in certain benefits on dates specified in the Memorandum Agreement which is attached hereto, made a part hereof and marked Exhibit A.

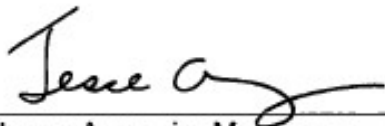
BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute and implement said Memorandum Agreement including all changes in wages, hours, and other terms and conditions of employment. A fully executed original of said contract is filed in the Office of the City Clerk.

The foregoing Resolution was adopted by the Berkeley City Council on November 27, 2018 by the following vote:

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

Noes: None.

Absent: Bartlett.

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

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

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**MEMORANDUM AGREEMENT**  
**Between**  
**CITY OF BERKELEY**  
**and the**  
**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**  
**LOCAL 1245**

**ARTICLE 1 - ADMINISTRATION**

**SECTION 1: RECITALS**

- 1.1 This Memorandum Agreement is entered into pursuant to the Meyers-MiliasBrown Act (Government Code, Sections 3500-3511), as amended, and has been jointly prepared by the parties.
- 1.2 The City Manager is the representative of the City of Berkeley (hereinafter referred to as "the City") in employer-employee relations as provided in Resolution No. 43,397-N.S., adopted by the City Council on October 14, 1969.
- 1.3 International Brotherhood of Electrical Workers, Local 1245, is the recognized employee organization for Representation Unit C (Electrical Occupations), which organization has been certified as such pursuant to said Resolution No. 43,397N.S. The employee positions in such Representation Unit are hereinafter set forth in Exhibit A attached hereto and made a part hereof, and International Brotherhood of Electrical Workers, Local 1245 (hereinafter referred to as "the Union") is recognized as the sole representative of employees assigned to such positions.
- 1.4 The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees in said Representation Unit C, have exchanged freely information, opinions, and proposals, and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees.
- 1.5 This Memorandum Agreement shall be presented to the City Council as the joint recommendation of the undersigned.
- 1.6 Section titles in this Memorandum Agreement are for identification purposes only and are not to be used for the purpose of interpreting either the intent or the meaning of the language of any section.

## **SECTION 2: PARTIES TO THE AGREEMENT**

### **2.1 Exclusive Representation**

The Union is the exclusive representative of all employees within Representation Unit C (Electrical Occupations) and shall continue to be recognized as such unless, in accordance with the provisions of Resolution No. 43,397-N.S. or said Resolution may be amended, the Union is no longer certified as the Recognized Employee Organization for employees in Representation Unit C.

### **2.2 Management Rights**

The Union recognizes that the management of the City and its business and the direction of its working forces are vested exclusively in the City, and this includes, but it not limited to, the following: to direct and supervise the work of its employees, to hire, promote, demote, transfer, suspend, and discipline or discharge employees for just cause; to plan, direct, and control operations; to lay off employees because of lack of work or for other legitimate reasons; to introduce new or improved methods or facilities, provided, however, that all of the foregoing shall be subject to the provisions of this Agreement, arbitration decisions, or letters of agreement, or memorandums of understanding clarifying or interpreting this Agreement.

The City shall not by reason of the execution of this Agreement (a) abrogate or reduce the scope of any present plan or rule beneficial to employees, such as its vacation and sick leave policies or its retirement plan, or (b) reduce the wage rate of any employee covered hereby, or change the conditions of employment of any such employee to his disadvantage. The foregoing limitation shall not limit City in making a change in a condition of employment if such change has been negotiated and agreed to by City and Union.

## **SECTION 3: NO DISCRIMINATION**

The City and Union agree that they will not discriminate against employees based on race, creed, color, ethnicity, ancestry, religion, political affiliation, gender, sexual orientation, age, national origin, marital or domestic partner status, gender identity or gender expression, parental status, pregnancy, disability or medical condition, Acquired Immune Deficiency (AIDS/HIV) or AIDS related condition, or any other status protected by applicable state or federal law, or protected Union activity. Furthermore, the City and Union agree to comply with all applicable federal, state and local laws pertaining to nondiscrimination and equal employment opportunity.

The Union agrees that it will support programs for making members of minority groups and women aware of employment opportunities within the City's jurisdiction, and that it will work with the City to increase recruitment efforts of such minorities and women into

City service. The Union recognizes and supports the City of Berkeley's commitment to equal employment opportunity.

## **SECTION 4:     UNION SECURITY**

### **4.1     Union Security**

4.1.1 An employee included in Unit C, may become and remain a member in good standing of the Union; or pay to the Union an initial fee equal to the regular initiation fee and, thereafter, a monthly fair share service fee equal to the regular monthly union dues and general assessments.

4.1.2 **Contracting Out:** The City will not hire any contractors, firm or individual which will result in the layoff of any employees covered under this Agreement.

4.1.3 **Subcontracting:** If the City intends to subcontract any electrical or communication work, the City will notify the Union in advance of any bid solicitation whose value is estimated to be \$25,000 or more. The City will notify the Union in advance by mailing a copy of the City Council Bid Notifications Report to the Union Stewards. Information will be sent to the Union at the same time it is forwarded to the City Council and will include nature of project, the name of department requesting the work, and the budget code. Upon written request from the Union, the City will provide a copy of the actual bid specifications.

For electrical or communication work estimated to cost less than \$25,000, the City will provide the Union Stewards a copy of the Council Awarded Contracts Report on a monthly basis.

4.2.3 **Indemnification:** The Union shall indemnify and save harmless the City, its officers and employees, from and against any and all loss, damages, costs, expenses, claims, attorneys' fees, demands, actions, suits, judgments and other proceedings arising out of any claims made by Unit C employees for deductions made in reliance on information provided by the Union.

4.2.4 **Union Reports:** The City shall furnish the Union, on a monthly basis, the name, date of hire, salary, classification and work location of all newly-hired employees subject to this Agreement.

### **4.3     New Employee Orientation**

This provision shall apply to new hire employees appointed to classifications covered by this Agreement.

**4.3.1 Onboarding:** The parties acknowledge that the City provides a new employee orientation (onboarding) to each new employee hired by the City. As such, the Union will be provided with not less than 10 calendar days' advanced notice of the time, date, and location of the onboarding of any new employee represented by the Union. The Union will be given 30-minutes at the start of the new employee onboarding in a room designated by the City for no more than one (1) representative to present Union membership information. The City representative will excuse him or herself during the Union portion of the onboarding. The Union agrees in its portion of the onboarding not to engage in speech that could cause disruption or material interference with City activities.

The City will provide 30 minutes of Union Release Time to the Union representative presenting the Union membership information during the scheduled onboarding. The Union shall provide the Union representative's immediate supervisor with the Union representative's name at least five (5) days prior to the onboarding. The Union representative shall be released for this purpose unless unusual operation needs interfere with such release in which case the Union representative's immediate supervisor will provide a written explanation of why release could not be approved. If the Union representative is not released due to department operational needs, the Union representative may arrange an alternative date and time to meet with the newly hired employee within the first two (2) weeks of employment, subject to the 30-minutes onboarding and Union Release Time requirements as stipulated above.

**4.3.2 Information Provided:** On a quarterly basis (March, June, September, and December), the City will provide the Union with a digital file via email to the email address designated by the Union. The Union acknowledges and understands that the City is working diligently and in good faith to update its contact information database functionality to incorporate all the fields of contact information listed below. As a result, the City may not initially be able to provide the employee's work telephone number, personal phone number, and personal email address until the completion and implementation of the City's new Enterprise Resource Management Application (ERMA) system.

The City will provide the Union with the following information on file, to the extent the City has it on file:

- Name.
- Job Title.
- Department.
- Work Location.

- Home telephone number.
- Home address.
- Personal cellular telephone number (new hires hired on or after October 1, 2017).
- Work telephone number (*upon implementing ERMA*).
- Personal email addresses on file with the City (*upon implementing ERMA*).

Notwithstanding the foregoing, limited to the express purpose of the requirements of Government Code section 3558 only, an employee may opt out via written request to the City (copy to the Union) to direct the City to withhold disclosure of the employee's: Home address; home telephone number; personal cellular telephone number; personal email address; and date of birth.

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

### **5.1 Deductions**

The City shall deduct, once monthly, the amount of Union regular and periodic dues, service fees, or insurance premiums as may be specified by the Union under the authority of written notification by the Union certifying that the employee has provided written affirmed consent for deduction of union membership dues or fair share service fees.

Such deductions, together with a written statement of the names and amounts deducted, shall be forwarded promptly to the Union office.

### **5.2 Revocation**

Upon receipt of a written notice from the Union to the Human Resources Department, the City shall cease deducting membership dues or fair share service fees from the designated employee.

### **5.3 Authorization Forms**

The City may request verification of employee's authorization form giving affirmed consent to deduct dues or fees only if a legitimate dispute arises about the existence or term of the authorization.

### **5.4 Notice**

Union agrees to give reasonable notice of dues change.

## **SECTION 6: UNION REPRESENTATIVES**

### **6.1 Number of Representatives**

The City shall allow two (2) representatives of the Union reasonable time off from work, without loss of compensation or other benefits, to represent its members in disputes which involve the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect memoranda of understanding which may result from the meeting and conferring process, and to represent its members in meeting and conferring in good faith for amendments to this Memorandum Agreement in the future, subject to the conditions set forth in Sections 6.2 (Maximum Representatives) and 6.3 (Notification).

All release time shall be recorded on time sheets and time cards with appropriate codes.

### **6.2 Maximum Representatives**

Two (2) Union representatives shall be the maximum number who will be allowed concurrent time off.

### **6.3 Notification**

The representatives shall notify the first non-bargaining supervisor a minimum of one workday in advance before leaving their work assignments except for emergency situations which require the immediate attention of said representatives (an emergency is defined as a safety problem or hazardous condition), but in no case shall an employee leave his or her job without notification of the first non-bargaining supervisor. Such request shall include the location, and area of activity, the approximate time needed and the general nature of the union business involved. Such request shall not be unreasonably denied. Failure to comply with notification and time recording rules may be grounds for denial of leave.

### **6.4 Union/Management Meetings**

Quarterly meetings shall be held between the union and management. Release time shall be granted for up to two union representatives. Agendas for such meetings shall be set one week in advance between the Business Representative of the Union and the City Manager or their designees. Meetings within department may be held at the discretion of the department head.

### **6.5 Union Training**

Conditional upon prior approval of the course content and upon receipt of certification of completion, if the employee is an elected official or steward of the Union, the City shall reimburse the employee for up to one-half of his or her regular work time spent in such training at the employee's permanent rate of pay, not to exceed twenty (20) hours of paid leave in a calendar year.



## **SECTION 7: SEPARABILITY OF PROVISIONS**

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

## **SECTION 8: EXISTING MEMORANDUM AGREEMENT**

Pursuant to Section A of the Memorandum of Understanding dated August 9, 1972 by and between the City and the Union, this Memorandum Agreement shall supersede all existing Memoranda of Understanding between the City and the Union. There is no guarantee that working conditions and practices will be continued if they are not included in this Memorandum Agreement or have not been or are not hereafter specifically authorized by ordinance or by resolution or the City Council.

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

The recommendations set forth herein are final. No changes or modifications shall be offered, urged, or otherwise presented by the Union, or the City Manager prior to October 20, 2018; provided, however, that nothing herein shall prevent the parties to this Memorandum Agreement from meeting and conferring and making modifications herein by mutual consent.

## **SECTION 10: DURATION**

This Memorandum Agreement shall be effective upon ratification by the City Council except for those provisions which have been assigned other effective dates as herein set forth, and shall remain in full force and effect up to and including June 30, 2022. This Memorandum Agreement and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at midnight June 30, 2022.

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

## **SECTION 11: SALARIES**

### **11.1 Salary Rates**

Salary rates for the period of June 28, 2020 through June 30, 2022, for all classes of positions in Representation Unit C shall be set according to the classifications and salary ranges assigned to those classifications listed in Exhibit "A" and attached hereto and made part hereof.

- A.) The salary ranges for those classifications covered by this Agreement which went into effect on October 20, 2019, shall remain in effect through June 30, 2022 and are listed in Exhibit B unless the following occurs:

If during any fiscal year during the term of this agreement, the City reaches agreement with the largest bargaining unit or extends the unrepresented employees an across the board Cost of Living Adjustment (COLA) increase, wage increase, lump sum payment, or other benefits increase the City agrees to apply these same increases to the salary ranges and/or benefits for those classifications covered by this MA as listed in Exhibit B.

### **11.2 Step Placement**

Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's class as set forth in Exhibit "B". The minimum rate for the class shall apply to employees upon original appointment to the position except as may be determined by the City Manager within the negotiated wage ranges. Employees who have been laid-off and are rehired to the same classification shall be placed on the same wage step they were in when laid-off. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit "B" and employed or working on a part-time basis shall be paid in proportion to the time worked and described in their appointment.

### **11.3 Maximum Salary Rate**

No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City and shall depend upon increased service value of an employee to the City as exemplified by recommendations of the department head, performance record, special training, length of service, and other pertinent evidence.

#### 11.4 Effect of Leaves

An employee's pay increase shall not be affected by any leave of absence without pay if the employee is off the payroll for less than one hundred sixty (160) consecutive hours. If the employee is off the payroll for more than one hundred sixty (160) consecutive hours, the total amount of time off shall be made up before the employee shall be entitled to such pay increase.

#### 11.6 Y-Rate

Any employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary, or occupying a position in a class, the salary rate or range for which is reduced, shall continue to receive his present salary. Such salary shall be designated as a Y rate. When an employee on a Y rate vacates his or her position, subsequent appointments to that position shall be made in accordance with Section 11.1 (Salary Rates).

#### 11.7 Pay Frequency

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

11.7.1 **Full-Time:** Bi-weekly payment to full-time employees shall be made on the basis of the hourly rate, as set forth in Exhibit B, multiplied by the number of hours worked during the pay period.

11.7.1.1 **40 Hour Week:** For employees on a forty (40) hour week schedule, the annual salary shall be the product of the hourly salary times 2,080 hours.

11.7.1.2 **37.5 Hour Week:** For employees on a thirty seven and onehalf (37.5) hour work week schedule, the annual salary shall be the product of the hourly salary times 1,950 hours.

11.7.1.3 **Monthly Salary:** The monthly salary shall be the quotient of the annual salary divided by 12.

11.7.2 **Part-Time:** Bi-weekly payment to part-time employees in a class for which a monthly salary rate has been herein established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period. The hourly rate for such part-time employees shall be computed in the same manner as for full-time employees.

11.7.3 **Intermittent:** Bi-weekly payment to intermittent employees in a class for which a monthly salary rate has been established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period. The hourly rate for such intermittent employees shall be computed in the same manner as for full-time employees.

11.7.4 **Bi-Weekly Daily Rate:** Bi-weekly payment to employees in a class for which a daily rate rather than a monthly rate has been herein established shall be made on the basis of the actual days worked during the biweekly pay period multiplied by the daily rate.

11.7.5 **Bi-Weekly Hourly Rate:** Bi-weekly payment to employees in a class for which an hourly rate rather than a monthly rate has been herein established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period.

### 11.8 Higher Classification

The Department Head will work all employees within their career classifications. The departments may specifically assign an employee to work in a higher class. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments over one (1) week shall be approved in advance by the City Manager or his or her designee. Blanket authorizations for department will be issued on a yearly basis for applicable positions. To be eligible for higher-class pay, the employee must work a minimum of four (4) hours, meet the minimum qualifications, and perform the duties of the higher class. Employees meeting these requirements will be compensated at the lowest step of the higher classification which provides at least a five percent (5%) differential. The journeylevel employees will rotate the assignment on a monthly basis and perform the necessary duties. In the event the offer of higher class is declined by the journeylevel employee assigned for that month, volunteers will be asked according to the rotation list. If there are no volunteers, the journey-level employee assigned for that month will be required to perform the necessary duties.

### 11.9 Temporary Appointment

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

### 11.10 Step Increases for Provisional Employees

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

### **11.11 End of Year Pay Period**

For all salary and benefit purposes, the parties agree that the last day of the last pay period ending in the calendar year shall be the end of the year. For excess leave only, the end of the year shall be treated as the last day of the pay period nearest March 31st.

### **11.12 Overtime Underpayment**

The City will include any payment of overtime, which was inadvertently omitted or miscalculated, in the following pay period's check.

### **11.13 Equity Studies**

A list of comparison jurisdictions is established for the purpose of salary equity studies: Alameda County, Contra Costa County, Oakland, Palo Alto, Richmond, San Francisco, San Jose, San Leandro, Santa Clara, and Vallejo. Other jurisdictions may be added as required by agreement between the parties. Job classifications which fall below the median for these jurisdictions may be reviewed. It is the policy of the City that within available funding limits, equity adjustments which are in the interests of the service will be considered.

### **11.14 Step Increase**

Step increases shall be effective for payroll purposes only on the first day of the pay period nearest to the actual anniversary date. Personnel records will maintain actual dates and will be used to resolve any discrepancies or questions that may arise.

### **11.15 Effective Date of Salary Adjustment**

Any general future salary adjustments will be set to become effective on the first day of the pay period.

### **11.16 Reclassification**

In the event the City reclassifies a position based on an employee initiated review from a lower level classification to a higher level classification, an incumbent occupying such position shall be reclassified without competitive examination provided he or she has performed the duties of the new classification for one (1) year and has not received an unsatisfactory evaluation during that period. All other employees shall be required to pass an examination for the higher classification and shall serve the normal probationary period. If a position is reclassified, the employee shall receive salary compensation retroactive to the date the position description questionnaire is submitted and verified as having been received by the department head. Position description questionnaires will be provided by the City. Employees may request one (1) job audit one (1) year after an initial job audit has been completed on their position. Thereafter one (1) job audit will be permitted every two (2) years.

Reclassification or reallocation of positions shall not be used as a mechanism, the sole purpose of which is to improperly circumvent the provisions of this Agreement, including provisions relating to layoff, transfer, demotion or promotion.

#### **11.17 Premium Pay Differential - Working at Heights of 60 Feet or More**

Assignments for working at heights of 60 feet or more will be on a voluntary basis. However, if all qualified employees decline the assignment, the City will be free to contract the work out to an outside service provider.

Employees who work at heights of 60 feet or more, including but not limited to performing maintenance of lights at San Pablo Park, shall receive Height Premium Pay Differential of one and one-half times ( $1\frac{1}{2}$ ) times the normal hourly rate for all time performing such work. The Height Premium Pay Differential shall be reported to CalPERS as Height Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

#### **11.18 Commercial Driver's License Premium**

Employees required to possess and maintain a valid California Class A or Class B Commercial Driver's License as a condition of employment shall receive three percent (3%) differential to hourly rate. This differential shall be reported to CalPERS as Special Class Driver's License Pay. However, any hours worked on overtime are excluded from CalPERS reported "Compensation earnable" in California Government Code Section 20636.

#### **11.19 Longevity Pay**

Effective July 3, 2016, employees completing twenty five (25) years of service shall receive a three percent (3.0%) differential beginning with the anniversary date of beginning of the twenty fifth (25<sup>th</sup>) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

### **SECTION 12: HOURS AND DAYS OF WORK**

#### **12.1 Hours and Days of Work**

Hours and days of work shall be governed by rules established by the City Manager. (At the present time, the hours and days of work are as shown in Exhibit E (Hours and Days of Work))

## 12.2 Sunday and Graveyard Shifts

Regularly scheduled Sunday shifts and "graveyard" shifts, as defined in Section 14 (Shift Differential), shall be for eight (8) consecutive hours, including up to onehalf ( $\frac{1}{2}$ ) hour for lunch.

## 12.3 Shift Assignment

Within a given classification, shift assignments shall first be offered to employees by classification seniority on a voluntary basis. In the event shift assignments are not filled voluntarily, such assignments will be made on the basis of inverse classification seniority.

### 12.3.1 Types of Shifts:

- a. **Swing shift** means authorized work schedules regularly assigned in which at least four (4) hours worked are between the hours of 5:00 p.m. and 12:00 midnight of each workday.
- b. **Night shift** means authorized work schedules regularly assigned in which at least four (4) hours worked are between the hours of 12:00 midnight and 7:00 a.m. of each workday.
- c. **Day shift** means any authorized work schedules between the hours of 7:00 a.m. and 5:00 p.m.

## 12.4 Classes during Shift Assignments

If an employee assigned to the swing or graveyard shift wishes to attend classes during the day, the employee shall notify the first non-bargaining supervisor of his or her intention to enroll in classes during the day and the completion date of the classes. The City will review the work program and advise the employee within 14 days whether or not the day classes will interfere with the shift assignments. If no conflict exists, the City will not change the shift assignment until after the semester ends provided that the employee continues to be actively enrolled in the class.

## 12.5 Rest Period

Each employee shall be entitled to a rest period of fifteen (15) minutes during each one-half ( $\frac{1}{2}$ ) shift worked.

## 12.6 Daylight Saving Time

- 12.6.1 **Spring:** In the Spring when transitioning to Daylight Saving Time (DST), employees working during the one (1) hour transition from Standard Time

to DST will be paid only for actual hours worked. Employees working on a shift which includes the one (1) hour transition may be granted an option by the Department Head or his or her designee, to work an additional hour or use compensatory time, floating holiday, or vacation to make up the lost work hour.

**12.6.2 Fall:** In the Fall when transitioning from DST, employees working during the one (1) hour transition will be paid for all hours worked including overtime at one and one-half (1½) times the straight-time rate of pay for hours worked in excess of the regular workweek as set forth in Section 13 (Overtime) of this Agreement.

## **SECTION 13: OVERTIME**

Employees required to work in excess of their basic work week or in excess of 8 hours in one day (excepting voluntary regular schedules of 9 or 10 hours) during any one week shall be compensated for such overtime services as follows:

### **13.1 Rate**

The overtime rate shall be one and one-half (1½) times the regular hourly salary for the first four (4) hours of such excess and at two (2) times the regular hourly salary for the balance of such excess.

### **13.2 Department Head Discretion**

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

**13.2.1 Compensatory Time Off:** Compensatory time off may be earned in lieu of overtime pay at the rate of one and one-half (1½) hours for each overtime hour worked up to a maximum of sixty (60) hours of such compensatory time. Accumulation of compensatory time off in excess of sixty (60) hours may be allowed at the discretion of the department head. Utilization of compensatory time shall be at the discretion of the employee's department head. The times during the calendar year at which an employee shall take his or her compensatory time off shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the service. As used herein, sixty (60) hours is equivalent to ninety (90) hours of time off work.



### **13.3 Payoff of Overtime**

In the event that an employee resigns or is terminated, he or she shall be entitled to compensation for his or her accumulated overtime.

### **13.4 FLSA Workweek**

For the purpose of computing overtime, the work week shall be defined as beginning at 12:01 a.m. Sunday and ending at 12:00 midnight Saturday. Any applied benefited leave shall be included in the calculation of overtime.

### **13.5 Emergency Overtime**

Employees who are called from their living quarters for emergency work or duty on days other than normal workdays, or on normal workdays outside of their regular work hours, shall be paid emergency overtime compensation for actual time worked; provided, however, that in any case of emergency overtime as herein provided the minimum time for which such overtime compensation shall be paid shall be four (4) hours; and provided further that if such overtime work is performed prior to the beginning of the regularly scheduled work period and such overtime continues into such regularly scheduled work period without a break in service, compensation shall be paid only for the actual time worked.

#### **13.5.1 Overtime Earned Rest Period**

If an employee has worked four (4) hours or more of overtime between the hours of 10:30 p.m. and 6:30 a.m. preceding the beginning of his/her regular work hours on a workday, he/she shall be entitled, except in an emergency, to a rest period to include two (2) hours of his/her workday without loss of his/her regular straight-time pay. If the overtime work period extends for six (6) hours or more of overtime between the hours of 10:30 p.m. and 6:30 a.m. preceding the beginning of his/her regular work hours on a workday, he/she shall be entitled, except in an emergency, to a rest period to include five (5) hours of his/her workday without loss of his/her regular straight-time pay. In the event that an employee, due to operational need, is required to work during an earned rest period during regular work hours, the employee will be paid for the earned rest period in addition to wages earned for hours worked.

### **13.6 Meals**

The City will provide meals to employees during emergency assignments and when the employees work continuously for two (2) or more hours immediately before or after their regular shift of eight (8) or nine (9) hours for a total of ten (10) or eleven (11) hours. The employee shall earn an additional meal for every four (4) hours of continuous work after the first meal is earned or taken.

The City will reimburse the employees for the costs of the meal up to twenty five dollars (\$25) if no meals are provided.

### 13.7 Standby Pay

An employee assigned to standby shall receive ten (10) hours of overtime compensation in addition to any overtime worked while on standby.

13.7.1 **Standby Week:** For the purpose of this Section 13.7.1 (Standby Week), a week shall mean the seven (7) consecutive calendar days following assignment to standby service. In the case of emergencies, the Senior Supervisor or Superintendent may assign another employee to complete the standby week for the originally assigned employee. In that case, the ten (10) hours standby compensation will be pro-rated between the employees.

13.7.2 **Missed Assignment while on Standby:** If an employee misses an overtime assignment while on standby duty, he or she will not receive the standby pay for that day. If he or she misses a second call during the same standby period, he or she will forfeit all the standby pay for that period.

13.7.3 **Consequences:** If an employee develops a pattern of failing to perform the service when called, they will be subject to disciplinary action and the Union reserves the right to appeal any action.

13.7.4 **Standby Vehicle:** The City will provide the employee on standby duty with a vehicle. Said employee shall be responsible for taking all reasonable steps to insure the safety of the tools and equipment on that vehicle.

### 13.8 Emergency Overtime Assignments

All emergency overtime assignments including calling an employee other than the employee on scheduled standby status will be paid the minimum overtime compensation as defined in Section 13.5 (Emergency Overtime). In the event that the employee on scheduled standby is not called, and another employee has been called to perform the emergency overtime assignment, both the employee who performed the assignment and the employee on scheduled standby status will receive the minimum overtime compensation.

13.8.1 **Scheduled Overtime during Standby:** The employee who is on scheduled standby status may perform scheduled overtime tasks on a voluntary basis. The standby premium shall not be pro-rated. If an emergency call occurs during the time that the employee is performing scheduled overtime tasks that call shall be paid at the time and one-half rate and not at the call back rate set forth in Section 13.5 (Emergency Overtime). If other City electrical employees are concurrently performing scheduled overtime tasks, the Senior Electrical Supervisor may, at his or her discretion, assign the work to electrical employees present within the

City performing the scheduled overtime tasks at the regular overtime rate of pay. The employee who is on scheduled standby status who chooses to perform scheduled overtime shall defer to other employees who choose schedule overtime assignments pursuant to Section 13.9 (Overtime Offers).

### **13.9 Overtime Offers**

The Department will offer Scheduled Overtime on a voluntary basis to employees with the least amount of overtime worked in accordance with the following provisions:

**13.9.1 Posting of Overtime:** The Department will post a Scheduled Overtime Sign-up List on the Division's bulletin board once every two weeks. Employees who wish to be considered for scheduled overtime during that time period must sign the list.

**13.9.2 Scheduled Overtime Definition:** Scheduled Overtime shall be defined as an overtime assignment scheduled at least 24 hours in advance.

**13.9.3 Overtime Report:** The Department will prepare and post a Report of Overtime Worked for employees on a calendar year basis beginning with a zero balance on January 1. The report will be updated after each pay period.

**13.9.4 Overtime Assignments:** As scheduled overtime assignments occur, the Department will offer the assignment to individuals on the list for the applicable time period beginning with the person on the sign-up list with the least amount of overtime worked during the calendar year. Notification of scheduled overtime assignments shall be made during work hours at the work place, and employees must be present at the work place to receive the overtime work assignment.

**13.9.5 Overtime Assignment Tie Breaker:** If employees have equal amounts of overtime, the scheduled overtime assignment shall be offered to employees in the same order as their names appear on the sign-up list.

## **SECTION 14: SHIFT DIFFERENTIAL**

### **14.1 Swing Shift**

Employees who regularly work a full shift of seven and a half (7½) hours or more on swing shift as defined in Section 12.3.1 (Types of Shifts), which includes more than four (4) hours between the hours of 5:00 p.m. and 12:00 midnight, shall be paid their

regular salary plus seven and a half percent (7½%) of their regular monthly salary per month.

#### **14.2 Night Shift**

Employees who regularly work a full shift of seven and a half (7½) hours or more on night shift as defined in Section 12.3.1 (Types of Shifts), which includes more than four (4) hours between the hours of 12:00 midnight and 7:00 a.m. (night shift), shall be paid their regular salary plus ten percent (10%) of their regular monthly salary per month; provided, however, that in the case of any such employee who is regularly assigned to such night-shift work for less than an entire work week, the additional payment shall be made only for the portion of the work week worked on the night-shift assignment.

### **SECTION 15: NATURAL DISASTER/DECLARED EMERGENCY**

If an emergency is formally declared by the City, county, state or national authority:

#### **15.1 Call Outside Normal Working Hours**

If an employee is called outside of normal working hours, the employee gets time and one-half (1½) the normal rate of pay for the first whole shift regardless of the number of hours worked. If the employee is not called from home the regular rules apply (i.e., overtime for hours worked above eight in a day).

#### **15.2 Shift Differential**

Thereafter, the first eight hours at regular rate and 7½% for hours worked between 5:00 p.m. and midnight; 10% for hours worked from midnight to 7:00 a.m. For hours greater than eight in a shift, the employee gets time and one-half (1½) the normal rate of pay but no shift differential on those hours above eight.

#### **15.3 Reduction in Hours**

There will be no reduction in the number of hours in the regular work week schedule.

#### **15.4 Change in Assignments**

If an employee is at work during the day when an emergency is declared and is assigned to work a night shift and is sent home, the employee will be compensated as follows:

- 15.4.1 If an employee has been at work for up to but not more than two (2) hours the employee will be paid for two (2) hours at the straight time rate.

15.4.2 If an employee has been at work for more than two (2) hours but not more than four (4) hours the employee will be paid for four (4) hours at the straight time rate.

15.4.3 If an employee has been at work for more than four (4) hours the employee will be paid for eight (8) hours at the straight time rate.

**15.5 Hours Worked in Excess of 12-hours**

An employee working more than twelve (12) hours in one continuous shift will be compensated at two (2) times the normal hourly rate.

**ARTICLE 3 - LEAVES**

**SECTION 16: VACATION**

**16.2 Vacation Approval**

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. Wherever practical, employees working in the same classifications within a division shall be given preference of vacation time by seniority. If the requirements of the service are such that a department head cannot permit an employee within his or her department to take an annual vacation leave or any part of such leave within a particular calendar year, the City Manager may permit such employee to take the deferred vacation during the following year.

**16.3 Use of Incremental Vacation**

Employees may, with advance supervisory approval, use vacation leave in increments of one hour.

**16.4 Accrual Rate as of December 8, 1987**

Effective December 8, 1987, the vacation accrual rate shall be modified as follows:

Vacation Accrual Schedule	Authorized Annual Workweeks of Vacation	Vacation Leave Credits in Work Days per Month of Service	Vacation Leave Credits in Hours Earned per Month of Service
Through the first three (3) calendar years of service (except as provided in Section 16.4 (Accrual Rates as of December 8, 1987) and 16.5	2 work weeks	0.833	6.667

Fourth (4 <sup>th</sup> ) through eleventh (11 <sup>th</sup> ) calendar years of service (except as provided in Section 16.5 below)	3 work weeks	1.25	10.00
Twelfth (12 <sup>th</sup> ) through seventeenth (17 <sup>th</sup> ) calendar years (except as provided in Section 16.5)	4 work weeks	1.667	13.33
Eighteenth (18 <sup>th</sup> ) through twenty-fourth (24 <sup>th</sup> ) calendar years (except as provided in Section 16.5)	5 work weeks	2.083	16.667
Twenty-fifth (25 <sup>th</sup> ) and subsequent calendar years (except as provided in Section 16.5)	6 work weeks	2.5	20.00

The authorized annual vacation leave for prior years is set forth in Exhibit D attached hereto and made a part hereof.

**16.5 Accrual, Use, and Limitation for Employees with Less than 6-Months of Service**

Each employee, during that portion of the calendar year in which he or she is originally appointed and during the next succeeding year, shall be entitled to vacation leave credits at the rate of 0.833 work days for each calendar month of service. Each such employee shall be entitled to take during these two (2) calendar years only such annual vacation leave as he or she earns.

**16.6 Vacation Eligibility for Part-time, Intermittent, Leave Without Pay or Reemployed Employees**

For an employee who has worked on a part-time or intermittent basis or who has been on leave of absence without pay for a total of six (6) months or more or who has been terminated and subsequently reemployed, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5) and six (6) weeks' rate.

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

**16.6.2 Effect of Military Leave on Vacation Eligibility:** For the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5) or six (6) weeks' rate, time spent on extended military leave shall be counted as time spent in the service of the City.

### **16.7 Maximum Vacation Accumulation**

Employees may accrue vacation earned up to a maximum cumulative total of 320 hours.

Once an employee accrues 320 hours vacation, the employee shall not accrue any additional vacation leave hours until his or her vacation leave balance is below the maximum 320 hours. Under no circumstances will an employee be allowed to accrue more than 320 hours vacation leave. As provided below, the City will advise employees and their supervisors when the employee has attained an accumulation of 280 hours. Supervisors should be flexible in granting vacation requests from employees who reach 280 hours. Provided further that with regard to employees who have reached 280 hours, no vacation request by such employee shall be unreasonably denied. No employee shall be denied vacation leave such that it causes him or her to reach the 320 hour limit.

**Notification:** To assist employees to remain below the 320 hours vacation leave maximum accumulation, the parties agree that no later than October 1 of each year of this Agreement, the City will provide the Union and Department Heads with a report identifying accumulated vacation hours of all employees. The City also agrees to notify all employees who have accrued 280 hours of vacation leave, as of this date, that they must take vacation leave to reduce their vacation leave to avoid reaching the 320 hour maximum accrual.

### **16.8 Prorated Vacation due to Extended Absence, Reemployment or Reinstatement**

An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which he or she returns to the City service, to a prorated vacation based upon the total years of service with the City and upon the total number of months of actual service with the City during the said calendar year. For succeeding calendar years, his or her vacation leave shall be as provided elsewhere in this Section 16 (Vacation).

An employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred sixty (160) consecutive hours shall be entitled to a full vacation. If such an employee is off the payroll for one hundred sixty (160) consecutive hours, his or her vacation shall be as provided in the preceding paragraph of this Section 16.8 (Prorated Vacation due to Extended Absence, Reemployment or Reinstatement) or Section 16.9 (Payment of Vacation upon Termination or Extended Leave after Six Months of Service).

### **16.9 Payment of Vacation upon Termination or Extended Leave after Six Months of Service**

If an employee, is terminated, or is granted an extended military leave or other extended leave of absence without pay, such employee, or his or her estate, shall be paid for vacation credits in excess of the actual amount of vacation leave taken or such

employee, or his or her estate, shall reimburse the City for the actual amount of vacation leave taken in excess of vacation leave credits, as the case may be.

**16.10 Calculation and Payment or Reimbursement of Vacation Credits upon Termination or Extended Leave**

Upon termination, extended military leave, or other extended leave of absence without pay, vacation leave credits shall be totaled, and the actual amount of vacation leave taken, including any that may have been taken during the year in which the termination, extended military leave, or other extended leave of absence without pay occurs, shall be deducted from the total credits. If the credits exceed the actual amount of vacation leave taken, such employee, or his or her estate, shall be paid for the excess of credits on the basis hereinafter set forth. If the actual amount of vacation leave taken exceeds the credits, such employee, or his or her estate, shall reimburse the City on the same basis.

The basis for such payment by the City or for such reimbursement to the City shall be as follows:

The employee's hourly pay rate at date of termination, extended military leave, or other extended leave of absence without pay, multiplied by the excess of credits over vacation leave actually taken or excess of vacation leave actually taken over credits, as the case may be.

**16.11 Lump Sum Payment of Vacation**

Upon termination, extended military leave or other extended leave of absence without pay, payment for excess of vacation leave credits shall be made in one lump sum at time of termination, extended military leave, or other extended leave of absence without pay, or as soon thereafter as possible; provided, however, that an employee may elect to use excess vacation leave credits prior to termination, extended military leave, or other extended leave of absence without pay, to the extent permitted by this Section 16 (Vacation), and receive a lump sum payment for the balance of leave credits, if any. An employee, or his or her estate, shall not be paid for vacation leave credits in excess of eight (8) calendar weeks. Notwithstanding the foregoing, accumulated but unearned vacation credit at the time of retirement shall be paid off in a lump sum.

**16.12 Calculation of Vacation Based on Actual Paid Hours**

All vacation benefits shall be calculated upon actual paid hours of work. This provision shall go into effect immediately upon implementation of necessary data processing and programming changes.



### **16.13 Vacation Accounting Procedures**

The City may revise vacation accumulation provisions in order to standardize accounting procedures without effect on the amount of employees' vacation, subject to review and approval by the union.

### **16.14 Voluntary Time Off**

The City will implement a voluntary time off (VTO) program, which may include a year-end holiday closure. It is understood by the parties that employee participation is completely voluntary and that employees who wish to work during such periods will be permitted to do so.

## **SECTION 17: HOLIDAYS**

### **17.1 Holidays**

Recognized holidays for employees in Representation Unit C shall be:

- 17.1.1 New Year's Day
- 17.1.2 Martin Luther King's Birthday (3rd Monday of January)
- 17.1.3 Lincoln's Birthday
- 17.1.4 Washington's Birthday (observed on the third Monday in February)
- 17.1.5 Malcolm X's Birthday (observed on Monday or Friday nearest May 19th)
- 17.1.6 Memorial Day (observed on the last Monday in May)
- 17.1.7 Independence Day
- 17.1.8 Labor Day (observed on the first Monday in September)
- 17.1.9 Indigenous Peoples' Day (observed on the second Monday in October)
- 17.1.10 Veteran's Day
- 17.1.11 Thanksgiving Day
- 17.1.12 Day after Thanksgiving Day
- 17.1.13 Christmas Day
- 17.1.14 Effective January 9, 2000, each employee shall be granted three (3) floating holidays each calendar year.

### **17.2 Floating Holidays**

Any employee shall be granted three (3) floating holidays each calendar year. The days selected shall be by mutual agreement between the employee and the department head (or his or her designee). In the event mutual agreement cannot be reached on the selection of floating holidays, the employee shall have the three (3) days added to his or her accrued vacation time. Employees may take Floating Holidays in one (1) hour increments.

#### **17.2.1 Additional Floating Holidays**

For employees who were required to remain in the workplace from March 17, 2020 - June 1, 2020, the City will provide 8 hours of floating holidays for every 40 hours of regularly scheduled hours worked in the workplace up to a maximum of 32 hours of floating holiday. The City will credit these floating holiday hours in the first full pay period after adoption of the MOU.

City will use a specific pay code for the additional floating holiday, hours will be available June 30, 2021. These additional 32 hours of floating holiday shall have no cash value and may not roll over to vacation if not used by June 30, 2021.

### **17.3 Floating Holiday Accrual upon Employment**

In the first calendar year of employment, an employee hired before May 1 shall be entitled to three (3) floating holidays; and an employee hired on or after May 1, but before September 1, shall be entitled to two (2) floating holidays; and an employee hired on or after September 1, shall be entitled to one (1) floating holiday in that first calendar year.

### **17.4 Limitations**

No monetary award shall be authorized for unused accumulated Floating Holidays for employees who terminate employment prior to the completion of six (6) months of continuous City service.

### **17.5 Holidays for Employees whose Work Week is Other than Monday through Friday**

Employees whose work week is Monday through Friday shall be allowed all holidays with pay which fall within such work week. Those employees whose work week is other than Monday through Friday shall be entitled to the same number of holidays, with pay, during each calendar year as are allowed to employees whose work week is Monday through Friday. The procedure for allowing holidays for employees whose workweek is other than Monday through Friday shall be established by the City Manager. The provisions of this Section 17.5 (Holidays for Employees whose Work Week is Other than Monday through Friday) are not applicable to intermittent employees.

### **17.6 Work during a Holiday**

An employee required to work on any day which is a holiday for employees whose work week is Monday through Friday shall be paid for the number of hours worked during such day at the rate of one and one-half (1½) times the straight-time rate, based upon his or her regular monthly salary, or shall be granted compensatory time off in an amount equal to one and one-half (1½) times the number of hours worked on such holiday. Any employee who works on Christmas day or Thanksgiving Day shall be paid double time for that day. The hours worked on

such holiday and paid at the rate herein provided shall not be credited in computing the hours worked in the week for overtime purposes.

The holiday pay provided for shall be in addition to an employee's regular salary. In the event that the time worked on such a holiday is also overtime, as provided in Section 13 (Overtime) of this Memorandum Agreement, payment will be made for the hours worked either as overtime under said Section 13 (Overtime), or as holiday pay under this Section 17 (Holidays), but will not be made under both Sections.

### **17.7 Holidays for Part-Time Employees**

Regularly scheduled part-time employees 1) who are assigned to a regular schedule of twenty (20) or more hours per week; 2) who have worked for the City as regular or part-time employees for one (1) or more years; and 3) who during such period of time have worked a minimum of 1,000 hours shall be entitled to the holiday pay for the number of hours which such employee would have worked had the holiday not occurred, provided such holiday occurs on a day which such employee is regularly scheduled to work.

## **SECTION 18: SICK LEAVE**

### **18.1 Eligibility**

Any employee shall be entitled to take sick leave with full pay in case of sickness, disability, or serious illness within the immediate family of the employee in accordance with the provisions of Sections 18.2 (Sick Leave Accrual) to 18.12 (Cessation of Accrual).

### **18.2 Sick Leave Accrual**

Each employee shall be credited with one (1) working day of sick leave with full pay for each month of service.

For the purposes of this Section 18 (Sick Leave), a month of service shall mean thirty (30) consecutive calendar days in the case of employees working on a fulltime or part-time basis, and shall mean 163 hours of work in the case of employees working on an intermittent basis.

### **18.3 Pro-rated Sick Leave for Part-Time Employees**

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

#### **18.4 Sick Leave for Intermittent Employees**

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

#### **18.5 Maximum Accumulation**

Such sick leave as provided in Section 18.2 (Sick Leave Accrual), when not used, shall be cumulative; but the accumulated unused period of sick leave shall not exceed two hundred (200) working days, regardless of the length of service. When the maximum of two hundred (200) working days has been reached, and thereafter part of said maximum has been used, the used part of said maximum may subsequently be replenished at the applicable rate provided in Section 18.2 (Sick Leave Accrual).

#### **18.6 Payment upon Retirement/Termination**

All accumulated sick leave shall be canceled when an employee terminates or is terminated, except as provided below for employees hired on or before June 30, 2013.

**18.6.1 Employees Hired on or Before June 30, 2013:** For employees hired on or before June 30, 2013 who retire or voluntarily terminate with a vested pension, and with between twenty (20) years and twenty-eight (28) years of benefited service shall be entitled to receive payment in an amount equal to thirty eight percent (38%) of their accrued sick leave days up to a maximum of the two hundred (200) day maximum accumulation. Provided further that any employee retiring on permanent disability arising out of and incurred in the course and scope of his employment with the City shall be entitled to receive payment at retirement for thirty eight percent (38%) of accumulated unused sick leave days but not, in any event, more than thirty eight percent (38%) of the two hundred (200) day maximum accumulation.

**18.6.2 Payment After 28 Years of Service for Employees Hired on or Before June 30, 2013:** Employees who were hired on or before June 30, 2013, who terminate with at least twenty-eight (28) years of benefited 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 (28) years of benefited service shall be entitled to receive payment in an amount equal to fifty percent (50%) of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days.

**18.6.3 Sick Leave Payout to 401(a) Plan for Employees Hired on or Before June 30, 2013:** The City and the Union have met and conferred on an Internal Revenue Code Section 401(a) plan and trust agreement to address the liquidation of sick leave at time of retirement. This plan and trust agreement was originally negotiated with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 and has been submitted to the Internal Revenue Service for a Determination Letter and a Private Letter Ruling which are pending. If the City receives a positive response from the Internal Revenue Service, the plan and trust agreement will be extended to the employees in the bargaining unit. This will provide the employees with an irrevocable option to defer accrued but unused sick leave at time of retirement into a 401(a) plan or be paid out the balance of the accrued but unused sick leave less withholding of applicable federal and state taxes.

**18.7 Annual Payment for Hours in Excess of Maximum for Employees Working Half-Time or More for Employees Hired on or Before June 30, 2013**

Employees who regularly work one-half ( $\frac{1}{2}$ ) time or more and who have attained the one hundred fifty (150) day maximum sick leave accumulation shall be entitled to receive payment for one-third ( $\frac{1}{3}$ ) of the first twelve (12) days of sick leave for which they become eligible but do not use and would otherwise forfeit because of the one hundred fifty (150) 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 January 22 of the following year. Such payment shall be made at the employee's salary rate in effect on the preceding December 31 and shall be made only in units of whole days and not for any fraction of a day.

**18.8 Restoration of Sick Leave if Reemployed within Two Years**

Accumulated sick leave, which has been canceled by reason of an employee's termination, shall be credited back to such employee if the employee returns to City employment within two (2) years of such termination.

**18.9 Sick Leave Use/Family Illness**

Sick leave shall not be considered as a privilege which an employee may use at his or her discretion but shall be allowed only in case of his or her sickness or disability or in the case of serious illness within the immediate family of the employee. Not more than fifteen (15) working days in any calendar year may be taken as sick leave because of the illness of a member of the employee's immediate family, except for serious medical conditions covered under the provisions of Administrative Regulation 2.4 (Family Care Leave). The immediate family of an employee, for the purpose of this Section, shall be defined as: spouse, domestic partner, son, daughter, parent or dependent.

### **18.10 Prohibition for Use with Outside Employment**

No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that such injury is covered by the Workers' Compensation laws of the State of California, or other provision for payment for time off because of such injury is made by such other employer. In the event such injury is not covered by the Workers' Compensation laws of the State of California and no other provision for payment for time off because of injury is made by such other employer, sick leave in accordance with the provisions of this Section shall be allowed only if such outside employment has been approved by the City.

### **18.11 Notification Requirement**

In order to receive compensation while absent on sick leave, the employee shall notify his department head prior to or within four (4) hours after the time set for beginning his or her daily duties, or as may be approved by the head of his or her department. The Union and the City recognize it is advantageous to both parties that calls should normally be made prior to the beginning of the work shift. Leave for non-emergency doctors' appointments shall be requested in advance. In specific instances the City may by written notice require an employee (s) to call in prior to the beginning of their shift in order to be eligible for sick leave.

### **18.12 Cessation of Accrual**

An employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred-sixty consecutive hours shall receive his or her earned sick leave credit. If the employee is off the payroll for one hundred-sixty (160) consecutive hours or more, he or she shall not earn sick leave credit for each two successive pay periods that he or she is off the payroll.

### **18.13 Workers' Compensation**

All probationary and permanent employees of the City and provisional employees who have worked a total of four (4) months or more for the City, who have suffered any disability arising out of and in the course of their employment as defined by the Worker's Compensation Insurance and Safety Act of the State of California, and who are receiving or shall receive compensation from the insurance carrier for such disability, and during the first seven (7) days after such disability when compensation is not paid by the insurance carrier shall be entitled to remain absent from duty with pay until such time as they are able to return to duty or some other final disposition is made of their case; provided, however, that provisional employees who have worked a total of four (4) months or more for the City shall be entitled to remain absent from duty with pay for the period they would have been permitted to remain provisional employees under their employment at the time of injury.

All employees, other than probationary and permanent employees and provisional employees who have worked a total of four (4) months or more, shall be entitled to

such compensation as may be allowed them by the Workers' Compensation Insurance and Safety Act of the State of California.

**18.13.1 Workers' Compensation Payments:** Payments from the insurance carrier for disability arising out of and in the course of employment shall be paid to the employee. The amount of such payment or payments shall be deducted from the monies, which the employee received from the City. Payments from the insurance carrier, plus the monies paid to the employee by the City, shall be equivalent to the employee's regular full pay.

**18.13.2 Workers' Compensation Leave and Salary Continuation:** Payments under the Workers' Compensation law for temporary disability, or a recurrence thereof, arising out of and in the course of employment shall be paid for a period not to exceed 365 days at a maximum payment of the employee's pre-disability net pay but shall not exclude any salary adjustments to which the employee is entitled. Thereafter, the employee will continue to receive only the temporary disability payments provided under state law, and the City will cease to pay the difference. However, salary continuation payments above the statutorily required temporary disability payments shall not be reported by the City to CalPERS as compensation. No time worked shall be part of the 365 calendar days of salary supplement paid by the City. This change shall not affect employees who are currently off the job with a work-related injury which occurred prior to July 1, 1979.

**18.13.3 Calculation:** The City shall continue to calculate salary continuation at pre-disability gross pay. The City may calculate salary continuation payments at pre-disability net pay at such time when they develop the capacity to administer it equitably. Any change in calculation shall not reduce employees' combination of disability payments and salary continuation payments below employees' pre-disability net pay.

The change in calculation shall not affect employees who are off the job with a work-related injury prior to the new calculation method being implemented.

**18.13.4 Workers' Compensation Related Absence of Less than Four (4) Hours:** An employee who is absent from work for a medical appointment or physical therapy for less than four (4) hours will have ½ day charged against his or her 365 day maximum period for receipt of salary continuation pre-disability net pay.

**18.13.5 Workers' Compensation Related Absence of Four (4) Hours or More:**

An employee who is absent from work for a medical appointment or physical therapy for 4 hours or more will have 1 day charged against his or her 365 day maximum period for receipt of salary continuation predisability net pay.

**18.13.6 Calculation Based on Actual Paid Hours:** All sick leave benefits shall be calculated upon actual paid hours.

**18.14 Light Duty**

Assignments for temporarily disabled employees.

An employee who is absent by reason of industrial disability may be returned to work and given temporary light duties within his or her ability to perform. The duration of any such period of temporary work should be determined by the City. Employees should be compensated at the rate of pay of their regular classification while engaged in such temporary duties, and such work assignments are to incorporate the following provisions:

**18.14.1 Modified Duty Accommodation:** The City shall accommodate, when feasible, employees covered by this memorandum under the provisions of workers' compensation, and such work assignments are to incorporate the following provision:

18.14.1.1 The assignment shall be consistent with medical limitations as determined by the physician of record.

18.14.1.2 The Assignment shall be within the City of Berkeley and may include hours and days of work other than the employee's regular assignment.

**18.14.2 Modified Duty Accommodation for Non-Industrial Disabilities:** The City may accommodate an employee disabled with a non-industrial disability by providing a modified work assignment in that employee's classification. To be eligible for such a modified assignment, the employee must provide the Human Resources Department with a medical statement from his or her treating physician that clearly states the medical limitations and abilities of the employee. If modification of that position does not serve the best interests of the City, other classifications may be considered, subject to the approval of the Human Resources Director. Compensation will be provided at the level of the classification in which the temporarily disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.



18.14.3 **Modified Duty for Pregnancy-Related Disability:** In the case of a medically certified, pregnancy-related disability, in which the normal duties clearly threaten the health and safety of the employee or the unborn child, the Human Resources Department will endeavor to place the employee in a position which best serves the interest of the City with no loss of pay, but in no event will such placement exceed 5 months in duration.

18.14.4 **Light Duty Assignments:** Availability of light duty job assignments shall be discussed upon request at the monthly Labor-Management Meetings.

### **18.15 Control Program for Sick Leave Use**

The City may establish a reasonable program for the control of abuse of sick leave and absenteeism, subject to Union review and comment.

### **18.16 Bonus Time for Unused Sick Leave**

For every six (6) months of perfect sick leave attendance the employee will receive eight (8) hours of bonus time. A leave of absence from work pursuant to workers' compensation is counted as an absence from work in the same manner as sick leave for the purpose of this bonus. This bonus time will be prorated for part-time employees. Such bonus time can be used for any leave purpose covered by this Memorandum Agreement. Such bonus time shall be counted as vacation leave credits for purposes of determining eligibility for carry-over and cash payment.

### **18.17 State Disability Insurance**

Except as provided in 18.17.1.3 below, any employee who is absent due to personal illness for more than 7 calendar days (or for any period of time if hospitalized) may apply for State Disability Insurance Benefits.

18.17.1 **State Disability Integration:** After such employee has been absent from work due to personal illness for six (6) consecutive work days, if the employee applies and is eligible for State Disability Insurance, the City shall integrate the employee's pay with the employee's State Disability benefits in the following way:

18.17.1.1 The City will determine the weekly SDI benefit amount based on the amount of wages earned with the City of Berkeley in the SDI base period.

18.17.1.2 The weekly SDI benefit will be subtracted from the employee's normal weekly wages and the amount necessary to bring the total of State Disability plus wages to 100% will be deducted from any accumulated sick leave,

vacation leave and compensatory time available to the employee. The integration with vacation leave and compensatory time is optional but will be automatically implemented after sick leave has expired unless written notification is received from the employee, as discussed below.

18.17.1.3 The employee must notify the payroll clerk, in writing, to stop integration of State Disability Insurance payments with vacation leave or compensatory time. Upon receipt of notification, the payroll clerk will cease integration of any future leave for that incident of illness.

18.17.1.4 The employee must show the State of California form (Disability Insurance Notice of Computation) to his or her payroll clerk to verify dates covered by SDI and the amount to be paid. The employee must inform their payroll clerk of all SDI payments. Any employee entitled to State Disability Insurance shall receive in addition thereto such portion of his or her accumulated leave as will meet, but not exceed, the standard earnings of the employee for his or her normal workweek, up to a maximum of five (5) days.

## **SECTION 19: FUNERAL LEAVE**

In the case of death within the immediate family of an employee (who is not excluded from such benefit pursuant to Chapter 4.04.120 of the Berkeley Municipal Code (Personnel Ordinance) which is attached hereto as Exhibit C (City of Berkeley Municipal Code Chapter 4.04.120) and made a part hereof, such employee shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service for a period not exceeding three (3) working days or, in the case of a funeral or memorial service conducted out of the State of California, for a period not exceeding five (5) working days. For the purpose of this Section, the immediate family of an employee shall be defined as: husband, wife, domestic partner, mother, father, sister, brother, child, grandmother, grandfather, grandchildren, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, and daughter-in-law, step-parent, step-sibling, step-child, aunts and uncles, nieces and nephews.

Leave of absence with pay because of death in an employee's immediate family is allowed for the purpose of attending the funeral or memorial services, and such leave shall not be charged against vacation or sick leave that an employee may be entitled to but shall be in addition thereto. Employees may request, and the

City will make reasonable efforts to accommodate requests, for employees to supplement bereavement leave by using accrued vacation, compensatory time, or floating holiday. All accrued leave (and/or sick leave, if applicable) shall be utilized prior to taking a leave of absence without pay.

**Funeral Leave for Persons Other than Immediate Family:** In special cases, with the approval of the department head, the City Manager may grant a death leave to allow an employee to attend funeral or memorial services because of a death of a person not included within the definition of the immediate family.

## **SECTION 20: MILITARY AND MARITIME LEAVE**

Military and Maritime Leave shall be governed by the provisions of the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA) and any regulations promulgated to implement the Act and the California Military and Veteran's Code.

If an employee voluntarily extends his or her military leave in excess of two (2) weeks, the amount of pay received by the employee for his or her military duty shall be deducted from his or her regular pay for such period.

## **SECTION 21: PARENTAL LEAVE**

### **21.1 Eligibility:**

Employees with one (1) or more years of employment with the City (or equivalent in the case of part-time employees) shall be entitled to parental leave as follows:

A continuous parental leave of up to one year will be granted to any employee with one year (full-time) or more years of employment with the City (or equivalent in the case of part-time employees) upon the birth of a child or the legal adoption of a child who is five years or younger, provided that:

**21.1.1 Commencement of Parental Leave:** The one year parental leave must commence no later than 13 months from the date of birth or adoption and must expire no later than 25 months from the date of birth or adoption, and.

