

AGENDA
BERKELEY CITY COUNCIL MEETING
Tuesday, July 26, 2022
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/89491193768>. 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: 894 9119 3768. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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

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

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

Preliminary Matters

Roll Call:

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

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

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

Consent Calendar

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

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

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

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

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

Consent Calendar

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

From: City Manager

Recommendation: Adopt second reading of Ordinance No. 7,830-N.S. containing technical edits, corrections and other non-substantive amendments to the following sections of the Zoning Ordinance:

BMC Section 23.202.140 (R-SMU Zoning District)

BMC Section 23.204.020 (Commercial Districts -- Allowed Land Uses)

BMC Section 23.204.030 (Additional Permit Requirements)

BMC Section 23.204.060 (C-U Zoning District)

BMC Section 23.204.130 (C-DMU District)

BMC Section 23.206.202 (Manufacturing Districts – Allowed Land Uses)

BMC Section 23.302.030 (Temporary Uses and Structures)

BMC Section 23.302.070 (Use-Specific Regulations)

BMC Section 23.404.040 (Public Notice)

BMC Section 23.502.020 (Glossary)

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

Financial Implications: None

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

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

From: City Manager

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

Financial Implications: To be determined

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

Consent Calendar

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

From: City Manager

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

Financial Implications: To be determined

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

4. Minutes for Approval

From: City Manager

Recommendation: Approve the minutes for the Council meetings of June 2 (special), June 13 (closed), June 14 (regular), June 21-4 p.m. (special), June 21-6 p.m. (special), June 27 (closed) and June 28 (regular).

Financial Implications: None

Contact: Mark Numainville, Commission Secretary, (510) 981-6900

5. Downtown Berkeley YMCA for Fitness Center Memberships for City Employees

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with the Downtown Berkeley YMCA in the amount of \$109,440, for fitness center memberships for City employees for the period July 1, 2022 through June 30, 2023.

Financial Implications: Payroll Deduction Trust Fund - \$109,440

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

6. Contract: Lehr for Emergency Response Vehicle Supplies/Equipment and Installation Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to enter into contract with Stommel Inc. dba Lehr, for emergency response vehicle supplies/equipment and installation services, with the term of the contract from August 1, 2022 to September 30, 2022 in an amount not to exceed \$350,000. The contract may be extended for up to five additional years and shall not exceed \$750,000 in total.

Financial Implications: Various Funds - \$750,000

Contact: David Sprague, Fire, (510) 981-3473

Consent Calendar

- 7. Mental Health Services Act (MHSA) Fiscal Year 2022-2023 Annual Update**
From: City Manager
Recommendation: Adopt a Resolution approving the Mental Health Services Act (MHSA) Fiscal Year 2022-2023 Annual Update (MHSA FY23 Annual Update), which provides information on current and proposed uses of funds for mental health programming, and forwarding the MHSA FY23 Annual Update to appropriate state officials.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 8. Contract No. 32200185 Amendment: Sonya Dublin Consulting to Provide Evaluation Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32200185 with Sonya Dublin Consulting to provide evaluation services, and any subsequent amendments or extensions, to add \$93,600 and bring the contract total to an amount not to exceed \$109,200 and extending the end date from June 30, 2022 to June 30, 2025.
Financial Implications: See report.
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 9. Shelter Plus Care Program Renewal Grants**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to receive funds and execute any agreements and amendments resulting from the renewal of the following grants: 1. Two Shelter Plus Care grants from U.S. Department of Housing and Urban Development (HUD): a) \$3,949,021 for Supportive Housing Collaborative Project (SHC) for the period June 1, 2022 through May 31, 2023; b) \$2,327,914 for COACH Project (COACH) for the period of January 1, 2022 through December 31, 2022. 2. One grant from HUD administered through the County of Alameda for \$881,045 to provide tenant-based rental assistance to individuals who are chronically homeless and disabled from March 1, 2022 through February 28, 2023.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Consent Calendar

10. **Contract Amendments: Mental Health Services Act Community Services and Supports, and Prevention and Early Intervention**

From: City Manager

Recommendation: Adopt ten Resolutions authorizing the City Manager or her designee to execute amendments for the following contracts that are funded through Mental Health Services Act (MHSA) Community Services and Supports (CSS) and Prevention and Early Intervention (PEI); increasing the contract amounts as outlined below; totaling \$1,571,966 and extending the contracts through June 30, 2023:

1. Increasing CSS Contract No. 100042-1 with Lakehurst Hall by \$36,000 for a total contract amount not to exceed \$185,500 for Room Rental Fees for Berkeley Mental Health clients;

2. Increasing CSS Contract No. 108800-1 with Bay Area Hearing Voices Network by \$46,941 for a total contract amount not to exceed \$184,855 for hearing voices support groups;

3. Increasing CSS Contract No. 31900132 with Building Opportunities for Self-Sufficiency by \$100,000 for a total contract amount not to exceed \$400,000 for representative payee services;

4. Increasing CSS Contract No. 32200130 with Alameda County Behavioral Health Care Services by \$491,933 for a total contract amount not to exceed \$983,866 for Wellness Center operations;

5. Increasing CSS and PEI Contract No. 32000094 with Youth Spirit Artworks by \$100,000 for Transition Age Youth case management and linkage services, and \$32,046 for trauma support services. This amendment also includes \$78,000 for Tiny House Village services, which is non-MHSA funding, for a total contract amount not to exceed \$737,092;

6. Increasing PEI Contract No. 32000240 with Berkeley Unified School District by \$355,000 for a total contract amount not to exceed \$1,347,778 for services to support Berkeley students;

7. Increasing PEI Contract No. 088999-1 with Center for Independent Living by \$32,046 for a total contract amount not to exceed \$352,722 for services to support Older Adults;

8. Increasing PEI Contract No. 052129-1 with Pacific Center for Human Growth by \$100,000 for a total contract amount not to exceed \$515,150 for services to support the Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Agender, Plus (LGBTQIA+) population;

9. Increasing PEI Contract No. 32200146 with OnTrack Program Resources by \$100,000 for a total contract amount not to exceed \$175,000 for services to support African Americans; and

10. Increasing PEI Contract No. 3200111 with East Bay Sanctuary Covenant by \$100,000 for a total contract amount not to exceed \$200,000 for services to support the Latinx/Latina/Latino population.

Financial Implications: See report

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

Consent Calendar

- 11. Revision of the Tool Lending Specialist Classification to Reflect an Accurate Scope of Duties with a Four Percent (4%) Salary Increase**
From: City Manager
Recommendation: Adopt a Resolution approving the revision of the Tool Lending Specialist job specification to accurately reflect the scope of duties and to increase the current salary schedule by four percent (4%) effective March 16, 2021 or the employee's start date, if more recent.
Financial Implications: See report
Contact: Tess Mayer, Library, (510) 981-6100
- 12. Contract No. 32100168 Amendment: Robert Half International/Protiviti for Professional**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32100168 to increase spending authority with Robert Half International/Protiviti for professional services in support of the cyber-resilience projects in the Fiscal Year (FY) 2023 using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X to increase the contract by \$312,000 for a total amount not to exceed \$552,432 through June 30, 2023.
Financial Implications: General Fund - \$312,000
Contact: Michael Sinor, Information Technology, (510) 981-6500
- 13. Contract No. 7167M Amendment: Superior, LLC for AS400 Software Maintenance and Support**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 7167M with Superior, LLC for software maintenance and support of the City's FUNDS system on the AS400 platform, increasing the contract amount by \$154,927 for a total not-to-exceed amount of \$2,549,483 from July 1, 2006 through June 30, 2023.
Financial Implications: IT Cost Allocation Fund - \$154,927
Contact: Michael Sinor, Information Technology, (510) 981-6500
- 14. Protiviti Government Services: Using General Services Administration (GSA) Vehicle for Professional Services Purchase Orders**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to issue purchase orders with Protiviti Government Services for the purchase of professional services using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X for an amount not to exceed \$350,000 through September 30, 2023.
Financial Implications: Various Funds - \$350,000
Contact: Michael Sinor, Information Technology, (510) 981-6500

Consent Calendar

- 15. Contract No. 047162-1 Amendment: ESI Group for the IBM Hardware and Software Lease**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 047162-1 with ESI Group for leasing, maintenance, and technical support for International Business Machines (IBM) hardware lease and software maintenance and support, increasing the current contract by \$140,000, for a total not to exceed \$2,294,769 from June 2, 2003 through June 30, 2023
Financial Implications: IT Cost Allocation - \$140,000
Contact: Michael Sinor, Information Technology, (510) 981-6500
- 16. Donation: New Sign at Berkeley Waterfront - from Caltrans**
From: City Manager
Recommendation: Adopt a Resolution approving a donation of a new sign from Caltrans to be placed at the entrance to the Berkeley Waterfront with a value up to \$250,000.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 17. Contract: AE3 Partners, Inc. for Architectural Services for the African American Holistic Resource Center**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a not-to-exceed \$900,000 contract with AE3 Partners, Inc. for architectural services for the African American Holistic Resource Center (AAHRC) for a contract period of August 1, 2022 through July 31, 2025.
Financial Implications: Measure IT Phase 2 Funds - \$900,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 18. Extension of Exclusive Negotiating Agreement with Innovation Properties Group for 199 Seawall Drive**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an Amended and Restated Exclusive Negotiating Agreement (ENA) with Innovation Properties Group (IPG), extending the existing ENA for 9 months with two 3-month options to work toward a long-term lease of City property at 199 Seawall Drive and short-term lease to activate a portion of the adjacent parking lot.
Financial Implications: See report.
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Consent Calendar

- 19. Approval of Funds for Electric Vehicle Charging Stations at Tuolumne Camp**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to allocate up to \$350,000 to add electric vehicle charging stations at Tuolumne Camp.
Financial Implications: See report.
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 20. Accept Grant Funding from the California Highway Patrol (CHP) Cannabis Tax Fund Grant Program to Reduce Impaired Driving in the City of Berkeley**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager, or designee, to accept the “Cannabis Tax Fund Grant (CTFGP)” and enter into the resultant grant agreement and any amendments to fund impaired driving detection/investigation training for officers, community educational programs and supplemental impaired driving enforcement. The tentative grant allocation is for \$112,337 for the period of July 1, 2022 through June 30, 2023.
Financial Implications: See report
Contact: Jennifer Louis, Police, (510) 981-5900
- 21. Contract No. 32000078 Amendment DC Electric Group, Inc. for On-Call Electrical Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32000078 with DC Electric Group, Inc. for on-call electrical services, increasing the current contract by \$100,000 for a total not to exceed amount of \$175,000 and extending the contract through June 30, 2025.
Financial Implications: Various Funds - \$100,000
Contact: Liam Garland, Public Works, (510) 981-6300
- 22. Contract No. 098713-1 (9488D) Amendment: Berry Brothers Towing for On-Call Towing Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 098713-1 with Berry Brothers Towing to provide towing services for the City’s Fleet equipment and vehicles, increasing the contract amount by \$75,000 for a new not to exceed amount of \$255,000 and extending the contract end date to June 30, 2025.
Financial Implications: Equipment Maintenance Fund - \$75,000
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

- 23. Contract No. 32000128 Amendment: Wood Environment & Infrastructure Solutions, Inc. for On-Call Environmental Consulting Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000128 with Wood Environment & Infrastructure Solutions, Inc. to increase the contract for on-call environmental consulting services by \$400,000 for a new not to exceed amount of \$700,000 and extend the contract term through November 30, 2025.
Financial Implications: Various Funds - \$400,000
Contact: Liam Garland, Public Works, (510) 981-6300
- 24. Contract No. 32100072 Amendment: CycloMedia Technology, Inc. for Geographic Information System Infrastructure Data**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32100072 with CycloMedia Technology Inc. for Geographic Information System Infrastructure asset data acquisition and ongoing data access to increase the contract amount by \$100,000 for an amount not to exceed \$287,401, adopt the use policy, and extend the contract term through December 30, 2025.
Financial Implications: Various Funds - \$100,000
Contact: Liam Garland, Public Works, (510) 981-6300, Michael Sinor, Information Technology, (510) 981-6500
- 25. Grant Application: Highway Safety Improvement Program Cycle 11**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit a grant application to the California Highway Safety Improvement Program (HSIP) Cycle 11 for the following project: Protected Left-Turn Signals at multiple signalized intersections for up to \$6 million, and accept the grant if awarded, and execute any resultant agreements and amendments.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
- 26. Approval of Additional Disaster and Fire Safety Commission Meeting**
From: Disaster and Fire Safety Commission
Recommendation: Adopt a Resolution approving the request from the Disaster and Fire Safety Commission to hold one additional meeting in calendar year 2022.
Financial Implications: Staff time
Contact: Keith May, Commission Secretary, (510) 981-3473

Council Consent Items

27. Authorize Three Additional Meetings in 2022 for the Homeless Services Panel of Experts

From: Mayor Arreguin (Author)

Recommendation: Authorize three additional meetings for the Homeless Services Panel of Experts for the calendar year, 2022.

Financial Implications: See report

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

28. Resolution Supporting the Living Wage Act of 2022

From: Councilmember Robinson (Author), Councilmember Hahn (Co-Sponsor)

Recommendation: Adopt a Resolution supporting the Living Wage Act of 2022 to increase the California state-wide minimum wage to \$18 on a gradual timeline.

Financial Implications: None

Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

Action Calendar

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

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

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

Action Calendar – Old Business

29. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers (Continued from May 12, 2020. Item contains revised and supplemental materials)

From: City Manager

Recommendation: Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.

Financial Implications: None

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

Action Calendar – Old Business

30. **Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report** *(Continued from June 21, 2022) (Item contains supplemental and revised material)*
From: City Manager
Recommendation: Adopt a Resolution approving the Controlled Equipment Impact Statements, Associated Equipment Use Policies and Equipment.
Financial Implications: See report
Contact: Jennifer Louis, Police, (510) 981-5900
31. **Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)** *(Continued from July 12, 2022)*
From: 4 x 4 Joint Committee on Housing City Council/Rent Board
Recommendation:
1. Adopt a Resolution placing the proposed amendments to the Rent Stabilization and Eviction for Good Cause Ordinance on the ballot of the November 8, 2022 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.
Financial Implications: See report
Contact: Matt Brown, Rent Stabilization Board, (510) 981-7368

Action Calendar – Old Business

32. Restoring and Improving Access to City of Berkeley Website and Archival Materials *(Continued from July 12, 2022)*

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

Recommendation: Direct the City Manager to:

1. Restore at previous URLs all PDF documents previously hosted on the City of Berkeley website.
2. Create a publicly accessible archival copy of the City's previous website, CityofBerkeley.info, that can be accessed without logins and via internet search engines. Include a prominent disclaimer noting the date the website, page, or document was archived, with links redirecting to the active website or other responsive resource.
3. On the new website, update Commission pages to include a minimum of 2 years of historic agendas and other materials and update City Council and Council Committee pages to include at least 3 years of complete materials.
4. By July 15, 2022 develop and make available to all City staff and to the public training at beginner to expert levels on use of the City's Records Online search function and create more extensive and less technical self-help resources covering basic and expert use.
5. In recognition of increased public traffic, update the Records Online homepage to explain how the portal works and link to more robust self-help resources and alternative search functions.
6. Coordinate with agency staff to include all relevant records (agendas, minutes, etc.) from Rent Board and Housing Authority in Records Online Portal.
7. Update any remaining 404 pages to explain that the City's website has been moved/updated, and provide links to helpful pages, search functions and/or pathways to access responsive materials. As quickly as possible, consider implementing redirects with wildcards to direct as many old links to relevant new website pages in lieu of the standard 404 page. E.g. cityofberkeley.info/planning* to the Planning Department site map/homepage, or Department Specific 404 page explaining new navigation.

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

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

Financial Implications: Staff time

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

Information Reports

- 33. Sanctuary City Contracting Compliance Report for FY 2021**
From: City Manager
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 34. LPO NOD: 2733 Buena Vista Way/#LMSAP2022-0004**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 35. LPO NOD: 2200-block of Piedmont Avenue/#LMSAP2019-0009**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 36. LPO NOD: 8 Greenwood Common/#LMSAP2022-0002**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 37. LPO NOD: 2113 Kittredge Street/#LMIN2022-0001**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 38. 2022 Commission on Aging Work Plan**
From: Commission on Aging
Contact: Richard Castrillon, Commission Secretary, (510) 981-5190
- 39. City Auditor Fiscal Year 2023 Audit Plan**
From: Auditor
Contact: Jenny Wong, Auditor, (510) 981-6750

Public Comment – Items Not Listed on the Agenda

Adjournment

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

Archived indexed video streams are available at:

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

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

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

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

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

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

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

COMMUNICATION ACCESS INFORMATION:

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



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

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***I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on July 14, 2022.***

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

Mark Numainville, City Clerk

## Communications

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

## **Commendations of the Berkeley Police Department**

1. Katherine Lee, Interim Director of Police Accountability

## **Berkeley Marina Area Specific Plan (BMASP) + Cesar Chavez Park**

2. Susan Black
3. Helen Canin
4. Maud Engel
5. Carol Denney
6. Summer Brenner
7. Gael Alcock
8. Margaret Fouda
9. Donald Stang and Helen Wickes
10. Wini Williams
11. Paul Litsky
12. Edward Vine
13. Jamie Brown
14. Bobbi Sloan
15. Diane Mintz
16. Llyana Landes
17. Sally Nelson
18. Micky Duxbury
19. Bob Herman
20. T. Anne Richards
21. Terry Toczynski
22. Alan K
23. Jane White
24. Antonio Guzman
25. Kevin James
26. Linda Kroll and Dennis Creek
27. Tanja Schlosser
28. Kathryn Ruiz
29. Save CC (Cesar Chavez Park)
30. Tom Reilly
31. Michele Ritterman
32. Lex Morris
33. Sharran Zeleke
34. Darah Daniels
35. Carl Dellar
36. Diana Bohn
37. Marcy Darnovsky
38. Ilya Ganelin
39. Susan Tomasello
40. Charles Wilson
41. Rachel Bradley
42. Kate Greswold
43. Ernest Isaccs
44. Ginny Garrett

45. Carlos Hill
46. Tamara Birdsall
47. Robert Blomberg (2)
48. Barbara Rydlander
49. dougdohrer@
50. City Manager's Office (14)

### **IKE Kiosks**

51. Elsa Tranter
52. Rebecca Dahlberg
53. Judith Brown
54. Judi Doyle
55. Lisa Titus
56. Vicki Sommer
57. Isabel Samaras
58. Heather Hernandez (2)
59. Betsy Bigelow-Teller
60. Karen Eisenstadt
61. Mimi Mougovan
62. Paul Jacobs
63. Nancy Lichtenstein
64. Pat Hill
65. Cece Littlepage
66. Lisa Tsering
67. Roya Arasteh
68. Carol Vertel
69. Lissa Miner
70. Joan Hart
71. Diana Damonte
72. Karen Nierlich
73. Carol Bledsoe
74. Janet Coleman
75. Maulin Chokshi
76. Mayilyn Siegel
77. Soula Culver
78. Miranda Ewell
79. Morton Cohn
80. Sally Hughes
81. Judy Dale
82. Charles Siegel
83. Josephine Gallup
84. Karen Eisenstadt
85. Bryce Nesbitt
86. David Durbin
87. Susan Taylor
88. Todd Andrew

**People's Park**

89. Summer Brenner

90. Shella Benevides, on behalf of Resources for Community Development

**Hopkins Street Corridor**

91. Stephen Alpert

92. Rachel Bradley

93. Carol Benioff

94. Ann May

95. Sally Adams

**Biking and Concrete Blobs**

96. Maris Arnold

**High Rises Destroying Our City of Berkeley**

97. Carole Gill

**1201-1205 San Pablo Avenue**

98. Yvette Bozzini (2)

**Berkeley Federation of Teachers School Board Endorsements**

99. Matty Meyer

**Train Noise**

100. Maria Kolakowska

101. Councilmember Kesarwani

**Street Project Confusion at Prince and Dana**

102. Dorothy Hale

**Low Income Housing**

103. Virginia Browning

104. Councilmember Harrison

**Pedestrian Safety at the Intersection of Addison and Martin Luther King**

105. Charles Siegel, on behalf of Walk Bike Berkeley

**Crime in Berkeley**

106. Dan Auten

**Vacancy Tax**

107. Diana Bohn

**Berkeley Restaurant Inspections**

108. David Lerman

### **Rodeway Inn Residents Trashing Neighborhood**

109. Dolores Cortez

### **Pentagon Budget**

110. Jack Kurzweil

### **Small Building Owners Paying for Large Developments**

111. Dan Auten

### **Harriet Tubman Tenants Issues**

112. M. Mendonca

### **Tenant Opportunity to Purchase Act**

113. Paul Gumpel

114. Diana Bohn

115. Janice Schroeder

116. Ariana Thompson-Lastad

117. Patricia Hall

118. 21 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. 7,830-N.S.

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

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

Section 1. That Berkeley Municipal Code Section 23.202.140 Figure 23.202-2 is amended as follows:

**Figure 23.202-2. R-SMU SUBAREAS**



↑ N     
  Residential Mixed Use (R-SMU)     
  Height Sub Area One     
  Height Sub Area Two     
 Parcel boundaries as of [adoption date]

Section 2. That Berkeley Municipal Code Section 23.204.020 Table 23.204-1 is amended as follows:

**Table 23.204-1: Allowed Uses in the Commercial Districts**

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see<br>23.204.020(B)<br>[#] = Table Note Permit<br>Requirement<br>* Use-Specific Regulations Apply | COMMERCIAL DISTRICTS                |         |         |         |         |         |         |         |         |                     |         | USE-SPECIFIC REGULATIONS          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------------------|---------|-----------------------------------|
|                                                                                                                                                                                                                                        | C-C                                 | C-U     | C-N     | C-E     | C-NS    | C-SA    | C-T     | C-SO    | C-DMU   | C-W                 | C-AC    |                                   |
| <b>Residential Uses</b>                                                                                                                                                                                                                |                                     |         |         |         |         |         |         |         |         |                     |         |                                   |
| Accessory Dwelling Unit                                                                                                                                                                                                                | See 23.306—Accessory Dwelling Units |         |         |         |         |         |         |         |         |                     |         |                                   |
| Dwellings                                                                                                                                                                                                                              |                                     |         |         |         |         |         |         |         |         |                     |         |                                   |
| Single-Family                                                                                                                                                                                                                          | UP(H)                               | UP(PH)* | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)              | UP(PH)  | 23.204.060.B.3                    |
| Two-Family                                                                                                                                                                                                                             | UP(PH)                              | UP(PH)* | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)              | UP(PH)  | 23.204.060.B.3                    |
| Multi-Family                                                                                                                                                                                                                           | UP(PH)                              | UP(PH)* | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)              | UP(PH)  | 23.204.060.B.3                    |
| Group Living Accommodation                                                                                                                                                                                                             | UP(PH)                              | UP(PH)* | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)              | UP(PH)  | 23.204.060.B.3                    |
| Hotel, Residential                                                                                                                                                                                                                     | UP(PH)                              | UP(PH)* | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)              | UP(PH)  | 23.204.060.B.3                    |
| Mixed-Use Residential                                                                                                                                                                                                                  | UP(PH)                              | UP(PH)* | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)* | UP(PH)  | UP(PH)  | UP(PH)  | See Table 23.204-41 | UP(PH)  | 23.204.060.B.3;<br>23.204.100.B.4 |
| Senior Congregate Housing                                                                                                                                                                                                              | See 23.302.070.H                    |         |         |         |         |         |         |         |         |                     |         |                                   |
| <b>Public and Quasi-Public Uses</b>                                                                                                                                                                                                    |                                     |         |         |         |         |         |         |         |         |                     |         |                                   |
| Child Care Center                                                                                                                                                                                                                      | UP(PH)                              | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)              | UP(PH)  |                                   |
| Cemetery/Crematory/Mausoleum                                                                                                                                                                                                           | NP                                  | NP      | NP      | NP      | NP      | NP      | NP      | NP      | NP      | NP                  | NP      |                                   |
| Club/Lodge                                                                                                                                                                                                                             | UP(PH)                              | UP(PH)  | UP(PH)  | UP(PH)  | NP      | UP(PH)  | UP(PH)  | NP      | UP(PH)  | UP(PH)              | UP(PH)  |                                   |
| Columbaria                                                                                                                                                                                                                             | See 23.302.070.C                    |         |         |         |         |         |         |         |         |                     |         |                                   |
| Community Care Facility                                                                                                                                                                                                                | AUP                                 | AUP     | AUP     | AUP     | AUP     | AUP     | AUP     | AUP     | AUP     | ZC                  | AUP     |                                   |
| Community Center                                                                                                                                                                                                                       | UP(PH)                              | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)              | UP(PH)  |                                   |
| Emergency Shelter                                                                                                                                                                                                                      | See 0                               |         | --      | --      | See 0   |         |         |         |         |                     |         |                                   |
| Family Day Care Home, Large                                                                                                                                                                                                            | ZC                                  | ZC      | ZC      | ZC      | ZC      | ZC      | ZC      | ZC      | ZC      | ZC                  | ZC      |                                   |
| Family Day Care Home, Small                                                                                                                                                                                                            | ZC                                  | ZC      | ZC      | ZC      | ZC      | ZC      | ZC      | ZC      | ZC      | ZC                  | ZC      |                                   |
| Hospital                                                                                                                                                                                                                               | UP(PH)                              | UP(PH)  | NP      | NP      | NP      | NP      | NP      | NP      | UP(PH)  | UP(PH)              | NP      |                                   |
| Library                                                                                                                                                                                                                                | UP(PH)                              | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)              | UP(PH)  |                                   |
| Mortuaries and Crematories                                                                                                                                                                                                             | UP(PH)                              | UP(PH)  | NP      | NP      | NP      | NP      | NP      | NP      | NP      | UP(PH)              | NP      |                                   |
| Municipal Animal Shelter                                                                                                                                                                                                               | --                                  | --      | --      | --      | --      | --      | --      | --      | --      | --                  | --      |                                   |
| Nursing Home                                                                                                                                                                                                                           | UP(PH)                              | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)              | UP(PH)  |                                   |
| Park/Playground                                                                                                                                                                                                                        | ZC                                  | ZC      | ZC      | ZC      | ZC      | ZC      | ZC      | ZC      | ZC      | AUP                 | ZC      |                                   |
| Public Safety and Emergency Service                                                                                                                                                                                                    | UP(PH)                              | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)              | UP(PH)  |                                   |
| Public Utility Substation/Tank                                                                                                                                                                                                         | UP(PH)                              | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)              | UP(PH)  |                                   |
| Religious Assembly                                                                                                                                                                                                                     | UP(PH)                              | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | AUP                 | UP(PH)  |                                   |
| School                                                                                                                                                                                                                                 | UP(PH)                              | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)              | UP(PH)  |                                   |
| School, Vocational                                                                                                                                                                                                                     | AUP                                 | AUP     | AUP     | AUP     | AUP     | AUP     | AUP     | AUP     | AUP     | UP(PH)              | AUP     |                                   |
| <b>Retail Uses</b>                                                                                                                                                                                                                     |                                     |         |         |         |         |         |         |         |         |                     |         |                                   |
| Alcoholic Beverage Retail Sale                                                                                                                                                                                                         | UP(PH)*                             | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | NP      | UP(PH)* | UP(PH)* | UP(PH)*             | UP(PH)* | 23.204.060.B.2;<br>23.310         |
| Cannabis Retailer                                                                                                                                                                                                                      | ZC*                                 | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*                 | ZC*     | 23.320; 12.21; and<br>12.22       |
| Cannabis Retailer, Delivery Only                                                                                                                                                                                                       | ZC*                                 | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*                 | --      | 23.320; 12.21; and<br>12.22       |
| Firearm/Munitions Business                                                                                                                                                                                                             | UP(PH)*                             | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | NP      | UP(PH)              | UP(PH)* | 23.302.070.D                      |
| Industrial and Mining Products                                                                                                                                                                                                         | --                                  | --      | --      | --      | --      | --      | --      | --      | --      | --                  | --      |                                   |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see<br>23.204.020(B)<br>[#] = Table Note Permit<br>Requirement<br>* Use-Specific Regulations Apply | COMMERCIAL DISTRICTS |         |         |         |         |         |         |         |         |         |         | USE-SPECIFIC REGULATIONS                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|------------------------------------------------------------------------|
|                                                                                                                                                                                                                                        | C-C                  | C-U     | C-N     | C-E     | C-NS    | C-SA    | C-T     | C-SO    | C-DMU   | C-W     | C-AC    |                                                                        |
| Pawn Shop/Auction House                                                                                                                                                                                                                | UP(PH)               | --      | NP      | NP      | NP      | NP      | NP      | NP      | UP(PH)  | UP(PH)  | NP      |                                                                        |
| Pet Store                                                                                                                                                                                                                              | UP(PH)               | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | ZC [3]  | UP(PH)  |                                                                        |
| Retail, General                                                                                                                                                                                                                        | ZC [1]               | ZC [1]  | ZC* [2] | ZC* [2] | ZC* [2] | ZC [1]  | ZC      | ZC* [2] | ZC      | ZC* [3] | ZC*     | 23.204.040.E (for department stores)<br>23.204.040.F (for drug stores) |
| Smoke Shop                                                                                                                                                                                                                             | UP(PH)*              | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | NP      | UP(PH)* | UP(PH)* | 23.302.070.I                                                           |
| <b>Personal and Household Service Uses</b>                                                                                                                                                                                             |                      |         |         |         |         |         |         |         |         |         |         |                                                                        |
| Personal and Household Services, General                                                                                                                                                                                               | ZC [1]               | ZC [1]  | ZC [2]  | ZC [2]  | ZC [2]  | ZC [1]  | ZC      | ZC [2]  | ZC      | ZC [5]  | ZC      |                                                                        |
| Kennels and Pet Boarding                                                                                                                                                                                                               | NP                   | NP      | NP      | NP      | NP      | NP      | NP      | NP      | NP      | UP(PH)  | NP      |                                                                        |
| Laundromats and Cleaners                                                                                                                                                                                                               | AUP                  | AUP     | UP(PH)  | UP(PH)  | UP(PH)  | AUP     | AUP     | UP(PH)  | UP(PH)  | AUP [4] | AUP     |                                                                        |
| Veterinary Clinic                                                                                                                                                                                                                      | UP(PH)               | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  |                                                                        |
| Video Tape/Disk Rental                                                                                                                                                                                                                 | ZC [1]               | ZC [1]  | ZC [2]  | AUP     | ZC [2]  | -       | ZC      | ZC [2]  | ZC      | ZC [5]  | NP      |                                                                        |
| <b>Office Uses</b>                                                                                                                                                                                                                     |                      |         |         |         |         |         |         |         |         |         |         |                                                                        |
| Business Support Services                                                                                                                                                                                                              | ZC [1]               | ZC [1]  | ZC [2]  | ZC [2]  | ZC [2]  | ZC [1]  | ZC*     | ZC [2]  | ZC      | ZC [5]  | ZC [6]  | 23.204.110.B.6                                                         |
| Banks and Financial Services, Retail                                                                                                                                                                                                   | AUP                  | AUP     | UP(PH)  | UP(PH)  | UP(PH)  | ZC [1]  | AUP*    | UP(PH)  | ZC*     | AUP     | ZC      | 23.204.110.B.6;<br>23.204.130.B.3;<br>23.204.130.D.3                   |
| Insurance Agents, Title Companies, Real Estate Agents, Travel Agents                                                                                                                                                                   | ZC [1]               | ZC [1]  | ZC* [2] | ZC* [2] | ZC* [2] | ZC [1]  | ZC*     | ZC* [2] | ZC*     | ZC [5]  | ZC [6]  | 23.204.040.D;23.204.110.B.6;<br>23.204.130.D.3                         |
| Medical Practitioners                                                                                                                                                                                                                  | ZC [1]               | ZC [1]  | AUP     | NP      | UP(PH)  | ZC [1]  | AUP*    | UP(PH)  | ZC*     | ZC [5]  | ZC [6]  | 23.204.040.D;<br>23.204.110.B.6;<br>23.204.130.D.3                     |
| Non-Chartered Financial Institutions                                                                                                                                                                                                   | UP(PH)*              | UP(PH)* | NP      | NP      | NP      | UP(PH)* | UP(PH)* | NP      | NP      | UP(PH)* | UP(PH)  | 23.302.070.F<br>23.204.110.B.6                                         |
| Office, Business and Professional                                                                                                                                                                                                      | ZC [1]               | ZC [1]  | AUP*    | AUP*    | AUP*    | ZC [1]  | AUP*    | AUP*    | ZC*     | ZC [5]  | ZC [6]  | 23.204.040.B;<br>23.204.110.B.6;<br>23.204.130.D.3                     |
| <b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>                                                                                                                                                             |                      |         |         |         |         |         |         |         |         |         |         |                                                                        |
| Adult-oriented Business                                                                                                                                                                                                                | UP(PH)*              | UP(PH)* | NP      | NP      | NP      | NP      | NP      | NP      | UP(PH)* | UP(PH)* | NP      | 23.302.070.A                                                           |
| Amusement Device Arcade                                                                                                                                                                                                                | UP(PH)*              | UP(PH)* | NP      | NP      | NP      | UP(PH)* | NP      | NP      | UP(PH)* | UP(PH)* | UP(PH)  | 23.302.070.B                                                           |
| Bar/Cocktail Lounge/Tavern                                                                                                                                                                                                             | UP(PH)*              | UP(PH)* | UP(PH)* | --      | NP      | UP(PH)* | UP(PH)* | NP      | UP(PH)* | UP(PH)* | UP(PH)  | 23.204.100.B.3;<br>23.204.110.B.2;<br><br>23.310                       |
| Commercial Recreation Center                                                                                                                                                                                                           | See 23.204.040.A     |         |         |         |         |         |         |         |         |         |         |                                                                        |
| Dance/Exercise/Martial Arts/Music Studio                                                                                                                                                                                               | ZC [1]               | ZC [1]  | ZC [2]  | AUP     | AUP [4] | ZC [1]  | ZC      | AUP     | ZC      | ZC [7]  | ZC      |                                                                        |
| Entertainment Establishment                                                                                                                                                                                                            | UP(PH)               | UP(PH)  | UP(PH)  | NP      | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  |                                                                        |
| Food Service Establishment                                                                                                                                                                                                             | See 23.204.040.E     |         |         |         |         |         |         |         |         |         |         |                                                                        |
| Group Class Instruction                                                                                                                                                                                                                | ZC [1]               | ZC [1]  | AUP     | AUP     | AUP*    | ZC [1]  | ZC*     | AUP     | ZC*     | ZC      | ZC      | 23.204.040.B                                                           |
| Gym/Health Club                                                                                                                                                                                                                        | See 23.204.040.C     |         |         |         |         |         |         |         |         |         |         |                                                                        |
| Hotels, Tourist                                                                                                                                                                                                                        | UP(PH)               | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  |                                                                        |
| Motels, Tourist                                                                                                                                                                                                                        | UP(PH)               | UP(PH)  | NP      | NP      | NP      | NP      | NP      | NP      | UP(PH)  | UP(PH)  | NP      |                                                                        |
| Theater                                                                                                                                                                                                                                | UP(PH)               | UP(PH)  | UP(PH)  | UP(PH)  | NP      | UP(PH)  | UP(PH)  | NP      | AUP     | UP(PH)  | UP(PH)  |                                                                        |
| <b>Vehicle Service and Sales Uses</b>                                                                                                                                                                                                  |                      |         |         |         |         |         |         |         |         |         |         |                                                                        |
| Alternative Fuel Station                                                                                                                                                                                                               | UP(PH)               | UP(PH)  | UP(PH)  | NP      | UP(PH)  | UP(PH)  | NP*     | UP(PH)  | NP      | AUP*    | UP(PH)  | 23.204.110.B.4;                                                        |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see<br>23.204.020(B)<br>[#] = Table Note Permit<br>Requirement<br>* Use-Specific Regulations Apply | COMMERCIAL DISTRICTS |        |        |        |        |         |        |        |         |          |        | USE-SPECIFIC REGULATIONS |                                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------|--------|--------|--------|---------|--------|--------|---------|----------|--------|--------------------------|------------------------------------------------------|
|                                                                                                                                                                                                                                        | C-C                  | C-U    | C-N    | C-E    | C-NS   | C-SA    | C-T    | C-SO   | C-DMU   | C-W      | C-AC   |                          |                                                      |
|                                                                                                                                                                                                                                        |                      |        |        |        |        |         |        |        |         |          |        |                          | 23.204.140.B.3                                       |
| Electric Vehicle Charging Station                                                                                                                                                                                                      | AUP                  | AUP    | AUP    | AUP    | AUP    | AUP     | AUP    | AUP    | AUP     | AUP*     | AUP    |                          |                                                      |
| Gasoline Fuel Stations                                                                                                                                                                                                                 | UP(PH)               | UP(PH) | UP(PH) | NP     | UP(PH) | UP(PH)  | NP*    | UP(PH) | NP      | UP(PH)*  | UP(PH) |                          | 23.204.140.B.3                                       |
| Large Vehicle Sales and Rental                                                                                                                                                                                                         | AUP                  | NP     | NP     | NP     | NP     | NP      | NP     | NP     | NP      | AUP* [8] | NP     |                          | 23.204.140.B.3                                       |
| Small Vehicle Sales and Service                                                                                                                                                                                                        | AUP                  | NP     | NP     | NP     | NP     | UP(PH)* | NP     | NP     | UP(PH)  | UP(PH)*  | NP     |                          | 23.204.100.B.5;<br>23.204.140.B.3                    |
| Tire Sales and Service                                                                                                                                                                                                                 | UP(PH)               | NP     | NP     | NP     | NP     | NP      | NP     | NP     | NP      | UP(PH)*  | NP     |                          | 23.204.140.B.3                                       |
| Vehicle Parts Store                                                                                                                                                                                                                    | ZC [1]               | NP     | ZC [2] | ZC [2] | ZC [2] | ZC [1]  | ZC     | ZC [2] | NP      | AUP* [8] | ZC     |                          |                                                      |
| Vehicle Rentals                                                                                                                                                                                                                        | AUP                  | NP     | NP     | NP     | NP     | NP      | NP     | NP     | UP(PH)  | AUP* [8] | NP     |                          | 23.204.140.B.3                                       |
| Vehicle Repair and Service                                                                                                                                                                                                             | AUP                  | NP     | NP     | NP     | NP     | NP      | NP     | NP     | NP      | AUP* [8] | NP     |                          |                                                      |
| Vehicle Sales, New                                                                                                                                                                                                                     | AUP                  | NP     | NP     | NP     | NP     | UP(PH)* | NP     | NP     | UP(PH)  | AUP* [8] | NP     |                          | 23.204.100.B.5<br>23.204.140.B.3                     |
| Vehicle Sales, Used                                                                                                                                                                                                                    | AUP                  | NP     | NP     | NP     | NP     | UP(PH)* | NP     | NP     | UP(PH)  | UP(PH)*  | NP     |                          | 23.204.100.B.5;<br>23.204.140.B.3;<br>23.204.140.D.4 |
| Vehicle Wash                                                                                                                                                                                                                           | UP(PH)               | NP     | NP     | NP     | NP     | NP      | NP     | NP     | NP      | UP(PH)*  | NP     |                          | 23.204.140.B.3                                       |
| Vehicle Wrecking                                                                                                                                                                                                                       | NP                   | NP     | NP     | NP     | NP     | NP      | NP     | NP     | NP      | NP       | NP     |                          |                                                      |
| <b>Industrial and Heavy Commercial Uses</b>                                                                                                                                                                                            |                      |        |        |        |        |         |        |        |         |          |        |                          |                                                      |
| Bus/Cab/Truck/Public Utility Depot                                                                                                                                                                                                     | --                   | --     | --     | --     | --     | --      | --     | --     | --      | --       | --     | --                       |                                                      |
| Commercial Excavation                                                                                                                                                                                                                  | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)  | UP(PH) | UP(PH) | --      | NP       | UP(PH) |                          |                                                      |
| Contractors Yard                                                                                                                                                                                                                       | --                   | --     | --     | --     | --     | --      | --     | --     | --      | AUP      | --     |                          |                                                      |
| Dry Cleaning and Laundry Plant                                                                                                                                                                                                         | UP(PH)               | UP(PH) | NP     | --     | UP(PH) | NP      | NP     | NP     | UP(PH)  | NP       | NP     |                          |                                                      |
| Laboratory                                                                                                                                                                                                                             |                      |        |        |        |        |         |        |        |         |          |        |                          |                                                      |
| Commercial Physical or Biological                                                                                                                                                                                                      | AUP                  | AUP    | NP     | NP     | NP     | NP      | NP     | NP     | AUP     | NP       | NP     |                          |                                                      |
| Cannabis Testing                                                                                                                                                                                                                       | AUP                  | AUP    | NP     | NP     | NP     | NP      | NP     | NP     | AUP     | AUP [9]  | NP     |                          |                                                      |
| Manufacturing                                                                                                                                                                                                                          |                      |        |        |        |        |         |        |        |         |          |        |                          |                                                      |
| Construction Products                                                                                                                                                                                                                  | --                   | --     | --     | --     | --     | --      | --     | --     | --      | UP(PH)   | --     |                          |                                                      |
| Light Manufacturing                                                                                                                                                                                                                    | --                   | --     | --     | --     | --     | --      | --     | --     | --      | AUP [8]  | --     |                          |                                                      |
| Pesticides/Herbicides/Fertilizers                                                                                                                                                                                                      | --                   | --     | --     | --     | --     | --      | --     | --     | --      | UP(PH)   | --     |                          |                                                      |
| Petroleum Refining and Products                                                                                                                                                                                                        | --                   | --     | --     | --     | --     | --      | --     | --     | --      | UP(PH)   | --     |                          |                                                      |
| Pharmaceuticals                                                                                                                                                                                                                        | --                   | --     | --     | --     | --     | --      | --     | --     | --      | UP(PH)   | --     |                          |                                                      |
| Primary Production Manufacturing                                                                                                                                                                                                       | --                   | --     | --     | --     | NP     | --      | --     | --     | --      | UP(PH)   | --     |                          |                                                      |
| Semiconductors                                                                                                                                                                                                                         | --                   | --     | --     | --     | NP     | --      | --     | --     | --      | UP(PH)   | --     |                          |                                                      |
| Material Recovery Enterprise                                                                                                                                                                                                           | --                   | --     | --     | --     | --     | --      | --     | --     | --      | --       | --     |                          |                                                      |
| Media Production                                                                                                                                                                                                                       | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)  | UP(PH) | UP(PH) | UP(PH)* | AUP      | UP(PH) |                          | 23.204.130.B.4                                       |
| Mini-storage                                                                                                                                                                                                                           | UP(PH)               | NP     | NP     | NP     | NP     | NP      | NP     | --     | UP(PH)  | NP       | NP     |                          |                                                      |
| Recycled Materials Processing                                                                                                                                                                                                          | --                   | --     | --     | --     | --     | --      | --     | --     | --      | --       | --     |                          |                                                      |
| Recycling Redemption Center                                                                                                                                                                                                            | AUP                  | AUP    | AUP    | AUP    | AUP    | AUP     | AUP    | AUP    | AUP     | AUP      | AUP    |                          |                                                      |
| Repair Service, Non-Vehicle                                                                                                                                                                                                            | --                   | --     | --     | --     | --     | --      | --     | --     | --      | AUP      | --     |                          |                                                      |
| Research and Development                                                                                                                                                                                                               | --                   | --     | --     | --     | --     | --      | --     | --     | --      | --       | --     |                          |                                                      |
| Services to Buildings and Dwellings                                                                                                                                                                                                    | --                   | --     | --     | --     | --     | --      | --     | --     | --      | AUP      | --     |                          |                                                      |
| Warehouse                                                                                                                                                                                                                              | UP(PH)               | NP     | NP     | NP     | NP     | NP      | NP     | --     | UP(PH)  | NP       | NP     |                          |                                                      |
| Warehouse-Based Non-Store Retailer                                                                                                                                                                                                     | --                   | --     | --     | --     | --     | --      | --     | --     | --      | --       | --     |                          |                                                      |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see 23.204.020(B)<br>[#] = Table Note Permit Requirement<br>* Use-Specific Regulations Apply                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | COMMERCIAL DISTRICTS                         |        |         |         |            |        |        |        |            |         |        | USE-SPECIFIC REGULATIONS |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|--------|---------|---------|------------|--------|--------|--------|------------|---------|--------|--------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | C-C                                          | C-U    | C-N     | C-E     | C-NS       | C-SA   | C-T    | C-SO   | C-DMU      | C-W     | C-AC   |                          |
| Wholesale Trade                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | --                                           | --     | --      | --      | --         | --     | --     | --     | --         | AUP [8] | --     |                          |
| <b>Incidental Uses</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                              |        |         |         |            |        |        |        |            |         |        |                          |
| Amusement Devices                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | AUP*                                         | AUP*   | AUP*    | AUP*    | AUP*       | AUP*   | AUP*   | AUP*   | AUP*       | AUP*    | UP(PH) | 23.302.070.B             |
| Alcoholic Beverage Service                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | See 23.310                                   |        |         |         |            |        |        |        |            |         |        |                          |
| Cafeteria, On-Site                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | UP(PH)                                       | UP(PH) | UP(PH)  | UP(PH)  | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH)     | AUP     | UP(PH) |                          |
| Columbaria                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | See 23.302.070.C                             |        |         |         |            |        |        |        |            |         |        |                          |
| Food and Beverage for Immediate Consumption                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | ZC                                           | ZC     | AUP     | UP(PH)  | UP(PH)     | ZC     | AUP    | UP(PH) | ZC         | ZC      | ZC     |                          |
| Food Service Establishment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | See 23.302.070.E                             |        |         |         |            |        |        |        |            |         |        |                          |
| Live Entertainment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | See 23.302.020.D                             |        |         |         |            |        |        |        |            |         |        |                          |
| Manufacturing                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | AUP                                          | AUP    | UP(PH)  | UP(PH)  | NP         | UP(PH) | AUP    | AUP    | AUP        | AUP     | AUP    |                          |
| Retail Sale of Goods Manufactured On-Site                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | ZC [1]                                       | ZC [1] | ZC [2]  | ZC [2]  | ZC [2]     | ZC [1] | ZC     | ZC [2] | ZC         | AUP     | ZC     |                          |
| Storage of Goods (>25% gross floor area)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | AUP*                                         | AUP*   | AUP*    | AUP*    | AUP*       | AUP*   | AUP*   | AUP*   | AUP*       | AUP*    | AUP    | 23.302.020.C             |
| Wholesale Activities                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | AUP*                                         | AUP*   | UP(PH)* | UP(PH)* | NP         | AUP*   | AUP*   | AUP*   | AUP*       | AUP     | AUP    | 23.204.080.B.3           |
| <b>Other Miscellaneous Uses</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                              |        |         |         |            |        |        |        |            |         |        |                          |
| Art/Craft Studio                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | AUP                                          | AUP    | AUP     | AUP     | AUP        | AUP    | AUP    | AUP    | AUP        | AUP     | AUP    | ZC [6]                   |
| ATM, Exterior and Attached to Bank                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | AUP                                          | AUP    | AUP     | UP(PH)  | AUP        | AUP    | AUP    | AUP*   | AUP        | AUP     | AUP    | 23.204.120.B.2           |
| ATM, Interior or Exterior and Not With Bank                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | UP(PH)                                       | UP(PH) | UP(PH)  | NP      | UP(PH)     | UP(PH) | UP(PH) | NP     | UP(PH)*    | AUP     | UP(PH) | 23.204.130.B.2           |
| Circus/Carnival                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | UP(PH)                                       | UP(PH) | UP(PH)  | UP(PH)  | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH)     | UP(PH)  | UP(PH) |                          |
| Drive-in Uses                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | UP(PH)                                       | NP     | NP      | NP      | UP(PH)     | UP(PH) | NP     | UP(PH) | NP         | NP      | UP(PH) |                          |
| Home Occupations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | See 23.302.040                               |        |         |         |            |        |        |        |            |         |        |                          |
| Live/Work                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | See 23.312                                   |        |         |         |            |        |        |        |            |         |        |                          |
| Parking Lot/Structure                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | See 23.302.070.G                             |        |         |         |            |        |        |        |            |         |        |                          |
| Public Market, Open Air                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | AUP                                          | AUP    | AUP     | AUP     | AUP        | AUP    | AUP    | AUP    | AUP        | UP(PH)  | AUP    |                          |
| Public Market, Enclosed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | AUP                                          | AUP    | AUP     | AUP     | AUP        | AUP    | AUP    | AUP    | AUP        | AUP [9] | AUP    |                          |
| Short-Term Rental                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | See 23.314                                   |        |         | NP      | See 23.314 |        |        | NP     | See 23.314 |         |        | NP                       |
| Urban Agriculture, Low-Impact                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | ZC*                                          | ZC*    | ZC*     | ZC*     | ZC*        | ZC*    | ZC*    | ZC*    | ZC*        | ZC      | ZC     | 23.318                   |
| Urban Agriculture, High-Impact                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | AUP*                                         | AUP*   | AUP*    | AUP*    | AUP*       | AUP*   | AUP*   | AUP*   | AUP*       | AUP     | AUP    | 23.318                   |
| Wireless Telecommunication Facility                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | See 23.332—Wireless Communication Facilities |        |         |         |            |        |        |        |            |         |        |                          |
| Notes:<br>[1] Change of use of floor area over 3,000 square feet requires an AUP.<br>Change of use of floor area over 2,000 square feet requires an AUP.<br>Requires an AUP for uses 3,500 sq. ft. to 7,500 square feet. Requires a Use Permit for uses more than 7,500 sq. ft.<br>Requires a Use Permit if 5,000 sq. ft. or more.<br>Requires an AUP for uses 3,000 sq. ft. to 5,000 square feet. Requires a Use Permit for uses more than 5,000 sq. ft.<br>Requires an AUP for uses 2,500 sq. ft. or greater or 50 ft. wide or greater on Shattuck, between Ward and Russell; Adeline between Russell and the City boundary; on Ashby, east of Adeline; or on the north side of Ashby, west of Adeline.<br>Requires a Use Permit if 7,500 square feet or more.<br>Require a Use Permit if either 5,000 sq. ft. or more of floor area or 10,000 square feet or more of lot area.<br>Requires a Use Permit if more than 10,000 sq. ft. |                                              |        |         |         |            |        |        |        |            |         |        |                          |

Section 3. That Berkeley Municipal Code 23.204.030 is hereby amended as follows:

23.204.030 Additional Permit Requirements.

A. *New Floor Area.*

1. *When Permit is Required.* A project that creates new floor area for any use requires permits as shown in Table 23.204-2: New Floor Area Permit Requirements. Creation of new floor area includes:

- (a) Construction of new main buildings or accessory buildings;
- (b) Additions to existing buildings; or
- (c) The installation of new floor or mezzanine levels within or onto existing buildings.

Table 23.204-2. NEW FLOOR AREA PERMIT REQUIREMENTS

| DISTRICT/NEW GROSS FLOOR AREA                 | PERMIT REQUIRED FOR NEW FLOOR AREA |
|-----------------------------------------------|------------------------------------|
| C-C, C-U                                      |                                    |
| Less than 5,000 sq. ft.                       | ZC                                 |
| 5,000 sq. ft. or more                         | UP(PH)                             |
| C-N, C-E, C-SO (any amount of new floor area) | UP(PH)                             |
| C-NS                                          |                                    |
| Less than 2,000 sq. ft.                       | ZC                                 |
| 2,000 sq. ft. or more                         | UP(PH)                             |
| C-SA                                          |                                    |
| Less than 3,000 sq. ft.                       | ZC                                 |
| 3,000 sq. ft. or more                         | UP(PH)                             |
| C-T                                           | --                                 |
| Less than 1,500 sq. ft.                       | AUP                                |
| 1,500 sq. ft. or more                         | UP(PH)                             |
| C-DMU                                         |                                    |
| Less than 10,000 sq. ft.                      | ZC                                 |

| DISTRICT/NEW GROSS FLOOR AREA                                                                                                                  | PERMIT REQUIRED FOR NEW FLOOR AREA |
|------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| 10,000 sq. ft. or more                                                                                                                         | UP(PH)                             |
| C-W                                                                                                                                            |                                    |
| 5,000 sq. ft. or more except when an AUP is required below                                                                                     | UP(PH)                             |
| 7,500 sq. ft. or less in a building containing only retail uses                                                                                | AUP                                |
| 20,000 sq. ft. or less in a building with residential and retail space that is more than 15% and less than 33% of the floor area being created | AUP                                |
| C-AC                                                                                                                                           |                                    |
| New Main Building or New Dwelling Unit                                                                                                         | UP(PH)                             |
| Addition of 5,000 sq ft or more                                                                                                                | UP(PH)                             |

2. *C-DMU Findings.* To approve a Use Permit for new floor area in the C-DMU district, the ZAB must find that:

(a) The addition or new building is compatible with the visual character and form of the district; and

(b) No designated landmark structure, structure of merit, or historic district in the vicinity would be adversely affected by the appearance or design of the proposed addition.

3. *C-W Findings.* To approve an AUP or Use Permit for new floor area in the C-W district, the review authority must find that the new use or structure provides an intensity of development which does not underutilize the property.

4. *C-AC Findings.* To approve a Use Permit for new floor area in the C-AC district, the review authority must find that the proposed use or structure will:

(a) Be compatible with the purposes of the District;

(b) Be compatible with the design and character within the District and the adjacent residential neighborhoods;

(c) Encourage utilization of public transit and off-street parking facilities in the area of the proposed building; and

(d) If a new residential development, that the proposed use or structure facilitates construction of affordable housing as defined by the US Department of Housing and Urban Development (HUD) Guidelines.

**B. Tenant Space Reconfiguration.**

1. Reconfiguration of tenant space in an existing building requires a permit as listed in Table 23.204-3: Tenant Space Reconfiguration Permit Requirements.
2. As used in this section, tenant reconfiguration means any physical change to an existing building's walls separating leased spaces so as to change:
  - (a) The number of lease spaces for commercial businesses; or
  - (b) The square footage of leasable floor area of an existing commercial lease space.

Table 23.204-3. TENANT SPACE RECONFIGURATION PERMIT REQUIREMENTS

| <b>District</b>                                                               | <b>Permit Required for Tenant Space Reconfiguration Project</b> |
|-------------------------------------------------------------------------------|-----------------------------------------------------------------|
| C-C, C-U                                                                      |                                                                 |
| Less than 5,000 sq. ft.                                                       | ZC                                                              |
| 5,000 sq. ft. or greater                                                      | AUP                                                             |
| C-N, C-E, C-NS, C-SO (All reconfiguration projects)                           | AUP                                                             |
| C-SA, C-DMU, C-AC                                                             | No additional permit required                                   |
| C-T                                                                           |                                                                 |
| Increasing the number of individual tenant spaces                             | ZC                                                              |
| 5,000 sq. ft. or greater                                                      | AUP                                                             |
| Creating a tenant space less than 1,000 sq. ft.                               | AUP                                                             |
| C-W                                                                           |                                                                 |
| Less than 5,000 sq. ft                                                        | ZC                                                              |
| In existing buildings in a designated node affecting 5,000 sq. ft. or greater | AUP                                                             |



C. *Major Residential Additions.*

1. *Where Allowed/Required Permits.*

(a) Major residential additions in the C-W district require an AUP.

(b) No additional permits are required for major residential additions in all other C districts.

2. *Findings.* To deny an AUP for a major residential addition in the C-W district, the review authority must find that although the proposed major residential addition satisfies all other standards of the Zoning Ordinance, the addition would unreasonably obstruct sunlight, air, or views.

D. *Changes to Nonconforming Structures.* See Section [23.324.050](#)--Nonconforming Structures and Buildings for permits required to modify structures that do not conform to setback, height, and other development standards.

E. *Accessory Structures.* For accessory structure permit requirements, see the following:

1. Section [23.304.060](#)--Accessory Buildings and Enclosed Accessory Structures.
2. Section [23.304.070](#)--Unenclosed Accessory Structures in Residential Districts.
3. Section [23.304.080](#)--Fences. (Ord. 7787-NS § 2 (Exh. A), 2021)

Section 4. That the Berkeley Municipal Code 23.204.130.E.6 is hereby amended as follows:

6. *Open Space Alternatives.*

- a. In lieu of providing the open space required by this section on-site, an applicant may either:
  - i. Pay an in-lieu fee to help fund the Streets and Open Space Improvement Plan (SOSIP); and/or
  - ii. Construct public improvement consistent with the SOSIP.
- b. Payment of a fee in lieu of providing publicly accessible open space requires a Use Permit. To allow payment of an in-lieu fee, the ZAB must find that the payment will support timely development of open space improvements that will serve the needs of project residents and other people living in and using the downtown.

- c. Construction of public improvements consistent with the SOSIP in lieu of open space requires a Use Permit. To allow construction of public improvements, the ZAB must find that the public improvements:
  - i. Will be located within the vicinity of the project and are consistent with the SOSIP;
  - ii. Will be coordinated with other ongoing or approved SOSIP or other right-of-way improvements in the vicinity, and will not create a hazardous situation or an unusual appearance in the downtown; and
  - iii. Will be finished before issuance of a certificate of occupancy for the project, unless otherwise allowed by the project conditions of approval.

Section 5. That Berkeley Municipal Code 23.206.202 Figure 23.206-6 is hereby amended as follows:

**TABLE 23.206-6: PERMITS REQUIRED FOR CHANGES TO PROTECTED LAND USES**

| Zoning District | Change to Protected Use                                                                                          | Permit Required |
|-----------------|------------------------------------------------------------------------------------------------------------------|-----------------|
| MM              | Change any amount of ground-floor protected use to a non-protected use                                           | UP(PH)          |
| MU-LI           | Change less than or equal to 20,000 sq. ft. or less than or equal to 25% of protected use to a non-protected use | AUP             |
|                 | Change over 20,000 sq. ft. or over 25% of protected use to a non-protected use                                   | UP(PH)          |

Section 6. That Berkeley Municipal Code Section 23.302.030.D.3.d is amended to read as follows:

- (d) Permits issued pursuant to this subsection must be posted in plain view within the commercial establishment for which the permit has been issued

Section 7. That Berkeley Municipal Code Section 23.302.070.E.3 is amended as follows:

- 3. *Notification of Decision.* Food service establishments requiring an AUP in the C-N, C-E, C-NS, C-SA, C-T, C-SO districts must provide public notification of decision (NOD) within a 300-foot radius of the subject property.

Section 8. That Berkeley Municipal Code Section 23.404.040.C is amended as follows:

**C. Public Notice for Zoning Ordinance Amendments.**

1. **When Required.** Public notice shall be given as required by this section for Planning Commission and City Council hearings on proposed Zoning Ordinance Amendments.
2. **Content of Notice.** Notice of a public hearing shall contain the following information:
  - a. The date, location, and time of the hearing.
  - b. A written description of the proposed amendment.
  - c. A map showing the location of a proposed Zoning Map amendment, if applicable.
  - d. The environmental review status under the California Environmental Quality Act (CEQA).
  - e. Directions on how to obtain further information about the proposed amendment or hearing.
  - f. Instructions to submit written comments on the proposed amendment.
3. **Timing of Notice.** Notice shall be provided at least 10 days before the hearing unless a longer notice period is required by state law. The Planning Commission or City Council may require an extended notice period for applications of major significance.
4. **All Zoning Ordinance Amendments.** The following notice requirements apply to all Zoning Ordinance Amendments.
  - a. Notice shall be posted at the Civic Center (Old City Hall) and in the lobby of the Permit Service Center.
  - b. Notice shall be mailed to:
    - i.* Neighborhood and community organizations with a registered interest in receiving notice of the proposed amendment. See Section 23.404.040.E (Public Notice).
    - ii.* The City of Berkeley Central Library; and
    - iii.* Any person who has filed a written request for notice.
5. **Zoning Ordinance Text Amendments.** In addition to requirements in Paragraph 4 (All Zoning Ordinance Amendments) above, notice of a Zoning Ordinance Text Amendment shall be published in a newspaper of general circulation in the city at least 7 days before the hearing.

6. **Zoning Ordinance Map Amendments.** The following notice requirements apply to Zoning Ordinance Map Amendments in addition to requirements in Paragraph 4 (All Zoning Ordinance Amendments) above.
  - a. **Less the 5 Acres.** For Zoning Map Amendments affecting an area less than 5 acres, public notice shall be:
    - i. Posted at three visible locations in the vicinity of the subject property; and
    - ii. Mailed to subject property owners, residents and tenants of the subject property, and all property owners, residents, and tenants within 300 feet of any part of the subject property.
  - b. **5 Acres or More.** For Zoning Map Amendments affecting an area 5 acres or more, public notice shall be:
    - i. Posted on each street frontage adjacent to the subject property.
    - ii. Mailed to all property owners, residents, and tenants within the subject property.
    - iii. Published twice in a newspaper of general circulation in the city at least 14 days before the hearing, and then again at least 7 days before the hearing.
7. **Additional Notice.** The Zoning Officer, Planning Commission, and City Council may require additional public notice as determined necessary or desirable.
8. **Failure to Receive Notice.** The validity of the hearing shall not be affected by the failure of any property owner, resident, tenant, or neighborhood or community organization to receive a mailed notice.

Section 9. That Berkeley Municipal Code Section 23.502.020.F.3 is hereby amended to read as follows:

3. **Family Day Care Home.** An establishment providing day care for 14 or fewer children in a dwelling unit as licensed by the California Department of Social Services. A family day care homes must be incidental to a residential use and must be operated in the dwelling unit or accessory building where the family day care operator resides.
  - a. **Small Family Day Care Home.** A family day care homes for eight or fewer children, including children who live at the home.
  - b. **Large Family Day Care Home.** A family day care homes for nine to fourteen children, including children who live at the home.

Section 10: 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 July 12, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: Droste.





Office of the City Attorney

CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Farimah Faiz Brown, City Attorney  
Subject: Resolution Reviewing and Ratifying the Proclamation of Local  
Emergency Due to the Spread of a Severe Acute Respiratory Illness  
Caused by a Novel (New) Coronavirus (COVID-19)

RECOMMENDATION

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

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

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

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

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

This item requests that the Council review the continued need for the local emergency and again ratify the Proclamation of Local Emergency issued on March 3, 2020, initially ratified by the Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, and June 28, 2022. If reviewed and ratified on July 26, 2022, the Council will need to again review and ratify the proclamation by September 24, 2022 in order to continue the local emergency.

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

#### **BACKGROUND**

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

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

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

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

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



ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Not applicable.

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

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

Attachments:

1: Resolution

RESOLUTION NO. –N.S.

RESOLUTION REVIEWING AND RATIFYING THE PROCLAMATION OF LOCAL EMERGENCY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



Office of the City Attorney

CONSENT CALENDAR  
July 26, 2022

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

From: Farimah Faiz Brown, City Attorney

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

RECOMMENDATION

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

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

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

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

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

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

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

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

Assembly Bill 361 (Rivas), signed into law by Governor Newsom on September 16, 2021, amended a portion of the Brown Act (Government Code Section 54953) to authorize the City Council, during the state of emergency, to determine that, due to the spread of COVID-19, holding in-person public meetings would present an imminent risk to the health or safety of attendees, and therefore City legislative bodies must continue to meet via videoconference and teleconference. Assembly Bill 361 requires that the City Council must review and ratify such a determination every thirty (30) days. Therefore, if the Council passes this resolution on July 26, 2022, the Council will need to review and ratify the resolution by August 25, 2022.