**21.1.2 Notice Requirement:** Employees exercising their rights under this provision must provide the City at least 45 calendar days notice prior to the anticipated commencement date of the parental leave, unless a shorter notice is approved for good cause.

21.1.3 **Use of Sick Leave:** The employee, at his or her option, may request that all or any portion of sick leave (up to a maximum of two hundred (200) days) or vacation leave that he or she has accumulated be paid in the same manner as it would if he or she had been absent due to illness or on vacation during the leave. In the event both parents are employed by the City, nothing in the Personnel Rules and Regulations shall prohibit both employees from taking simultaneous parental leave.

21.1.4 **Verification Requirement:** The foregoing leave shall be granted upon medical certification of pregnancy or the presentation of legal evidence of adoption.

21.1.5 **Life and Health Insurance Coverage Upon Exhaustion of Leave:** During approved parental leave, after all earned leaves are exhausted, (except sick leave) the City agrees to maintain life and health insurance coverage for duration of the approved leave subject to any regular participation requirement of the employee. Thereafter the City agrees to continue coverage for the employee at the employee's expense.

## **SECTION 22: LEAVE OF ABSENCE WITHOUT PAY**

### **22.1 Department Head Authority**

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

### **22.2 Union Sponsored Training**

A leave of absence without pay shall be granted at the request of an employee and the Union for the purpose of the employee's attending a training course sponsored by the Union. The maximum duration of such leave shall not exceed two (2) consecutive payroll periods in a calendar year.

### **22.3 Exhaustion of Accrued Time**

Leaves of absence without pay shall be granted only after the employee has utilized all accrued vacation and any other time owed to the employee, except sick leave.

## **SECTION 23: JURY DUTY LEAVE**

An employee who is called or required to serve as a trial juror shall be entitled to be absent from work with pay during the period of jury service or while required to be present in court as a result of a call to jury duty. An employee is required to be present at work when not serving as a trial juror or as a member of a jury selection panel. An employee will notify his or her supervisor of any unusual constraints (e.g., time to call in, time to report for jury service) made by the court that affect the employee's ability to simultaneously fulfill his or her jury duty service and employment obligations; and the supervisor will attempt to accommodate the employee based on the operational needs of the department. Absence from work to perform jury duty service shall apply to employees who work swing and graveyard shifts for those days on jury duty. An employee who serves jury duty on his or her day off shall be granted an equivalent number of days off during his or her normal workweek. Employees are required to submit a written proof of jury duty service issued by the court in order to receive payment for Jury Duty Leave. The employee will keep any payment received for jury service including mileage reimbursement.

### **23.1 Court Time**

The City will guarantee a minimum of three (3) hours pay for every court appearance required by an employee in the conduct of official City of Berkeley job duties on the employee's scheduled day off and three (3) hours minimum if on a workday but outside scheduled working hours. In addition, employees assigned to court phone standby in the conduct of official City of Berkeley job duties will be compensated by earning compensatory time as follows: Duty day, outside of scheduled working hours, one hour minimum compensatory time and hour for hour thereafter. Day off, two-hour minimum compensatory time and hour for hour thereafter.

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

### **SECTION 24: HOSPITAL-MEDICAL, DENTAL, AND VISION COVERAGE**

#### **24.1 Medical Coverage**

The City shall pay the cost of health insurance coverage for employees who are not excluded from such benefit pursuant to Chapter 4.04.120 of the Berkeley Municipal Code (Personnel Ordinance) which is attached hereto as Exhibit C (City of Berkeley Municipal Code Chapter 4.04.120) and made a part hereof, and who have such coverage under any group health insurance plan authorized by the City Council. The present level of benefits under the Kaiser Plan shall be maintained at City expense for the duration of this Memorandum Agreement. Medical benefits are extended to full-time employees, spouse of the employee or domestic partner, and IRS dependent up to age 26.

The City is committed to providing at least one fully paid employer provided health insurance option for employees and eligible dependents. The Union acknowledges the City's policies as stated above.

#### **24.2 Maximum Medical Premium Payments**

24.2.1 Effective January 1, 2003, the City will transfer employees who chose to maintain Kaiser medical plan coverage from the Kaiser V-5 Plan into the Kaiser S-1 Plan. Effective January 1, 2003, the City will transfer employees who chose to maintain Health Net HMO coverage from the Health Net W-2 Plan to the Health net C9A Plan.

24.2.2 For employees hired on or after January 1, 2003, the maximum amount the City shall be required to pay for medical insurance premiums shall be the applicable Kaiser rate (i.e., single party, two-party, or family) regardless of the City sponsored health plan selected by the employee.

24.2.3 For employees in a probationary or career benefited status as of January 1, 2003, the City will continue to pay 100% of the health care premium costs (employee and any dependents) for the health plan the employee is enrolled in as of this date as long as the employee remains employed in the bargaining unit. After January 1, 2003, if the employee transfers health coverage to a different health plan, the employee will assume responsibility for paying the difference, if any, between the Kaiser monthly premium rate (i.e., single-party, two-party, or family) and the plan chosen by the employee from that date forward.

24.2.4 Effective January 1, 2009, the amount the City contributes each calendar year toward the payment of health insurance premiums, in accordance with Section 24.2 (Maximum Medical Premium Payment), will increase by the lesser of twenty percent (20%) (single, two-party, family) or the amount of the Kaiser HMO premium amount (single, twoparty, family) in effect on that date.

24.2.5 Effective January 1, 2014, for those employees who are enrolled on October 31, 2012 in the Health Net Point of Service (POS) health plan (Payroll Benefit Code Description HJ, HK, and HL) the City shall pay medical insurance premiums at the applicable rate for the Health Net HMO plan (i.e., single; 2-party, or family). If the employee chooses to remain enrolled in the Health Net POS Plan on or after January 1, 2014, the employee will assume responsibility for paying the difference between the Health Net POS and the Health Net HMO monthly premium rate (single; 2-party, or family). Provided further that if at any time after January 1, 2014 the employee transfers health coverage from Health Net POS to the Kaiser health plan, the maximum amount the City shall be required to pay for medical insurance premiums shall be the applicable Kaiser rate (i.e., single 2-party; or family) even if the employee subsequently enrolls in a different City sponsored health plan.

24.2.6 **Meet & Confer:** The Parties agree to meet and confer with the City, commencing no sooner than January 1, 2017. The negotiations shall be on developing comparable and less expensive health plan options as a means of reducing or ensuring that the City shall not be required to pay any penalties associated with the Excise Tax. This meet and confer process will be subject to normal rules of collective bargaining, including applicable impasse, strike or lock-out procedures.

Any changes resulting from a review of employee health insurance or other health related benefits will be subject to meet and confer between the Union and the City, except as otherwise provided in Section 24.5 (Change in Insurance Carrier).

### **24.3 Dental Coverage**

The City shall provide a dental care program for employees who are not excluded from such benefit by Chapter 4.04.120 of the Berkeley Municipal Code (Personnel Ordinance) which is attached hereto as Exhibit C (City of Berkeley Municipal Code Chapter 4.04.120) and made a part hereof. The present level of benefits under the Dental Program shall be maintained at City expense for the duration of this Memorandum. Dental benefits are extended to full-time employees, spouse of the employee or domestic partner, and IRS dependents up to age 26.

24.3.1 Effective January 1, 2000, the dental plan is improved from 90% coverage to 100% coverage.

24.3.2 Effective January 1, 2003, the annual maximum dental benefit will be increased to \$4000 per year, the lifetime maximum orthodontia benefit will be increased to \$4000, and the annual cleanings will be increased from two (2) to four (4). Effective January 1, 2016, the number of annual cleanings will be decreased from four (4) to three (3).

**24.4 Vision Coverage**

Effective January 1, 2003, the City shall provide a Vision Care Program for employees covered by this Agreement. The annual maximums for this benefit are as follows:

<b>Benefit</b>	<b>Benefit Frequency</b>
Exam	12-Months
Lenses	12-Months
Frames	24-Months
Contact Lenses**	12-Months
**Note: Benefits for Contact Lenses are in lieu of benefits for lenses and frames.	

The maximum amount the City shall be required to pay for the Vision Care Program shall be the applicable Vision Services Plan (\$25 Plan B) rate (i.e., employee only, employee plus spouse, employee plus one (1) child; employee plus family).

If during the term of this Agreement the premiums for such Vision Care Program are increased, the amount the City contributes shall increase no more than five percent (5%) above the previous calendar year’s contribution amount towards the payment of the monthly premium.

Recognizing that the “vision exam” portion of the Vision Care Program duplicates existing benefit provided under Medical Coverage Section 24.1 (Medical Coverage) and 24.2 (Maximum Medical Premium Payments), the Union and the City agree to revisit the Vision Care Program during the term of this Agreement with the expectation that it may be possible to identify a plan that provides a “Hardware Only” benefit (Lenses every 12-months; Frames every 24-months). Such “Hardware Only” plan shall be at a lower City and employee cost than the present Vision Services Plan (\$25 Plan B).

**24.5 Change in Insurance Carrier**

Before the City acts to change an insurance carrier during the term of this Agreement, the City shall give the Union thirty (30) days notice of its intention to change carriers and shall, upon written request, meet with the Union to discuss the reasons for



such change. The final determination of insurance carriers shall be at the sole discretion of the City.

#### **24.6 Domestic Partner Coverage**

If an employee chooses to complete and submit an Affidavit of Domestic partnership and sign up for medical and/or dental benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

#### **24.7 Part-Time Employees and Prorated Benefits**

All career and grant-funded, benefited employees working less than full time shall receive prorated rather than full fringe benefits and shall pay, by payroll deduction, a pro rata portion of the health and dental insurance premiums.

#### **24.8 Commencement of Medical, Dental, and Vision Benefits**

Medical, dental, and vision 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.

#### **24.9 Health Insurance In-Lieu Payments**

Effective January 1, 2019, for employees who show proof of alternate medical coverage, the City will compensate the employee \$576.00 per month, prorated for less than full-time employees, as provided in Section 24.7 (Part-Time Employees and Prorated Benefits). In order to include in-lieu payments in the regular rate of pay for the correct overtime calculation, the City must provide in-lieu payments on the bi-weekly payroll cycle. This benefit shall be frozen at this amount for the term of this agreement.

#### **24.10 Group Life Insurance**

Effective January 1, 2016, the City shall provide group life insurance, by a carrier of the City's choice, in the amount of \$100,000 which shall include a standard accidental death and dismemberment provision of a like amount. In addition, the employee may purchase additional life insurance up to a maximum of \$300,000 at a rate offered by the City's insurance carrier and subject to any medical exam as required by the insurance carrier. Life insurance shall become effective the first day of the calendar month following the date of hire, and shall continue until the last day of the calendar month in a pay status.

#### **24.11 Pre-Tax Status**

When employees are required to contribute to the cost for medical, dental, or vision insurance, those contributions will continue to qualify as pre-tax expenses under the provisions of IRS Section 125.

## **SECTION 25: RETIREE MEDICAL COVERAGE**

The City and Union have agreed that the City will make available retiree health insurance coverage under certain terms and conditions described below. The retiree medical benefit described below is the plan tentatively agreed to during multi-union bargaining during the summer of 1998. The terms and conditions of this benefit shall be set forth in a separate document which shall contain a full plan description and shall control the administration of the retiree medical plan.

The City will begin to provide the retiree medical coverage set forth in this Section on July 1, 1998. An employee's entitlement to any and all benefits provided by the City under this retiree medical cover plan are subject to the funding limitations set forth in sub-Section 25.8 (City Funding of Retiree Health Benefit).

### **25.1 Amendment of Retiree Health Premium Assistance Plan III, effective January 23, 1998, Restated and Amended effective March 22, 2011**

Employees who retire on or after June 21, 2015, shall be permitted, at their discretion, to enroll in non-City sponsored health plans. After Council approval of the successor Memorandum of Understanding, the City shall amend the Retiree Health Premium Assistance Plan III as soon as practicable to allow enrollment in non-City sponsored health plans. In the event a retiree elects to enroll in a non-City sponsored health plan, the City shall make medical insurance premium payments directly to the health insurance provider in an amount equal to what the City would contribute to the City sponsored health plan. Retiree shall be solely responsible for all aspects of the requirements to enroll in a non-City sponsored health plan and maintain eligibility for such a plan; the City's sole obligation is to pay the medical insurance premium contribution required under this Section, as directed by the retiree to a non-City sponsored health plan. The City shall not be responsible for any excess cost differentials associated with the direct payment of premiums to non-City sponsored plans. The City will only make payments through its third party administrator to provide medical insurance premium payments for an individual plan and will not make payments for a group plan. The retiree and/or surviving spouse or domestic partner that enroll in non-City sponsored health plans shall be solely responsible for paying the administrative set up fee, the monthly administrative fee, and/or any other fees established by the third party administrator, and said fees will be deducted directly from the retiree's monthly contribution. No cash payments will be paid directly to the retiree and/or the retiree's spouse/domestic partner. There shall be no cash in lieu payments made under this benefit.

The City and the Union agree that the City will also amend the Retiree Premium Assistance Plan III to allow eligible retirees who retired prior to June 21, 2015 to enroll in a non-City sponsored health plan.

**25.2 Eligibility**

An employee is eligible for the retiree health insurance coverage set forth in subSection 26.2 (Provisional Appointments to a Higher Classification) below if he or she meets all the following criteria:

- 25.2.1 retires on or after July 1, 1998,
- 25.2.2 is vested with CalPERS,
- 25.2.3 has at least eight (8) years of CalPERS qualifying service with the City,
- 25.2.4 is at least age 55.

**25.3 Pre Age 65 Retiree Health Insurance**

**25.3.1 Beginning July 1, 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. The actual monthly amount of money the City will contribute on the employee’s behalf will be based on the employee’s total years of CalPERS service as provided in the following chart:

<b>Years of CalPERS Qualifying Service</b>	<b>Percent of City Contribution</b>
8	30%
9	40%
10	50%
11	58%
12	66%
11	58%
12	66%
13	74%
14	82%
15	90%
16	92%
17	94%
18	96%
19	98%
20	100%

The employee will pay the difference between the City’s monthly contribution and the actual monthly insurance premium charged by the health plan he or she has elected for retiree medical coverage. If during the term of this Agreement, the premiums for such health insurance are increased, the

amount the City contributes shall increase no more than 4.5% above the previous year's contribution. No increases in the amount the City contributes shall occur before July 1, 1999. Thereafter, any increase in the amount contributed by the City will occur on July 1 each year thereafter.

- 25.3.2 **Effective June 28, 2009:** For employees who retire on or after June 28, 2009, the City will pay on the employee's behalf no more than \$358.19 per month for an employee electing single party health coverage and no more than \$716.38 per month for an employee electing two party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.
- 25.3.3 **Effective June 27, 2010:** For employees who retire on or after June 27, 2010, the City will pay on the employee's behalf no more than \$424.31 per month for an employee electing single party health coverage and no more than \$848.61 per month for an employee electing two party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.
- 25.3.4 **Effective June 26, 2011:** For employees who retire on or after June 26, 2011, the City will pay on the employee's behalf no more than \$468.40 per month for an employee electing single party health coverage and no more than \$936.80 per month for an employee electing two party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.
- 25.3.5 **Effective June 24, 2012:** For employees who retire on or after June 24, 2012, the City will pay on the employee's behalf no more than \$589.48 per month for an employee electing single party health coverage and no more than \$1,178.96 per month for an employee electing two-party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.
- 25.3.6 **Effective June 23, 2013:** For employees who retire on or after June 23, 2013, the City will pay on the employee's behalf no more than \$666.00 per month for an employee electing single party health coverage and no more than \$1,332.01 per month for an employee electing two-party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.

**25.3.7 Effective June 22, 2014:** For employees who retire on or after June 22, 2014, the City will pay on the employee's behalf no more than \$720.97 per month for an employee electing single party health coverage and no more than \$1441.94 per month for an employee electing two-party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.

**25.3.7.1 Retiree Health Premium Assistance Plan Benefit as of June 30, 2017:** As of June 30, 2017, the maximum amount the City will pay the health care service provider, which were increased in accordance with Section 25.3 (Pre Age 65 Retiree Health Insurance), total \$1,517.40 for two party coverage for the retiree and spouse or domestic partner or \$758.70 for single party coverage.

#### **25.4 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 subSection 25.3 (Pre Age 65 Retiree Health Insurance) ceases. On reaching age 65, the City will make available health insurance coverage in addition to Medicare. When an employee or retiree reaches age 65, the City will contribute no more than \$50.00 per month on the employee's behalf for single party health insurance coverage and no more than \$100.00 per month for two party health coverage. If during the term of this Agreement, the premiums for such health insurance are increased, the amount the City contributes shall increase no more than 4.5% above the previous year's contribution.

The City will take such actions under the provisions of Section 218(g) of the Social Security Act to permit employees who are not currently paying employee portion of the Medicare Tax with a one-time opportunity to choose to be covered by the Medicare Tax. If the employee chooses to be covered by the Medicare Tax the choice cannot be revoked at a later date.

The City shall include in its next actuarial request, the impact on the City if the City were to amend its Retiree Health Premium Assistance Plan III to provide the following benefit levels:

Single Party Health:   \$200.00  
Two Party Health:     \$400.00

**25.4.1 Retiree Health Premium Assistance Plan Benefit as of June 30, 2017:** As of June 30, 2017, the maximum amount the City will pay the health care service provider, which were increased in accordance with Section 25.4

(Retiree Benefits for Employees Age 65 and Over), total \$62.59 for two party coverage for the retiree and spouse or domestic partner or \$31.30 for single party coverage.

### **25.5 Termination by City of Retiree Medical Benefit**

Failure of the retiree or surviving spouse to pay their monthly share of the health insurance premium will result in termination of the retiree medical benefit and relieve the City of any further obligation to provide any further benefits under this Section.

### **25.6 Retiree Medical Benefit for Employees Retiring Between the Ages of 50 and 55**

An employee who is at least 50 years of age, but less than 55, and has at least eight years of CalPERS qualifying employment with the City will retain eligibility for the retiree medical benefits provided in sub-Section 25.3 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his 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.

### **25.7 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 sub-Section 25.3 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his 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.

### **25.8 City Funding of Retiree Health Benefit**

City contributions to the retiree medical benefit will begin on July 1, 1998. Funding of this benefit will be set aside in a trust to be established by the City.

The retiree medical benefit will be funded by a charge of 0.25% of payroll in each year of this Agreement, so that contributions are at 1% of the payroll in the fourth year of the Agreement. The City will fund the benefit at approximately 1% of the payroll for every year thereafter with the intent of achieving a funding level of 70% after 30 years. The funding will be ongoing to maintain a 70% funding level thereafter.

Effective June 28, 2009, a total charge of twenty six thousand, six hundred and forty (\$26,640) of employee payroll will be charged in the final three years of the Agreement so that contributions are at 1.764% in the final year of the Agreement. The purpose of the 0.764% increase in payroll contributions is to fund Pre Age 65 Retiree Health Insurance.

### **25.9 Actuarial Study**

The Union understands and acknowledges that the City conducted an actuarial study to determine the percentage of payroll it needed to set aside each year and the rate of return of 7% it must achieve to fund the retiree health benefit provided in this Section. The City will conduct an actuarial study by an outside actuary of the retiree medical plan prior to June 30, 2002. After that time, the City will conduct an actuarial study by the outside actuary of the retiree medical plan every two to three years to review the funding status of the program. The outside actuary will be selected by mutual agreement of the parties. The Union and City agree that if the Actuary concludes that the City's funding of this benefit by contribution of 1% of the payroll for all miscellaneous employees is insufficient to fully fund the retiree medical benefits, the City shall not be required to increase its funding for this benefit to more than 1% of the payroll for miscellaneous employees. In the event that there are insufficient funds in the trust to cover all retirees' monthly health premiums, the City and the Union agree to meet and confer regarding the City's distribution of its 1% contribution.

## **ARTICLE 5 – TERMS AND CONDITIONS OF EMPLOYMENT**

### **SECTION 26: PROBATIONARY PERIOD**

#### **26.1 Duration and Effect of Military Leave on Probationary Period**

Original and promotional appointments from employment lists shall be tentative and subject to a probationary period of: one (1) year (full time equivalent exclusive of all leave and light duty completed within 18 months) upon original appointment to the unit; employees promoted within the unit are subject to a probationary period of six (6) months (half time equivalent exclusive of all leave and light duty completed within one year); in addition, employees in trainee programs with specified training, evaluation or probation periods shall be governed by the applicable provisions of such program. Probationary employees who are granted military leaves of absence shall complete the balance of their probationary period within a period of six (6) months following their return to City service. No provision of this Section shall be interpreted to preclude the City from establishing new classifications, which may require a probationary period of more than six (6) months.

#### **26.2 Provisional Appointments to a Higher Classification**

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

#### **26.3 Report Requirement**

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

#### **26.4 Rejection during Probationary Period**

During the probationary period, an employee may be rejected at any time without right of appeal or hearing in any manner. An employee rejected from a position to which he has been promoted shall be reinstated to the position from which he was promoted unless charges are filed and he is discharged as provided in Section 31 (Discharge). Career City employees who are rejected during their probationary period in a promotional position or fail to complete the training requirements of a training program (academics or OJT) shall revert to their prior classification.



### **26.5 Rejections Subject to Disciplinary Appeal**

A promoted employee may not grieve his or her rejection from probationary period/training. However, an employee disciplined for cause while on promotional probationary period shall have access to the disciplinary appeal procedure.

### **26.6 Probationary or Temporary Employee Assignments**

No probationary or temporary employee will be assigned as the only ground worker with an Electrician until such employee has completed one (1) month of familiarization with aerial truck equipment.

## **SECTION 27: TRANSFER**

A transfer may be made at any time by the City Manager. Transfer shall not be used to effect a promotion, demotion, advancement, or reduction, each of which may be accomplished only as provided elsewhere in this Memorandum Agreement. No person shall be transferred to a position for which he or she does not possess the minimum qualifications. An employee with permanent status who is transferred from one class to another class shall assume permanent status in the class to which the employee is transferred.

## **SECTION 28: PROMOTION**

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

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

**Interview of Employees:** A City employee who is on a closed promotional or open competitive list shall have the option to interview for the vacancy. A City employee who is unsuccessful and who so requests shall be advised of steps he or she may take to increase his or her competitive standing for future promotional opportunities.

Employees who have qualified for promotional lists shall be considered for promotion based on the following factors: previous work performance, previous training and experience, merit, ability, and seniority.

### **SECTION 29: DEMOTION**

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

Notice of the demotion shall be given the employee not later than four (4) weeks prior to the effective date of demotion and a copy of said notice filed with the Director of Human Resources. Any employee who has been demoted shall be entitled to receive a written statement of the reasons for such action.

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

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

### **SECTION 30: SUSPENSION**

The City Manager may suspend an employee from his position at any time for the good of the service, for a disciplinary purpose, or for other just cause. Suspension without pay shall not exceed twenty (20) working days, nor shall any employee be penalized by suspension for more than twenty (20) days in any fiscal year. Any employee who has been suspended shall be entitled to receive a written statement of the reasons for such action.

For the good of the service, a department head may suspend an employee for not more than three (3) working days for any one offense. Such suspension shall be reported immediately to the City Manager.

### **SECTION 31: DISCHARGE**

An employee may be discharged at any time by the City Manager, but if the probationary period has been completed then such discharge must be for just cause. Any employee

who has been discharged shall be entitled to receive a written statement of the reasons for such action.

### **SECTION 32: RESIGNATION**

An employee wishing to leave the competitive service in good standing shall file with the department head, at least two (2) weeks before leaving the service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the Director of Human Resources with a statement by the department head as to the resigned employee's service performance and other pertinent information concerning the cause for resignation. Failure of the employee to give the notice required shall be entered on the service record of the employee and may be cause for denying future employment by the City. The resignation of an employee who fails to give notice shall be reported by the department head immediately.

### **SECTION 33: REINSTATEMENT**

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

### **SECTION 34: NOTICE OF TERMINATION**

Department head shall notify the Director of Human Resources of all terminations of employment before or within two (2) days after the termination has taken place. Such notice shall be on forms provided by the Director of Human Resources and shall indicate the effective date and reasons for termination and a statement certifying whether or not the employee's services have been satisfactory.

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

### **SECTION 35: GRIEVANCES**

#### **35.1 Definition**

A grievance is any dispute which involves the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the

City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect memorandum agreements which result from the meeting and conferring process.

A grievant may be any member of the bargaining unit covered by the terms of this Agreement, or the grievant may designate the Union to act on his or her behalf, or the Union itself may file a grievance on behalf of a member or group of members. Grievances must be filed in a timely manner. Grievances that are filed by the Union on behalf of a member or group of members, or when a grievant designates the Union to act on his or her behalf, are subject to settlement at any step of the grievance procedure at the Union's sole discretion.

A member of the bargaining unit that files a grievance where the Union is not representing or acting on the grievant's behalf, may only utilize this grievance procedure through step 3. The Union retains the sole discretion to refer which, if any, grievances to move to arbitration.

The parties agree that disclosure to the other party of all relevant information available to them is critical to the successful resolution of grievances at the lowest possible step of the grievance procedure. The parties therefore agree to disclose to each other the relevant information in their possession related to the grievance. Further, the parties agree to comply with reasonable grievance related information requests from the other party in a timely manner.

### **35.2 Procedure**

Grievances shall be processed in the following manner:

**35.2.1 Informal Step:** An employee who believes that he or she has a grievance (and / or the employee's steward or Union representative) may discuss the complaint with the Deputy Director of Public Works, or with such subordinate management official as the Deputy Director may designate. If the issue is not resolved informally, the formal procedures hereinafter specified may be invoked.

**35.2.2 First Formal Step:** Any informal grievance which has not been resolved by the Deputy Director of Public Works or his or her designee, must be filed in writing to the Deputy Director of Public Works within thirty (30) days from the date the informal discussion was initiated. The written grievance must state specific issues involved, the decision rendered at the informal step, and the remedy sought. The Deputy Director or his or her designee shall have five (5) days to respond in writing to the formal, written grievance.

35.2.3 **Second Formal Step:** Any formal grievance which has not been resolved by the Deputy Director of Public Works or his or her designee, may be referred to the Director of Public Works or his or her designee within thirty (30) days from the date of the Deputy Director's formal written response, or if more than five (5) days have elapsed since the grievance was presented at the Deputy Director's level.

35.2.3.1 **Referral to Department Director:** The grievance may be referred to the Director's level and shall include a copy of the original grievance, the decision rendered at the Deputy Director's level, and a clear, concise statement of the reasons for the referral.

The Director of Public Works may designate a personnel representative to investigate the merits of the complaint, to meet with the complaining employee (and/or the employee's steward or Union representative); if the grievant is not the Union itself, to meet with the officials of the Union; and to settle such grievance or to make recommendations thereon to the City Manager in his or her capacity as an employee relations officer. The Director of Public Works shall issue a formal written decision within five (5) days of receipt of the grievance or if a meeting is held with the employee and his or her Union, the meeting must be held within ten (10) days of receiving the referral. The Director of Public Works or his or her designee shall issue a written decision within five (5) days from his or her meeting with the complaining employee and/or Union representative. If the issue is not resolved the grievance may be referred to the Third Formal Step within thirty (30) days of receipt of the response from the Director of Public Works.

35.2.4 **Third Formal Step:** Any grievance which has not been resolved by the procedures hereinabove set forth may be referred to the City Manager by the grievant, the Union, or the Director of Public Works. Any such referral shall be in writing including a copy of the original grievance, the decision rendered at the Director's level, and a clear, concise statement of the reasons for the referral. The City Manager shall designate a Human Resources representative to investigate the merits of the complaint, and upon request from the employee or the union, that representative to meet with the complaining employee (and/or the employee's steward or Union representative), if the grievant is not the Union itself, to meet also with the officials of the Union, and to settle such

grievance or to make recommendations thereon to the City Manager in his or her capacity as an employee relations officer.

The City Manager shall issue a decision within ten (10) days of receipt of the grievance referral or within ten (10) days of the meeting, or if a meeting is held with the employee and/or the Union, the meeting must be held within ten (10) days of the referral. Grievances filed by a bargaining member where the Union is not representing or acting on the grievant's behalf, shall end at this step and no further right of appeal exists. The City Manager's decision shall be final.

**Union controlled grievances:** If the issue is not resolved, the grievance may be referred to Arbitration by the Union pursuant to Section 35.2.5 (Arbitration: The Union retains the sole discretion to move a grievance to arbitration) below within thirty (30) days of receipt of the City Manager's response. Provided further that the Union shall forward to the City the Union's portion of the State Mediation and Conciliation Services (SMCS) fee within sixty (60) days of receipt of the City Manager's response. Failure by the Union to meet this sixty (60) days deadline for both referral to Arbitration and payment of the SMCS fee shall be deemed as a full and complete waiver by the Union to appeal the City Manager decision to Arbitration and the City Manager decision shall be final and binding on all parties.

**35.2.5 Arbitration: The Union retains the sole discretion to move a grievance to arbitration.** Any grievance which has not been resolved by the procedures hereinabove set forth may be referred by the Union, or the City to an impartial arbitrator who shall be designated by mutual agreement between the Union and the City, using the State Mediation and Conciliation Services (SMCS) to provide a list of five (5) arbitrators. The City and the Union will alternately strike a name until one remains. The remaining name will be the arbitrator. The fees and expenses of the arbitrator, the State Mediation and Conciliation Services (SMCS) and of the court reporter shall be shared equally by the Union and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any. Arbitrator decisions on matters properly before them shall be final and binding on both parties..

The arbitrator may hear testimony, receive written briefs, interview witnesses, and conduct any investigation she or he deems appropriate, and shall render a final and binding decision to the parties which will end the formal grievance process.

**35.2.5.1 Arbitrator Jurisdiction:** No arbitrator shall entertain, hear,

decide, or make recommendations on any dispute involving a position over which a formally recognized employee organization has jurisdiction unless such dispute falls within the definition of a grievance as hereinabove set forth in Section 35 (Grievances).

**35.2.5.2 No Modifications:** Proposals to add to or change this Memorandum Agreement or written agreements or addenda supplementary hereto shall not be arbitrable, and no proposal to modify, amend, or terminate this Memorandum Agreement, nor any matter arising out of or in connection with such proposal, may be referred for arbitration under this Section; and no arbitrator shall have the power to amend or modify or recommend amendment or modification of this Memorandum Agreement or any written agreements or addenda supplementary hereto or to establish or recommend establishment of any new terms and conditions of employment.

**35.2.5.3 Timeliness of Award:** No arbitrator will be selected hereunder who does not agree to render an award not later than thirty (30) calendar days after the close of the hearing. By mutual agreement between the City and the Union, the arbitrator may render an award immediately upon the conclusion of the presentation of evidence.

### **35.3 EEO Complaints**

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

### **35.4 Compensation Complaints**

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources. In such cases, no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation. Only grievants which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understanding contained in any Memorandum Agreement which has resulted from the meeting and conferring process shall be considered as grievances. Any other matters of compensation are to be resolved in the meeting and conferring process and, if not detailed in the memorandum agreement which results from such meeting and conferring process, shall be deemed withdrawn until the meeting and conferring process is next open for such discussion.

**35.4.1 Response Time Limits:** The Director of Human Resources or his or her designee shall issue a decision in writing within twenty (20) days from the time he or she received the compensation grievance in writing. The grievant or the Union may refer the decision to the Third Formal Step (Section 35.2.4 - Third Formal Step) of this Memorandum Agreement) within twenty (20) days of receipt of the written decision.

### **35.5 Changes or Interpretations**

No changes in this Memorandum Agreement or interpretation thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Union.

### **35.6 Extension of Timelines**

Timelines noted in this Section may be extended for cause upon mutual agreement between the City and the Union.

### **35.7 Days**

All references in this Section 35 (Grievances) to "days" shall mean normal working days except as otherwise noted.

### **35.8 Grievances Challenging Disciplinary Action**

35.8.1 Any grievance involving any disciplinary action up to as three (3) day suspension will be filed at the Director level.

35.8.2 All grievances involving demotion, discharge, or suspension of greater than three (3) days will be filed at the City Manager's level of the grievance



procedure. If the issue is not resolved within fifteen (15) days of referral to this step, the procedures hereinafter specified may be invoked.

35.8.3 No grievance involving the suspension or discharge of an employee will be entertained unless it is filed in writing with the City Manager within five (5) working days of the time at which the affected employee was notified of such action in writing. If the City Manager, in pursuance of the procedures outlined in Section 35.2.4 (Third Formal Step) above, resolves a grievance which involves suspension or discharge, he or she may agree to payment for lost time or to reinstatement with or without payment for lost time.

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

## **ARTICLE 7 – GENERAL PROVISIONS**

### **SECTION 36: GENERAL PROVISIONS**

#### **36.1 Personal Conduct**

36.1.1 No employee shall accept appointment to the deputyship or assistantship of any county or state office or position, or otherwise incur an obligation of civil public service outside his or her regular municipal employment without first obtaining the recommendation of the head of his or her department and of the City Manager.

36.1.2 No employee shall be disciplined for off-the-job activities which do not affect his or her job performance.

36.1.3 Employees shall so arrange their personal financial affairs so that the demands of creditors and collection agencies shall not impose a recurring burden upon the offices of the City Manager, the department head, or the Director of Human Resources for the purpose of making collections.

36.1.4 Full-time City employees may not carry on concurrently with their public service any private business or undertaking, attention to which affects the time or quality of their work or which casts discredit upon or creates embarrassment for the City government.

36.1.5 No official or employee who wears a badge or other official insignia as evidence of his or her authority and identity shall permit such badge or insignia to be used or worn by any other person of the same or another department or otherwise to leave his possession without approval by the head of this department. The department head shall not grant such approval except as to persons regularly and formally appointed by the City Manager to the position designated by the badge or insignia.

#### **36.2 Rain Gear**

The City will provide rain gear for employees in Representation Unit C assigned to work in inclement weather.

#### **36.3 Tools**

Each employee shall continue to be responsible for providing tools of the trade or other equipment, but shall receive a flat annual tool replacement allowance each July 1.

New employees hired before or after July 1 will be entitled to a prorated tool replacement allowance payable the following July 1 after employment.

36.3.1 **Allowance:** Effective July 1, 2015, the tool replacement is five hundred dollars (\$500). Tool allowances shall be paid at the end of the fiscal year in which they are earned.

### 36.4 Shoes

Effective June 18, 2017, all classifications covered by this MA shall be eligible for reimbursement of up to two hundred dollars (\$200.00) per fiscal year for the cost of safety shoes. Employees receiving this reimbursement must wear safety shoes on duty.

36.4.1 **Reimbursement:** Employees shall be required to submit a reimbursement request, along with receipts verifying the purchase of safety shoes within sixty (60) days of purchase. Reimbursements will be paid within forty-five (45) days of complete reimbursement requests.

### 36.5 Training

36.5.1 **Responsibility:** Responsibility for developing training programs for employees shall be assumed by the City Manager. Such training programs may include lecture courses, demonstrations, assignment of reading matter, or such other devices as may be available for the purpose of improving the efficiency and broadening the knowledge of municipal employees in the performance of their duties. The City shall endeavor to provide training for all new technology purchased by the City and maintained by members of this Agreement.

36.5.2 **Advancement/Promotional Consideration for Special Training Courses:** Participation in and successful completion of special training courses may be considered in making advancements and promotions. Evidence of such activity shall be filed with the Director of Human Resources by the department head.

36.5.3 **Mileage and Tuition Reimbursement:** The City shall reimburse all employees for mileage and tuition expenses related for attendance at job-related courses. Provided that the employee must have prior authorization from his or her department head and the course has been approved by the City.

36.5.4 **Education Leave:** The City shall allow up to forty (40) hours off with pay per year to employees:

36.5.4.1 Who are required to obtain a license (excluding Class C driver's licenses) issued by the State of California and, in order to do so, must take courses which were not offered as a part of their basic curriculum or,

36.5.4.2 Who are required to obtain continuing education as a condition of license renewal; provided the license is required by the City for the employment or continued employment of the employee and that no more hours than are required by the State shall be granted. Employees seeking time off to take courses for an initial license must provide verification that the course was not offered as a part of their basic curriculum.

Employees who take classes during non-scheduled work hours in order to retain a job required license or to meet continuing education requirements shall be allowed time off from work on an hour-for-hour basis without loss of compensation or other benefits.

36.5.4.3 To obtain education and training related to job skills to enhance performance, or to qualify for promotion, at the discretion of the department head.

**36.5.5 Management/Union Meetings:** The City and Union agree that it is beneficial to both parties to discuss and develop training for all classifications. The Director of Public Works and the Union shall meet on a quarterly basis to discuss and review progress made in addressing initial employee orientation, new equipment training, and vendor training.

**36.5.6 Commercial Driver's License:** The City shall provide the necessary training for employees to obtain a California Class B driver's license when such license is a requirement of their job classification and a condition of employment. Employees who fail to obtain the required California Class B driver's license after training will be subject to rejection from the probationary period pursuant to Section 26.4 (Rejection during Probationary Period) of this Memorandum Agreement.

### **36.6 Use of Automobiles**

The City Manager shall govern the use of City-owned automotive equipment and privately-owned automotive equipment by such rules and regulations as he or she may establish. Compensation shall be given in the form of a cash allowance for the use of private-owned automobiles on City business if such use has been

authorized in advance by the City Manager. The cash allowance will be equal to the amount established by the Internal Revenue Service, and will change as necessary to comply with IRS Standard Mileage Rate.

### **36.7 Safety**

**36.7.1 Safety Committee:** The City and the Union will make every effort to maintain excellent health and safety standards. No employee shall be required to perform work with unsafe equipment or in situations which are injurious to his or her health or safety. To further these purposes, the City shall maintain an ongoing safety program which shall include committees comprised of representatives from the Union and appropriate supervisory personnel.

**36.7.2 Rainy Weather Assignments:** The City shall endeavor to avoid assigning non-emergency, routine work in rainy weather, which would constitute a safety hazard.

### **36.8 YMCA Group Membership**

The City shall offer employees a low or no-cost group membership in the Berkeley Central YMCA. As of July 1, 1999, the City will pay 75% of the membership fee. If the monthly fee is increased to more than \$60, the employee share will be capped at \$30 per month; the City will pay the balance. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding.

Use of the YMCA membership by a City of Berkeley employee, as provided for in this Agreement, is non-compensable, is not a part of the employee's work-related duties, is not required for employment and is not condoned as part of a physical fitness program, or required to remain top physical conditioning for the employee's job performance.

The City of Berkeley or its Claims Administrator may not be liable for any injury that arises out of a City of Berkeley employee's participation in and use of a YMCA membership.

### **36.9 Annual Performance Evaluation**

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

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

### **SECTION 37: PAYMENT OF EMPLOYEES' PERS CONTRIBUTIONS**

#### **37.1 Miscellaneous Designation**

The City shall continue participation under the Miscellaneous Employees Plan of the California Public Employees' Retirement System, (CalPERS).

#### **37.2 "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).

#### **37.3 "New Member" Definition**

"New Members are as defined in the Public Employees' Pension Reform Act of 2013 (PEPRA), Government Code Section 7522.04(f).

#### **37.4 CalPERS Retirement Formula for "New Members" as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA)**

"New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the retirement formula set forth in PEPRA.

#### **37.5 CalPERS Retirement Formula and Employer Paid Member Contribution for Classic Employees (i.e. current employees and employees who do not qualify as "New Members" under PEPRA)**

Current employees and other employees who do not qualify as "New Members" under PEPRA shall continue to be entitled to the 2.7% at age 55 retirement formula benefit, and the City shall continue the contribution of eight percent (8%) to CalPERS on behalf of the employee.

#### **37.6 CalPERS New Members Normal Share of Cost**

New Members as defined by PEPRA who are hired on or after January 1, 2013 shall pay 50% of the normal share of cost required by PEPRA. New Members shall receive any other additional optional CalPERS benefits that the City provides to Classic Employees as allowed by PEPRA.

#### **37.7 Reporting of Contributions**

Effective July 3, 1994, contributions made pursuant to Section 37.5 above have been 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 member contributions made by the City shall not be considered as a part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked, or education incentive pay; nor shall such contribution be taken into account in determining the level of any other benefit which is a function of or percentage of salary. Pursuant to California Government Code Section 20691, the City shall not increase, reduce or eliminate payments of the normal contributions on behalf of the employee without engaging in the meet and confer process with the Union.

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.

### **37.8 City Contracts with CalPERS**

The City's contract with CalPERS includes the following optional benefits:

**37.8.1 Classic Employees – One Year of Final Compensation:** Classic Employees as defined in Section 37.2 ("Classic Employees" Definition) above and as provided in Government Code Section 20042 (July 9, 1978).

**37.8.2 New Members – Three Years Final Compensation:** Provided further that New Members as defined by PEPRA hired on or after January 1, 2013 shall be eligible to receive retirement allowance based on three (3) highest consecutive years of compensation under the plan as provided under the California Public Employees' Pension Reform Act of 2013, or as subsequently amended.

**37.8.3 Post Retirement Survivor Allowance** as provided in Sections 21624, 21626 and 21628 (December 16, 1973).

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

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

**37.8.6 1959 Survivor Benefits to Surviving Spouse at Age 60** as provided in Section 21580 (December 16, 1973).

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

37.8.8 2% @ 55 for Local Miscellaneous Members as provided in Section 21354 (June 30, 1992).

37.8.9 Military Service Credit as Public Service as provided in Section 21024 (April 9, 1999).

37.8.10 Public Service Credit for Peace Corps or AmeriCorps/VISTA Service as Provided in Section 21023.5 (April 14, 2000).

### **37.9 Index Level 1959 Survivor Benefit**

The City intends to amend its contract with CalPERS to provide the Indexed Level of the 1959 Survivor Benefit as provided in Section 21574.5 when administratively feasible.

### **37.10 Classic Members' Pension Contribution through 20516 a Contract Amendment**

37.10.1 **July 3, 2016:** Effective July 3, 2016, employees will contribute one and one-quarter percent (1.25%) 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, in exchange for the City granting the salary increase set forth in Section 11.1.5 (July 3, 2016 - Salary/PERS Exchange) of this MA. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.

### **37.11 New Members' Pension Contributions through 20516 a Contract Amendment**

37.11.1 **July 3, 2016:** Effective July 3, 2016, in addition to the contributions in Section 37.4 (CalPERS Retirement Formula for "New Members" as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA)), New Members will contribute one and one-quarter percent (1.25%) towards the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions as pre-tax via automatic payroll deduction, in exchange for the City granting the salary increase set forth in Section 11.1.5 (July 3, 2016 - Salary/PERS Exchange) of this MA. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.

37.11.2 The parties recognize that the CalPERS 20516 amendment that allows employee contributions toward the employer rate is in addition to the



required 50% of the normal cost of “New Members” benefits and made in consideration of additional salary increases in Section 11.1.5 (July 3, 2016 - Salary/PERS Exchange) above (a total of 1% salary increases in exchange for employees paying a total of 1.25% towards CalPERS pension cost).

**SECTION 38: SUPPLEMENTAL RETIREMENT/DISABILITY INSURANCE PLAN**

Effective January 1, 1983, the majority of miscellaneous employees under the City's contract with the State of California Public Employees Retirement System who were covered by the integrated Social Security Program voted to withdraw from participation in the Federal Social Security Program. In lieu of Social Security payments, the City has agreed to pay an amount equal to that percent of individual pay (6.7% payable on the first \$32,400 of salary paid in the calendar year) which had been paid by the City to Social Security as of December 31, 1982 to a Supplemental Retirement and Income and Long Term Disability Insurance Plan for those employees previously covered under the integrated PERS/Social Security Plan. Provisions of this plan are described in Berkeley Municipal Code Chapter 04.36.101 (Supplemental Retirement and Income Plan I) as amended and Berkeley Municipal Code Chapter 04.38.101 (Supplemental Retirement and Income Plan II) as amended. All employees hired after July 22, 1988 are in SRIP II. All employees hired prior to July 22, 1988 are in SRIP I unless they chose to enroll in SRIP II prior to December 17, 1988.

## **ARTICLE 9 - LAYOFF PROCEDURE**

### **SECTION 39: LAYOFF**

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

#### **39.1 Announcement of Layoff**

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

**39.1.2 Freezing of Vacancies:** Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the competitive service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, benefited, temporary positions which are expected to last six (6) months or more, and notify all department heads that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Section 39.6 (Flexible Placement Program).

#### **39.2 Seniority Service Date**

**39.2.1** All service in the employ of the City shall be counted toward the establishment of an employee's seniority service date, including, for example, permanent, probationary, provisional, temporary (full-time and intermittent), seasonal, and exempt employment, as well as leaves of absence for obligatory military service while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the seniority service date. Time off as a result of formal disciplinary action will be subtracted from the seniority service date.

- 39.2.2 The auditor's office will maintain up-to-date and current seniority dates for all City employees holding probationary and permanent appointments.

### **39.3 Establishment of Seniority Lists**

- 39.3.1 Whenever a layoff of one or more career employees becomes necessary, as defined above, such layoffs shall be made according to City-wide classification seniority lists. Upon receiving notification that the City Manager must proceed with a possible reduction in the work force, and following receipt of information concerning the specific positions, programs, and departments involved, the Human Resources Department will immediately establish separate probationary and permanent seniority lists for each classification targeted for layoff.
- 39.3.2 The names of all City employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by seniority service date. Employees on both lists shall be laid off on the basis of their seniority service date, i.e., employees with the least amount of total service shall be laid off first. All emergency, temporary, and provisional employees working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the probationary seniority list for a specific classification will be laid off prior to employees on the permanent seniority list for that classification.
- 39.3.3 Probationary or permanent employees temporarily acting out of classification and holding a provisional appointment in another classification will only be listed on a seniority list of the classification in which they hold permanent or probationary status targeted for layoff.
- 39.3.4 If two (2) or more employees on a seniority list have an identical seniority service date, the tie shall be broken in the following order:
- 39.3.4.1 Time in classification - the employee having least time in the classification shall be released first;
- 39.3.4.2 By lot.

### **39.4 Employee Retreat Rights**

- 39.4.1 Before an employee with permanent or probationary status may be released from employment with the City of Berkeley, the Human Resources Department must consider the employee's right to retreat to lower level classifications through which he or she was originally promoted or any subsequently created intermediate level career classification which provides normal progression through the classification series. Retreat rights shall also extend to employees who have not previously been promoted through a classification but for whom the classification is a natural progression or beginning in the classification series.
- 39.4.2 In the process of retreating, the same rules concerning the length of service, classification seniority lists, etc., apply as in the first stage of the layoff process. In order to retreat, the targeted employee must be higher on the seniority list for the classification into which he or she is retreating than at least one of the incumbents on the probationary or permanent seniority list for that classification.
- 39.4.3 If an employee is qualified for retreat into more than one classification with comparable salary ranges, or if a vacancy exists in a classification to which an employee is entitled to retreat, the options shall be discussed with the employee and due consideration shall be given to the employee's preferences. However, it is the prerogative of the City Manager to determine the final placement offer to the employee.
- 39.4.4 The retreating employee has a right to be retained in the highest salary range possible which is equal to or less than his or her present salary range. An employee involved in layoff does not have a right of mandatory placement to positions with a higher salary range, i.e., promotion.

### **39.5 Employee Notification**

- 39.5.1 Emergency, temporary, intermittent, seasonal, etc., employees shall be notified individually, in writing, of pending layoff as soon as possible, but no definite time period is required. However, at least two (2) weeks notification is desirable if possible.
- 39.5.2 Provisional employees shall be notified individually, in writing, of pending layoff as soon as possible, with no less than fifteen (15) calendar days notification if targeted for release or reassignment.
- 39.5.3 Permanent, probationary, and career-exempt employees should be notified individually in writing of pending layoffs as soon as possible, with no less

than thirty (30) calendar days notification if targeted for release or reassignment.

If an employee fails to accept a bona fide offer of reassignment within ten (10) calendar days after the offer has been made, he or she forfeits further right to employment retention. Acceptance of a reassignment does not remove the right of appeal under Section 39.9 (Appeal Procedure).

35.5.4 An employee who is transferred in lieu of layoff when his or her position has been eliminated shall have automatic return rights to the previous position if it is restored within one (1) year of the date of the transfer. If an employee with a full time position is offered a reduction in hours in that position or in a lower classification, the employee may elect to be targeted for layoff for purpose of consideration under Section 39.6 (Flexible Placement Program.) If there is no flexible placement available for the employee, the employee may accept the reduction in hours, in lieu of layoff.

### **39.6 Flexible Placement Program**

39.6.1 In order to minimize the negative impact of layoff, the City Manager will, as previously stated in Section 39.1.2 (Freezing of Vacancies), impose a citywide freeze on all appropriate vacancies as soon as it has been determined that a layoff of career City employees may be necessary.

39.6.2 Following the release of all emergency, temporary, and provisional employees in classes similar to those targeted for layoff, and as soon as employees targeted for layoff have been identified and the provisions under Sections 39.4 (Employee Retreat Rights) have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standards, and/or the substitution of related experience and education may be made, with an understanding on the part of management and supervisory personnel that adequate on-the-job training, which can be completed within no more than six (6) months, will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards if that has occurred.

This shall be called the qualification period. The employee shall be advised of their progress after two months and four and six months in the new classification. If at the end of the qualification period the department head notifies the Human Resources Department that the employee is

unable to adequately perform the assignment or fails a test for the position administered by Human Resources then the employee shall be subject to the layoff process.

39.6.3 Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off, except that the City Manager may authorize the offer of a flexible placement to position with a maximum salary of no more than five (5) percent above the salary range as the classification from which layoff is targeted, when it is in the best interest of the City service to do so. Whenever flexible placement is made to a classification with a greater salary range, the appointment shall be probationary, in accordance with the terms of that classification.

39.6.4 Offers to positions under the Flexible Placement Program shall be made according to seniority service date and in accordance with the probationary and permanent seniority list certification process outlined in Section 39.3 (Establishment of Seniority Lists). All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review at all times.

39.6.5 If an employee fails to accept a bona fide written offer of an alternative job within ten (10) calendar days after the offer has been made, he or she forfeits further rights to employment retention. Acceptance of an alternative job under the Flexible Placement Program in no way jeopardizes an employee's standing on the reemployment priority lists on which his or her name has been placed in accordance with Section 39.7 (Reemployment Lists).

### **39.7 Reemployment Lists**

39.7.1 The names of all probationary and permanent employees released from positions in the competitive service as a result of layoff must be placed on reemployment priority lists for those classifications from which they were separated, as well as all other classifications to which they have retreat rights in accordance with Section 39.4 (Employee Retreat Rights).

39.7.2 A reemployment priority list shall remain in effect for three (3) years.

39.7.3 Departments with vacancies in any classification for which there is an active reemployment priority list must use the reemployment priority list to fill their positions and may not use any other recruitment or appointment

method to fill a vacancy until appropriate reemployment lists have been exhausted.

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

39.7.5 If a former employee fails to accept a bona fide written offer of reemployment within fifteen (15) calendar days, his or her name will be removed permanently from the reemployment priority list from which the offer was made. Failure to accept an offer of reemployment to the classification with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all reemployment priority lists. However, the employee may decline (or accept) reemployment to lower salary range classifications without jeopardizing his or her standing on the reemployment priority list for the classification from which he or she was originally terminated.

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

### **39.8 Career Exempt Employees**

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

### **39.9 Appeal Procedures**

Any permanent, probationary, or career-exempt employee who is laid off, demoted, or reassigned as a result of layoff who believes that the layoff procedure has been improperly administered as it pertains to the employee's case may appeal the action under Section 35 (Grievances). In addition, employees may, at all times before, during, and subsequent to layoff, review all records, including seniority lists, reemployment priority lists, documentation pertaining to appointments under the Flexible Placement Program, etc., which pertain to their classification and their rights under the provisions of the layoff policy.

### **39.10 Reemployment Priority Rights**

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



**SIGNATURE PAGE**

Executed this \_\_\_ day of \_\_\_\_\_, 2021, by the Employer and Employee representatives whose signatures appear below for their respective organizations.

FOR INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS, LOCAL 1245

FOR THE CITY OF BERKELEY

\_\_\_\_\_  
Tom Dalzell, Business Manager

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

\_\_\_\_\_  
Charley Souders, Business Representative

\_\_\_\_\_  
LaTanya Bellow, Director of Human  
Resources

\_\_\_\_\_  
Greg Marwick, Steward

\_\_\_\_\_  
Andrew Brozyna, Deputy Director of  
Public Works

\_\_\_\_\_  
Tom Hartman, Negotiation Committee

\_\_\_\_\_

## EXHIBIT A - Hourly Salary Schedule

### As of December 2, 2018 (3.0% Salary Increase)

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
32020	C	COMMUNICATIONS TECHNICIAN	N	0	0	44.2005	46.3264	48.4402
52180	C	ELECTRICAL PARTS TECHNICIAN	N	0	32.3190	34.4065	36.2108	37.1260
51030	C	ELECTRICIAN	N	0	0	44.2005	46.3264	48.4402
51100	C	LEAD COMMUNICATION TECHNICIAN	N	0	0	47.2545	49.3934	51.7651
51080	C	LEAD ELECTRICIAN	N	0	0	47.2545	49.3934	51.7651

## EXHIBIT B - Hourly Salary Schedule

### As of October 20, 2019 (2.0% Salary Increase)

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
32020	C	COMMUNICATIONS TECHNICIAN	N	0	0	45.0845	47.2529	49.4090
52180	C	ELECTRICAL PARTS TECHNICIAN	N	0	32.9654	35.0947	36.9350	37.8686
51030	C	ELECTRICIAN	N	0	0	45.0845	47.2529	49.4090
51100	C	LEAD COMMUNICATION TECHNICIAN	N	0	0	48.1996	50.3813	52.8004
51080	C	LEAD ELECTRICIAN	N	0	0	48.1996	50.3813	52.8004

Note: Employee's monthly salary will depend upon the number of hours worked. Employees hired before January 9, 2000, have an option (discussed in detail in Exhibit E (Hours and Days of Work) to work either a 37.5-hour work week or a 40-hour work week. Employees hired after January 9, 2000 work a 40-hour per week schedule.

## EXHIBIT C

### CITY OF BERKELEY MUNICIPAL CODE CHAPTER 4.04.120

#### **4.04.120 Exemption from Career Service (At-Will Employees).**

The provisions of this chapter shall apply to all positions in the service of the city except:

- A. The city manager, assistant city manager, deputy city manager, assistant to the city manager, police review commission officer, police review commission investigator, and assistant to the mayor;
- B. Assistant, associate and senior management analyst when appointed to the city manager's department or to the Budget Unit of the Management and Administrative Services Agency; and secretary to the mayor, administrative secretary and secretary when appointed to the mayor's office;
- C. All department heads, health officer, and supervising psychiatrist;
- D. Persons employed seasonally in the summer camps;
- E. Persons employed as reserve or emergency employees during the period of national emergency as provided in the ordinance creating such employment;
- F. All persons who are paid at an hourly rate with the exception of library aides. Persons appointed as hourly Library Aides shall be part of the career service with the exception of those hired to fill temporary positions of six months or less.

Persons appointed to these positions which are exempt from the career service shall serve at the pleasure of the appointing authority and may be demoted, suspended, or otherwise rejected at any time without cause and without right of appeal or hearing in any manner. Except that, any employee in the career service promoted or transferred to a position not included in the career service and made exempt from the career service shall be reinstated to his or her career appointment from which he or she was promoted or transferred if within six months of appointment to a position not included in the career service, action is taken to dismiss him or her, unless charges are filed and the employee is discharged in accordance with this chapter and the rules established hereunder for positions in

the career service. All employments designated in this Section shall be entitled to only those benefits provided for at-will employees in the personnel rules and regulations or in applicable memoranda agreements.

**EXHIBIT D – Service Vacation Leave**

<b>Years During Which Service Rendered</b>	<b>Number of Years of Service</b>	<b>AUTHORIZED ANNUAL VACATION LEAVE (IN CALENDAR WEEKS)</b>
All years prior to 01/01/1950		2
01/01/1950 through 12/31/1956	First 10 years of service	2
	Years of service in excess of 10	3
01/01/1957 through 12/31/1961	First 5 years of service	2
	6 through 25 years of service	3
	Years in excess of 25	4
01/01/1962 through 12/31/1965	First 5 years of service	2
	6 through 20 years of service	3
	Years of service in excess of 20	4
01/01/1966 through 06/30/1970	First 5 years of service	2
	6 through 20 years of service	3
	21 through 25 years of service	4
	Years of service in excess of 25	5
Subsequent to 06/30/1970	First 5 years of service	2
	6 through 15 years of service	3
	16 through 25 years of service	4
	Years of service in excess of 25	5
Effective 01/01/1981	First 4 years of service	2
	5 through 12 years of service	3
	13 through 20 years of service	4
Effective 07/01/1984	First 3 years of service	2
	4 through 11 years of service	3
	12 through 17 years of service	4
	18 and subsequent years of service	5
Effective 12/08/1987	First 3 years of service	2
	4 through 11 years of service	3
	12 through 17 years of service	4
	18 through 24 years of service	5
	25 and subsequent years of service	6

## **EXHIBIT E - HOURS AND DAYS OF WORK**

The hours and days of work applicable to employees in Representation Unit C, as set by the City Manager, are presently as follows:

### **1. Hours per Day**

Field Operations: Working arrangements may vary as to daily schedules under the reduced workweek.

Flexible Hours: On a job-by-job basis, with prior approval of the Senior Electrical Supervisor, a crew may schedule a workday, or workdays, other than the normal workday schedule of 7:00 a.m. to 3:30 p.m.

### **2. Hours per Week (Basic)**

Field Operations: 40 hours. However, employees in Representation Unit C as of January 9, 2000 have the option of retaining a 37.5-hour per week work schedule. An employee will have an option to change his work schedule to 40 hour per week at the beginning of a payroll period. An employee will have a one-time option to revert to a 37.5 hour per week work schedule at the beginning of a payroll period. After exercising this one time option, if the employee chooses to change his work schedule to 40 hours per week, the employee must maintain this work schedule for the balance of his career in this Representation Unit. All persons hired on or after January 9, 2000 will work a 40-hour per week schedule and will not be permitted to change his or her work schedule to 37.5 hours per week.

The parties may agree in writing to alternative work schedules other than those set forth in this Agreement, such as a 9-80 work schedule which produces an 80-hour pay period with the hours worked in nine work days. The City will take into consideration its operational needs, including the impact of potential overtime, in deciding whether to approve an alternate work schedule. However, such alternate work schedule will not be unreasonably denied.

### **3. Work Week**

The work week will begin at 12:01 a.m., Sunday and end at Saturday midnight. Regular days off will be considered to be Saturday and Sunday.

## **EXHIBIT F - IMPLEMENTING THE REDUCED WORK SCHEDULE**

**NOTE:** This Exhibit F applies only to employees hired before January 9, 2000 who are permitted to work a 37.5 hour per week work schedule subject to the conditions set forth in Exhibit E (Hours and Days of Work).

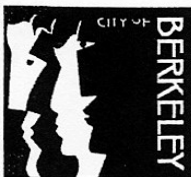
The City and the Union agree that the implementation of the reduced work schedule which is to be effective June 29, 1986 will be as follows:

That one-fourth of the Electrical Division employees will be off every fourth Monday on a staggered basis. This time would be treated as a scheduled day off and could not be adjusted or moved. A yearly schedule would be set up at the beginning of the year so that each employee would know what days he would have off. Since the agreed upon reduced work schedule does not calculate evenly into one day off every four weeks, it is proposed that an additional day off (Friday) be given once every 16 weeks. This agreement very closely approximates the reduced work schedule. Any discrepancies would be credited to the employee's vacation at the end of the contract year.

For Fair Labor Standards Act purposes, the workweek is defined as 40 hours.

Sick leave, vacation, and other compensable leaves of absences shall be based on the 40 hour work week.

When a scheduled day off falls on a holiday, the next regularly scheduled work day shall be observed as the scheduled day off.




Office of the City Manager

## **EXHIBIT G**

### **DIRECTIVE PROHIBITING UNAUTHORIZED CONSTRUCTION**

July 31, 2001

To: Department Directors  
From: Weldon Rucker  City Manager  
Subject: **DIRECTIVE PROHIBITING UNAUTHORIZED CONSTRUCTION  
OR FACILITY MAINTENANCE WORK IN CITY FACILITIES**

It has come to my attention that some construction, building maintenance and electrical work is being improperly performed at various facilities that are either owned or leased by the City. Because this work can affect the health and safety of all City employees and can result in a significant potential liability for the City, it is absolutely essential that any such work be done by competent and experienced individuals. Even if licensed contractors are brought in to do the work, they may not be fully aware of how their work will impact other City projects or facilities. Furthermore, already scarce City funds are wasted when Public Works has to correct improper or hazardous work performed by unauthorized individuals or contractors. Accordingly, such construction and maintenance work must only be performed by properly trained and supervised Public Works maintenance staff or contractors selected by, and under the direction of, the Public Works Department.

Therefore, I am reminding and directing all department directors to ensure that absolutely no construction, building maintenance or electrical work be performed in any City owned or leased facilities by contractors or anyone else not under the direction of Public Works. All construction and facility maintenance work is to be referred to the Public Works Department.

For routine maintenance, minor repairs, or minor physical modifications, contact the Public Works Customer Service representative at 644-6620. For larger construction projects, contact Public Works Capital Improvement Projects at 981-6330. Public Works can then make appropriate decisions as to whether construction or maintenance work should be performed by City employees or by outside contractors, utilities, or agencies.

Thank you, in advance, for your full compliance with this direction.

cc: City Manager's Office





Office of the City Manager

CONSENT CALENDAR  
June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Director of Human Resources

Subject: Adopt Tentative Agreement with SEIU Local 1021 Community Services Unit And Part-Time Recreation Leaders Association related to the Inclusion of the Legislative Assistants into the Unit.

RECOMMENDATION

Adopt a Resolution approving the terms and conditions related to the Legislative Assistant classification's inclusion into the existing Memorandum of Understanding (hereafter referred to as "MOU") with SEIU Local 1021 Community Services Unit And Part-Time Recreation Leaders Association (hereafter referred to as the "Union"), and authorizing the City Manager to direct staff to execute and implement the terms and conditions of employment set forth in the Tentative Agreement dated May 18, 2021. Also, authorize the City Manager to make edits to the format and language of the Memorandum of Understanding in alignment with the Tentative Agreement, and conforming to legal requirements, when the parties ultimately reach agreement regarding the successor MOU currently under negotiation with the larger CSU bargaining unit.

FISCAL IMPACTS OF RECOMMENDATION

The terms of the new Tentative Agreement provide for wage increases, an accretion recognition payment, Administrative Leave, and changes to the City's share of payment for part-time employee medical benefits specific to the Legislative Assistant classification. There are modest costs related to inclusion of the Legislative Assistant in the Union though their addition to the unit involves a small group of employees.

The cumulative total cost of the new MOU is expected to have a modest fiscal effect over the remaining term of the MOU (Fiscal Year 2020 to Fiscal Year 2021), however, the cost of this labor contract involving the Legislative Assistants only is already under discussion as part of the fiscal year 2022 budget since the City is also actively engaged in negotiations with the larger bargaining unit. The funding for this agreement comes from the general fund and other funding sources.

CURRENT SITUATION AND ITS EFFECTS

The City's labor contract with the Union expires June 26, 2021. As a result of the Legislative Assistants inclusion into the existing SEIU CSU/PTRLA unit, the parties

engaged in negotiations over the new terms and conditions for this group. The parties have met and confer in good faith and reached Tentative Agreement on May 18, 2021. Since there is an existing CSU/PTRLA MOU in place, the terms and conditions reached in the Tentative Agreement shall become effective on June 15, 2021 unless otherwise stated in the TA and will be incorporated in the successor MOU which expires on June 26, 2021. The Union has ratified the Tentative Agreement by a vote.

**BACKGROUND**

There are approximately 471 employees currently represented by the Union in seven (7) representational units: G-1, G-3, I-A, I-B, L, R-1, and R-2.

The major provisions of the new labor contract with the Legislative Assistants are as follows:

Section	Change
Article 11 Section 54.2 Not Applicable Provisions	NEW LANGUAGE: Parties agree to existing CSU/PTRLA MOU provisions that are not applicable to the Legislative Assistants.
New Section 27 Admin Leave for Legislative Assistants Only	NEW LANGUAGE: The City recognizes the important role that the Legislative Assistants play in their respective legislative offices and in delivering public services to City constituents; therefore, FLSA excluded Legislative Assistants will be provided fifty (50) hours of Admin Leave each January 1.  Admin Leave not used during the calendar year can be carried over to the following year up to a max cap of 100 hours total. Admin Leave may not be converted to other leave and has no cash value.
Article 11 Section 54.1 At-Will Status	NEW LANGUAGE: Parties agree Legislative Assistants will maintain their at-will status upon joining the larger bargaining unit.
Section 9.11.1 Equity Studies	NEW LANGUAGE: When City conducts a unitwide total compensation study as part of successor MOU negotiations, the Legislative Assistant class will be studied as a benchmark classification.
Article 11 Section 54.3 Salary Range	NEW LANGUAGE: The City agrees to adopt an 8-step salary range for the Legislative Assistant classification from \$35.28 to \$49.64 per hour.  Initial salary step placement will be at least the new step closest to the Legislative Assistant's current salary that represents an increase. Thereafter, future step increases

Section	Change
	will be based on a successful performance evaluation prior to the Legislative Assistant’s anniversary date.
24.2 LWOP Approval for Legislative Assistant Classification	<p>NEW LANGUAGE: The appointing authority may grant LWOP for a period not to exceed thirty (30) working days. No leave without pay shall be granted for more than thirty days without a written request from the employee and approval of the appointing authority.</p> <p>In the event of illness, an employee must exhaust all available sick leave before receiving authorization for leave without pay.</p> <p>In the event of LWOP for personal reasons, the employee must exhaust all compensatory and vacation time.</p>
27.1.3 Part-Time Employees in the Legislative Assistant Classification Only	<p>NEW LANGUAGE: City agrees that part-time employees in the Legislative Assistant classification only will be eligible for 75% City paid cost of the medical plan which is fully paid for fulltime employees for those Legislative Assistants who work up to 29 hours per week.</p> <p>The City will pay 100% for those employees who work 30 or more hours per week.</p>
18.8 Holidays for Legislative Assistants Only	NEW LANGUAGE: FLSA excluded employees in the Legislative Assistant classification required to work on a scheduled holiday shall be given another day off that is mutually agreeable to the employee and the appointing authority.
Article 11 Section 54.4 One-Time Accretion Recognition Payment	<p>NEW LANGUAGE: In recognition of their inclusion in the CSU/PTRLA bargaining unit, Legislative Assistants in paid status shall receive a one-time accretion recognition payment equal to six (6) months of the difference between their base salary as of May 14, 2021 and the employee’s new salary subject to tax deductions and withholdings. Legislative Assistants employed less than six (6) months shall receive the payment on a pro rata basis.</p>

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Representatives of the City worked within policies set by the City Council for guiding negotiations with the Legislative Assistants and staff met with the City Council in closed

Memorandum of Understanding: SEIU Local 1021 Community Services  
Unit & PTRLA and Legislative Assistants

CONSENT CALENDAR  
June 15, 2021

session to discuss and receive the policy direction and economic authority to settle this contract. The overall settlement must be within the City's ability to pay based on projected revenue as well as demands for services across the spectrum of programs the City provides the community. I believe this settlement is in keeping with City Council's direction to staff and is fair and equitable to the members of the Union.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

LaTanya Bellow, Director of Human Resources, Human Resources, (510) 981-6800

Attachments:

1: Resolution: Tentative Agreement: SEIU Local 1021 Community Services  
Unit & PTRLA and Legislative Assistants

Exhibit A: Tentative Agreement between the City of Berkeley and SEIU Local 1021  
Community Services Unit & PTRLA Legislative Assistant Classification

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

TENTATIVE AGREEMENT: SEIU Local 1021 Community Services  
Unit & PTRLA and Legislative Assistants

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

WHEREAS, representatives of the City and the SEIU Local 1021 Community Services Unit & PTRLA and members of the Legislative Assistant classification have met and conferred in good faith and have reached agreement on a new Tentative Agreement that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to direct staff to execute and implement said Tentative Agreement including all changes in wages, hours, and other terms and conditions of employment for the Legislative Assistant classification. The City Manager is hereby authorized to add the Legislative Assistants to the Memorandum of Understanding for the period ending June 26, 2021 with SEIU Local 1021 Community Services Unit & PTRLA, including changes in certain benefits on dates specified in the Tentative Agreement which is attached hereto, made a part hereof and marked Exhibit A. A fully executed original of said contract is filed in the Office of the City Clerk.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to make edits to the format and language of the SEIU Local 1021 Community Services Unit & PTRLA Memorandum of Understanding in alignment with the Tentative Agreement when the parties ultimately reach agreement regarding the successor MOU currently under negotiation with the larger CSU bargaining unit.

Exhibits

A: Tentative Agreement between the City of Berkeley and SEIU Local 1021  
Community Services Unit & PTRLA Legislative Assistant Classification



**CITY OF BERKELEY AND SEIU 1021 CSU/PTRLA TENTATIVE AGREEMENT REGARDING  
LEGISLATIVE ASSISTANTS – TENTATIVE AGREEMENT REACHED MAY 14, 2021**

1. New Article: Article 11 – Legislative Assistants Section 54.2 CSU/PRTLA Current MOU Provisions Not Applicable to Legislative Assistants to the Mayor and to City Councilmembers

Article 1 – Administration

- Section 4.8 Elected Official/Steward Leave Without Pay

Article 2 – Salaries, Hours of Work and Compensation Issues

- Section 9 Salaries: Differentials/add pays in Section 9 not applicable to Legislative Assistants except 9.22 Living Wage
- Section 10 Temporary Appointments
- Section 12 Hours of Work – At-will and FLSA excluded employees so all paragraphs in this Section are inapplicable except 12.8 related to Daylight Saving Time
- Section 13 Overtime – Not applicable to Legislative Assistants who are excluded from FLSA
- Section 14 Shift Differential – except Sections 15.2 Bilingual Premium Pay and 15.3 Longevity Pay

Article 3 - Leaves

- Section 18 Holidays – Sections 18.4 and 18.7 are inapplicable to Legislative Assistants who are excluded from FLSA
- Section 24 Leave of Absence without Pay – 24.1 is inapplicable

Article 4 – Health and Welfare

- Section 31 Probationary Period
- Section 32 Transfer
- Section 33 Promotion
- Section 34 Filling of Vacancies
- Section 36 Reinstatement

Article 5 – Grievance and Disciplinary Appeal Procedure

- Section 38 Disciplinary Actions is inapplicable

Article 9 – Layoff Procedure (entire Article 9)

2. Article 3: Leaves: New Section: Section 27 Administrative Leave for FLSA Excluded Employees in the Legislative Assistant Classification Only

Only FLSA excluded employees in the Legislative Assistant classification who

report to the Mayor or a City Councilmember, shall be credited with fifty (50) hours of Administrative Leave each January 1. Administrative Leave which is not utilized during the calendar year may be carried over to the following calendar year up to a maximum cap of 100 hours total in an Administrative Leave bank. Administrative Leave has no cash value and may not be converted to other leave or carried over in excess of 50 hours past December 31 of each year, if unused. In the event the Legislative Assistant classification is either reclassified to an FLSA non-excluded status or does not qualify as an excluded classification under the FLSA, the City has the authority to rescind Administrative Leave consistent with the intent of this provision to grant Administrative Leave to FLSA excluded qualified employees only.

The Legislative Assistant classification shall receive Administrative Leave prorated based on the number of pay periods remaining in the calendar year as long as that proration does not nullify the FLSA exclusion.

3. New Article and Section: Article 11 – Legislative Assistants Section 54.1 At-Will Status

All positions in the Legislative Assistant classification are excluded from the career service by Berkeley Municipal Code Section 4.04.120 of the Personnel Ordinance and serve at the will of the appointing authority. An employee in the Legislative Assistant classification shall be 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 the provisions of this Section. Employees in the Legislative Assistant classification shall not be subject to progressive discipline. Employees in the Legislative Assistant classification shall be entitled to only those benefits provided for at-will employees in the personnel rules and regulations or in applicable memoranda agreements.

4. Wage Reopener

Both parties agree to keep the Wage Reopener language consistent with the CSU/PTRLA MOU.

5. Future Total Compensation Surveys

New Section: Section 9.11.1 When the City conducts a unitwide total compensation study as part of successor MOU negotiations, the Legislative Assistant will be studied as a benchmark classification.



## 6. Salary Range

New Article and Section: Article 11 – Legislative Assistants Section 54.3 Salary Range

Effective the first full pay period after Union ratification and Council approval, the following step range shall be amended as follows:

Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
\$35.28	\$37.04	\$38.90	\$40.84	\$42.88	\$45.02	\$47.28	\$49.64

Effective the first full pay period after Union ratification and Council approval, at initial salary step placement current incumbents who make less than Step 1 of the new range will move to at least Step 1 of the new range. All other incumbents will move to at least the new step closest to a Legislative Assistant’s current salary that represents an increase. Incumbents may be initially placed at a higher step in the step range at the discretion of the appointing authority. Thereafter, at their anniversary date, Legislative Assistants with a successful performance evaluation move to the next step. If a performance evaluation is not completed prior to a Legislative Assistant’s anniversary date, the Legislative Assistant shall move to the next step. Newly hired employees in the classification of Legislative Assistant may be placed at any step of the step range at the discretion of the appointing authority. Only employees in the Legislative Assistant classification who are excluded from FLSA shall be entitled to Administrative Leave as provided for in Article 3, Section 27.

7. New Section: 24.2 Approval for Legislative Assistant Classification

Upon request of the employee, an appointing authority may grant to an employee within his/her department leave of absence without pay for a period not to exceed thirty (30) working days. No leave without pay shall be granted for more than thirty (30) working days except upon the written request of an employee and approval of the appointing authority.

24.2.1 In the event of illness, an employee must exhaust all available sick leave prior to receiving authorization for leave without pay.

24.2.2 The appointing authority shall not unreasonably deny a request for medical leave as Authorized Leave Without Pay for Part-Time benefitted employees who work or are compensated for a minimum of 1,040 hours, when the employee is suffering from a serious medical condition or must care for a family member with a serious medical condition.

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

24.2.4 Accrual of sick leave credits and/or vacation benefits for an employee on leave without pay shall be as provided in Sections 17 (Vacation) and 19 (Sick Leave).

8. Article 4 – Health and Welfare Benefits, Section 27.1 Medical Coverage

The City shall pay for the cost of health insurance coverage for employees, spouse/domestic partner and dependents who have such coverage under any group health insurance plan authorized by the City Council, regardless of the funding source for their position. The maximum amount the City shall be required to pay for medical insurance premiums shall be the applicable Kaiser rate (i.e., single party, two party, or family) regardless of the City sponsored health plan selected by the employee. The present level of the health plan benefits described above shall be maintained at City expense.

27.1.1 Domestic Partnership Taxation: If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for medical benefits for his or her domestic partner, the employee may be subject to federal and state income tax withholding.

27.1.2 Part-Time Employees: Effective July 1, 2008, the City will pay 75% of the cost of the medical plan which is fully paid for full time employees for those part time employees who work 20 to 29 hours per week. The City will pay 100% of the cost of the medical plan which is fully paid for full time employees for those part time employees who work 30 or more hours per week.

New Section: 27.1.3 Part-Time Employees in the Legislative Assistant Classification Only: Part-time employees in the Legislative Assistant classification may be eligible for retirement benefits as provided for in the CSU PTRLA SEIU MOU, Sections 27.1 (Part-Time Employees), 47 (Public Employees' Retirement System), and 48 (Public Agency Retirement System). As soon as administratively possible after Union ratification and approval by the City Council, the City will pay 75% of the cost of the medical plan which is fully paid for full time employees for those part-time employees who work up to 29 hours per week. The City will pay 100% of the cost of the medical plan which is fully paid for full time employees for those part-time employees who work 30 or more hours per week.

9. New Section: 18.8 Holidays for Legislative Assistant Classification Only

FLSA excluded employees in the Legislative Assistant classification required to work on a scheduled holiday shall be given another day off that is mutually agreeable to the employee and the appointing authority.

FLSA non-excluded employees required to work on a scheduled holiday shall be eligible for provision in the CSU PTRLA SEIU MOU, Sections 18.5 (Work on a Holiday) and 18.6 (Holiday for Part-Time Employees).

10. New Article and New Section: Article 11 – Legislative Assistants Section 54.4 One-Time Accretion Recognition Payment

Effective the first full pay period after Union ratification and Council approval, only employees in the Legislative Assistant classification currently in paid status shall receive a one-time accretion recognition payment. Payment shall be calculated as follows: the value equivalent to six months of the difference between the employee’s current base salary as of May 14, 2021 and the employee’s new base salary as defined in Article 11, Section 54.3 subject to applicable tax deductions and withholdings. Legislative Assistants employed less than six months upon Union ratification and Council approval shall receive the accretion recognition payment on a pro rata basis.

For SEIU 1021:

DocuSigned by:

Jonathan Muñoz-Babb 5/18/2021  
Jonathan Muñoz-Babb Date

Lead Negotiator

DocuSigned by:

Darryl Richardson 5/18/2021  
Darryl Richardson Date

SEIU Field Representative

DocuSigned by:

Khin Chin 5/18/2021  
Khin Chin Date

Bargaining Team Member Leader

DocuSigned by:

Andrea Mullarkey 5/18/2021  
Andrea Mullarkey Date

Bargaining Team Member Leader

DocuSigned by:

Solomon Alpert 5/18/2021  
Solomon Alpert Date

Bargaining Team Member Leader

For the City of Berkeley:

DocuSigned by:

Dania Torres-Wong 5/18/2021  
Dania Torres-Wong Date

Lead Negotiator

DocuSigned by:

Ravinder Rangi 5/18/2021  
Ravinder Rangi Date

Employee Relations Manager

DocuSigned by:

*Christopher Naso*

5/18/2021

~~Christopher Naso~~

Date

Bargaining Team Member Leader

DocuSigned by:

*Gastano Trachtenberg*

5/18/2021

~~Gastano Trachtenberg~~

Date

Bargaining Team Member Leader

DocuSigned by:

*Lorenzo Lewis*

5/18/2021

~~Lorenzo Lewis~~

Date

Bargaining Team Member Leader



Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront

Subject: Contract: Get IT Tech for new Electronic Gate System at the Waterfront

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute a contract with Get IT Tech to provide a new electronic gate system at the Waterfront in an amount not-to-exceed of \$73,458, which includes a contract amount of \$61,215 and a 20% contingency in the amount of \$12,243.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the contract is available in the FY 2021 Marina Fund. No other funding is required, and no other projects will be delayed due to this expenditure.

**Expenditures**

Get IT Tech (lowest bid) .....	\$61,215
20% Contingency .....	\$12,243
<b>Total cost</b>	<b>\$73,458</b>

**Funding**

Marina Fund .....	\$73,458
-------------------	----------

(608-52-545-000-0000-000-472-612990-PRWWF21007)

CURRENT SITUATION AND ITS EFFECTS

In early 2021, the existing vendor for the electronic gate system at the Waterfront, ALX Inc, informed the City that they were closing and that replacement parts would no longer be available. In March of 2021, the City conducted a competitive Request For Proposal (RFP) process to obtain a vendor to provide an electronic gate system at the Waterfront, and Get IT Tech was identified as the vendor that best met the needs described in the RFP.

BACKGROUND

The electronic gate system at the Marina operates 24/7 and provides secure access to the docks and restrooms for slip holders and guests. In 2009, the system was upgraded

from SSI to ALX. In 2016, the City contracted with Get IT Tech for maintenance and support of the ALX system. In early 2021, ALX informed the City that they were closing and that replacement parts would no longer be available

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts associated with the recommendation contained in this report.

RATIONALE FOR RECOMMENDATION

During the competitive RFP process, Get IT Tech was identified as the vendor that best met the needs described in the RFP to provide the City with an effective electronic gate system at the Waterfront.

CONTACT PERSON

Alexandra Endress, Waterfront Manager, (510) 981-6737

Sean Crothers, Harbormaster, (510) 981-6744

Attachments:

1. Resolution

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

CONTRACT: GET IT TECH FOR NEW ELECTRONIC GATE SYSTEM AT THE WATERFRONT - SPECIFICATION NO. 21-11446

WHEREAS, in early 2021, the existing vendor for the electronic gate system at the Waterfront, ALX Inc, informed the City that they were closing and that replacement parts would no longer be available; and

WHEREAS, in March of 2021, the City conducted a competitive Request For Proposal (RFP) process to obtain a vendor to provide an electronic gate system at the Waterfront, and Get IT Tech was identified as the vendor that best met the needs described in the RFP; and

WHEREAS, funding for the contract in the amount of \$61,215 plus \$12,243 contingency is available in the FY 2021 Marina Fund budget (608-52-545-000-0000-000-472-612990- PRWWF21007).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to execute a contract and any amendments with Get IT Tech to provide a new electronic gate system at the Waterfront in the amount not-to-exceed \$73,458, which includes a contract amount of \$61,215 and a 20% contingency in the amount of \$12,243. A record signature copy of said contract will be on file in the Office of the City Clerk.







Office of the City Manager

CONSENT CALENDAR  
June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Department of Public Works

Subject: Contract: Community Conservation Centers, Inc. for Processing and Marketing Services of Recyclable Materials

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a new Contract with Community Conservation Centers, Inc. (CCC) for the sorting and marketing of residential and commercial curbside collected recyclables, and the recycling drop-off and buyback centers. The contract term is five (5) years, commencing July 1, 2021 through June 30, 2026, with an option to extend by mutual agreement for another five (5) years, commencing July 1, 2026 through June 30, 2031, for a total contract amount not to exceed \$30,080,793 for a ten year period.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this Contract is subject to appropriation in the Zero Waste Fund (601) via the FY 2022 Annual Appropriation Ordinance. The Contract's not to exceed (NTE) amount for the initial five (5) year term is \$13,003,684 plus \$1,087,000 for a capital and maintenance contingency. If the five (5) year contract option is exercised with no change in terms and conditions, the NTE for the next five (5) year option is \$15,990,109. The NTE for ten (10) years is \$30,080,793. This contract is an approximate doubling of CCC's current contract. The Zero Waste Fund can absorb this impact through June 30, 2022. However, this cost increase will be reflected in the new five-year rate schedules, which are subject to the Proposition 218 process. If approved through the Proposition 218 process, the City Council will be requested to adopt new rates effective July 1, 2022.

CURRENT SITUATION AND ITS EFFECTS

On December 15, 2020<sup>1</sup>, the City Council authorized the City Manager to conduct sole source negotiations with CCC. CCC's operation of Berkeley Recycling includes: sorting and marketing of curbside recycling from businesses and residents; California

<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/12\\_Dec/City\\_Council\\_12-15-2020\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/12_Dec/City_Council_12-15-2020_-_Regular_Meeting_Agenda.aspx)

Redemption Value containers and residential drop-off recyclable centers; and acceptance of certain residential universal waste materials. The current Contract is due to expire on June 30, 2021.

For many years, our community has heard a message that the costs of recycling would pay for itself, i.e., the costs of collecting and processing recyclable materials would be offset by the revenue generated from marketing the materials. However, policies implemented by the Chinese government have dramatically restricted the volume of the recyclables accepted in China. This, in turn, has led to a sustained drop in commodity pricing for the foreseeable future. Cardboard went from receiving \$350 per ton in 2012 to around \$60 per ton today, and cardboard is 50% of the recyclable material currently collected in Berkeley. This new normal is not forecasted to change anytime soon and is having significant effects on the contract with CCC, where these revenues had been able to offset the majority of expenses. With significantly less revenue, a greater portion of CCC's operating expenses must be covered through rates charged to customers. Thus, to continue to support the City's dedicated dual stream collection system and to achieve the Zero Waste Goal, rates will increase.

This new contract has a revised scope of services, exhibits, and payment terms. It will ensure the continued and uninterrupted processing and marketing of all of the City's recyclables, and Berkeley Recycling's residential drop-off and buyback program.

### BACKGROUND

On October 2, 2018<sup>2</sup>, the City Council confirmed the City's commitment to its dual stream recycling curbside collection system. As a key component of this system, CCC operates Berkeley Recycling located at Second and Gilman. This materials recovery facility accepts and markets all recyclable materials collected by the City of Berkeley, Ecology Center, and surrounding communities, and provides one of the few Container Redemption Value (CRV) programs and buyback centers in the East Bay.

On January 22, 2019<sup>3</sup>, the City Council authorized the City Manager to execute a new contract with CCC for the sorting and marketing of the City's recyclables, California Redemption Value containers, and residential dropped-off recyclable materials. By the Resolution, CCC was no longer obliged to remit 7.5% of its gross revenues to the City, a decision precipitated by the dramatic decline in revenue from marketing commodities.

This Contract was due to expire on June 30, 2020. However, given the City's Public Health Officer's Shelter in Place Orders, dated March 16 and 31, 2020, the City Council<sup>4</sup> authorized a one (1) year extension of \$2,100,000. The Contract extension

<sup>2</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/10\\_Oct/City\\_Council\\_10-02-2018\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/10_Oct/City_Council_10-02-2018_-_Regular_Meeting_Agenda.aspx)

<sup>3</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/01\\_Jan/City\\_Council\\_01-22-2019\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/01_Jan/City_Council_01-22-2019_-_Regular_Meeting_Agenda.aspx)

<sup>4</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/05\\_May/Documents/2020-05-26\\_Item\\_18\\_Contract\\_Amendment\\_No\\_31900055.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/05_May/Documents/2020-05-26_Item_18_Contract_Amendment_No_31900055.aspx)

ensured the continued processing and marketing of the City's dual stream collected recyclables materials and Berkeley Recycling.

ENVIRONMENTAL SUSTAINABILITY

The services provided by CCC advance important measures in the City of Berkeley's Vision 2050 Framework (2020), Climate Action Plan (2009), Zero Waste Goal (2005), and long-standing commitment to protect the environment. In support of these goals, CCC supports the City's Zero Waste Program to minimize recyclable materials being sent to the landfill and promoting these materials' remanufacture.

RATIONALE FOR RECOMMENDATION

CCC, a non-profit, has provided these services to the City for many decades. A randomized citywide survey of CCC's customers conducted in May 2021 showed high satisfaction rates. More than 85% of respondents were either satisfied or very satisfied with CCC's and Berkeley Recycling's services. The contracting with a non-profit for these services is unique in the Bay Area and the state, resulting in a Berkeley-based provider that receives high marks from customers, provides entry level jobs to many low-income people, provides one of the few buy-back programs in the East Bay, and produces high quality recyclables.

Staff engaged a third-party expert to help determine whether CCC's costs for the sorting and marketing of recyclable materials was reasonable when compared to communities in Alameda County. That audit found CCC's costs and marketing of recyclables reasonable and in line with those of surrounding communities.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Greg Apa, Solid Waste & Recycling Manager, Zero Waste Division (510) 981-6359

Attachment:

1: Resolution

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

CONTRACT WITH COMMUNITY CONSERVATION CENTERS, INC.  
FOR THE PROCESSING AND MARKETING  
OF RECYCLABLE MATERIALS

WHEREAS, the City recognizes its long-standing partnership with the Community Conversation Centers, Inc. to assist the City's Zero Waste Goal and to accept, sort and market all recyclable materials collected by the City and its contracted vendor and this Contract will provide and ensure the continuation of this essential service for the processing and marketing of recyclable materials for the City's residential and commercial customers; and

WHEREAS, on October 2, 2018, the City Council confirmed the City's commitment to its dual stream recycling curbside collection system; and

WHEREAS, on January, 22, 2019, Resolution No. 68,735 - N.S., City Council authorized City Manager to execute a contract and the not to exceed amount of \$4,000,000 for the Processing and Marketing of Recyclable Materials, that include curbside collected, residential drop-off and buyback materials, December 1, 2018 through June 30, 2020; and

WHEREAS, on May 26, 2020, Resolution No. 69,417 - N.S., City Council authorized the City Manager to amend the existing CCC contract with an additional \$2,100,00 in funding and extend until June 30, 2021; and

WHEREAS, on December 15, 2020, Resolution No. 69,662 - N.S., the City Council authorized the City Manager to conduct sole source negotiations with CCC; and

WHEREAS, the City has negotiated terms with CCC that are reasonable and in line with surrounding communities.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a Contract and any amendments with Community Conservation Centers, Inc. to provide recyclables processing and marketing services with a total Contract amount not to exceed \$30,080,793 for the period from July 1, 2021 to June 30, 2031. 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  
June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Department of Public Works

Subject: Contract: Ecology Center, Inc. for the Residential Curbside Recycling Collection

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a new contract with Ecology Center, Inc. for the collection of residential curbside recycling and delivery of these recyclable materials to Berkeley Recycling for processing and marketing. The contract term is five (5) years, commencing July 1, 2021 through June 30, 2026, with an option to extend by mutual agreement for another five (5) years, commencing July 1, 2026 through June 30, 2031, for a total contract not to exceed amount of \$54,518,752 for the ten year period.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this Contract is subject to appropriation in the Zero Waste Fund (601) via the FY 2022 Annual Appropriation Ordinance. The contract's not-to-exceed (NTE) amount for the five (5) year term is \$23,773,984, plus \$3,527,709 for the replacement of carts over this time. If the contract option is exercised with no change in terms and conditions, the NTE for the five (5) year option is \$27,217,058. The NTE for the full ten (10) years is \$54,518,752. This contract is an approximate 13% increase over Ecology Center's current contract. The Zero Waste Fund can absorb this impact through June 30, 2022. However, this cost increase will be reflected in the new five-year rate schedules, which are subject to the Proposition 218 process. If rates are approved through the Proposition 218 process, the City Council will be requested to adopt the next five years of these rates effective July 1, 2022.

CURRENT SITUATION AND ITS EFFECTS

On December 15, 2020<sup>1</sup>, the City Council authorized the City Manager to conduct sole source negotiations with Ecology Center, Inc. (EC). The Ecology Center (EC) is a non-profit organization that runs eight (8) collection routes, three year-round farmers

<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/12\\_Dec/City\\_Council\\_12-15-2020\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/12_Dec/City_Council_12-15-2020_-_Regular_Meeting_Agenda.aspx)

markets, and a store and environmental center in Berkeley. The EC's recycling routes are coordinated with the City Zero Waste Division's residential collection of refuse and green/food waste to ensure same day collection.

EC's residential curbside collection of recyclable materials is a key component of the City's Zero Waste Program to encourage residents in single family homes and up to 9 units to fully participate in recycling. As a result of these services, 8,400 tons of materials are diverted from the landfill and recycled annually. The current contract is due to expire on June 30, 2021.

This new contract with revised scope of services, exhibits, and payment terms will ensure the continued collection of the City's residential recyclables and its dual stream curbside recycling collection program.

### BACKGROUND

On December 8, 2009<sup>2</sup>, the City Council adopted Resolution No. 64,714 – N.S., which authorized the City Manager to execute a contract with EC for the residential curbside collection recycling program in the amount of \$37,020,678. The Contract was amended with City Council approval on June 29, 2010, June 11, 2011, and March 19, 2013 to adjust for changes initiated by the City's Zero Waste Program with a revised 2013 amount NTE of \$35,582,679.

On October 2, 2018<sup>3</sup>, the City Council affirmed the City's commitment to its dual stream recycling curbside collection system, which provides collection of cardboard and other fiber material separate from metal, glass, aluminum, and plastic containers. This Contract was due to expire on June 30, 2020. However, given the City's Public Health Officer's Shelter in Place Orders, dated March 16 and 31, 2020, the City Council<sup>4</sup> authorized a one (1) year extension with additional funding of \$3,850,384 for collection services and \$210,089.81 for 1,600 sixty-four (64) gallon split carts to replace unrepairable carts. This Contract extension ensured continued curbside collection of the City's dual stream residential collected recyclables materials, and its delivery to the Berkeley Recycling facility for sorting and marketing during the pandemic.

### ENVIRONMENTAL SUSTAINABILITY

The services provided by EC advance important measures in the City of Berkeley's Vision 2050 Framework (2020), Climate Action Plan (2009), Zero Waste Goal (2005), and long-standing commitment to protect the environment. In support of these goals,

<sup>2</sup> <https://www.cityofberkeley.info/recordsonline/paFiles/cqFiles/index.html>

<sup>3</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/10\\_Oct/City\\_Council\\_10-02-2018\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/10_Oct/City_Council_10-02-2018_-_Regular_Meeting_Agenda.aspx)

<sup>4</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/06\\_June/City\\_Council\\_06-16-2020\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/06_June/City_Council_06-16-2020_-_Regular_Meeting_Agenda.aspx)

EC's collections help the City's Zero Waste Program minimize recyclable materials being sent to the landfill and promote remanufacture of these materials.

RATIONALE FOR RECOMMENDATION

EC, a non-profit organization, has provided these curbside recycling collection services to the City's residents for many decades. A randomized citywide survey of EC's customers conducted in May 2021 showed high satisfaction rates. More than 85% of respondents were either satisfied or very satisfied with EC's collection services. In addition, an audit of EC's costs found them reasonable and in line with those of surrounding communities. The contract's rise in costs is attributable to increased labor expense, expanded outreach and education that includes an equity component, and a more proactive vehicle replacement schedule. Finally, contracting with a non-profit for collection services is unique in the Bay Area and the state, resulting in a Berkeley-based provider of recycling services, three year-round farmers markets, and an environmental center.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Greg Apa, Solid Waste & Recycling Manager, Zero Waste Division (510) 981-6359

Attachment:  
1: Resolution

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

CONTRACT WITH ECOLOGY CENTER, INC.  
FOR THE RESIDENTIAL CURBSIDE RECYCLING COLLECITON

WHEREAS, the City recognizes its long-standing partnership with the Ecology Center, Inc. to assist with and collaborate on the City's Zero Waste Goal. In conjunction with the City supported dual stream recycling material system, Ecology Center, Inc. provides curbside collection service to the City's single family and multi-family, up to nine units, residents and delivery of these materials to the City's Berkeley Recycling facility; and

WHEREAS, on March 19, 2013, Resolution No. 66,036 - N.S., the City Council authorized the City Manager to execute an amended contract and its not to exceed amount of \$35,582,679 for the residential curbside recycling collection; and

WHEREAS, on December 8, 2009, Resolution No. 64,714 – N.S., the City Council authorized the City Manager to execute a contract with the Ecology Center, Inc. for the residential curbside recycling collection services with an amount not to exceed of \$37,020,678 and term of January 1, 2010 through June 30, 2020; and

WHEREAS, on May 26, 2020, Resolution No. 69,417 - N.S., the City Council authorized the City Manager to amend the existing Ecology Center, Inc. contract with \$4,060,474 in additional funding and extend the term until June 30, 2021; and

WHEREAS, on December 15, 2020, Resolution No. 69,662 - N.S., the City Council authorized the City Manager to conduct sole source negotiations with Ecology Center, Inc; and

WHEREAS, the City has negotiated terms with Ecology Center, Inc., that are reasonable and in line with surrounding communities.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a Contract and any amendments with the Ecology Center, Inc. to provide residential curbside recycling collection services with a total Contract amount not to exceed \$54,518,752 for the period from July 1, 2021 to June 30, 2031. A record signature copy of said amendment to be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
June 15, 2021

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Liam Garland, Director, Department of Public Works  
Subject: Contract No. 111976-1 Amendment: HF&H Consultants, LLC for the Development and Update of a Zero Waste Rate Model

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 111976-1 with HF&H Consultants, LLC to increase the current contract by \$50,000 for a total not to exceed amount of \$250,000 and to extend the contract term to June 30, 2023 for the Development and Update of a Zero Waste Rate Model.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available in the Zero Waste Fund 601. Funding for the proposed contract amendment is available as detailed below:

Original Authorized Contract Amount	\$150,000
Prior Contract Amendment	\$ 50,000
Current Contract Amendment	\$ 50,000
<b>Total contract amount.....</b>	<b>\$250,000</b>

CURRENT SITUATION AND ITS EFFECTS

HF&H Consultants, LLC was retained to develop a rate model based on a review of all City’s costs to provide residential and commercial collection services. Since July 2018, the City’s consultant, HF&H Consultants, LLC (HF&H), has worked with Zero Waste Division staff and other City staff to evaluate all relevant information required for all residential, commercial, and roll-off collection and corresponding services. The current rate schedules concluded on June 30, 2019 and need evaluation and modification.

As presented at the September 17, 2019 City Council Work Session on Rate Study Review<sup>1</sup>, the consultant reviewed and analyzed costs associated with the City’s

<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/09\\_Sep/Documents/2019-09-17\\_\(WS\)\\_Presentations\\_Item\\_2\\_Pres\\_PW\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/09_Sep/Documents/2019-09-17_(WS)_Presentations_Item_2_Pres_PW_pdf.aspx)

provided collection and recycling programs services that provide the foundation of all City mandated efforts to achieve its goal of Zero Waste<sup>2</sup>.

This contract amendment authorization supports the City's Strategic Plan Priority of advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

#### BACKGROUND

In August 2016, HF&H was retained to develop a rate model to review all City's costs to provide residential and commercial collection services.

#### ENVIRONMENTAL SUSTAINABILITY

The contract amendment will allow HF&H to continue to work on the proposed rate schedules aimed at generating sufficient revenues to support:

- The expansion of the City's efforts to meet its Zero Waste Goal,
- The 2009 Climate Action Plan<sup>3</sup>,
- Compliance with legislation to enhance recycling, organic diversion and composting, single foodware use and litter reduction,
- All residential and commercial materials collection, material processing, or marketing, and
- Sufficient enterprise fund reserve for future capital replacements.

#### RATIONALE FOR RECOMMENDATION

Authorization of this amendment will allow Public Works to propose a 5-year rate schedule for City Council's consideration.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Greg Apa, Solid Waste & Recycling Manager, Public Works, (510) 981-6359

Attachment:

1: Resolution

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<sup>2</sup> [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Solid\\_Waste/Zero%20Waste%20Goal.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Solid_Waste/Zero%20Waste%20Goal.pdf)

<sup>3</sup> [Climate Action Plan - City of Berkeley, CA](#)

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

CONTRACT NO. 111976-1 AMENDMENT: HF&H CONSULTANTS, LLC. FOR THE STUDY OF THE CITY PROVIDING COMMERCIAL COLLECTION SERVICES AND DEVELOPMENT AND UPDATE OF RATE MODEL

WHEREAS, on July 19, 2016, by Resolution No. 67,630 – N.S., City Council authorized Contract No. 111976-1 (FUND\$ Contract No.10340) with HF&H Consultants, LLC for a comprehensive financial and operations assessment of the impacts to city and public for providing in-house commercial hauling services, and to update the 2014 Franchise Study, in an amount not to exceed \$150,000; and

WHEREAS, on November 19, 2019 by Resolution No. 68,196 N.S., City Council authorized an amendment to Contract No. 10340 with HF&H Consultants, LLC to continue comprehensive financial and operations assessment of the impacts to city and public for providing in-house commercial hauling services, and to update the 2014 Franchise Study, in an amount not to exceed \$200,000; and

WHEREAS, HF&H Consultants, LLC services are necessary to complete the assessment of the City providing commercial collection services of refuse, recyclables and compost and update to the Rate Model; and

WHEREAS, Funding is available in Zero Waste Fund 601.

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. 111976-1 with HF&H Consultants, LLC in the amount of \$50,000 for a total contract not to exceed amount of \$250,000 and to extend the contract term to June 30, 2023 for the Study of the City Providing Commercial Collection Services and Development and Update of Rate Model. A record signature copy of the contract and any amendments to be on file in the City Clerk Department.





Office of the City Manager

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Department of Public Works

Subject: Contract No. 120470-1 Amendment: Fairbanks Scales, Inc. for Preventative Maintenance and Repairs at the City's Solid Waste Management and Transfer Station

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 120470-1 with Fairbanks Scales, Inc. for preventative maintenance and repairs on the various scales at the City's Solid Waste Management and Transfer Station, extending the contract term by two years to June 30, 2025, and increasing the contract amount by \$150,000 for a total contract amount not to exceed \$340,000.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the contract amendment is subject to appropriation in the FY 2022-2025 budgets in the Zero Waste Fund.

CURRENT SITUATION AND ITS EFFECTS

The authorized spending limit for Contract No. 120470-1 has nearly been reached. Failure to obtain Council approval for the recommended action will interrupt the ongoing provision of preventative maintenance and repairs on the various public scales at the City's Solid Waste Management and Transfer Station (Transfer Station).

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

BACKGROUND

Maintenance and repairs of the scales at the Transfer Station is critical for the facility's operation. To remain in compliance with its permit to operate and the Alameda County Community Development Agency's Weights and Measures Department, the Transfer Station must ensure its vehicle weigh scales are fully operational and accurately calibrated to avoid undercharging or overcharging customers that use the facility. The original contract included a Request for Waiver of Competitive Solicitation, and based on Fairbanks Scale's specialized knowledge of the City's Transfer Station, its processes and software the waiver was approved by the City Manager.

ENVIRONMENTAL SUSTAINABILITY

Having fully operational scales at the Transfer Station improves traffic flow to reduce vehicle idling and waiting times.

RATIONALE FOR RECOMMENDATION

In order to ensure the uninterrupted provision of preventative maintenance and repairs on the various scales at the Berkeley Transfer Station, staff recommend that Council authorize execution of an amendment to Contract No. 120470-1 with Fairbanks Scales, Inc. to increase the contract amount.

ALTERNATIVE ACTIONS CONSIDERED

None, Fairbanks Scales, Inc. is recognized as the local expert in solid waste scales and has provided the City with excellent service. Further, the City does not have the in-house resources or expertise to perform this type of specialized preventative maintenance and repairs. It is essential for continued Transfer Station operations for the facility to have a contract with a vendor to ensure timely servicing of the various scales.

CONTACT PERSON

Greg Apa, Solid Waste & Recycling Manager, (510) 981-6359

Attachment:

1: Resolution

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

CONTRACT NO. 120470-1 AMENDMENT - FAIRBANKS SCALES, INC. FOR  
PREVENTATIVE MAINTENANCE AND REPAIRS ON THE VARIOUS SCALES AT THE  
BERKELEY TRANSFER STATION

WHEREAS, the City of Berkeley Zero Waste Division has operated the Solid Waste Management and Transfer Station (Transfer Station) Facility since August 1, 1985; and

WHEREAS, the Transfer Station hosts an array of solid waste operations, including refuse disposal, organics materials recovery and recycling, construction and demolition material management, and self-haul disposal services for small volume generators and private parties; and

WHEREAS, to remain in compliance with its permit to operate and the Alameda County Community Development Agency's Weights and Measures Department, the Transfer Station must have accurate public scales to weigh vehicles to avoid undercharging or overcharging the customers; and

WHEREAS, preventative maintenance and repairs of the various scales at the Transfer Station is critical for the facility's operation, the City does not have in-house the resources nor expertise to perform this type of specialized preventative maintenance or repairs; and

WHEREAS, funding for FY 2022 through FY 2025 from Zero Waste Fund 601 is subject to appropriation.

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. 120470-1 with Fairbanks Scales, Inc. for preventative maintenance and repairs on the various scales at the Transfer Station, extending the contract term by two years to June 30, 2025, and increasing the contract amount by \$150,000 for a total contract amount not to exceed \$340,000. A record signature copy of said contract amendment to be on file in the Office of the City Clerk.







Zero Waste Commission

CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council  
 From: Zero Waste Commission  
 Submitted by: Christienne de Tournay Birkhahn, Chairperson, Zero Waste Commission  
 Subject: Support of Assembly Bills 881, 1454 & 1276

RECOMMENDATION

1. Support Assembly Bill 881 (Plastic Waste Exports) which closes an existing loophole in California law that allows mixed plastic exports to be counted as recycling regardless of their ultimate destination, which is often overseas landfills, incinerators, or waterways, and send a letter expressing the City Council's support to Assemblymember Gonzalez.
2. Support Assembly Bill 1454 (Bottle Bill Modernization) which helps keep recycling centers open and provides much-needed support for new centers to open in areas where there are not enough centers to serve consumers, including rural and urban areas, and send a letter expressing the City Council's support to Assemblymember Bloom.
3. Support Assembly Bill 1276 (Unnecessary Food Serviceware) which expands plastic straws upon-request law to include other single-use food accessories, other food facilities, and third-party delivery platforms – including food that is taken away, delivered, or served on-site - and send a letter expressing the City Council's support to Assembly Member Carrillo.

SUMMARY

At its April 26, 2021 meeting, the Zero Waste Commission voted unanimously to recommend the City Council support three current environmental bills in the State Assembly: AB 881 (Plastic Waste Exports), AB 1454 (Bottle Bill Modernization), and AB1276 (Unnecessary Food Serviceware). Letters to Assemblymembers in support of the individual bills are attached to this recommendation. Support of these bills fits into the City's Strategic Plan Priority, advancing our goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment. There is no cost for implementation of the recommended action.

The current situation and background for these bills is as follows: (1) California has established a policy goal to divert 75% of the state's generated solid waste through source reduction, recycling, and composting by 2020, and is a major exporter of mixed plastic waste. **AB 881** closes an existing loophole in California law that allows mixed plastic exports to be counted as recycling regardless of their ultimate destination, which is often overseas landfills, incinerators, or waterways. (2) Container recycling rates are dropping - statewide beverage container recycling rates have fallen below 70% for the first time in 13 years, with containers ending up in landfill. Outdated laws have led to recycling center closures: more than 1000 community-based recycling centers have closed since 2015 because of outdated statutory requirements for calculating compensation. **AB 1454** will help keep recycling centers open and provide support for new centers to open in areas where there are not enough centers to serve consumers. (3) Each year an estimated 561 billion disposable foodware items are used, resulting in a whopping 4.9 million tons of waste. Unused food accessories including utensils, straws, and other items clog landfills, complicate recycling, and pollute our communities. **AB 1276** expands plastic straws upon-request law to include other single-use food accessories, other food facilities, and third-party delivery platforms – including food that is taken away, delivered, or served on-site. This bill is based on Berkeley's 2019 Single-Use Foodware & Litter Reduction ordinance.

#### FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts to this recommendation.

#### CURRENT SITUATION AND ITS EFFECTS

AB 881: California has established a policy goal to divert 75% of the state's generated solid waste through source reduction, recycling, and composting by 2020. Communities achieve disposal and diversion rates when waste isn't littered, dumped, or sent to landfills.

California is a top exporter of plastic waste to other countries around the world. Manufacturers purchase this plastic waste and pick out the valuable pieces to use for raw materials to make new products; they do not use all of the waste because it may be the wrong material for their needs and/or it costs too much to process to make it worthwhile for them to use. Unfortunately, when California exports worthless mixed plastic waste to other countries, CalRecycle and local jurisdictions do not count the material as being "disposed;" even though that is exactly what happens to much of that waste. For purposes of assessing how the state is meeting its 75% solid waste "diversion" goal, CalRecycle assumes that exported waste is recycled regardless of what actually happens to it -- even if that waste is simply landfilled, dumped, or incinerated in another country.

AB 1454: Container recycling rates are dropping - statewide beverage container recycling rates have fallen below 70% for the first time in 13 years, meaning that too many bottles and cans are ending up in landfills or as litter. Data from CalRecycle

demonstrates that there aren't enough locations or opportunities for people to return these containers for recycling. Outdated laws have led to recycling center closures: more than 1000 community-based recycling centers have closed since 2015 because of outdated statutory requirements for calculating compensation. Record low global prices for scrap materials have compounded the problem.

The decades old Bottle Bill program has relied on a rigid "Convenience Zone" definition to determine where new recycling centers are located and which centers can receive supplemental recycling incentives. CalRecycle clearly needs greater flexibility and authority to define and establish Convenience Zones, and provide resources to regions that need centers.

AB 1276: Every year in the United States, an estimated 561 billion disposable foodware items are used, resulting in a whopping 4.9 million tons of waste. Unused food accessories including utensils, straws, napkins, condiment packages, and other items clog landfills, complicate recycling, and pollute streets and waterways in our communities.

The COVID-19 pandemic has increased takeout and food delivery, which restaurants are relying upon to stay afloat. The use of disposable food accessories has contributed to a 250-300% increase in single-use plastics and a 30% increase in waste. Currently, many food facilities and food delivery services provide single-use food and beverage accessories regardless of whether or not they are needed. Most customers do not want them or have reusable items at home and/or in their workspaces. As a result, these accessories are usually discarded without being used. Furthermore, global health experts and U.S health officials agree that there's no evidence that COVID-19 can spread through food or food packaging.

Local governments and taxpayers spend over \$428 million annually in ongoing efforts to clean up and prevent litter in streets, storm drains, parks and waterways. Recyclers are now faced with a worsened crisis, as the vast majority of these non-recyclable single-use food accessories debase recycling systems and can contaminate many commercial compost facilities. This increases costs to collection, sorting, processing and disposal for cities and ratepayers. Many of these food accessories are made of plastic, and the increasing surge in plastic use exacerbates health risks predominantly in communities of color and/or low-income communities.

At its meeting on April 26, 2021, the Zero Waste Commission passed a motion to recommend sending letters of support for the following California legislation: AB 881, AB 1454, and AB 1276. (M/S/C: Stein/de Tournay. Ayes: de Tournay, Poliwka, Doughty, Schueler, Curtis, Stein, Ulakovic, Grubb; Noes: None; Abstain: None; Absent; None.)

## BACKGROUND

Support of these three bills fits into the City's Strategic Plan Priority advancing our goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

AB 881 would reclassify the export of mixed plastic waste as disposal, while allowing truly recyclable plastic to continue to be counted towards California recycling goals. To be counted as diversion through recycling, rather than disposal, it would require the export to:

- Be a readily recyclable plastic type or mixture. The Basel Convention identifies polyethylene (PE), polypropylene (PP) and polyethylene terephthalate (PET) as allowable exports without stricter regulation due to their easy recyclability, provided they are destined for separate recycling of each material. AB 881 would allow these exports to be counted as diversion through recycling.
- Not be prohibited by an applicable law in the country of destination. Basel Convention signatory countries may establish their own accepted level of contamination and may require prior agreements for the import of plastic scrap.

AB 1454 makes the Bottle Bill program more efficient and effective through the following modifications:

- Provides targeted increase in payments to recycling centers to better reflect the actual average cost of diverse (small, medium & large) community-based recycling centers based on CalRecycle's 2020 cost survey.
- Reestablish Plastic Quality Incentive Payments to further enable the state's achieving its minimum recycled content requirements on plastic beverage containers.
- Expands Convenience Zone recycler incentive eligibility beyond Supermarket parking lots to any recycler willing to open in a currently unserved zone.
- Provides start-up financing (up to \$25,000 per location) to any certified entity that opens and operates a recycling center in one of the 400-600 unserved/underserved areas. Authorizes loan forgiveness after 18 months of successful operation.
- Right-sizes Convenience Zones to meet community needs based on CalRecycle recommendations.

AB 1276 expands the plastic straws upon-request law to include other single-use food accessories, other food facilities, and third-party delivery platforms - including food that is taken away, delivered, or served on-site. Additionally, for specified restaurants, this bill will require reusable food serviceware for on-site dining. This bill is based on the City

of Berkeley's landmark Single-Use Foodware & Litter Reduction ordinance passed in early 2019.