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

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

#### BACKGROUND

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

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

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

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

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

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Not applicable.

#### RATIONALE FOR RECOMMENDATION

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

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

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

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

RESOLUTION NO. –N.S.

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

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

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

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

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

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

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

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

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



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

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

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

WHEREAS, the City Council will need to again review the need for the continuing necessity of holding City legislative body meetings via videoconference and teleconference by August 25, 2022.

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

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

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





Office of the City Manager

CONSENT CALENDAR  
July 26, 2022

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

RECOMMENDATION

Approve the minutes for the Council meetings of June 2 (special), June 13 (closed), June 14 (regular), June 21-4 p.m. (special), June 21-6 p.m. (special), June 27 (closed) and June 28 (regular).

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1. June 2, 2022-Special Council Meeting
2. June 13, 2022-Closed Council Meeting
3. June 14, 2022-Regular Council Meeting
4. June 21, 2022 (4 p.m.)-Special Council Meeting
5. June 21, 2022 (6 p.m.)-Special Council Meeting
6. June 27, 2022-Closed Council Meeting
7. June 28, 2022-Regular Council Meeting

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

**Thursday, June 2, 2022  
6:00 PM**

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

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 IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION***

*Proof of up-to-date COVID-19 vaccination or verified negative COVID-19 test is required for in-person attendance. In-person attendees are required to wear a mask that covers their nose and mouth for the duration of the meeting. If you are feeling sick, please do not attend in-person.*

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

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/86518584336>. 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: **865 1858 4336**. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*Please be mindful that the meeting will be recorded and all rules of procedure and decorum apply for in-person attendees and those participating by teleconference or videoconference.*

*To submit a written communication for the City Council's consideration and inclusion in the public record, email [council@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:** 6:02 p.m.

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

**Absent:** Bartlett

Councilmember Bartlett present at 6:05 p.m.

## Action Calendar – Public Hearing

### 1. **Ashby and North Berkeley BART Station Areas: Proposed Zoning and General Plan Amendments, City and BART Joint Vision and Priorities, Associated Environmental Review Documents and City and BART Memorandum of Agreement**

**From:** City Manager

**Recommendation:** Conduct a public hearing and upon conclusion:

1. Adopt a Resolution (a) certifying the Final Environmental Impact Report (EIR), adopting the California Environmental Quality Act (CEQA) Findings and Statement of Overriding Considerations, adopting mitigation measures, and adopting a Mitigation Monitoring and Reporting Program (MMRP) for the proposed zoning and General Plan, Municipal Code, and Map amendments; (b) amending the General Plan to include the Ashby and North Berkeley BART Mixed Use Transit Oriented Development General Plan Land Use Classification text and map amendments; and (c) adopting the City and BART Joint Vision and Priorities (JVP) for Transit Oriented Development at the Ashby and North Berkeley BART Stations (Attachment 1 to the report, Exhibits A - F); and
2. Adopt first reading of an Ordinance to amend the Berkeley Municipal Code to create the Residential-BART Mixed-Use District Residential Zone District (Chapter 23.202.150) and additional conforming amendments to other sections of the Municipal Code in order to ensure that the provisions are comprehensively and consistently incorporated into the Berkeley Zoning Ordinance (Attachment 2 to the report); and
3. Adopt a Resolution adopting the Memorandum of Agreement (MOA) regarding North Berkeley and Ashby Transit-Oriented Developments (Attachment 3 to the report).

**Financial Implications:** See report

Contact: Paul Buddenhagen, City Manager's Office, (510) 981-7000

**Action:** M/S/C (Arreguin/Harrison) to accept:

1. Supplemental material on Item 1 from Councilmember Hahn regarding proposed revisions to the BART Zoning.
2. Revised material on Item 1 from Mayor Arreguin regarding revisions to the City and BART Joint Vision and Priorities document.
3. Revised material on Item 1 from the Planning and Development Department to separate the resolution referenced in the first part of the recommendation into two distinct resolutions.

**Vote:** All Ayes.

**Public Testimony:** The Mayor opened the public hearing. 133 speakers.

## Action Calendar – Public Hearing

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

**Vote:** All Ayes.

Recess 8:10 p.m. – 8:20 p.m.

**Action:** M/S/C (Arreguin/Robinson) to suspend the rules and extend the meeting to 12:30 a.m.

**Vote:** All Ayes.

Recess 10:44 p.m. – 10:49 p.m.

**Action:** M/S/C (Arreguin/Kesarwani) to adopt Resolution No. 70,400–N.S. as revised in the materials from the City Manager in Supplemental Communications Packet #3, (a) certifying the Environmental Impact Report for the Ashby and North Berkeley BART Stations Transit-Oriented Development Zoning Project (SCH# 2020110320) (“EIR”), Adopting California Environmental Quality Act (CEQA) Findings and a Statement of Overriding Considerations, Mitigation Measures, and a Mitigation Monitoring and Reporting Program; (b) Adopting General Plan Amendments for the Ashby and North Berkeley Bart Station Areas. Mitigation Measure GHG-1 of the CEQA Findings Statement of Overriding Considerations (Exhibit D to the Resolution) is amended to read as follows:

*Mitigation Measure GHG-1: GHG Reduction Program. Applicants for future development allowed under the proposed project shall prepare and implement a Greenhouse Gas Reduction Program (GGRP) that includes on-site GHG reduction measures to reduce the project’s total remaining GHG emissions to 1.1 MT of CO<sub>2</sub>e per service person per year or less (a total of approximately 1,355 MT of CO<sub>2</sub>e per year). Potential options include, but would not be limited to:*

- *Supply 100 percent of electricity from renewable energy resources. Current options include opting into EBCE’s Renewable 100, PG&E’s Solar Choice, or PG&E’s Regional Renewable Choice.*
- *Install additional electric vehicle charging stations beyond those required under BMC Chapter 19.37 within proposed parking areas.*
- *Implement a transportation demand program that includes measures beyond those required by the City of Berkeley Transportation Demand Management (TDM) requirements. Program measures may include priority parking spaces for carpools, electric rideshare vehicles for residents and employees, and a bicycle sharing program.*
- *Prohibit installation of natural gas fireplaces. Comply with BMC Chapter 12.80 prohibiting the installation of natural gas infrastructure in newly constructed buildings.*
- *Use electric-powered construction equipment.*
- *Use electric-powered landscape equipment.*

Staff is authorized to make clarifying changes to the language to conform to Council’s action.

**Vote:** All Ayes.

## Action Calendar – Public Hearing

**Action:** M/S/C (Arreguin/Hahn) to adopt Resolution No. 70,401–N.S. adopting the Memorandum of Agreement (MOA) between the City of Berkeley and the Bay Area Rapid Transit District regarding the North Berkeley and Ashby Transit-Oriented Developments including Exhibit A in the supplemental material from the City Manager in Supplemental Communications Packet #1.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Kesarwani) to adopt Resolution No. 70,402–N.S. adopting the City and BART Joint Vision and Priorities document for Transit Oriented Development and the implementation of Assembly Bill 2932 at the Ashby and North Berkeley BART Stations areas as submitted in the supplemental material from the City Manager in Supplemental Communications Packet #3, including revisions to the Joint Vision and Priorities document as reflected in the revised material from the Mayor in Supplemental Communications Packet #3, with further amendments to the Public and Civic Space section of the Joint Vision and Priorities document to revise Shared Priorities sub-section A to read as follows:

*A. Maintenance Costs. New civic space should be maintained by the developer and/or lessee to minimize the ongoing cost of operations and maintenance to BART and the City.*

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Kesarwani) to suspend the rules and extend the meeting to 12:40 a.m.

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

**Action: M/S/Failed** (Hahn/Wengraf) to adopt first reading of Ordinance No. 7,815–N.S as revised in the supplemental materials from the City Manager in Supplemental Communications Packet #2 (including a Floor Area Ratio Maximum of 4.2, a Main Building Height Maximum of 80 feet and 7 Stories, and a Residential Density Minimum of 75 dwelling units per acre), and further amended by the revised material from Councilmember Hahn in Supplemental Communications Packet #3, amending the Berkeley Municipal Code to create the Residential-BART Mixed-Use District Residential Zone District (Chapter 23.202.150) and additional conforming amendments to other sections of the Municipal Code in order to ensure that the provisions are comprehensively and consistently incorporated into the Berkeley Zoning Ordinance, with the following additional amendments:

1. Revising the fourth entry of Table 23.202-27 to read as follows:

| Frontage Locations                                                                                                               | Permitted Street-Facing Ground Floor Uses |
|----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| Along Sacramento, along the Ohlone Greenway, or within 50 feet of any street corner, except at the corner of Acton and Virginia. | Residential or Non-Residential Uses       |

2. Referring to the City Manager to consider varied heights as part of the Objective Design Standards Process.

## Action Calendar – Public Hearing

3. Authorizing the City Manager and the City Attorney to make any necessary non-substantive amendments in line with Council's action.

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

**Action: M/S/Carried** (Arreguin/Harrison) to adopt first reading of Ordinance No. 7,815–N.S as revised in the supplemental materials from the City Manager in Supplemental Communications Packet #2 (including a Floor Area Ratio Maximum of 4.2, a Main Building Height Maximum of 80 feet and 7 Stories, and a Residential Density Minimum of 75 dwelling units per acre), and further amended by the revised material from Councilmember Hahn in Supplemental Communications Packet #3 and as clarified in the Mayor’s revisions that were verbally added by reference, amending the Berkeley Municipal Code to create the Residential-BART Mixed-Use District Residential Zone District (Chapter 23.202.150) and additional conforming amendments to other sections of the Municipal Code in order to ensure that the provisions are comprehensively and consistently incorporated into the Berkeley Zoning Ordinance, with the following additional amendments:

1. Revising the fourth and fifth entries of Table 23.202-27 to read as follows:

| <b>Frontage Locations</b>                                                                                                                   | <b>Permitted Street-Facing Ground Floor Uses</b> |
|---------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|
| Along Sacramento, along the Ohlone Greenway, or within 50 feet of any street corner, <del>except at the corner of Acton and Virginia.</del> | Residential or Non-Residential Uses              |
| Along Delaware, Acton, or Virginia                                                                                                          | Residential Uses                                 |

2. Excluding the following elements from the amendments submitted by Councilmember Hahn in Supplemental Communications Packet #3, and instead referring them to the City Manager for consideration as part of the BART Community Objective Design Standards Process:

**Private Usable Open Space:** *Consider standards for private usable open space. For example:*

*“70% of Private Usable Open Space may be provided as any combination of personal and common private space. 30% must be provided as personal private space.”*

**Rooftop Open Space:** *Consider rooftop open space standards that are more stringent than those adopted by the zoning ordinance. For example:*

*“Rooftops may be utilized as Private Usable Open Space or, if within 35 vertical feet of ground level and easily accessible from ground level Public Open Space, as Public Open Space meeting the requirements of 23.202.150.A.3 (Additional Open Space Requirements – Definitions). No more than 15% of Public Open Space requirements can be met with Rooftop Open Space.”*



## Action Calendar – Public Hearing

**Front Setbacks:** Consider a landscaped buffer. For example:

*“A landscaped buffer and street trees, as well as sidewalks wide enough for peak pedestrian circulation, are required along all perimeter public rights-of-way. If necessary, these may be achieved through setbacks or a dedication of land to the right-of-way.”*

**Transparency – Required Openings:** Consider a lower limit for the amount of space without a window, door, or other similar building opening. For example:

*“Required Openings. Ground-level exterior walls facing and within 20 feet of a front lot line or publicly accessible pathway or Public Open Space shall run in a continuous plane for no more than 25 feet without a window, door, or other similar building opening.”*

**Illumination.** Consider standards for illumination that are appropriate for each station.

**Parking Design and Access – Drop-Off and Delivery.** Consider standards for placement of commercial and passenger pick-up and drop-off zones. For example:

*“Drop-Off and Delivery. All commercial and passenger pick-up and drop-off shall be provided for on site, adjacent to public or private streets.”*

**Off-Street Parking:** Consider off-street parking space standards to accommodate accessible parking. For example:

*“R-BMU District: None required, except that accessible parking spaces shall be provided in a Title 24 ratio calculated as if one parking space were required per unit, and at least 50% of accessible spaces shall be van-accessible.”*

3. Referring to the City Manager to consider varied heights as part of the Objective Design Standards Process.
4. Authorizing the City Manager and the City Attorney to make any necessary non-substantive amendments in line with the direction of Council.

Second reading of the ordinance is scheduled for June 28, 2022.

**Vote:** All Ayes.

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 12:25 a.m.

I hereby certify that the foregoing is a true and correct record of the special session meeting held on June 2, 2022.

---

Rose Thomsen, Deputy City Clerk

**Item #1: Ashby and North Berkeley BART Station Areas: Proposed Zoning and General Plan Amendments, City and BART Joint Vision and Priorities, Associated Environmental Review Documents and City and BART Memorandum of Agreement**

1. Ethan Byxbe
2. Tom Reilly
3. Linda Rosen
4. Larry Orman
5. Sue Martin
6. Rose Ann Cochran
7. Adam Davis and Oana Cogan
8. Nina Torcoletti
9. North Berkeley Neighborhood Alliance
10. Ian Petrich
11. Cece Littlepage
12. Becki and Peretz Wolf-Prusan
13. Anne Boersma (2)
14. Laura Garcia Moreno
15. Carolyn McNiven
16. Stephanie Manning
17. Rachel Bradley
18. Sabina McMurtry
19. Cherie Hearne
20. Diana Bohn
21. Sue Martin
22. Ernie Mansfield
23. Phil Allen
24. David Brandon
25. Michelle Pasternack
26. Aimee Baldwin
27. Emily Klion
28. Steve Sperber
29. Richard Links
30. Doris Nassiry
31. Vicki Sommer
32. Roberta Silverstein
33. Barbara Rydlander
34. Valerie Dow

35. Laura Magnani
36. Kathleen Davis
37. Zelda Bronstein
38. Julieta Pisani McCarthy (2)
39. Toni Casal
40. Todd Jailer
41. Verna Uchida
42. Herbert Dang
43. Mary Louise Zernicke
44. Margaret Tormey
45. Councilmember Harrison
46. Sean Martin-Hamburger
47. Kerna Trottier
48. Leni Siegel
49. Dan Sibley
50. Ivan and Sarah Diamond
51. Josh Gutwill
52. Sue Jones
53. Inette Dishler
54. Elisa Mikiten
55. James Babcock
56. Susan DeMersseman
57. Scott Selmanoff
58. Barbara Shayesteh
59. Kris Muller
60. Leslie Dickersin
61. Eleni Sotos
62. David Ushijima
63. Emily McAfee
64. Karen Jacobs
65. Milo Trauss
66. Berkeley Neighborhood Council
67. Donna Mickleson
68. Jack Sawyer
69. Walter Wood
70. Ida Kuluk
71. Jackson Lester
72. Meryl Siegal
73. Larry Orman
74. Campbell B
75. Stephen Most
76. Rick Marcus
77. Kathleen Carroll
78. Jenifer Steele
79. Robert Dering and Gay Gale
80. Mark Ally
81. Maris Arnold
82. Justin Baldwin
83. Margot Smith

84. Stephen Wood
85. Leni Siegel
86. Judith Brown and Shannon Brown
87. Louise Rosenkrantz
88. Tobey Wiebe
89. Jonathan Lipschutz
90. Linda Wood
91. Phyllis Oyama
92. Leslie Stone
93. Sally Hughes
94. Seth Kimball
95. Rob Wren
96. Michele Arreola-Burl
97. Todd Darling
98. Roberta Silverstein
99. Stephen Sperber
100. Janel Coleman and Berne Reuben
101. Nancy Graham
102. Priscilla Hine
103. Chris McKee
104. Kenneth Gross
105. Ednah Beth Friedman
106. Janice Schroeder
107. Cecile Leneman
108. Jeannette MacMillan
109. Joan Hamilton
110. Catherine Ronneberg
111. Linda Rosen
112. Cressida Simpson
113. Jordan Harrison
114. Charlene Harrington
115. Margaret Pritt
116. Ben Domingue
117. Toni Mester
118. Summer Brenner
119. Lynn Cooper
120. Tobey Wiebe
121. Phyllis Rothman
122. John Carroll
123. Lee Bishop
124. Louise Specht
125. Phyllis Orrick
126. Megan Wachpress
127. Jeannette MacMillan
128. Stephen Woodrow
129. Alfred Twu
130. Michael Barglow
131. Chris and Libby Lee-Egan
132. James Mattson

- 133. 44 similarly-worded form letters (JVP 1-4)
- 134. 17 similarly-worded form letters (7 stories max)

## **Supplemental Communications and Reports 1**

### **Item #1: Ashby and North Berkeley BART Station Areas: Proposed Zoning and General Plan Amendments, City and BART Joint Vision and Priorities, Associated Environmental Review Documents and City and BART Memorandum of Agreement**

135. Supplemental material, submitted by the City Manager's Office

136. Negeene Mosaed

137. Laura Klein

138. Lisa Bruce

139. Virginia Warheit

140. Kris Eggen

141. Maria and Rick Faszholz

142. Linda Helman

143. Paola Laverde, on behalf of the Berkeley Tenants Union

144. Sally Bean

145. Elana Auerbach

146. Elizabeth Wilson

147. David Simpson

148. Vicki Sommer

149. Marice Ashe

150. Phil Allen

151. William Bombria

152. Ann May

153. Mary Lai

154. Alden Mudge and Mari Loria

155. Julieta Pisani McCarthy

156. Roberta Hopkins

157. Jane McKinne

158. Richard Whittow

159. Jennifer Willmann

160. Jane Kitchel

161. Martha Geering

162. S. Entwistle

163. David and Koho Baker

164. David Levine

165. Lina Urbain

166. Constance Rivemale

167. Linda Franklin

168. Leslie Valas

169. Anne-Lise Francois

170. Sheila Himmel

171. Carla Woodworth

172. Marianne Sluis

173. Friends of Adeline

174. Stephanie and Ali Alladin

175. Tony Corman

176. Robert Schonberger
177. Patricia and Kazu Iwasaki
178. Joanna Baker
179. Gabriela Kipnis
180. Janice Schroeder
181. Michelle Pasternack
182. Eileen Joyce
183. Colette Meunier
184. Ronald Berman
185. Karl Goldstein
186. Jeanne Schuman
187. Wei-Bing Chen
188. Eva Herzer
189. Edward Opton
190. Margot Smith
191. Melanie Lawrence and John Smail
192. Tom Anthanasiou
193. Judy Kellman
194. Shmuel
195. Donna Anderson
196. Haynes Sheppard
197. Ellen Kramer
198. Wendy Alfsen
199. Miriam Shipp
200. Fran Sheppard
201. Andrea Meghrouni-Brown
202. Joanne Bowsman
203. Jeff and Cathy Brown
204. Roxanne Fiscella
205. Diana Bohn
206. Sara Antunovich
207. Joan Bradus
208. David Lerman
209. Albert Buizade Farre
210. Carolyn Weil
211. Rebecca Lidow
212. Heather Kostrzewa
213. Diana Rowan
214. Mari Kalishock
215. Charlene Woodcock
216. Berkeley Citizens Action Steering Committee
217. Leni Siegel
218. Mel Weitsman
219. Tom Graly
220. Harald Leventhal
221. Davoud Kermaninejad
222. DM P
223. Afy Downey
224. Adam Fuchs

225. Norman McKnight
226. Dewayne Cecil
227. Emilie Strauss
228. Lynn Van Housen
229. Derek and Deirdre Popplewell
230. Barryett Enge
231. Marla and Rick Faszholz
232. Julie Searle
233. Andy Kivel
234. Susan Mathews
235. Laurie MacDougall
236. Mary Lee Noonan
237. Gerda Korner
238. Janie Hall
239. Judith Barish
240. Michael Frantz
241. Ednah Beth Friedman
242. George Hull
243. Sandy Emerson
244. Jennifer Jacobs
245. Vincent Casalaina
246. Christopher Kroll
247. Margaret Goodman
248. Richard Kalman
249. Laura Fujii
250. Jackie
251. Jacqueline Beth
252. Stephen Wood
253. Seth Kimball
254. Marvin Snow
255. Eileen Hughes
256. Friends of Adeline Petitions
257. Laura Goodman
258. Deborah Roosevelt
259. Karen Chernoff
260. Million Skoda
261. Donna Dediemar
262. Tom Hertenstein
263. Elsa Tranter
264. Bronya Feldman
265. Steve Meyers
266. Yuko Fukami
267. Georg Killingsworth
268. Judith Tabb
269. Susan Brand
270. Richard Boyden
271. Ernest Isaacs
272. Stan Goldberg
273. Andrea Cassidy

- 274. Judith Barish
- 275. Robert Warden
- 276. Kenneth Sisson
- 277. Danial Shariat
- 278. 48 similarly-worded form letters

## **Supplemental Communications and Reports 2**

### **Item #1: Ashby and North Berkeley BART Station Areas: Proposed Zoning and General Plan Amendments, City and BART Joint Vision and Priorities, Associated Environmental Review Documents and City and BART Memorandum of Agreement**

- 279. Supplemental material, submitted by the City Manager's Office
- 280. Becca Freed
- 281. Christine Reed
- 282. Chris McKee
- 283. Bob Flasher
- 284. Jennifer Kennedy
- 285. Kevin James
- 286. Mark Mueller
- 287. Naomi Pearce
- 288. Susan Brand
- 289. Skylar Hope Davis
- 290. Les Guliasi
- 291. Michael Brodheim
- 292. Mickey Butts
- 293. Ellen Greenblatt
- 294. Tom Ferris
- 295. Ken Powelson
- 296. Elizabeth Snowden
- 297. Francine Ostrem
- 298. Priscilla Myrick and Tom Cutillo
- 299. David Mendelsohn
- 300. Thea Davison
- 301. Travis Close
- 302. Derek Popplewell
- 303. Yoel Kahn
- 304. Bhima Sheridan
- 305. Lynn Barrow
- 306. John Rice
- 307. Chris Lee-Egan
- 308. Abbie Turiansky
- 309. Marsha Weintraub
- 310. Ben Domingue
- 311. Zachary Ferguson
- 312. Jack Kurzweil
- 313. Pablo Diaz-Gutierrez
- 314. Mary Behm-Steinberg
- 315. Stephanie Allan
- 316. Benjamin Kadish
- 317. Eric Dodds



318. Nancy Lewin
319. Richard Laden
320. Leonard Mudrock
321. Tobey Wiebe
322. Richard Bunce
323. Shawn Drost
324. Tony Corman
325. Seth Kimball
326. Mary Law
327. Beth Goldstein
328. Bob Chlebowski
329. Cheryl Davila
330. Jean Peters
331. Dan Feinberg
332. Eliot Jordan
333. Kori Kody and Steve Jackson
334. Danny Snyder
335. Jane McKinne
336. Kate Kirkhuff
337. Sue Chan
338. Sheri Tharp
339. Elaine Magree
340. Judy Bebelaar
341. Marg Hall
342. Dawn Thomas
343. Susie Zukor
344. Diana Bohn
345. Ludovic Blain
346. Christina Tworek
347. Dough0918@
348. Kirsten Rose
349. Carrie Evans
350. Judy Turley and Duane Anderson
351. Jeffrey Kaplan
352. Abderzak Mehdhkour
353. Carol Cohen
354. Shirely Kirsten
355. Elizabeth MCarthy
356. Sheila Goldmacher
357. Eileen Hughes
358. Liz Ruhland
359. Nicole Henley
360. Kay Schwartz
361. Bruce Alexander
362. Peggy Scott
363. Mori Achen
364. Sara Wolf
365. Claudia Valas
366. Peggy Scott

367. Edward Opton
368. Ryan Max Steinberg
369. Ariana Thompson-Lastad
370. Barbara Fisher
371. Bonnie Gold
372. Zachary Ferguson
373. Kathleen Tuttle
374. Margaret Pritt
375. Felicia Brandon
376. Heidi Nelson
377. Albert Buixade Farre
378. Bobbi Sloan
379. Adrien
380. Jenifer Steele
381. Mrs. The-Ah Cao
382. Katherine Baylor
383. Laura Peterson
384. Shana Rocklin
385. Brendan Irvine-Broque
386. Phyllis Orrick
387. Vicki Sommer
388. Jia Yang
389. Mayling Yang
390. Alicia Klein
391. Shua Chai
392. Todd Andrew
393. Victor Gaspar
394. Libby Lee-Egan
395. Ben Gerhardstein
396. Jim Offel
397. Evan Kerr
398. Justin McAdams
399. Cynthia Johnson
400. Andrew Chen
401. Sue Martin
402. Mariam Barrere
403. Doyle Irvin
404. Larry Orman
405. Johan Busch
406. Karen Benioff Friedman
407. Richard Wallace
408. Councilmember Hahn
409. Gloria Elissha
410. D. Resek
411. Felicia Fields
412. Claire Woodrow
413. Gregory Magofna
414. John Daniel
415. Julie Lamont and Phil Price

416. Ludene Murphree
417. Don Grether
418. Solon Stewart
419. Alvin Warwas
420. Carolyn Shoulders
421. Bernard Marszalek
422. Michelle Mebine
423. David Lerman
424. Bill Springer
425. Pamela Webster
426. Stephen Alpert
427. Carole Meyers
428. Jonathan
429. Sharon Wheat
430. Michelle Pasternack
431. Daniel Jurnove
432. Keri Ferencz
433. Mary Parks
434. Margot Smtih
435. Milo Trauss
436. Jenn Guitart
437. Teresa Clarke
438. Joey Feldman
439. Stephen Vonder Haar
440. Bhima Sheridan
441. Jack Kurzweil
442. Alex Newkirk
443. Kurt Worthington
444. David Soffa
445. Tom and Mary Breiner
446. Elizabeth Givens
447. Elliot Warren
448. Andrew Fox
449. Christine Meuris
450. Gregory Kalkanis
451. Daren Fields
452. Tatiana Libman
453. Daniel Killian
454. Chris Harrelson
455. Margot Smth
456. Nate Kane
457. Nanette Cowardin-Lee
458. Dorothy Gray
459. Vishal Ganesan
460. Sandra Blair
461. Dora Zhang
462. Anne Boersma
463. Alan Tobey
464. Grayson Peters

465. Bobby Lutzker
466. Ronan Potage
467. Nico Calavita
468. Shirley Dean
469. Olga Louchakova-Schwartz
470. Josh Cohen
471. Mara and Richard Carman
472. Timothy Nelson
473. Janis Pearson
474. Jeffrey Wescott
475. Ariella Granett
476. Jane Scantlebury
477. Andrea Altschuler
478. Duncan MacRae
479. Gloria Schild
480. Trudy Obi
481. Jeff
482. Sara Kershner
483. Nancy Steele
484. Mary Dorst
485. Vicki Sommer
486. Edward Opton
487. Jeanne Miller
488. Eileen Hughes
489. Dmitriy Shirchenko
490. Friends of Adeline
491. Chuck Siegel
492. Jason Pinost
493. Pamela Webste
494. James Angus
495. Jan Stock
496. Alan Baer
497. Sophia DeWitt
498. Thomas Lord
499. Julie Tell
500. Frances Cave
501. Rebecca Goodin
502. Zack Subin
503. Rory Aptekar
504. Gamma Zon
505. Sarah Boudreau
506. Negeene Mosaed
507. Adam Rogers
508. Raul Maldonado
509. Chris Gilbert
510. Ranjit Bharvirkar
511. S. Entwistle
512. Kathleen Curran
513. Fernando Olmedo

- 514. Liz Lisle
- 515. Tony Warwick
- 516. Mary Lawrence Hicks
- 517. Thomas Luce
- 518. Sarah Bell
- 519. Dan Kammen
- 520. Audre Newman
- 521. Deborah Kropp
- 522. Chimey Lee (2)

### **Supplemental Communications and Reports 3**

- 523. Presentation, submitted by the Planning and Development
- 524. Revised material, submitted by Planning and Development
- 525. Revised material, submitted by Mayor Arreguin
- 526. Revised material (1), submitted by Councilmember Hahn
- 527. Revised material (2), submitted by Councilmember Hahn
- 528. Claire Broome
- 529. Thea Bellos
- 530. Robert Gable
- 531. Eric-Michael Wilson II
- 532. Dina Roumiantseva
- 533. Lizabeth Klein
- 534. Theo Gordon
- 535. Kelly Burkett
- 536. Liza Lutzker
- 537. Ned Resnikoff
- 538. Christa Burgoyne
- 539. Michael Scott
- 540. Phyllis Kamrin
- 541. Christopher Kroll
- 542. Tanja Schlosser
- 543. Gary Glickman
- 544. Dale Smith
- 545. Dan Gluesenkamp
- 546. Marjorie Winter
- 547. Leslie Valas
- 548. Craig Koester
- 549. Lynda Caesara
- 550. Kristin Leimkuhler
- 551. Charlene Woodcock
- 552. Vincent Casalaina
- 553. Nikki Sachs
- 554. Bianca Walser
- 555. Barney Greinke
- 556. Jennifer Wright
- 557. Olalere Williams
- 558. Pamela Smith

559. Pallop Wilairat
560. Vicki Sommer
561. Elisabeth Lamoureaux
562. Mary Wrenn
563. Karen Street
564. David Landon
565. John Givens
566. Bob Baldwin
567. Russel Bates
568. Jennie McDonald
569. Koji Fujioka
570. Geoffrey Holton
571. Catherine Rice
572. Paul Robins
573. Alex Stec
574. Elizabeth Ditmars
575. Katharine Bierce
576. Alexandra Yurkovsky
577. Nancy Kates
578. Susan Rawlins (2)
579. Marcia DuBois
580. Maggie Parks
581. Art Goldberg
582. Claire Fitzgerald
583. Andrea Voinot
584. Joanna Picciotto
585. Becca Schonberg
586. Christine and David Goldin
587. Sue Jones
588. Jack Sawyer
589. Clifford Fred
590. Jeanne Clinton
591. Karen Fiene
592. Noel and Penny Nellis
593. E. Anne Griffiths
594. Jonathan Singh
595. Susan Johnson
596. Chris Hamilton
597. Alicia Klein
598. Steve Akana
599. Melissa Pauna
600. Nayer and Gary Gatterman
601. Kathleen and Russell Lopes
602. Adriana Valencia
603. Jon Wehry
604. Belinda Lyons-Newman
605. Genesee Herzberg
606. Jennifer Millar
607. Lauren Carroll

608. Xanthippe Phillips
609. Rachel Gold
610. Lisa Camasi
611. Garret Dellwo
612. Vika Teicher
613. Julia Zuckerman
614. Sophie Green
615. Gabriela de la Rosa
616. Russ Greene
617. Stephen Dalton
618. Leslie Valas
619. Margaret Tormey
620. Cora Johnson-Grau
621. Ross Bernet
622. Mary Lai
623. Michael Several
624. Susan Palo
625. Nelly Coplan
626. Donna Evans
627. Michael Hyatt
628. Rainbow Rubin
629. Jane Scherr
630. Melissa Riley
631. Michael Caplan
632. Isabelle Gaston and Steve Robey
633. David Coy
634. Joseph Feldman
635. Andrea Horbinski
636. Chimey Lee
637. Hannah Bruegmann
638. Naor Deleanu
639. Ellen Kramer
640. Micahel Goldberg
641. Elizabeth Davids
642. Ben Gould
643. Maria Sakovich
644. Meryl Siegal
645. Marilyn Simons
646. Sarah Jones
647. Fred Krieger
648. Sabina McMurtry
649. Harald Leventhal
650. Daniel Keller
651. Ariel Zucker
652. Johanna Eigen
653. Lily Bernheime
654. Leslie Retallick
655. Robert Abiad
656. Naomi Janowitz

657. Lori Hines
658. Preston Mui
659. Sean Gibson
660. Fiona Baker
661. Vicki Sommer
662. Alisa Foster
663. Adam Berman
664. Tamara Crane
665. Michael O'Heaney
666. Joaquin Carbonell
667. Scott McGlashan
668. Tony Wilkinson
669. Donna Mickleson
670. Linda Franklin
671. Mark Rhoades (2)
672. Ellen Hahn
673. Neal Donnelly
674. Colin DuRant
675. Jeffrey Carter
676. Barbara Rydlander
677. Enid Camps
678. Dan Newman
679. Aileen Paterson
680. Irene Chan
681. George Porter
682. Deena Aranoff
683. Kelley Kahn
684. Fran Segal
685. Tony Chapelle
686. Erik Wiener
687. David Cobb
688. Moni Law
689. Margot Smith
690. Adam Weisberg
691. Teresa Clarke
692. Paul Lee
693. Councilmember Harrison
694. Mark Mueller
695. Julieta Pisani McCarthy
696. Basak Altan
697. Margot Smith
698. Theo Posselt
699. Andrea Altschuler
700. March Schirmer
701. Desmid Lyon
702. David Lerman
703. Mary Louise Zernicke
704. Dawn Thomas
705. Charlene Woodcock



**MINUTES  
BERKELEY CITY COUNCIL SPECIAL MEETING**

**MONDAY, JUNE 13, 2022**

**4:30 P.M.**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/88324327577>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free); enter Meeting ID: 883 2432 7577. 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.*

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## Preliminary Matters

**Roll Call:** 4:30 p.m.

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

**Absent:** Kesarwani

Councilmember Kesarwani present at 4:40 p.m.