ENVIRONMENTAL SUSTAINABILITY

Each bill would enhance the environmental sustainability of our community by decreasing landfilled materials and greenhouse gases from food waste therein.

RATIONALE FOR RECOMMENDATION

The Zero Waste Commission finds that passing the current bills would be effective in helping the City achieve its goal of zero waste by 2020.

ALTERNATIVE ACTIONS CONSIDERED

The alternative of inaction has been considered and was found to be detrimental to zero waste goals.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON

Heidi Obermeit, Recycling Program Manager (510) 981-6357

Attachments:

- 1: AB 881 Letter of Recommendation - Plastic Waste Exports
- 2: AB 1454 Letter of Recommendation - Bottle Bill Modernization
- 3: AB 1276 Letter of Recommendation - Unnecessary Food Serviceware

The Honorable Lorena Gonzalez  
California State Assembly, 80<sup>th</sup> District  
State Capitol, Room 2114  
Sacramento, CA 95814

SUBJECT: AB 881 (Gonzalez): Recycling Export Reform - SUPPORT

Dear Assembly Member Gonzalez:

We, the Berkeley City Council, are writing in support of Assembly Bill 881 (Gonzalez), which would close the loophole in California law that enables exported mixed plastic waste to be deemed recycled even when it is landfilled, burned, dumped, or otherwise improperly managed.

Traditionally the United States has been a major exporter of plastic scrap, with approximately half of our plastic waste exported to China and Hong Kong until 2017. In 2018, China implemented the National Sword policy to severely restrict the level of contamination accepted, which drastically reduced the amount of foreign waste imported. Since then, other countries have begun implementing additional policies to reduce the import of plastic waste, most recently with the ratification of the Basel Convention by 187 parties. Under the Basel Convention, plastic scrap and waste exports are only allowed with prior written consent from the importing country. Certain specified plastic that is more readily recyclable can be traded under the Basel Convention without prior written consent, but must meet strict criteria, including a low contamination rate and requirement to be recycled in an environmentally sound manner. The United States has not yet ratified the Basel Convention.

Still, California continues to be a top plastic waste exporter in the country. When worthless mixed plastic waste is exported, CalRecycle and local jurisdictions do not count the material as being "disposed," in effect assuming it is all recycled regardless of its actual fate.

Increasingly, evidence shows US plastic is being exported to countries where the material ends up inadequately disposed of, through incineration and dumping. As plastic is mismanaged, it further pollutes the environment and health of people nearby. Fumes from incineration can cause respiratory problems, while dumping or open landfilling can lead to pollution in both marine and land-based habitats. As plastic then breaks down into microplastics, they concentrate toxic chemicals and contaminate food and drinking water sources. Exposure to these plastics and associated toxins has been linked to cancers, birth defects, impaired immunity, endocrine disruption and other serious health problems.

Additionally, the fact that both truly recyclable and worthless mixed plastics continue to be shipped overseas lets manufacturers off the hook from using sustainable packaging and building robust recycling markets.

When Californians sort their waste for disposal, recycling, and compost, they assume that what is sorted for recycling will be properly recycled into new goods. Californians also assume that the disposal and recycling data presented by CalRecycle and their local jurisdictions reflect what is actually recycled. However, this is not the case.

AB 881 would reclassify the export of mixed plastic waste as disposal, while allowing truly recyclable plastic to continue to be counted towards our recycling goals. This bill will increase transparency in our waste management practices, and help prevent California from simply exporting our environmental problems.

For these reasons, we strongly support AB 881 and thank you for championing this important issue.

Sincerely,

The Honorable Wendy Carrillo  
California State Assembly, 51<sup>st</sup> District  
State Capitol, Room 4167  
Sacramento, CA 95814

Re: AB 1276 (Carrillo) – Unnecessary Food Service Ware – STRONG SUPPORT

Dear Assembly Member Carrillo,

On behalf of the Berkeley City Council, we strongly support AB 1276 (Carrillo,) as proposed to be amended, which will significantly reduce unnecessary waste and save businesses and local governments money. With the increase in takeout and food delivery as a result of the covid-19 pandemic, also comes an increase in the amount of unused food and beverage accessories. These items including utensils, straws, napkins, condiment packages clog landfills, complicate recycling, and pollute streets and waterways. Pollution of these items isn't limited to when they're disposed of, but also negatively affects communities and ecosystems further upstream during resource extraction, production, and manufacturing.

The use of disposable food accessories has contributed to a 250-300% increase in single-use plastics and a 30% increase in waste. California's local governments and taxpayers spend over \$428 million annually in ongoing efforts to clean up and prevent litter in streets, storm drains, parks and waterways. Additionally, California recyclers are now faced with a worsened crisis, as the vast majority of these non-recyclable single-use food accessories debase recycling systems and can contaminate many commercial compost facilities. This adds costs to collection, sorting, processing and disposal for cities and ratepayers.

Restaurants in the U.S. spend \$19 billion purchasing disposable food ware items. California restaurants that have voluntarily made the transition to a combination of by request and reusable food ware have been proven to save between \$3,000 and \$21,000 per year, while reducing waste and greenhouse gas emissions. Additionally, reuse creates as many as 30 times more jobs than landfills.

In order to address this issue, AB 1276 expands the plastic straws upon request law to include other single-use food accessories, other food facilities, and third-party delivery platforms - including food that is taken away, delivered, or served on-site. Additionally, for specified restaurants, reusable food service ware is required for on-site dining (as proposed to be amended.)

Experts agree that upstream reduction of unnecessary packaging is by far the most efficient and cost-effective way to protect resources and communities, and help California reach its waste reduction and climate goals. Reducing unnecessary food service ware is a simple solution and a win-win for reducing waste in the first place, saving businesses money, and relieving recyclers, composters and local governments from the complications and costs associated with it.

Sincerely,

The Honorable Richard Bloom  
California State Assembly, 50th District  
California State Capitol, Room 2003  
Sacramento, CA 942849

The Honorable Patrick O'Donnell  
California State Assembly, 70th District  
California State Capitol, Room 4001  
Sacramento, CA 942849

RE: AB 1454 (Bloom & O'Donnell): Bottle Bill Modernization – SUPPORT

Dear Assemblymembers Bloom and O'Donnell,

We, the Berkeley City Council, write to express our strong support of the provisions of Assembly Bill 1454 (Bloom & O'Donnell). This measure will modernize and simplify the state's Beverage Container Recycling Program (Bottle Bill), while re-investing unredeemed funds to increase recycling, create market resiliency, expand consumer convenience, and match collection program output with California's circular economy objectives.

As recently as 2013, the Bottle Bill was achieving near best in the nation recycling rates of 85%. But an outdated payment system and resulting recycling center closures has caused Statewide rates to drop below 70% for the first time in 13 years. However, the fundamentals of the program remain sound. Regions of the state that have maintained their recycling infrastructure, such as Los Angeles County, and the 13 County San Joaquin Valley, continue to achieve better than 85% recycling rates. At the same time, in the 11 County Bay Area, where there remains just one center per 105,000 population, the recycling rate has dropped to just 54%.

We can fix this with existing resources and more nimble program administration. CalRecycle data demonstrates a clear correlation between lack of community recycling centers and below average recycling rates. This lack of recycling opportunity can be traced to outdated statutory requirements which fails to cover the cost of recycling for the vast majority of recycling centers, according to CalRecycle's 2020 cost survey. This, compounded with record low market scrap prices, has resulted in over 1,000 community-based recycling centers to close since 2014.

CalRecycle's 2020 AB 54 Report to the Legislature makes a thoughtful and persuasive case for greater flexibility and authority to redefine Convenience Zones and prioritize re-investment of existing resources. Unserved and underserved areas of the state could be covered by as few as 400-600 thoughtfully located community-based recycling centers.

Additionally, some outdated and unnecessarily rigid statutory requirements for the establishment of recycling enterprises have hampered the department's ability to certify and support innovative and convenient recycling opportunities such as mobile recycling, Bottle Drop and Reverse Vending Machines.

Understanding these technical and specific statutory roadblocks, AB 1454 proposes to provide immediate stabilization to the recycling infrastructure, provide incentives to expand convenient consumer recycling in unserved/underserved areas, support innovative and nimble responses to evolving market conditions, and update rules and incentives for processors to support the quality demands of a circular economy.

More specifically, AB 1454 will:

- Provide targeted increase in payments to recycling centers to better reflect the actual average cost of diverse (small, medium & large) community-based recycling centers based on CalRecycle's 2020 cost survey.



- Reauthorize Plastic Quality Incentive Payments, upon Legislative authority, to further enable the state's achieving its minimum recycled content requirements on plastic beverage containers.
- Expand Convenience Zone recycler incentive (Handling Fee) eligibility beyond Supermarket parking lots to any recycler willing to open in a currently unserved zone.
- Provide start-up financing (up to \$25,000 per location) to any certified entity that opens and operates a recycling center in one of the 400-600 unserved/underserved areas, and authorize loans forgiveness after 18 months of successful operate.
- Right-size Convenience Zones to meet community needs based on recommendations in CalRecycle's AB 54 Report to the Legislature.
- Establish a Beverage Container Stakeholder Advisory Board to provide CalRecycle with real time guidance on market conditions and administrative changes.

With implementation of these well-understood and supported updates, California can stabilize the existing infrastructure and return to 80% or better recycling rates in 12-18 months.

For these reasons, we strongly support the provisions of AB 1454, and thank you for authoring this important measure.

Sincerely,



CONSENT CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmembers Ben Bartlett & Kate Harrison (Authors)

Subject: Support for AB-279 (Muratsuchi) Intermediate Care Facilities and Skilled Nursing Facilities: COVID-19

RECOMMENDATION

Adopt a Resolution in support of AB-279 (Muratsuchi) Intermediate Care Facilities and Skilled Nursing Facilities: COVID-19 and send copies of the Resolution letters supporting AB-279 to the Senate Health Committee, Senator Skinner, Assemblymembers Muratsuchi, Santiago, Wicks, and Governor Newsom.

BACKGROUND

For decades, one of the most severe threats facing residents at senior care facilities in California has been the trauma of forced involuntary transfer to locations away from friends, families, and advocates. During the COVID-19 pandemic, the situation has grown worse.

According to the California Department of Public Health Records, there have been 200 improper and illegal discharges of patients from senior care facilities statewide. Facilities across the state have failed to observe legal protections to prevent traumatic, involuntary transfers. There could not be a worse time for such misconduct and risking the health and safety of seniors. Current restrictions on visitation make it nearly impossible for residents and their families to assess the safety and care at new facilities.

Currently, seniors at the Sakura Intermediate Care Facility (ICF) located near historic Little Tokyo in the City of Los Angeles are under threat of eviction due to the facility owner's intentions to shut down the ICF to make way for unaffordable housing units. Sakura ICF is the only facility of its kind offering sensitive bilingual and bi-cultural care and has been an invaluable resource for the Los Angeles area Japanese American community for nearly 50 years.

In addition, during the weeks leading up to the State of Emergency Declaration due to the COVID 19 pandemic, seniors at Brookdale in the City of San Pablo (including the co-author's mother), were evicted to allow the facility operators and owners to close and sell the facility. To endanger the lives of seniors to move to a facility not providing essential services and further from support networks including physicians, especially during a pandemic, is unconscionable.

AB 279 (Muratsuchi), an urgency measure, would protect seniors at all ICF's and SNF's in CA, prohibiting such facilities from terminating, transferring, or significantly altering the conditions of residential care services during the State of California's COVID-19 state of emergency period. At the end of the State of Emergency, the bill would establish a six-month advance notice to every resident, of any proposed sale or termination of licensed facility operations. This bill also requires that all conditions of operation imposed by the Attorney General as conditions of sale for assets from a non-profit to a for-profit entity remain in effect and unchanged.

AB 279 is supported by: Alameda County Democratic Party; California Democratic Party; California Advocates for Nursing Home Reform; Los Angeles County Supervisor Hilda Solis; AARP; Advocacy, Inc.; Asian Americans Advancing Justice – Los Angeles; California Alliance for Retired Americans; California Association of Long Term Care Medicine; California Health

Advocates; California Retired Teachers Association; Chinatown Community for Equitable Development; Consumer Federation of California; Essential Caregivers Association; Florin Japanese American Citizens League - Sacramento Valley; Gray Panthers of San Francisco; Health Care for All – Los Angeles Chapter; Japanese American Bar Association; Japanese American Citizens League, Twin Cities Chapter; Keiro Pacifica Community Advisory Board; Koreisha Senior Care & Advocacy; National Association of Social Workers, California Chapter; National Health Law Program; Nikkei Progressives; Progressive Asian Network for Action; Sakura ICF Family Council; Save our Seniors Network; SEIU California; and countless individuals.

The State Assembly recently passed AB 279 by 58 yes votes to overcome the two-thirds requirement as an urgency measure. AB 279 is on its way to being heard at the Senate Health Committee; the Committee meets every Wednesday at 1:30 p.m.

Letters of Support for AB 279 are due by 3:00 p.m. seven calendar days before the scheduled hearing to be officially listed in the Senate Health Committee bill analysis.

Letters can be sent to the Committee by:

1. Using the Advocacy Portal at this link: <https://calegislation.lc.ca.gov/Advocates/>
2. Mailed to: Senate Health Committee, State Capitol Room 2191, Sacramento, CA 95814.

Cities, organizations, elected officials, and community leaders throughout the state should be united to protect our seniors' health and safety. Let's send resolutions and letters in support of AB 279!

#### FINANCIAL IMPLICATIONS

No financial implications to send the resolution to Legislators.

#### ENVIRONMENTAL SUSTAINABILITY

Protecting our seniors during this climate and health crisis is an act of environmental sustainability.

#### CONTACT PERSONS

Councilmember Ben Bartlett	510-981-7130
James Chang	510-981-7131

#### ATTACHMENTS:

1. Resolution
2. Sample Letter to Elected Officials
3. AB 279:  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB279](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB279)

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,  
SUPPORTING AB-279 INTERMEDIATE CARE FACILITIES AND SKILLED NURSING  
FACILITIES

WHEREAS, one of the most serious threats facing residents at senior care facilities in cities throughout the state has been the trauma of forced involuntary transfer to locations away from friends, families, physicians and advocates. During the COVID-19 pandemic, the situation has gotten worse; and

WHEREAS, According to the California Department of Public Health Records, statewide, there have been 200 improper and illegal discharges of patients from senior care facilities. Facilities across the state have failed to observe legal protections to prevent traumatic involuntary transfers, risking the health and safety of seniors at a very precarious time. Current restrictions on visitation make it nearly impossible for residents and their families to assess the safety and care at new facilities; and

WHEREAS, seniors at the Sakura Intermediate Care Facility (ICF) located near historic Little Tokyo in the City of Los Angeles are under threat of eviction to make way for unaffordable housing units. Sakura ICF is the only one of its kind offering sensitive bilingual and bi-cultural care and has been an invaluable resource for the Los Angeles area Japanese American community for nearly 50 years; and

WHEREAS, during the weeks leading up to the State of Emergency Declaration due to the COVID 19 pandemic, seniors at Brookdale in the City of San Pablo were evicted in order to close and sell the facility. To endanger the lives of seniors to move to a facility not providing these essential services and further from support networks, especially during a pandemic is unconscionable; and

WHEREAS, AB 279 (Muratsuchi), an urgency measure, would protect seniors at all ICF's and SNF's in CA, prohibiting such facilities from terminating, transferring, or significantly altering the conditions of residential care services during the State of California's COVID-19 state of emergency period. At the end of the State of Emergency, this bill would establish a six-month advance notice to every resident, of any proposed sale or termination of licensed facility operations. This bill also requires that all conditions of operation imposed by the Attorney General as conditions of sale for assets from a non-profit to a for-profit entity remain in effect and unchanged; and

WHEREAS, AB 279 is supported by: Alameda County Democratic Party; California Democratic Party; California Advocates for Nursing Home Reform; Los Angeles County Supervisor Hilda Solis; AARP; Advocacy, Inc.; Asian Americans Advancing Justice – Los Angeles; California Alliance for Retired Americans; California Association of Long Term Care Medicine; California Health Advocates; California Retired Teachers Association; Chinatown Community for Equitable Development; Consumer Federation of California; Essential Caregivers Association; Florin Japanese American Citizens League - Sacramento Valley; Gray Panthers of San Francisco; Health Care for All – Los Angeles Chapter; Japanese American Bar Association; Japanese American Citizens League, Twin Cities Chapter; Keiro Pacifica Community Advisory Board; Koreisha Senior Care & Advocacy; National Association of Social Workers, California Chapter; National Health Law Program; Nikkei Progressives; Progressive Asian Network for Action; Sakura ICF Family Council; Save our Seniors Network; SEIU California; and countless individuals

WHEREAS, The State Assembly recently passed AB 279 by 58 yes votes to overcome the two-thirds requirement as an urgency measure. AB 279 is on its way to being heard at the Senate Health Committee;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that it stands in full support of AB 279 to protect the health and safety of our seniors during this COVID 19 pandemic.

BE IT FURTHER RESOLVED, that copies of the Resolution Supporting AB 279 be sent to the Senate Health Committee, Senator Skinner, Assemblymembers Muratsuchi, Santiago, Wicks, and Governor Newsom.

Sample Letter

RE: Support Assembly Bill #279

Dear [Name of Official],

On behalf of the City of Berkeley, California, we are writing to voice our support for Assembly Bill 279. This proposal would protect vulnerable seniors in Immediate Care and Skilled Nursing Facilities from being transferred away from their loved ones into new locations or being expelled in the midst of a pandemic.

The Sakura Intermediate Care Facility (ICF) example proves that the crisis of transfers and expulsions from facilities serving elders has become untenable. At the Sakura ICF, located near historic Little Tokyo in the City of Los Angeles, seniors were under threat of eviction due to the facility owner's intentions to shut down the ICF to make way for unaffordable housing units. Sakura ICF is the only one of its kind offering sensitive bilingual and bi-cultural care that has been an invaluable resource for the Los Angeles area Japanese American community for nearly 50 years. To endanger the lives of seniors to move to a facility not providing these essential services, especially during a pandemic, is unconscionable.

AB 279 (Muratsuchi), an urgency measure, would protect seniors at all ICF's and SNF's in CA, prohibiting such facilities from terminating, transferring, or significantly altering the conditions of residential care services during the State of California's COVID-19 state of emergency period. This bill would establish a six-month advance notice to every resident, at the end of the State of Emergency, of any proposed sale or termination of licensed facility operations. This bill also requires that all conditions of operation imposed by the Attorney General as conditions of sale for assets from a non-profit to a for-profit entity remain in effect and unchanged.

This urgency measure is needed now to protect the health and safety of our seniors in California during a pandemic. It is supported by organizations from the American Association of Retired Persons to California Retired Teachers Association to SEIU California, and many more.

At a time when the Asian American and Pacific Islander community faces extraordinary trauma from the exponential rise in hate incidents and crimes, and, recognizing that many seniors were once before forcibly removed from their homes and communities - we respectfully request your SUPPORT on AB 279.

Sincerely,  
[Mayor of Berkeley and Members of the City Council]

AMENDED IN ASSEMBLY APRIL 15,  
2021

AMENDED IN ASSEMBLY MARCH 25,  
2021

CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

ASSEMBLY BILL

NO. 279

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Introduced by Assembly Members Muratsuchi and Santiago

January 21, 2021

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An act to add and repeal Section 1287 of the Health and Safety Code, relating to care facilities, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 279, as amended, Muratsuchi. Intermediate care facilities and skilled nursing facilities: COVID-19.

(1) Existing law requires the State Department of Public Health to license, inspect, and regulate intermediate care facilities (ICF) and skilled nursing facilities (SNF). Existing law generally requires an ICF or SNF to comply with certain procedures and disclosures when transferring ownership or management of the facility, as specified. Existing law imposes criminal penalties on a person who violates the requirements imposed on these facilities.

This bill would prohibit an ICF or SNF, as defined, from terminating or making significant *quality-of-care* changes to its skilled nursing or supportive care services, or from transferring a resident to another ~~facility, ICF or SNF~~, during any declared state of emergency relating to the coronavirus disease 2019 (COVID-19), except if the owner files a bankruptcy petition. ~~The~~ *Besides the exception of a bankruptcy petition, the* bill would authorize a resident transfer *during the state of emergency* only if the transfer is deemed medically necessary by ~~a government agency, an attending physician, as specified~~, or the impacted resident or their representative provides written consent, as specified.

The bill would require, for one year after termination of the same type of state of emergency, the owner of an ICF or SNF to issue a 6-month advance notice of any proposed sale or termination of the licensed operation of the facility to each resident and their representatives before the sale or termination goes into effect. The bill would also prohibit, during the same type of state of emergency, any changes in all conditions for the sale of assets imposed by the Attorney General, except if the owner of an ICF or SNF files a bankruptcy petition.



During the same type of state of emergency, if a resident of an ICF or SNF, or an individual temporarily transferred to an ICF or SNF, has tested positive for COVID-19 within the previous 14 calendar days, the bill would require the ICF or SNF to notify all residents and their representatives about the existence of a new case of COVID-19, as specified, subject to state and federal privacy laws.

By expanding the requirements and prohibitions imposed on a licensee of an ICF or SNF, and thereby expanding the scope of a crime, this bill would impose a state-mandated local program. The bill would repeal these provisions on January 1, 2026.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

DIGEST KEY

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

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BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 1287 is added to the Health and Safety Code, to read:

~~1287.(a)Unless the owner of the facility files a bankruptcy petition under Title 11 of the United States Code or any other laws of the United States, a facility shall not terminate or make significant changes to its skilled nursing or supportive care services or transfer a resident to another facility during any state of emergency declared pursuant to Section 8625 of the Government Code relating to the coronavirus disease 2019 (COVID-19). A resident transfer may occur only if either of the following is met:~~

*1287. (a) A facility shall not terminate or make significant quality-of-care changes to its skilled nursing or supportive care services, or transfer a resident to another facility except as described in subdivision (b), during any state of emergency declared pursuant to Section 8625 of the Government Code relating to the coronavirus disease 2019 (COVID-19), unless the owner of the facility files a bankruptcy petition under Title 11 of the United States Code or under any other federal bankruptcy laws.*

*(b) A resident transfer under the conditions described in subdivision (a) may occur only if any of the following is met:*

*(1) The transfer is deemed medically necessary by ~~a government agency.~~ an attending physician approved by the impacted resident or their legally authorized representative, if applicable.*

*(2) The impacted resident or their legally authorized representative, if applicable, provides written consent after being informed of their right to refuse the transfer in writing and in a language and manner that they understand.*

*(3) The owner of the facility files a bankruptcy petition as described in subdivision (a).*

~~(b)~~

*(c) For one year after termination of any state of emergency declared pursuant to Section 8625 of the Government Code relating to COVID-19, the owner of a facility shall issue a six-month advance notice of any proposed sale or termination of the licensed operation of the facility to each resident and their representatives before the sale or termination goes into effect.*

~~(e)~~

*(d) Unless the owner of a facility files a bankruptcy petition under Title 11 of the United States Code or ~~any other laws of the United States,~~ under any other federal bankruptcy laws, both of the following apply during any state of emergency declared pursuant to Section 8625 of the Government Code relating to COVID-19:*

(1) All conditions of operation imposed by the Attorney General as conditions for the sale of assets from a nonprofit entity to a for-profit entity shall remain in effect and unchanged.

(2) All conditions for the sale of assets imposed by the Attorney General that are in effect at the beginning of the state of emergency shall remain in effect.

~~(d)~~

(e) During any state of emergency declared pursuant to Section 8625 of the Government Code relating to COVID-19, if a resident of a facility, or an individual temporarily transferred to a facility from another facility or any other type of health facility, has tested positive for COVID-19 within the previous 14 calendar days, the facility of that resident or where that individual is transferred shall do both of the following, subject to state and federal privacy laws, as instructed by the department:

(1) Notify all other residents of the facility and their representatives about the existence of a new case of COVID-19, without disclosing the identity of the resident or other individual who has tested positive.

(2) In the case of a resident who has tested positive for COVID-19, notify the representatives of that resident about their COVID-19 case. In the case of an individual temporarily transferred to the facility and who has tested positive for COVID-19, if the individual becomes a resident of the facility, notify the representatives of that individual about their COVID-19 case.

~~(e)~~

(f) The protections provided under this section are in addition to, and not exclusive of, any other protections for facility residents regarding transfer and discharge.

~~(f)~~

(g) For purposes of this section, the following definitions apply:

(1) Except as described in paragraph (2), "facility" means an intermediate care facility, as defined in subdivision (d) of Section 1250, or a skilled nursing facility, as defined in subdivision (c) of Section 1250, but does not include either of the following:

(A) Licensed beds in any facility specified in Section 4100 of the Welfare and Institutions Code or any other facility operated by the State Department of State Hospitals.

(B) Any facility operated by the State Department of Developmental Services, including, but not limited to, any Stabilization, Training, Assistance and Reintegration (STAR) home, developmental center, or community facility.

(2) "Health facility" has the same meaning as defined in Section 1250.

~~(g)~~

(h) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

**SEC. 2.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

**SEC. 3.** This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To protect the residents of intermediate care facilities or skilled nursing facilities and their continued residence in their supportive environment and to prevent foreseeable homelessness of this vulnerable population during the crisis of the coronavirus disease 2019 (COVID-19) state of emergency, it is necessary for this act to take effect immediately.



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmembers Susan Wengraf and Kate Harrison (authors), and  
Councilmember Sophie Hahn (co-sponsor)

Subject: Letter of Opposition Unless Amended on SB 9

**RECOMMENDATION**

Pass a resolution and send a letter to Senators Atkins, Caballero, Rubio, Wiener and Skinner, Assemblymember Wicks and Governor Newsom, expressing the Berkeley City Council's concerns about SB 9: Housing development: Approvals (Atkins) as drafted, and state our opposition to the bill unless it is amended to address these specific concerns.

**FISCAL IMPACTS**

None

**CURRENT SITUATION AND ITS EFFECTS**

SB 9, as drafted, by Senator Toni Atkins, circumvents local planning and zoning control and public input by *mandating* local approval of lot splits and the ministerial approval of the development of two residential units on each lot without a public hearing. The proposed bill also bypasses the California Environmental Quality Act (CEQA), which was established to require the thoughtful consideration of the impact of development on the environment and infrastructure. It also bypasses the [California Coastal Act of 1976](#), which recognizes that there are unique zoning and land management needs in coastal areas of our state. In addition, there are no provisions for affordability of new units constructed under SB 9 and the definition of transit adjacency is over-broad. As stated by the League of California Cities, " SB 9 as currently drafted will not spur much needed housing construction in a manner that supports local flexibility, decision making, and community input. State-driven ministerial or by-right housing approval processes fail to recognize the extensive public engagement associated with developing and adopting zoning ordinances and housing elements that are certified by the California Department of Housing and Community Development (HCD)."

**BACKGROUND**

The City of Berkeley is committed to creating more housing across all income levels and shares the intent and goals of SB 9 to increase housing production. We understand that homes are out of reach for many people and housing is not being built fast enough to meet the current or projected needs of people living in California. Cities lay the

groundwork for housing production by planning and zoning new projects in their communities based on extensive public input and engagement. As a result, Berkeley has built and entitled thousands of housing units during the past several years and plans to build thousands more, with the support of our community.<sup>1</sup>

SB 9, as currently drafted, has no provision for local flexibility or decision-making and does not recognize the important value of public engagement in developing and adopting zoning ordinances and housing policies. In forwarding its own proposal for upzoning to the Planning Commission, the Berkeley City Council thoughtfully foreswore ministerial approval, recognizing the need for community standards and review while recommitting itself to reducing delays in application processing.

Under SB 9, a minimum of four and potentially six residential units (with an ADU) could be mandated to replace a single unit. Local objective design standards related to density or solar access for adjoining properties would be precluded if those standards meant one of the units would be less than 800 square feet. Maximum rear setbacks of four feet would be mandated, reducing climate-need green space and water absorption, and limitations would only apply in Cal Fire districts and not allowed in high fire areas identified by the city of Berkeley. By proposing a "one formula fits all" approach to zoning, the bill ignores the unique characteristics and needs of the hundreds of different cities in California.

SB 9's current allowance for local governments to impose a one-year occupancy period when a lot is split is insufficient to protect against flipping properties. In addition, that provision would sunset after five years. The legislation does not require that any of the resulting units be affordable and does not provide what is most needed for affordable housing: state funding. Even Plan Bay Area 2020 finds that the upzoning envisioned in SB 9 would not facilitate production of affordable housing.<sup>2</sup>

Many elements of SB 9 are ambiguous. We request the following amendments in order to address these concerns:

- Clarify that a property owner using SB 9 is limited to requiring construction of two residential units on each parcel;
- Allow cities to determine a range of lot sizes suitable for SB 9 development projects;

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<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/07\\_Jul/Documents/2020-07-28\\_Item\\_45\\_Annual\\_Housing\\_Pipeline\\_Report.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-28_Item_45_Annual_Housing_Pipeline_Report.aspx)

<sup>2</sup> Plan Bay Area 2050 Regional Growth Forecast.

- Allow local governments to regulate adequate access for police, fire and other public safety vehicles and equipment and to limit application of SB 9 in very high fire hazard severity zones;
- Include a stronger provision to ensure speculators and investors do not exploit SB 9 by buying, splitting and flipping parcels.
  - Better define what is meant by "transit" and remove the "parked" car share qualification;
  - Apply current or future CEQA regulations;
  - Honor the California Coastal Act of 1976; and
  - Ensure HCD provides Regional Housing Needs Allocation (RHNA) credit for production of SB 9 units.

#### ENVIRONMENTAL SUSTAINABILITY

SB 9 pre-empts the California Environmental Quality Act (CEQA) and the 1976 California Coastal Act which were established to require the thoughtful consideration of development of the environment and infrastructure. This item seeks to reinstate CEQA and California Coastal Act review in SB 9.

#### CONTACT PERSON

Councilmember Susan Wengraf

District 6

510-981-7160

#### Attachments:

1: Letter

2: Resolution

3: Detailed Analysis by Dan Carrigg, Renne Policy Group

4: [SB 9](#)

May 11, 2021

The Honorable Toni Atkins  
California Senator  
State Capitol, Room 205  
Sacramento, CA 95814

**RE: SB-9 (Atkins) "Housing development: approvals"  
Opposition Unless Amended from the Berkeley City Council**

Dear Senator Atkins,

The City Council of the City of Berkeley officially expresses our opposition unless amended to SB-9 (Atkins), Housing development: approvals.

The City of Berkeley is committed to creating more housing across all income levels and shares the intent and goals of SB 9 to increase housing production. We understand that homes are out of reach for many people and housing is not being built fast enough to meet the current or projected needs of people living in California. Cities lay the groundwork for housing production by planning and zoning new projects in their communities based on extensive public input and engagement. As a result, Berkeley has built and entitled thousands of housing units during the past several years and plans to build thousands more, with the support of our community.

SB 9, as currently drafted, has no mandate for affordability, no provision for local flexibility or local decision-making or community input nor does it recognize the important value of extensive public engagement associated with developing and adopting zoning ordinances and housing policies. By proposing a "one formula fits all" approach to zoning, the bill ignores the unique characteristics and needs of the hundreds of different cities in California.

The City of Berkeley requests the following amendments in order to address our concerns:

- Clarify that a property owner using SB 9 is limited to constructing two residential units on each parcel;
- Allow cities to determine a range of lot sizes suitable for SB 9 development projects;
- Allow local governments to regulate adequate access for police, fire and other public safety vehicles and equipment;
- Strengthen provisions to ensure speculators and investors do not exploit SB 9 by buying, splitting and flipping parcels.

- Apply current or future CEQA regulations;
- Honor the California Coastal Act of 1976;
- Better define what is meant by "transit" and remove the "parked" car share qualification; and
- Ensure HCD provides Regional Housing Needs Allocation (RHNA) credit for production of SB 9 units.

The City of Berkeley is committed to being part of the solution to the affordable housing shortage and will continue to work collaboratively with you to encourage creation of much needed housing. Thank you for considering the above amendments.

Sincerely,

*Berkeley City Council*

CC: Senator Anna Caballero  
Senator Susan Rubio  
Senator Scott Wiener  
Senator Nancy Skinner  
Assemblymember Buffy Wicks  
Governor Gavin Newsom

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

OPPOSITION TO SB-9 UNLESS AMMENDED

WHEREAS, The City of Berkeley is committed to creating more housing across all income levels and shares the intent and goals of SB 9 (Atkins) to increase housing production; and

WHEREAS, As currently drafted, SB 9 has no mandate for affordability, no provision for local flexibility or local decision-making, bypasses the California Environmental Quality Act (CEQA), and the [California Coastal Act of 1976](#) ; and

WHEREAS, Amendments to the bill would reduce the probability of unintended consequences, such as exacerbating fire evacuation issues or speculator exploitation; and

WHEREAS, SB 9 should clarify that a property owner using SB 9 is limited to constructing two residential units on each parcel; and

WHEREAS, SB 9 should allow local governments to regulate adequate access for police, fire and other public safety vehicles and equipment; and

WHEREAS, The bill should prohibit SB 9 in very high fire hazard severity zones; and

WHEREAS, SB 9 should honor the California Coastal Act of 1976; and

WHEREAS, The bill should allow cities to determine a range of lot sizes suitable for SB 9 development projects; and

WHEREAS, SB 9 should better define what is meant by "transit" and remove the "parked" car share qualification; and

WHEREAS, The bill should ensure HCD provides Regional Housing Needs Allocation (RHNA) credit for production of SB 9 units; and

WHEREAS, SB 9 should allow local governments to take into account local conditions such as hillsides, lot dimensions, natural hazards, available infrastructure, etc.; and

WHEREAS, SB 9 should Include a provision to ensure speculators and investors do not exploit SB 9 by buying, splitting and flipping parcels.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it registers its opposition to SB 9 unless amended.



# **Senate Bill (SB) 9 (Atkins) Detailed Analysis**

*Prepared by RPPG Senior Policy Advisor,  
Dan Carrigg*

## **SB 9 (Atkins) Statewide Rezoning of Single-Family Neighborhoods & Urban Parcel Splits**

**Rezones by state statute virtually all parcels within single-family residential zones<sup>1</sup> in California allowing for the creation of (when combined with state Accessory Dwelling Unit (ADU) law) up to six,<sup>2</sup> eight<sup>3</sup> or even 10<sup>4</sup> units; and further authorizes urban parcel splits<sup>56</sup>, without any local discretionary hearing or review, including compliance with the California Environmental Quality Act (CEQA)<sup>7</sup>, as follows:**

- 1.** US Census data indicates there are nearly 6.9 million detached homes in California. State and local historic zones are proposed to be exempted, but most other limitations are of relatively minor impact to the massive and sweeping scope of this bill. This measure is silent on how/if it applies to homes within common interest developments, or homeowner's associations, where development is tightly regulated by codes, covenants, and restrictions (CC&R's) that are agreed to by contract and administered by local association boards under the Davis-Stirling Act. California homeowners can take little comfort in the reliability of any potential exceptions in this bill. The Legislature's objective of eliminating single-family zoning statewide is clear, so this law can be expected to be amended in the future to further its intent. The passage of multiple bills in recent years to expand ADU laws are an example of how the Legislature can be expected to quickly widen this law once it is established.
- 2.** At a minimum a developer could create six units by doing the following: (1) First add a junior and separate accessory dwelling units as permitted by recently-enacted state ADU law; then (2) use Sec. 65852.21 in SB 9 to split the single-family home into two units; then (3) apply for an urban parcel split under Sec. 66411.7 of SB 9, and build an additional two units on the newly created parcel.
- 3.** A developer could potentially create even two more accessory dwelling units connected to the subdivision of the original single-family home if the division of the main dwelling is considered a condominium. It could then be argued that each condominium is a separate "lot," so each separate unit is entitled to the development of both junior and separate ADU's. While such an interpretation may seem far-fetched, SB 9 only says (Sec. 6582.21 (e)) that ADU's need not be permitted by a local agency when the developer also proposes the parcel to be split. However, the urban parcel split section of SB 9 (Sec. 66411.7) contains no mention of Section 65852.21-, or single-family homes, or ADU's that may be

on the parcel prior to a proposed split. Thus, a savvy developer can exploit this by first maximizing and completing development of the parcel prior to requesting a split. Given SB 9's objective is to preempt local zoning, and prohibit related local public hearings and discretionary decisions, the total amount of allowed units on a parcel will likely trigger litigation over how to interpret SB 9's interactions between dividing single-family homes, adding ADU's and splitting parcels.

4. Yes, potentially 10 units. There is an omission in the draft of SB 9 that raises the question whether a developer could create two junior accessory dwelling units in addition to the two new dwelling units on the split parcel, because Section 67411.7 (h) in SB 9 only refers to a prohibition on accessory dwelling units per Sec. 65852.2, which applies to accessory dwelling units, but does not also reference Sec. 65852.22 which specifically applies to junior accessory dwelling units. This concern is further bolstered by language in SB 10 (Wiener) which implies that each section contains separate authority and reads as follows:

*“(2) Paragraph (1) shall not apply to a project to create no more than two accessory dwelling units and no more than two junior accessory dwelling units per parcel pursuant to Sections 65852.2 and 65852.22 of the Government Code.”*

5. SB 9 prohibits local agencies from requiring the dedication of a right of way to a newly created parcel created in a backyard. Easements for public services and facilities, or access to a public right of way may be required. Presumably, for a parcel with no access to the street, the residents would park on the street and cross the front parcel on a path along the property line.

6. Section 66411.7 in SB 9, which enables urban parcel splits, contain no reference to single family homes, thus enabling a multifamily parcel to be also split.

7. It is hard to imagine a bigger CEQA exemption than proposed by SB 9. If a city or county proposed such zoning changes locally CEQA analysis would apply. SB 9 is designed to work around environmental analysis by dictating specific zoning criteria in state statute, and requiring locals to approve applications “ministerially” without public review. Thus, the state Legislature is avoiding environmental reviews in a proposal that rezones virtually all of the single-family lots in the state.

- **Single-Family Residential Zones:** Permits the division, partial or full tear down of an existing single-family home to create two separate residential units, eligible to be sold separately<sup>8</sup>. Since SB 9 also operates in conjunction with ADU law, it will allow even more units to be built on the parcel without public review. All local ordinances<sup>9</sup> that would physically preclude construction of the two units cannot be enforced. ADU law has separate authority enabling the construction of additional units. Parking is limited to one space per unit<sup>10</sup>, and must be eliminated entirely if within one-half mile of transit or if there is a car share vehicle within one

- **Urban Parcel Splits:** Permits urban lot splits in residential zones to create two equal parcels of a minimum of 1,200 square feet<sup>11</sup>. Prohibits the application of local requirements that would physically preclude the construction of two units to be built on each split (Applies to all residential parcels, not just single-family)<sup>12</sup>
- **Area Limitations:** Parcels must be located in a US Census designated urban area or urban cluster.<sup>13</sup> Parcels within the Coastal Zone are also included<sup>14</sup>. Parcels cannot be located within a fire hazard zone<sup>15</sup>, hazardous waste site, on land designated for conservation, or within a historic district, as those various terms are defined. If parcel is located in an earthquake fault zone, floodplain or regulatory floodway, the development shall be constructed in compliance with applicable state and local requirements.
- **Parcel Occupancy Limitations:** The affected development cannot affect units occupied by a tenant within the prior three years,<sup>16</sup> units subject to local rent control, units that have been withdrawn (Ellis Act) from rental housing within the prior 15 years, or units restricted by covenant for low- and moderate-income
- **Single-Family Home Demolishing:** A single family home may be demolished entirely if a tenant has not lived in the home during the prior three years, otherwise only 25 percent may be demolished, unless a greater percentage is allowed by local
- **Setbacks:** Provides that local building setbacks cannot be greater than what is applied to an existing structure and requires those same setbacks to be applied to a structure constructed in the same location and the same dimension as the existing structure.<sup>17</sup> Related conditions include:
  1. Stipulates that a proposal shall not be rejected solely because it proposes adjacent or connected structures that meeting building code safety standards and are sufficient to allow a separate <sup>18</sup>
  2. Permits local governments to require four-foot setbacks from the rear and side lot lines in other <sup>19</sup>
  3. Requires units that are proposed to be connected to an on-site waste treatment system to have a percolation test completed within the prior five years, or if percolation has been recertified, within 10 year.
- **Parking:** Authorizes a local agency to require parking of one space per unit, but prohibits a parking requirement if:

1. The project is within one-half mile of a high-quality transit corridor or a major transit stop, as defined<sup>20</sup>.
  2. There is a car-share vehicle<sup>21</sup> located within one block of the parcel.
- **Zoning:** Authorizes the proposed development to comply with local “objective” zoning, subdivision, and design standards, but states that such standards cannot have the effect of precluding<sup>22</sup> the development of two units. Defines these terms to mean standards that are uniformly verifiable by reference to an external and uniform benchmark or criterion and involve no personal and subjective judgement by a public official. Stipulates that local agencies shall require that any units constructed under this provision that are to be rented shall be for a term longer than 30 days. (Avoids vacation rentals)<sup>23</sup>
  - Prohibits a local agency from being required to permit an accessory dwelling unit on parcels where an applicant constructs units in compliance with this section and also subdivides the lot into two separate <sup>24</sup>
  - Authorizes a local agency to adopt an ordinance to implement these provisions but stipulates that the adoption of the ordinance shall not be considered a project under the California Environmental Quality Act (CEQA).<sup>25</sup>

8. It is not legally necessary to formally divide the parcel to create two units. Condominiums or townhouses could be created that can be sold separately.

9. Many local ordinances that can be ignored by developers under this law can result in significant environmental and community impacts. Applying such an edict statewide with no understanding of the myriad of conditions that may apply to an individual existing parcel makes no sense. For example, some communities have ordinances seeking to preserve heritage trees, maintain views, or allow space for a community bike path. SB 9 preempts the application of such any such ordinances that physically preclude the development of units.

10. Vehicle ownership in the US average two cars per household. Under SB 9, a developer is able to tear down and convert an existing garage as part of dividing a single-family home into two units. If the developer decides to also build ADU's then this could result in eight or more cars parking on the street. Not requiring adequate parking for new units or eliminating parking entirely will impose a significant burden on adjacent homeowners when residents of the new units' park in front of neighboring properties. Allowing for such major impacts on adjacent property owners statewide in violation of local zoning without opportunity for a public discussion and due process will exacerbate political tensions.

11. Major social equity issues are raised with this provision. 1,200 square foot parcels are shockingly small and will be further limited by four-foot setbacks for ingress and fire access. This will result in rental units crammed together with no green space and certainly no parking. This small square footage will have the most impact in poor neighborhoods that are already densely developed. Executive homes on larger parcels, however, will be less impacted. For instance, a half-acre parcel that is split in half, will still enable separation between units, and areas for greenspace and parking.

12. SB 9 prohibits a lot that has been split pursuant to its provisions from being split again. It also prohibits an owner of a parcel, or, and any person acting in concert with the owner, to split adjacent lots. These provisions are of absolutely no comfort to those concerned about retaining neighborhood integrity. Unlike a local city or county, the Legislature is removed from any direct implications from what this bill actually means to a neighborhood or a homeowner. If SB 9 is allowing parcels as small as 1,200 square feet, why wouldn't legislators entertain changes next year to this provision on behalf of developers who have their eyes on larger lots? Also, for those who think that 1,200 square feet is a minimum, consider that SB 9 requires locals to allow two units on that lot. Also, the limitation on a developer splitting adjacent lots enables multiple work arounds for savvy investors and attorneys who can maintain separate ownership of adjacent parcels, and nothing stops an investor from freely targeting every other parcel for this activity. And other investors can focus on the rest.

13. This exception will increase demand for living on rural parcels outside of these urban census tracts and contribute to further sprawl. Those that have more resources will likely pay a premium to live on parcels not subject to the uncertainties of SB 9. Realtors will likely have to disclose whether a property is within an SB 9 zone.

14. It is surprising that the Coastal Act is included in this bill. How this measure interacts with the application of the Coastal Act, approved by the voters, deserves additional examination.

15. There are various exceptions to this prohibition where state building standards and state fire hazard mitigation measures have been applied. The cross-referenced definition reads as follows: *“Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.”*

16. This limitation is of minor relevance. The economic potential offered by SB 9, far exceeds the impacts of purchasing a desired property and living in for several years, while plans to develop it are prepared. Still given the delay, developers will likely avoid a rental occupied home in a neighborhood and focus on owner-occupied homes, which will accelerate the conversion of a neighborhood to rental properties.

17. This allows for the full teardown, including the garage.
18. “Conveyance” in real estate terminology means “sale.”
19. This allows the entire back half of the property to be used without any open space, other than walking paths. This also will create privacy issues when windows look onto adjoining properties, or other disputes when building remove heritage trees and block views.
20. Corridor with bus service at 15-minute intervals during peak commute hours, and includes existing rail or bus transit stations, ferry terminals served by bus or rail transit, or major transit stops included in regional transportation plan. These distances bear no real correlation with reality. Most residents living in units subject to SB 9 will have cars. Most Californian’s need cars to get to work, take children to school, shop, visit doctor’s offices etc. In most areas of California, outside of urban core areas, transit is insufficient for the variety of most needs. Many also consider transit to be unsafe, and (more recently with COVID) unhealthy.
21. This reference in the bill only mentions a “car share vehicle” within one block but does not mention a car share parking space. A clever developer could park a car share vehicle permanently on the property, or on the street in front of it, and argue that no other parking is required.
22. There is no way of fulling knowing what this exemption from applicable local ordinances really means. Such an exemption means that the laws of a community will apply unequally. For instance, a family that wants to add more room to an existing house cannot do so because of a view ordinance, but a developer who buys the property next door is free to use SB 9 to split the lot and put multiple units on the property blocking the views of others in violation of the ordinance. How is this equitable?
23. Likely difficult to enforce with numerous tenants inhabiting properties.
24. Footnotes 2, 3 and 4 describe ways this can be worked around.
25. Locals are provided little real authority in this measure. No doubt, they will be heavily blamed by residents for the widespread impacts of SB 9 and the absence of any due process for those affected.

***Dan Carrigg is a Senior Policy Advisor with the Renne Public Policy Group. As the retired Deputy Executive and Legislative Director with the League of California Cities, Carrigg brings a wealth of experience to the firm in legislative analysis, policy development, strategy, and advocacy on a wide range of issues affecting local government. His expertise in California housing and land use policy is truly unmatched—having spent nearly 30 years as a land use legislative advocate and former Assembly Housing and Community Development Policy Committee Consultant.***

AMENDED IN SENATE APRIL 27, 2021

AMENDED IN SENATE APRIL 05, 2021

CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

**SENATE BILL**

**NO. 9**

Introduced by Senators Atkins, Caballero, Rubio, and Wiener  
(Coauthors: Senators ~~Gonzalez~~ Cortese, Gonzalez, and McGuire)  
(~~Coauthor: Assembly Member Robert Rivas~~)(Coauthors: Assembly Members Robert Rivas  
and Wicks)

December 07, 2020

An act to amend Section 66452.6 of, and to add Sections 65852.21 and 66411.7 to, the  
Government Code, relating to land use.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 9, as amended, Atkins. Housing development: approvals.

The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions.

This bill, among other things, would require a proposed housing development containing no more than 2 residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements, including, but not limited to, that the proposed housing development would not require demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low

income, that the proposed housing development does not allow for the demolition of more than 25% of the existing exterior structural walls, except as provided, and that the development is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving the construction of 2 residential units, including, but not limited to, authorizing a ~~city or county~~ *local agency* to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of up to 2 units or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances.

The Subdivision Map Act vests the authority to regulate and control the design and improvement of subdivisions in the legislative body of a local agency and sets forth procedures governing the local agency's processing, approval, conditional approval or disapproval, and filing of tentative, final, and parcel maps, and the modification of those maps. Under the Subdivision Map Act, an approved or conditionally approved tentative map expires 24 months after its approval or conditional approval or after any additional period of time as prescribed by local ordinance, not to exceed an additional 12 months, except as provided.

This bill, among other things, would require a ~~city or county~~ *local agency* to ministerially approve a parcel map ~~or tentative and final map~~ for an urban lot split that meets certain requirements, including, but not limited to, that the urban lot split would not require the demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the parcel is located within a *single-family* residential zone, and that the parcel is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving an urban lot split, including, but not limited to, authorizing a ~~city or county~~ *local agency* to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of 2 units, as defined, on either of the resulting parcels or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances. The bill, until January 1, 2027, would prohibit a local agency from imposing an owner occupancy requirement on applicants unless specified conditions are met.

The bill would also extend the limit on the additional period that may be provided by ordinance, as described above, from 12 months to 24 months and would make other conforming or nonsubstantive changes.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment. CEQA does not apply to the approval of ministerial projects.

This bill, by establishing the ministerial review processes described above, would thereby exempt the approval of projects subject to those processes from CEQA.

The California Coastal Act of 1976 provides for the planning and regulation of development, under a coastal development permit process, within the coastal zone, as defined, that shall be based on various coastal resources planning and management policies set forth in the act.

This bill would exempt a local ~~government~~ *agency* from being required to hold public hearings for coastal development permit applications for housing developments and urban lot splits pursuant to the above provisions.



By increasing the duties of local agencies with respect to land use regulations, the bill would impose a state-mandated local program.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

### **DIGEST KEY**

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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### **BILL TEXT**

### **THE PEOPLE OF THE STATE OF CALIFORNIA DO**

### **ENACT AS FOLLOWS:**

#### **SECTION 1.**

Section 65852.21 is added to the Government Code, to read:

#### **65852.21.**

(a) A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the following requirements:

(1) The parcel subject to the proposed housing development is located within a ~~city~~ city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(3) Notwithstanding any provision of this section or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:

(A) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) Housing that has been occupied by a tenant in the last three years.

(4) The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the housing development meets at least one of the following conditions:

(A) If a local ordinance so allows.

(B) The site has not been occupied by a tenant in the last three years.

(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(b) (1) Notwithstanding any local law and except as provided in paragraph (2), a ~~city or county~~ *local agency* may impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this section.

(2) (A) The ~~city or county~~ *local agency* shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

(B) (i) Notwithstanding subparagraph (A), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), a local ~~government~~ *agency* may require a setback of up to four feet from the side and rear lot lines.

(c) In addition to any conditions established in accordance with subdivision (b), a local agency may require any of the following conditions when considering an application for two residential units as provided for in this section:

(1) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last ~~five~~ *5* years, or, if the percolation test has been recertified, within the last 10 years.

(d) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(e) Notwithstanding Section ~~65852.2, 65852.2 or 65852.22~~, a local agency shall not be required to permit an accessory dwelling unit *or a junior accessory dwelling unit* on parcels that use both the authority contained within this section and the authority contained in Section 66411.7.

(f) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(g) Local agencies shall include units constructed pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(h) For purposes of this section, all of the following apply:

(1) A housing development contains two residential units if the development proposes no more than two new units or if it proposes to add one new unit to one existing unit.

(2) The terms “objective zoning standards,” “objective subdivision standards,” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a ~~city or county~~, *local agency*, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

*(3) “Local agency” means a city, county, or city and county, whether general law or chartered.*

(i) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local ~~government~~ *agency* shall not be required to

hold public hearings for coastal development permit applications for a housing development pursuant to this section.

SEC. 2.

Section 66411.7 is added to the Government Code, to read:

66411.7.

(a) Notwithstanding any other provision of this division and any local law, a ~~city or county~~ *local agency* shall ministerially approve, as set forth in this section, a parcel map ~~or tentative and final map~~ for an urban lot split ~~that~~ *only if the local agency determines that the parcel map for the urban lot split* meets all the following requirements:

(1) The parcel map ~~or tentative and final map~~ subdivides an existing parcel to create *no more than* two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.

(2) (A) Except as provided in subparagraph (B), both newly created parcels are no smaller than 1,200 square feet.

(B) A local agency may by ordinance adopt a smaller minimum lot size subject to ministerial approval under this subdivision.

(3) The parcel being subdivided meets all the following requirements:

(A) The parcel is located within a *single-family* residential zone.

(B) The parcel subject to the proposed urban lot split is located within a ~~city~~ *city*, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(C) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(D) The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(iv) Housing that has been occupied by a tenant in the last three years.

(E) The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(F) The parcel has not been established through prior exercise of an urban lot split as provided for in this section.

(G) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this section.

(b) An application for *a parcel map for* an urban lot split shall be approved in accordance with the following requirements:

(1) A local agency shall approve or deny an application for *a parcel map for* an urban lot split ministerially without discretionary review.

(2) A local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

(3) Notwithstanding Section 66411.1, a local agency shall not impose regulations that require dedications of rights-of-way or the construction of offsite improvements for the parcels being created as a condition of issuing a parcel map ~~or tentative and final map~~ for an urban lot ~~split~~. *split pursuant to this section.*

(c) (1) Except as provided in paragraph (2), notwithstanding any local law, a ~~city or county~~ *local agency* may impose objective zoning standards, objective subdivision standards, and objective design review standards applicable to a parcel created by an urban lot split that do not conflict with this section.

(2) A local agency shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.

(3) (A) Notwithstanding paragraph (2), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), a local ~~government~~ *agency* may require a setback of up to four feet from the side and rear lot lines.

(d) In addition to any conditions established in accordance with ~~subdivision (c)~~, *this section*, a local agency may require any of the following conditions when considering an application for *a parcel map* for an urban lot split:

(1) Easements required for the provision of public services and facilities.

(2) A requirement that the parcels have access to, provide access to, or adjoin the public right-of-way.

(3) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(e) A local agency shall require that the uses allowed on a lot created by this section be limited to residential uses.

(f) (1) A local agency may impose an owner occupancy requirement on an applicant for an urban lot split that meets one of the following conditions:

(A) The applicant intends to occupy one of the housing units as their principal residence for a minimum of one year from the date of the approval of the urban lot split.

(B) The applicant is a “qualified nonprofit corporation.” A “qualified nonprofit corporation” means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under either of the following:

(i) Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

(ii) Section 214.18 of the Revenue and Taxation Code for properties owned by a community land trust.

(2) A local agency shall not impose additional owner occupancy standards, other than provided for in this subdivision, on an urban lot split pursuant to this section.

(3) This subdivision shall become inoperative on January 1, 2027.

(g) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(h) A local agency shall not require, as a condition for ministerial approval of a ~~permit~~ *parcel map* application for the creation of an urban lot split, the correction of nonconforming zoning conditions.

(i) (1) Notwithstanding any provision of Section 65852.2, Section 65852.21, Section 65852.22, Section 65915, or this section, a local agency shall not be required to permit more than two units on a parcel created through the exercise of the authority contained within this section.

(2) For the purposes of this section, “unit” means any dwelling unit, including, but not limited to, a unit or units created pursuant to Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Section 65852.2, or a junior accessory dwelling unit as defined in Section 65852.22.

(j) Notwithstanding paragraph (3) of subdivision (c), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(k) Local agencies shall include the number of applications for *parcel maps for* urban lot splits pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(l) For purposes of this section, *both of the terms “objective following shall apply:*

*(1) “Objective zoning standards,” “objective subdivision standards,” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a ~~city or county~~, local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.*

*(2) “Local agency” means a city, county, or city and county, whether general law or chartered.*

(m) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(n) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local ~~government~~ agency shall not be required to hold public hearings for coastal development permit applications for urban lot splits pursuant to this section.

### SEC. 3.

Section 66452.6 of the Government Code is amended to read:

#### 66452.6.

(a) (1) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 24 months. However, if the subdivider is required to expend two hundred thirty-six thousand seven hundred ninety dollars (\$236,790) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way that abut the boundary of the property to be subdivided and that are reasonably related to the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 48 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps that may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

(2) Commencing January 1, 2012, and each calendar year thereafter, the amount of two hundred thirty-six thousand seven hundred ninety dollars (\$236,790) shall be annually increased by operation of law according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The effective date of each annual adjustment shall be March 1. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

(3) "Public improvements," as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency that approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed before the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of six years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Before the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies that regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action before expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency that owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency that owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency that owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

**SEC. 4.**

The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Sections 1 and 2 of this act adding Sections 65852.21 and 66411.7 to the Government Code and Section 3 of this act amending Section 66452.6 of the Government Code apply to all cities, including charter cities.

**SEC. 5.**

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.







Office of the City Manager

PUBLIC HEARING

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Department of Public Works

Subject: Levy and Collection of Fiscal Year 2022 Street Lighting Assessments

RECOMMENDATION

Conduct a public hearing and upon conclusion adopt two Resolutions confirming the assessments for the Berkeley Street Lighting Assessment District No. 1982-1 and the Street Lighting Assessment District 2018, approving the Engineer's Reports, and authorizing the levying and collection of assessments in Fiscal Year 2022.

FISCAL IMPACTS OF RECOMMENDATION

On May 25, 2021, Council adopted Resolutions No. 69,882–N.S. (District No. 1982-1) and Resolution No. 69,883–N.S. (District 2018) declaring the City's intent to levy and collect FY 2022 assessments for Berkeley Street Lighting Assessment District No. 1982-1 and Street Lighting Assessment District 2018, collectively referred to herein as the Districts; preliminarily approving the Engineer's Reports for the Districts; and setting a public hearing for the June 15, 2021 Council Meeting.

The attached Resolutions confirm the assessments, approve the final Engineer's Reports, and authorize the levying and collection of the assessment in Fiscal Year 2022. The assessments are to be filed with the Alameda County Auditor and included on the County's assessment roll. After collection by the County the total amount of the assessment minus a county collection fee is paid to the City of Berkeley. The revenue is posted in the Street Light Assessment District Fund (Fund 142).

The City's Street Lighting Program in FY 2022 has projected expenditures in the amount of \$2,881,369. FY 2022 revenue from proposed street lighting assessment is estimated at \$2,008,042 resulting in a shortfall of approximately \$873,328. This deficit can be covered by the projected available fund balance in the Street Light Assessment District Fund. A summary of FY 2022 revenue, expenditures and fund balances for the assessment districts is shown in Table 1.

**Table 1: FY 2022 Street Light Assessment Fund Forecast**

<b>Estimated Beginning Balance (Fund 142)</b>	<b>\$ 2,031,342<sup>1</sup></b>
<b>Street Lighting Program Expenditures</b>	<b>\$ 2,881,369</b>
<b>Projected Assessments</b>	
Street Light Assessment District 1982-1	\$ 1,398,111
Street Light Assessment District 2018	\$ 644,657
County Collection Fee (1.7%)	\$ (34,727)
<b>Projected Net Assessments</b>	<b>\$ 2,008,041</b>
<b>Deficit</b>	<b>\$ (873,328)</b>
<b>Estimated End Balance (Fund 142)</b>	<b>\$ 1,158,014</b>

Allowable annual adjustments of the 2018 District assessment rates are expected to raise revenues over the coming years.

#### CURRENT SITUATION AND ITS EFFECTS

The proposed FY 2022 rates for Assessment District 1982-1 (1982 District) are incorporated into the Engineer's Report (Attachment 3) and reflect no changes to assessment rates in FY 2022. Accordingly, this action is exempt from the notice, protest, and hearing requirements of State Proposition 218 as set forth in Government Code Section 53753.5 (Article XIII D, Sec. 5). Any increase or change in formula for the assessments would make the annual assessment subject to procedures and approval process of Proposition 218 (Government Code Section 53750-53754). Table 2 details prior year and proposed FY 2021 assessment rates for this district.

**Table 2: Street Lighting Assessment District No. 1982-1 Rate Schedule**

<b>Rate Category</b>	<b>Assessment FY 2021</b>	<b>Proposed Assessment FY 2022</b>	<b>Unit</b>
Residential and Institutional	\$ 0.0108	\$ 0.0108	BSF <sup>2</sup>
Industrial and Utility	\$ 0.0216	\$ 0.0216	BSF
Commercial	\$ 0.0432	\$ 0.0432	BSF

The assessment for Street Lighting Assessment District 2018 (2018 District) is subject to an annual adjustment tied to the Consumer Price Index-U for the San Francisco Bay Area as of December of each succeeding year (the "CPI"), with a maximum annual adjustment not to exceed 3%. For the period beginning in December 2019 and ending

<sup>1</sup> Deferred street lighting improvements and maintenance over the last two fiscal years have led to a buildup of fund reserves. A portion of these surplus funds will be allocated to the development of a Street Lighting Master Plan that will help direct capital spending in future fiscal years.

<sup>2</sup> Building Square Footage (BSF)

in December 2020, the CPI increased by 2.00%<sup>3</sup>; therefore the assessment CPI adjustment for Fiscal Year 2022 may not exceed 2.00%. As approved by voters, the total annual adjustment may be calculated by taking the sum of the 1982-1 District assessment and the 2018 District assessment, and multiplying the sum by the allowable CPI increase. Calculating the adjustment in this manner allows for the inclusion of a 1982-1 District adjustment as part of the 2018 District adjustment.

These rate increases and the methodology used in their calculation are in accordance with the voter approved measure; therefore the proposed adjustments are exempt from the notice, protest, and hearing requirements of State Proposition 218 as set forth in Government Code Section 53753.5 (Article XII D, Sec. 5). Table 3 details FY 2021 and proposed FY 2022 assessment rates for this district. A detailed calculation of the annual adjustment and the corresponding rate increases are included in the 2018 District Engineer's Report (Attachment 4).

**Table 3: Street Lighting Assessment District 2018 Rate Schedule**

Rate Category	Assessment FY 2021	Proposed Assessment FY 2022	Unit
<b>Residential</b>			
Single Family	\$ 13.32	\$ 14.12	parcel
Multi-Family<5 units	\$ 10.66	\$ 11.30	unit
Multi-Family 5 or more units	\$ 7.98	\$ 8.47	unit
Condominium	\$ 10.66	\$ 11.30	parcel
Mobile Home	\$ 6.66	\$ 7.06	unit
Multiple SFR on parcel	\$ 13.32	\$ 14.12	unit
<b>Non-Residential</b>			
General Commercial	\$ 199.78	\$ 211.82	acre
Industrial / Warehouse	\$ 19.98	\$ 21.18	acre
Auto Repair	\$ 133.18	\$ 141.22	acre
Hotel / Motel / Boarding	\$ 133.18	\$ 141.22	acre
Hospital	\$ 83.24	\$ 88.26	acre
Retirement Home	\$ 16.64	\$ 17.65	acre
School / Day Care	\$ 29.96	\$ 31.77	acre
Medical / Dental / Vet	\$ 166.48	\$ 176.52	acre
Church	\$ 9.98	\$ 10.59	acre
Mortuary	\$ 3.32	\$ 3.53	acre
Recreational	\$ 33.30	\$ 35.30	acre
Parking / Transportation	\$ 66.60	\$ 70.61	acre
Mini Storage	\$ 9.98	\$ 10.59	acre
Office	\$ 49.94	\$ 52.96	acre
Bank	\$ 166.48	\$ 176.52	acre
Park / Open Space / Agriculture	\$ 0.66	\$ 0.71	acre
Vacant	<i>Not assessed</i>		

Revenue from the assessments will provide needed funding for the installation, maintenance, and servicing of public lighting facilities, including but not limited to street

<sup>3</sup> Bureau of Labor Statistics, Data Series CUUSS49BSA0

lights, traffic signals, and related electrical facilities. The improvements and services provided support the Strategic Plan goals of creating a resilient, safe, connected, and prepared city and of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities.

### BACKGROUND

The Berkeley Street Lighting Assessment District No. 1982-1 was established under the Landscaping and Lighting Act of 1972 (Streets and Highway Code Section 22620-22631) on July 27, 1982 (Resolution No. 51,449-N.S.)<sup>4</sup>. The Street Lighting Assessment District 2018 was established under the same Act on June 12, 2018 (Resolution No. 68,482-N.S.). The Act requires the City Council to hold a public hearing each year to consider adoption of an annual budget and approve changes to the Engineer's Report. At this hearing owners of assessed properties within the district are allowed to make an oral or written protest against the annual levy.

During the course of, or upon conclusion of the public hearing, City Council may order changes in any of the matters provided in the respective Engineer's Report, including changes in improvements; zones within the assessment district; and the proposed district diagram, or the proposed assessment, as long as any proposed changes are less than the proposed annual levy. With the incorporation of any changes made by Council to the Engineer's Report, it is then adopted upon supporting vote by Council confirming the diagrams, assessments, and levying assessments for the coming Fiscal Year.

The City's Engineering Division has filed the FY 2022 Engineer's Reports for the assessment districts with the City Clerk. Copies of the Engineer's Reports with FY 2022 assessments will be available for review on the City's Website<sup>5</sup> after this Council Action, and at the reference desk of the main branch of the Berkeley Public Library and at the City Clerk's Office when the City offices reopen for public business.

### ENVIRONMENTAL SUSTAINABILITY

The City exclusively uses LED (light emitting diode) street lighting. LED lights provide environmental benefits by reducing the level of greenhouse gases emitted; reducing level of toxic materials disposed; maximization of energy and energy cost savings; achieving the City's illumination standards; and minimizing administration costs and staff time for street light maintenance.

### RATIONALE FOR RECOMMENDATION

<sup>4</sup> State of California legislation (Streets & Highways §22500) allows local governmental agencies to form Landscape & Lighting Maintenance Districts. A 1972 Act Landscaping and Lighting District is a flexible tool used by local government agencies to pay for landscaping, lighting and other improvements and services in public areas. It is based on the concept of assessing only those properties that benefit from improvements financed, either directly, or indirectly through increased property values.

<http://www.californiataxdata.com/pdf/1972LLact.pdf>

<sup>5</sup> <https://www.cityofberkeley.info/propertytaxes/>

Failure to conduct a public hearing and adopt the Resolutions would result in non-compliance of the requirements set forth in the Landscaping and Lighting Act of 1972 thus preventing the City from levying assessments in FY 2022. The District assessments are needed to establish financial sustainability for the Program and to avoid significant reductions in service.

CONTACT PERSON

Liam Garland, Director, Department of Public Works, (510) 981-6303

Joe Enke, Acting Manager of Engineering/City Engineer, (510) 981-6411

Attachments:

- 1: Resolution – Levy and Collection of FY 2022 Assessments for Street Lighting Assessment District 1982-1
- 2: Resolution – Levy and Collection of FY 2022 Assessments for Street Lighting Assessment District 2018
- 3: Engineer’s Report - Street Lighting Assessment District 1982-1 Fiscal Year 2022
- 4: Engineer’s Report - Street Lighting Assessment District 2018 Fiscal Year 2022

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

LEVY AND COLLECTION OF FY 2022 ASSESSMENTS FOR STREET LIGHTING  
ASSESSMENT DISTRICT 1982-1

WHEREAS, the Council of the City of Berkeley adopted Resolution No. 69,882-N.S. declaring the City's intent to levy and collect assessments for FY 2022, approving the preliminary Engineer's Report, dated May 2021, for the Berkeley Lighting Assessment District 1982-1, and setting a public hearing for June 15, 2021; at a regular Council Meeting; and

WHEREAS, the City Clerk published notice of the public hearing 10 days prior to the public hearing in accordance with Streets and Highway Code Sections 22625, 22626, 22552, and 22553 and Government Code Section 6061 in a newspaper with general circulation; and

WHEREAS, a public hearing was held on Tuesday, June 15, 2021 at the regular City Council meeting held via videoconference and teleconference pursuant to Governor's Executive Order N-29-20; and all interested persons were afforded the opportunity to hear and be heard or file a written protest with the Clerk; and

WHEREAS, the Council considered all public comments received against the levy of an annual assessment at the same rate as was levied in FY 2021 and the assessment is in compliance with the Landscape and Lighting Act of 1972.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley approves the final Engineer's Report dated May 2021 and authorizes the levy and collection of assessments within Berkeley Street Lighting Assessment District No. 1982-1 for FY 2022. The area of Land to be assessed is located in the City of Berkeley, Alameda County.

BE IT FURTHER RESOLVED that improvements to be made in this assessment district are generally described as maintenance or servicing of existing and future public lighting facilities, including, but not limited to street lights, traffic signals, and related electrical facilities; and the installation and construction of public lighting including but not limited to grading, clearing, removal of debris, installation and construction of curbs, gutters, walls, sidewalk, paving, irrigation, and drainage as needed for the installation of public lighting or related electrical facilities.

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

LEVY AND COLLECTION OF FY 2022 ASSESSMENTS FOR STREET LIGHTING  
ASSESSMENT DISTRICT 2018

WHEREAS, the Council of the City of Berkeley adopted Resolution No. 69,883-N.S. declaring the City's intent to levy and collect assessments for FY 2022, approving the preliminary Engineer's Report, dated May 2021, for the Street Lighting Assessment District 2018, and setting a public hearing for June 15, 2021; at a regular Council Meeting; and

WHEREAS, the City Clerk published notice of the public hearing 10 days prior to the public hearing in accordance with Streets and Highway Code Sections 22625, 22626, 22552, and 22553 and Government Code Section 6061 in a newspaper with general circulation; and

WHEREAS, a public hearing was held on Tuesday, June 15, 2021 at the regular City Council meeting held via videoconference and teleconference pursuant to Governor's Executive Order N-29-20; and all interested persons were afforded the opportunity to hear and be heard or file a written protest with the Clerk; and

WHEREAS, the Council considered all public comments received against the levy of an annual assessment at the proposed assessment rate of FOURTEEN DOLLARS AND TWELVE CENTS (\$14.12) per single-family equivalent benefit unit; and

WHEREAS, the proposed annual assessment adjustment is in accordance with formulas established when the assessment district was formed and the assessment is in compliance with the provisions of Proposition 2018 (Article XIII D of the California Constitution) and the Landscape and Lighting Act of 1972.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley approves the final Engineer's Report dated May 2021 and authorizes the levy and collection of assessments within Street Lighting Assessment District 2018 for FY 2022. The area of Land to be assessed is located in the City of Berkeley, Alameda County.

BE IT FURTHER RESOLVED that improvements to be made in this assessment district are generally described as maintenance or servicing of existing and future public lighting facilities, including, but not limited to street lights, traffic signals, and related electrical facilities; and the installation and construction of public lighting including but not limited to grading, clearing, removal of debris, installation and construction of curbs, gutters, walls, sidewalk, paving, irrigation, and drainage as needed for the installation of public lighting or related electrical facilities.

CITY OF BERKELEY

**STREET LIGHTING  
ASSESSMENT DISTRICT No. 1982-1**

**ENGINEER'S REPORT**

on the  
Levy of an Assessment  
for  
Fiscal Year 2022

May 2021

Prepared by

JOSEPH ENKE, PE  
CITY OF BERKELEY  
DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION



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**BACKGROUND**

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By its Resolution 51,230 N.S., adopted April 6, 1982, the Berkeley City Council initiated proceedings under the provisions of Division 15, Part 2, of the California Streets and Highways Code, entitled "Landscaping and Lighting Act of 1972". The required public hearing was held on July 20, 1982, at which time the Council ordered the improvements and the formation of the assessment district, and confirmed the diagram and assessment. The district so formed was designated the "City of Berkeley Street Lighting Assessment District 1982-1". Assessments have been levied for the 1983 through 2021 fiscal years.

This report was prepared and filed pursuant to Division 15, Part 2, of the California Streets and Highway Code Section 2250, and is exempt from Government Code Section 53753 since the proposed assessment for FY 2022 will not be increased.

**PLANS AND SPECIFICATIONS**

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The plans and specifications for this assessment district were prepared and filed with the Engineer's Report for the 1983 fiscal year, which plans and specifications are incorporated herein by this reference thereto.

**METHODOLOGY**

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The benefit to individual parcels within the Assessment District was established in 1982 based on the median light intensity a parcel receives. Parcel's Land Use Code (LUC) is used to categorize the parcels. The assessment is calculated by multiplying the building square footage on the parcel times the rate of its category. The rate structure has three categories: 1) Residential and Institutional, 2) Industrial, 3) Commercial. An industrial area has twice the median light intensity of a residential area and a commercial area has four times the median light intensity; therefore, the rates are two and four times higher, respectively, than the residential rate. The rates are:

Residential and Institutional	\$0.0108/Building Square Footage
Industrial and Utility	\$0.0216/Building Square Footage
Commercial	\$0.0432/Building Square Footage

**ESTIMATE OF COSTS**

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The improvements to be made in this assessment district are generally described as the maintenance or servicing of existing and future public lighting facilities, including, but not limited to street lights, traffic signals, and related electrical facilities; and the installation and construction of public lighting including grading, clearing, removal of debris, installation and construction of curbs, gutters, walls, sidewalks, paving, irrigation, and drainage as needed for the installation of public lighting or related electrical facilities.

An estimate of costs for the maintenance of the improvements is provided in the fiscal year (FY) 2022 Street Light Assessment Fund (Fund 142) forecast provided below. A more detailed breakdown of costs is included as Appendix A.

**Table 1- FY 2022 Street Light Fund Forecast**

<b>Estimated Beginning Balance Street Lighting Fund (142)</b>	<b>\$ 2,031,342</b>
<b>Costs</b>	
<b>Personnel Costs</b>	<b>\$ 1,110,571</b>
<b>Non-Personnel Costs</b>	
Supplies, etc...	\$ 96,756
Debt Service	\$ 370,451
PG&E Electric Costs	\$ 378,233
Infrastructure/Streets	\$ 214,715
Deferred Capital Maintenance	\$ 443,026
Indirect Costs	\$ 62,577
Operating Transfer Out	\$ 12,120
Internal Services	\$ 192,920
<b>Subtotal Non-Personnel Costs</b>	<b>\$ 1,770,798</b>
<b>Total Costs</b>	<b>\$ 2,881,369</b>
<b>Assessments</b>	
Street Light Assessment District 1982-1	\$ 1,398,111
Street Light Assessment District 2018	\$ 644,657
County Collection Fee (1.7%)	\$ (34,727)
<b>Net Assessment</b>	<b>\$ 2,008,041</b>
<b>Deficit</b>	<b>\$ (873,328)</b>
<b>Estimated End Balance Street Lighting Fund (142)</b>	<b>\$ 1,158,014</b>

## **DIAGRAM**

The diagram for this assessment district was prepared and filed with the Engineer's Report for the 1983 fiscal year.

**ASSESSMENT**

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Except as described below, the assessments to be made against the assessable lots and parcels of land within this assessment district are contained in the "2021 Assessment Roll" for this district, which roll is filed herewith and incorporated herein by this reference thereto.

Said assessment roll filed herewith is based on data contained in the City's 2021 Library Tax tape and the County Assessor's 2021 maps. In the event that data contained in the 2021 Library Tax tape and 2021 maps, when issued, conflict therewith, assessments to be made against the affected parcels for this 2022 Fiscal Year shall be based upon the revised data contained in said 2022 tape and 2022 maps.

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Joseph Enke, RCE 49027  
Engineer of Work

Filed in the office of the City Clerk of the City of Berkeley, Alameda County, California,  
this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

Filed in the office of the County Auditor-Controller of Alameda County, California,  
this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Melissa Wilk  
County Auditor-Controller

**APPENDIX A: DETAIL OF STREET LIGHTING COSTS IN FY 2022**

	Personnel	Supplies, etc	Debt Service	PGE Electric	Infrastructure/ Streets	Deferred Capital/ Maintenance	Indirect Costs	Operating Transfer Out	Internal Services	TOTALS
Customer Service - 311									\$ 30,483	\$ 30,483
Revenue Collection	\$ 19,777						\$ 1,541			\$ 21,318
Financial Admin Services								\$ 364		\$ 364
Corp Yard Administration								\$ 1,091		\$ 1,091
General Engineering								\$ 121		\$ 121
Communication System Maintenance		\$ 1,000								\$ 1,000
Street Lighting Maintenance	\$ 1,090,794	\$ 83,756	\$ 370,451	\$ 369,169	\$ 214,715	\$ 443,026	\$ 61,036	\$ 10,544	\$ 146,301	\$ 2,789,792
Traffic Signal Maintenance										\$ -
Corp Yard Maintenance		\$ 12,000		\$ 9,064					\$ 16,136	\$ 37,200
<b>TOTALS</b>	<b>\$ 1,110,571</b>	<b>\$ 96,756</b>	<b>\$ 370,451</b>	<b>\$ 378,233</b>	<b>\$ 214,715</b>	<b>\$ 443,026</b>	<b>\$ 62,577</b>	<b>\$ 12,120</b>	<b>\$ 192,920</b>	<b>\$ 2,881,369</b>

**APPENDIX B: FY 2022 ASSESSMENT ROLL (SORTED BY APN)**

CITY OF BERKELEY

**STREET LIGHTING  
ASSESSMENT DISTRICT 1982-1**

**FY 2022 Assessment Roll  
Listed by  
Assessor's Parcel Number**

May 2021

Engineer's Report with Full Listing of Assessments by Assessor's Parcel Number will be available at the following locations on or after May 13, 2021:

- City Clerk's Office, 2180 Milvia Street, Berkeley, CA 94704
- Main Berkeley Library, Reference Desk, 2090 Kittredge Avenue, Berkeley, CA 94704
- Public Works Engineering Division, 1947 Center Street, 4th Floor, Berkeley, CA 94704

These documents will be available to the public when the Library and City offices reopen for public business. Electronic copies of the reports and complete assessment rolls are available to the public upon request.

Prepared by

JOSEPH ENKE, PE  
CITY OF BERKELEY  
DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION

**APPENDIX C: FY 2022 ASSESSMENT ROLL (SORTED BY STREET ADDRESS)**

CITY OF BERKELEY

**STREET LIGHTING  
ASSESSMENT DISTRICT 1982-1**

**FY 2022 Assessment Roll  
Listed by  
Street Address**

May 2021

Engineer's Report with Full Assessments Roll by Street Address will be available at the following locations on or after May 13, 2021:

- City Clerk's Office, 2180 Milvia Street, Berkeley, CA 94704
  - Main Berkeley Library, Reference Desk, 2090 Kittredge Avenue, Berkeley, CA 94704
  - Public Works Engineering Division, 1947 Center Street, 4<sup>th</sup> Floor, Berkeley, CA 94704
- These documents will be available to the public when the Library and City offices reopen for public business. Electronic copies of the reports and complete assessment rolls are available to the public upon request.

Prepared by

JOSEPH ENKE, PE  
CITY OF BERKELEY  
DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION

CITY OF BERKELEY

**APPENDIX D: ASSESSMENT DISTRICT NO. 1982-1 SUMMARY**

Type	Rate	Assessment
Residential	0.0108	\$733,937.58
Commercial	0.0432	\$500,209.14
Industrial	0.0216	\$163,964.70
<b>Total</b>		<b>\$1,398,111.42</b>



CITY OF BERKELEY

# **STREET LIGHTING ASSESSMENT DISTRICT 2018**

## **ENGINEER'S REPORT**

on the  
Levy of an Assessment  
for  
Fiscal Year 2022

May 2021

Prepared by

JOSEPH ENKE, PE  
CITY OF BERKELEY  
DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION

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## **INTRODUCTION**

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The City of Berkeley (“City”) provides maintenance and servicing of certain publicly-owned streetlights throughout the City. In order to fund the installation, maintenance and operation (the “Services”) of these improvements (“Improvements”), the City formed a city-wide streetlight assessment district in 1982. The district so formed was designated the “City of Berkeley Street Lighting Assessment District 1982-1” (SLAD 1982-1) and assessments have been levied for the 1983 through 2021 fiscal years.

The Street Lighting Assessment District 1982-1 rates have historically failed to generate sufficient revenue to sustain operations of the City’s Street Lighting Program (Program). For a period beginning in FY 2006 the General Fund (011) subsidized the City’s Street Light Assessment Fund (142), but the subsidy was discontinued as part of a City-wide budget balancing measure in FY 2018 when the General Fund faced a deficit. Subsequently, in FY 2018 the City used available Street Lighting Fund balance to cover the operating deficit of the Program.

To establish financial sustainability for the Streetlight Fund and avoid significant reductions in service levels, the City moved forward with the formation a new district, Street Lighting Assessment District 2018 (“SLAD 2018” or “District”). The District would be formed separately and leave the 1982 assessment’s structure in place. By Resolution 68,333 N.S., adopted February 13, 2018, the Berkeley City Council initiated proceedings for the formation of the District pursuant to the provisions of Division 15, Part 2, of the California Streets and Highways Code, entitled “Landscaping and Lighting Act of 1972” (Act). Balloting procedures in accordance with Proposition 218 (Articles XIII C and XIII D of the California Constitution) and pertinent statutes, were adopted by Resolution 68,376-N.S. Following tabulation of returned ballots and confirmation of voter approval, Council adopted Resolution 68,482-N.S., dated June 12, 2018, accepting the ballot tabulation results, formally establishing the District, and ordering that assessments be levied. SLAD 2018 assessment have been levied for the 2019 through 2021 fiscal years.

## **PLANS AND SPECIFICATIONS**

The work and Improvements proposed to be undertaken by the City and the cost paid from the levy of the annual assessment provide special benefit to assessor parcels within the District. Consistent with the Act, the Improvements are generally described as follows:

- The installation, maintenance, and servicing of local streetlights in close proximity to certain lots and parcels which provide a direct special benefit to such lots or parcels.
- The installation, maintenance, and servicing of peripheral streetlight structures which provide a special benefit to all the assessable parcels within the District whether or not such parcels are in close proximity to such lighting.
- The installation or construction of public lighting facilities, or the acquisition of any new improvements.

Plans and Specifications for the Improvements for the District are voluminous and are not bound in this Report but by this reference are incorporated and made a part of this Report. The Plans and Specifications are on file in the office of the Public Works Director where they are available for public inspection.

Article XIII D of the California Constitution defines "maintenance and servicing expenses" as, "the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care and supervision necessary to properly operate and maintain a permanent public improvement". The Improvement funding includes, but is not limited to, the removal, repair, replacement or relocation of light standards, poles, bulbs, fixtures and appurtenances, electrical energy, supplies, engineering and incidental costs relating to the maintenance and servicing of the local lighting improvements benefiting the parcels within the District.

The Improvements to be maintained and serviced within the District are to be part of the local streetlight system of the City of Berkeley that confers special benefit to the District's parcels. The specific location of local streetlight Improvements within the City can be found in the Streetlight Condition Assessment by Tanko Lighting, which is on file in the office of the Director of Public Works, where it is available for public inspection.

**FISCAL YEAR 2022 – STREET LIGHT ASSESSMENT FUND FORECAST**

A summary FY 2022 forecast for the Street Light Assessment Fund is provided in the table below.

**Table 1- FY 2022 Street Light Assessment Fund Forecast**

<b>Estimated Beginning Balance Street Lighting Fund (142)</b>	<b>\$ 2,031,342</b>
<b>Costs</b>	
<b>Personnel Costs</b>	<b>\$ 1,110,571</b>
<b>Non-Personnel Costs</b>	
Supplies, etc.	\$ 96,756
Debt Service	\$ 370,451
PG&E Electric Costs	\$ 378,233
Infrastructure/Streets	\$ 214,715
Deferred Capital Maintenance	\$ 443,026
Indirect Costs	\$ 62,577
Operating Transfer Out	\$ 12,120
Internal Services	\$ 192,920
<b>Subtotal Non-Personnel Costs</b>	<b>\$ 1,770,798</b>
<b>Total Costs</b>	<b>\$ 2,881,369</b>
<b>Assessments</b>	
Street Light Assessment District 1982-1	\$ 1,398,111
Street Light Assessment District 2018	\$ 644,657
County Collection Fee (1.7%)	\$ (34,727)
<b>Net Assessment</b>	<b>\$ 2,008,041</b>
<b>Deficit</b>	<b>\$ (873,328)</b>
<b>Estimated End Balance Street Lighting Fund (142)</b>	<b>\$ 1,158,014</b>

## **METHOD OF ASSESSMENT**

---

This section of the Engineer's Report includes an explanation of the benefits derived from the installation, maintenance and servicing of the Improvements throughout the District and the Assessment methodology used to apportion the total Assessment to properties within the District.

The District consists of all assessor parcels within the boundaries as defined by the Assessment Diagram and the parcels identified by the Assessor Parcel Numbers listed with the levy roll included with this Report. The parcel list includes all assessable privately and publicly owned parcels within the boundaries. The method used for apportioning the Assessment is based on the proportional special benefits to be derived by the properties in the District over and above general benefits conferred on real property or to the public at large. The apportionment of special benefit is a two-step process: the first step is to identify the types of special benefit arising from the Improvements and the second step is to allocate the Assessments to property based on the estimated relative special benefit for each type of property.

## **DISCUSSION OF BENEFIT**

In summary, the Assessments can only be levied based on the special benefit to property. This benefit is received by property over and above any general benefits. Moreover, such benefit is not based on any one property owner's use of the Improvements or a property owner's specific demographic status. With reference to the requirements for Assessments, Section 22573 of the Act states:

*The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements.*

Proposition 218, as codified in Article XIII D of the California Constitution, has confirmed that Assessments must be based on the special benefit to property:

*No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel.*

## **SPECIAL BENEFIT**

Street lighting is an optional improvement, not required by state or federal law that is an enhancement over and above requisite infrastructure, and thus is a special benefit. The majority of the benefits of the streetlights are received by the benefited property, with a small portion of the benefits received by the general public on major streets

only. This portion received by the general public is captured and quantified in the following section.

### **Improved Visibility and Safety**

Well maintained, effective street lighting provides special benefit to proximate parcels, within range of the light, because it allows for safer and improved use of the property in the evenings, early morning, and at night. Street lighting provides special benefit because it increases neighborhood safety and, at least indirectly, reduces the likelihood of crime on the proximate parcels. Over time, the Improvements continue to confer a particular and distinct special benefit upon parcels within the District because of the nature of the Improvements. The proper maintenance of the streetlights and appurtenant facilities increases visibility and local human presence and, in many situations, helps reduce property-related crimes, especially vandalism, against assessed properties in the District.

### **Improved Access, Navigation, and Traffic Safety**

Well maintained, effective street lighting enhances ingress, egress and accessibility of all forms to the assessed parcels in the evening, early morning, and at night by increasing visibility. Improved visibility also helps prevent local automobile, bicycle, and pedestrian traffic accidents related to the assessed parcels. This benefit includes a reduction in accidents during non-daylight hours.

### **Improved Community Character and Vitality**

Well maintained, effective street lighting promotes evening and nighttime social interaction of residents and customers of businesses and industry. This creates a positive atmosphere and enhanced community image in the evening and at night for the assessed parcels.

All of the above-mentioned items also contribute to a specific enhancement to each of the parcels within the District. The proximate street lights make each parcel safer, more visible, more accessible, more useful, more valuable and more desirable; and this further strengthens the basis of these Assessments.

## **GENERAL VERSUS SPECIAL BENEFIT**

The proceeds from the Assessments are used to fund the described Improvements and increased levels of maintenance to the other City facilities that serve and benefit the properties in the District. In absence of the Street Lighting Assessment District 2018, such Improvements would not be properly maintained. Therefore, the District's purpose is to ensure that the necessary and beneficial public facilities in the District are properly maintained, operated and repaired over time. The Assessments will ensure that street lighting and associated improvements within and adjacent to the District are functional, well maintained and effective. These public resources directly benefit the property in the District and will confer distinct and special benefits to the properties within the District.

The Improvements and Services are specifically designed, located and created to provide additional and improved resources for property inside the District and not the public at large although the Improvements maintained by the Services may be available to the general public. Other properties that are outside the District do not enjoy the unique proximity and other special benefit factors described previously. These Improvements and Services are of special benefit to properties located within the District because they provide a direct advantage to properties in the District that would not be provided in the absence of the Assessments. Any general benefits to surrounding properties outside of the Assessment District, if any, are collateral and conferred concomitantly.

### **QUANTIFICATION OF GENERAL BENEFIT**

Although the analysis used to support these assessments concludes that the benefits are solely special, as described above, consideration is made for the suggestion that a portion of the benefits are general. General benefits cannot be funded by these assessments. The funding for general benefits must come from other sources.

The maintenance and servicing of these Improvements is also partially funded, directly and indirectly, from other sources, including the City of Berkeley, Alameda County, and the State of California. This funding comes in the form of grants, development fees, special programs, and general funds, as well as direct maintenance and servicing of facilities (e.g. curbs, gutters, streets, drainage systems, etc.). This funding from other sources more than compensates for general benefits, if any, received by the public at large. A more detailed quantification of general benefits is included in the Engineer's Report for Fiscal Year 2018-19. That report is available for public inspection at the Public Works Engineering Division office.

### **METHOD OF ASSESSMENT**

The method used for apportioning the Assessment is based on the proportional special benefits to be received by the properties in the District over and above general benefits conferred on real property or to the public at large. The special benefit factors considered are as follows:

- Improved visibility and safety
- Improved access, navigation and traffic safety
- Improved community character and vitality

Traffic generated to and from a particular parcel is used as the basis to quantify the special benefits received by each parcel. This is used because the amount of traffic generated by a parcel is directly proportional to the relative quantity of benefits it receives. The calculations, described in detail in the Fiscal Year 2018-2019 Engineer's Report, arrive at single-family equivalent ("SFE") rates for each category of parcel. The SFE rate for each rate category is a relative measure of the special benefit received



by each parcel category. It is based on average daily trips<sup>1</sup> adjusted by a darkness factor which accounts for non-operational hours of non-residential parcels. Each rate category is assigned an SFE rate using the following formula.

$$\frac{ADT \times \text{Darkness Factor}}{ADT \text{ for SFR}} = \text{SFE Rate}$$

Where:

- ADT = Average Daily Trips for each parcel category
- ADT for SFR = ADT for single-family residential, which is used as a baseline figure for SFE rate
- SFE Rate = SFEs per unit shown (parcel, [living] units, or acre)

The results of these calculations are summarized in Table 2.

**Table 2 – Single-Family Equivalent Rates**

Rate Category	ADT	Darkness Factor	Adj ADT	SFE Rate	Unit
<b>Residential</b>					
Single Family	10	1	10	1.00	parcel
Multi-Family<5 units	8	1	8	0.80	unit
Multi-Family 5 or more units	6	1	6	0.60	unit
Condominium	8	1	8	0.80	parcel
Mobile Home	5	1	5	0.50	unit
Multiple SFR on parcel	10	1	10	1.00	unit
<b>Non-Residential</b>					
General Commercial	600	0.25	150	15.00	acre
Industrial / Warehouse	60	0.25	15	1.50	acre
Auto Repair	400	0.25	100	10.00	acre
Hotel / Motel / Boarding	200	0.5	100	10.00	acre
Hospital	250	0.25	62.5	6.25	acre
Retirement Home	50	0.25	12.5	1.25	acre
School / Day Care	90	0.25	22.5	2.25	acre
Medical / Dental / Vet	500	0.25	125	12.50	acre
Church	30	0.25	7.5	0.75	acre
Mortuary	10	0.25	2.5	0.25	acre
Recreational	100	0.25	25	2.50	acre
Parking / Transportation	200	0.25	50	5.00	acre
Mini Storage	30	0.25	7.5	0.75	acre
Office	300	0.125	37.5	3.75	acre
Bank	1000	0.125	125	12.50	acre
Park / Open Space / Agriculture	2	0.25	0.5	0.05	acre
Vacant				<i>not assessed</i>	

<sup>1</sup> Average trip generation rates used for Assessment calculation are based on trip generation rates published by the San Diego Association of Governments.

The SFE rates derived in Table 2 are then applied to each individual parcel according to its rate category and the number of units or the lot acreage as applicable. For large, multi-family parcels with more than 100 units, the trip generation tends to increase less with additional units because of the density and number of residents who use public transportation or non-motorized modes of transportation. There, the units in excess of 100 are computed at one-tenth the rate. Similarly, with non-residential parcels in excess of five acres, the trip generation tends to increase less with size. There, acres (or portions thereof) are also computed at one-tenth the rate. A summary of these calculations is shown in Table 3.

**Table 3 – Summary of SFEs by Category**

Rate Category	SFE Rate	No. of Parcels	Parcels or Units or Acres	SFEs
<b>Residential</b>				
Single Family	1.00	17,379	17,379	17,379.000
Multi-Family<5 units	0.80	3,535	9,274	7,419.200
Multi-Family 5 or more units*	0.60	1,458	24,800	12,567.120
Condominium	0.80	2,493	2,493	1,994.000
Mobile Home	0.50	1	-	0.500
Multiple SFR on parcel	1.00	677	1,413	1,413.000
<b>Non-Residential</b>				
General Commercial*	15.00	778	183.38	2,750.000
Industrial / Warehouse*	1.50	397	257.73	346.311
Auto Repair	10.00	120	29.45	294.500
Hotel / Motel / Boarding	10.00	49	18.11	181.100
Hospital	6.25	9	13.15	82.188
Retirement Home	1.25	2	0.46	0.575
School / Day Care*	2.25	105	180.63	331.452
Medical / Dental / Vet	12.50	104	15.86	198.250
Church	0.75	102	40.91	30.683
Mortuary	0.25	1	0.11	0.028
Recreational*	2.50	33	55.37	82.580
Parking / Transportation	5.00	121	42.85	214.250
Mini Storage	0.75	8	7.51	5.633
Office*	3.75	232	80.02	293.764
Bank	12.50	16	4.68	58.500
Park / Open Space / Agriculture*	0.05	93	206.08	6.713
Vacant			<i>not assessed</i>	
<b>TOTALS</b>				<b>45,650.445</b>

\* Categories where some parcels are over the size threshold (100 units for MFR and 5 acres for non-residential) and excess units are charged at reduced rates.

To arrive at the Assessment amount for a single-family equivalent (SFE), the total Assessment to be collected must be divided by the total SFEs in the District. The calculation is represented by the following formula;

$$\frac{\text{Total Assessments to be Collected}}{\text{Total SFEs}} = \text{Assessment per SFE}$$

The formula above can be modified to incorporate the annual adjustment. Per the Annual Assessment Increase section of this report, the assessment is subject to annual increase based upon the sum of the 1982 and 2018 assessments. The formula can be rewritten as follows:

$$\frac{2018 \text{ Assmt in FY 21} + (1982 \text{ Assmt in FY 21} + 2018 \text{ Assmt in FY 21}) \times (\% \text{ Increase})}{\text{Total SFEs}} = \text{Assmt per SFE in FY 22}$$

Where:

- 2018 Assmt in FY 21 = \$604,603
- 1982 Assmt in FY 21 = \$1,398,111
- % Increase = 2.00 (See Annual Assessment Increase section on next page)
- Total SFEs = 45,650.445 (From Table 3)

Substituting numbers:

$$\frac{\$604,603 + (\$1,398,111 + \$604,603) \times (0.0200)}{45,650.445} = \$14.12 \text{ per SFE}$$

**Table 4 – Assessment Rate Schedule**

Rate Category	SFE Rate	Assessment 2020-2021	Proposed Assessment 2021-2022	Unit
<b>Residential</b>				
Single Family	1.00	\$ 13.32	\$ 14.12	parcel
Multi-Family<5 units	0.80	\$ 10.66	\$ 11.30	unit
Multi-Family 5 or more units	0.60	\$ 7.98	\$ 8.47	unit
Condominium	0.80	\$ 10.66	\$ 11.30	parcel
Mobile Home	0.50	\$ 6.66	\$ 7.06	unit
Multiple SFR on parcel	1.00	\$ 13.32	\$ 14.12	unit
<b>Non-Residential</b>				
General Commercial	15.00	\$ 199.78	\$ 211.82	acre
Industrial / Warehouse	1.50	\$ 19.98	\$ 21.18	acre
Auto Repair	10.00	\$ 133.18	\$ 141.22	acre
Hotel / Motel / Boarding	10.00	\$ 133.18	\$ 141.22	acre
Hospital	6.25	\$ 83.24	\$ 88.26	acre
Retirement Home	1.25	\$ 16.64	\$ 17.65	acre
School / Day Care	2.25	\$ 29.96	\$ 31.77	acre
Medical / Dental / Vet	12.50	\$ 166.48	\$ 176.52	acre
Church	0.75	\$ 9.98	\$ 10.59	acre
Mortuary	0.25	\$ 3.32	\$ 3.53	acre
Recreational	2.50	\$ 33.30	\$ 35.30	acre
Parking / Transportation	5.00	\$ 66.60	\$ 70.61	acre
Mini Storage	0.75	\$ 9.98	\$ 10.59	acre
Office	3.75	\$ 49.94	\$ 52.96	acre
Bank	12.50	\$ 166.48	\$ 176.52	acre
Park / Open Space / Agriculture	0.05	\$ 0.66	\$ 0.71	acre
Vacant		<i>Not assessed</i>		

## **ANNUAL ASSESSMENT INCREASE**

The District assessment is subject to an annual adjustment tied to the San Francisco-Oakland-Hayward Consumer Price Index-U as of December of each succeeding year ("CPI"), with a maximum annual adjustment not to exceed 3%. The maximum authorized rate is equal to the maximum rate in the first fiscal year the Assessment was approved adjusted annually by the lower of either 3% or the increase in the CPI. In order for the City's dedicated Streetlight Fund revenue sources to satisfy cost requirements into the future, the annual adjustment for each property may be calculated based upon the sum of the SLAD 1982-1 assessment and the SLAD 2018 assessment. This adjustment methodology was presented to property owners in the District and approved by the property owner balloting in 2018.

From the period beginning in December 2019 and ending in December 2020, the CPI increased by 2.00%; therefore the assessment adjustment for Fiscal Year 2022 may not exceed 2.00%.

## **DURATION OF ASSESSMENT**

The assessments may be continued every year after their formation, so long as the public Improvements need to be maintained and improved and the City requires funding from the assessments for these Improvements in the District. Assessments can continue to be levied annually after the City Council approves an annually updated Engineer's Report, budget for the Assessment, Improvements to be provided and other specifics of the Assessment. In addition, the City Council must hold an annual public hearing to continue the Assessment.

## **APPEALS AND INTERPRETATION**

Any property owner who feels that the Assessment levied on the subject property is in error as a result of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with the City of Berkeley Public Works department. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City of Berkeley City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the City Engineer or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any dispute over the decision of the City Engineer or her or his designee shall be referred to the Public Works Director and the decision of the Public Works Director shall be final.

**ASSESSMENT STATEMENT**

The amount to be paid for the Improvements and the expense incidental thereto to be paid by the City of Berkeley Street Lighting Assessment District 2018 for the fiscal year 2022 are generally as listed in Table 1.

As required by the Act, an Assessment Diagram is hereto attached and made a part hereof showing the exterior boundaries of the City of Berkeley Streetlight Assessment District 2018. The distinctive number of each parcel or lot of land in the City of Berkeley Streetlight Assessment District 2018 is its Assessor Parcel Number appearing on the Assessment Roll.

And I do hereby assess and apportion the net amount of the cost and expenses of the Improvements, including the costs and expenses incident thereto, upon the parcels and lots of land within the City of Berkeley Street Lighting Assessment District 2018, in accordance with the special benefits to be received by each parcel or lot, from the Improvements, and more particularly set forth in the cost estimate and method of assessment hereto attached and by reference made a part hereof.

The Assessments are made upon the parcels or lots of land within the City of Berkeley Street Lighting Assessment District 2018 in proportion to the special benefits to be received by the parcels or lots of land from the Improvements.

Each parcel or lot of land is described in the Assessment Roll by reference to its parcel number as shown on the Assessor's Maps of the County of Alameda for the fiscal year 2021. For a more particular description of said property, reference is hereby made to the deeds and maps on file and of record in the office of the County Recorder of the County.

I hereby place opposite the Assessor Parcel Number for each parcel or lot within the Assessment Roll, the amount of the assessment for the fiscal year 2022 for each parcel or lot of land within the City of Berkeley Street Lighting Assessment District 2018.

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Joseph Enke, RCE 49027  
Engineer of Work

Filed in the office of the City Clerk of the City of Berkeley, Alameda County, California,  
this \_\_\_\_\_ day of \_\_\_\_\_, 2021

---

Mark Numainville  
City Clerk

Filed in the office of the County Auditor-Controller of Alameda County, California, this  
\_\_\_\_\_ day of \_\_\_\_\_, 2021.

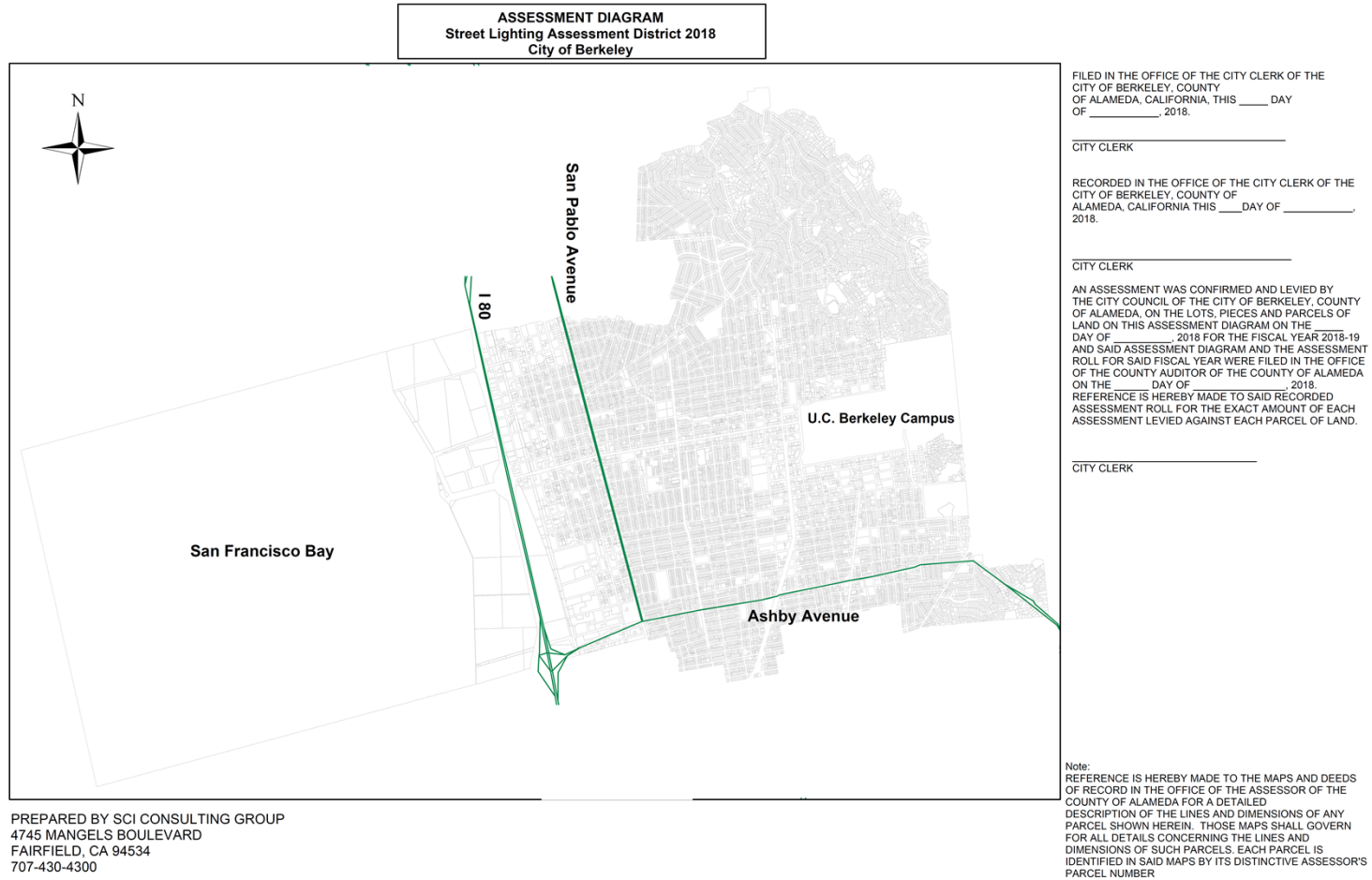
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Melissa Wilk  
County Auditor-Controller

**DIAGRAM**

The boundaries of the City of Berkeley Streetlight Maintenance Assessment Districts and Annexations are displayed on the Assessment Diagram below.

**Figure 1 – Assessment Diagram**



CITY OF BERKELEY

**STREET LIGHTING  
ASSESSMENT DISTRICT 2018**

**FY 2022 Assessment Roll  
Listed by  
Assessor's Parcel Number**

May 2021

Engineer's Report with Full Listing of Assessments by Assessor's Parcel Number is available at the following locations on or after May 13, 2021:

- City Clerk's Office, 2180 Milvia Street, Berkeley, CA 94704
- Main Berkeley Library, Reference Desk, 2090 Kittredge Avenue, Berkeley, CA 94704
- Public Works Engineering Division, 1947 Center Street, 4th Floor, Berkeley, CA 94704

These documents will be available to the public when the Library and City offices reopen for public business. Electronic copies of the reports and complete assessment rolls are available to the public upon request.

Prepared by

JOSEPH ENKE, PE  
CITY OF BERKELEY  
DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION



CITY OF BERKELEY

**STREET LIGHTING  
ASSESSMENT DISTRICT 2018**

**FY 2022 Assessment Roll  
Listed by  
Street Address**

May 2021

Engineer's Report with Full Assessments Roll by Street Address is available at the following locations on or after May 13, 2021:

- City Clerk's Office, 2180 Milvia Street, Berkeley, CA 94704
- Main Berkeley Library, Reference Desk, 2090 Kittredge Avenue, Berkeley, CA 94704
- Public Works Engineering Division, 1947 Center Street, 4<sup>th</sup> Floor, Berkeley, CA 94704

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DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION

## NOTICE OF PUBLIC HEARING - BERKELEY CITY COUNCIL STREET LIGHTING ASSESSMENTS

### Berkeley Street Lighting Assessment District 1982-1:

No increase is proposed for Street Lighting Assessment District 1982-1 rates in FY 2022. The assessment rates will remain as follows:

Rate Category	Assessment Rate	Unit
Residential and Institutional	\$ 0.0108	Bldg. Sf
Industrial	\$ 0.0216	Bldg. Sf
Commercial	\$ 0.0432	Bldg. Sf

Assessments under this district are determined by building square footage and rates.

### Street Lighting Assessment District 2018:

In accordance with the voter-approved measure, Street Lighting Assessment District 2018 is subject to an annual assessment adjustment equal to the annual change in the Bay Area Consumer Price Index (CPI), up to a maximum of 3%. For the period beginning in December 2019 and ending in December 2020, the CPI increased by 2.00%; therefore the CPI assessment adjustment for Fiscal Year 2022 is limited to 2.00%. As approved by voters, the total annual adjustment may be calculated by taking the sum of the 2018 District assessment and the Berkeley Street Lighting Assessment District 1982-1 assessment, and multiplying the sum by the allowable CPI increase. Calculating the adjustment in this manner allows for the inclusion of a 1982-1 District adjustment as part of the 2018 District adjustment. The cumulative total adjustment results in 2018 District assessment rate increases by approximately 6.1%. Detailed calculations of the annual adjustment and the corresponding rate increases are included in the Street Lighting Assessment District 2018 Engineer's Report for FY 2022<sup>1</sup>. The proposed assessment rates are summarized below.

Rate Category	Assessment 2020-2021	Proposed Assessment 2021-2022	Unit
Residential			
Single Family	\$ 13.32	\$ 14.12	parcel
Multi-Family<5 units	\$ 10.66	\$ 11.30	unit
Multi-Family 5 or more units	\$ 7.98	\$ 8.47	unit
Condominium	\$ 10.66	\$ 11.30	parcel
Mobile Home	\$ 6.66	\$ 7.06	unit
Multiple SFR on parcel	\$ 13.32	\$ 14.12	unit
Non-Residential			
General Commercial	\$ 199.78	\$ 211.82	acre
Industrial / Warehouse	\$ 19.98	\$ 21.18	acre
Auto Repair	\$ 133.18	\$ 141.22	acre
Hotel / Motel / Boarding	\$ 133.18	\$ 141.22	acre
Hospital	\$ 83.24	\$ 88.26	acre
Retirement Home	\$ 16.64	\$ 17.65	acre
School / Day Care	\$ 29.96	\$ 31.77	acre
Medical / Dental / Vet	\$ 166.48	\$ 176.52	acre
Church	\$ 9.98	\$ 10.59	acre

<sup>1</sup> Copies of the Engineer's Report are on file at the main branch of the Berkeley Public Library and at the City Clerk's Office.

Mortuary	\$	3.32	\$	3.53	acre
Recreational	\$	33.30	\$	35.30	acre
Parking / Transportation	\$	66.60	\$	70.61	acre
Mini Storage	\$	9.98	\$	10.59	acre
Office	\$	49.94	\$	52.96	acre
Bank	\$	166.48	\$	176.52	acre
Park / Open Space / Agriculture	\$	0.66	\$	0.71	acre
Vacant	<i>Not assessed</i>				

Assessments under the 2018 District are generally determined by the number of parcels, units or acres, as applicable to each parcel category, and the associated rate category.

**Public Hearing Information**

The hearing will be held on June 15, 2021 at 6:00 p.m. at a regular council meeting. This hearing will be held via videoconference pursuant to Governor’s Executive Order N-29-20. The Council will consider all objections or protests, if any, to the proposed assessment. At the public hearing any interested person may present written or oral testimony.

A copy of the agenda material for this hearing will be available on the City’s website at [www.cityofberkeley.info](http://www.cityofberkeley.info) as of June 3, 2021. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

FY 2022 Assessment Rolls for both street lighting districts will be available at the City Clerk’s Office at 2180 Milvia Street, 1<sup>st</sup> Floor, and at the main Public Library, 2090 Kittredge Street, Berkeley, CA, when the city offices reopen for public business.

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

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

For further information, please contact Joe Enke, Acting Manager of Engineering at (510) 981-6411 or Ricardo Salcedo, Associate Civil Engineer at (510) 981-6407.

**Published:** June 4, 2021 – The Berkeley Voice


City Clerk shall publish a notice at least 10 days prior to the date of the public hearing with the date, hour, and place of the public hearing for annual levy and collection of assessments in accordance with Streets and Highway Code Sections 22625, 22626, 22552, and 22553 and Section 6061 of the Government Code.



I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted on the display case located near the walkway in front of the Council Chambers at 2134 Martin Luther King Jr. Way, as well as on the City's website, on June 3, 2021.

A handwritten signature in black ink, appearing to read "Mark Numainville". The signature is written in a cursive, flowing style.

Mark Numainville, City Clerk



**Item #37**  
City Council Comments  
on the FY 2022  
Proposed Biennial Budget

Please refer to the following Agenda Packets for this report material:

- May 17, 2021 Agenda Packet (Budget & Finance, Item #4)  
<https://www.cityofberkeley.info/uploadedFiles/Clerk/FY%202022%20Proposed%20Budget%20Presentation.pdf>
- May 25, 2021 Agenda Packet (Public Hearing 1, Item #38)  
[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/05\\_May/City\\_Council\\_05-25-2021\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/05_May/City_Council_05-25-2021_-_Regular_Meeting_Agenda.aspx)
- June 1, 2021 Agenda Packet (Public Hearing 2, Item #15)  
[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/06\\_June/City\\_Council\\_06-01-2021\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/06_June/City_Council_06-01-2021_-_Regular_Meeting_Agenda.aspx)

This material is also on file and available for review at the City Clerk Department, or can be accessed from the City Council Website.