**Public Comment - Limited to items on this agenda only - None**

## CLOSED SESSION:

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

### 1. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6

Negotiators: Dee Williams-Ridley, City Manager, Paul Buddenhagen, Deputy City Manager, LaTanya Bellow, Deputy City Manager, Don Ellison, Interim Human Resources Director.

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

**Action:** No reportable action taken.

### 2. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(1):

- a. Ruegg & Ellsworth v. City of Berkeley, Alameda County Superior Court, Case No. RG18930003

**Action:** M/S/C (Arreguin/Hahn) to authorized the City Attorney to file an appeal of the order fixing the bond amount in Ruegg & Ellsworth v. City of Berkeley, Alameda County Superior Court, Case No. California Case No. RG18930003.

**Vote:** All Ayes.

## OPEN SESSION:

The City Council met in closed session and authorized the City Attorney to file an appeal of the order fixing the bond amount in Ruegg & Ellsworth v. City of Berkeley, Alameda County Superior Court, Case No. California Case No. RG18930003.

## Adjournment

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

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

Adjourned at 7:22 p.m.

Councilmember Harrison absent at 7:10 p.m.

Councilmember Bartlett absent at 7:15 p.m.

I hereby certify that the forgoing is a true and correct record of the special closed meeting of June 13, 2022 as approved by the Berkeley City Council.

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Rose Thomsen, Deputy City Clerk

**MINUTES**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, June 14, 2022**  
**6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

## Preliminary Matters

**Roll Call:** 6:01 p.m.

**Present:** Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste

**Absent:** Kesarwani, Taplin, Arreguin

Councilmember Kesarwani present at 6:05 p.m.

Councilmember Taplin present at 6:10 p.m.

Mayor Arreguin present at 6:18 p.m.

### Report from Closed Session

The City Council met in closed session and authorized the City Attorney to file an appeal of the order fixing the bond amount in Ruegg & Ellsworth v. City of Berkeley, Alameda County Superior Court, Case No. California Case No. RG18930003.

### Ceremonial Matters:

1. Presentation: Alameda County Affordable Housing Portal
2. Adjourned in Memory of James "JT" Street, City of Berkeley Public Works Department Employee
3. Recognition of Juneteenth Holiday on June 19, 2022
4. Recognition of Elder Abuse Awareness Month

### City Manager Comments:

1. The City Manager provided an update on the recruitments for the positions of Director of Police Accountability and Chief of Police.
2. The City Manager provided an update regarding the City's Sanctuary Contracting Ordinance.

**Public Comment on Non-Agenda Matters:** 10 speakers.

## Consent Calendar

**Public Comment on Consent Calendar and Information Items Only:** 8 speakers.

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

**Vote:** All Ayes.

## Consent Calendar

**1. Ordinance authorizing an amendment to the contract between the City Council of the City of Berkeley and the Board of Administration of the California Public Employees' Retirement System**

**From: City Manager**

**Recommendation:** Adopt second reading of Ordinance No. 7,813-N.S. amending the City's contract with CalPERS to effectuate changes to the cost sharing agreement between the City and PEPRAs members of Service Employee International Union, Local 1021 Maintenance and Clerical (SEIU MC), Public Employees Union Local 1 (Local 1), Community Services & Part-Time Recreation Leaders Associations Local 1021 (SEIU CSU/PTRLA), and the Unrepresented Employees Group.

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

**Financial Implications:** See report

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

**Action:** Adopted second reading of Ordinance No. 7,813–N.S.

**2. Commission Reorganization: Amendments to Berkeley Municipal Code Section 7.52.190 (Homeless Services Panel of Experts)**

**From: City Manager**

**Recommendation:** Adopt second reading of Ordinance No. 7,814-N.S. amending Section 7.52.190 of the Berkeley Municipal Code, the enabling legislation for the Homeless Services Panel of Experts (HSPOE) to add the functions of the Homeless Commission as found in Resolution No. 60,647-N.S.

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

**Financial Implications:** See report

Contact: Peter Radu, City Manager's Office, (510) 981-7000

**Action:** Adopted second reading of Ordinance No. 7,814–N.S.

**3. Placing a Measure on the November 8, 2022 Ballot Related to Housing for Persons of Low-Income**

**From: City Manager**

**Recommendation:**

1. Adopt a Resolution submitting a measure related to housing for persons of low-income to a vote of the electors at the November 8, 2022 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

**Financial Implications:** No direct fiscal impacts

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

**Action:** 1. Adopted Resolution No. 70,403–N.S. 2. Designated Mayor Arreguin, Councilmember Harrison, and Councilmember Hahn to file ballot measure arguments on this measure on behalf of the Council.

## Consent Calendar

- 4. Donation to the Animal Shelter from the U.C. Davis Koret Shelter Medicine Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a grant from the U.C. Davis Koret Shelter Medicine Program to Animal Care Services in the sum of \$5,000.  
**Financial Implications:** Animal Services Donation Fund - \$5,000 (Donation)  
Contact: Peter Radu, City Manager's Office, (510) 981-7000  
**Action:** Adopted Resolution No. 70,404–N.S.
- 5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on June 14, 2022**  
**From: City Manager**  
**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.  
**Financial Implications:** Various Funds - \$270,000  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Approved recommendation.
- 6. Temporary Appropriations FY 2023**  
**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, 2022, until the effective date of the FY 2023 Annual Appropriations Ordinance.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopted Resolution No. 70,405–N.S.
- 7. FY 2023 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 2023 tax rate funding the debt service on the Street and Integrated Watershed Improvements General Obligation Bonds (Measure M, November 2012) at 0.0075%.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopt first reading of Ordinance No. 7,816–N.S. Second reading scheduled for June 28, 2022.

## Consent Calendar

8. **FY 2023 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 2023 tax rate for funding the debt service on the Neighborhood Branch Library Improvements Project General Obligation Bonds (Measure FF, November 2008 Election) at 0.0058%.  
**Financial Implications:** See report  
 Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopt first reading of Ordinance No. 7,817–N.S. Second reading scheduled for June 28, 2022.
9. **FY 2023 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 2023 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 0.0130%.  
**Financial Implications:** See report  
 Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopt first reading of Ordinance No. 7,818–N.S. Second reading scheduled for June 28, 2022.
10. **FY 2023 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 2023 tax rate funding the debt service on the Affordable Housing General Obligation Bonds (Measure O, November 2018) at 0.0200%.  
**Financial Implications:** See report  
 Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopt first reading of Ordinance No. 7,819–N.S. Second reading scheduled for June 28, 2022.
11. **FY 2023 Tax Rate: Business License Tax on Large Non-Profits**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2023 tax rate for Business License Tax on large non-profits at \$0.7573 (75.73 cents) per square foot of improvements.  
**Financial Implications:** See report  
 Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopt first reading of Ordinance No. 7,820–N.S. Second reading scheduled for June 28, 2022.



## Consent Calendar

- 12. FY 2023 Tax Rate: Fund the Provision of Emergency Medical Services (Paramedic Tax)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2023 tax rate for funding the provision of emergency medical services to Berkeley residents at \$0.0433 (4.33 cents) per square foot of improvements.  
**Financial Implications:** See report  
 Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopt first reading of Ordinance No. 7,821–N.S. Second reading scheduled for June 28, 2022.
- 13. FY 2023 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 2023 tax rate for funding Firefighting, Emergency Medical Response and Wildfire Prevention (Measure FF) in the City of Berkeley at the annual tax rate of \$0.1126 (11.26 cents) per square foot of improvements.  
**Financial Implications:** See report  
 Contact: Henry Oyekanmi, Finance, (510) 981-7300, Abe Roman, Fire, (510) 981-3473  
**Action:** Adopt first reading of Ordinance No. 7,822–N.S. Second reading scheduled for June 28, 2022.
- 14. FY 2023 Tax Rate: Fund the Maintenance of Parks, City Trees and Landscaping**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2023 tax rate for funding all improvements for the maintenance of parks, City trees, and landscaping in the City of Berkeley at \$0.2039 (20.39 cents) per square foot of improvements.  
**Financial Implications:** See report  
 Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopt first reading of Ordinance No. 7,823–N.S. Second reading scheduled for June 28, 2022.
- 15. FY 2023 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 2023 tax rate funding the debt service on the Infrastructure and Facilities Improvements General Obligation Bonds (Measure T1, November 2016) at 0.0160%.  
**Financial Implications:** See report  
 Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopt first reading of Ordinance No. 7,824–N.S. Second reading scheduled for June 28, 2022.

## Consent Calendar

- 16. FY 2023 Tax Rate: Fund Emergency Services for the Severely Disabled (Measure E)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2023 tax rate for funding the provision of emergency services for the disabled at \$0.01932 (1.932 cents) per square foot of improvements.  
**Financial Implications:** See report  
 Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopt first reading of Ordinance No. 7,825–N.S. Second reading scheduled for June 28, 2022.
- 17. FY 2023 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 2023 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, Fire, (510) 981-3473  
**Action:** Adopt first reading of Ordinance No. 7,826–N.S. Second reading scheduled for June 28, 2022.
- 18. FY 2023 Special Tax Rate: Fund the Provision of Library Services**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an ordinance setting the FY 2023 tax rate for funding the provision of Library Services in the City of Berkeley at \$0.2583 (25.83 cents) per square foot for dwelling units and \$0.3906 (39.06 cents) per square foot for industrial, commercial, and institutional buildings.  
**Financial Implications:** See report  
 Contact: Henry Oyekanmi, Finance, (510) 981-7300, Tess Mayer, Library, (510) 981-6100  
**Action:** Adopt first reading of Ordinance No. 7,827–N.S. Second reading scheduled for June 28, 2022.
- 19. 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 emergency, and rescinding Resolution No. 69,919-N.S.  
**Financial Implications:** None  
 Contact: Abe Roman, Fire, (510) 981-3473  
**Action:** Adopted Resolution No. 70,406–N.S.

## Consent Calendar

- 20. St. Paul Terrace Housing Trust Fund Reservation**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: 1. Reserving \$8,551,040 in Housing Trust Funds for Community Housing Development Corporation's St. Paul Terrace (2024 Ashby) affordable housing development, conditioned on the project obtaining planning entitlements within 24 months; and 2. Authorizing the City Manager or her designee to execute all original or amended documents or agreements to effectuate these actions.  
**Financial Implications:** See report  
 Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 70,407–N.S.
- 21. Classification and Salary: Senior Economic Development Project Coordinator**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution establishing the Senior Economic Development Coordinator classification (Local 1) with a monthly stepped salary range of \$11,219.88 to \$13,775.00 effective June 15, 2022.  
**Financial Implications:** None  
 Contact: Donald E. Ellison, Human Resources, (510) 981-6800  
**Action:** Adopted Resolution No. 70,408–N.S.
- 22. Contract No. 8392 Amendment: Innovative Claim Solutions (ICS) for claims administration of the City's Workers' Compensation Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to extend Contract No. 8392 with Innovative Claims Solutions (ICS) to provide third-party claims administrative services, Medicare, Medicaid, and SCHIP Extension Act (MMSEA) Section 111 Mandatory Reporting to the Centers for Medicare & Medicaid Services (CMS), for an additional amount of \$598,560 for July 1, 2022 through June 30, 2023.  
**Financial Implications:** Workers' Compensation Self-Insurance Fund - \$598,560  
 Contact: Donald E. Ellison, Human Resources, (510) 981-6800  
**Action:** Adopted Resolution No. 70,409–N.S.
- 23. Contract: Axon Enterprise, Incorporated for Body Worn Cameras, Storage and Software**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into a Contract with Axon Enterprise, Incorporated to provide body worn cameras, equipment, software, and services for an amount not to exceed \$1,115,000 over the next five years through Fiscal Year 2027.  
**Financial Implications:** See report  
 Contact: Jennifer Louis, Police, (510) 981-5900  
**Action:** Moved to Action Calendar. M/S/C (Arreguin/Harrison) to continue Item 23 and Item 32 to a special meeting at 4:00 p.m. on June 21, 2022.  
**Vote:** All Ayes.

## Consent Calendar

- 24. Commission Reorganization: Creating the Transportation and Infrastructure Commission**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: rescinding Resolution No. 55,751-N.S. which created the Transportation Commission, rescinding Resolution No. 55,750-N.S. which created the Public Works Commission, and establishing the Transportation and Infrastructure Commission.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,410–N.S. as revised in Supplemental Communications Packet #2 from the Public Works Department to revise the formation date of the new Transportation and Infrastructure Commission.  
**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Wengraf, Robinson, Droste, Arreguin; Noes – Harrison, Abstain – Hahn; Absent – None.
- 25. Final Map of Tract 8621: 1169-1173 Hearst Avenue**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the final map of Tract Map 8621, a five (5) unit residential condominium project consisting of a single-family dwelling unit and two duplexes at 1169-1173 Hearst Avenue.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,411–N.S.
- 26. Call for Immediate Ukraine Ceasefire**  
**From: Peace and Justice Commission**  
**Recommendation:** Adopt a Resolution Urging a Ceasefire between Ukraine and Russia.  
**Financial Implications:** Staff time  
Contact: Okeya Vance-Dozier, Commission Secretary, (510) 981-7100  
**Action:** Adopted Resolution No. 70,412–N.S.

## Consent Calendar

27. **Recommendation that the City Council revise Resolution No. 69,917 regarding procurement, sales and service of sugar-sweetened beverages.**

**From: Sugar Sweetened Beverage Product Panel of Experts**

**Recommendation:** Adopt a Resolution to amend Resolution No. 69,917 in response to the request of the City Council on June 1st, 2021, in Action Item #18A, the Sugar Sweetened Beverage Product Panel of Experts (SSBPPE) has considered “how to regulate sugar sweetened beverages at events held on City of Berkeley Property hosted by non-City entities who receive City of Berkeley funds.” The Commission recommends that the Berkeley City Council revise the requirement for events that receive City of Berkeley funding to mandate that these events also comply with the intent of Resolution No. 69,917.

The City Council has the opportunity to make the Resolution more impactful by banning the sale and service of sugary drinks at City sponsored events. This will be a powerful message to community residents and visitors who attend events such as the Book Festival, Kite Festival, Juneteenth festival and Chocolate and Chalk Art Festival to name a few.

**Financial Implications:** See report

Contact: Roberto Terrones, Commission Secretary, (510) 981-5400

**Action:** Adopted Resolution No. 70,413–N.S. revised to include language that City staff will prepare and provide language for posting at the events educating the public about why sugar-sweetened beverages are not being served or sold.

## Council Consent Items

### 28. Restoring and Improving Access to City of Berkeley Website and Archival Materials

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

Direct the City Manager to:

1. Restore at previous URLs all PDF documents previously hosted on the City of Berkeley website.
2. Create a publicly accessible archival copy of the City's previous website, CityofBerkeley.info, that can be accessed without logins and via internet search engines. Include a prominent disclaimer noting the date the website, page, or document was archived, with links redirecting to the active website or other responsive resource.
3. On the new website, update Commission pages to include a minimum of 2 years of historic agendas and other materials and update City Council and Council Committee pages to include at least 3 years of complete materials.
4. By July 15, 2022 develop and make available to all City staff and to the public training at beginner to expert levels on use of the City's Records Online search function and create more extensive and less technical self-help resources covering basic and expert use.
5. In recognition of increased public traffic, update the Records Online homepage to explain how the portal works and link to more robust self-help resources and alternative search functions.
6. Coordinate with agency staff to include all relevant records (agendas, minutes, etc.) from Rent Board and Housing Authority in Records Online Portal.
7. Update any remaining 404 pages to explain that the City's website has been moved/updated, and provide links to helpful pages, search functions and/or pathways to access responsive materials. As quickly as possible, consider implementing redirects with wildcards to direct as many old links to relevant new website pages in lieu of the standard 404 page. E.g. cityofberkeley.info/planning\* to the Planning Department site map/homepage, or Department Specific 404 page explaining new navigation.

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

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

**Financial Implications:** Staff time

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

**Action:** Item 28 continued to July 12, 2022.

## Council Consent Items

- 29. Support for SB 1389: Low-Level Vehicle Infractions**  
**From: Councilmember Robinson (Author), Mayor Arreguin (Co-Sponsor)**  
**Recommendation:** Send a letter to Senator Steven Bradford, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Senate Bill 1389, which would prohibit peace officers from initiating traffic stops for certain low-level infractions unless there is a separate, independent basis to initiate the stop.  
**Financial Implications:** Staff time  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170  
**Action:** Councilmembers Bartlett and Hahn added as co-sponsors. Approved recommendation.

## Action Calendar – Public Hearings

- 30. FY 2023 and FY 2024 Proposed Budget Public Hearing #2**  
**From: City Manager**  
**Recommendation:** Conduct Public Hearing #2 on the FY 2023 and FY 2024 Proposed Budget.  
**Financial Implications:** See FY 2023 and FY 2024 Proposed Biennial Budget  
Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000
- Public Testimony:** The Mayor opened the public hearing. 21 speakers.  
M/S/C (Arreguin/Robinson) to close the public hearing.  
**Vote:** Ayes – Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None, Abstain – None; Absent – Kesarwani.
- Councilmember Kesarwani absent 8:30 p.m. – 8:42 p.m.
- Action:** Presentation made and discussion held. No action taken.
- Recess 8:32 p.m. – 8:42 p.m.

## Action Calendar – Old Business

- 31. City Council Comments on the FY 2023 and FY 2024 Proposed Biennial Budget and Capital Improvement Program** *(Continued from May 31, 2022.) (Item contains supplemental material.)*  
**From: City Manager**  
**Recommendation:** Provide comments on the FY 2023 and FY 2024 Proposed Biennial Budget and Capital Improvement Program.  
**Financial Implications:** See report  
Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000  
**Action:** Item 30 and Item 31 taken up together. Received supplemental material in Supplemental Communications Packet #1 from the City Manager. See action for Item 30.

## Action Calendar – Old Business

32. **Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report** (*Continued from May 10, 2022*)  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Controlled Equipment Impact Statements, Associated Equipment Use Policies and Equipment.  
**Financial Implications:** See report  
Contact: Jennifer Louis, Police, (510) 981-5900  
**Action:** M/S/C (Arreguin/Harrison) to continue Item 23 and Item 32 (including the supplemental material in Supplemental Communications Packet #2 from the Police Accountability Board and the supplemental material in Supplemental Communications Packet #1 from the Police Department) to a special meeting at 4:00 p.m. on June 21, 2022.  
**Vote:** All Ayes.

## Action Calendar – New Business

33. **Parking Enforcement of Existing Parking Code in Fire Zones 2 & 3** (*Reviewed by the Public Safety Policy Committee*)  
**From: Disaster and Fire Safety Commission**  
**Recommendation:** The Disaster and Fire Safety Commission (DFSC) recommends that Council direct the Berkeley Police Department to enforce existing Berkeley Municipal Code in all Fire Zones.  
*Policy Committee Recommendation: Forward the item to the City Council with a qualified positive recommendation amending the item to a budget referral for the FY 23 & FY 24 budget process to hire an additional dedicated parking officer for fire zones 2 & 3.*  
**Financial Implications:** See report  
Contact: Keith May, Commission Secretary, (510) 981-3473  
**Action:** Moved to Consent Calendar. Approved the recommendation of the Public Safety Committee.



## Council Action Items

### 34. Refer to the City Attorney and City Manager an Empty Homes Tax Ordinance for the November 8, 2022 Ballot

**From: Councilmember Harrison (Author)**

**Recommendation:** Refer to the City Attorney and City Manager to prepare and submit a resolution submitting an Ordinance adding Chapter 7.54 to the Berkeley Municipal Code taxing housing units that 1) have remained vacant for more than six months, 2) are not under permitted renovation and 3) are in multi-unit buildings or are single family homes or condominiums whose owners are not natural persons or family trusts to a vote of the electors at the November 8, 2022 General Municipal Election.

**Financial Implications:** See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

**Action:** 18 speakers. Councilmember Robinson added as a co-sponsor.

**M/S/Failed** (Wengraf/Kesarwani) to refer Item 34 including the revised material in Supplemental Communications Packet #2 and Supplemental Communications Packet #1 to the Land Use, Housing, & Economic Development Committee.

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

**M/S/Carried** (Hahn/Harrison) to refer the item (including the revised material in Supplemental Communications Packet #2 and Supplemental Communications Packet #1) to the City Attorney and City Manager to prepare and submit a resolution submitting an Ordinance adding Chapter 7.54 to the Berkeley Municipal Code taxing housing units that 1) have remained vacant for more than six months, 2) are not under permitted renovation and 3) are in multi-unit buildings or are single family homes or condominiums whose owners are not natural persons or family trusts to a vote of the electors at the November 8, 2022 General Municipal Election. Factors to be considered during review include exemptions, the size trigger, and how the ordinance would be administered.

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

## Council Action Items

- 35. Budget Referral and Resolution Establishing a Pilot Existing Building Electrification Installation Incentives and Just Transition Program with Pre-Qualified Contractors Meeting Minimum Labor Standards to Assist New Property Owners, Renters and Existing Property Owners with Transition to Zero-Carbon Buildings** *(Reviewed by the Budget & Finance Committee)*  
**From: Councilmember Harrison (Author), Councilmember Bartlett (Co-Sponsor)**

**Recommendation:**

1. Adopt a Resolution establishing: a. a referral to Office of Energy and Sustainable Development (OESD) staff to design and launch a two-year Pilot Existing Building Electrification Installation Incentives and “Just Transition” Program, using pre-qualified contractors meeting minimum labor standards to assist new property owners, renters and existing property owners with transition to zero-carbon plumbing, HVAC, cooking, and related electrical systems, with a preference first for assisting existing affordable housing buildings and assisting households at or below 120% of the Area Median Income; and b. an annual process for the Energy (or successor) Commission and the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee (FITES), in consultation with community and labor groups, to provide input to staff and Council about eligible categories of fund expenditures to maximize equitable emissions reductions and impacts for eligible households while leaving the mechanisms for doing so to staff discretion.

2. Send copies of the Resolution and letters to members of the California Public Utilities and Energy Commissions, Governor Newsom, State Senator Skinner, and Assemblymember Wicks conveying urgent support for a statewide approach to rapidly contract the natural gas distribution system in a way that is safe, economical for remaining customers, and that provides a just transition for affected workers, including gas utility and extraction workers.

*Policy Committee Recommendation: to send the item to Council with a qualified positive recommendation including the following amendments: Recommendation 2. That part of the recommended funding source is American Rescue Plan dollars and; Recommendation 1a. Modifying the end of the last sentence to “with a preference first for affordable housing projects and assisting households at or below 120% the area median income.”*

**Financial Implications:** See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

**Action:** Moved to the Consent Calendar. Adopted Resolution No. 70,414–N.S. as recommended by the Budget & Finance Committee.

## Information Reports

- 36. City Council Short Term Referral Process – Quarterly Update**  
**From: City Manager**  
 Contact: Mark Numainville, City Clerk, (510) 981-6900  
**Action:** Received and filed.

## Information Reports

37. **Results of General Obligation Bonds: \$40,000,000 City of Berkeley 2022 General Obligations Bonds, Series B (2018 Election Measure O: Affordable Housing) (Federally Taxable)**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Received and filed.
38. **Update on the Implementation of Fair and Impartial Policing Task Force Recommendations**  
**From: City Manager**  
Contact: Jennifer Louis, Police, (510) 981-5900  
**Action:** Received and filed.
39. **City Auditor's Office 2021 Peer Review Results**  
**From: Auditor**  
Contact: Jenny Wong, Auditor, (510) 981-6750  
**Action:** Received and filed.

**Public Comment – Items Not Listed on the Agenda - 6 speakers.**

## Adjournment

Adjourned at 11:00 p.m.

I hereby certify that the foregoing is a true and correct record of the regular session meeting held on June 14, 2022.

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Rose Thomsen, Deputy City Clerk

## Communications

### **Item 17: FY 2023 Tax Rate: Fund Fire Protection and Emergency Response and Preparedness (Measure GG)**

1. Jose Luis Bedolla, Chair, Disaster and Fire Safety Commission

### **Berkeley Marina Area Specific Plan (BMASP)/Chavez Park**

2. Deborah Scott
3. phcanin@
4. Mike Vanderman
5. Steve Masover
6. Pat Phillips
7. Alexis Milea
8. Sierra Club East Bay Public Lands Committee
9. Beverley Spencer

10. Katherine Ogburn
11. Sasha Futran
12. Margo Lesl
13. Carlos Hill
14. Nancy Hormachea
15. Irene Jung-Huang

### **Public Safety**

16. Ann Einstein
17. Lorraine Mahley
18. Margo Smtih
19. Barbara Atwell
20. Pamela Drake
21. Councilmember Bartlett
22. Andrea Prichett
23. Robin Kibby

### **Hopkins Corridor Plan**

24. Robion Kirby
25. Sondra Jensen
26. Margot Smith
27. Jeanne Schuman
28. Zelda
29. Marilyn Margulius
30. Zelda Bronstein
31. Sheridan Pauker
32. Dahlia Armon

### **Vaccination for Pool Use**

33. Donna Mickleson (4)
34. Chuck Herndon (2)
35. Paul Preston
36. Lynn Jones Finn

### **SB 1338 – CARE Court Program**

37. John Caner, on behalf of the Downtown Berkeley Association

### **Homelessness Reporting**

38. Natalie Hanson (4)
39. Councilmember Harrison

### **Affordable Housing**

40. Gramma Grass
41. Barry Fike

**1201-1205 San Pablo**

42. Margaret

**COVID + Masks**

43. George Torgun

**Landlord Issues**

44. Nancy Joachim

45. Karen Oberdorfer

**Fire Safety in the Berkeley Hills**

46. Marissa Moss

**Berkeley Unified School District**

47. Cielo Rios

48. Mara Kolesas

**Train Horns**

49. Lauren Parson

**City of Berkeley Website**

50. Thomas Lord

**Environment and Climate Commission**

51. Sam Kaplan-Pettus

**Sanctuary Contracting Ordinance**

52. Elana Auerbach

**35<sup>th</sup> Annual Juneteenth Festival**

53. Delores Nochi Cooper

**Israel Visit**

54. Henry Norr

55. Glen Hauer

56. Max Ventura

57. Jeff Pekrul

58. Melanie Lawrence and John Smail

59. Rafael Gonzalez

60. Martha Larsen

61. Bonnie Weiss

62. Mary Prophet

63. Jay Rosenthal

64. Judy Grether

65. Anna T.

66. Izumi Van Cleave

- 67. Patricia Hartnett
- 68. Tori Porell
- 69. Charles Wollenberg
- 70. Carol Sanders
- 71. Hani Kaileh
- 72. Esther Lerman
- 73. Is Sullivan
- 74. Dorothea Dorenz
- 75. Karen Carroll
- 76. Andrew Paul Gutierrez
- 77. Dave Joki
- 78. Nora Roman
- 79. Daniel Zwickel ben Avram
- 80. Sara Sunstein
- 81. Eleanor Levine
- 82. Bobbi Sloan
- 83. Vivian Zelaya
- 84. P.Rainey

**People's Park**

- 85. Joe Liesner
- 86. Max Ventura

**Police Accountability Board**

- 87. James McFadden
- 88. Diana Bohn
- 89. Andrea Prtichett

**7-11 Alcohol License for 7-11 at University and San Pablo**

- 90. Chris Horgan and Elena Prakoura

**Cosco Busan Oil Spill of 2017**

- 91. California State Department of Fish and Wildlife

**Mayors for Peace**

- 92. Jackie Cabasso

**Mental Health for Berkeley Students**

- 93. Hector Malvido

**Bicycle and Rolling Tour**

- 94. Aimee Baldwin

**No Final Comments at May 24 Council Meeting**

- 95. Blair Beekman

**Increasing Property Taxes**

96. Paul Mathew

**Supplemental Communications and Reports 1**

**Item #23: Contract: Axon Enterprise, Incorporated for Body Worn Cameras, Storage and Software**

97. Elana Auerbach

**Item #30: FY 2023 and FY 2024 Proposed Budget Public Hearing #2**

98. 18 similarly-worded form letters

99. Maulin Chokshi

100. Kate Greswold

101. Eric Friedman

**Item #31: City Council Comments on the FY 2023 and FY 2024 Proposed Biennial Budget and Capital Improvement Program**

102. Supplemental material, submitted by the City Manager

**Item #32: Police Equipment and Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report**

103. Supplemental material, submitted by the Police Department

**Item #34: Refer to the City Attorney and City Manager an Empty Homes Tax Ordinance for the November 8, 2022 Ballot**

104. Revised material, submitted by Councilmember Harrison

**Supplemental Communications and Reports 2**

**Item #23: Contract: Axon Enterprise, Incorporated for Body Worn Cameras, Storage and Software**

105. Phoebe Thomas Sorgen

106. Elana Auerbach

107. Lisa Ferguson

108. Laura X

109. Summer Brenner

110. Mary Prophet

**Item #24: Commission Reorganization: Creating the Transportation and Infrastructure Commission**

111. Revised material, submitted by Public Works

**Item #27: Recommendation that the City Council revise Resolution No. 69,917 regarding procurement, sales and service of sugar-sweetened beverages**

112. Holly Scheider

**Item #30: FY 2023 and FY 2024 Proposed Budget Public Hearing #2**

113. Susan Springborg

114. Greg Martin

115. Denah Bookstein

- 116. George Lippman
- 117. John Rice
- 118. Diana Bohn

**Item #32: Police Equipment and Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report**

- 119. Supplemental material, submitted by the Police Accountability Board

**Item #34: Refer to the City Attorney and City Manager an Empty Homes Tax Ordinance for the November 8, 2022 Ballot**

- 120. Revised material, submitted by Councilmember Harrison
- 121. Max Ventura
- 122. Moni Law
- 123. Sylvia

**Supplemental Communications and Reports 3**

**Ceremonial Matter: Presentation: Alameda County Affordable Housing Portal**

- 124. Presentation, submitted by the County of Alameda

**Item #23: Contract: Axon Enterprise, Incorporated for Body Worn Cameras, Storage and Software**

- 125. Diana Bohn

**Item #30: FY 2023 and FY 2024 Proposed Budget Public Hearing #2**

- 126. Presentation, submitted by the City Manager's Office
- 127. Zoe Lake
- 128. Timothy Carter
- 129. Berkeley Progressive Alliance
- 130. Diana Bohn

**Item #34: Refer to the City Attorney and City Manager an Empty Homes Tax Ordinance for the November 8, 2022 Ballot**

- 131. Berkeley Progressive Alliance
- 132. Max Ventura
- 133. Michael Brodheim
- 134. Lisa Camasi
- 135. Leslie Firestone
- 136. Alan Kiviat
- 137. Marcia Poole
- 138. Igor Tregub
- 139. Nicky Gonzalez Yuen
- 140. Mary Oram
- 141. Julia Cato
- 142. Theo Posselt
- 143. Councilmember Harrison
- 144. Moni Law



**Item #35: Budget Referral and Resolution Establishing a Pilot Existing Building Electrification Installation Incentives and Just Transition Program with Pre-Qualified Contractors Meeting Minimum Labor Standards to Assist New Property Owners, Renters and Existing Property Owners with Transition to Zero-Carbon Buildings**

- 145. Igor Tregub, on behalf of the Sierra Club
- 146. Marjorie Alvord

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

**Tuesday, June 21, 2022  
4:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

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## Preliminary Matters

**Roll Call:** 4:01 p.m.

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

**Absent:** Bartlett, Harrison

Councilmember Bartlett present at 4:12 p.m.

Councilmember Harrison present at 4:17 p.m.

## Action Calendar – Old Business

1. **Contract: Axon Enterprise, Incorporated for Body Worn Cameras, Storage and Software** *(Continued from June 14, 2022)*  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into a Contract with Axon Enterprise, Incorporated to provide body worn cameras, equipment, software, and services for an amount not to exceed \$1,115,000 over the next five years through Fiscal Year 2027.  
**Financial Implications:** See report  
Contact: Jennifer Louis, Police, (510) 981-5900  
**Action:** 6 speakers. M/S/C (Arreguin/Wengraf) to adopt Resolution No. 70,415–N.S.  
**Vote:** All Ayes.
  
2. **Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report** *(Continued from June 14, 2022) (Item contains supplemental material)*  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Controlled Equipment Impact Statements, Associated Equipment Use Policies and Equipment.  
**Financial Implications:** See report  
Contact: Jennifer Louis, Police, (510) 981-5900  
**Action:** 8 speakers. M/S/C (Arreguin/Hahn) to adopt the recommendation in the revised material from Councilmember Harrison in Supplemental Communications Packet #2 and further revised as follows:
  1. Adopt Resolution No. 70,416–N.S. approving the revised Controlled Equipment Impact Statements and Policy 303 (Control Devices and Techniques) from Supplemental Communications Packet #2, conforming to local and state law.
  2. Refer the Annual Equipment Use Report to the Police Accountability Board for review and recommendation within 60 days following City Council approval of the remaining use policies.
  3. Refer all other internal policies relevant to controlled equipment to the Police Accountability Board and Berkeley Police Department to review and conform to the approved Controlled Equipment Impact Statements, and local/state laws for City Council consideration by July 26, 2022.**Vote:** Ayes – Taplin, Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – None; Abstain – Kesarwani, Wengraf, Droste; Absent – None.

## Adjournment

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

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

Councilmember Harrison absent at 6:01 p.m.

Adjourned at 6:02 p.m.

I hereby certify that the foregoing is a true and correct record of the special session meeting held on June 21, 2022.

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Rose Thomsen, Deputy City Clerk

## Communications

**Item #2: Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report**

1. Berkeley Friends Meeting
2. Police Accountability Board

## Supplemental Communications and Reports 1

- None

## Supplemental Communications and Reports 2

**Item #2: Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report**

3. Revised material, submitted by Councilmember Harrison
4. Kitt Saginor

## Supplemental Communications and Reports 3

**Item #1: Contract: Axon Enterprise, Incorporated for Body Worn Cameras, Storage and Software**

5. Diana Bohn
6. Elana Auerbach
7. Cheryl Davila

**Item #2: Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report**

8. Phoebe Anne Sorgen

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

**Tuesday, June 21, 2022  
6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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## Preliminary Matters

**Roll Call:** 6:15 p.m.

**Present:** Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Arreguin

**Absent:** Harrison, Droste

Councilmember Droste present at 6:16 p.m.

Councilmember Harrison present at 6:17 p.m.

## Action Calendar – New Business

### 1. Discussion and Direction Regarding Vision 2050 Program Plan and Potential Ballot Measures for the November 8, 2022 General Municipal Election

**From:** City Manager

**Recommendation:** Discuss and provide input and direction to the City Manager and City Attorney on measure(s) to place on the November 8, 2022 ballot, and the Vision 2050 Program Plan.

**Financial Implications:** See report

Contact: Paul Buddenhagen, City Manager's Office, (510) 981-7000

**Action:** 12 speakers. Presentation made and discussion held. The City Council provided input on measure(s) to place on the November 8, 2022 ballot, and the Vision 2050 Program Plan, including the following points for consideration by the City Manager and City Attorney:

- Desire to further consider a general obligation bond measure and a parcel tax measure for placement on the November 8, 2022 ballot.
- Apply the parcel tax to commercial parking structures.
- Provide options to potentially include a split roll tax.
- Provide additional detail for how funding for how street/bicycle/pedestrian/paving improvements will be spent.
- Consider a policy to set aside a minimum funding allocation to maintain street paving.
- Provide additional detail regarding public infrastructure improvements.
- Provide additional metrics for potential uses of funding, such as miles of streets paved, PCI rating achieved, and number of affordable housing units possible.
- Provide options for the amount per square foot for the parcel tax.

No action taken.

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 8:59 p.m.

I hereby certify that the foregoing is a true and correct record of the special session meeting held on June 21, 2022.

---

Rose Thomsen, Deputy City Clerk

## **Communications**

**Item #1: Discussion and Direction Regarding Vision 2050 Program Plan and Potential Ballot Measures for the November 8, 2022 General Municipal Election**

1. Parks, Recreation and Waterfront Commission

## **Supplemental Communications and Reports 1**

- None

## **Supplemental Communications and Reports 2**

**Item #1: Discussion and Direction Regarding Vision 2050 Program Plan and Potential Ballot Measures for the November 8, 2022 General Municipal Election**

2. Gordon Wozniak

## **Supplemental Communications and Reports 3**

**Item #1: Discussion and Direction Regarding Vision 2050 Program Plan and Potential Ballot Measures for the November 8, 2022 General Municipal Election**

3. Presentation, submitted by the City Manager's Office

# MINUTES BERKELEY CITY COUNCIL SPECIAL MEETING

**MONDAY, JUNE 27, 2022**

**4:30 P.M.**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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## Preliminary Matters

**Roll Call:** 4:30 p.m.

**Present:** Bartlett, Hahn, Harrison, Robinson, Taplin, Wengraf, Arreguin

**Absent:** Droste, Kesarwani

Councilmember Kesarwani present at 4:34 p.m.

**Public Comment - Limited to items on this agenda only - None**

## CLOSED SESSION:

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

### **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(1):**

- a. *Franklin v. City of Berkeley*, United States District Court – Northern District of California, Case No. 3:20-cv-04090-LB

**Action:** M/S/C (Wengraf/Taplin) to approve the settlement of the lawsuit of Franklin v. City of Berkeley, et al., USDC No. 3:20-cv-0904, for \$65,000.

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

- b. *Deal v. City of Berkeley*, Alameda County Superior Court Case No. RG21110607

**Action:** No reportable action taken.

- c. *Emery v. City of Berkeley*, Alameda County Superior Court Case No. RG19047377

**Action:** M/S/C (Arreguin/Harrison) to approve the settlement of the lawsuit of Emery v. City of Berkeley, Alameda County Superior Court Case No. RG19047377 for \$50,000.

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

- d. *Druschel et al. v. City of Berkeley, Graham Chrisholm*, Alameda County Superior Court Case No. Case No. RG20073792

**Action:** M/S/C (Hahn/Wengraf) to approve the settlement of the lawsuit of Druschel et al. v. City of Berkeley, Graham Chrisholm, Alameda County Superior Court Case No. Case No. RG20073792 for \$30,000.

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

- e. *Dominguez, et al. v. City of Berkeley, et al.*, United States District Court – Northern District of California Case No. 3:21-cv-08599-SI

**Action:** M/S/C (Arreguin/Robinson) to approve the settlement of the lawsuit of *Dominguez, et al. v. City of Berkeley, et al.*, United States District Court – Northern District of California Case No. 3:21-cv-08599.

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

- f. *Secure Justice v. City of Berkeley*, Alameda County Superior Court Case No. 21CV003630

**Action:** No reportable action taken.

Councilmember Wengraf absent 7:15 p.m. – 7:31 p.m.

## OPEN SESSION:

Public Reports of actions taken pursuant to Government Code section 54957.1.

The City Council met in closed session and authorized the City Attorney to settle the following lawsuits:

- Franklin v. City of Berkeley, et al., USDC No. 3:20-cv-04090, for \$65,000.
- Emery v. City of Berkeley, Alameda County Superior Court Case No. RG19047377 for \$50,000.
- Druschel et al. v. City of Berkeley, Graham Chrisholm, Alameda County Superior Court Case No. Case No. RG20073792 for \$30,000.
- Dominguez, et al. v. City of Berkeley, et al., United States District Court – Northern District of California Case No. 3:21-cv-08599.

## Adjournment

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

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

Adjourned at 7:31 p.m.

I hereby certify that the forgoing is a true and correct record of the special closed meeting of June 27, 2022 as approved by the Berkeley City Council.

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Rose Thomsen, Deputy City Clerk

**MINUTES**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, June 28, 2022**  
**6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

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

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/82212647688>. 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: **822 1264 7688**. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*Please be mindful that the meeting will be recorded and all rules of procedure and decorum apply for in-person attendees and those participating by teleconference or videoconference.*

*To submit a written communication for the City Council's consideration and inclusion in the public record, email [council@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:** 6:01 p.m.

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

**Absent:** Harrison

Councilmember Harrison present at 6:06 p.m.

### Report from Closed Session

The City Council met in closed session on June 27, 2022 and authorized the City Attorney to settle the following lawsuits.

- Franklin v. City of Berkeley, et al., USDC No. 3:20-cv-04090, for \$65,000.
- Emery v. City of Berkeley, Alameda County Superior Court Case No. RG19047377 for \$50,000.
- Druschel et al. v. City of Berkeley, Graham Chrisholm, Alameda County Superior Court Case No. Case No. RG20073792 for \$30,000.
- Dominguez, et al. v. City of Berkeley, et al., United States District Court – Northern District of California Case No. 3:21-cv-08599.

The Council met in closed session on April 19, 2022 and authorized negotiating a settlement for up to \$60,000 in the case of Worthy v. City of Berkeley, United States District Court No. 3:20-cv-05558-EMC; the case is now settled for \$60,000.

### Ceremonial Matters:

1. Adjourned in memory of Elijah Wallace, son of Kelly Wallace, former Deputy Director of the Department of Health, Housing, and Community Services for the City of Berkeley

**City Manager Comments:** None

**Public Comment on Non-Agenda Matters:** 3 speakers.

**Action:** M/S/C (Arreguin/Robinson) to accept an urgency item from Councilmember Taplin pursuant to Government Code Section 54954.2(b)(2) entitled Resolution Supporting Unionization Efforts by REI Workers.

**Vote:** All Ayes.

## Consent Calendar

**Public Comment on Consent Calendar and Information Items Only:** 14 speakers.

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

**Vote:** All Ayes.

## Consent Calendar

**Urgent Item: Resolution Supporting Unionization Efforts by REI Workers**  
**From: Councilmember Taplin (Author), Councilmember Kesarwani (Co-Sponsor), Mayor Arreguin (Co-Sponsor)**

**Recommendation:** Adopt a Resolution in support of workers at REI unionizing under representation by United Food and Commercial Workers (UFCW) Local 5.

**Financial Implications:** None

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

**Action:** Councilmember Bartlett added as a co-sponsor. Adopted Resolution No. 70,417–N.S.

1. **Ashby and North Berkeley BART Station Areas: Proposed Zoning and General Plan Amendments, City and BART Joint Vision and Priorities, Associated Environmental Review Documents and City and BART Memorandum of Agreement**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No.7,815-N.S. to amend the Berkeley Municipal Code to create the Residential-BART Mixed-Use District Residential Zone District (Chapter 23.202.150) and additional conforming amendments to other sections of the Municipal Code in order to ensure that the provisions are comprehensively and consistently incorporated into the Berkeley Zoning Ordinance.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Adopted second reading of Ordinance No. 7,815-N.S.
  
2. **FY 2023 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 second reading of Ordinance No.7,816-N.S. setting the FY 2023 tax rate funding the debt service on the Street and Integrated Watershed Improvements General Obligation Bonds (Measure M, November 2012) at 0.0075%.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopted second reading of Ordinance No. 7,816-N.S.

## Consent Calendar

- 3. FY 2023 Tax Rate: Fund Debt Service on Neighborhood Branch Library Improvements Project General Obligation Bonds (Measure FF, November 2008 Election)**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No.7,817-N.S. setting the FY 2023 tax rate for funding the debt service on the Neighborhood Branch Library Improvements Project General Obligation Bonds (Measure FF, November 2008 Election) at 0.0058%.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopted second reading of Ordinance No. 7,817-N.S.
- 4. FY 2023 Tax Rate: Fund Debt Service on 2015 Refunding General Obligation Bonds (Measures G, S & I)**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,818-N.S. setting the FY 2023 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 0.0130%.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopted second reading of Ordinance No. 7,818-N.S.
- 5. FY 2023 Tax Rate: Fund the Debt Service on the Affordable Housing General Obligation Bonds (Measure O, November 2018 Election)**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,819-N.S. setting the FY 2023 tax rate funding the debt service on the Affordable Housing General Obligation Bonds (Measure O, November 2018) at 0.0200%.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopted second reading of Ordinance No. 7,819-N.S.
- 6. FY 2023 Tax Rate: Business License Tax on Large Non-Profits**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,820-N.S. setting the FY 2023 tax rate for Business License Tax on large non-profits at \$0.7573 (75.73 cents) per square foot of improvements.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopted second reading of Ordinance No. 7,820-N.S.

## Consent Calendar

7. **FY 2023 Tax Rate: Fund the Provision of Emergency Medical Services (Paramedic Tax)**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,821-N.S. setting the FY 2023 tax rate for funding the provision of emergency medical services to Berkeley residents at \$0.0433 (4.33 cents) per square foot of improvements.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopted second reading of Ordinance No. 7,821-N.S.
  
8. **FY 2023 Tax Rate: Fund Firefighting, Emergency Medical Response and Wildfire Prevention (Measure FF)**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,822-N.S. setting the FY 2023 tax rate for funding Firefighting, Emergency Medical Response and Wildfire Prevention (Measure FF) in the City of Berkeley at the annual tax rate of \$0.1126 (11.26 cents) per square foot of improvements.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300, Abe Roman, Fire, (510) 981-3473  
**Action:** Adopted second reading of Ordinance No. 7,822-N.S.
  
9. **FY 2023 Tax Rate: Fund the Maintenance of Parks, City Trees and Landscaping**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,823-N.S. setting the FY 2023 tax rate for funding all improvements for the maintenance of parks, City trees, and landscaping in the City of Berkeley at \$0.2039 (20.39 cents) per square foot of improvements.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopted second reading of Ordinance No. 7,823-N.S.
  
10. **FY 2023 Tax Rate: Fund the Debt Service on the Infrastructure and Facilities General Obligation Bonds (Measure T1, November 2016 Election)**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,824-N.S. setting the FY 2023 tax rate funding the debt service on the Infrastructure and Facilities Improvements General Obligation Bonds (Measure T1, November 2016) at 0.0160%.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopted second reading of Ordinance No. 7,824-N.S.

## Consent Calendar

- 11. FY 2023 Tax Rate: Fund Emergency Services for the Severely Disabled (Measure E)**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,825-N.S. setting the FY 2023 tax rate for funding the provision of emergency services for the disabled at \$0.01932 (1.932 cents) per square foot of improvements.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopted second reading of Ordinance No. 7,825-N.S.
- 12. FY 2023 Tax Rate: Fund Fire Protection and Emergency Response and Preparedness (Measure GG)**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No.7,826-N.S. setting the FY 2023 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.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300, Abe Roman, Fire, (510) 981-3473  
**Action:** Adopted second reading of Ordinance No. 7,826-N.S.
- 13. FY 2023 Special Tax Rate: Fund the Provision of Library Services**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No.7,827-N.S. setting the FY 2023 tax rate for funding the provision of Library Services in the City of Berkeley at \$0.2583 (25.83 cents) per square foot for dwelling units and \$0.3906 (39.06 cents) per square foot for industrial, commercial, and institutional buildings.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300, Tess Mayer, Library, (510) 981-6100  
**Action:** Adopted second reading of Ordinance No. 7,827-N.S.



## Consent Calendar

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

**From: City Manager**

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

**Financial Implications:** To be determined

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

**Action:** Adopted Resolution No. 70,418–N.S.

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

**From: City Manager**

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

**Financial Implications:** To be determined

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

**Action:** Adopted Resolution No. 70,419–N.S.

**16. Extension of Interim Director of Police Accountability Appointment**

**From: City Manager**

**Recommendation:** Adopt a Resolution extending the appointment of Katherine J. Lee to be Interim Director of Police Accountability and approving an employment contract to be effective July 1, 2022 at an annual salary of \$182,260.65.

**Financial Implications:** See report

Contact: LaTanya Bellow, City Manager's Office, (510) 981-7000

**Action:** Adopted Resolution No. 70,420–N.S.

## Consent Calendar

**17. Minutes for Approval**

**From: City Manager**

**Recommendation:** Approve the minutes for the Council meetings of May 5 (closed and special), May 10 (regular), May 17 (closed), May 24 (regular) and May 31 (regular).

**Financial Implications:** None

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

**Action:** Approved the minutes as submitted.

**18. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on June 28, 2022**

**From: City Manager**

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

**Financial Implications:** \$4,856,000

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

**Action:** Approved recommendation.

**19. FY 2023 Revision to the Investment Policy and Designation of Investment Authority**

**From: City Manager**

**Recommendation:** Adopt a Resolution accepting the changes to the Investment Policy and to confirm the delegation of investment authority to the Director of Finance to make investments for FY 2023.

**Financial Implications:** None

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

**Action:** Adopted Resolution No. 70,421–N.S.

**20. Appropriations Limit for FY 2023**

**From: City Manager**

**Recommendation:** Adopt a Resolution establishing the appropriations limit at \$328,834,462 for FY 2023 pursuant to Article XIII B of the Constitution of the State of California based on the calculations for the appropriations limit.

**Financial Implications:** See report

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

**Action:** Adopted Resolution No. 70,422–N.S.

## Consent Calendar

- 21. Revenue Grant Agreement: Medi-Cal Administrative Activities Funding from State of California to Conduct Health Promotion Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to submit grant agreements to the State of California, to accept the grants, and to execute any resultant revenue agreements and amendments to conduct health promotion for the Medi-Cal Administrative Activities (MAA) program for an amount not to exceed \$4,200,000 for the period of the agreement, Fiscal Years 2023 through 2025.  
**Financial Implications:** See report  
 Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 70,423–N.S.
- 22. Amending Contract No. 32100184 with O.C. Jones & Sons, Inc. for the Berkeley Marina Roadway Improvements Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution amending Contract No. 32100184 with O.C. Jones & Sons, Inc. for the Berkeley Marina Roadway Improvements Project by adding \$200,000 for a total not-to-exceed contract amount of \$6,375,185.82.  
**Financial Implications:** See report  
 Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 70,424–N.S.
- 23. Vision Zero Annual Report**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution 1) accepting the City of Berkeley Vision Zero Annual Report for 2021-2022; 2) affirming the actions and priorities as stated in the 2020 Berkeley Vision Zero Action Plan; and 3) directing the City Manager to form a Vision Zero Coordinating Committee for guiding the implementation of the 2020 Vision Zero Action Plan, including coordinating with the ongoing Berkeley Department of Transportation (BerKDOT) referral response and the Reimagining Public Safety Task Force, with the goal of developing a Vision Zero Traffic Enforcement policy before proceeding with the “Safer Streets by Everyone: Enforcement” actions described in the Vision Zero Action Plan.  
**Financial Implications:** Staff time  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,425–N.S.
- 24. Purchase Order: PB Loader Corporation for Two Chipper Trucks**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcwell (formerly NJPA) Contract No. 080521-PBL bid procedures and authorizing the City Manager to execute a purchase order for two chipper trucks with PB Loader Corporation in an increased amount not to exceed \$400,000.  
**Financial Implications:** See report  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,426–N.S.

## Consent Calendar

- 25. Purchase Order: Sonsray Machinery for one CASE Tractor Loader**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcwell (formerly NJPA) Contract No. 03219-CNH bid procedures and authorizing the City Manager to execute a purchase order for one CASE Tractor Loader with Sonsray Machinery in an amount not to exceed \$165,000.  
**Financial Implications:** Equipment Replacement Fund - \$165,000.  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,427–N.S.
- 26. Purchase Order Amendment: Diesel Direct West, Inc. for Fuel for City Vehicles and Equipment**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend the multi-year purchase orders with Diesel Direct West, Inc. for fuel for City vehicles and equipment, increasing the combined amount by \$1,900,000 for a total amount not to exceed \$10,744,000, and extending the term through December 31, 2023.  
**Financial Implications:** See report  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,428–N.S.
- 27. Contract: Sposeto Engineering Inc. for FY 2022 Sidewalk Repair Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the FY 2022 Sidewalk Repair Project; accepting the bid of Sposeto Engineering Inc. as the lowest responsive and responsible bidder; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project, in accordance with the approved plans and specifications in an amount not to exceed \$2,512,152.  
**Financial Implications:** Various Measures - \$2,512,152  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,429–N.S.
- 28. Contract No. 102354-1 Amendment: Direct Line Tele Response for Citywide After-Hours Answering Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment for up to \$200,000 to Contract No. 102354-1 with Direct Line Tele Response to provide continued customer service support after normal business hours, on weekends and holidays, for a total contract amount not to exceed \$632,750, and extending the contract term through December 31, 2024.  
**Financial Implications:** See report  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,430–N.S.

## Consent Calendar

- 29. Contract No. 10458 Amendment: Alta Planning and Design, Inc. for On-Call Transportation Planning Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 10458 with Alta Planning and Design for On-Call Transportation Planning Services, increasing the contract by \$150,000, for a total amount not to exceed \$750,000.  
**Financial Implications:** See report  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,431–N.S.
- 30. Contract No. 10516 (ERMA Contract No. 114128-1) Amendment: Community Design and Architecture for On-Call Transportation Planning Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 10516 (ERMA Contract No. 114128-1) with Community Design and Architecture for On-Call Transportation Planning Services, increasing the contract by \$150,000, for a total amount not to exceed \$650,000.  
**Financial Implications:** See report  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,432–N.S.
- 31. Contract No. 117563-1 Amendment: Clean Harbors, Inc. for Hazardous Waste Management Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract amendment with Clean Harbors, Inc. for hazardous waste management, removal, and disposal services for the City of Berkeley increasing the contract amount by \$200,000 for a new not to exceed amount of \$650,000 and extend the contract term through June 30, 2024.  
**Financial Implications:** Various Funds - \$135,500  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,433–N.S.
- 32. Contract No. 108007-1 Amendment: Don's Tire Service, Inc. for Tire Repair Services for City Fleet Vehicles**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 108007-1 with Don's Tire Services, Inc. for repair and replacement services for automobile and truck tires for City of Berkeley fleet vehicles for an additional \$150,000, for a new total not to exceed \$423,534, and extend the authorized term through June 30, 2024.  
**Financial Implications:** See report  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,434–N.S.

## Consent Calendar

### 33. **Contract Amendment: East Bay Municipal Utilities District (EBMUD) for Sanitary Sewer Charge and Billing Collection**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to amend the agreement (Contract 9735) with East Bay Municipal Utility District (EBMUD) to administer a Customer Assistance Program (CAP) which is an expanded discount program for qualifying City of Berkeley sanitary sewer customers. Eligible customers under the CAP program will receive a 35% discount on their sewer charges.

**Financial Implications:** See Report

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

**Action:** Adopted Resolution No. 70,435–N.S.

### 34. **Recommendation to Use Measure FF Funds as Intended by Voters for Firefighting, Emergency Medical Response, 9-1-1 Communications Services, Hazard Mitigation, and Wildfire Prevention and Preparedness; to Not Reduce General Fund Allocations Towards Fire Services; and to Support Effective Commission Oversight**

**From: Disaster and Fire Safety Commission**

**Recommendation:** The Disaster and Fire Safety Commission (DFSC) supports revenue generated by the voter-approved Fire, Emergency Services and Wildfire Prevention Tax (Measure FF) going towards services described in the Fire Department's 5-year implementation plan, including:

Wildfire Prevention and Response, Training and Development, EMS Operations, and Dispatch. The Commission has reviewed and provided input on expenditure plans described by the Fire Department and is engaged in the process of providing input and oversight prior to the budget being finalized. As these projects advance and line-item budgets continue to be developed in more detail, the Commission expects to follow up with more specific recommendations on funding allocations.

In order to provide effective oversight of Measure FF spending as resolved by City Council, the Commission needs to have the tools and information necessary to do so. This includes: 1. Thorough and detailed information about spending plans, including detailed line items and staffing numbers, before budgets are finalized and locked in place (as of December 2021, the commission has not been provided a measure FF budget); and 2. An accounting system that will clearly designate spending from the fund, including job codes that are specific to Measure FF, so that the Commission can easily determine staff time spent on Measure FF-funded activities.

Additionally, in allocating funds towards these critical safety improvements, it is imperative that the City ensures that Measure FF funds are used to supplement, rather than replace, general funding of Berkeley Fire Department costs.

**Financial Implications:** See report

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

**Action:** Approved recommendation.

## Consent Calendar

- 35. Appointment of Mary-Lee Smith and Glenn Turner to Mental Health Commission for the City of Berkeley**  
**From: Mental Health Commission**  
**Recommendation:** Adopt a Resolution appointing: Mary-Lee Smith as a representative of the Special Public Interest Category (consumer), to complete her first 3- year term beginning June 29, 2022 and ending June 28, 2025; and Glenn Turner as a representative of the Special Public Interest Category (family member), to complete her first 3-year term beginning June 29, 2022 and ending June 28, 2025.  
**Financial Implications:** None  
Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400  
**Action:** Adopted Resolution No. 70,436–N.S.

## Council Consent Items

- 36. Suspension of Sister City Relations with Dmitrov, Russia and Ulan-Ude, Russia**  
**From: Mayor Arreguin (Author), Councilmember Wengraf (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution to suspend Sister City relations with the cities of Dmitrov, Russia and Ulan-Ude until Russian hostilities against Ukraine come to an end.  
**Financial Implications:** Staff time  
Contact: Jesse Arreguin, Mayor, (510) 981-7100  
**Action:** Adopted Resolution No. 70,437–N.S.
- 37. Support for AB 2156 – Firearms: manufacturers**  
**From: Councilmember Taplin (Author), Councilmember Wengraf (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Send a letter to Assemblymember Buffy Wicks and the state legislature in support of Assembly Bill 2156, which would prohibit the manufacture of unlicensed firearms and precursor parts, commonly known as “ghost guns.”  
**Financial Implications:** Staff time  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120  
**Action:** Approved recommendation.
- 38. Support for AB-256 (Racial Justice Act for All)**  
**From: Councilmember Taplin (Author), Councilmember Wengraf (Co-Sponsor), Councilmember Robinson (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Send a letter to Assemblymember Ash Kalra (D-San Jose) and the state legislature in support of Assembly Bill 256, the Racial Justice Act for All, which would apply Kalra’s previous bill, AB 2542 (2020) retroactively to enable appeals of past convictions and sentences made with racial bias.  
**Financial Implications:** Staff time  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120  
**Action:** Approved recommendation.

## Council Consent Items

- 39. Parking Minima for Mixed-Use Projects and Manufacturing Districts**  
**From: Councilmember Taplin (Author)**  
**Recommendation:** Refer to the City Manager and Planning Commission to develop amendments to Berkeley Municipal Code Chapter 23 Section 322 and return an Ordinance to Council with such amendments to include the following:  
 (a) In BMC 23.322.030(B)(1), Table 23.322-2: remove “(residential use only)” from Mixed-Use Residential category; reduce “Live/Work” off-street parking requirements to, at most, 1 space per unit; reduce “Manufacturing” off-street parking requirements to, at most, 1 space per 1,500 gross square feet; reduce off-street parking requirements for “All non-residential uses except uses listed below” to, at most, 1 space per 1,000 square feet.  
 (b) In BMC 23.322.020(C)(2)(i): reduce district minimum parking requirements to 1 space per 1,000 square feet at most in Manufacturing Districts.  
**Financial Implications:** Staff time  
 Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120  
**Action:** Approved recommendation.
- 40. Holding Social Media Companies Accountable for Impacts on Children: Supporting AB 2408 and AB 2273 (Wicks/Cunningham)**  
**From: Councilmember Hahn (Author), Councilmember Wengraf (Co-Sponsor)**  
**Recommendation:** Send a letter in support of AB 2408 “Child users: addiction” and AB 2273 “The California Age-Appropriate Design Code Act” (Wicks/Cunningham) to forward to appropriate colleagues, expressing the City of Berkeley’s support for these bills, which would allow parents to sue social media platforms if their children become addicted and require tech firms to create child-safe producing by creating age-appropriate design code for websites and apps likely to be accessed by children.  
**Financial Implications:** Staff time  
 Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150  
**Action:** Approved recommendation.

## Action Calendar – Public Hearings

- 41. Approval and Levy of 2018 Clean Stormwater Fee in FY 2023**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and upon conclusion adopt a Resolution approving the proposed adjusted fees for the 2018 Clean Stormwater Fee and ordering the levy of the fees in Fiscal Year 2023.  
**Financial Implications:** See report  
 Contact: Liam Garland, Public Works, (510) 981-6300
- Public Testimony:** The Mayor opened the public hearing. 0 speakers.  
 M/S/C (Arreguin/Wengraf) to close the public hearing.  
**Vote:** All Ayes.
- Action:** M/S/C (Wengraf/Harrison) to adopt Resolution No. 70,438–N.S.  
**Vote:** All Ayes.



## Action Calendar – Public Hearings

### 42. Levy and Collection of Fiscal Year 2023 Street Lighting Assessments

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion adopt 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 the Fiscal Year 2023.

**Financial Implications:** See report

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

**Public Testimony:** The Mayor opened the public hearing. 1 speaker. M/S/C (Arreguin/Robinson) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Wengraf) to adopt Resolution No. 70,439–N.S. (District No. 1982-1) and Resolution No. 70,440–N.S. (District 2018).

**Vote:** All Ayes.

### 43. Transfer Station Rates for FY 2023

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon its conclusion adopt a City Council Resolution authorizing the City Manager to:

1. Approve the proposed Transfer Station rates, environmental compliance fee and special material handling charges to be effective August 1, 2022; and
2. Annually review the Transfer Station rates, environmental compliance fee, and special material handling charges, and increase them by a percentage equal to the percentage change in the Consumer Price Index statistics published by the United States Bureau of Labor, as needed; and
3. Rescind the rates and special handling fees approved by City Council Resolution No. 64,575-N.S., adopted July 14, 2009, and as amended by Resolution No. 64,712-N.S., adopted December 6, 2009.