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**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

or from:

**The City of Berkeley, City Council's Web site**  
[www.cityofberkeley.info/citycouncil](http://www.cityofberkeley.info/citycouncil)





Office of the City Manager

ACTION CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Eleanor Hollander, Acting Economic Development Manager

Subject: Referral Response: Path to Permanence: Outdoor Dining and Commerce in the Public Right-of-Way

RECOMMENDATION

Take the following actions to allow for increased outdoor dining and commerce to be permitted permanently in the public right-of-way:

1. Adopt first reading of an Ordinance revising BMC Section *14.48.190 Parklets* and BMC Section *16.18 Right of Way Encroachments and Encroachment Permits* to simplify the permitting process for the conversion of temporary parklets and outdoor commerce installations after a declared local emergency; and
2. Adopt first reading of an Ordinance revising BMC Section *14.48.150 Sidewalk Seating* to expand the areas and scope of activities that may be permitted via a sidewalk seating permit (a type of engineering permit) after a declared local health emergency, implement a new fee for the use of parking spaces for commercial activity; and
3. Adopt a Resolution empowering the City Manager to implement a fee schedule for structures and activities permitted in the public right of way permitted under *BMC Sections 14.48.190 Parklets, 14.48.150 Sidewalk Seating* after the declaration of a local emergency lapses or is revoked. The resolution extends the current fee waivers for application, review, and use fees for structures and activities permitted in the public right of way permitted under *BMC Sections 14.48.190 Parklets, 14.48.150 Sidewalk Seating* and *13.44 Street Events and Block Parties* from June 30, 2021, to instead coincide with the cessation of the declared local health emergency.

FISCAL IMPACTS OF RECOMMENDATION

The installation of parklets (conversion of on-street parking spaces into public spaces and amenities) and the expansion of the sidewalk seating program (where outdoor commerce in the public right of way is incorporated into an adjacent business' operation) to include the parking lane can result in a reduction in parking revenues to the City's Parking Meter Fund. For example, staff projects that lost parking revenue from sidewalk seating and parklet programs will total on average approximately \$3,082

per parking space annually depending on location (Attachment 4).<sup>1</sup> The total potential revenue loss per parking space, (assuming full utilization) is closer to \$6,631 annually. Using parking meter rates pre-pandemic (February 2020), the total actual annual revenue loss resulting from the existing outdoor commerce locations is \$199,864.

### *Fee Rationale*

More broadly, revenue losses to the Parking Meter Fund in theory could be slightly mitigated at least in part, by an increase in sales and use tax and business license tax revenues that will result from increased commercial activities in the public right-of-way. However, these revenues (sales and use tax and business license fees) go to the City's General Fund. Parking meter revenue instead directly supports the Parking Meter Fund which in turn supports ongoing parking management operations, including parking enforcement, and infrastructure needs.

Crucially, the parking meter revenues of both the Off Street Parking Fund and the Parking Meter Fund have been pledged to pay the City's outstanding \$33,970,000 Berkeley Joint Powers Financing Authority Parking Revenue Bonds, Series 2016 that financed construction of the newly built Center Street parking garage. The City promised bond owners that it would maintain parking rates in an amount sufficient to pay debt service on the bonds and the costs of operating the City's off street and on street parking enterprises. This promise is called a "rate covenant." The City cannot satisfy this rate covenant with general fund monies. Therefore, the City must ensure that the Parking Meter Fund will continue to receive sufficient revenue to satisfy the rate covenant. In order to meet the rate covenant while allowing commercial activities in the parking lane, the City will need to charge businesses that use the parking lane an amount that is approximately equal to the amount that would have been received from parked cars.

### *Use Fee Calculation*

Outdoor commerce use fees will be calculated based on the use of the parking space during 9 revenue generating hours per day, 6 days per week, 52 weeks per year, less 10 meter holidays.  $9 \text{ hours} \times (6 \text{ days per week} \times 52 \text{ weeks per year} - 10 \text{ holiday days}) = 2,718 \text{ hours per year}$  at the hourly meter rate, which may range from \$0.50/hr to \$8.00/hr per BMC 14.52.120(B)(1). Use fees levied on outdoor commerce installations in the parking lane must be reflective of the parking meter rates of the area that the installation is located in (i.e., parking area/zone) and those hourly rates are subject to change based on demand responsive pricing under the goBerkeley program.<sup>2</sup> The outdoor commerce use fees will change on an annual basis based on any meter pricing changes that have occurred in the previous year. In this way, the Parking Meter Fund's

<sup>1</sup> See *Impacts on Meter Revenue*, (Attachment 4) presented at the Berkeley City Council *Facilities, Infrastructure, Transportation, Environment & Sustainability* (FITES) Policy Committee meeting, [November 2, 2020](#).

<sup>2</sup> See goBerkeley parking pricing program, online: <https://www.cityofberkeley.info/parking-meters/>.



revenues will be replenished by fees levied on commercial activity conducted in parking spaces.

#### *Implementation of Fee Collection*

Revenues from sidewalk seating engineering permits for ongoing uses in the public right of way (other than the sidewalk) will be directed to the Parking Meter Fund. A new revenue code (840-4940-321.11-00) has been established to replenish the Parking Meter Fund (840) in the Transportation Division (49) and Parking Services (4940) account. In the future, Outdoor Commerce Use Fees will be recorded in a new budget code known as, "Outdoor Commerce License and Permits (32)", and will be processed concurrently alongside Business License Permits (321) with the Element Object code "Outdoor Commerce" (321.11).

The renewable Outdoor Commerce Use fee payments will be coordinated with the annual business license renewal cycle and the annual Outdoor Commerce Use Fee will be commensurate with the corresponding block face's price for parking. For example, in an area where the hourly meter rate is \$2, annual fee for use would be \$5,436 per parking space based on 2,718 hours of meter operation per year (9 hours per day, 6 days per week and 10 meter holidays). Many areas of the City have meter rates of \$1.50 per hour, which would correspond to annual fee of \$4,077 per parking space.

#### *Initial Permit Application Review and Fees*

The proposed changes above do not impact the existing permit application and review fees for parklet establishment, and outdoor commerce/sidewalk seating engineering permits. The process to evaluate the safety and design of outdoor commerce/parklets will continue to be handled by engineering division of the Permit Service Center. Fees collected from sidewalk seating engineering permit and parklet minor encroachment application fees will continue to go (as is standard with any enterprise fund) to offset the costs associated with permit application and site plan review of both the sidewalk seating and parklet program applications.

#### CURRENT SITUATION AND ITS EFFECTS

The COVID-19 pandemic, and the associated imperative to avoid close physical contact with others, especially indoors, continues to have lasting impacts on Berkeley's small businesses. In order to enable outdoor commerce, on June 2, 2020, the Berkeley City Council adopted a referral to the City Manager to explore strategies to expand outdoor dining and commerce so that businesses will be able to comply with health guidelines and operate with sufficient capacity to remain solvent during the duration of the current public health emergency.<sup>3</sup> On June 16, 2020 the Berkeley City Council passed an urgency ordinance to allow for sidewalk seating in the public right of way, and to waive all fees for parklets, sidewalk seating and street event permits for 'group' outdoor

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<sup>3</sup> ["Berkeley Safe Open Air Dining"](#) Berkeley City Council, June 2, 2020 meeting, item 11.

commerce installations for one year.<sup>4</sup> On January 19, 2021, the Berkeley City Council adopted modifications to the urgency ordinance to extend the time that outdoor commerce installations permitted under the urgency ordinance may be installed to 365 days after the termination of the declared City emergency due to COVID-19.<sup>5</sup>

The City has three existing programs that can be used to permit outdoor dining and commerce, and associated amenities, in the public right-of-way:

- Street event permits;
- Sidewalk seating; and
- Parklets.

This referral response establishes a path to permanence for all three types of outdoor commerce permitted during the duration of the urgency outdoor commerce ordinance. It is modeled on best practices from neighboring cities and has been developed in consultation with the business owners and operators of the nearly 40+ installations of outdoor commerce currently established in the City of Berkeley. Staff recommends that City Council keep the bulk of the changes implemented in 2020 to the municipal code sections governing the sidewalk seating and parklet programs. These changes successfully expanded outdoor commerce to be responsive to the needs of small businesses successfully operating during and after the shelter-in-place order(s) and the pandemic in general. Going forward, continuing these changes will help to bolster economic recovery and resilience in Berkeley.

Staff also recommends that City Council adopt a revised fee schedule for sidewalk seating engineering permits which authorize the City Manager to levy fees for outdoor commerce in the parking lane that are commensurate with the parking meter rate for the corresponding block face and are renewable annually by the sponsoring business. Parklet permits will continue to be permitted as minor encroachment permits,<sup>6</sup> and group outdoor commerce installations will continue to be permitted as street event permits.<sup>7</sup> Free use of parking spaces for parklets (which are reserved for non-revenue generating activity) has been City policy since before the parking revenue bond was implemented. Staff is recommending that that this policy continue, parklets (which are

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<sup>4</sup> ["Urgency Ordinance: Outdoor Dining and Commerce in the Public Right-of-Way"](#) Berkeley City Council, June 16, 2020 meeting, urgency item.

<sup>5</sup> ["Extending Time for Temporary Parklets and Sidewalk Seating Post-COVID-19"](#) Berkeley City Council, January 19, 2021 meeting, item 27.

<sup>6</sup> City of Berkeley, [Fee Schedule](#) for Minor Encroachment Permits, (\$454 application fee +\$1,228 final fee= \$1,682 total per permit), online:[https://www.cityofberkeley.info/uploadedFiles/Online\\_Service\\_Center/Planning/Submittal%20-%20Encroachment.pdf](https://www.cityofberkeley.info/uploadedFiles/Online_Service_Center/Planning/Submittal%20-%20Encroachment.pdf)

<sup>7</sup> [City of Berkeley, Fee Schedule for Special Event Permits](#), (ranges from \$128-\$450 per event), online:[https://www.cityofberkeley.info/Health\\_Human\\_Services/Special\\_Events\\_Permits/Street\\_Event\\_Permit.aspx#Filing\\_Fees](https://www.cityofberkeley.info/Health_Human_Services/Special_Events_Permits/Street_Event_Permit.aspx#Filing_Fees)

open to the public) won't have to offset parking revenue in the same manner that outdoor commerce will. Because existing parklets (total number = 6) have had a relatively modest impact on parking revenue to date, if their use were to have more of an impact on parking revenue the City could adjust parking meter rates to meet bond agreement commitments.

#### *Selection of Permit Type for existing permit holders - After the Emergency*

At the conclusion of the declared local emergency, current outdoor commerce permit holders will have the option to 'opt out' of the outdoor commerce program or transition their parklet, sidewalk seating, or group street event permit to a permanent outdoor installation type of their choice.<sup>8</sup> Per the ordinance modification adopted in January 2021, current outdoor commerce permit holders will have 365 days from the cessation of the declared emergency to confirm their selection. Staff will be available to provide technical assistance to existing permit holders, to determine which permit type is most appropriate for each outdoor commerce practitioner going forward.<sup>9</sup>

#### *Parklets*

Currently parklets are classified as minor encroachments and thus require a significant noticing and outreach process in order to be permitted. In June of 2020, staff recommended modifications to the Parklet Ordinance (BMC 14.48.190) and the definition of encroachment in BMC 16.18.010 so that during a declared local health emergency due to disease outbreak, parklets are defined as temporary structures in the public right-of-way and therefore can be permitted via an engineering permit, which does not require the same degree of noticing and outreach.

This section of the ordinance is now modified; so current parklet permit holders may decide to transition their permits to sidewalk seating in the right of way, should they want to continue to incorporate business operations into outdoor space in the public right of way once the emergency subsides. Or parklet permit holders can elect to pay the one-time application fee for the minor encroachment permit, and continue on as a sponsor of the parklet, without noticing the parklet installation. The parklet sponsor would commit to the standard parklet maintenance agreement, and ensure that the parklet installation is not otherwise incorporated into business operations, and affirm that "this parklet is public space" and "no-smoking" signs are posted in a visible location on the parklet. A key difference between parklets during COVID and after the public health emergency would be that the parklet could no longer be used for table service or other business operations, but instead would be designated as public space.<sup>10</sup>

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<sup>8</sup> As of March 2021, there are approximately 43 participants in the Urgency Outdoor Commerce program (13 Parklets, 21 Sidewalk Seating, 7 Street Event Permits, 2 pending/on private property).

<sup>9</sup> See: City of Berkeley, [Outdoor Commerce Guide for Business Owners](#), *Which Permit Is Right For My Business?* Page 2.

<sup>10</sup> To transition a parklet to an outdoor commerce installation where the outdoor space is incorporated into business operations is possible, the procedures to do so are described in *BMC 14.48.190, Sec 1, D, 4, b.*

Converting a parklet to permanence post-pandemic would include the following steps for an applicant:

1. Payment of the minor encroachment fee (approximately \$1,682; application fee of \$454 and \$1,228 final fee)<sup>11</sup>
2. Signing/Reaffirmation of the maintenance agreement/performance standards for caring for the parklet.
3. A new application or yellow noticing sign board or mailing **is not** required.

For new parklet applications opened after the declared local emergency, standard fees, and application noticing and mailing procedures for a minor encroachment permit for a parklet would apply. Parklets established during and before the pandemic may also be transitioned to sidewalk seating where their use is incorporated into business operations if their sponsor so chooses.

#### *Public Noticing for Parklets and Sidewalk Seating*

Pre-COVID (prior to March 2020) all pending parklet proposals were considered applications for a 'minor encroachment' were noticed in a manner similar to zoning applications. This is proposed to continue post-COVID. That is, in non-emergency times an application for a parklet is treated as a minor encroachment permit and an applicant is required to post a yellow zoning notice board at the location of the proposed parklet detailing their project plans. Per the minor encroachment permit process, Public Works staff will also post additional notices around the proposed parklet area for the public to submit in writing their response/questions/objections. In addition, the applicant is required to mail notices to property owners, occupants, and interested neighborhood groups within 300 feet of the proposed location.

The Outdoor Commerce Urgency Ordinance allowed for parklets to instead be considered as 'temporary structures in the public right of way', and therefore be permitted via an "over the counter" engineering permit, during a declared local emergency. Engineering permits do not require the 300ft mailing of notices nor a posted yellow zoning board. The Urgency Ordinance stipulates that all granted engineering permits for Berkeley parklets would sunset 90 days after the cessation of the local emergency declaration and the applicant would either (1) remove the temporary structure in the public right of way (at their own expense) or (2) apply for a minor encroachment permit to make the parklet a permanent feature of the public right of way. The January 19, 2021 ordinance extended this timeframe to 365 days after the termination of the declared local emergency.

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<sup>11</sup> City of Berkeley, Encroachment Permits, 2020, visit: [https://www.cityofberkeley.info/uploadedFiles/Online\\_Service\\_Center/Planning/Submittal%20-%20Encroachment.pdf](https://www.cityofberkeley.info/uploadedFiles/Online_Service_Center/Planning/Submittal%20-%20Encroachment.pdf) for a description of fees and required materials for submittal.

The public noticing practice for parklets would return for applications submitted post-COVID (after the state of emergency ends + 365 days), but for parklets permitted during COVID, additional public noticing would not be required. The sidewalk seating program is currently permitted via a sidewalk seating permit (a type of engineering permit), and does not require public notice.

### *Sidewalk Seating*

Prior the COVID-19 pandemic, the Sidewalk Seating Ordinance (BMC 14.48.150) allowed restaurants to obtain a permit to place and manage tables and chairs on the sidewalk immediately adjacent to their storefront. Staff is recommending the modifications adopted to BMC section 14.48.150 in June 2020 remain in the code as adopted. These include, primarily, the following:

- The removal of the word “café” and a more inclusive definition of sidewalk seating permittees to include all business establishments.
- The addition of “furniture” (matching the Parklet Ordinance definition) to allow a broader range of amenities, rather than just “tables and chairs.”
- Clarification of language relating to ADA compliance, and permit renewal.

In addition, staff recommends that council further modify BMC 14.488.150 to confirm:

- The expansion of the area where sidewalk seating can occur to include additional sections of the public right-of-way (e.g., parking lanes and travel lanes), even when there is no longer an active “declared emergency due to disease outbreak.”

New language related to the fee schedule for outdoor commerce (defined as business operations in the public right-of-way other than the sidewalk) is proposed in the attached resolution (Attachment 1) and in BMC Section *14.48.150 Sidewalk Seating*. It includes, primarily, the following:

- Extending the period of time for which outdoor commerce application and permit review fees will be waived – the granted outdoor commerce fee waivers will be extended from the current ending date of June 30, 2021; to match the conclusion of the declared local emergency, which has no identified date at this time.
- Indicating the fees for sidewalk seating in the parking lane (outdoor commerce) will be commensurate with the block face rate for parking fees at the time of renewal, and that sidewalk seating/outdoor commerce use permits will be renewable annually concurrent with the business license renewal process.

Per BMC section *14.48.150 Sidewalk Seating* the City Manager or City Council is allowed to waive permit fees in cases of demonstrated financial hardship. Public Works staff will continue to issue an administrative decision to permit or deny a specific sidewalk seating proposal based upon review of the site plan.

*Sidewalk Seating Permitting and Renewal Process*

The sidewalk seating program currently allows applicants the use of the sidewalk for one year from date of issue and is to be renewed annually. The Urgency Ordinance allows for the issuance of permits for sidewalk seating in the public right-of-way for the duration of the declared local emergency, and for 365 additional days thereafter. Following that time period, sidewalk seating outdoor commerce installations will require annual renewal at the revised fee schedule concurrent with the annual business license renewal process (typically issued in December of the preceding year and due in late February of the active year).

Annual outdoor commerce fees will be based on current parking meter rates at the time of renewal for metered parking spaces taken up by sidewalk seating. For example, a sample fee schedule for an outdoor commerce installation taking up two parking spaces in an area with parking meter rates of \$1.50 per hour, would be calculated based on 2,718 hours per year (9 hours per day, 6 days per week, 52 weeks per year, less 10 meter holiday days) is \$4,077, multiplied by 2 spaces for a total of \$8,154 per year.

By 365 days after the cessation of the declared local emergency, the sidewalk seating/outdoor commerce permit holder would either (1) cease conducting business operations in the public right of way or (2) apply for an annual sidewalk seating permit (pursuant to BMC Section 14.48.150); and pay the annual outdoor commerce use fees (if applicable if the installation is in the parking lane). A re-submittal, revised site plan, or a new application for an existing sidewalk seating permit would not be required. In addition, the application permit fee for transitioning permits will be waived.

*Street Closures and Group Outdoor Commerce Installations*

The Berkeley Street Event Permit application is used to permit all event-related street closures that are not defined as block parties; they are used for small or large events, and any other use that requires a street closure. Any person or organization from the public can apply for a street closure permit, and the cost is \$128 per block per day with an insurance coverage requirement of \$1 million. Individual businesses, the City, Business Improvement Districts, merchant associations, or other entities can continue to implement temporary or part-time street closures or “group outdoor commerce installations” via Street Event Permits. These closures would continue be reviewed via the existing special event review process that is already used for events such as the Telegraph Street Fair, outdoor concerts, and festivals. Consideration can also be given to adding retailers to existing recurring special events (such as the Farmer’s Market). The City’s published special event guide provides a detailed manual for applicants.<sup>12</sup>

**BACKGROUND**

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<sup>12</sup> City of Berkeley, *Street Event Permit Planning Guide*, online: [https://www.cityofberkeley.info/Health\\_Human\\_Services/Special\\_Events\\_Permits/Special\\_Event\\_Planning\\_Guide.aspx](https://www.cityofberkeley.info/Health_Human_Services/Special_Events_Permits/Special_Event_Planning_Guide.aspx)

On March 3, 2020, the City of Berkeley declared a state of local emergency due to coronavirus (SARS-CoV-2, or “COVID-19”), for which an effective vaccine has since been developed. Throughout 2020, the COVID-19 pandemic had a severe impact on Berkeley’s local businesses, resulting in extreme revenue losses, layoffs and, in some cases, closures.<sup>13</sup> In the early part of 2021, vaccines have become available to the general public and both the rates and incidence of disease transmission have decreased; though as of this writing indoor commerce opportunities are still restricted, and the City’s state of emergency declaration remains in effect.

#### *Outdoor Commerce Urgency Ordinance*

On June 2, 2020 the Berkeley City Council adopted the “Berkeley Safe Open Air Dining” proposal to “facilitate and expedite potential use of both public and private (parking lots, yards, setbacks, etc.) property for outdoor dining and other retail activities” and directed the City Manager “to implement or, where necessary, return to Council for approval any and all required temporary or permanent changes to, or suspensions of, Berkeley Municipal Code sections, fees, permitting requirements/timelines, and other rules and regulations.” On June 16, 2020, the Berkeley City Council passed an urgency ordinance entitled, “Outdoor Dining and Commerce in the Public Right-of-Way” which enabled businesses to expand outdoor dining and other commerce activities into the public right-of-way so businesses were able to comply with health guidelines to reduce the risk of viral transmission (i.e. outdoors) and operate with sufficient capacity to remain solvent during the duration of the current public health emergency.

#### *Path to Permanence*

On December 15, 2020 the Council referred to the City Manager “Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration” legislation requesting development of a program, and if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City’s declaration of emergency to permanent status. On January 19, 2021, the Berkeley City Council passed a second ordinance on this topic “Extending Time for Temporary Parklets and Sidewalk Seating Post-COVID-19” which modified via ordinance BMC Sections *16.18 Right-of-Way Encroachments and Encroachment Permits* and *14.48.150 Sidewalk Seating, Benches, and Planters* to extend the period of time that Parklets and Sidewalk Seating established under the COVID-19 declared City emergency can remain in place to 365 days (up from the initial 90 days) after the termination of the declared City emergency.

Staff in the City Manager’s Office, Transportation, Public Works, Finance and City Attorney’s Office met on several occasions to consider process and policy improvements to enable the expansion of outdoor dining and commerce consistent with the referral from City Council. In addition, staff engaged with business owners, business

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<sup>13</sup> For a detailed look at the economic impact of the pandemic on Berkeley’s economy in 2020, see: City of Berkeley, [Office of Economic Development, Economic Dashboard & COVID-19 Impacts & Response](#), December 2020.

district leaders, and current street closure, sidewalk seating, and parklet permit applicants. This experience has informed the development of a framework for enabling outdoor commerce to continue on in a post-pandemic world (Attachments 1, 2, and 3).

*Pending State Legislation (Alcoholic Beverage Control)*

Regarding sales and consumption of alcoholic beverages in parklets, there is [current legislation](#) under consideration in the state Senate (Senate Bill 314, also known as the “[Bar and Restaurant Recovery Act](#)”) which could authorize California cities to allow restaurants to serve alcohol in outdoor spaces like parking lots, parklets, and “streeteries”, or open container entertainment zones at outdoor festivals, street fairs, and concerts where alcohol is purchased and consumed.<sup>14</sup> Passage of SB314 would not automatically implement any of these changes, but would rather give cities and counties the option of adopting them.<sup>15</sup> Prior to and during the pandemic, alcoholic beverage service is allowed at sidewalk seating installations. Should the proposed state legislation pass, the City could consider making it explicit that alcoholic beverages are permitted in parklets as well.

The goals of the both the sidewalk seating and parklet program are to maintain and enhance public space in Berkeley, enhance the economic sustainability of commercial and mixed-use districts, and create a desirable streetscape for the public to enjoy. Further, the expanded sidewalk seating and the strategic use of the existing street event closures program provide a regulatory pathway for more commercial activity to take place out of doors, improve quality of life, and enable sustainable economic recovery for local-serving businesses.

#### ENVIRONMENTAL SUSTAINABILITY

Parklets, Sidewalk Seating and Outdoor Commerce activities improve the pedestrian environment and often include bicycle parking facilities, and therefore encourage the use of multi-modal, environmentally sustainable transportation types.

#### RATIONALE FOR RECOMMENDATION

As a result of this sustained public health emergency, and part of the subsequent recovery, the City can leverage the public right-of-way to help animate key commercial corridors, and enable the production of high-quality outdoor spaces in Berkeley.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

<sup>14</sup> For the full text of the proposed SB 314, see:

[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=20210220SB314](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=20210220SB314)

<sup>15</sup> Esther Mobley, *California liquor bill aims to make restaurant parklets permanent, plus zones for open containers*, San Francisco Chronicle, February 5, 2021, Online:

<https://www.sfchronicle.com/restaurants/article/California-liquor-bill-aims-to-make-restaurant-15926255.php>



Eleanor Hollander, Acting Manager, Office of Economic Development, (510) 981-7536

Attachments:

- 1: Ordinance 14.48.190 Parklets and 16.18.010 Right of Way Encroachments and Encroachment Permits
- 2: Ordinance 14.48.150 Sidewalk Seating
- 3: Resolution: Revised Fee Schedule for Parklets, Sidewalk Seating and Special Event Street Closure Application(s).
- 4: *Impacts on Meter Revenue*, presented at the Berkeley City Council *Facilities, Infrastructure, Transportation, Environment & Sustainability* (FITES) Policy Committee meeting, [November 2, 2020](#).

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

AMENDING CHAPTER 14.48 MISCELLANEOUS USE OF STREETS AND SIDEWALKS  
OF THE BERKELEY MUNICIPAL CODE SECTION 14.48.190 PARKLETS AND  
AMENDING CHAPTER 16.18 RIGHT-OF-WAY ENCROACHMENTS AND  
ENCROACHMENT PERMITS

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

Section 1. That Berkeley Municipal Code Section 14.48.190 is amended to read as follows:

**14.48.190 Parklets**

A. Notwithstanding anything to the contrary in this Chapter, the City of Berkeley Engineering Division of the Department of Public Works, or its successor, may approve Parklets, Benches and/or Planters in the public right of way- (excluding Sidewalks alone, which are subject to and governed by Section 14.48.200) as set forth in, and in compliance with, this Section.

1. No permit may be issued under this Section for any right-of-way area in front of a single parcel if there are any current violations of this Chapter in that right-of-way area.
2. A permit for a Parklet may not be issued unless the parklet Host is in full compliance with all applicable requirements of Title 23 and any Permit issued thereunder.
3. A permit for a Parklet may only be issued adjacent to parcels in the following zoning districts: all Commercial (C-prefixed districts), Mixed-Use Light Industrial (MU-LI), Mixed-Use Residential (MU-R), and Mixed Manufacturing (MM).

B. For purposes of this Chapter, the following terms shall be defined as follows:

1. "Bench" means a seat designed for two or more persons.
2. "Bike Parking" means a location with bike racks intended for the secure parking of bicycles.
3. "Furniture" means amenities such as but not limited to tables, chairs, benches, and other equipment that facilitates the stationary use of public space.
4. "Parklet" means a platform or similar level surface extending into the public right of way with amenities such as but not limited to tables and/or chairs (including Benches), Bike Parking, and umbrellas, designated as public space, located in or on the public right-of-way or resting on, or projecting into, the sidewalk and parking area, which are not physically or structurally attached to a building, retaining wall or

fence. [Platforms that meet this definition but have received a Sidewalk Seating Permit pursuant to BMC Section 14.48.150 shall not be considered Parklets.](#)

5. "Planter" means a container that is designed or used for growing plants.
6. "Sidewalk" has the same meaning as set forth in Section 1.04.010(18).
7. "Sponsoring Business", "Host", "Permit Holder" or "Permittee" means, and is limited to, any establishment engaged in insuring and caring for the Parklet as set forth in the Parklet maintenance agreement.
8. "Transit Stop" means an AC Transit bus stop, UC Berkeley bus stop, a paratransit bus stop, Bay Area Rapid Transit station entrance, or another public transit provider.

C. Parklets, Benches and Planters shall fully conform to the following requirements of this subdivision:

1. Any object permitted under this Section shall leave a minimum of clear space as the Engineering Division finds necessary to protect and enhance pedestrian or vehicle traffic for public use in and around the Parklet area, as that space is determined by the City of Berkeley Engineering Division of the Department of Public Works, or its successor.
2. Parklets shall comply with applicable Americans with Disabilities Act (ADA) accessibility standards.
3. Objects permitted under this Section shall not:
  - a. Unduly interfere with access by public employees and utility workers to meters, fire hydrants or other objects (street hardware) in the right-of-way;
  - b. Block or obstruct the view of necessary authorized traffic devices;
  - c. Unduly interfere with pedestrian traffic in the right-of-way, including the Sidewalk, pedestrian safety, traffic circulation, and/or vehicular safety;
  - d. Be closer than 25 feet to any curb return or fire hydrant; except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshall as appropriate;
  - e. Be affixed to any City or utility company-owned poles or appurtenances;
  - f. The width of the Parklet must not extend beyond six feet from the curb line, except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a Parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshall as appropriate.

4. All Parklets shall be subject to the following additional standards and requirements:

- a. Parklets must remain publicly accessible and must include signage posted on site to this effect;
- b. Parklet construction materials must be of high quality, durable, and suitable for public use;
- c. A visible edge to the Parklet is required, which may consist of Planters, railing, or cabling. The edges should be visually permeable;
- d. The Permittee shall regularly inspect and clean the Parklet and that portion of the public sidewalk adjacent to the Parklet;
- e. Access panels must be included in order to maintain the gutter and area underneath the Parklet and the design must allow for drainage along the gutter to pass underneath the Parklet;
- f. Safe hit posts and wheel stops, or approved equivalents, may be required. If Bike Parking is provided, the bike racks can be at street grade;

5. All Benches, Furniture, and Planters within the Parklet shall be subject to the following additional standards and requirements:

- a. All proposals shall comply with any design requirements adopted by the City for Benches, Planters and/or plant material;
- b. All non-secured Parklet components shall be stored in a secure location on private property when not in use;
- c. Any unsecured Furniture must be clearly different from the Furniture used by a Parklet Host in order to emphasize that the Parklet is public space, as determined by City staff;

D. All permits issued under this Section shall be subject to the following conditions:

1. The Permittee shall be responsible for, and exercise reasonable care in the inspection, maintenance, and cleanliness of the area affected by any object(s) permitted by this Section, including any design requirements hereafter enacted, from the building frontage to the right-of-way, including the Parklet area.

2. The Permittee shall restrict any objects permitted under this Section to the approved location(s) and configuration, ensure compliance with all applicable laws, and the number and configuration of Benches, Furniture and Planters and overall square footage of the Parklet shall not be modified without prior approval of the Public Works Department.

3. When any objects permitted under this Section are found to be in conflict with existing or proposed facilities or improvements owned, maintained, or operated by the City, or any existing or proposed City design plans, those objects shall, upon written demand of the City Manager or his or her designee, be removed or relocated in such a way as to eliminate the conflict, at the sole expense of the Permittee. Should the Permittee fail to comply with said written demand within a reasonable period of time, the City may cause such relocation of the placement at the expense of the Permittee. Any such non-compliance shall also be a violation of this Section.

4. Permits issued under the Section, when under review prior to issuance shall be posted in plain view within the sponsoring establishment(s) for which the permit has been issued. Public notice, permitting, and appeal for Parklets are set forth in BMC Section 16.18.060 (Permit procedure for minor encroachment) of the Berkeley Municipal Code. Section D (4) is not applicable in cases of declared local emergency due to disease outbreak. [Upon termination of a declared local emergency due to disease outbreak within 365 days, a permittee must:](#)

[a. pay the permit fee for a minor encroachment and comply with all the requirements of this Section and Section 16.18.060, except that public notice requirements shall not be required; or](#)

[b. apply for a Sidewalk Seating Permit pursuant to BMC Section 14.48.150, and pay initial annual outdoor commerce use fee \(the application permit fee for transitioning permits will be waived\); or](#)

[c. remove the Parklet from the public right-of-way.](#)

5. By accepting a permit under this Section, the Permittee explicitly agrees to hold the City, its officers and employees harmless from any liability, claims, suits or actions for any and all damages alleged to have been suffered by any person or property by reason of the Permittee's installation, operation, maintenance or removal of the Parklet, Benches and/or Planters.

6. Prior to permit approval, the Permittee shall demonstrate possession of liability insurance, in the amount not less than \$1,000,000, for the Parklet including any associated Benches, Planters and Furniture. Said insurance shall name the City of Berkeley as an additional insured and shall be in a form acceptable to the City Attorney.

7. The City Manager or their designee may require a performance bond to ensure Parklet removal in the event of a permit cancellation.

8. The Permittee shall monitor and control the use of the Parklet to prevent disturbance of the surrounding neighborhood.

9. A Sponsoring Business or other business is not permitted to perform table service at a Parklet or otherwise incorporate a Parklet into its business operations.

Section D (9) is not applicable in cases of declared local emergency due to disease outbreak.

10. Commercial signage, smoking, and advertising are prohibited at Parklets.

E. Parklets, Benches and/or Planters that are not permitted under this Section are prohibited encroachments under Chapter 16.18, and shall constitute public nuisances subject to the remedies in Chapter 1.26.

F. The City Council may by resolution establish or waive fees and guidelines for the implementation and administration of this Section.

Section 2. That Berkeley Municipal Code Section 16.18.010 is amended to read as follows:

**16.18.010 Definitions.**

A. "Encroach" means constructing or placing permanent structures or improvements over, upon, under, or using any public right-of-way or watercourse in any manner other than its intended use.

B. "Encroachment" shall include any of the following acts:

1. Erecting or maintaining any flag, banner, decoration, post, sign, pole, fence, guard-rail, wall, loading platform, mailbox, pipe, conduit, wire, or other structure on, over, or under a public right-of-way;
2. Constructing, placing, or maintaining, on, over, under, or within the public right-of-way any subsurface drainage structure or facility, any pipe, conduit, wire or cable;

C. "Major encroachment" means any permanent improvement attached to a structure or constructed in place so that it projects into the public right-of-way such as basement vaults, earth retaining structures over three feet above grade, structure connected planter boxes, ramps, or fences over six feet above grade Improvements identified in chapters 16.04, 16.24 and 17.16, and. any items conforming to the Berkeley Building Code, shall not be considered Major encroachments. Projections over any part of the public right-of-way that are not permitted by or which are in excess of the limitations specified in the Berkeley Building Code shall also be classified as major encroachments, including theatre marquees, signs suspended above the sidewalk, oriel windows, balconies, cornices and other architectural projections.

D. "Minor encroachment" means encroachment into the public right-of-way resting on or projecting into the sidewalk area such as: subsurface tiebacks and soil nails; concrete stairs; disabled Access Ramps where more than six feet of sidewalk area is preserved; subsurface foundations extending less than 2 feet from the property line; level landings for garages; landscape features less than two feet in height; conduit for privately owned phone and data lines connecting buildings owned by the permittee;

flower pots; permanent planter boxes; clocks; bus shelters; phone booths; bike racks; fences less than six feet above grade; earth retaining structures less than three feet above grade; benches; Parklets, as defined in Section 14.48.190; and curbs around planter areas. Any encroachment which is not a minor encroachment is a major encroachment. During a declared City emergency in response to a disease outbreak, a Parklet shall be considered a temporary structure not subject to the encroachment permit requirement and shall be permitted with an engineering permit. ~~Upon termination of the declared City emergency, any Parklet present in the public right-of-way shall within (365) days of date of termination either obtain a valid encroachment permit pursuant to 14.48.190.D.4 or be removed from the public right-of-way.~~

E. "Assistant City Manager for Public Works" includes the ~~Assistant~~ Deputy City Manager, Public Works Director and/or his/her authorized delegate.

F. "Permittee" means any person(s) firm, company, corporation, association, public agency, public utility, or organization and the permittee's successors-in-interest which has been issued a permit for said encroachment by the Assistant City Manager for Public Works. All obligations, responsibilities, and other requirements of the permittee as herein described, shall be binding on successors in interest of the original permittee and subsequent owners of the property benefitted by the encroachment unless otherwise specified in the permit. (Ord. 7301-NS § 1, 2013; Ord. 6998-NS, 09/18/07: Ord. 5514-NS § 1, 1983)

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 Old City Hall, 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.

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

AMENDING CHAPTER 14.48 MISCELLANEOUS USE OF STREETS AND SIDEWALKS  
OF THE BERKELEY MUNICIPAL CODE

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

Section 1. Findings.

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

A. During the declared local emergency due to the COVID-19 pandemic, the City permitted Sidewalk Seating in all parts of the public right-of-way in order to allow businesses to survive while also maintaining appropriate social distancing measures.

B. Following the termination of the local emergency, the City desires to continue allowing Sidewalk Seating in all parts of the public right-of-way, subject to conditions set forth in BMC 14.48.150.

C. The City expects that such outdoor commerce will result in a decrease in parking meter revenues, as parking spaces will be used for business operations rather than parking.

D. The City is obligated to maintain revenue from operation of its off-street parking enterprise and its parking meter enterprise sufficient to meet rate covenants in the Installment Sale Agreement, dated as of August 1, 2016 related to the \$33,970,000 Berkeley Joint Powers Financing Authority Parking Revenue Bonds, Series 2016.

E. In order to maintain sufficient parking meter revenue, the amended Berkeley Municipal Code Section 14.48.150 implements a new Outdoor Commerce Use Fee which shall be equivalent to the expected block face parking revenue from the parking spaces used by the Sidewalk Seating permittee, and shall be treated as Parking Meter Fund revenue.

F. By charging the Sidewalk Seating permittee the equivalent of the parking meter rate for the use of parking spaces, the Outdoor Commerce Use Fee is no more than necessary to cover the costs to the City of providing parking spaces for outdoor commerce, and bears a fair and reasonable relationship to the benefit received by the Sidewalk Seating permittee.

Section 1. That Berkeley Municipal Code Section 14.48.150 is amended to read as follows:

**14.48.150 Sidewalk seating, benches and planters.**



A. Notwithstanding anything to the contrary in this Chapter, the City of Berkeley Engineering Division of the Department of Public Works, or its successor, may approve Sidewalk Seating, Benches and/or Planters on sidewalks, parking lanes, street areas, and other public right of way locations as set forth in, and in compliance with, this Section.

1. No permit may be issued under this Section for any sidewalk area in front of a single parcel if there are any current violations of this Chapter in that sidewalk area.

2. A permit for Sidewalk Seating, Benches and/or Planters may not be issued unless the business for which the Sidewalk Seating, Benches and/or Planters is/are proposed is in full compliance with Title 23 and any Permit issued thereunder.

3. Sidewalk Seating and Outdoor Commerce shall require a Sidewalk Seating engineering permit, renewed annually.

4. Businesses conducting Outdoor Commerce in a parking lane shall additionally pay an annual Outdoor Commerce Use Fee in exchange for using public parking spaces for business operations.

5. Sidewalk Seating shall be permitted in any area of the public right-of-way if City Staff makes a finding that the use of the right-of-way for Sidewalk Seating purposes does not create a dangerous condition for customers, pedestrians, or bicycle or motor vehicle traffic. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshall as appropriate.

6. Upon termination of any declared City emergency, any Sidewalk Seating present in the public right-of-way and not on the sidewalk shall within (365) days of date of termination either obtain a valid Sidewalk Seating Engineering Permit and pay the Outdoor Commerce Use Fee or be removed from the public right-of-way.

B. For purposes of this Chapter, the following terms shall be defined as follows:

1. "Bench" means a seat designed for two or more persons.

[2. "Block Face" means one side of one block, e.g., the north side of Center Street between Milvia Street and Shattuck Avenue.](#)

[23.](#) "Bus Bench" means a bench installed and maintained under an agreement between the City, A.C. Transit and Lamar Transit Advertising or another public or semi-public transit provider.

[34.](#) "Commercial Establishment" means, but is not limited to, a place where Business Activity is established. Business activity is defined as any activity subject to BMC Chapter 9.04 and any economic activity which generates receipts but is exempt from BMC Chapter 9.04 by state or federal law.

~~[45.](#)~~ "District-wide Sidewalk Bench/Planter Area Plan" means a City-approved plan for a specific commercial district as defined in said plan that establishes area-specific regulations for benches, planters and/or plant material, and establishes general regulations for the placement of benches and planters in the public right-of-way, for the designated district.

~~[56.](#)~~ "District-wide Sidewalk Seating Area Plan" means a City-approved plan for a specific commercial district as defined in said plan that establishes area-specific regulations for sidewalk seating, and establishes general regulations for the placement of sidewalk seating in the public right-of-way, for the designated district.

~~[67.](#)~~ "Food Service Establishment" has the same meaning as set forth in BMC Chapter 23F.04.

[78.](#) "Furniture" means amenities such as but not limited to tables, chairs, benches, and other equipment that facilitates the stationary use of sidewalk, parking lanes, street area, and other public right of way spaces.

[9. "Outdoor Commerce" means Sidewalk Seating in the public right of way.](#)

[10. "Outdoor Commerce Use Fee" means an annual fee for the use of the parking lane for Sidewalk Seating.](#)

~~6.~~ 11. "Planter" means a container that is designed or used for growing plants.

912. "Parking Lane" and "Street Area" are considered to be part of the Public right-of-way (PROW), known as, "any public street, public way, public place or rights-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, owned, operated and/or controlled by the City or subject to an easement owned by City and any privately-owned area within City's jurisdiction which is not yet, but is designated as a proposed public place on a tentative subdivision map approved by City." as defined in BMC 23F.04.010.

~~7.~~ 13. "Sidewalk" has the same meaning as set forth in BMC 1.04.010(18).

14. "Sidewalk Seating" means tables and/or chairs (including benches) and, umbrellas and other associated furniture with lawfully operating Food Service Establishments or other commercial establishments, in or on the sidewalk.

~~During cases of a declared City emergency in response to a disease outbreak,~~  
"Sidewalk Seating" includes seating and associated furniture in the public right-of-way or resting on, or projecting into, the sidewalk, parking lane, or street area, or any combination thereof which are not physically or structurally attached to a building, retaining wall or fence. ~~Such Sidewalk Seating shall be permitted in any area of the public right-of-way for the duration of the declared City emergency if Traffic Engineer makes a finding that the use of the right-of-way for Sidewalk Seating purposes does not create a dangerous condition for customers, pedestrians, or bicycle or motor vehicle traffic. Upon termination of the declared City emergency, any Sidewalk Seating present in the public right-of-way and not on the sidewalk shall within 365 days of date of termination either obtain and valid encroachment permit or be removed from the public right-of-way.~~

~~12~~15. "Transit Stop" means an AC Transit bus stop, UC Berkeley bus stop, a paratransit bus stop, Bay Area Rapid Transit station entrance, or another public transit provider.

~~10.~~ 16. "Window Box Planter" means a box, designed to hold soil for growing plants, attached at or on a windowsill.

C. Sidewalk Seating, Benches and Planters shall fully conform to the following requirements of this subdivision:

1. Any object permitted under this Section shall leave a minimum horizontal clear space of six feet for ADA-compliant path of travel, (or reduce to 5 feet at a single point of contact) or such greater (or smaller) amount of clear space as the Engineering Division finds necessary to protect and enhance pedestrian and vehicle traffic for public use in the sidewalk area, as that space is determined by the City of Berkeley Engineering Division of the Department of Public Works, or its successor.

2. Objects permitted under this Section shall not:

a. Unduly interfere with access by public employees and utility workers to meters, fire hydrants or other objects (street hardware) in the right-of-way;

b. Block or obstruct the view of necessary authorized traffic devices;

c. Unduly interfere with pedestrian traffic in the public ROW/sidewalk, pedestrian safety, access to public or private parking, traffic circulation, and/or vehicular safety;

d. Be closer than 25 feet to any curb return or fire hydrant; except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, Sidewalk Seating, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate;

e. Be affixed to any City or utility company-owned poles or appurtenances;

3. All sidewalk seating shall be subject to the following additional standards and requirements:

a. All Sidewalk Seating configurations shall comply with applicable Americans with Disabilities Act (ADA) accessibility standards.

b. All Sidewalk Seating components shall be stored in a secure location ~~on private property~~ when not in use.

c. The permittee shall regularly inspect and clean the Sidewalk Seating and that portion of the public sidewalk adjacent to the establishment. A waste receptacle shall be provided.

4. All benches and planters shall be subject to the following additional standards and requirements:

a. All proposals shall comply to the greatest extent possible with any design requirements adopted by the City for benches, planters and/or plant material.

D. All permits issued under this Section shall be subject to the following conditions:

1. The permittee shall be responsible for, and exercise reasonable care in the inspection, maintenance, and cleanliness of the area affected by any object(s) permitted by this Section, including any design requirements hereafter enacted, from the building frontage to the curb, parking lane, or street area.

2. The permittee shall restrict any objects permitted under this Section to the approved location(s) and configuration, and ensure compliance with all applicable laws, and the number of tables and chairs shall not be increased without prior approval of the Public Works or Public Health Department.

3. When any objects permitted under this Section are found to be in conflict with existing or proposed facilities or improvements owned, maintained, or operated by the City, or any existing or proposed City design plans, those objects shall, upon written demand of the City Manager or their designee, be removed or relocated in such a way as to eliminate the conflict. Should the permittee fail to comply with said written demand within a reasonable period of time, the City may cause such relocation of the placement at the expense of the permittee. Any such non-compliance shall also be a violation of this Section.

4. Permits issued under the Section shall be posted in plain view within the commercial establishment for which the permit has been issued along with any other relevant permits that support health and safety of patrons and the general public.

5. By accepting a permit under this Section, the permittee explicitly agrees to hold the City, its officers and employees harmless from any liability, claims, suits or actions for any and all damages alleged to have been suffered by any person or property by reason of the permittee's installation, operation, maintenance or removal of Sidewalk Seating, Furniture, Benches and/or Planters.
  6. Prior to permit approval, the permittee shall demonstrate possession of liability insurance in the amount of \$1,000,000 for Benches and Planters, and related Sidewalk Seating furniture. Said insurance shall name the City of Berkeley as additionally insured and shall be in a form acceptable to the City Attorney.
  7. The permittee shall monitor and control the use of the Sidewalk Seating so as to prevent disturbance of the surrounding neighborhood.
  8. A food service establishment that proposes to serve alcoholic beverages within an outdoor dining area shall comply with the standards established by the State of California Department of Alcoholic Beverage Control. The dining area shall be:
    - a. Physically defined and clearly part of the [commercial establishment](#) ~~restaurant~~ it serves; and
    - b. Supervised by a [commercial establishment](#) ~~restaurant~~ employee to ensure compliance with laws regarding the on-site consumption of alcoholic beverages.
- E. Permits under this Section are not transferable, and must be renewed annually.
- F. Sidewalk Seating, Benches, Furniture, and/or Planters that are not permitted under this Section are prohibited encroachments under Chapter 16.18, and shall constitute public nuisances subject to the remedies in Chapter 1.26.
- G. The City Council may by resolution establish or waive fees for the implementation and administration of this Section. [Outdoor Commerce Use Fees shall be equivalent to the expected block face parking revenue from the parking spaces used by the permittee, and shall be treated as Parking Meter Fund revenue.](#) (Ord. 7632-NS § 1 (part), 2018; Ord. 7468-NS § 1, 2016; Ord. 7401-NS § 1, 2015; Ord. 7203-NS § 2, 2011; Ord. 6281-NS § 5, 1995. Formerly 14.48.200)

Section 2. 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 fifteen calendar days of adoption, copies of this Ordinance shall be published in a newspaper of general circulation.

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

AUTHORIZING THE CITY MANAGER TO WAIVE APPLICATION AND PERMIT FEES DURING A DECLARED LOCAL EMERGENCY FOR APPLICATIONS TO THE SIDEWALK SEATING, PARKLET, AND STREET EVENT PERMIT PROGRAMS AND FURTHER AUTHORIZING THE CITY MANAGER TO LEVY FEES FOR THESE PROGRAMS AT THE CONCLUSION OF A DECLARED LOCAL EMERGENCY.

WHEREAS, on June 16, 2020, the Council of the City of Berkeley adopted Urgency Ordinances Nos. [REDACTED]-N.S. and [REDACTED]-N.S, establishing Parklets and Sidewalk Seating as an approvable temporary use in the public right-of-way; and

WHEREAS, the Ordinances, codified in Berkeley Municipal Code Chapters 14.48.190 (defined in Chapter 16.18.010) and 14.48.150 (defined in Chapter 23F.04.010), establish regulations for parklets and sidewalk seating in the public right-of-way during a declared local emergency; and

WHEREAS, the Ordinances, codified in Berkeley Municipal Code Chapters 14.48.190 (defined in Chapter 16.18.010) and 14.48.150 (defined in Chapter 23F.04.010), also establish regulations for parklets and sidewalk seating in the public right-of-way after the declared local emergency lapses or is rescinded; and

WHEREAS, the adopted ordinances establish procedures, conditions and a fee structure for engaging in outdoor commerce in the public right of way at the conclusion of a local emergency; and

WHEREAS, these Procedures and Conditions empower the City Council to waive permit fees, for the permitting and review of parklets, sidewalk seating and street closure event permits in the public-right-of-way during a state of declared local emergency; and

WHEREAS, the Council of the City of Berkeley declared a state of local emergency on March 3, 2020 due to the global pandemic caused by spread of COVID-19;

WHEREAS, when the local emergency has ended, the City will continue to allow outdoor commerce to take place in the public right of way, including in areas otherwise used for parking; and

WHEREAS, the City is required to maintain sufficient parking meter revenue to meet commitments in the Installment Sale Agreement, dated as of August 1, 2016 related to the \$33,970,000 Berkeley Joint Powers Financing Authority Parking Revenue Bonds, Series 2016 ("Bond Agreement");

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to waive fees associated with the permitting and inspection of these programs until the local state of emergency lapses or is revoked.



BE IT FURTHER RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to levy fees associated with the permitting and inspection of these programs when the local state of emergency lapses or is revoked.

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to levy fees associated with the use of the public right of way for these programs when the local state of emergency lapses or is revoked.

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that the fee structure for sidewalk seating in the public right-of-way other than the sidewalk shall compensate the Parking Meter Revenue Fund for purposes of meeting the rate covenants in the City's Bond Agreement.

**Attachment 4:** Impacts on Meter Revenue, Berkeley City Council Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Policy Committee meeting, November 2, 2020

**From:** Javandel, Farid  
**Sent:** Wednesday, November 4, 2020 2:53 PM  
**To:** MacDonald, Michael  
**Subject:** Re: Cost of parklet fees

Michael,

The FITES subcommittee asked for the value of the waived parklet application and permit fees. The answer is that we have issued permits with \$71,000 in waived fees so far and have additional permits pending which will bring us to a total of \$138,000 in waived fees. If a temporary parklet opts to become permanent after the pandemic, it will require an encroachment permit, which costs about \$1,700. We have not required encroachment permits for the temporary parklets during the pandemic.

There was also a question about the current revenue and potential revenue per parking space as a basis for potential future lease price of parking spaces for dedicated use by businesses. The information in the table below summarizes the annual average revenue for spaces in each area based on revenue on or before February 2020. The revenues provided are the average actual revenues per meter in each of the specified zones. Actual revenues are typically less than potential revenues because of both vacant spaces and unpaid meter use by disabled placard holders who are exempt from paying or by other people who park without paying or stay for longer than the payment on the meter. There are also vacant spaces. However, in goBerkeley zones like downtown the meter prices are adjusted to keep occupancy between 65% and 85%, which does not account for the actual revenue being 42.6% of potential at the single space meters and 33% at multispace meters. Clearly underpayment of occupied parking spaces plays a big role in the discrepancy between actual and potential revenues even if the cars occupying those spaces belong to patrons or employees of businesses who rely on the availability of those parking spaces.

Best Regards,  
 Farid

Financial Zone/Area	Annual Revenue per space	Annual Potential Revenue per space
Elmwood Multi Space	\$4,502.67	\$7,499.25
Main GoBerkeley 2 Hr Single Space Meter	\$4,645.92	\$10,908.00
Main GoBerkeley 2 Hr Multi Space	\$3,613.67	\$10,908.00
Main GoBerkeley 8 Hr (Value) meters	\$4,646.46	\$5,454.00
2300 Shattuck	\$5,133.44	\$10,908.00
Main North Berkeley Single Space	\$2,496.91	\$5,454.00
Main North Berkeley Multi Space	\$2,889.88	\$5,454.00
Solano Multi Space Meters	\$1,778.79	\$4,090.50
University/San Pablo Single Space Meters	\$932.87	\$4,090.50
University San Pablo Multi Space Meters	\$533.11	\$4,090.50
1800 Fourth Street	\$2,742.96	\$4,090.50

## Impacts of Parklets on Parking Meter Revenue

Meter Area	# of Parklets	Total Spaces	Annual Revenue Loss	
			Actual*	Potential**
4th Street	3	7	\$19,200.75	\$28,633.50
Downtown	6	21	\$78,983.78	\$229,068.00
Elmwood	3	6	\$27,016.00	\$44,995.50
North Berkeley	6	22	\$60,433.59	\$119,988.00
Solano	3	8	\$14,230.33	\$32,724.00
	<b>21</b>	<b>64</b>	<b>\$199,864.46</b>	<b>\$455,409.00</b>

\*Calculated using February 2020 revenue data

*Revenue shown is average of meter financial area. 4th St. specific to 1800 block of 4th Street.*

\*\*Potential revenue assumes metered spaces are paid from 9am-6pm, Monday-Saturday, holidays excepted, at Feb. 2020 hourly rates.





Office of the City Manager

INFORMATION CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: City Council Short Term Referral Process – Quarterly Update

INTRODUCTION

This report is a quarterly update on the status of short term (90-day) and other date-certain Council referrals.

CURRENT SITUATION AND ITS EFFECTS

In this context, tracking refers to a manually updated chart (Attachment 1). The May 15, 2018 Council referral establishing the monthly update includes both “short term” and “date-certain” referrals. Short term referrals are referrals that staff determines they will be able to complete in approximately three months. Date-certain referrals are those which contain a specified date of completion at the time they are approved by the City Council. Currently, the City only tracks short term referrals in an Excel spreadsheet.

The January 21, 2020 Council consent item changed the reporting frequency from monthly to quarterly. Providing a quarterly update on all short term and date-certain referrals will allow Council and the public to see the status of these referrals and any circumstances which lead to delays.

BACKGROUND

In 2016, the City Council adopted a system of Re-Weighted Range Voting (RRV) to prioritize the outstanding City Council referrals to staff. The RRV system enables City Council to provide direction to staff on which referrals are highest priority to the City Council. However, that process does not provide information on the status of short term or date-certain referrals. While many short term or date-certain referrals were “updated” through being completed and presented to Council as consent or information items, there was no comprehensive overview of this subset of referrals.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

The City Council may wish to direct staff to evaluate this process after it has been in place six months.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

No direct fiscal impact. Greater efficiencies in staff resources due to prioritization of work and alignment with budget and strategic plan goals.