**Financial Implications:** See report

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

**Public Testimony:** The Mayor opened the public hearing. 0 speakers. M/S/C (Arreguin/Harrison) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Robinson) to adopt Resolution No. 70,441–N.S. It was noted for the record that the following sentence on page 4 of the staff report is revised to read as follows:

*In 2009~~2014~~, the Transfer Station rates were revised and approved without allowance for annual adjustments to these rates to account for any inflation impacts on operational expenses.*

**Vote:** All Ayes.

## Action Calendar – New Business

### 44. FY 2023 & FY 2024 Biennial Budget Adoption

**From:** City Manager

**Recommendation:** Adopt a Resolution:

1. Adopting the FY 2023 & FY 2024 Biennial Budget as contained in the City Manager's FY 2023 & FY 2024 Proposed Biennial Budget that includes the Proposed Capital Budget, presented to Council on June 14, 2022, and as amended by subsequent Council action.
2. Authorizing the City Manager to provide applicable advances to selected community agencies receiving City funds in FY 2023, as reflected in Attachment 2, and as amended by subsequent Council action.

**Financial Implications:** See report

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

**Action:** 31 speakers. Supplemental material received from Mayor Arreguin in Supplemental Packet #2 deemed received.

**Action:** M/S/C (Arreguin/Wengraf) to accept supplemental material from the City Manager and revised material from Mayor Arreguin on Item 44.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Harrison) to include for consideration in the adoption of the FY 2023 and FY 2024 Biennial Budget, the line item to add an additional .5 FTE in the legislative assistant classification in each of the eight Council districts.

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

**Action:** M/S/C (Arreguin/Harrison) to adopt Resolution No. 70,442–N.S. as revised in the supplemental materials received from the City Manager at the meeting, and reflecting the additional appropriations in the revised materials received from Mayor Arreguin at the meeting (including adjustments to the Measure P and Measure U-1 budgets), and further revised as follows:

- Modify the proposed expenditure for the line item entitled “Increase City Council Office Expenditure Accounts” to increase each City Council office expenditure account by \$54,769.50 for FY 2023 and FY 2024, and that the amount is based on .5 FTE in the legislative assistant classification.
- Modify the line item entitled “Dedicated Parking Enforcement in Fire Zones 2 & 3” to reflect that funding will come from the General Fund, and that an adjustment may be made in the future to cover the costs with Measure FF funds.
- Appropriate any remaining positive fund balance to the Section 115 Trust, and include the proposed balancing measures as submitted in the supplemental material received from the City Manager at the meeting.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Hahn) to suspend the rules and extend the meeting to 11:30 p.m.

## Action Calendar – New Business

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Robinson) to suspend the rules and extend the meeting to 11:45 p.m.

**Vote:** All Ayes.

### 45. FY 2023 Annual Appropriations Ordinance

**From:** City Manager

**Recommendation:** Adopt first reading of an Ordinance adopting the FY 2023 Annual Appropriations Ordinance (AAO) in the amount of \$737,068,276 (gross appropriations) and \$620,623,866 (net appropriations).

**Financial Implications:** See report

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

**Action:** M/S/C (Arreguin/Robinson) to accept revised material from the City Manager on Item 45.

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

**Action:** 0 speakers. M/S/C (Arreguin/Wengraf) to adopt first reading of Ordinance No. 7,828-N.S. as revised in the material received at the meeting from the City Manager to adopt the FY 2023 Annual Appropriations Ordinance (AAO) in the amount of \$754,176,624 (gross appropriations) and \$625,939,999 (net appropriations). Second reading scheduled for July 12, 2022.

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

Councilmember Harrison absent 11:32 p.m. – 11:37 p.m.

Councilmember Droste absent 11:32 p.m. – 11:37 p.m.

### 46. Borrowing of Funds and the Sale and Issuance of FY 2022-23 Tax and Revenue Anticipation Notes

**From:** City Manager

**Recommendation:** Adopt a Resolution approving the borrowing of \$28,000,000 and the sale and issuance of Fiscal Year 2022-23 Tax and Revenue Anticipation Notes.

**Financial Implications:** See report

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

**Action:** 0 speakers. M/S/C (Arreguin/Robinson) to adopt Resolution No. 70,443–N.S.

**Vote:** All Ayes.

## Action Calendar – Public Hearings

### 47. goBerkeley SmartSpace Pilot Program Implementation Recommendations From: City Manager

**Recommendation:** Conduct a public hearing, and upon conclusion:

1. Adopt an Ordinance repealing and reenacting Berkeley Municipal Code Chapter 14.52 Parking Meters to enable demand-responsive paid parking for non-RPP permit holders in the 2700 blocks of Durant Avenue, Channing Way, and Haste Street and the 2300-2400 blocks of Piedmont Avenue (a portion of Residential Preferential Parking Program Area I) for the duration of the grant-funded goBerkeley SmartSpace pilot program, and allow payment via license plate entry pay stations (“pay-by-plate”) to improve convenience and enforcement; and
2. Adopt a Resolution approving the pilot proposals to be implemented and evaluated as part of the goBerkeley SmartSpace pilot program.

**Financial Implications:** See report

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

**Public Testimony:** The Mayor opened the public hearing. 7 speakers.

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

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Droste) to:

1. Adopt first reading of Ordinance No. 7,829-N.S. Second reading scheduled for July 12, 2022.
2. Adopt Resolution No. 70,444–N.S.

**Vote:** All Ayes.

Recess 7:42 p.m. – 7:58 p.m.

## Action Calendar – New Business

### 48a. Request for Timely Fiscal Information on Measures FF and GG

#### From: Disaster and Fire Safety Commission

**Recommendation:** The Disaster and Fire Safety Commission (“Commission” or “DFSC”) respectfully recommends that Council direct the Fire Department and City Manager provide the Commission with the following fiscal information regarding Measures GG and FF:

1. Base budget documentation for the 22/23 FY (current year) that was approved by Council;
2. Quarterly, preferably monthly, expenditure reports, including a brief narrative describing each line item, with initial reports starting by March 30, 2022, with a published calendar for reporting and
3. The proposed budgets submitted to Council's Budget and Finance Policy Committee in April, each subsequent revision presented to Council, and the budget that is adopted at the end of the budget process.

The Commission takes seriously the role it has been given by the voters and the City Council to provide oversight and advice to the City Council about the use of Measure GG and FF funds. DFSC commissioners intend to carry out this role but must rely on information from the City Manager and the Fire Department to do so.

**Financial Implications:** See report

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

### 48b. Companion Report: Request for Timely Fiscal Information on Measures FF and GG

#### From: City Manager

**Recommendation:** The City Manager acknowledges the need to provide accurate, timely, and relevant information to the Disaster and Fire Safety Commission (DFSC). Fire Department Staff has committed to providing the DFSC line item budgets on Measures GG and FF funding plans prior to the budget process cycle as much as feasible. The DFSC can take this opportunity to discuss potential recommendations or issues with Staff with regards to the future spending of the funds. The Fire Department will continue to provide biennial reports on Measure FF as outlined by City Council in accordance to the Adopted Council Resolution No. 69,575–N.S.

**Financial Implications:** See report

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

**Action:** Item 48a and Item 48b moved to the Consent Calendar. Approved recommendation for Item 48a and approved recommendation for Item 48b.

## Information Reports

### 49. Voluntary Time Off Program for Fiscal Year 2023

#### From: City Manager

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

**Action:** Received and filed.

## Information Reports

- 50. Annual Update on Wells Fargo Bank’s Community Involvement and Investment in the City of Berkeley**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Received and filed.
- 51. FY 2022 Second Quarter Investment Report: Ended December 31, 2021**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Received and filed.
- 52. FY 2022 Third Quarter Investment Report: Ended March 31, 2022**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Received and filed.
- 53. HWCAC 2018-2023 Work Plan**  
**From: Human Welfare and Community Action Commission**  
Contact: Mary-Claire Katz, Commission Secretary, (510) 981-5400  
**Action:** Received and filed.
- 54. Annual Report on LPC Actions**  
**From: Landmarks Preservation Commission**  
Contact: Fatema Crane, Commission Secretary, (510) 981-7400  
**Action:** Received and filed.
- 55. Zero Waste Commission Fiscal Year 2022-23 Work Plan**  
**From: Zero Waste Commission**  
Contact: Heidi Obermeit, Commission Secretary, (510) 981-6300  
**Action:** Received and filed.

**Public Comment – Items Not Listed on the Agenda - 1 speakers.**

## Adjournment

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

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

Adjourned at 11:37 p.m.

I hereby certify that the foregoing is a true and correct record of the regular session meeting held on June 28, 2022.

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Rose Thomsen, Deputy City Clerk

## **Communications**

### **Item #1: Ashby and North Berkeley BART Station Areas: Proposed Zoning and General Plan Amendments, City and BART Joint Vision and Priorities, Associated Environmental Review Documents and City and BART Memorandum of Agreement**

1. Janis Ching
2. Ann Campbell
3. Angie Schertle
4. Judith Baker

### **Item #38: Support for AB-256 (Racial Justice Act for All)**

5. Micael Navarro Lopez
6. Jennifer Coffey
7. Sarah Bush
8. Lilia Goldenberg
9. Brian Hinch

### **Berkeley Marina Master Plan/Cesar Chavez Park**

10. Stefani Berger
11. Ryan Turner
12. Erica Citret Roberts

### **Covid-19/Masks/Vaccinations/Public Health**

13. Elsa, Ortiz, President, AC Transit Board of Directors
14. Anne-Lise Francois
15. Nina Lyons
16. Vivian Warkentin

### **Hopkins Corridor**

17. Shirley Kirsten (2)
18. Lynn Winsten
19. Zelda (2)

### **Affordable Housing**

20. David Lerman
21. Avram
22. Geoff Lomax

### **Fair Work Week**

23. Rebeca Rozen, on behalf of the Hospital Council of Northern & Central California

24. Julie Sinai, on behalf of LifeLong Medical Care

**Car Free Homes – 26-Story Building at University and Shattuck**

25. Robin Kibby

**Bird Safe Glass**

26. Summer Brenner

27. Gael Alcock

**Property Tax Explosion**

28. Carol Corradi

**People’s Park**

29. Diana Bohn

30. Max Ventura

**3219 King Street – Property Taxes Placed on Home**

31. Gloria Carson

**2420 Ashby Avenue – Medical Zoning**

32. Christine Brozowski

**Healthy Black Families Conference**

33. Ayanna Davis, on behalf of Healthy Black Families, Inc.

**City’s New Website**

34. Mark Lowe

**Berkeley Social Housing Pilot**

35. Derek Sagehorn

**African American Holistic Resource Center**

36. Diana Bohn

**Shattuck Cinemas**

37. Charlene Woodcock

**Rodeway Inn**

38. Max Ventura

**Juneteenth Festival**

39. Delores Nochi Cooper

**Thanks from Kala Art Institute**



40. Ellen Lake, on behalf of Kala Art Institute

**Removal of Child from Parents Recommended**

41. Darwin Greenwell

**Community College Constitutional Rights**

42. Benjamin Stein

**Smoking in a Multi-Unit Complex**

43. Anne Marei

**Hazards Created by Bicycle and Skateboard Users**

44. Meryl Siegal

**Huge Piles of Wood Chips**

45. Max Ventura

**Recurrent Roach Issues at 2020 Kittredge (a CalCHA Building)**

46. Alex Merenkov

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

47. Sam Frankel

48. Margaret Alducin

49. Yoni Mayeri

50. 8 similarly-worded form letters

**Supplemental Communications and Reports 1**

**Item #1: Ashby and North Berkeley BART Station Areas: Proposed Zoning and General Plan Amendments, City and BART Joint Vision and Priorities, Associated Environmental Review Documents and City and BART Memorandum of Agreement**

51. Michael Brodheim

52. Susan Kuchinskas

**Item #44: FY 2023 & FY 2024 Biennial Budget Adoption**

53. Ben Paulous

**Supplemental Communications and Reports 2**

**Urgent Item: Resolution Supporting Unionization Efforts by REI Workers**

54. Urgent item, submitted by Councilmember Taplin

**Item #44: FY 2023 & FY 2024 Biennial Budget Adoption**

55. Supplemental material, submitted by Mayor Arreguin

56. Justin Lee

57. Nicole Chabot

58. Vernon Theiss
59. Joshua Jacobs, on behalf of Homeless Services Panel of Experts
60. Carole Marasovic, Chair of the Homeless Services Panel of Experts Chair
61. Diana Bohn
62. Geoff Lomax
63. Kelly Hammargren
64. Bob Fabry and Susan Taylor
65. Nancy Rader
66. Julie Lebel
67. Hannah Meleokaiao Ayasse
68. Elissa Lee
69. 16 similarly-worded form letters

### **Supplemental Communications and Reports 3**

#### **Item #36: Suspension of Sister City Relations with Dmitrov, Russia and Ulan-Ude, Russia**

70. Igor Tregub

#### **Item #44: FY 2023 & FY 2024 Biennial Budget Adoption**

71. Supplemental material, submitted by the City Manager's Office
72. Supplemental material, submitted by Mayor Arreguin
73. Presentation, submitted by the City Manager's Office
74. Jim McGrath
75. John-Mario Arcilla Sevilla
76. Liz Ozol
77. Avilee Goodwin
78. Jochelle Perena
79. Cindy Chan
80. Nancy Ng
81. Phoenicia Pettyjohn
82. Andrea Mullarkey, on behalf of SEIU 1021
83. Angela Jernigan

#### **Item #45: FY 2023 Annual Appropriations Ordinance**

84. Revised material, submitted by the City Manager's Office

### **Action Calendar – Public Hearings**

#### **Item #47: goBerkeley SmartSpace Pilot Program Implementation Recommendations**

85. Presentation, submitted by the Planning Department



Office of the City Manager

CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Sharon Friedrichsen, Budget Manager  
 Subject: Contract: Downtown Berkeley YMCA for Fitness Center Memberships for City Employees

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with the Downtown Berkeley YMCA in the amount of \$109,440 for fitness center memberships for City employees for the period July 1, 2022 through June 30, 2023.

FISCAL IMPACTS OF RECOMMENDATION

FY 2023 Contract Cost: \$109,440 (190 members @ \$48 per month \* 12 months)

FY 2022 Contract Cost: \$163,008 (283 members @ \$48 per month \* 12 months)

The FY 2023 contract represents a decrease of \$53,568 from the FY 2022 contract. The decrease is due to the number of memberships decreasing from 283 members to 190 members. Although the contract cost of \$109,440 for FY 2023 is based on 190 memberships, this amount is a flat fee for the duration of the fiscal year regardless of whether memberships increase or decrease during the fiscal year. The FY 2023 Budget includes funding for this contract in fringe benefit accounts in department budgets that is collected and paid out from the Payroll Deduction Trust Fund (Fund 013). The General Fund will cover approximately \$50,463 of the contract cost and the remaining \$58,977 will be covered by other funds.

CURRENT SITUATION AND ITS EFFECTS

The current agreement began on July 1, 2021 and ends on June 30, 2022. A new contract is needed for FY 2023, which will continue the memberships for City employees and Legislative Assistants at a low cost.

BACKGROUND

Since 1989, the City has had an agreement with the YMCA to provide low cost fitness memberships for City employees and officials.

The City's labor contracts require the City to pay 75% of the total membership cost and employees pay the remaining 25%. Beginning on July 1, 2021, the full membership cost was \$64 per month, which meant the City's share was \$48 per month and the employee's share was \$16 per month. For FY 2023, the membership cost will remain at \$64 per month.

This benefit is included in all of the collective bargaining agreements and would terminate at the same time as the longest union contract containing the benefit. The City would need to hold meet and confer sessions with the unions if it wishes to eliminate this benefit.

The Downtown Berkeley YMCA contract is a Strategic Plan Priority, advancing our goal to attract and retain a talented and diverse City government workforce.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### CLIMATE IMPACTS

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

#### RATIONALE FOR RECOMMENDATION

City contracts for personal services over \$50,000 require authorization from the City Council before the City Manager can execute the contract.

#### ALTERNATIVE ACTIONS CONSIDERED

None

#### CONTACT PERSON

Sharon Friedrichsen, Budget Manager, 981-7000  
Donald Ellison, Director of Human Resources, 981-6800

Attachments:

1: Resolution

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

CONTRACT: DOWNTOWN BERKELEY YMCA FOR LOW COST FITNESS CENTER  
MEMBERSHIPS FOR CITY EMPLOYEES

WHEREAS, the City has had an agreement with the Downtown Berkeley YMCA to provide low cost fitness memberships for City employees and legislative assistants; and

WHEREAS, the City's labor contracts require the City to pay 75 percent of the total membership cost; and

WHEREAS, the current agreement began on July 1, 2021 and ends on June 30, 2022 and a new contract is proposed for FY 2023; and

WHEREAS, the FY 2023 Budget includes funding for this contract in fringe benefit accounts in department budgets that is collected and paid out from the Payroll Deduction Trust Fund (Fund 013).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that that the City Manager is authorized to execute a contract and any amendments with the Downtown Berkeley YMCA for low cost fitness center memberships for City of Berkeley employees and legislative assistants for the period July 1, 2022 to June 30, 2023 in the amount not to exceed \$109,440. 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  
July 26, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Keith May, Acting Fire Chief, Fire Department

Subject: Contract: Lehr for Emergency Response Vehicle Supplies/Equipment and Installation Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to enter into contract with Stommel Inc. dba Lehr, for emergency response vehicle supplies/equipment and installation services, with the term of the contract from August 1, 2022 to September 30, 2022 in an amount not to exceed \$350,000. The contract may be extended for up to five additional years and shall not exceed \$750,000 in total.

FISCAL IMPACTS OF RECOMMENDATION

The term of this contract is from August 1, 2022 to September 30, 2022 in an amount not to exceed \$350,000. The contract may be extended for up to five additional years and shall not exceed \$750,000 total. Funding is budgeted in FY 2023 in account codes 011-72-742-835-0000-000-422-664120/011-72-742-837-0000-000-423-664120 (General Fund), 164-72-745-000-0000-000-423-664120/164-72-742-837-0000-000-423-664120 (Measure FF), and 778-72-742-835-0000-000-422-664120 (Measure Q).

CURRENT SITUATION AND ITS EFFECTS

The Fire Department (Department) replaces emergency vehicles on a routine basis and will be adding additional vehicles to the fleet over the next four fiscal years to support the new programs and services being put in place as the Department goes through its internal re-design. Having an identified vendor established through a competitive process will save considerable staff time that would otherwise be associated with each vehicle upfitting with emergency equipment. In addition to being the successful vendor in the Placer County contract, this vendor has consistently been able to provide the lowest of three quotes to City Staff for multiple projects over the past two years.

BACKGROUND

The County of Placer (County) conducted a competitive process that opened on July 30, 2019 and closed on August 13, 2019. The County was "...soliciting bids for the purchase and installation of emergency response vehicle equipment & related supplies for the Placer County sheriff's Office and Placer County Fire Department. Placer County

intends to award a supplier contract for the purchase emergency response vehicle equipment and installation services on an as-needed basis.” Upon review Placer County selected Stommel Inc. dba Lehr as the best most responsive proposer to meet the specifications, thusly awarding the firm with Contract Number Agreement No. SCN104242.

Section 4.3 of the County’s RFP provides “piggyback” authority. “Other public agencies may elect to “piggyback” on the County’s resulting agreement(s). It will be the responsibility of the other agencies to execute separate contracts with the successful bidder(s) at the same bid pricing (refer to this Bid’s General Terms and Conditions, Section 22) through the end of the initial contract period. Any subsequent renewal pricing and terms successfully negotiated between Placer County and the successful bidder(s) would be made available to those other agencies.” The piggyback process requires City to align with the terms of the County contract, including the contract sunset date, hence the short base period of two months. The Department expects that up to five vehicles may arrive before the end of September 2022, which is why it still needs the contract in place for that short window of time.

The Contract between Stommel Inc. dba Lehr ends on September 30, 2022, if the County extends the Contract, the City will also extend its contract with Lehr for up to five additional years.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

This contract does not create environmental sustainability or climate change impacts.

#### RATIONALE FOR RECOMMENDATION

When vehicles are purchased for emergency services they are required to be upfitted with various equipment to make them functional for emergency responders. This includes communications equipment, visual and audible alerting devices, equipment storage, and various types of equipment that is used by personnel performing Incident Command roles on the emergency scene. The City has routinely and historically used contractors to provide this service, but this has generally been coordinated as vehicles arrive. This new contract will create efficiently and save valuable staff time that can be focused elsewhere.

#### ALTERNATIVE ACTIONS CONSIDERED

Continue with the current inefficient process that uses a large amount of staff time.

#### CONTACT PERSON

Keith May, Acting Chief, Fire Department, (510) 981-3473

Attachments:

1: Resolution



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

CONTRACT: STOMMEL INC. DBA LEHR FOR EMERGENCY RESPONSE VEHICLE SUPPLIES/EQUIPMENT AND INSTALLATION SERVICES

WHEREAS, the Fire Department (Department) replaces emergency vehicles on a routine basis,

WHEREAS, the Department will be adding additional vehicles to the fleet over the next four fiscal years to support the new programs and services being put in place as the Department goes through its internal re-design, and

WHEREAS, having an identified vendor established through a competitive process will save considerable staff time that would otherwise be associated with each vehicle upfitting with emergency equipment, and

WHEREAS, the County of Placer (County) conducted a competitive process that opened on July 30, 2019 and closed on August 13, 2019. The County was "...soliciting bids for the purchase and installation of emergency response vehicle equipment & related supplies for the Placer County sheriff's Office and Placer County Fire Department. Placer County intends to award a supplier contract for the purchase emergency response vehicle equipment and installation services on an as-needed basis.", and

WHEREAS, upon review Placer County selected Stommel Inc. dba Lehr as the best most responsive proposer to meet the specifications, thusly awarding the firm with Contract Number Agreement No. SCN104242, and

WHEREAS, Section 4.3 of the County's RFP provides the "piggyback" authority. "Other public agencies may elect to "piggyback" on the County's resulting agreement(s). It will be the responsibility of the other agencies to execute separate contracts with the successful bidder(s) at the same bid pricing (refer to this Bid's General Terms and Conditions, Section 22) through the end of the initial contract period. Any subsequent renewal pricing and terms successfully negotiated between Placer County and the successful bidder(s) would be made available to those other agencies.", and

WHEREAS, funding is budgeted in 011-72-742-835-0000-000-422-664120/011-72-742-837-0000-000-423-664120 (General Fund), 164-72-745-000-0000-000-423-664120/164-72-742-837-0000-000-423-664120 (Measure FF), and 778-72-742-835-0000-000-422-664120 (Measure Q).

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 Stommel Inc. dba Lehr to provide Emergency Response Vehicle Supplies/Equipment and Installation Services with a contract term from August 1, 2022 to September 30, 2022 in an amount

July 26, 2022

not to exceed \$350,000. The contract may be extended for up to five additional years and shall not exceed \$750,000 total.



Office of the City Manager

CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services  
 Subject: Mental Health Services Act (MHSA) Fiscal Year 2022-2023 Annual Update

RECOMMENDATION

Adopt a Resolution approving the Mental Health Services Act (MHSA) Fiscal Year 2022-2023 Annual Update (MHSA FY23 Annual Update), which provides information on current and proposed uses of funds for mental health programming, and forwarding the MHSA FY23 Annual Update to appropriate state officials.

SUMMARY

California MHSA revenues are allocated to mental health jurisdictions across the state on an annual basis to transform the mental health system into one that is consumer and family driven, culturally competent, wellness and recovery oriented, collaborative with community partners, and inclusive of integrated services. MHSA includes five defined funding components: Community Services and Supports; Prevention and Early Intervention; Innovations; Workforce, Education and Training; and Capital Facilities Technological Needs. The State requires that the City submit local stakeholder informed and Council approved MHSA Three Year Program and Expenditure Plans and Annual Updates in order to utilize funds.

FISCAL IMPACTS OF RECOMMENDATION

Approval of the MHSA FY23 Annual Update enables funding for MHSA programs and services. The City of Berkeley receives funding from MHSA revenues on a monthly basis from the State of California. The total MHSA funding amount the city will receive in any given year is unknown until the end of the year. Therefore, MHSA Plans and Annual Updates must estimate revenues and expenditures for each year. This MHSA FY22 Annual Update includes estimated revenue and expenditures in each MHSA component:

The budget provides an update to the estimated revenue and expenditures that were projected for FY23 in the previously approved MHSA Three Year Plan. As with all MHSA Plans and Annual Updates, revenue and expenditures in this Annual Update are estimates. Because statewide MHSA revenues were higher than anticipated in the past year, resulting in increased funding available to the City, and expenditures were lower than estimated due to vacancies and start-up time, the City has additional MHSA funds

available in FY23 that can provide increased one-time support for local priorities. The following table shows the current balance of unspent funds and the amount of new funding and expenditures.

| <b>MHSA FUNDING COMPONENT</b>              | <b>Projected Unspent Funds from FY22 and prior years</b> | <b>Projected New Funding in FY23</b> | <b>Projected Expenditures in FY23</b> |
|--------------------------------------------|----------------------------------------------------------|--------------------------------------|---------------------------------------|
| Community Services and Supports            | \$5,002,253                                              | \$7,088,391                          | \$8,514,903                           |
| Prevention and Early Intervention          | \$1,897,440                                              | \$1,772,679                          | \$1,759,216                           |
| Innovations                                | \$1,730,975                                              | \$482,230                            | \$548,650                             |
| Workforce Education and Training           | \$41,248                                                 | \$1,361                              | \$42,609                              |
| Capital Facilities and Technological Needs | \$199,572                                                | 0                                    | \$110,000                             |
| <b>TOTALS</b>                              | <b>\$8,471,488</b>                                       | <b>\$9,344,661</b>                   | <b>\$10,975,378</b>                   |

The previously approved Three Year Plan included MHSA revenue projections based on data from the State. That data projected a downturn of revenue in the MHSA Fund due to uncertainty created by the pandemic. MHSA revenue comes from a one percent income tax on personal income in excess of \$1 million per year statewide. Income for these wealthy Californians generally increased during the pandemic, reflecting national trends on income disparities. Additionally, the expenditure projections for FY23 in the approved MHSA Three Year Plan reflected the total costs of each program if it was fully operable. The actual expenditures in FY22 were less than what was projected, due to several factors including staff attrition and vacancies, and slower start-ups with new programs. The savings from the FY22 expenditures, together with the projected additional revenue in FY23, will provide increased funding to support MHSA programs and services.

Additionally, the budgets in this MHSA Annual Update reflect several factors related to funding for staff positions:

1. Changing the funding for certain staff from 100% MHSA funds to a mix of Medi-Cal and MHSA;
2. Assuming a 10% vacancy rate across all programs due to on-going staffing challenges; and
3. Projecting that new staff positions will not be filled until mid-FY23 due to the hiring process and challenges, and funding 30% of these positions from Medi-Cal.

HHCS will continue to closely monitor the City of Berkeley MHSA allotments and expenditures to assess whether program changes are needed in the future. Any proposed program changes will be vetted for community input and reflected in the next MHSA Three Year Plan.

### CURRENT SITUATION AND ITS EFFECTS

The MHSA FY23 Annual Update is the local plan, informed by area stakeholders, that provides an update to the previously approved MHSA FY2020/2021 – 2022/2023 Three Year Program and Expenditure Plan. The MHSA FY23 Annual Update details current mental health programs and services, proposes areas of new programming and/or increased staffing, and includes the state required MHSA FY2018/2019 – 2020/2021 Prevention and Early Intervention Three Year Evaluation Report and the FY2020/2021 Innovations Annual Evaluation Report. Per state legislation, MHSA Three Year Plans and Annual Updates must include the following steps: conducting a community program planning process with the involvement of area stakeholders, writing a draft plan, initiating a 30-day public review on the Draft Plan, and conducting a public hearing at a Mental Health Commission meeting.

Development of this City of Berkeley MHSA FY23 Annual Update included a community program planning process to obtain input via multiple Zoom meetings, drafting a plan, incorporating feedback from the planning process, a 30-day Public Review from May through June 23, and a Public Hearing on the evening of June 23 before the Mental Health Commission. The Division received the following comments on the FY23 Annual Update during the 30-day Public Review and Public Hearing:

- I didn't realize Berkeley had a Mental Health Division. Maybe some of the funds could be used to increase visibility and outreach. When I was looking for a psychiatrist and a therapist awhile back, no one mentioned the City as an option for services. Maybe there needs to be more outreach to practitioners, agencies, social workers and clinics as well.
- Need more public awareness for MHSA Community Input Meetings.
- It would be a good idea to use some of the funding for education: webinars, in-person lectures, literature, etc. As someone with a mental health disability, I confront a lot of prejudice. Reducing the stigma through education would also help those with mental illness, seek treatment.
- Berkeley needs a Drop-In Crisis Center with skilled professionals (not interns and volunteers) who are trained to help people with complex PTSD and other mental illnesses. We need help when we are triggered but before we have psychotic episodes and hurt others or ourselves. We do not belong in jail or psych wards. Help us help ourselves!! Most of us have incredible difficulty navigating the horrendous "pathway" needed to get a regular therapist or psychiatrist. The system is so screwed up and none of it makes any sense. Consider even a place that offers

classes on “How to deal with our triggers, tapping, other helpful tools”. Look to Santa Cruz who I think have such places.

- The Adult Clinic should have designated staff who have had Neurodiversity Training and are trained to work with individuals who are dyslexic. There is a big co-morbidity of neurodiversity and mental health issues. Being dyslexic can create a significant issue in communicating and can lead to underlying shame.
- Students, parents and adults all need to be able to have access to Peer Counseling programs as individuals are more likely to share and open up to others that are similar to them and whom they trust.
- How can MHSA funds be utilized to provide more blended services, and braided teams, where someone receiving housing services for instance can also receive clinical services?
- Results Based Accountability (RBA) is good, it addresses the what and the how, but it doesn't address the “why”. We need to understand the root causes of why we are doing what we are doing.
- You should consider the credentials of who you are hiring for the evaluation position and have a set aside of funds for evaluation and consider the resources that will be needed, such as the use of Data Analytics.
- Consider building a webpage with a dashboard that shows which demographic groups are accessing services so community members or partners can have a way of referencing how they and the Division are doing, and how well they are serving underserved populations, etc.
- Please reserve some funds for local mental health organizations. The Berkeley Chapter of Depression and Bipolar Support Alliance (DBSA) provides support for those with mood disorders. They are chronically underfunded, relying solely on donations from members, many of whom are on SSI or SSDI.
- There has been improvement in the gathering of required demographic and related statistics in the MHSA Annual Update, but I still think for some groups, I think the LGBTQ groups, there are certain providers who still haven't come around to really giving some thought on how they should be collecting that data. There should potentially be some kind of training for these providers on how to do that because not only are they not collecting it, but are they actually tailoring the services to these individuals in a way that is culturally responsive? It may be true for other populations as well.

All input received will be utilized to inform this MHSA Annual Update and/or future MHSA Three Year Plans and Updates. After the close of the Public Hearing the Mental Health Commission passed the following motion:

M/S/C (Fine, Jones) Recommend that the City Council approve this funding and submit the MHSA Plan to the State.

Ayes: Fine, Jones, Opton, Pritchett Noes: None; Abstentions: None; Absent: Escarcega; Taplin.

## BACKGROUND

California voters adopted the Mental Health Services Act (Proposition 63 – MHSA) on November 2, 2004. The Act places a 1% tax on every dollar of personal income over \$1 million. MHSA revenues are allocated to mental health jurisdictions across the state to transform the mental health system into one that is consumer and family driven, culturally competent, wellness and recovery oriented, collaborative with community partners, and inclusive of integrated services. MHSA includes the following five funding components:

- Community Services and Supports: Primarily for treatment services and supports for Severely Mentally Ill Adults and Seriously Emotionally Disturbed Children.
- Prevention and Early Intervention: For strategies to prevent mental illnesses from becoming severe and disabling.
- Innovations: For short-term pilot projects designed to increase new learning in the mental health field.
- Workforce, Education and Training: Primarily for strategies to identify and remedy mental health occupational shortages, promote cultural competency, and promote the employment of mental health consumers and family members.
- Capital Facilities and Technological Needs: For capital projects on owned buildings and on mental health technology projects.