CONTACT PERSON

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

Attachments:

- 1: Short Term Referrals
- 2: Completed Short Term Referrals

Short Term Referrals | 1st Quarter

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-01-28	12	Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F	2) analyze the impacts of artificial flavorings/additives and advise if any further regulations are necessary	Councilmembers				2020-07-20 17:00:00	Health, Housing and Community Services	Pending	2020-07-20 17:00:00		
2020-02-11	2	Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F	2) direct the Berkeley Public Health Department to review the issue of flavored cannabis products for combustion or inhalation, and cannabis products whose names imply that they are flavored, and review any additional ingredients that may be hazardous, whether natural or artificial, including vitamin E acetate in inhalation products, and make recommendations for action.	Councilmembers				2020-07-20 17:00:00	Health, Housing and Community Services	Pending	2020-07-20 17:00:00		

Short Term Referrals | 1st Quarter

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-09-10	48	Request for Information Regarding Current Status and Progress on Traffic Mitigations at Dwight Way and California Street	Refer to the City Manager a request for information regarding the current status and progress on traffic mitigations and pedestrian safety improvements at the intersection of Dwight Way and California Street.	Council member		Ben Bartlett		2019-09-16 17:00:00	Public Works	Not Started	2019-09-16 17:00:00		<p>2020-10-05 09:33:42 - Nancy Melendez (Additional comments) Received approval to fill Associate Traffic Engineer vacancy to do the work. initiating hiring process.</p> <p>2020-03-19 10:31:47 - Nancy Melendez (Additional comments) Engineering Design work is commencing now, construction expected in Spring 2021</p> <p>2019-11-26 14:16:26 - Melissa McDonough (Additional comments) Off agenda memo pending</p>
2020-01-28	12	Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F	1) determine if the City can require businesses to post notices on their website	Councilmembers				2020-01-30 17:00:00	City Attorney	Not Started	2020-01-30 17:00:00		
2020-02-11	2	Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F	1) determine if the City can require businesses to post notices on their website	Councilmembers				2020-02-17 17:00:00	City Attorney	Not Started	2020-02-17 17:00:00		



Short Term Referrals | 1st Quarter

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-12-01	28	Referral: Commission Low-Income Stipend Reform	Refer to the City Manager to develop and return to Council with a plan to improve equity, accessibility, and representation in City of Berkeley commissions by modernizing the low-income stipend program, and in doing so consider: 1. Increasing the annual household income cap for stipend eligibility from \$20,000 to align with the 50% Area Median Income (AMI) guidelines for Alameda County and reflect household size, and updating it annually with the latest HUD data. 2. Increasing the low-income stipend from \$20,000 to \$25,000.	Councilmembers		Rigel Robinson		2020-12-04 17:00:00	City Clerk	Not Started	2020-12-04 17:00:00		
2020-12-15	25	Prohibition on the Resale of Used Combustion Vehicles in 2040	On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to refer to the City Manager for review of the attached ordinance prohibiting the resale of used, existing combustion-powered vehicles beginning in 2040, to the extent legally possible.	Commission			Community Environmental Advisory Commission	2020-12-25 17:00:00	City Attorney	Not Started	2020-12-25 17:00:00		

Short Term Referrals | 1st Quarter

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2021-01-26	11	Short Term Referral to City Manager, Disaster and Fire Safety Commission and Planning Commission to Amend Local Accessory Dwelling Unit (ADU) Zoning Ordinance and Berkeley's Fire Code	Refer to the City Manager, the Disaster and Fire Safety Commission and the Planning Commission to evaluate and recommend to Council within 90 days, a set of ordinance amendments and implementation programs to address emergency access and egress, parking and objective development standards for ADUs in all districts with expedited consideration to address the constraints presented by high fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3.	Councilmembers		Susan Wengraf, Sophie Hahn		2021-01-28 17:00:00	PLANNING & DEVELOPMENT	Not Started	2021-01-28 17:00:00		
2021-03-09	11	Proposed Changes to City Council Office Budget Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)	prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.	Councilmembers				2021-03-15 17:00:00	City Clerk	Not Started	2021-03-15 17:00:00		

Short Term Referrals | 1st Quarter

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-07-10	20	Refer to City Manager to look into adopting an ordinance requiring a permit process for scooter sharing companies to operate on public streets	Refer to the City manager to look into adopting an ordinance establishing a pilot Powered Scooter Share Permit Program for 24 months, requiring a permit issued by the Director of Public Works, establishing a fee for the issuance of the permit, establishing administrative penalties for failure to obtain a permit or violation of permit requirements, providing a procedure for the assessment and collection of administrative penalties for permit violations or parking or leaving standing an unpermitted powered scooter subject to the City Manager's discretion.	Council member		Kriss Worthington, Sophie Hahn	Transportation Commission	2018-11-27 17:00:00	Public Works	Work in Progress	2018-11-27 17:00:00		<p>2021-04-15 10:10:12 - Nancy Melendez (Additional comments) Staff is preparing a new permit program for dockless shared mobility devices like scooters and ebikes. This will be submitted for review by the City attorney in May 2021</p> <p>2019-11-26 14:11:56 - Melissa McDonough (Additional comments) Continuing to monitor status of outstanding lawsuits against other cities re: scooters.</p> <p>2019-08-07 11:03:01 - Nancy Melendez (Additional comments) City issued an RFP for Franchise applications due back by 1/25/19. A panel consisting of staff reps from Public Works, Police, and Economic Development is reviewing applications.</p>
2018-04-03	18	Supplemental Paid Family Leave	2) refer to the City Manager to draft an ordinance regarding retaliation against employees using state family leave, including a private right of action provision.	Commission				2019-01-31 17:00:00	City Attorney	Work in Progress	2019-01-31 17:00:00		<p>2019-12-16 10:27:45 - Christopher Jensen (Additional comments) City Attorney's Office is coordinating with Human Resources.</p> <p>2019-09-17 11:24:26 - Christopher Jensen (Additional comments) City Attorney's Office to coordinate with Human Resources</p>

Short Term Referrals | 1st Quarter

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-09-10	53	Voluntary Time Off on Statewide Election Days for City Employees	Refer to the City Manager to designate Statewide Election Days as VTO days, and refer to the 2x2 Committee to discuss coordinating City and District policy on holidays, in particular Election Day.	Council member		Rigel Robinson, Cheryl Davila, Sophie Hahn, Lori Droste		2019-09-16 17:00:00	Human Resources	Work in Progress	2019-09-16 17:00:00		<p>2020-10-21 11:01:23 - Melissa McDonough (Additional comments) Pending draft Administrative Regulation to institute as regular practice and memo to Council to close out referral. Implemented VTO day as Election Day (Nov 3) for 2020.</p> <p>2020-04-28 09:58:54 - Melissa McDonough (Additional comments) item went to council and approved. Delayed due to COVID-19</p> <p>2019-11-06 15:47:09 - Wilhelmina Parker (Additional comments) Referred to the budget committee to provide analysis on the cost. It is also slated to be a part of labor negotiations in 2020 as it is related to</p>
2019-05-28	29	Referral to the Public Works Department and the City Manager: Finishing the installation of Sculpture Lighting into Adjacent Street Lights for the William Byron Rumford Statue on Sacramento and Julia St.	Refer to the City Manager a request to finish the installation of sculpture lighting into adjacent street lights for the William Byron Rumford statue on Sacramento and Julia Street. Refer to the Public Works Department for its installation.	Councilmembers		Ben Bartlett, Kate Harrison, Cheryl Davila, Jesse Arreguin		2019-06-13 17:00:00	Public Works	Work in Progress	2019-10-01 17:00:00		<p>2021-04-14 14:02:28 - Nancy Melendez (Additional comments) All materials have arrived. Final installation is scheduled and work is anticipated to be completed by 4-30-21.</p> <p>2020-06-30 15:29:22 - Nancy Melendez (Additional comments) PW waiting for a response from Berkeley Electric to confirm project and when they can start.</p> <p>2019-11-26 14:28:34 - Melissa McDonough (Additional comments) Project is out to bid and completion is expected by end of fiscal year.</p> <p>2019-11-26 14:19:08 - Melissa McDonough (Additional comments) All materials identified</p>

Short Term Referrals | 1st Quarter

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-09-24	36	Companion Report: Health Study to be Conducted by the Public Health Division to Gather Data on Health Conditions, Health Disparities and Mortality Rates of Berkeley's homeless	Send a letter to Alameda County requesting data on deaths of identified homeless individuals. Contact Alameda County request that they explore the feasibility of recording homelessness as a data point in death records and/or making investments to begin tracking this information locally.	Councilmembers				2019-10-31 17:00:00	Health, Housing and Community Services	Work in Progress	2019-11-29 17:00:00		2019-12-02 14:10:47 - Melissa McDonough (Additional comments) Disregard previous comment. Mistake.  2019-12-02 14:06:36 - Melissa McDonough (Additional comments) RFP issued, due date for responses 12/12/19
2019-03-26	15	Dynamex Decision Impact and Compliance on Minimum Wage Ordinance and Paid Sick Leave Ordinance	That the City Council refers to the City Manager and the Labor Commission to ensure the Berkeley Minimum Wage Ordinance (MWO) and Paid Sick Leave Ordinance are interpreted and enforced in a manner consistent with the holdings in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903.	Councilmembers		Ben Bartlett		2019-11-29 17:00:00	City Attorney	Work in Progress	2020-01-31 17:00:00		2019-12-16 10:28:22 - Christopher Jensen (Additional comments) City Attorney's Office is coordinating with Human Resources.  2019-09-17 10:59:00 - Christopher Jensen (Additional comments) A draft opinion is under review in the City Attorney's office.  2019-06-18 08:04:27 - Melissa McDonough (Additional comments) The City Attorney's Office is drafting a City Attorney opinion analyzing the holding in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4Cal.5th 903 with respect to the City's MWO and PSLO. The completed memo will be referred to the City

Short Term Referrals | 1st Quarter

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-02-11	15	Recommendations Related to Code Enforcement and Receivership Actions	On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee took action to send an item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following: a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City Council.	Councilmembers				2020-02-17 17:00:00	CITY MANAGER'S OFFICE	Work in Progress	2020-02-17 17:00:00		2020-10-21 11:12:01 - Melissa McDonough (Additional comments) The staff assigned to conduct this work has been tasked with civil enforcement of the face coverings urgency ordinance.  2020-07-20 10:49:42 - Melissa McDonough (Additional comments) Work on this project was delayed by the onset of the COVID pandemic. With the onboarding of a new Code Enforcement Supervisor, City staff has begun to compile this information.
2019-07-16	9	Referral to the City Manager to Consider Amending the Language of the City's Wireless Telecommunications Ordinance and Aesthetic Guidelines	Request that the City Manager consider amending the language of the City's Wireless Telecommunications Ordinance (BMC 23C.17) and Aesthetic Guidelines (BMC 16.10 & Aesthetic Guidelines for PROW permits) and return to City Council for adoption as soon as possible.	Councilmembers		Susan Wengraf, Jesse Arreguin, Ben Bartlett, Kate Harrison		2019-07-22 17:00:00	City Attorney	Work in Progress	2020-02-28 17:00:00		2019-11-27 10:54:30 - Melissa McDonough (Additional comments) The City Attorney's Office, the City Manager's Office, Public Works, and Land Use Planning are in the process of revising an internal draft of administrative guidelines for implementing BMC 16.10 with respect to small cell wireless facilities.  2019-09-17 11:03:27 - Christopher Jensen (Additional comments) The City Manager's Office and City Attorney's Office are coordinating with other departments to update guidelines and procedures for wireless application submittals.

Short Term Referrals | 1st Quarter

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-06-16	0	Urgency Item: Safety for All: The George Floyd Community Safety Act - City Attorney and Manager Analysis of Contractual and Legal Barriers to Public Safety Reform	Direct the City Manager and City Attorney to analyze contractual and legal barriers to public safety reform including police union contracts, vendor contracts, state and federal laws, to determine barriers to accountability and substantive reform. In addition, direct the City Manager and City Attorney to evaluate elements in the proposed police review commission charter amendment, that can be implemented by the City Council.	Councilmembers		Ben Bartlett, Jesse Arreguin, Kate Harrison		2020-06-24 17:00:00	CITY MANAGER'S OFFICE	Work in Progress	2020-06-24 17:00:00		2021-04-05 11:18:09 - Melissa McDonough (Additional comments) To the greatest extent possible, this work is being incorporated into the reimagining public safety process and it is anticipated that any recommendations that result will outline any barriers to implementation.  2021-01-12 15:42:28 - Melissa McDonough (Additional comments) On hold, pending Reimagining Police
2020-09-22	16	Healthy Checkout Ordinance	2. Refer to the City Manager to determine funding and staffing needs to implement and enforce the ordinance and sources of funding to support this program.	Councilmembers		Kate Harrison, Sophie Hahn		2020-10-15 17:00:00	HEALTH, HSG & COMMUNITY SVC	Work in Progress	2020-10-15 17:00:00		

Short Term Referrals | 1st Quarter

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-07-28	30	Providing our Unhoused Community in the City of Berkeley with Menstrual Products	3. Direct the City Manager to use existing homeless services funding to develop and deploy a program to provide a broad spectrum of menstrual products, including but not limited to, feminine hygiene, pads, tampons, underwear, and other related products, both through the City's outreach direct services, as well as through the community based homeless services providers. Additionally, require some elements of this program be deployed immediately, with a full program deployment within six months.	Councilmembers		Cheryl Davila, Ben Bartlett, Lori Droste		2020-10-15 17:00:00	HEALTH, HSG & COMMUNITY SVC	Work in Progress	2020-10-15 17:00:00		
2020-10-13	12	Authorize Installation of Security Cameras at the Marina and Request an Environmental Safety Assessment	Adopt the following recommendations in order to address the recent dramatic uptick in reported crime incidents at the Berkeley marina: - Request that the City Manager install security cameras and signage as expeditiously as possible as a long-term safety measure; - Refer to the City Manager to perform an environmental safety assessment of the Berkeley marina with particular attention to the berther parking areas. Cameras will not use facial recognition or biometric software.	Councilmembers		Rashi Kesarwani, Susan Wengraf		2020-10-22 17:00:00	Parks Recreation & Waterfront	Work in Progress	2020-10-22 17:00:00		



Short Term Referrals | 1st Quarter

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-10-13	18	Enforce Bi-Weekly (Once Every Two Weeks) Residential Cleaning Measures to Address Encampments and Promote Clean Streets in Berkeley	Refer to the City Manager to promote equitable street cleaning practices and require biweekly (once every two weeks), cleanings of populated encampment sites in Berkeley and adjacent residential neighborhoods. In order to determine where City Staff should prioritize residential cleaning services, the City Manager should establish a radius around the campsites. When encampments are on non-City owned property, such as Caltrans, the City should bill the appropriate agency for the cost of staff and materials.			Ben Bartlett, Sophie Hahn, Kate Harrison, Cheryl Davila		2020-10-22 17:00:00	CITY MANAGER'S OFFICE	Work in Progress	2020-10-22 17:00:00		
2020-11-10	5	Referral Response: Including Climate Impacts in City Council Reports	Request that the City Manager update the templates and associated training materials to add "Climate Impacts" in the "Environmental Sustainability" section of reports to the City Council, and codify the changes in Appendix B in the next update to the Berkeley City Council Rules of Procedure. This recommendation is a partial response to a January 21, 2020 referral, sponsored by Councilmembers Davila and Bartlett, to require that all City Council items and staff reports include "climate impacts" in addition to environmental sustainability.	Councilmembers				2020-11-18 17:00:00	City Clerk	Work in Progress	2020-11-18 17:00:00		

Short Term Referrals | 1st Quarter

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-11-10	11	Four Way Stop Signs on Eighth Street at Carleton Street and Pardee Street	Refer to the City Manager a proposal to install stop signs at the intersections of Eighth Street and Carleton Street and Eighth Street and Pardee Street.	Councilmembers		Jesse Arreguin		2020-11-18 17:00:00	Public Works	Work in Progress	2020-11-18 17:00:00		2021-04-15 10:11:39 - Nancy Melendez (Additional comments) Data analysis concluded that traffic and pedestrian volumes are far below the level at which stop signs may be warranted.  2021-01-14 17:44:32 - Nancy Melendez (Additional comments) Data collection needed for Stop Warrants is being scheduled
2020-12-01	25	Personal Liability Protection for Small Businesses	1. Direct the City Manager and City Attorney to draft and submit to the City Council for consideration an emergency ordinance to prohibit the enforcement of personal liability provisions in commercial leases and commercial rental agreements in the City of Berkeley for lessees/renters who have experienced financial impacts related to the Covid-19 pandemic. 2. Direct the City Manager to conduct outreach to all commercial tenants regarding any protections enacted by the City Council, with a particular focus on businesses that	Councilmembers		Sophie Hahn, Susan Wengraf		2020-12-04 17:00:00	City Attorney	Work in Progress	2020-12-04 17:00:00		

Short Term Referrals | 1st Quarter

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-12-15	39	Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration	On November 2, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item to the City Council with the recommendation language as amended by the committee. The revised recommendation language includes: Refer to the City Manager to develop a program and, if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the	Councilmembers		Lori Droste, Jesse Arreguin, Rigel Robinson, Kate Harrison		2020-12-25 17:00:00	Office of Economic Development	Work in Progress	2020-12-25 17:00:00		2021-04-05 11:08:42 - Melissa McDonough (Additional comments) Anticipated return to Council in May 2021
2020-12-15	32	Deferral of Remaining Permit Fees for 2009 Addison Street	Refer to the City Manager to conduct a feasibility analysis and develop an MOU with the Berkeley Repertory Theater to defer \$720,000 in remaining permit and inspection fees for Berkeley Repertory Theater's housing project at 2009 Addison Street (leaving flexibility for timing, setting of interest, schedule of payments, and fund sources).	Councilmembers		Jesse Arreguin, Susan Wengraf		2021-03-31 17:00:00	PLANNING & DEVELOPMENT	Work in Progress	2021-03-31 17:00:00		2021-02-05 11:19:27 - Melissa McDonough (Additional comments) The Planning and Development Department has started to analyze the permit service center fund and staff are meeting with Berkeley Rep to discuss the deferral referral.

Short Term Referrals | 1st Quarter

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-02-19	16	Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program	That the Council provides requested direction to the Planning Department with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report; with the following specifications: Recommendation of creating 1 new dispensary license for equity applicants. It is envisioned as new licenses are created, such as, delivery, manufacturing, and micro-business, permits will be reserved for equity applicants for each new category.	Councilmembers		Ben Bartlett, Kriss Worthington, Cheryl Davila		2019-05-17 17:00:00	PLANNING & DEVELOPMENT	Work in Progress	2021-12-31 12:00:00		2021-01-15 13:24:28 - James Bondi (Additional comments) Equity program on hold pending additional staff resources. Planned end date pushed back, percent complete reduced to 25%  2020-04-15 11:32:41 - James Bondi (Additional comments) Planned end date moved back to Oct 2020, given delays to public processes and re-prioritization due to COVID response.  2019-11-06 09:58:01 - James Bondi (Additional comments) Planned end date changed to 3/24/2020. Cannabis actions coming to Council in Dec 2019 will NOT include the
2017-07-25		Public Toilet Policy	Refer to the City Manager to develop the following "Neighborhood Public Toilet Policy": Develop a process in which residents can obtain a permit for a neighborhood public toilet via an official petition; Residents should contact the City via 311 to obtain an official petition form to apply for a permit; In order to obtain the permit, the petition should be signed by at least 51% of residential addresses and business owners within the nearest two block radius of the proposed public toilet site; The City shall not fund or contribute to the	Council member				2020-12-31 17:00:00	CITY MANAGER'S OFFICE	Past Due	2020-12-31 17:00:00		2020-07-20 10:51:47 - Melissa McDonough (Additional comments) Response to the referral has been delayed due to the COVID-19 pandemic and its impact on available staffing to support the draft policy. In response to the pandemic, the City has placed and maintains several additional portable toilets and handwashing stations throughout the City.  2019-08-05 09:47:54 - Melissa McDonough (Additional comments) Staff have prepared a memo which will be submitted to Council in Fall 2019.  2019-04-24 15:13:54 - Melissa McDonough (Additional comments) Still on hold as staff

Short Term Referrals | 1st Quarter

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-12-19	22	Develop Ordinance Prohibiting Companies Participating in the Construction of a Border Wall from Contracting with the City of Berkeley	Direct the City Manager to develop an ordinance prohibiting companies involved in the construction of a border wall from contracting with the City of Berkeley. Return to Council with the proposed ordinance within 90 days.	Council member		Ben Bartlett, Sophie Hahn, Cheryl Davila		2018-07-20 17:00:00	Finance	Pending Not On Schedule	2018-07-20 17:00:00		2020-04-16 10:57:58 - Melissa McDonough (Additional comments) October 2019 draft ordinance was sent to City Attorney for review. Remaining at 25% complete General Services Manager to commence follow up with City Attorney's Office following COVID-19 event and Emergency Operations Center deactivation.  2019-11-25 13:41:42 - Melissa McDonough (Additional comments) Draft ordinance sent to the City Attorney for review.
2019-04-02	18	Companion Report: Effective Enforcement of Safe Lead-Paint Practices - Update on Amendments	Based on the intent of the recommendation from the Community Environmental Advisory Commission (CEAC) for the City to expand enforcement of unsafe lead paint practices, refer to the City Manager to: - Coordinate with the Alameda County Healthy Homes Program to clearly identify roles and responsibilities for expanding enforcement of unsafe lead practices, and to explore options for sharing resources that can support expanded local enforcement; - Identify what resources, staff capacity, and program structure would be required to	Councilmembers				2020-12-31 15:28:36	CITY MANAGER'S OFFICE	Pending Not On Schedule	2020-12-31 15:28:36		2020-04-02 13:24:58 - Melissa McDonough (Additional comments) Multi-department staff resources are required and are not available to address this request right now.  2019-10-03 13:55:00 - Melissa McDonough (Additional comments) Completed matrix  2019-09-12 08:32:23 - Melissa McDonough (Additional comments) Convened all City divisions which touch issue (Public Health, Environmental Health, Toxics, Building & Safety, 311). Mapped existing processes. Preparing draft consolidation plan.  2019-08-07 15:33:54 - Melissa McDonough (Additional comments)

Short Term Referrals | 1st Quarter

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-03-14	24	Referral to Consider Caregiver Parking in Residential Shared Parking Pilot	Refer to the City Manager and Transportation Commission to consider a pilot program for caregiver parking permits in RPP zones in the goBerkeley Residential Shared Parking Pilot.	Council member				2020-06-12 17:00:00	Public Works	Pending On Schedule	2020-06-12 17:00:00		<p>2021-01-14 17:36:21 - Nancy Melendez (Additional comments) Due to Covid-19 work remains suspended, and the new end date is likely to be 12-31-2021</p> <p>2020-10-05 09:35:13 - Nancy Melendez (Additional comments) (no change) Due to the Shelter in Place order and temporary suspension of RPP, the schedule for this project is estimated to be delayed 6 to 12 months. The new planned end date is June 12, 2021</p> <p>2020-06-30 15:24:51 - Nancy Melendez (Additional comments) Due to the Shelter in Place order and temporary suspension of RPP, the schedule for this project is estimated to be delayed 6 to 12 months. The new planned end date is June 12, 2021</p>

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2014-04-29	35	35. City Manager Referral: Policy for Companies Such as Airbnb to Pay Transient Occupancy Tax, as Currently Paid by Other Small Local Businesses	Refer to the City Manager creation of a policy for companies such as Airbnb to pay the Transient Occupancy Tax, as currently paid by other small local businesses.	Council member	City Council District 7	Kriss Worthington		2014-10-24 17:00:00	PLANNING & DEVELOPMENT	Completed	2014-10-27 08:00:00	2016-09-07 00:00:00	
2014-12-16	25	Reconcile the West Berkeley Plan and the Zoning Code as it Pertains to Medical Uses	Refer to the Planning Commission the task of revising the current zoning ordinance so that it reflects the West Berkeley Plan's goals of encouraging medical uses in West Berkeley.	Council member	City Council District 2			2015-06-12 17:00:00	PLANNING & DEVELOPMENT	Completed	2015-06-15 08:00:00	2017-01-24 00:00:00	
2015-09-15	43	Prohibit Sales of Tobacco Products to Persons Under the Age of 21	Direct the City Manager and Community Health Commission to draft an ordinance amending Berkeley Municipal Code Chapter 9.80 "Tobacco Retailers" to prohibit the sales of tobacco products and smoking paraphernalia to persons under the age of 21.	Council member		Jesse Arreguin		2016-03-11 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2016-03-11 17:00:00		
2015-09-15	55	Referral to the Community Environmental Advisory Commission to Install 1.8 GPM Showerheads in All New Housing Projects or Any Renovation Over \$50,000	Refer to the Community Environmental Advisory Commission to explore requiring a maximum of 1.8 GPM low flow showerheads in new housing projects and all housing renovations exceeding \$50,000 throughout Berkeley.	Council member		Kriss Worthington		2016-03-11 17:00:00	PLANNING & DEVELOPMENT	Completed	2016-03-14 08:00:00	2016-07-19 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2015-11-10	1	Proposed Amendments to the Minimum Wage Ordinance; Amending Berkeley Municipal Code Chapter 13.99 (Continued from September 15, 2015)	Review and consider information regarding the activities and costs associated with implementing and enforcing the Commission on Labor's proposed amendments to the Minimum Wage Ordinance (MWO), including the potential impact of the proposed amendments on the City's minimum wage employees, employers, non-profit organizations and community-based organizations, on-call workers and youth training program workers, and either: 1. Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.99.					2016-05-06 17:00:00	CITY MANAGER'S OFFICE	Completed	2016-05-09 08:00:00	2016-09-01 00:00:00	
2015-11-17	30	Fourth Ambulance Pilot Project 6-Month Update	No recommendation noted. Action: Moved to Consent Calendar and held over to January 19, 2016. Fire to report back in May 2016 for permanent program.					2016-05-13 17:00:00	FIRE & EMERGENCY SERVICES	Completed	2016-05-16 08:00:00	2018-07-01 00:00:00	
2015-12-01	33	City Manager and Planning Commission's Referral: Enable Implementation of Council Approved Floor Area Ratio in the Telegraph Commercial District between Dwight and Bancroft by Amending the Zoning Ordinance	Refer to the City Manager and Planning Commission an immediate implementation strategy to bring the City Zoning Ordinance in compliance with the policy adopted by City Council to increase Floor Area Ratio (FAR) in the Telegraph Commercial District between Dwight and Bancroft	Council member	City Council District 7	Kriss Worthington		2016-05-27 17:00:00	PLANNING & DEVELOPMENT	Completed	2016-05-30 08:00:00	2016-06-28 00:00:00	



Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2015-12-01	22	City Manager Referral: Pilot Program to Implement Solar Trash Compactors on Telegraph Avenue and Downtown Berkeley	Refer to the City Manager to adopt a Pilot Program to implement Solar Trash Compactors on Telegraph Avenue and Downtown Berkeley.	Council member		Kriss Worthington, Linda Maio, Susan Wengraf, Lori Droste		2016-05-27 17:00:00	Public Works	Completed	2016-05-30 08:00:00	2018-07-24 00:00:00	2019-02-05 16:44:20 - Melissa McDonough (Additional comments) 6/2018 RFPs received; 2 solar compactors to be issued contracts.
		Google Translate Bar							Information Technology	Completed	2016-06-01 00:00:00	2016-06-01 00:00:00	
2015-12-15	35	Amending Open Government Ordinance to Allow Submission of Revised/Supplemental Items	Refer to the City Manager and City Attorney to draft an ordinance amending Berkeley Municipal Code Section 2.06.070.E (Open Government Ordinance) to allow the submission of revised or supplemental agenda material for the Supplemental Communications Packet 2. The revised or supplemental material must be submitted no later than 12 noon the day of the City Council meeting at which the item is to be considered. The online version of the City Council agenda shall also contain a link to such items. If revised agenda	Council member		Jesse Arreguin, Susan Wengraf, Lori Droste		2016-06-10 17:00:00	City Clerk	Completed	2016-06-10 17:00:00		
2015-12-15	30	Provide Cost Estimates to Restore the Berkeley Pier	Refer to the City Manager to determine the cost to make the appropriate repairs so that it will be safe for public use.	Council member	City Council District 2			2016-06-10 17:00:00	CITY MANAGER'S OFFICE	Completed	2016-06-13 08:00:00	2017-03-14 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2015-12-15	54	Referral to City Manager: Establishment of Affordable Housing Small Sites Program Revised Version	Refer to the City Manager to: 1. Look into the feasibility of creating a Small Sites Program to allow non-profits to purchase small multi-family buildings (5-25 units) to create and preserve affordable housing, with an emphasis on properties with a high potential for conversion to cooperative homeownership. 2. Develop an inventory of City-owned land and other land owned by public agencies in the City of Berkeley which could potentially be used to create below-market rate housing.	Council member		Jesse Arreguin		2016-06-10 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2016-06-13 08:00:00	2016-12-13 00:00:00	2019-02-05 16:47:39 - Melissa McDonough (Additional comments) 2 is completed. 1 was later prioritized long term as top priority of Council's housing action plan. Plan outline complete and will bring before HAC in July 2018.
2016-01-19	24	Tenant Buyout Agreement Ordinance	Refer to the City Manager and the Rent Stabilization Board to draft an ordinance regulating situations where a tenant agrees to vacate a rent-controlled unit in exchange for a sum of money, known as a buyout.	Council member		Jesse Arreguin		2016-07-15 17:00:00	CITY MANAGER'S OFFICE	Completed	2016-07-18 08:00:00	2016-03-31 00:00:00	
2016-02-09	15	Budget Referral: Including BigBelly Solar Compactor Bins Allocation in the 2016 Mid-Year Budget Process	Refer to the 2016 Mid-year budget process the purchasing of BigBelly Solar Compactor Bins in order to save money, meet zero waste goals, and reduce Berkeley's greenhouse gas emissions.	Council member		Kriss Worthington, Lori Droste		2016-08-05 17:00:00	Public Works	Completed	2016-08-08 08:00:00	2018-07-24 00:00:00	2019-02-05 16:51:37 - Melissa McDonough (Additional comments) 6/2018 RFPs received; 2 solar compactors to be issued contracts.

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-02-09	26	Develop a Provision for the Landmarks Preservation Ordinance to Allow for the De-designation of a Landmark Designation for a Building that has been Legally Demolished (Continued from January 12, 2016)	Refer to the City Manager to develop a provision for the Landmarks Preservation Ordinance (LPO) that would allow a landmark designation to be de-designated for a building that has been previously landmarked but subsequently has been legally demolished.	Council member				2016-08-05 17:00:00	CITY MANAGER'S OFFICE	Completed	2016-08-08 08:00:00	2016-05-10 00:00:00	
2016-03-15	6	Prioritize Installation of Bicycle Lane on Fulton Street	Direct the City Manager and Transportation staff to prioritize and expedite the installation of a bicycle lane on Fulton Street between Bancroft Way and Channing Way.	Council member		Jesse Arreguin		2016-09-09 17:00:00	Public Works	Completed	2016-09-12 08:00:00	2016-05-10 00:00:00	
2016-04-05	10	Modify the Proposed Early Mitigation Fee Discount and Preserve Revenue Towards Units At Or Below 50% AMI and Add Sunset Clause (Continued from February 23, 2016)	That the City of Berkeley amend Council Item 10a to remove the option of paying a substantially-reduced mitigation fee at the issuance of a permit, and to preserve revenue from the mitigation fees to maintain or increase the funds designated towards units for incomes at or below 50% AMI, and add a sunset clause.	Council member		Kriss Worthington		2016-09-30 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2016-10-03 08:00:00	2016-07-19 00:00:00	
2016-04-26	31	Creation of 311 Mobile Application	Refer to the City Manager to create a mobile application for the 311 system and improve the 311 Online Service Center.	Council member		Jesse Arreguin		2016-10-24 08:00:00	Information Technology	Completed	2016-10-24 08:00:00	2016-11-15 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-05-10	21	Resolutions Consenting to Inclusion of the City of Berkeley Properties in the California Home Finance Authority PACE Programs and Associate Membership in California Home Finance Authority	ABAG has a new report and the City Council has voted twice in favor; thus, the City of Berkeley should approve and sign an agreement for collaborative services for Property Assessed Clean Energy Financing (PACE) marketplace. Also, that the City of Berkeley approve and sign acknowledgement addendum of RCSA, as executed between ABAG and RPPs.	Council member		Kriss Worthington		2016-11-04 17:00:00	City Attorney	Completed	2016-11-07 08:00:00	2016-09-20 00:00:00	
2016-05-31	22	City Manager Referral: Consider Adding Energy Efficient Equity as an Additional Property Assessed Clean Energy Program	Refer to the City Manager to consider adding Energy Efficient Equity as an additional property assessed clean energy program.	Council member		Kriss Worthington		2016-11-25 17:00:00	PLANNING & DEVELOPMENT	Completed	2016-11-28 08:00:00	2016-09-20 00:00:00	
2016-05-31	20	Requesting a Comprehensive Report on the State of Homeless Services within the City of Berkeley	Request the City Manager direct staff to prepare a report outlining the details of City funded homeless services. The purpose of this report is to help Council and the community understand the various factors related to the allocation of resources to address homelessness within the City. Once the report is complete, it is requested that city staff schedule a worksession to go over the findings.	Council member	City Council District 5			2016-11-25 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2016-11-28 08:00:00	2016-11-01 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-06-28	47	City Manager Referral: Feasibility of Acquiring a High-Capacity Scanner for Multiple City Departments	Refer to the City Manager to consider investing in a high-capacity scanner to digitize City records for the Council and multiple City departments.	Council member		Kriss Worthington		2016-12-26 08:00:00	Information Technology	Completed	2016-12-26 08:00:00	2017-12-12 00:00:00	
2016-07-12	27	Refer to City Manager to Consider Applying for \$100,000 from the Better Together Resilient Communities Grant Program	That the City Manager consider applying for the \$100,000 grant that PG&E's Better Together Resilient Communities grant program will offer in the beginning of 2017.	Council member		Kriss Worthington		2017-01-06 17:00:00	PLANNING & DEVELOPMENT	Completed	2017-01-09 08:00:00	2016-12-31 00:00:00	
2016-07-19	41	Companion Report: Amend Berkeley Municipal Code Creating Community Health Commission	Refer to staff to write an ordinance based on the Community Health Commission (CHC) recommendation with the changes suggested by staff.		MAYOR AND COUNCIL			2017-01-13 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2017-01-16 08:00:00	2016-11-29 00:00:00	
2016-09-20	22	Amending Council Rules Regarding Removal of Commissioners	Direct staff to return with a policy recommendation consistent with the recommendations in this report, i.e., noting that as a matter of courtesy and respect, Councilmembers are expected to set the date a commissioner is to be replaced on a commission and communicate that date to the commissioner not less than two weeks from the official date of replacement.	Council member		Commission		2017-03-17 17:00:00	City Clerk	Completed	2017-03-20 08:00:00	2018-06-12 00:00:00	2019-02-05 17:02:37 - Melissa McDonough (Additional comments) Incorporating changes from City Council.

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-09-20	21	City Manager Referral: Consider the Four Recommendations Contained in the Alameda County Grand Jury Report (Continued from July 19, 2016)	Refer to the City Manager to consider the four recommendations in response to the Alameda County Grand Jury Report recommendations.	Council member		Kriss Worthington		2017-03-20 08:00:00	Information Technology	Completed	2017-03-20 08:00:00	2016-10-20 00:00:00	
2016-09-20	32	City Manager Referral: Implementing BigBelly Solar Compactor Bins	Refer to the City Manager to examine the feasibility of procuring BigBelly Solar Compactor Bins to save money, meet zero waste goals, and reduce Berkeley's greenhouse gas emissions.	Council member		Kriss Worthington, Lori Droste		2017-03-17 17:00:00	Public Works	Completed	2017-03-20 08:00:00	2018-07-24 00:00:00	2019-02-05 17:04:44 - Melissa McDonough (Additional comments) 6/2018 RFPs received; 2 solar compactors to be issued contracts.
		Improved Emergency Notification System							Information Technology	Completed	2017-04-01 00:00:00	2017-06-05 00:00:00	
2016-10-18	25	Amendments to BMC 23C.23.050 to Allow a Third Option to Satisfy the Private Percent for Art Requirements	Request the City Manager draft an ordinance for Council adoption to revise BMC 23C.23.050, the One-Percent for Public Art on Private Projects Ordinance, to do the following: 1. Have 5% of the 1% requirement go directly to administration of the Public Art in Private Development program regardless of how the developer decides to satisfy the requirement;	Council member				2017-04-14 17:00:00	Office of Economic Development	Completed	2017-04-17 08:00:00	2017-01-24 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-10-18	41	City Plan for Emergency Shelter During Winter Season	Refer the following actions to the City Manager to consider in developing a plan for emergency shelter/services during the upcoming winter season. These actions will help implement Resolution No. 67,357-N.S. "Declaring a Homeless Shelter Crisis in Berkeley": 1. Allow full use of the Multi-Agency Service Center (MASC) at 1931 Center Street as a Warming Center. Direct the City Manager to study the feasibility of using the West Berkeley Senior Center as a day-time Warming Center or evening shelter. Engage in discussions with the Department of	Council member		Jesse Arreguin		2017-04-14 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2017-04-17 08:00:00	2017-06-27 00:00:00	
2016-10-18	26	Revisions to the Public Art in Private Development Program	Request the City Manager draft a resolution to revise the Public Art in Private Development Program Guide to provide the Civic Arts Commission guidance and more flexibility in the use of the Cultural Trust Fund with the language suggested in the report.	Council member				2017-04-14 17:00:00	Office of Economic Development	Completed	2017-04-17 08:00:00	2016-12-13 00:00:00	
2016-11-01	15	City Manager Referral: Increasing Transparency in City Public Record Act Responses	Approved revised recommendation to request a report from the City Manager on how the City is using the permitted exemptions in compliance with the Public Records Act.	Council member		Kriss Worthington		2017-04-28 17:00:00	City Attorney	Completed	2017-05-01 08:00:00	2016-12-13 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-12-13	29	Ordinance for Standards for Testing and Certification of DAS Antennas	Request that the City Manager draft ordinance language to amend Section 16.10.100 of the Berkeley Municipal Code to include Standards for Testing and Certification of DAS Antennas and return to the City Council within 60 days.	Council member		Susan Wengraf		2017-06-09 17:00:00	City Attorney	Completed	2017-06-12 08:00:00	2017-03-28 00:00:00	
2017-01-24	38	Berkeley Mothers Initiative	Request that the City Manager ensure that all City buildings provide and maintain at least one private place reasonably close to an employee's workspace for breastfeeding mothers to pump.	Councilmembers		Lori Droste		2017-07-21 17:00:00	CITY MANAGER'S OFFICE	Completed	2017-07-24 08:00:00	2017-07-01 00:00:00	
2017-01-24	37	Berkeley BABIES Initiative	Request that the City Manager create a provision and enforcement mechanism to ensure that all publically-accessible City buildings install and maintain at least one baby diaper-changing accommodation that is accessible in both men and women's restrooms or a single diaper-changing accommodation that is accessible to all genders. In addition, request that the City Manager provide recommendations to mandate all businesses to provide changing stations in either women's and men's restrooms or gender-neutral restrooms.	Councilmembers				2017-07-24 08:00:00	CITY MANAGER'S OFFICE	Completed	2017-07-24 08:00:00	2017-07-01 00:00:00	
2017-01-31	10	Medical Cannabis Ordinance Revisions and Cultivation Application Process	Request that the City Manager provide Council with analysis of the questions presented by Councilmember Sophie Hahn.	Council member				2017-07-28 17:00:00	PLANNING & DEVELOPMENT	Completed	2017-07-31 08:00:00	2017-11-07 00:00:00	



Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-02-14	11	Updated Information Report on Measure M	Request that the City Manager return to the City Council in April with an Information Report on Measure M implementation, expenditures, projected expenses and plans.	Council member				2017-08-11 17:00:00	Public Works	Completed	2017-08-14 08:00:00	2017-05-02 00:00:00	
2017-03-28	22	Security Camera Database	Request that the City Manager return to Council with an update on the referral to create a voluntary database of security cameras in Berkeley. With an increase in crime, residents are anxious to help the Berkeley Police Department solve cases and arrest the perpetrators - amended to include direction that guidelines protect privacy and prevent misuse of camera footage.	Council member				2017-09-25 08:00:00	Police	Completed	2017-09-25 08:00:00	2018-08-15 00:00:00	
2017-03-28	33	Referral Response: Cigarette Butt Pollution Prevention	REFER to the City Manager to enact a pilot program in downtown Berkeley with the goal of greatly reducing cigarette butt litter that accumulates on sidewalks and curbsides, in a central location. This pilot program would: a) Place a total of four receptacles for cigarette butt disposal in front of three adult schools and a bus stop where smoking behavior continues despite its prohibition. The receptacles are to be placed in front of: i. Berkeley City College, 2050 Center Street; ii. Language Studies International on 2015 Center Street; iii.	Commission			Community Environmental Advisory Commission	2017-09-22 17:00:00	Office of Economic Development	Completed	2017-09-25 08:00:00	2017-05-30 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-07-25	40	Expediting Elements of Previous Council Referral to Study Possible Scenarios of the Loss of Federal Funds	Direct the City Manager to expedite the compilation and delivery of a list of federal funds that the City of Berkeley receives and the programs and facilities supported by such funds.	Council member		Sophie Hahn, Jesse Arreguin, Cheryl Davila, Kate Harrison		2018-01-19 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2017-10-23 00:00:00	2018-12-11 12:22:40	2019-02-05 17:14:03 - Melissa McDonough (Additional comments) HHCS is updating with the latest single audit findings.
2017-05-30	53	Eliminate the Required Affidavits of Residency for Commissioners	Eliminate the requirement for Commissioners to submit Affidavits of Residency when they are appointed, and annually thereafter, in pursuit of saving time and money for the City of Berkeley. Revised Materials - <a href="http://www.cityofberkeley.info/Clerk/City_Council/2017/05_May/Documents/2017-05-30_Item_53_Eliminate_the_Required_-_Rev.aspx">http://www.cityofberkeley.info/Clerk/City_Council/2017/05_May/Documents/2017-05-30_Item_53_Eliminate_the_Required_-_Rev.aspx</a>	Council member				2017-11-24 17:00:00	City Clerk	Completed	2017-11-27 08:00:00	2017-09-12 00:00:00	
2017-06-27	32	Housing Inspection and Community Services Manager	Request the City Manager to create and fill the position of Housing Inspection and Community Services Manager.	Council member				2017-12-22 17:00:00	PLANNING & DEVELOPMENT	Completed	2017-12-25 08:00:00	2018-09-13 00:00:00	2019-02-05 17:13:07 - Melissa McDonough (Additional comments) New position approved by Personnel Board. Will bring to Council for adoption by November which will complete referral.

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-10-03	7	Request for Information Regarding Grant Writing Services from Specialized Grant Writing Firms	Refer to the City Manager to issue a request for information to explore grant writing services from specialized municipal grant-writing firms, and report back to Council.	Council member		Sophie Hahn, Kate Harrison, Cheryl Davila, Ben Bartlett		2018-01-01 17:00:00	Finance	Completed	2018-01-01 17:00:00	2019-09-24 12:41:03	2019-04-12 15:07:44 - Melissa McDonough (Additional comments) Issued #18-11201 Feb. 5, 2018 as an RFI (Request for information); closed March 1, 2018. Received 13 information responses for review. Next Steps: use responses to inform scope of work, then release as RFP.
2017-07-25	51	Commercial Cannabis Regulations and Licensing	Refer to the City Manager and Cannabis Commission the proposed local ordinances to establish a licensing process for Commercial Cannabis operations, as permitted under Proposition 64, Adult Use of Marijuana Act. The Council requests that the City Manager and Cannabis Commission report to the City Council on its recommendations on regulations and licensing for commercial cannabis businesses before the end of 2017.	Council member				2018-01-19 17:00:00	PLANNING & DEVELOPMENT	Completed	2018-01-22 08:00:00	2018-09-13 00:00:00	2019-02-05 17:15:33 - Melissa McDonough (Additional comments) Lengthy process involving 3 Commissions and many City departments. Some Ordinance changes will be at Council 9/13/18. But more will be needed. Council Worksession scheduled for 10/9/18, then adoption of more Ordinance changes expected by end of year, which will close this referral.

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-10-31	17	Expanded Criteria for the Installation of Stop Signs	1. Refer to the Transportation Commission consideration of additional or supplemental stop sign criteria which addresses the needs of vulnerable populations, the presence of bicycle boulevards, and the difficulty of crossing particular intersections. 2. Direct that staff consult with the Bicycle Subcommittee of the Transportation Commission when making decisions impacting bicycle boulevards, whenever possible. 3. Request that the City Manager provide an informational report on the particular state of the transportation system.	Council member		Kate Harrison, Ben Bartlett, Lori Droste	Transportation Commission	2018-01-29 17:00:00	Public Works	Completed	2018-01-29 17:00:00	2019-11-12 17:00:00	2019-09-25 08:55:09 - Melissa McDonough (Additional comments) Commission Recommendation and City Manager Companion report are under review and tentatively scheduled for council approval in Nov 2019  2019-02-05 16:27:28 - Melissa McDonough (Additional comments) Transportation Commission formed a subcommittee and held first meeting 6/11/18, additional meetings to be planned by subcommittee.
2017-09-12	33	Voter Registration Forms in All City Buildings on Their Main Floors	Direct the City Manager to provide voter registration forms on the main floor of all designated city buildings that are open to the public and in all Community based organizations within the city limits. Community based organizations that are funded by the City of Berkeley will be required to pick up the voter registration forms from the City Clerk's Office and that should be clearly stated in their respective contracts.	Council member		Cheryl Davila, Kate Harrison, Sophie Hahn		2018-03-09 17:00:00	City Clerk	Completed	2018-03-12 08:00:00	2017-11-08 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-10-03	21	Referral to the City Manager to Provide a Public Master List of the Legislation on which the City Council Has Taken a Position	Request that the City Manager work with the City's lobbyist to create and maintain a master list of the legislation on which the City Council has taken a formal position of support or opposition through passage of an item.	Council member		Kate Harrison, Sophie Hahn, Cheryl Davila		2018-03-30 17:00:00	City Clerk	Completed	2018-04-02 08:00:00	2018-01-23 00:00:00	
2017-10-03	24	Parallel Permitting Process	Request that the City Manager in coordination with the Director of Planning and the Chief Building Official work to establish a voluntary parallel permitting process for applications to construct housing in the City of Berkeley.	Council member		Susan Wengraf, Linda Maio, Lori Droste, Jesse Arreguin		2018-03-30 17:00:00	PLANNING & DEVELOPMENT	Completed	2018-04-02 08:00:00	2017-11-01 00:00:00	2019-02-05 17:23:50 - Melissa McDonough (Additional comments) This voluntary parallel permitting option already exists. Following October 2017 referral we advised Building staff to be sure to make option known to interested applicants.
2018-01-23	27	Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool	Short Term Referral to City Manager to assess the feasibility to keep the West Campus Pool open all year round and to start COB Shower Program at the West Campus Pool. Keeping the West Campus Pool open all year round will provide equitable swimming options in both North Berkeley and in South/West Berkeley and provide another location available for our community to shower.	Council member		Cheryl Davila, Ben Bartlett		2018-07-20 17:00:00	Parks, Recreation & Waterfront	Completed	2018-04-23 00:00:00	2018-10-16 10:14:13	2019-02-05 17:38:54 - Melissa McDonough (Additional comments) a) On June 12, 2018, Council received an Off Agenda Memo that identifies the cost to establish a shower program at West Campus Pool. B) In mid-September 2018, Council will receive an Off Agenda Memo that describes the feasibility of keeping West Campus pool open year-round.
2017-10-31	30	Short-Term Referral to the City Manager, a Process for Relocation of a Permitted Cannabis Dispensary	Refer to the City Manager to approve a process for the relocation of Apothecarium, a cannabis dispensary with valid permits.	Council member				2018-04-27 17:00:00	PLANNING & DEVELOPMENT	Completed	2018-04-30 08:00:00	2018-01-23 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-12-05	18	City Manager Referral: Prioritizing New Business Before Old Business at City Council Meetings	Prioritize new business before old business at City Council Meetings by: 1. Altering the Council rules of procedure as adopted May 24, 2016 so that new business comes before old business. The reformatted section will read "The agenda for the regular business meetings shall include the following: Ceremonial; Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, New Business, Old Business); Information Reports;	Council member				2018-06-01 17:00:00	City Clerk	Completed	2018-06-04 08:00:00	2018-01-30 00:00:00	
2018-02-13	17	Referral to the City Manager to Submit a Filing to the CPUC Recommending Adjusting Electric Rule 20 to Better Serve the City of Berkeley and Other Communities with Very High Fire Hazard Severity Zones	A referral to the City Manager to submit a filing with the California Public Utilities Commission (CPUC) concerning the CPUC's current review of Electric Rule 20. The CPUC is considering, among other things, how the existing program is administered by the various utility companies operating in California and the definition of what projects are to be included in the public interest.	Council member		Susan Wengraf, Sophie Hahn, Jesse Arreguin, Lori Droste		2018-08-10 17:00:00	Public Works	Completed	2018-08-10 17:00:00		
2018-02-13	26	Referral to the City Manager on Gender Options of the General Application for City Boards and Commissions	Refer to the City Manager to add a nonbinary gender option on the General Application for appointment to Berkeley boards and commissions.	Council member		Lori Droste, Linda Maio, Susan Wengraf, Worthington		2018-08-10 17:00:00	City Clerk	Completed	2018-08-13 08:00:00	2018-03-01 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-02-27	22	Wildland Urban Interface Fire Safety and Fire Safety Education	Commission Referral #5 revised to read: 5. Refer to the Planning Commission to consider Accessory Dwelling Units (ADUs) in the Very High Hazard Fire Zone to review public safety issues especially relevant to the risk of WUI fires. Amend Section 23D.10 to incorporate greater public safety considerations to be met before issuing an Administrative Use Permit (AUP);		City Council and Mayor			2018-08-24 17:00:00	FIRE & EMERGENCY SERVICES	Completed	2018-08-24 17:00:00		
2018-03-13	17	Referral to the Arts Commission and the City Manager: Cost Estimate and Plan for Installation of Sculpture Lighting into Adjacent Street Lights for the William Byron Rumford Statue on Sacramento and Julia St	Refer to the City Manager a request to develop a cost estimate and an installation plan for installing sculpture lighting into adjacent street lights for the William Byron Rumford statue on Sacramento and Julia Street. Refer the cost estimate and plan to the Arts Commission.	Council member				2018-09-07 17:00:00	Public Works	Completed	2018-09-07 17:00:00		

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-01-30	14	Direction and Referral to the City Manager Regarding "Premier Cru" Property	3. The Berkeley Way Affordable Housing Project is the City's top affordable housing priority. Premier Cru, as a City property, to be developed for affordable housing falls under the "High Priority" on the list of housing initiatives passed by Council on November 28, 2017. In light of the above, refer to the City Manager to take the following actions to move Premier Cru forward as a High Priority initiative: a. Based on recommendations from Health, Housing and Community Services and other Departments, the Housing Advisory Commission and	Council member		Sophie Hahn, Jesse Arreguin, Linda Maio, Kate Harrison		2018-09-07 17:00:00	PLANNING & DEVELOPMENT	Completed	2018-09-10 08:00:00	2018-05-29 00:00:00	
2017-12-19	41	Companion Report: Public Works Commission Recommendation for the Five-Year Paving Plan	Adopt a Resolution updating the City's Five-Year Street Rehabilitation Plan for FY 2018 to FY 2022. The City Council may consider the information put forth by the Public Works Commission relevant to adoption of the recommended plan.					2018-09-21 17:00:00	Public Works	Completed	2018-09-24 08:00:00	2018-07-24 00:00:00	
2017-12-05	24	Ordinance Amending the Berkeley Municipal Code to Establish Ability to Pay Provisions Regarding Parking Fines and Fees in Accordance with Guidelines Established in Assembly Bill 503	to refer the item as written in Supplemental Reports Packet #2 to the City Manager to conduct an analysis of the item, including a review of current indigency procedures and coordination with similar efforts in the City of Oakland, and report back to the Council in 90 days.	Council member		Transportation Commission		2018-09-28 17:00:00	Finance	Completed	2018-09-28 17:00:00	2018-07-02 00:00:00	



Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-04-24	17	Refer the Housing Advisory Commissions Questions on the Smoke-Free Residential Housing Ordinance to Staff and Berkeley Considers	The Housing Advisory Commission respectfully requests that the Council direct the City Manager to assist the HAC in its review of the Smoke-Free Residential Housing Ordinance, a regulation of tobacco use, as follows: 1. By responding to the HAC's questions enumerated in the report with any readily available responsive information. 2. By facilitating the conduct of a "Berkeley Considers" questionnaire about the Smoke-Free Residential Housing Ordinance, questions for which are proposed in the	Commission				2018-10-19 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2018-10-19 17:00:00	2019-03-17 14:41:36	
2017-07-25	10	Authorizing City Manager Approval for Community Development Block Grant (CDBG) Community Facility Improvement Contracts Under \$200,000; Amending BMC Chapter 7.18	Adopt first reading of an Ordinance, by two-thirds vote of the Council, amending Chapter 7.18 of the Berkeley Municipal Code to authorize the City Manager to enter into and amend contracts of up to \$200,000 with applicants recommended for funding by staff and the Housing Advisory Commission under the City's Community Development Block Grant (CDBG) program for community facility improvements.					2018-10-19 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2018-10-22 08:00:00	2018-04-24 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-07-31	10	Direction to the City Manager Regarding the Community Service In Lieu of Parking Penalties Program	Direct the City Manager to amend the eligibility requirements of the Community Service In Lieu of Parking Penalties Program in order to allow all indigent individuals to be eligible to participate in the program (regardless of the registration status of a potential participant's vehicle).	Council member		Ben Bartlett, Cheryl Davila, Kate Harrison, Sophie Hahn		2018-10-29 17:00:00	Public Works	Completed	2018-10-29 17:00:00	2019-01-19 15:21:35	2019-08-27 15:23:33 - Nancy Melendez (Additional comments) FJ/DP: Aside from the fact that Public Works is not actually involved in citations or citation payment plans or alternatives, this program exists and the FAQ at the link below was updated January 2019. <a href="https://www.cityofberkeley.info/uploadedFiles/City_Manager/Level_3_-_General/COMMUNITY%20SERVICE.pdf">https://www.cityofberkeley.info/uploadedFiles/City_Manager/Level_3_-_General/COMMUNITY%20SERVICE.pdf</a>  2019-02-05 15:38:44 - Melissa McDonough (Additional comments) Because this is a multidepartmental task assigned to Public Works, involving Finance and City Attorney, and administered by the City of Oakland, the
2018-05-15	23	Transgender Health Access Training at City of Berkeley Clinics	Adopt a Resolution providing \$2,400 from the General Fund to support a half-day Transgender Health Access Training for City of Berkeley Public Health staff in June 2018.	Commission				2018-11-09 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2018-11-10 17:00:00	2019-02-04 10:22:57	2019-04-15 10:25:13 - Laura Schroeder (Additional comments) On February 4, 2019 staff from public health and mental health attended a training on Transgender Access to Public Health
	24	Budget Referral: Increasing Safety at San Pablo Park	Request the City Manager perform traffic assessments to gather data and refer any needed improvements to the FY 2020 – FY 2021 budget process.	Councilmembers		Cheryl Davila		2018-11-13 17:00:00	Public Works	Completed	2018-11-13 17:00:00	2019-05-16 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-05-29	14	Implementation of Secure Storage Program	1. Direct the City Manager to expedite implementation of two publicly available, secure storage facilities to accommodate as many individuals as possible, based on the parameters set in staff's March 2, 2018 RFI: Downtown Homeless Storage Pilot - Staffing and Operations and on additional parameters outlined in Program Details, below. 2. Direct the City Manager to publicize the locations, hours, and rules applicable to new storage facilities through normal outreach channels (website, press release, etc.) and through direct outreach to homeless	Council member				2018-11-23 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2018-11-26 08:00:00	2018-07-24 00:00:00	
2018-12-11	23	Short-term referral to City Attorney and Health Housing and Community Service to amend Berkeley Municipal Code 7,441-N.S. to expand the control of flavored tobacco across the City of Berkeley toward preventing youth and young adult tobacco use	Short-term referral to City Manager to amend Berkeley Municipal Code 7,441-N.S. according to the changes made in the attached amended ordinance to prohibit the sale of flavored tobacco products and require a minimum package size for cigars and little cigars across the City of Berkeley. The primary purpose of the amendment to the ordinance is to do more to prevent youth and young adult tobacco use.	Councilmembers		Cheryl Davila		2018-12-11 17:00:00	City Attorney	Completed	2018-12-11 17:00:00	2019-09-10 13:15:43	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-09-13	31	Short-Term Referral to City Manager re: Emergency Standby Officers Qualifications	Referral to the City Manager to consider the following suggestions for requirements and qualifications for Emergency Standby Officers and return to Council within 90 days with recommendations. Possible requirements may include: - Trainings in roles and responsibilities to serve as a standby officer possibly including: ethics and workplace harassment. -City government experience. -Council District residency. - Require standby officers to meet the same qualifications, including restrictions on conflict of interest, as required by the City	Council member		Susan Wengraf, Jesse Arreguin, Sophie Hahn		2018-12-11 17:00:00	City Clerk	Completed	2018-12-11 17:00:00	2019-05-02 12:02:38	2019-02-05 15:21:26 - Melissa McDonough (Additional comments) Ongoing discussion with City Attorney regarding potential criteria
2018-07-10	17	Referral to City Manager to Consolidate all City Commission Workplans in One Place for Easy Access for Staff, the Public, and Elected Officials	Make a referral to the City Manager to consolidate all City Commission Workplans in one place for easy (electronic) access for staff, the public, and elected officials.	Council member				2019-01-04 17:00:00	City Clerk	Completed	2019-01-07 08:00:00	2018-09-13 00:00:00	
2018-10-30	20	Proposed Portland Loo Installations in Telegraph Commercial District	Short-Term Referral to the City Manager to identify costs for the installation of a "Portland Loo" type of bathroom facility in Telegraph Commercial District. Costs should be comprehensive and include, but not be limited to: the facility, infrastructure, design, construction, oversight and any contingencies.	Councilmembers		Jesse Arreguin, Sophie Hahn		2019-01-31 17:00:00	Public Works	Completed	2019-01-31 17:00:00	2019-02-27 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-11-13	23	Clarifying Jurisdiction of Ohlone Greenway	Refer to the City Manager to review the recommendation to place the Ohlone Greenway under park rules and policies with the intent of revising the BMC to include the Ohlone Greenway as open space and enforce park-like rules.	Councilmembers		Linda Maio, Sophie Hahn, Kate Harrison		2019-02-13 17:00:00	City Attorney	Completed	2019-02-13 17:00:00	2019-09-17 10:57:38	2019-09-17 10:57:27 - Christopher Jensen (Additional comments) Referral response complete; Public Works is providing assistance on right-of-way issues.  2019-04-24 10:04:24 - Mark Numainville (Additional comments) City Attorney provided legal opinion to PRW. PRW to report to Council.
2017-05-02	27	Berkeley Bicycle Plan 2018	Adopt a Resolution approving the Berkeley Bicycle Plan 2017, and directing the City Manager to pursue implementation of the Plan as funding and staffing permit.					2019-02-15 17:00:00	Public Works	Completed	2019-02-15 17:00:00		
2015-11-17	28	Improve Conditions on Our Community Sidewalks; Amending Berkeley Municipal Code Chapters 13.36 and 14.48	Discuss and refer the following services and ordinances to the City Manager for implementation, and adopt first reading of three Ordinances: 1. Adding Section 13.36.085 to the Berkeley Municipal Code prohibiting urination and defecation in public places. 2. Amending Sections 14.48.020 and 14.48.170 of the Berkeley Municipal Code regulating use of sidewalks. 3. Adding Section 13.36.040 to the Berkeley Municipal Code prohibiting obstruction of City-owned planters and trees. Additional Services: 1. Create a secure storage facility for...	Council member		Linda Maio, Lori Droste		2019-02-28 16:00:00	CITY MANAGER'S OFFICE	Completed	2019-02-28 16:00:00	2019-02-28 16:00:00	2019-10-15 14:27:16 - Melissa McDonough (Additional comments) Staff has prepared an overview of the outcomes from the pilot implementation of the Shared Sidewalk Policy , and anticipates presenting its findings to Council in Fall 2019. The ongoing program is currently in place.  2019-08-07 14:46:28 - Melissa McDonough (Additional comments) Storage is done as is mobile showers and expansion of bathrooms, 14.48 re: sidewalks is done.  2019-04-24 15:08:11 - Melissa McDonough (Additional comments) Outreach information disseminated to people...