MHSA also provides funding for local housing development, collaborative programs for suicide prevention, school mental health, programs that combat stigma and discrimination; and training and technical assistance in the areas of cultural competency and prevention/early intervention. Three of the funding components are allocated annually and may be spent over a five-year timeframe. These are Community Services and Supports, Prevention and Early Intervention, and Innovations. Workforce, Education and Training and Capital Facilities and Technological Needs funds were awarded with expenditures of 10 years each, and had to be utilized by the end of FY2018 or FY2019. Per the City Council approved AB114 Reversion Expenditure Plan, some Capital Facilities and Technological Needs and Workforce, Education and Training projects were continued past the original timeframes.

The MHSA FY23 Annual Update is required by the state to update the previously approved FY2020/2021 – 2022/2023 Three Year Program and Expenditure Plan. Since the inception of MHSA, funds have been utilized to transform the mental health service delivery system to better meet the needs of underserved and inappropriately served communities, among others. This initiative has also provided the opportunity for the City of Berkeley Mental Health Division to further develop and expand the system of care by adding new programs within the division and utilizing non-profit providers in the planning and delivery of comprehensive mental health services.

Past Council Action

Since the inception of the MHSA Program in 2006, Council has approved all MHSA Plans and Annual Updates. The most recent actions taken are as follows:

- September 14, 2021, approval of the MHSA Fiscal Year 2021/2022 Annual Update.
- December 1, 2020, approval of the MHSA Fiscal Years 2020/2022 – 2022/2023 Three Year Program and Expenditure Plan.

Council has also previously approved the initial MHSA component plans, Innovations Plans, and the uses of MHSA funding for local housing development projects and contracts with community-based agencies to implement mental health services and supports, housing and vocational services, and translation services.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

State legislation requires mental health jurisdictions to create MHSA Three Year Plans and to provide updates on MHSA Plans on an annual basis. The legislation also requires local approval on MHSA Plans and Annual Updates. Approval of this MHSA FY23 Annual Update will fulfill state requirements.

ALTERNATIVE ACTIONS CONSIDERED

Obtaining approval on MHSA Plans and Annual Updates by the local governing body is a state requirement for receiving MHSA funds. Due to the importance of these funds in serving community needs, no other alternative actions were considered.

CONTACT PERSON

Karen Klatt, Community Services Specialist III, HHCS, (510) 981-7644

Lisa Warhuus, Director of Health, Housing and Community Services, (510) 981-5400

## Attachments:

1: Resolution

Exhibit A: – MHSA Fiscal Year 2022-2023 Annual Update



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

MENTAL HEALTH SERVICES ACT (MHSA) FISCAL YEAR 2022-2023  
ANNUAL UPDATE

WHEREAS, Mental Health Services Act (MHSA) funds are allocated to mental health jurisdictions across the state for the purposes of transforming the mental health system into one that is consumer and family driven, culturally competent, wellness and recovery oriented, includes community collaboration, and implements integrated services; and

WHEREAS, MHSA includes five funding components: Community Services and Supports; Prevention and Early Intervention; Innovations; Workforce, Education and Training; and Capital Facilities and Technological Needs; and

WHEREAS, the City's Department of Health, Housing and Community Services, Mental Health Division, receives MHSA Community Services and Supports, Prevention and Early Intervention, and Innovations funds on an annual basis, and received one-time distributions of MHSA Workforce, Education and Training and Capital Facilities and Technological Needs funds; and

WHEREAS, in order to utilize funding for programs and services, the Mental Health Division must have a locally approved Plan; Three Year program and Expenditure Plan, or Annual Update in place for the funding timeframe; and

WHEREAS, all MHSA Plans and Annual Updates require Council approval and have been approved annually since 2006, including most recently the the MHSA Fiscal Year 2021 through 2022 Annual Update on September 14, 2021 by Resolution No. 70,012-N.S.; and,

WHEREAS, City Council has previously MHSA funding for local housing development projects and contracts with community-based agencies to implement mental health services and supports, housing and vocational services, and translation services; and

WHEREAS, in order to comply with state requirements, the MHSA Fiscal Year 2022 through 2023 Annual Update must be approved by City Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the MHSA Fiscal Year 2022-2023 Annual Update that, incorporated herein as Exhibit A, is hereby approved.

BE IT FURTHER RESOLVED that the City Manager is authorized to forward the MHSA Fiscal Year 2022-2023 Annual update to appropriate state officials.

Exhibit A: MHSA Fiscal Year 2022-2023 Annual Update

EXHIBIT A

# **City of Berkeley Mental Health Mental Health Services Act (MHSA)**



## **FY2022/23 Annual Update**

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## BACKGROUND AND OVERVIEW

California voters passed Proposition 63, the Mental Health Services Act (MHSA), in November 2004, to expand and transform the public mental health system. This legislation places a 1% tax on personal incomes above \$1 million dollars. Funds are deposited into the MHSA State Treasury Fund and allocations per each mental health jurisdiction are determined based on the total population in a given area.

Through the following five funding components, the MHSA was designed to create the capacity for a broad continuum of prevention, early intervention and treatment services along with the necessary infrastructure, technology, and training elements to support effective mental health system transformation:

- Community Services & Supports (CSS): Primarily provides treatment services and supports for Severely Mentally Ill Adults and Seriously Emotionally Disturbed Children and Youth.
- Prevention & Early Intervention (PEI): For strategies to recognize early signs of mental illness and to improve early access to services and programs, including the reduction of stigma and discrimination, and for strategies to prevent mental illness from becoming severe and disabling.
- Innovations (INN): For short-term pilot projects designed to increase new learning in the mental health field.
- Workforce, Education & Training (WET): Primarily for strategies to identify and remedy mental health occupational shortages, promote cultural competency and the employment of mental health consumers and family members in the workplace.
- Capital Facilities and Technological Needs (CFTN): For capital projects on owned buildings and on mental health technology projects.

Among other things, the MHSA provides enhanced services and supports for Seriously Emotionally Disturbed children, youth and Transition Age Youth (TAY), adults, and older adults suffering from Severe Mental Illness through a “no wrong door” approach and aims to move public mental health service delivery from a “disease oriented” system to one that is culturally responsive, consumer informed, and wellness recovery oriented. This is accomplished through implementing programs that focus on the following major components:

- Wellness, recovery and resilience;
- Cultural competency;
- Consumer/family member driven services;
- Consumer/family member integration in the mental health system; and
- Community collaboration.

The MHSA also strives to improve and increase services and supports for individuals and families from cultural and ethnic populations that are traditionally unserved and underserved in the mental health system. In Berkeley these have included: Asian Pacific Islanders (API);

Latinos/Latinas/Latinx (Latino/a/x); Lesbian, Gay, Bi-Sexual, Transgender, Queer/Questioning, Inter-Sexed, Agender, Plus others (LGBTQIA+); Older Adults; and Transition Age Youth (TAY). African Americans have been an additional population of focus as data indicates they are overrepresented in the mental health system and hence “inappropriately served”, which could be due to being provided services that are not culturally responsive and/or appropriate.

In order to access MHSAs funds, a stakeholder informed plan outlining how funds will be utilized must be developed and locally approved. Development of an MHSAs Plan includes: community program planning with the involvement of area stakeholders, writing a draft plan, initiating a 30-day public review, conducting a public hearing at a Mental Health Commission meeting, and obtaining approval on the plan from City Council. The Community Services & Supports, Prevention & Early Intervention, and Innovation funding components are the only re-occurring monies that are allocated annually and may be spent over a five-year period. Workforce, Education & Training and Capital Facilities and Technological Needs funds had initial expenditure time periods of 10 years each, and were to be utilized by the end of Fiscal Year 2018 or 2019. Per the City Council approved [MHSAs AB114 Reversion Expenditure Plan](#) (which is posted on the City of Berkeley MHSAs Plans and Updates webpage), some CFTN and WET projects were continued past the original timeframes.

MHSAs legislation requires mental health jurisdictions to provide updates on MHSAs Plans on an annual basis, and an integrated Program and Expenditure Plan must also be developed every three years. Currently, the City of Berkeley Mental Health (BMH) Division has a City Council approved MHSAs Fiscal Years 2020/21 - 2022/23 Three Year Program and Expenditure Plan (Three Year Plan) in place which covers each funding component. Since 2006, as a result of the City’s approved MHSAs plans, a number of new services and supports have been implemented to address the various needs of the residents of Berkeley including the following:

- Intensive services for Children, TAY, Adults, and Older Adults;
- Multi-Cultural Outreach engagement, trainings, projects, and events;
- Increased mental health services and supports for homeless individuals;
- Wellness Recovery services and activities;
- Family Advocacy, Housing services and supports, and Benefits Advocacy;
- Case management and mental health services and supports for TAY;
- Trauma support services for unserved, underserved, and inappropriately served populations;
- Increased mental health prevention, and intervention services for children and youth in area schools and communities;
- A Wellness Recovery Center in collaboration with Alameda County Behavioral Health Care Services (BHCS);
- Funding for increased services for Older adults and the API population.

Additionally, an outcome of the implementation of the MHSAs is that mental health consumers, family members and other stakeholders now regularly serve on several of BMH internal

decision-making committees. These individuals share their “lived experience” and provide valuable input which has become an integral component that informs the Division on the implementation of MHSA services and supports. Even prior to the passage of Proposition 63, BMH convened (and has since maintained) an MHSA Advisory Committee which serves in an advisory capacity on MHSA programs and is comprised of mental health consumers, family members, and individuals from unserved, underserved and inappropriately served populations, among other community stakeholders.

MHSA funding is based on a percentage of the total population in a given area. The amount of MHSA funds the City of Berkeley receives is comprised of a calculation based on the total population in Berkeley. MHSA funding has been utilized to provide mental health services and supports in Berkeley. Additionally, from Fiscal Year 2011 (FY11) through FY20, the City of Berkeley has also utilized a portion of MHSA funds to provide services in the City of Albany, although Albany is a part of the Alameda County total population. Beginning in FY21, per agreement with Alameda County BHCS, the Division transitioned to only using MHSA funds for services and supports in Berkeley, and ACBHCS now provides MHSA funded services in Albany.

This City of Berkeley MHSA FY2022-2023 (FY23) Annual Update is a stakeholder informed plan that provides an update to the previously approved Three Year Plan. This Annual Update summarizes proposed program changes and additions, includes descriptions and updates of currently funded MHSA services, and provides a reporting on FY21 program data.

## **MESSAGE FROM THE HEALTH, HOUSING AND COMMUNITY SERVICES DIRECTOR**

Our community faces enormous challenges. Racial injustice, health inequities, isolated families and children, far too many unhoused people, and a continuing pandemic; are just a few of the myriad of issues impacting the mental health of residents of Berkeley. At the same time, the COVID-19 pandemic has made providing care more difficult. Over the past two years, Mental Health Division staff and community providers have worked hard to adapt to this changing landscape and to provide services in new ways. Through the use of tele-health and with the help of vaccinations, improved testing, and personal protective equipment, clinical and peer staff have continued to maintain care and connection both virtually and in person. Despite these efforts, many children, youth, adults, and families still remain disconnected and need support. The coming year will require all of us, to work together to collaborate on providing this needed care. We are excited to bring on a new Mental Health Manager who will lead us in this on-going work. An important part of our community's response to these enormous needs will be made possible by the MHSA FY23 Annual Update.

This Annual Update reflects community input the Division has received within the past year from a wide variety of stakeholders. Ongoing funds will be utilized to provide services and supports to vulnerable populations in Berkeley. Services in the proposed plan include outreach, assessment, and treatment for children to older adults; with a focus on increasing health equities across racial, ethnic and cultural populations. New funding in this Annual Update will be utilized to: increase staffing, program capacity and supports on the Homeless Full Services Partnership and the Adult Full Services Partnership; support quality assurance and program outcomes for the Adult Services programs; build an internal resource for program evaluation; provide short-term housing for individuals served on the Homeless Full Services Partnership; support the Bay Area Hearing Voices Network in providing outreach, technology, and program administration; provide on-site program management at the Martin Luther King House; and enable the Division to participate in the Greater Bay Area Regional Partnership Student Loan Repayment program.

Some of the various MHSA accomplishments within the past year included utilizing Innovations funds to make mental health apps available at no cost to adults who live, work or go to school in Berkeley; increasing services and supports to individuals who are unhoused through the Homeless Full Service Partnership; and obtaining local and state approvals to implement a new Mobile Wellness Center project in FY23, in order to ensure services that promote mental health well-being are available at area homeless encampments.

While economic uncertainty still remains, MHSA funds increased in FY22 and are expected to remain at that increased amount in FY23, so we have thankfully not yet seen decreases in funding. In coming years, we will closely watch both revenue and expenditures to ensure that we are able to sustain existing mental health programming. The Mental Health Division presents the City of Berkeley's MHSA FY23 Annual Update with much appreciation for the efforts, input and partnership of our community partners, consumers, Mental Health Commission, and City staff.

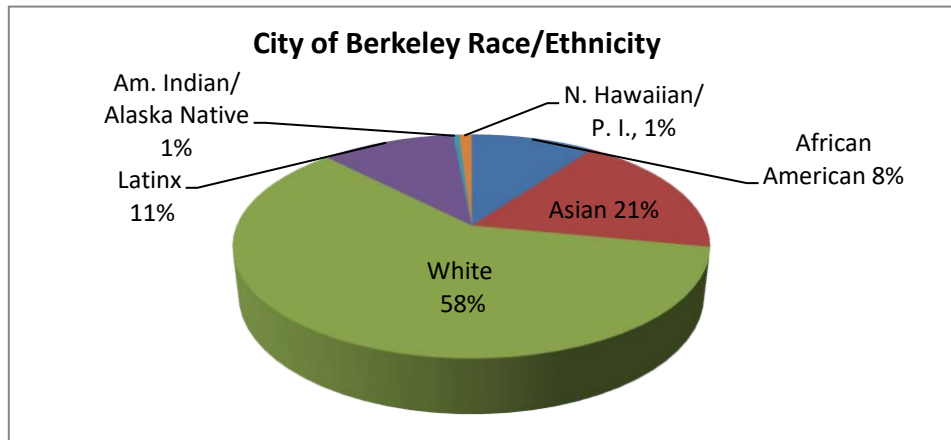
## DEMOGRAPHICS

### Description

Situated in the heart of the San Francisco Bay area, and home to the University of California, Berkeley is an urban city, located in northern Alameda County. With a combined land mass of around 12.2 miles and a total population of 124,321 the City of Berkeley is densely populated and larger than 23 of California's small counties.

### Race/Ethnicity

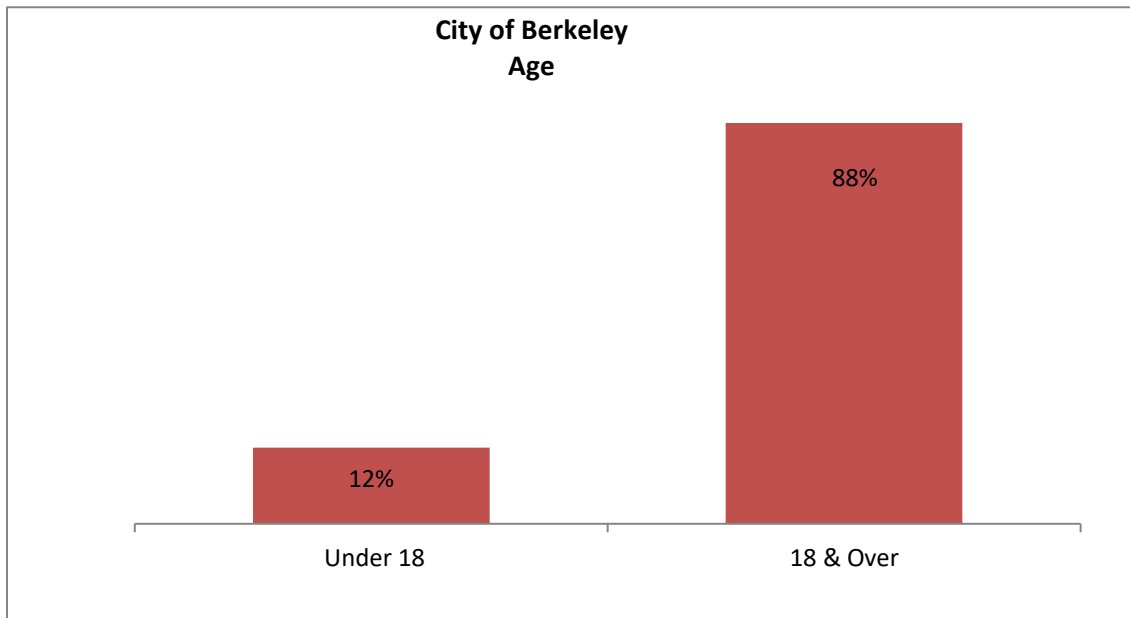
Berkeley is a diverse community with changing demographics. The African American population has decreased in recent years while the Latinx and Asian populations have both increased. Berkeley has a large student population, which provides housing for many of University of California's foreign students and their families. Threshold languages include English, Spanish, Farsi, Cantonese, and Vietnamese, and approximately 29% of Berkeley residents speak a language other than English at home. Berkeley is comprised of the following racial and ethnic demographics: African American; Asian; Latino/Latina/Latinx; White; American Indian/Alaska Native; and Native Hawaiian/Pacific Islander (P.I.). Demographics are outlined below:



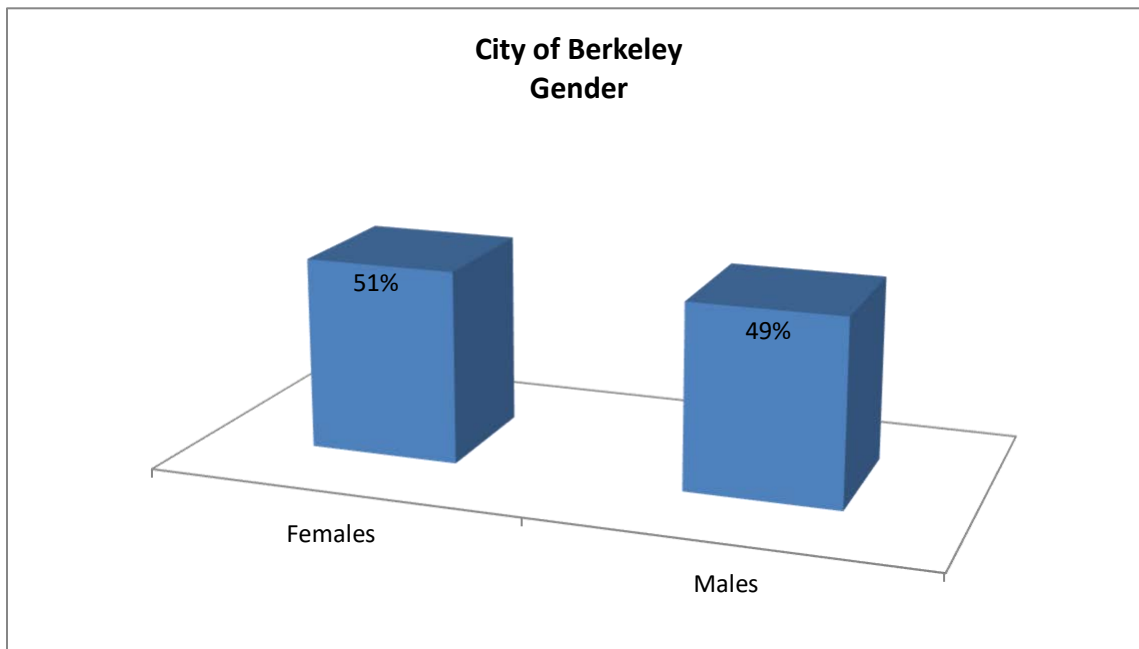
### Age/Gender

As depicted in the table below, a large percentage of individuals in Berkeley are over the age of eighteen:





Gender demographics are as follows:



**Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersexed, Agender, Plus (LBGTQIA+) Population**

Per a brief by the Williams Institute, UCLA, entitled "LGBT Adults in Large US Metropolitan Areas" the LGBT population is 6.7% in the San Francisco Bay Area. According to the Brief, the estimated percentages of adults age 18 and older who identify as LGBT was derived from the Gallup Daily Tracking Survey which is an annual list-assisted random digit dial (70% cell phone, 30% landline) survey, conducted in English and Spanish, of approximately 350,000 U.S. adults ages 18 and up who reside in the 50 states and the District of Columbia. LGBT identity is

based on response to the question, “Do you, personally, identify as lesbian, gay, bisexual, or transgender?” Respondents who answered “yes” were classified as LGBT. Respondents who answered “no” were classified as non-LGBT. Estimates derived from other measures of sexual orientation and gender identity may yield different results. (Conron, K.J., Lohr, W., Goldberg, S.K. Estimated Number of US LGBT Adults in Large Metropolitan Statistical Areas (MSA), (December 2020). The Williams Institute, UCLA. Los Angeles, CA.)

### **Income/Housing**

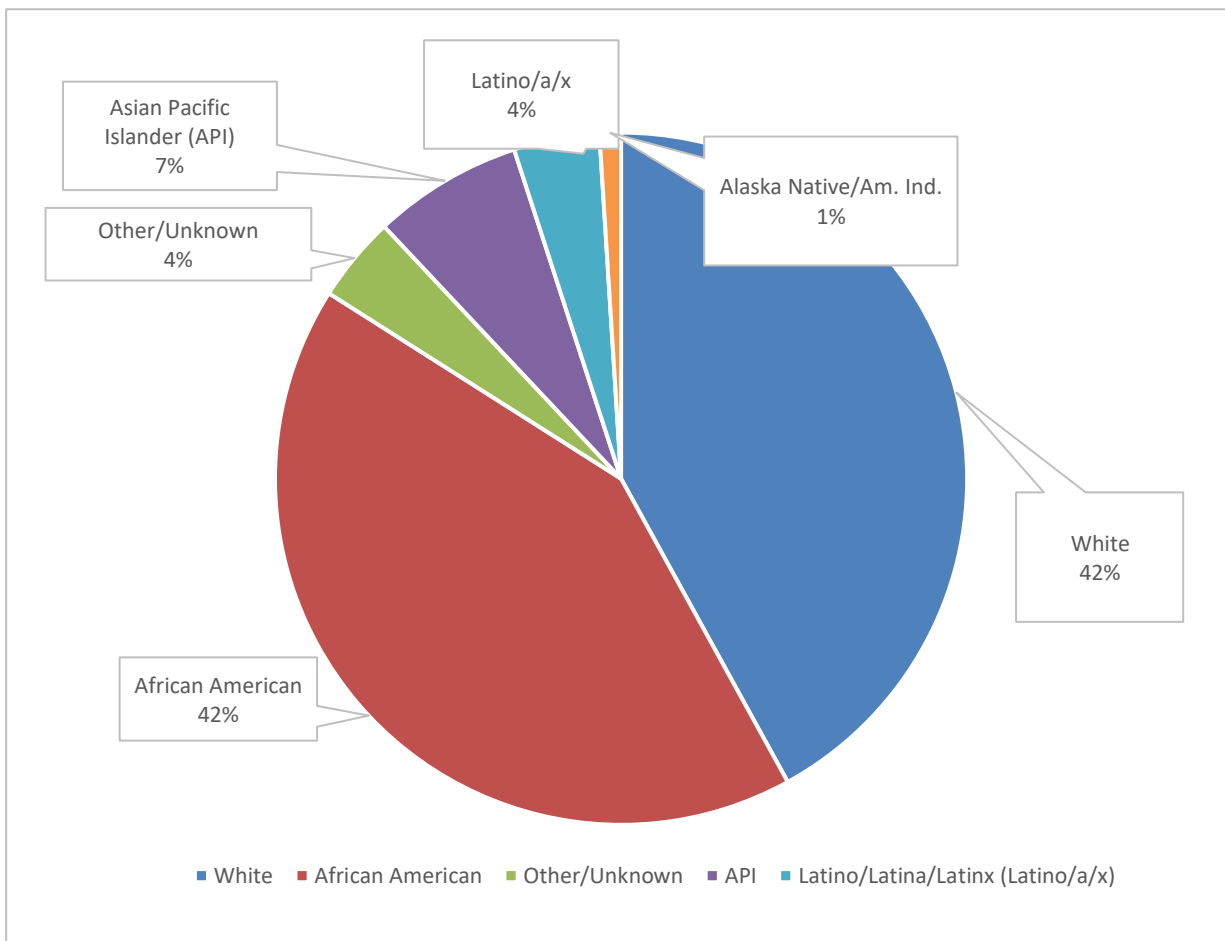
With some of the highest housing costs in the Bay Area, the Berkeley median household income is \$91,259. Nearly 18% of Berkeley residents live below the poverty line and approximately 42% of Berkeley children qualify for free and reduced lunches. While 43% of Berkeley residents own their own homes, there are many homeless individuals including women, TAY, and Older Adults. In Berkeley, approximately 46% of the homeless population meets the federal definition for chronic homelessness (adults unaccompanied by children, who have at least one disability and have been homeless for over a year, or four or more times in the last year). This is a disproportionately high percentage compared to other municipalities, and a sub-group with higher rates of both mental illness and substance abuse.

### **Education**

Berkeley has a highly educated population: 97% of individuals aged 25 or older are high school graduates; and approximately 73% possess a bachelor’s degree or higher.

### **System Organization**

Berkeley Mental Health (BMH), one of two city-based public mental health programs in the state, provides services for residents in Berkeley. It is a Division of the City of Berkeley Health, Housing & Community Services (HHCS) Department. Services are provided at multiple clinic sites and in the field. BMH has several units providing services: Access; Family, Youth & Children; and Adult Services. Services include: assessment, assertive community treatment, individual and group therapy, case management, and crisis intervention. In addition to offering homeless outreach and support, some services are provided through a variety of community-based agencies and at school sites. As part of the Access unit, a Mobile Crisis Response Team operates seven days a week. The majority of mental health services provided by BMH are aimed towards the Medi-Cal and uninsured population; as such it is important to note the ways in which the Medi-Cal population demographics differ from the overall demographics in Berkeley. Using data available from Alameda County, the Medi-Cal population in Berkeley in 2021 was as follows:



## Community Program Planning Process

The Community Program Planning (CPP) process for this City of Berkeley MHSA FY23 Annual Update was conducted while a global pandemic was still occurring. During this time one MHSA Advisory Committee meeting was held on Tuesday, May 3<sup>rd</sup> and six Community Input Meetings were held on the following dates/times:

- Monday, May 2<sup>nd</sup>: 3:00-4:30pm
- Thursday May 5<sup>th</sup>: 11:00am-12:30pm
- Tuesday May 10<sup>th</sup>: 1:00-2:30pm
- Wednesday May 11<sup>th</sup>: 6:00-7:30pm
- Thursday, May 12<sup>th</sup>: 6:00-7:30pm
- Monday, May 16<sup>th</sup>: 6:00-7:30pm

Announcements of the meetings were sent to MHSA Advisory Committee members, consumers, family members, representatives from community-based organizations, individuals from unserved, underserved and inappropriately served populations, HHCS Staff, City Commissioners, and other MHSA stakeholders. Additional outreach regarding opportunities on how to inform the MHSA FY23 Annual Update was conducted with the Mental Health Commission through email and presentations at the April 28<sup>th</sup> and May 26<sup>th</sup> Commission meetings.

During the MHSA Advisory and Community Input Meetings which were conducted through the Zoom platform, a presentation was conducted to provide information on MHSA background, funding, program requirements, and the CPP process. The presentation also covered detailed information on the proposed MHSA FY23 Annual Update and provided opportunities for input from the community. An anonymous voluntary online survey through Survey Monkey, was administered during each meeting to obtain demographic information on meeting participants. Individuals who joined the meetings by phone were contacted following the meeting to have the opportunity to voluntarily participate in the survey. The results of 19 individuals who voluntarily participated in the survey while attending either a Community Input Meeting, or the Public Hearing, or by phone were as follows:

| <b>DEMOGRAPHICS N=19</b>        |                           |                   |
|---------------------------------|---------------------------|-------------------|
| <i>Gender Identity</i>          | <i>Participant Number</i> | <i>% of total</i> |
| Male                            | 5                         | 26%               |
| Female                          | 10                        | 53%               |
| Gender Queer                    | 1                         | 5%                |
| Declined to Answer (or Unknown) | 3                         | 16%               |
| <b>Race/Ethnicity</b>           |                           |                   |
| <i>Race/Ethnicity</i>           | <i>Participant Number</i> | <i>% of total</i> |
| African American                | 4                         | 21%               |
| Asian Pacific Islander          | 1                         | 5%                |
| White                           | 9                         | 48%               |
| Latino/a/x                      | 1                         | 5%                |
| Other                           | 1                         | 5%                |
| Declined to Answer (or Unknown) | 3                         | 16%               |
| <b>Age Category</b>             |                           |                   |
| <i>Age Category</i>             | <i>Participant Number</i> | <i>% of total</i> |
| Adult (Ages 26-59)              | 11                        | 58%               |

|                                                                       |                           |                   |
|-----------------------------------------------------------------------|---------------------------|-------------------|
| Older Adult (Ages 60+)                                                | 5                         | 26%               |
| Declined to Answer (or Unknown)                                       | 3                         | 16%               |
| <b>Sexual Orientation</b>                                             |                           |                   |
| <i>Sexual Orientation</i>                                             | <i>Participant Number</i> | <i>% of total</i> |
| Heterosexual                                                          | 11                        | 58%               |
| Gay or Lesbian                                                        | 1                         | 5%                |
| Queer                                                                 | 1                         | 5%                |
| Declined to Answer (or Unknown)                                       | 6                         | 32%               |
| <b>Veteran</b>                                                        |                           |                   |
| <i>Veteran Status</i>                                                 | <i>Participant Number</i> | <i>% of total</i> |
| Veteran                                                               | 1                         | 5%                |
| Non-Veteran                                                           | 15                        | 79%               |
| Declined to Answer (or Unknown)                                       | 3                         | 16%               |
| <b>Disability Status</b>                                              |                           |                   |
| <i>Disability Status</i>                                              | <i>Participant Number</i> | <i>% of total</i> |
| Disabled                                                              | 4                         | 21%               |
| Not Disabled                                                          | 10                        | 53%               |
| Declined to Answer (or Unknown)                                       | 5                         | 26%               |
| <b>Representative Categories*</b>                                     |                           |                   |
| <i>Representative Status</i>                                          | <i>Participant Number</i> | <i>% of total</i> |
| Consumer                                                              | 4                         | 27%               |
| Family Member of Consumer                                             | 3                         | 13%               |
| Community Member or MHSA Stakeholder                                  | 3                         |                   |
| Parent, Student or Representative of Berkeley Unified School District | 1                         | 7%                |
| Representative of Community Based Organization                        | 8                         | 20%               |
| City of Berkeley Staff                                                | 3                         | 20%               |
| Other                                                                 | 3                         | 13%               |
| Declined to Answer (or Unknown)                                       | 3                         | 20%               |

\*Some participants were in more than one category.

As a method to continue to gather input from the community on this Annual Update, additional Community Input meetings were scheduled during the 30-Day Public Review. As with previous MHSA Plans and Annual Updates, a methodology utilized for conducting CPP for this Annual Update was implemented to enable a collaborative process to occur between BMH staff, MHSA Advisory Committee members and other MHSA stakeholders. Development of the MHSA FY23 Annual Update began with an internal examination of existing programs, unaddressed needs, and available funding which included a review of input received over the prior year and during previous MHSA planning processes. Following an internal review, proposed ideas and potential programs were vetted through the MHSA Advisory Committee prior to engaging other stakeholders.