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-11-13	24	Budget Referral: Increasing Safety at San Pablo Park	4. Develop, implement and coordinate drills for active shooter and other emergency protocol at San Pablo Park: Create protocol with input from community partners, then orient licensed daycare providers, coaches, trainers and program staff who operate out of the park, and conduct drills with City staff operating the Center and providers in order to prepare for emergencies and how to use the Center as a shelter during or following them.	Councilmembers		Cheryl Davila		2019-03-01 17:00:00	Police	Completed	2019-03-01 17:00:00	2019-03-30 15:34:27	2019-04-24 15:35:06 - Melissa McDonough (Additional comments) Training class conducted March 30
2017-12-05	17	City Manager Referral: Consider CPUC Interconnection Applications	Refer to the City Manager consideration of applying for CPUC interconnection applications.	Council member				2019-03-04 16:00:00	Public Works	Completed	2019-03-04 16:00:00	2018-04-04 00:00:00	
2018-09-13	18	Adopt a Resolution in Support of Appropriate City Enforcement Measures to Mitigate Damages Resulting from the Removal of Trees at 1698 University Avenue	Amended to be a referral to the City Manager regarding enforcement of measures to mitigate damage to the general welfare of the City and neighborhood resulting from the damage and subsequently-required removal of trees at 1698 University Avenue.	Council member		Kate Harrison		2019-03-11 17:00:00	PLANNING & DEVELOPMENT	Completed	2019-03-11 16:00:00	2018-10-01 15:56:16	
2018-09-25	22	Safe storage of firearms - Revised materials (Supp 2)	Refer to the City Manager to review draft Safe Storage of Firearms ordinance, identify and resolve issues, and return to Council within 90 days.	Council member		Susan Wengraf, Sophie Hahn		2019-03-22 17:00:00	City Attorney	Completed	2019-03-23 16:00:00	2018-12-24 16:21:16	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-10-02		Lobbyists Registration and Regulation Ordinance; Amendments to Existing Revolving Door Ordinance	Request an analysis from the City Manager before the November budget discussion on the administrative impacts and cost to implement the lobbyist ordinance.	Council member	MAYOR AND COUNCIL			2019-03-29 17:00:00	City Attorney	Completed	2019-03-30 16:00:00	2019-01-22 12:32:26	
2018-10-02	9	Amend BMC Chapters 6.24 and 14.52 to Authorize Paid Parking on Shattuck Avenue between Carleton Street and Ward Street and add the Northside (Euclid/Hearst) Metered Parking Area to the goBerkeley Program; and Authorize Paid Parking at the City-Owned Adeline/Alcatraz Parking Lot	Request staff to perform an analysis of the parking in the Northside area during the academic year to be completed within six months.	Council member	MAYOR AND COUNCIL			2019-04-02 17:00:00	Public Works	Completed	2019-04-02 17:00:00	2019-08-01 15:29:17	2019-08-27 15:29:52 - Nancy Melendez (Additional comments) GH: Staff conducted an analysis of the parking in the Northside area in spring 2019, roughly six months after goBerkeley price and time limits went into effect on November 1, 2018. As summarized in the June 25, 2019 Information Report submitted to Council, the data showed that goBerkeley changes are working as intended to increase parking availability in the area. Two minor adjustments to prices and time limits in "Value" zones went into effect August 1, 2019  2019-02-05 16:25:11 - Melissa McDonough (Additional comments)

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-10-30	35	City Manager referral: Initiate a franchise agreement with FlixBus	That the Council refer to the City Manager initiation of a franchise agreement with FlixBus, requiring a permit issued by the Director of Public Works, establishing a fee for the issuance of the permit, establishing administrative penalties for failure to obtain a permit or violation of permit requirements, and providing a procedure for the assessment and collection of administrative penalties for permit violations.	Councilmembers		Kriss Worthington		2018-10-30 17:00:00	Public Works	Completed	2019-05-01 11:39:27	2019-05-23 00:00:00	2019-04-23 11:49:56 - Mark Numainville (Additional comments) Resolution of Intent adopted on 3/26/19; Public Hearing set for 4/30/19
2018-10-16	25	Welcome to Berkeley Signage	Refer to the City Manager on a short term basis to replace all the Welcome to Berkeley signs with the Option B design per the Transportation Commission recommendation, including "Ohlone Territory" but not a second motto. Also, leave space on the sign to add a policy message and consult with Ohlone leaders on the use of the word "territory."	Councilmembers	City Council District 2	Cheryl Davila		2018-10-16 17:00:00	Public Works	Completed	2019-05-03 12:00:00	2019-02-07 00:00:00	



Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-02-19	21	Refer to the Planning Commission an amendment to BMC Chapter 23C.12.020 (Inclusionary Housing Requirements – Applicability of Regulations) and the Affordable Housing Mitigation Fee Resolution to Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation	1) Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements – Applicability of Regulations) and BMC Section 22.20.065 (Affordable Housing Mitigation Fee) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for projects by modifying property lines so that no lot is large enough to construct five or more units; the Commission should return to Council with a report by April 30, 2019. 2) Refer to the Planning Commission	Councilmembers		Kate Harrison, Rigel Robinson, Sophie Hahn		2019-05-21 17:00:00	PLANNING & DEVELOPMENT	Completed	2019-05-21 17:00:00	2019-06-11 09:40:07	2019-04-15 09:44:51 - James Bondi (Additional comments) Scheduled for Council 4/30/19.  2019-04-12 16:04:35 - Melissa McDonough (Additional comments) May be done at Council 4/30/19, pending recommendation from Planning Commission (special Public Hearing 4/3/19).
2019-02-19	9	Short-Term Referral: Develop Ordinance permitting Cannabis Events and designate Cesar Chavez Park as an Approved Venue	Short-Term Referral to the City Manager to develop ordinance amendments permitting up to three cannabis events per year in the first year in the City of Berkeley and designating Cesar Chavez Park as the sole approved location for cannabis events, provided such events are organized and licensed as required by the State of California. The ordinance shall: 1. reference Resolution No. 68,326-N.S., declaring that Berkeley is a sanctuary for adult use cannabis, 2. specify procedures for such events that replicate similar	Councilmembers		Jesse Arreguin		2019-05-21 17:00:00	PLANNING & DEVELOPMENT	Completed	2019-05-22 00:00:00	2019-04-15 09:54:32	2019-04-15 09:54:26 - James Bondi (Additional comments) Council considered and opted not to adopt policy, 4/2/19.  2019-04-12 16:02:31 - Melissa McDonough (Additional comments) Pending Council adoption of Cannabis Ordinance revisions scheduled for April 2 (second reading April 23).

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-07-25	37	Reviewing the GIG Car Share Pilot Program	Refer to the City Manager and Transportation Department a review of the concerns, emerging regarding some features of the recently implemented GIG Car Share pilot program, request adjustments before the two-year pilot program from staff.	Council member		Linda Maio, Susan Wengraf		2019-05-28 17:00:00	Public Works	Completed	2019-05-28 17:00:00	2019-05-28 11:39:27	2019-02-05 15:16:47 - Melissa McDonough (Additional comments) The program evaluation will be conducted in early 2019 and an action report prepared for Council to continue, modify, or discontinue the pilot.
2019-03-26	23	Referral to City Manager to Scope Process and Estimate Cost of New General Plan	Referral to the City Manager to return to City Council with an outline of the process for creating a new City of Berkeley General Plan. The cost for the first two years of work will be included in the report for consideration during the upcoming 2020-2021 Budget Process.	Councilmembers		Jesse Arreguin, Cheryl Davila		2019-06-21 17:00:00	PLANNING & DEVELOPMENT	Completed	2019-06-21 17:00:00	2019-06-12 09:41:11	2019-04-15 09:53:31 - James Bondi (Additional comments) Scoping has begun. Off-Agenda Memo will provide answers (date TBD)
2018-12-11	26	Referral to the City Manager and Planning Commission to Update the Housing Pipeline Report to Address Timeline between Planning Entitlements and Submission of Building Permit Applications and Consider Reasons for Delay	Referral to the City Manager to include in the Housing Pipeline Report an analysis of the time between planning entitlements and building permit requests for all projects of five units or greater over the past five years. On an ongoing basis, refer to the City Manager and Planning Commission to propose changes to current Planning approval process to address the causes of delays between entitlements and building permits for construction or substantial rehabilitation of five or more dwelling units.	Councilmembers		Kate Harrison		2018-12-11 17:00:00	PLANNING & DEVELOPMENT	Completed	2019-07-16 16:43:23	2019-07-23 11:40:57	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-03-26	15	Ensuring the Sustainability of the Berkeley Flea Market	Short-term referral to the City Manager to provide material and strategic assistance to the Berkeley Flea Market, to sustain and enhance its ability to serve both merchant participants and the community at large.	Council member		Ben Bartlett, Sophie Hahn, Cheryl Davila		2019-05-27 17:00:00	Office of Economic Development	Completed	2019-07-30 11:38:31	2019-07-30 11:38:31	2019-12-25 20:59:26 - Jordan Klein (Additional comments) Info report to Council on January 21, 2020 (Referral Response: Small Business Retention Programs) includes a summary of the assistance provided to CSU / Berkeley Flea Market, and includes their new strategic plan as an attachment. OED will continue to provide support to the Flea Market, directly and through our partner organizations.  2019-11-25 13:18:59 - Melissa McDonough (Additional comments) Community Services United (nonprofit that runs the flea market) submitted their strategic plan for the flea market to OED on November 25, 2019.
2018-11-13	18	Short-Term Referral to City Manager to Complete Steps Necessary to Establish Lava Mae Services in Berkeley	Short-term referral to the City Manager to coordinate with Fire, Planning and Public Works Department Heads to provide permits, identify locations and allow access to water and disposal hook-ups necessary to bring Lava Mae shower services to Berkeley's homeless populations within 90 days for a 6-8 week pilot. This includes: - Determining locations to set up portable shower; and - Identifying water source for hook ups designated to dispense water for showers, either fire hydrants (preferred) or garden hose spigots; and -Parking permits for shower	Councilmembers		Cheryl Davila, Sophie Hahn		2019-09-10 17:00:00	CITY MANAGER'S OFFICE	Completed	2019-09-10 17:00:00	2019-09-12 08:29:03	2019-09-12 08:30:15 - Melissa McDonough (Additional comments) Report on Council agenda.  2019-08-07 15:07:11 - Melissa McDonough (Additional comments) Sites and hook-ups have been established.

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-09-10	55	Game Day Parking - Minor Update to include RPP area K	Refer to the City Manager the modification of parking restrictions in specified RPP Zones on UC Berkeley home football game days as follows: establish "Enhanced Fine Areas" to prohibit parking without a valid RPP permit to include RPP Zone K; and install new RPP signs in zone K to clearly indicate UC Berkeley home football game day parking prohibitions.	Council member		Lori Droste, Jesse Arreguin		2019-09-16 17:00:00	Public Works	Completed	2019-09-16 17:00:00	2019-09-16 17:00:00	2020-10-28 16:19:57 - Mark Numainville (Additional comments) Item 13 on the 10-27-2020 agenda  2020-06-30 15:27:04 - Nancy Melendez (Additional comments) There is no known plan for Cal Football this fall. So the program is not expected to occur this year. Work to include area K has not started.  2019-11-26 14:14:38 - Melissa McDonough (Additional comments) Scheduled for Council action spring 2020.
2019-07-16	14	Opportunity Zone Project Guidelines for the City Manager	Refer to the City Manager the priorities listed below for investment in Berkeley's Opportunity Zones for proactive outreach and marketing to investors or Opportunity Funds, and to guide any discussions or negotiations regarding development projects in Opportunity Zones. The priorities are: Construction of new Affordable Housing units or acquisition and preservation of affordable housing; Preservation of historic buildings; Cultural Institutions and Performing Arts Venues; Civic Uses (Government Offices	Councilmembers		Ben Bartlett, Kate Harrison, Jesse Arreguin, Cheryl Davila		2019-07-22 17:00:00	Office of Economic Development	Completed	2019-09-25 11:01:10	2020-01-24 10:52:16	2020-04-16 10:52:40 - Melissa McDonough (Additional comments) Off-agenda memo released on 1/24/20: <a href="https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Opportunity%20Zones%20012320.pdf">https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Opportunity%20Zones%20012320.pdf</a>  2019-11-25 13:28:38 - Melissa McDonough (Additional comments) Information report postponed pending further analysis.  2019-11-05 13:31:36 - Jordan Klein (Additional comments) Information report submitted for 12/3/19 Council Meeting  2019-09-24 07:59:59 - Melissa McDonough (Additional comments) Expect to send an info

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-11-12	18	Request for Information: Police Dispatch	Refer to the City Manager a request for information clarifying: 1. when non-emergency phone calls to the police are directed to the Berkeley Police Department and when to the California Highway Patrol or other outside agencies, and 2. what staffing or technological changes would be needed to direct more calls to Berkeley dispatch.	Councilmembers		Kate Harrison		2019-11-20 17:00:00	Police	Completed	2019-11-20 17:00:00	2019-11-20 17:00:00	2020-10-26 10:56:20 - Melissa McDonough (Additional comments) Off agenda memo submitted 10/26  2020-08-05 09:43:23 - Melissa McDonough (Additional comments) Completion pending submittal of memo to Council documenting work.
2019-09-10	35	1281 University Avenue Request for Proposals	Refer to the City Manager to issue a Request for Proposals (RFP) for residential development at the City-owned site at 1281 University Avenue with a requirement that 100% of the on-site units to be restricted to 80% AMI or below households with at least 10% at 50% AMI, with consideration given to accommodations that serve unhoused or homeless households, including nontraditional living arrangements such as tiny homes and that Council consider interim use for the site for housing purposes.	Commission			Housing Advisory Commission	2019-11-29 17:00:00	Health, Housing and Community Services	Completed	2019-11-29 17:00:00	2019-11-29 17:00:00	2019-12-02 14:11:54 - Melissa McDonough (Additional comments) RFP issued, responses due 12/12/19

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-09-10	30	Referral Response: Proposed New BMC Ordinance Adding Chapter 9.26 Live Animal Sales – Disclosure Requirements	In lieu of approving the ordinance, encourage Berkeley live animal retailers to provide purchasers with information regarding the sourcing of their animals by utilizing one or two of the following designations describing the sourcing of the particular animal: 'captive bred;' 'hobby breeder' or 'licensed breeder;' 'rescue;' 'wild caught;' or 'imported.'	Commission		Animal Care Commission		2019-12-16 17:00:00	CITY MANAGER'S OFFICE	Completed	2019-12-16 17:00:00	2019-10-03 17:00:00	2019-10-15 14:28:21 - Melissa McDonough (Additional comments) Staff developed a set of standard terms and sent a letter to all animal retailers on 10/3/2019, encouraging them to use the designations. Staff has prepared and submitted a referral response via off-agenda memo.
2020-03-10	23	Directing the City Manager to Lease Caltrans Property at University and West Frontage Road	Direct the City Manager to: 1. Negotiate a lease agreement with the California Department of Transportation (Caltrans) for the leasing of state property at University Avenue and West Frontage Road as indicated in Attachment 1. The property will be used for a temporary outdoor shelter with restrooms, hand washing stations and garbage service. The City Manager should also inquire about whether additional Caltrans parcels adjacent to those being offered are also available for lease. The City Manager should utilize funding	Councilmembers		Jesse Arreguin, Rigel Robinson, Kate Harrison, Sophie Hahn		2020-03-23 17:00:00	CITY MANAGER'S OFFICE	Completed	2020-03-23 17:00:00	2020-03-23 17:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-04-14	0	Save Our Small (SOS) Business Loan Fund	Refer to the City Manager to rapidly explore and, if feasible, pursue the creation of a special structured financial recovery loan fund to provide a supplemental source of capital for Berkeley small businesses impacted by the COVID-19 emergency. Among other considerations, the City Manager is requested to consider whether the City of Berkeley should act as a sponsor of the fund, working with one or more financial institutions to pool capital from private investors and the City of Berkeley to lower the risk of the product and support	Councilmembers		Sophie Hahn, Jesse Arreguin, Susan Wengraf, Kate Harrison		2020-04-16 17:00:00	CITY MANAGER'S OFFICE	Completed	2020-04-16 17:00:00	2020-04-16 17:00:00	2020-10-21 11:31:46 - Melissa McDonough (Additional comments) see off agenda memo: (April 27) <a href="https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Business%20and%20Arts%20Organization%20Continuity%20Grant%20Programs%20042720.docx.pdf">https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Business%20and%20Arts%20Organization%20Continuity%20Grant%20Programs%20042720.docx.pdf</a>
2020-06-02	11	Berkeley Safe Open Air Dining	1. Refer to the City Manager to explore and identify, on an expedited basis, potential public locations throughout Berkeley, including but not limited to wide sidewalks, street medians, building curtilages, parking bays and strips, streets and portions of streets, parking lots, and parks, for the temporary placement of tables and chairs to be used, if and when safe and feasible, for open air dining to support restaurants, cafes, food shops, and other small businesses impacted by the COVID-19 emergency, and to increase capacity for pedes-	Councilmembers		Sophie Hahn, Jesse Arreguin, Rigel Robinson, Kate Harrison		2020-06-10 17:00:00	CITY MANAGER'S OFFICE	Completed	2020-06-10 17:00:00	2020-06-10 17:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-03-10	26	Disposition of City-Owned, Former Redevelopment Agency Property at 1631 Fifth Street	Refer the item to the City Manager to explore City uses of the property for housing and homelessness services and needs, or other uses, and review the remediation needs of the property.	Councilmembers				2020-07-20 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2020-07-20 17:00:00	2020-07-20 17:00:00	
2020-01-21	32	Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability	Adopt the following amended actions with a positive recommendation from the Council Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Committee: 1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on-going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new	Councilmembers		Cheryl Davila, Ben Bartlett		2020-01-23 17:00:00	PLANNING & DEVELOPMENT	Completed	2020-07-31 17:00:00	2020-07-21 17:00:00	2020-07-24 13:25:25 - James Bondi (Additional comments) Completed at Council 7/21/2020. Council action to accept report also created new long-term referral, to be tracked separately.  2020-07-01 13:12:14 - James Bondi (Additional comments) Referral response scheduled for Council 7/21/20.  2020-04-15 11:31:10 - James Bondi (Additional comments) Work has begun, draft report to Council prepared, but put on hold until budget recommendations can be considered in larger City budget context given COVID impacts.



Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-09-15	27	Outreach and Technical Assistance for Berkeley Small Businesses Eligible to Participate in the California Rebuilding Fund	Refer to the City Manager to engage in robust outreach to small businesses and organizations in Berkeley that may be eligible to participate in the California Rebuilding Fund, a new public-private partnership based on the SOS Small Business Loan model Berkeley passed in April 2020, that will leverage government backed capital to support small enterprises in California. It is our understanding that loans will be made in part on a first come, first served basis, so time is of the essence for staff to do outreach. The City Manager is	Councilmembers		Sophie Hahn		2020-09-25 17:00:00	CITY MANAGER'S OFFICE	Completed	2020-09-25 17:00:00	2020-09-25 17:00:00	2020-10-21 11:30:40 - Melissa McDonough (Additional comments) This effort will dovetail with the expanded RLF program (called "RLP", resiliency loan program) the federal funds are to be accepted and approved by council 10/27/20.
2020-09-15	31	Preserving Our Children's Recreation Areas	Request the City Manager implement the following recommendations for Willard Park and utilize them for other parks where appropriate: 1. Increase nighttime enforcement and enable the enforcement of park rules and ordinances. 2. Consider the presence of needles and feces a Public Health threat and enable the Public Health Department to cordon off areas of encampment for the purpose of clearing the areas of contamination and ensuring the areas are safe for public use. 3. Determine what	Councilmembers		Lori Droste, Jesse Arreguin		2020-09-25 17:00:00	CITY MANAGER'S OFFICE	Completed	2020-09-25 17:00:00	2020-09-25 17:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-10-13	17	Removal of Traffic Bollards on the Intersection at Fairview and California St.	Refer to the City Manager to remove the traffic bollards at the intersection at Fairview and California St. for the following reasons: 1. To allow residents, emergency responders, street cleaning and garbage disposal services, and delivery vehicles ease of access to enter and exit Fairview Street; 2. To allow residents of the 1600 block of Fairview St. access to additional parking spots because the current capacity is inadequate; and 3. To decrease illegal dumping that has been incentivized by the traffic bollards and eliminate the harborage of junk, debris and vehicles.			Ben Bartlett		2020-10-22 17:00:00	Public Works	Completed	2020-10-22 17:00:00	2020-10-22 17:00:00	2021-01-14 17:42:45 - Nancy Melendez (Additional comments) The bollards have been removed.
2020-06-16	24	Lessons Learned in Organizational Management During Crisis	Refer to the City Manager to include insights and reflections on organizational management in any comprehensive report regarding the City response to the COVID-19 Emergency. Information should include but not limited to: an overview of how the City was structured and functioned differently during activation of the Emergency Operations Center, the benefits and challenges with cross departmental collaborations, and strategies or structures worth instituting and incorporating into future plans.	Councilmembers		Jesse Arreguin, Kate Harrison, Sophie Hahn, Susan Wengraf		2021-01-15 17:00:00	CITY MANAGER'S OFFICE	Completed	2021-01-15 17:00:00	2021-01-15 17:00:00	2020-10-28 16:18:36 - Mark Numainville (Additional comments) Presentation made and report submitted at 10-27-2020 council meeting  2020-10-16 15:22:51 - Melissa McDonough (Additional comments) Report and presentation on 10/27 City Council Meeting Agenda  2020-07-14 14:04:25 - Melissa McDonough (Additional comments) The report on our emergency response will be provided culminating a year of activities.



Office of the City Manager

INFORMATION CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police

Subject: Update on the Implementation of FIP Task Force Recommendations

INTRODUCTION

The Berkeley City Council referred the recommendations from the Mayor's Fair and Impartial Policing (FIP) Task Force to the Berkeley Police Department for implementation.

CURRENT SITUATION AND ITS EFFECTS

This report provides the first quarterly update on the implementation of the Task Force recommendations from the February 23<sup>rd</sup>, 2021 City Council Special meeting. The Police Department was asked to implement the recommendations provided by the FIP Task Force.

On May 13, 2021 the City Manager and I met with the Mayor, Councilmember Harrison, additional staff and many of the FIP Task Force members. The current progress towards implementation described below was shared and discussed at this meeting. BPD is committed to continued collaboration with, and feedback from, the Task Force as we move towards full implementation.

The implementation of the FIP Task Force recommendations is a priority of the Berkeley Police Department. Lieutenant McGee of the Community Services Bureau and Sergeants Ledoux and Lee of the Professional Standards Bureau have been assigned to oversee the project of implementing the recommendations. The following outlines the Task Force recommendations and the respective progress:

Implement a New Evidence-Base Traffic Enforcement Model

- Focusing the basis for traffic stops on safety and not just low-level offenses &
- Minimize or de-emphasize as a lowest priority, stops for low-level offenses

*A working group has been established comprising of employees working in every division of the Berkeley Police Department and a representative of the Berkeley Police Association leadership. The working group is tasked with identifying what low-level offenses are applicable while balancing the necessity of traffic safety and the Berkeley Vision Zero initiative. Additionally, the working group will look to identify any mitigating*

*factors such as grant eligibility, or conflicts with existing MOUs. The working group will meet minimally biweekly and will present recommended policy language as well as analysis of risk or unintended outcomes of implementation no later than the next quarterly update to Council in Fall of 2021.*

Status: In progress

- Reaffirming and clarifying that the Berkeley Police Department will use a clear, evidence-based definition for stops of criminal suspects.

*The Police Department is establishing a precision based policing model that considers data and public safety. This model aims to reduce the number of stops that studies have shown had minimal impact on public safety.*

*Data driven-tools that enables close to real-time dashboard tracking of calls for service demands have been provided to the Community Services Bureau and Patrol Watch Commanders. This tool provides crucial data that assist Area Coordinators and Watch Commanders explore different deployment strategies.*

*The Police Department is working to provide data-driven tools to patrol officers to incorporate into their daily briefings and to train officers to collect data in a comprehensive manner. The goal is to have data-driven approaches to violence prevention programs and real time crime and call analysis for patrol deployment strategies.*

Status: In Progress

- Reaffirming and clarifying that the Berkeley Police Department will only use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria.

*Penal code 13519.4 is existing California law that prohibits racial profiling. Policy 401 (Fair and Impartial Policing) also prohibits racial profiling.*

*Section 401.2 explicitly states, "Officers shall not consider race, ethnicity, national origin, gender, age, religion, sexual orientation/identity or socio-economic status in establishing either reasonable suspicion or probable cause, or when carrying out other law enforcement activities..."*

*The above policies were reviewed in light of the task force recommendations and found to affirm and clarify police officer responsibilities in stops.*

Status: Completed

Implement Procedural Justice Reforms

- Refer amendments to existing BPD policy and the creation of an Early Intervention System (EIS) related to traffic, bike and pedestrian stops;  
*Existing Berkeley Police general order E-13 (Early Warning System) is being amended and a draft of new language is being crafted by a working group comprised of several employees. Anticipated completion date: August 2021*

Status: In progress

- Adopt a policy to require written consent for all vehicle and residence searches and update the consent search form in alignment with best practice and community feedback;  
*Policy 311 (Search and Seizure) will be amended to create a section requiring written consent for searches. A revised written consent form has been drafted and is pending further review. Anticipated completion date: August 2021*

Status: In progress

- Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole;  
*Refer to Policy 311. On 02/10/21 sections 311.5 and 311.6 were modified to reflect the above limitations to warrantless searches. The above policies were reviewed and modified in line with the task force recommendations.*

Status: Completed

- Address Profiling by Proxy (PAB Policy Development, Dispatcher Training);  
*The Communications Center Operation Manual has been amended to address, in writing, profiling by proxy. All dispatchers have reviewed the amended manual and are instructed to be cognizant and screen for profiling by proxy calls. BPD intends to continue to educate and train dispatchers, officers and all departmental employees on how to identify and address biased based reporting.*

Status: Completed

- Fire racist police officers identified through social media and other media screens;  
*The following existing policies dictate procedures for investigating employees in this area; these policies adhere to due process and Government Section 3300:*

*Policy 1029 (Employee Speech, Expression and Social Networking) provides accountability to employee personal social media posts. Section 1029.4(b) states “Speech or expression that, while not made pursuant to an official duty, is significantly link to, or related to, the Berkeley Police Department and tends to compromise or damage the mission, function, or reputation of professionalism of the Berkeley police Department or its employee.*

*PR 232 (Controversial Discussion), PR 235 (Acts –Statements-By employees), PR 238 (Organizational Membership), and PR 250 (enforcement of Law, Impartiality) are also policies that provide accountability for any racist behaviors.*

*The above policies were reviewed in light of the task force recommendations found to provide necessary authority to investigate allegations of racism. Departmental policy clearly identifies discrimination based upon a person’s race as misconduct, and requires reporting and prompt investigating of any allegation of racism. Any employee who becomes aware of or observes any discrimination on the basis of a protected class is required to notify a supervisor by the end of their shift or within 24 hours if they are off duty.*

Status: Completed, however the BPD is committed to continuing to explore additional methods to identify and address potentially racist behaviors or actions by our members.

- Require regular analysis of BPD stop, search, and use of force data;  
*The Open Data Portal (ODP) is a public facing website that gives the public access to police data and is accessible through the City’s website. This allows for open and independent analysis and review to foster police accountability and transparency.*

*ODP is operational and the data is updated approximately every 60 days. The data that is provided to ODP includes calls for service, arrests, bookings, and stop data (RIPA) which is updated monthly.*

*The Police Department is in the process of expanding the call for service dataset to include all types of calls and eliminate the 180 day time range that currently exist to allow for searches several years into the past. Anticipated completion date is dependent on the technological needs and contract process as this dataset is updated, but work is anticipated to be completed within six months.*

*Amendments to Berkeley Police general order E-13 (Early Warning System) will further address this recommendation.*

Status: Partially completed

- Make resources on police-civilian encounters more publicly available such as through RAHEEM.org;
- For any individual detained, BPD officers shall provide a business card with information on the commendation and complaint process with the Police Accountability Board and the Berkeley Police Department, Internal Affairs Bureau.

*A new business card has been drafted with information on the commendation and complaint process that includes a QR code to the Police Department Internal Affairs website. This business card is pending review.*

*Pending the approval and arrival of new business cards, the Berkeley Police Department has printed approximately 3000 labels for officers to affix on the backside of existing business cards containing the phone numbers to Internal Affairs and the Police Review Commission. The label also contains a QR code to the Berkeley Police Department's website containing information on how to file a complaint through Internal Affairs and PRC as well as a link to resources on police-civilian encounters. This website will be designed to ensure broad accessibility and ease of use for all members of our community, including those whose primary language may not be English.*

*Officers are being instructed to provide business cards to all detained individuals, and these instructions will be memorialized in Policy in the near future. All future BPD business cards will have the aforementioned printed on the backside of cards.*

*Berkeley Police Department is ready to modify the labels to include the link for the survey that's being created by the Reimagine Public Safety Task Force, and once completed BPD can quickly print new labels for officers to hand out as outlined in this recommendation. Anticipated completion date: June 2021*

Status: Partially completed

Refer the following recommendations summarized below to the Reimagine Public Safety process

- Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized

with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins.

*Lieutenant McGee's work on the Reimagine Public Safety Task Force is on-going and no formalized systems are in place at this time.*

Status: In Progress

- Conduct a baseline community survey  
*A community survey from the Reimagine Task Force is imminent. The City has contracted with the National Institute for Criminal Justice Reform (NICJR) to devise, disseminate, and subsequently analyze the survey. An additional community survey is being prepared specifically tailored to the Specialized Care Unit and covering topics around law enforcement engagement with mental health related calls.*

Status: In progress

Acknowledge and reaffirm the following recommendations summarized below and detailed in full in Attachment 1 that are already underway

- BPD released stop, arrest, calls for service and use of force data from 2012 to present to the Working Group;  
*The police department released the data in December of 2020*

Status: Completed

- Fund and implement a specialized care unit for mental health crises;  
*The City has contracted with a consulting firm who has already started work on this project.*

Status: In progress

- Conduct a Capacity Study of police calls and responses and use of officer time outside of case work.  
*The City's Auditor's report was recently released which analyzed Computer Aided Dispatch data.*

Status: Partially completed

Refer the following training recommendations summarized below to the Police Review Commission, to be taken up by the Police Accountability Board when it is established, and consider the resources required to implement this expanded training

- Refer to the Police Review Commission



Refer \$50,000 to the FY 2022 budget process for a consultant to assist the City Manager/Police Department in the implementation of these recommendations and other minor costs the Department may confer; and also refer to the FY 2022 budget process a line item for police training for the new evidence-based stop program (costs to be determined by BPD).

- The Police Department will be collaborating with the City Manager to determine the best use for the budget allocation in aiding our implementation process of these recommendations
- Refer to the Budget Office/City Manager

### BACKGROUND

On February 23, 2021 the Berkeley City Council voted unanimously to implement of the recommendations from the Mayor's Fair and Impartial Policing Task Force. The Police Department has begun implementing the recommendations. The Police Department has committed to quarterly progress updates on the movement towards the implementation of the recommendations.

Sgt. Lee and Sgt. Ledoux have been assigned to coordinate and track the implementation of the recommendations. Both sergeants have established a working group that consists of employee from every division/unit and a representative from the Berkeley Police Association leadership. Lt. McGee is participating on the Reimagine Public Safety Task Force. Meetings with the Reimagine Public Safety and working group will continue to further implement the remaining recommendations.

### ENVIRONMENTAL SUSTAINABILITY

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

### POSSIBLE FUTURE ACTION

The Police Department will continue to work toward the full implementation of the Task Force recommendations.

### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Staff time and additional training time to be determined at a later date.

### CONTACT PERSON

Jennifer Louis, Interim Chief of Police, (510) 981-5700

Attachments:

1: Berkeley Police Policy 401

[https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3\\_-\\_General/401%20Fair\\_and\\_Impartial\\_Policing\(1\).pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/401%20Fair_and_Impartial_Policing(1).pdf)

2: Berkeley Police Policy 311

[https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3\\_-\\_General/Search\\_and\\_Seizure.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/Search_and_Seizure.pdf)

3: California Legislative Information

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=13519.4](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=13519.4).

4. Berkeley Police Policy 1029

[https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3\\_-\\_General/1029%20Employee\\_Speech\\_Expression\\_and\\_Social\\_Networking.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/1029%20Employee_Speech_Expression_and_Social_Networking.pdf)

5. Berkeley Police Regulation Chapter 2

[https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3\\_-\\_General/PR%20Ch2\\_08Mar17.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/PR%20Ch2_08Mar17.pdf)



Office of the City Manager

## INFORMATION CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Dr. Diane Sequoia, Chair, Animal Care Commission  
 Subject: Animal Care Commission 2021/2022 Work Plan

### INTRODUCTION

In a general meeting held on April 21<sup>st</sup>, 2021 the Animal Care Commission adopted a work plan for 2021 - 2022 which is presented below.

### CURRENT SITUATION AND ITS EFFECTS

The top priorities of the Animal Care Commission (ACC) for 2021/ 2022 are as follows:

- A. Help keep people with their pets. Continue to support Animal Services and City efforts to ensure that wanted and well cared for pets are not separated by adverse circumstances from their humans. Assist in making available pet food and other pet supplies to enable all (responsible) Berkeley residents to keep and care for their pets particularly during times of stress. Prioritize low income, elderly and unhoused individuals.
- B. Help promote pet-friendly housing. Make available informational resources on finding and keeping housing for people with pets. Also make available informational resources to landlords on the advantages of renting to responsible pet-owners. Posting such informational resources on the Animal Services webpage and possibly the City office of housing services and/or other appropriate City divisions; including links to other organizations that have successful/robust pet-friendly policies or programs (an example being SFSPCA).
- C. Increase Berkeley residents' awareness of urban wildlife and promote knowledge of means of coexistence. Assist Animal Services in making urban wildlife awareness and means of coexistence available to the general public in Berkeley. This can be done by continuing and expanding on the information posted on the Animal Services webpage and on-going partnering with other urban wildlife awareness/co-existence organizations. Cross posting information and/or links on the City webpages of Vector Control and Public Health could also reach a wider group of Berkeley residents seeking information on or assistance in living with our resident urban wildlife.

- D. Actively support and promote increased and on-going adequate City funding of Animal Services and its vital programs supporting the Berkeley community, many of which are unrecognized by both the general public and by the City administration and elected officials.

Animal Services provides extensive community services to Berkeley including maintaining the municipal animal shelter and the animals housed there, reuniting lost pets with their people, providing animal related infrastructural support services, follow-up training for dogs adopted out, animal related advice and information to the public, assistance to low income residents with pets and pet and animal related community outreach.

The ACC will work with other commissions, including Parks & Waterfront Commission, the Public Works Commission, and non-profit organizations involved in these issues in Berkeley.

#### BACKGROUND

The Animal Care Commission meets six (6) times per year with the mission of overseeing the treatment of animals in all shelters established within Berkeley. The ACC advises the council on the care, treatment and control of animals.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### POSSIBLE FUTURE ACTION

The ACC and the Animal Services Manager will research options and associated costs to establish an area suitable for training and exercising shelter dogs. The ACC will research ways to assist homeless pet owners to secure housing. The ACC will also research and implement practical means to increase pet-friendly housing in Berkeley.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The ACC will research information regarding the cost of establishing an area suitable for training and exercising shelter dogs as well as possible sources of funding.

#### CONTACT PERSON

Amelia Funghi, Manager, Animal Services, (510) 981-6603



Planning Commission

## INFORMATION CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Planning Commission

Submitted by: Shane Krpata, Vice-Chair, Planning Commission and Jeff Vincent, Work Plan Subcommittee of the Planning Commission

Subject: Planning Commission Work Plan 2021-2022

### INTRODUCTION

The City of Berkeley Planning Commission (PC) hereby submits its work plan for Fiscal Year 2021, pursuant to the Berkeley City Council's request.

### CURRENT SITUATION AND ITS EFFECTS

Unlike other City commissions, the PC's workload is almost exclusively dictated by referrals from the City Council. In recent years, the Council conducted an annual referral ranking process, which shaped the prioritization of work for the PC. Thus, by design, the PC has far less latitude than other city commissions in establishing and prioritizing its workload. As of February 2021, the PC has a workload of more than 45 referrals from the City Council.

The PC's work plan organizes the referrals around three strategic areas of PC interest/outcome, as described below. Across these strategic outcome areas, the PC aims to **demonstrate state-wide leadership in promoting social equity, affordability, and climate resilience issues.**

Increasingly, new state laws – particularly on housing-related issues – require that the City update/amend its code to be in compliance with State legislation. Thus, the Planning Commission must prioritize agendaing these items so that a timely recommendation can be sent to City Council. On some of these issues, the Planning Commissioners agreed to go “beyond” state laws and recommend local land use policy policies that the PC feels will achieve more equitable results than what state laws are requiring.

Similarly, some referrals include the City hiring outside consultants on certain items under specific timelines, which requires attention and action by both PC and the Planning Department.

**Strategic Outcome Areas:**

1. **Increase affordable housing.** This includes retaining and expanding the stock of affordable housing available throughout the city. The commission has identified three mechanisms by which we can advance this strategic outcome:
  1. Modify development standards to create more affordable housing;
  2. Revise administrative procedures and levels of discretion to streamline affordable housing;
  3. Develop community benefits and other value capture mechanisms in order to maximize affordability in new development.
2. **Promote healthy, livable communities.** This includes ensuring Berkeley residents live in safe, healthy, and accessible communities with parks, schools, local businesses, and cultural institutions, and promoting healthy mobility options for all residents.
3. **Support community economic development and commercial vitality.** This includes preserving and enhancing Berkeley's thriving neighborhood commercial areas and ensuring a vibrant downtown.

**Resources:** Significant staff time is required to conduct the research, write reports, and draft zoning language. In some cases, consultants are brought on board to assist staff.

**Activities:** For each referral, the PC's action requires staff time for substantive reports on each topic within each referral as well as developing draft zoning language changes. Often the draft zoning language goes through multiple revisions across multiple PC meetings.

**Outputs:** On nearly all referrals, the PC output consists of recommendations to the City Council.

**BACKGROUND**

City Council has requested that each commission provide a work plan that explains the mission and goals of each appointed body. The mission of the PC, as outlined in the City Charter, reads:

*"The Commission recommends modifications to the City of Berkeley General Plan and related policy documents. All Zoning Ordinance amendments are developed through this Commission and recommended to the City Council. Other purviews include subdivision map consideration and review and comments on substantial projects from surrounding jurisdictions."*

Members of the PC have discussed their goals and prioritized three strategic outcomes to guide their 2021-2022 work as described above: 1) Increase affordable housing; 2)

Promote healthy, livable communities; and 3) Support community economic development and commercial vitality.

At its meeting of March 17th, 2021, the PC voted to adopt this work plan with Commissioner Krpata's edits and send it to City Council. (Vote: 8,0,0,1; Ayes: Wiblin, Schildt, Lacey, Beach, Kapla, Krpata, Hauser, Ghosh. Noes: None. Abstain: None. Absent: Vincent. Motion/Second: Krpata/Beach.)

The attached Planning Commission Work Plan Table 2020-2021 (see Attachment 1) shows started referrals, referrals awaiting action from other commission(s), referrals ranked by City Council that are awaiting PC action (but require additional resources or staff capacity), and referrals not yet ranked by City Council. The table also includes projects that are required for compliance with State law and/or projects underway with the help of consultants or staff from other divisions and departments.

The PC's pace in working through City Council referrals is determinant on staff support. The Long Range Policy Group currently has five fulltime equivalent (FTE) employees (two Principal Planners, one Associate Planner, and two Assistant Planners) and is in the process of hiring one Senior Planner. Additional staff resources would allow the Long Range Policy Group to move through their workload more efficiently.

#### ENVIRONMENTAL SUSTAINABILITY

The PC's work plan aids in advancing the city's goals around sustainability and greenhouse gas reduction.

#### CONTACT PERSON

Alene Pearson, Commission Secretary, Land Use Planning Division, (510) 981-7489

#### Attachments:

1: Planning Commission Work Plan Table 2021-2022

	Referral	STATUS: Started OR RRV-HAP Rank		Estimated Completion	Staff Lead	STRATEGIC OUTCOME AREAS			Special Considerations	
						1. Increase Affordable Housing	2. Promote Healthy, Livable Communities	3. Support Economic Development and Commercial Vitality		
1	<b>Student Housing:</b>	<a href="#">C-T: Community Benefits (focus on Labor Practice and AH)</a>	started	3	2nd Quarter 2022	Justin Horner	X	X	X	
2		<a href="#">Increase 20' height and FAR in SS</a>	started			Justin Horner	X			
3		<a href="#">Convert Groundfloor Com to Res in SS</a>	started			Justin Horner	X	*		
4		<a href="#">C-T: Pilot Density Bonus (DB Phase 2)</a>	started			Justin Horner	X			
5		<a href="#">More Student Housing Now &amp; SB1227</a>	started	4		Justin Horner	X			
6	<b>Active Long Range and Special Projects</b>	<a href="#">ADU Ordinance - Local Updates</a>	<b>ST</b>		3rd Quarter 2021	Katrina Lapira	X	X		mandated by ADU state law
7		<a href="#">Adeline Implementation</a>	started		ongoing	Alisa Shen	X	X	X	
8		<a href="#">Bayer Development Agreement</a>	started		4th Quarter 2021	Leslie Mendez			X	
9		<a href="#">BART Zoning // AB 2923</a>	started		4th Quarter 2021	Alisa Shen	X	X		mandated by state law (AB 2923)
10		<a href="#">Gentrification/Displacement Study</a>	started		4th Quarter 2021	HAC & PC	X	X	X	
11		<a href="#">Rezone Parcels Adjacent to the ACP Area</a>	started		3rd Quarter 2021	Alisa Shen	x	X	X	
12		<a href="#">ZORP Phase 1 - New Baseline ZO (BZO)</a>	started		3rd Quarter 2021	Justin Horner				customer service improvements
13	<b>Housing Element Related Work</b>	2020 Annual Progress Report HE	started		annual	Katrina Lapira	X			mandated by HE state law
14		2020 Annual Progress Report General Plan	started		annual	Katrina Lapira	X	X	X	mandated by HE state law
15		Housing Element (HE) Update	started		1st Quarter 2023	Alene Pearson	X	*		mandated by HE state law
16		<a href="#">1. Density by parcel; 2. Healthy/safety detriments; 3. Design review; 4. View-shadow impacts (DB Phase 3/JSISHL)</a>	started	5	3rd Quarter 2022	Alene Pearson	X	X		mandated by state law (HAA, SB 330, SB-35)
17		Implement State Law HAA & SB-35	started		3rd Quarter 2022	Alene Pearson	X	*		mandated by state law (HAA, SB 330, SB-35)
18		<a href="#">ZORP Phase 2 - Substantive Changes</a>	started		3rd Quarter 2022	Justin Horner		*		customer service improvements
19		<a href="#">Guide Development on San Pablo</a>	6		4th Quarter 2025	Alene Pearson	X	X	X	required by ABAB/MTC
20		<a href="#">Missing Middle Housing Report</a>	2		3rd Quarter 2022	Alene Pearson	X	*		supports HE Update / supported by CC
21		<a href="#">Resolution to End Exclusionary Zoning</a>			3rd Quarter 2022	Alene Pearson	X	*		supports HE Update / supported by CC
22		<a href="#">Expand Non-commercial Groundfloor Uses</a>		18		not assigned	X			
23		<a href="#">Flex Conversion to Mini Dorms</a>	NR			not assigned	X			
24	Housing Pipeline Report	cc request		annual	Katrina Lapira	X				
25	<b>Business-Related Referrals</b>	<a href="#">ZOAs Part 2: Sign Ordinance</a>	started		3rd Quarter 2021	Paola Boylan			X	
26		<a href="#">Expand Downtown Arts District</a>	started		1st Quarter 2022	Katrina Lapira			X	
27		<a href="#">Arcades in the Elmwood</a>	started		3rd Quarter 2021	Paola Boylan			X	
28		<a href="#">R&amp;D Definition</a>	started		4th Quarter 2021	Katrina Lapira			X	
29		<a href="#">ZOAs Part 2</a>	started			not assigned			X	
30		<a href="#">Development Agreements</a>	10			not assigned			X	
31		<a href="#">Beer and Wine in the M-District</a>	46			not assigned			X	
32	<b>Fees and Nexus Studies</b>	Fix LLA loophole & revise IHO	started		4th Quarter 2021	Alisa Shen	X			
33		<a href="#">Reform AHMF (fees per unit vs gfa)</a>	started		4th Quarter 2021	Alisa Shen	X			
34		Demolition Ordinance	started	16	1st Quarter 2022	Planning & RSB	X			
35		<a href="#">Decrease AHMF for TIC conversions</a>	started		4th Quarter 2021	Alisa Shen	X			
36		<a href="#">Inclusionary Units for Live Work</a>	started		4th Quarter 2021	Alisa Shen	X			
37	<a href="#">Analyze feasibility of onsite affordable units vs payment of AHMF</a>	started		4th Quarter 2021	Alisa Shen	X				

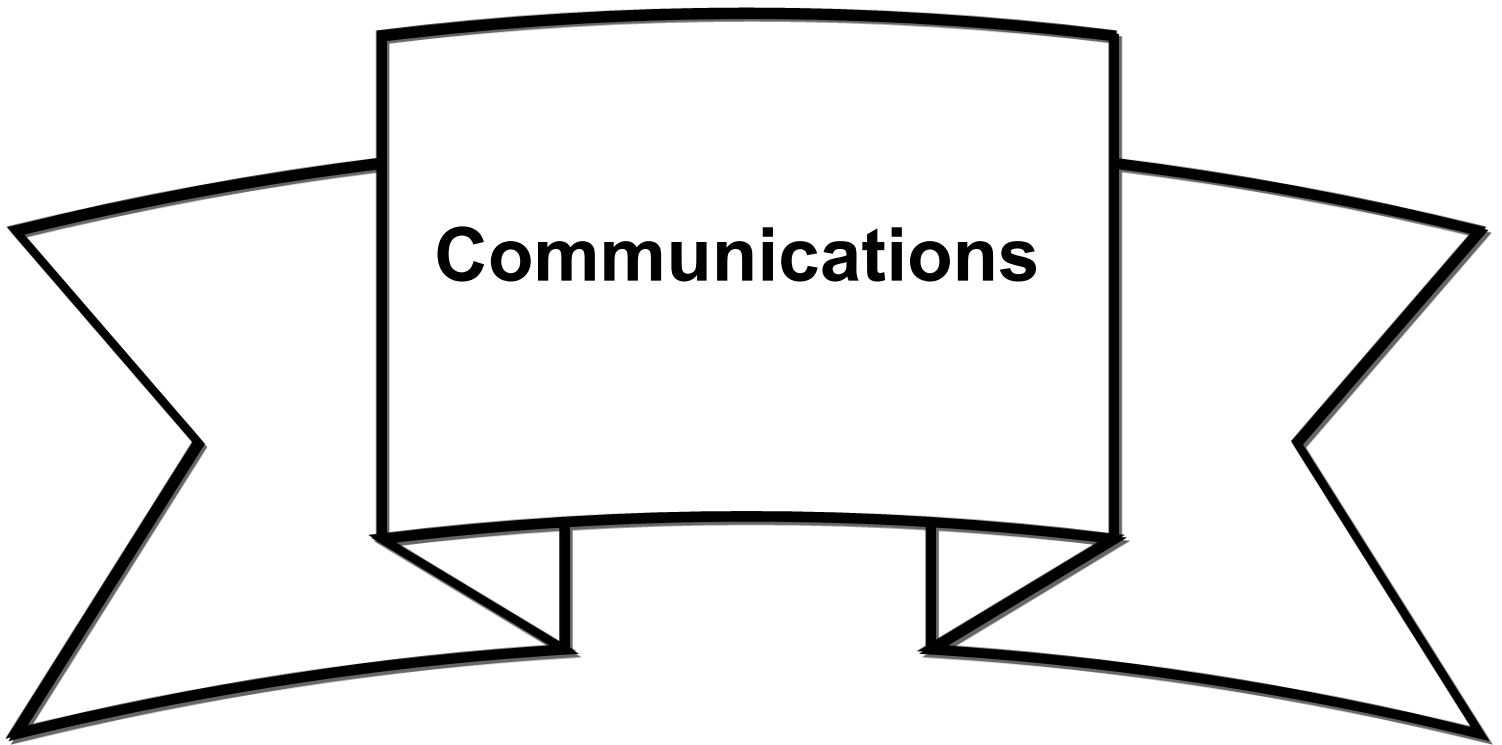


	Referral	STATUS: Started OR RRV-HAP Rank	Estimated Completion	Staff Lead	STRATEGIC OUTCOME AREAS			Special Considerations
					1. Increase Affordable Housing	2. Promote Healthy, Livable Communities	3. Support Economic Development and Commercial Vitality	
38	<a href="#">WB Service Center</a>	NR		Alene Pearson	X			
39	<a href="#">Opportunity Zone Overlay (OED lead)</a>	NR					X	
40	Alta Bates Zoning	----		Steve Buckley		X	X	
41	<b>Other Long Range // Special Projects</b> <a href="#">Pacific Steel Visioning</a>	---		Steve Buckley			X	
42	<a href="#">UC Berkeley LRDP (City Attorney lead)</a>	----		Shannon Allen	X			
43	<a href="#">Berkeley Marina Master Plan (PRW lead)</a>	----		Shannon Allen		X		
44	<a href="#">TIF / TSF Nexus Fee (Transportation lead)</a>			not assigned		X		
45	<a href="#">Berkeley Transfer Station (PW lead)</a>	----		not assigned		X		
46	<b>Cannabis Equity:</b> <a href="#">Cannabis Equity (feb 19, 2019)</a>	<b>ST</b>		not assigned		X	X	
47	<a href="#">Modify Live Work to allow Cannabis</a>	NR		not assigned			X	
48	<a href="#">Green Stormwater Requirements</a>	CEAC started		not assigned		X		
49	<a href="#">Urban Forestry Ordinance</a>	15		not assigned		X		
50	<a href="#">Develop Pay Transparency Permit Conditions</a>	26		not assigned			X	
51	<a href="#">Lower Discretion for Internal Remodeling</a>	42		not assigned		*		customer service improvements
52	<b>Miscellaneous</b> <a href="#">Air Pollution Performance Standards</a>	49		not assigned		X		
53	<a href="#">Deny Permits to Applicants with Code Violations</a>	52		not assigned		*		strengthen enforcement
54	<a href="#">Bird Safe Construction</a>	NR		not assigned		X		
55	<a href="#">Update Short Term Rental Ordinance</a>	started	4th quarter 2021 (partial)	Steve Buckley	X		X	
56	<a href="#">TDM Review</a>	NR		not assigned		X	*	
57	<a href="#">Home Occupation Class 3 Expansion</a>	NR		not assigned			X	

**ABBREVIATIONS**

- |   |   |  |
|---|---|--|
| X = Directly Related                      | * = Indirectly Related  |  |
| AHMF = Affordable Housing Mitigation Fund | MSHN = More Student Housing Now   | SS = Southside                           |
| cc = City Council                         | jsis/JSISHL = Joint Subcommittee for Implementation of State Housing Laws |  |
| EIR = Environmental Impact Report         | NR = not ranked   | <b>ST</b> = Short Term Referral          |
| GF = groundfloor                          | pc = Planning Commission  | TDM = Transportation Demand Management   |
| HAA = Housing Accountability Act          | PDA = Priority Development Area   | TIF = Transportation Impact Fee          |
| HAP = Housing Action Plan                 | ph = public hearing   | TSF = Transportation Service Fee         |
| HTF = Housing Trust Fund                  | RFP = Request for Proposals   | WB = West Berkeley                       |
| IHO = Inclusionary Housing Ordinance      | RRV = Reweighted Range Voting   | wg = working group                       |
| LLA = Lot-line adjustment                 | sc = Subcommittee of the Planning Commission                              | ws = work session                        |
|   |   | ZORP = Zoning Ordinance Revision Project |





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**City Clerk Department**

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