Proposed additions considered in this process include:

- Increase staffing on the Homeless Full Services Partnership and the Adult Full Services Partnership to build capacity and supports for each program;
- An additional position for the Adult Services programs to support quality assurance and program outcomes;
- An additional position to build the internal capacity for program evaluation and to support the Division-wide Results Based Accountability evaluation;

- Allocate funding for short-term housing for individuals served on the Homeless Full Services Partnership;
- Increase funding for the Bay Area Hearing Voices Network for outreach, technology, and program administration;
- Provide funding for on-site program management at the Martin Luther King House;
- Allocate a small amount of additional funds to participate in the Greater Bay Area Regional Partnership Student Loan Repayment program.

During the CPP process questions were answered regarding various MHSA programs and funding. Input received during this process was as follows:

- A nutritionist should be hired or a collaboration with Public Health should be initiated to support the wellness recovery of individuals receiving services at BMH with healthy weight management.
- Suggest changing the term, or redefining the language, of “Mental Health Illness”.
- We need to see more information to help make meaningful contributions and recommendations. There is not enough information on how to add funding to a large complex component.
- We need to come up with a plan to get the community invested in participating in the community program planning process and on the MHSA Advisory Committee. It could be that there is stigma around mental health but we have a lack of success in attracting the community in participating in these community meetings.
- Individuals need long term treatment, not services (blankets, toothbrushes, etc.). I don't hear that individuals are receiving treatment and I don't hear any success stories. Individuals are wandering the streets and dying on the streets in my neighborhood and they aren't getting the treatment that they need. It's miserable for them and for the residents living around it to witness. Treatment should be mandatory for individuals who are living in these conditions as they are unable to help themselves.
- Utilize unspent PEI funds to provide Dynamic Mindfulness (DMind) training, coaching, and supports to Head Start staff. (Dmind is an evidence-based trauma-informed program. validated by independent researchers as a transformative strategy for teaching skills for optimal stress resilience and healing from trauma, through mindful action, centering and breathing).
- Utilize unspent PEI funds to add the InPower mobile App into the Supportive Schools project, the High School Prevention Project, and the Community Education and Supports project. (InPower is a mobile App that provides two minute mindful movement practices using video animation and audio narration, that can help guide the user to regulate powerful emotions by changing how they feel in stressful moments and/or at times of anger, sadness, anxiety, worry, and/or tiredness. InPower ensures physical, emotional, and social well-being for youth, adults and older adults).
- Utilize unspent INN funds to add the InPower App to the Mental Health Apps that are available to the community through the Help@Hand project.
- Implement the Mental and Emotional Education Team (MEET) program in the High School in FY23. (MHSA has provided PEI funding to implement MEET in the Berkeley High School. MEET implements a peer-to-peer mental health education curriculum to 9<sup>th</sup> graders and an internship program for a cohort of high school students to serve as peers to their fellow

students. The goals of the program are to increase student awareness of common mental health difficulties, resources and healthy coping and intervention skills. In the past several years by the choice of the Berkeley High School, the MEET program has not been implemented).

A 30-Day Public Review was held from Wednesday, May 25<sup>th</sup> through Thursday, June 23<sup>rd</sup> to invite input on this MHSA Annual Update. A copy of the Annual Update was posted on the BMH MHSA website. A hard copy of the Annual Update was accessible for reviewing at the reference section of the Berkeley Public Library on 2090 Kittredge Street. Four additional Community Input Meetings were held during the 30-Day Public Review on the following dates and times:

Monday, June 13: 6:00-7:30pm

Tuesday, June 14: 1:00-2:30pm

Thursday, June 16: 6:00-7:30pm

Wednesday, June 22: 3:00-4:30pm

Information on the Community Input Meetings was posted on the MHSA webpage and on the City of Berkeley Event Calendar. Announcements of the 30-Day Public Review and Community Input Meetings were mailed and/or emailed to community stakeholders and City staff. A Press Release was also issued on the 30 Day Public Review and Community Input Meetings. Following the 30 Day Public Review, a Public Hearing was held on Thursday June 23<sup>rd</sup>, during the Mental Health Commission meeting which was conducted on the Zoom platform. Public Input received during the 30-Day Public Review and/or the Public Hearing was as follows:

- I didn't realize Berkeley had a Mental Health Division. Maybe some of the funds could be used to increase visibility and outreach. When I was looking for a psychiatrist and a therapist awhile back, no one mentioned the City as an option for services. Maybe there needs to be more outreach to practitioners, agencies, social workers and clinics as well.
- Need more public awareness for MHSA Community Input Meetings.
- It would be a good idea to use some of the funding for education: webinars, in-person lectures, literature, etc. As someone with a mental health disability, I confront a lot of prejudice. Reducing the stigma through education would also help those with mental illness, seek treatment.
- Berkeley needs a Drop-In Crisis Center with skilled professionals (not interns and volunteers) who are trained to help people with complex PTSD and other mental illnesses. We need help when we are triggered but before we have psychotic episodes and hurt others or ourselves. We do not belong in jail or psych wards. Help us help ourselves!! Most of us have incredible difficulty navigating the horrendous "pathway" needed to get a regular therapist or psychiatrist. The system is so screwed up and none of it makes any sense. Consider even a place that offers classes on "How to deal with our triggers, tapping, other helpful tools". Look to Santa Cruz who I think have such places.
- The Adult Clinic should have designated staff who have had Neurodiversity Training and are trained to work with individuals who are dyslexic. There is a big co-morbidity of neurodiversity and mental health issues. Being dyslexic can create a significant issue in communicating and can lead to underlying shame.
- Students, parents and adults all need to be able to have access to Peer Counseling programs as individuals are more likely to share and open up to others that are similar to them and whom they trust.

- How can MHSA funds be utilized to provide more blended services, and braided teams, where someone receiving housing services for instance can also receive clinical services?
- Results Based Accountability (RBA) is good, it addresses the what and the how, but it doesn't address the "why". We need to understand the root causes of why we are doing what we are doing.
- You should consider the credentials of who you are hiring for the evaluation position and have a set aside of funds for evaluation and consider the resources that will be needed, such as the use of Data Analytics.
- Consider building a webpage with a dashboard that shows which demographic groups are accessing services so community members or partners can have a way of referencing how they and the Division are doing, and how well they are serving underserved populations, etc.
- Please reserve some funds for local mental health organizations. The Berkeley Chapter of Depression and Bipolar Support Alliance (DBSA) provides support for those with mood disorders. They are chronically underfunded, relying solely on donations from members, many of whom are on SSI or SSDI.
- There has been improvement in the gathering of required demographic and related statistics in the MHSA Annual Update, but I still think for some groups, I think the LGBTQ groups, there are certain providers who still haven't come around to really giving some thought on how they should be collecting that data. There should potentially be some kind of training for these providers on how to do that because not only are they not collecting it, but are they actually tailoring the services to these individuals in a way that is culturally responsive? It may be true for other populations as well.

All input received will be utilized to inform this MHSA Annual Update and/or future MHSA Three Year Plans and Updates. Following the Public Hearing the Mental Health Commission passed the following motion:

M/S/C (Fine, Jones) Recommend that the City Council approve this funding and submit the MHSA Plan to the State.

Ayes: Fine, Jones, Opton, Pritchett Noes: None; Abstentions: None; Absent: Escarcega; Taplin.

### **MHSA FY22/23 Annual Update**

This City of Berkeley's MHSA FY22/23 (FY23) Annual Update is a stakeholder informed plan that provides an update to the previously approved MHSA FY20/21 – 22/23 Three Year Program and Expenditure Plan (Three Year Plan). The Annual Update summarizes proposed program changes and additions, includes descriptions and updates of currently funded MHSA services that are proposed to be continued in the next year, and a reporting on FY21 program data. Additionally, per state regulations, this Annual Update includes the Prevention and Early Intervention (PE) Fiscal Year (FY) 2018/2019 – 2020/2021 Three Year Evaluation Report (Appendix A), and the Innovations (INN) FY2022/2021 Annual Evaluation Report (Appendix B).

While some MHSA programs collected outcome and client self-report measures, the majority of the data that was collected in FY21 was still more process related. However, as reported in previous MHSA Plans and Updates, a few initiatives that are currently underway to evaluate the outcomes of several MHSA programs are as follows:



- Impact Berkeley: In FY18, the City of Berkeley introduced a new initiative in the Health Housing and Community Services (HHCS) Department called “Impact Berkeley”. Central to this effort is using a highly regarded framework called Results Based Accountability (RBA) to account for the work of the Department. RBA provides a new way of understanding the quality and impact of services provided by collecting data that answer three basic questions:
  1. How much did you do?
  2. How well did you do it?
  3. Is anyone better off?

RBA has been incorporated into selected programs within the Department. This has included community agency programs funded through the MHSA Prevention & Early Intervention (PEI) Community Education & Supports program. Through this initiative the Department worked with each contractor to envision, clarify and develop measures on the outcomes and results each program is seeking to achieve, and used a rigorous framework to begin measuring and enhancing progress towards these results. Page 54 of this Three Year Plan provides an aggregated summary of some of the results of this initiative.

- Results Based Accountability Evaluation for all BMH Programs: Through the approved FY19 Annual Update the Division executed a Request for Proposal (RFP) process to hire a consultant who will implement a Results Based Accountability Evaluation for all programs across the Division, and Resource Development Associates (RDA) was the chosen vendor. In FY21 RDA began working with the Division to implement the RBA research methodology. An update of the work on this evaluation is included on pages 40-41 of this Annual Update.
- PEI Data Outcomes: Per MHSA PEI regulations, all PEI funded programs have to collect additional state identified outcome measures (specific to the category of services provided) as well as detailed demographic information. Beginning in FY19, PEI Evaluations were required to be included in each MHSA Annual Update or Three Year Plan. See Appendix A for the Prevention & Early Intervention Fiscal Years (FY) 2018/2019 - 2020/2021 Three Year Evaluation Report.
- INN Data Outcomes: Per MHSA INN regulations, all INN funded programs have to collect additional state identified outcome measures and detailed demographic information. Beginning in FY19, INN Evaluations were required to be included in each MHSA Annual Update or Three Year Plan. See Appendix B for the Innovations (INN) Fiscal Year (FY) 2020/2021 Annual Evaluation Report.

Future MHSA Plans and Updates will continue to include reporting on the progress of these initiatives.

### **PROPOSED NEW FUNDING ADDITIONS**

The Division is proposing to add several new positions, and supportive services through this Annual Update, and will be discontinuing one program. Proposed new additions are a result of community needs that have arisen since the Three Year Plan was approved. Funding amounts for the proposed additional staffing outlined below are calculated based on staff being hired by mid FY23 with 30% of the costs of the positions offset by Medi-Cal reimbursement. The

proposed staffing and services to be added or discontinued through this MHSA Annual Update, are as follows:

### **Increase Program Capacity on the Homeless Full Services Partnership (FSP)**

The Homeless Full Service Partnership (FSP) provides services and supports for homeless individuals who are experiencing mental health needs. As this FSP is rapidly reaching program capacity, the Division is proposing to utilize MHSA Community Services and Supports (CSS) FSP Funds to expand this program through the addition of the following positions:

- 2 Social Service Specialists - \$107,491
- 1 Behavioral Health Clinician II - \$63,082

### **Increase Program Capacity on the Adult Full Services Partnership (FSP)**

The Adult Full Services Partnership (FSP) is the largest program in the MHSA Community Services and Supports funding component. This FSP provides intensive support services to TAY, Adults and Older Adults with severe mental illness using an Assertive Community Treatment (ACT) approach. The program focuses on serving individuals who have had difficulty with obtaining or maintaining housing; frequent and/or lengthy psychiatric hospitalizations; and/or frequent or lengthy incarcerations. Priority populations also include individuals from un-served, underserved and inappropriately served cultural communities. In order to increase the program capacity and organization of this FSP, the Division is proposing to add the following positions through MHSA CSS FSP Funds:

- 1 Social Service Specialist - \$53,745
- 1 Senior Behavioral Health Clinician II - \$68,741

### **Increase Administrative Support for Adult Programs**

Berkeley Mental Health (BMH) Adult Services is comprised of the following three large programs: Adult FSP, Comprehensive Community Treatment, and Focus on Independence. The programs provide a continuum of services and supports for individuals in need. In order to provide administrative support for each program in meeting Quality Assurance and performance outcomes, the Division is proposing to add the following position through MHSA CSS System Development Funds and MHSA FSP Funds:

- 1 Assistant Management Analyst - \$53,738

### **Create internal capacity for Program Evaluation**

Feedback received over previous years focused on implementing evaluation measures that help BMH, MHSA Stakeholders, and community members more fully understand and determine how well programs are meeting participant and community needs. Integral to this type of outcome measure is to engage the voice of the program participant around the services they received. As a result of this feedback in the previously approved MHSA FY19 Annual Update, BMH allocated funds to hire a Consultant to conduct an evaluation on all BMH programs across the system utilizing the "Results Based Accountability" (RBA) framework. The RBA framework measures how much was done, how well it was done, and whether individuals are better off as a result of the services they received. In FY19 a competitive RFP process was executed, and Resource Development Associates (RDA) was the chosen consultant. RDA is currently in the process of working with the Division on this evaluation.

In order to create the internal capacity to collect and report on the RBA outcomes as well as future evaluations, the Division is proposing to utilize MHSA CSS System Development Funds to hire the following administrative position to support this work:

- 1 Community Services Specialist III - \$74,686

#### **Add funding to support on-site management at Martin Luther King House**

The Martin Luther King Jr. House is a 12-unit single room occupancy (SRO) complex with shared living spaces that serves the disabled community in Berkeley. This SRO is currently experiencing a need for increased property management. Through this Annual Update the Division is proposing to allocate \$107,890 of CSS System Development Funds to support the Martin Luther King Jr. House in acquiring on-site property management

#### **Increase short-term housing for individuals on the Homeless FSP**

Through this Annual Update the Division is proposing to allocate \$120,000 of MHSA FSP Funds to support short-term housing for individuals receiving services on the Homeless FSP. The funding will be utilized to provide housing, three meals a day, utilities, 24/7 security, housing navigation and the maintenance of Trailers for four individuals at 701 Harrison Street.

#### **Increase funding for Bay Area Hearing Voices Network**

The Division currently provides MHSA funding to the Bay Area Hearing Voices Network to implement free support groups for individuals in Berkeley who experience voices, visions, special messages, unusual beliefs or extreme states of consciousness. The support groups are co-facilitated by trained group leaders whom have lived experiences in the mental health system. Through this Annual Update, the Division is proposing to increase the funding amount by \$12,205 to support program outreach, technology costs and administrative services. With the proposed increase the new annual project amount will be \$46,941 which will be funded through CSS System Development Funds.

#### **Provide additional funding for the Greater Bay Area Workforce, Education & Training Regional Partnership**

The Office of Statewide Health Planning and Development (OSHPD) allocated \$40 million in Workforce, Education and Training funds through FY25 for Regional Partnerships across the state for various mental health workforce strategies. A total of 2.6 million of OSHPD was allocated to the Greater Bay Area (GBA) Workforce, Education & Training Regional Partnership. In order to participate in the GBA Regional Partnership, mental health jurisdictions were required to contribute a portion of local funds towards this initiative. For the Berkeley contribution the amount was \$40,127, which the Division allocated through the previously approved Three Year Plan.

Since the approval of the Three Year Plan, the Division has participated in meetings with representatives from other counties in the GBA Regional Partnership. All participating counties decided to allocate these funds to implement the Loan Repayment program. This program will enable funds to be made available to repay a portion of student loans for a given number of staff who are in hard-to-fill positions, in exchange for a number of years of service in the Public Mental Health system.

Since the approval of the Three Year Plan some local counties decided not to participate in this initiative. As a result, the GBA Regional Partnership was notified that each participating mental health jurisdiction will need to increase the amount of funds they are contributing to this initiative. The additional amount for Berkeley is \$1,361. Per this Annual Update, the Division is proposing to transfer \$1,361 of CSS System Development Funds to the Workforce, Education and Training (WET) funding component, through the following process:

*Per MHSa Statute, (Welfare and Institutions Code, Section 5892 (b)): "In any year after 2007 -08, programs for services pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division may include funds for technological needs and capital facilities, human resource needs, and a prudent reserve to ensure services do not have to be significantly reduced in years in which revenues are below average of previous years. The total allocation for purposes authorized by this subdivision shall not exceed 20 percent of the average amount of funds allocated to that county for the previous five years pursuant to this section."*

Funds will be utilized to participate in this initiative, which is being administered through a joint powers authority, the California Mental Health Services Authority (CalMHSA). Through this Annual Update the Division is requesting to enter into a Participation Agreement with CalMHSA to allocate the designated funds to participate in this initiative.

#### **Adult Clinic Repair and Renovation Study on Adjacent Property**

Construction on the Adult Clinic began in FY19, and in June 2021, the renovation was completed, staff moved back into the building, and the clinic was re-opened for services. There is approximately \$199,572 in remaining CFTN Funds. It is anticipated that approximately \$35,000 of these funds will be utilized in FY23 to alleviate water damage at the Adult Clinic and \$75,000 will be utilized to conduct a Renovation Study on the adjacent property to the Adult Clinic (2636 Martin Luther King Jr. Way) where some Adult Clinic staff offices are located.

#### **Discontinue Community-Based Child & Youth Risk Prevention Program**

The Community-Based Child & Youth Risk Prevention Program is funded through the MHSa PEI component that targets children (aged 0-5) who are impacted by multiple risk factors including trauma, family or community violence, familial distress, and/or family substance abuse, (among other issues). A BMH clinician has served as the Mental Health Consultant on this project providing information, services and supports to teachers and parents at the YMCA Head Start program in South Berkeley. Services have included individual case consultation for teachers and parents, group consultations, classroom observations and interventions, assessments, brief treatment, and referrals to other resources as needed. The main goals of the program have been to reduce risk factors or other stressors, and promote positive cognitive, social, and emotional well-being. In FY23 this program will be discontinued, as the YMCA Head Start program has hired an internal staff to fill this role.

### **PROGRAM DESCRIPTIONS AND FY21 DATA BY FUNDING COMPONENT**

Outlined in this section per each funding component are descriptions of current City of Berkeley MHSa services along with FY21 program data. Across all MHSa funded programs, in FY21, approximately 3,805 individuals participated in some level of services and supports.

Additionally, a total of 561 individuals attended BMH Diversity and Multi-cultural trainings and/or events. As with FY20, among the largest of accomplishments in FY21 is that almost all MHSA funded services were able to continue providing services in some capacity during the pandemic. Some of the FY21 MHSA funded program highlights included: A reduction in psychiatric inpatient hospital and/or incarceration days for severely mentally ill clients; a decrease in the number of days severely mentally ill clients spent homeless; step down to a lower level of care for some clients; services and supports for homeless or marginally housed TAY, who are suffering from mental illness; services and supports for family members; multicultural trainings, projects and events; Wellness Center services; consumer driven wellness recovery activities; housing, and benefits advocacy services and supports for clients; augmented prevention and intervention services for children and youth in the schools and community; increased outreach, and support services for homeless TAY, Adults and Older Adults and individuals in unserved, underserved and inappropriately served cultural and ethnic populations.

### **COMMUNITY SERVICES & SUPPORTS (CSS)**

Following a year-long community planning and plan development process, the initial City of Berkeley Community Services & Supports (CSS) Plan was approved in September 2006. Since the approval of the original plan, Three Year Plans or Annual Updates outlining proposed CSS funding and programming have been developed and approved on an annual basis. From the original CSS Plan and/or through subsequent plan updates, some of the many services the City of Berkeley has provided through CSS funding are as follows:

- Wrap-around Services for Children and their families;
- TAY, Adult and Older Adult Intensive Treatment Services;
- Homeless Services;
- Multi-cultural Outreach & Engagement;
- TAY Case Management and Support Services;
- Consumer Advocacy;
- Wellness and Recovery Services;
- Family Advocacy;
- Transitional Outreach Team;
- Support Groups for individuals;
- A Wellness Recovery Center; and
- Benefits Advocacy.

Descriptions and updates for each CSS funded program and FY21 data are outlined below:

### **FULL SERVICE PARTNERSHIPS (FSP)**

#### **Children/Youth Intensive Support Services Full Service Partnership**

The Intensive Support Services Full Service Partnership (FSP) is for children ages 0-21 and their families. This program is for children, youth and their families who would benefit from, and are interested in participating in a program designed to address the total needs of a family whose child (and possibly other family members) is experiencing significant emotional, psychological or behavioral problems that are interfering with their wellbeing.

Priority populations include children and youth who:

- have substantial impairment in self-care, school functioning, family relationships, the ability to function in the community, and are at risk of or have already been removed from the home and have a mental health disorder and/or impairments that have presented for more than six months or are likely to continue for more than one year without treatment;  
OR
- display psychotic features, or a history of hospitalization due to Danger to Self, Danger to Others, Grave Disability or a recent suicide attempt within the last six months from the date of referral.

The Children/Youth FSP program utilizes wraparound as the treatment model. Wraparound differs from many service delivery strategies, in that it provides a comprehensive, holistic, youth and family-driven way of responding when children or youth experience serious mental health or behavioral health challenges. The model puts the child or youth and family at the center. With the help of the FSP team, the family and young person take the lead in deciding their vision and goals. Team member's work together to put the goals into an action plan, monitor how well it is working, and make changes to it as needed. The projected number of individuals to be served in FY23 by each age category is as follows: 9 individuals aged 6-12; 9 individuals aged 13-17; and 2 individuals aged 18-21.

In FY21, a total of 17 children/youth and their families were served through this program. Demographics on those served were as follows:

| <b>DEMOGRAPHICS N=17</b>      |                      |                   |
|-------------------------------|----------------------|-------------------|
| <i>Age</i>                    | <i>Number Served</i> | <i>% of total</i> |
| 6-12 years                    | 5                    | 29%               |
| 13-17 years                   | 9                    | 53%               |
| 18-21 years                   | 3                    | 18%               |
| <i>Gender Identity</i>        | <i>Number Served</i> | <i>% of total</i> |
| Male                          | 11                   | 65%               |
| Female                        | 6                    | 35%               |
| <b>Race/Ethnicity</b>         |                      |                   |
| <i>Race/Ethnicity</i>         | <i>Number Served</i> | <i>% of total</i> |
| African American              | 10                   | 59%               |
| Asian Pacific Islander        | 1                    | 6%                |
| White                         | 4                    | 23%               |
| Latino/a/x                    | 2                    | 12%               |
| <b>Sexual Orientation</b>     |                      |                   |
| Heterosexual or Straight      | 12                   | 71%               |
| Declined to State or Unknown* | 5                    | 29%               |

Flex funds are used to provide various supports for FSP program participants and/or the families of program participants. In FY21, flex funds were utilized as follows: 8

individuals/families received funding for food/groceries; 3 individuals/families received funds for clothing/hygiene; 1 individual/family received funds for furniture/household items; and 6 individuals/family members received funding for other various needs.

Program Successes:

- Seven individuals met and/or exceeded the stated objectives in their treatment plan.
- Successfully transitioned client care to Zoom at the beginning of the Pandemic. Staff were able to successfully support their clients/families to utilize the platform and to regularly have scheduled appointments.
- Increased linkages to psychiatric medication services, and individual/family therapy. Three individuals who were over 18 years of age were referred to BMH Adult Services for medication support.
- Reduced psychiatric hospitalizations and usage of crisis services.
- Services were provided by clinicians who mirrored the racial/ethnic identity of the populations served.
- The FSP Team was able to provide flex funds to support the felt needs of clients during the pandemic. This supported the purchase of food, household items, clothing/hygiene, and other various needs.
- As the shelter in place was eliminated for Berkeley residents, staff were able to engage individuals safely in public settings which improved engagement and the quality of care provided.

Program Challenges:

- Providing FSP level care to clients and families via Zoom during the Pandemic was extremely difficult as staff and families implemented safety protocols to reduce the risk of exposure to COVID-19. Families also reported high levels of Zoom fatigue since all services and academics were provided on line, which impacted consistent engagement in services.
- Reduction in referrals to the program due to the fact that families were sheltered in place at home. This reality made it difficult for natural supports (i.e. school staff) to see the students who could benefit from services and make the subsequent referrals.
- Staff were only able to provide services in English due to the resignation of the Spanish speaking clinician. Other BMH Family & Children's Services behavioral health clinicians were able to fill in to support these individuals and families.

**TAY, Adult and Older Adult Full Service Partnership**

This FSP program provides intensive support services to TAY, Adults and Older Adults with severe mental illness using an Assertive Community Treatment (ACT) approach. The program focuses on serving individuals who have had difficulty with obtaining or maintaining housing; frequent and/or lengthy psychiatric hospitalizations; and/or frequent or lengthy incarcerations. Priority populations also include individuals from un-served, underserved and inappropriately served cultural communities.

The team utilizes an ACT approach which maintains a low staff-to-client ratio (12:1) that allows for frequent and intensive support services. Individuals are provided assistance with finding appropriate housing and in some cases may qualify for temporary financial assistance. The primary goals of the program are to engage clients in their treatment and to reduce days spent

homeless, hospitalized and/or incarcerated. Goals also include increasing, employment and educational readiness; self-sufficiency; and wellness and recovery. The projected number of individuals to be served in each age category in FY23 is as follows: 5 Transition Age Youth; 55 Adults; and 15 Older Adults.

In FY21 a total of 79 TAY, Adults, and Older Adults participated in the program for all or part of the fiscal year. Demographics on those served include the following:

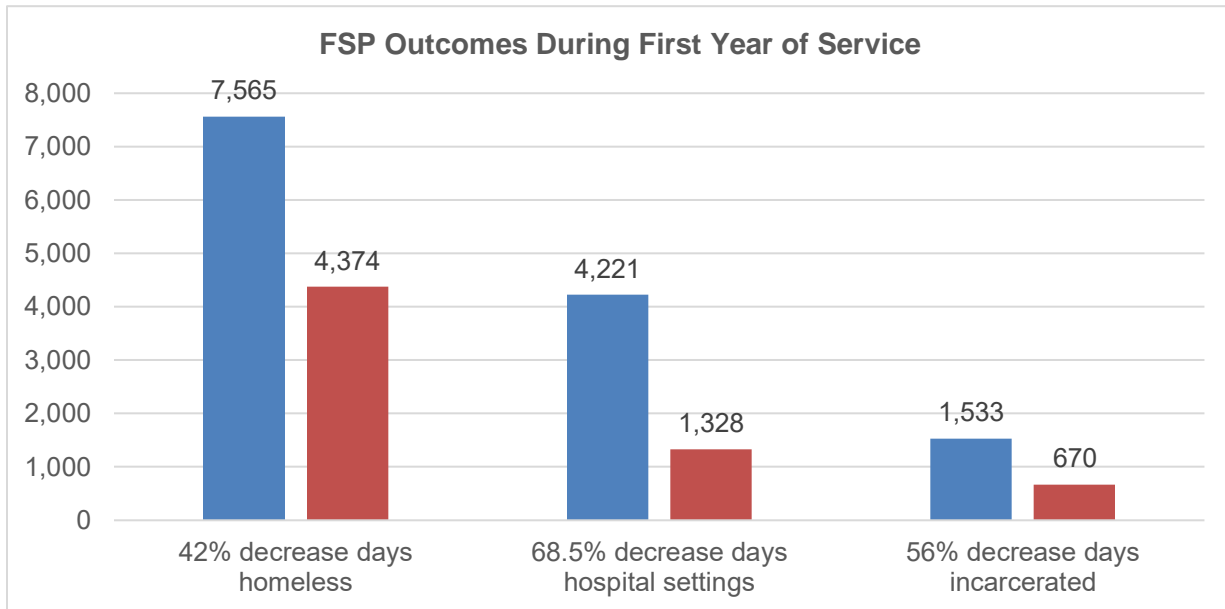
| <b>DEMOGRAPHICS N=79</b>        |                      |                   |
|---------------------------------|----------------------|-------------------|
| <i>Gender Identity</i>          | <i>Number Served</i> | <i>% of total</i> |
| Male                            | 47                   | 59%               |
| Female                          | 25                   | 32%               |
| Pangender                       | 1                    | 1%                |
| Declined to Answer (or Unknown) | 6                    | 8%                |
| <b>Race/Ethnicity</b>           |                      |                   |
| <i>Race/Ethnicity</i>           | <i>Number Served</i> | <i>% of total</i> |
| African American                | 35                   | 44%               |
| Asian Pacific Islander          | 1                    | 1%                |
| White                           | 36                   | 46%               |
| Latino/a/x                      | 4                    | 5%                |
| Declined to Answer (or Unknown) | 3                    | 4%                |
| <b>Age Category</b>             |                      |                   |
| <i>Age Category</i>             | <i>Number Served</i> | <i>% of total</i> |
| Transition Age Youth            | 4                    | 5%                |
| Adult                           | 56                   | 71%               |
| Older Adult                     | 19                   | 24%               |
| <b>Sexual Orientation</b>       |                      |                   |
| Heterosexual                    | 52                   | 66%               |
| Bisexual                        | 3                    | 4%                |
| Gay                             | 2                    | 2.5%              |
| Pansexual                       | 2                    | 2.5%              |
| Declined to Answer (or Unknown) | 20                   | 25%               |

Flex funds are used to provide supports for FSP program participants. In FY21, 20 partners received rental and housing assistance; 28 received food and groceries and 25 partners were provided with miscellaneous assistance with cleaning, clothing, bus passes, furniture, etc. FSP outcomes included the following: 11 partners were dis-enrolled from the program during FY21, 4 partners met treatment goals and graduated to lower levels of care (36%), 4 partners were transferred to a new Full Service Partnership team specializing in individuals who are chronically homeless (36%), 1 partner moved out of the county (9%), 1 partner died (9%), 1 partner could not be located (9%). 7 new partners were enrolled and completed services.

There were 71 FSP program participants in FY21 who completed at least 1 full year of service in the program and are included in the program outcome report data. There were positive outcomes with regard to reductions in days spent homeless, in hospital settings and/or incarcerated. There was a 42% reduction in days spent homeless. Partners spent 7,565 days homeless (on the street, couch surfing and in shelters) the year before program enrollment and 4,374 days homeless during the first year of program participation. There was a 68.5% reduction in days spent in hospital settings (Psychiatric Emergency, acute psychiatric inpatient, IMDs, MHRCs, state psychiatric hospitals and medical hospitals, SNF) during the first year of



program participation. Partners spent 4,221 days in hospital settings the year before program enrollment and 1,328 days in these settings during the first year of program participation. There was a 56% reduction of days spent incarcerated during the first year of program participation. Partners spent 1,533 days incarcerated (jail and prison) the year prior to program enrollment as compared with 670 days incarcerated during the first year of program participation. Outcomes are outlined in the chart below:



Overall, as with previous years, the program continued to have strong outcomes with regard to reducing days spent in hospital settings (68.5%) and days spent incarcerated (56%). The program continues to have more modest success with reducing the number of days spent homeless for participants (42%). Program challenges included the ongoing housing crisis in the Bay Area, staff vacancies, and the ongoing COVID-19 pandemic.

#### Program Challenges:

- **Bay Area Housing Crisis:** As the Bay Area housing crisis has continued, finding safe and affordable housing is extremely difficult as housing prices continue to rise and are among the most expensive in the country. Licensed Board & Cares that provide clients 24/7 support and monitor medication adherence have also been closing down. Single Room Occupancy Hotels have been raising their monthly rates such that clients are not able to afford staying there without housing subsidies.
- **Coordinated Entry System:** The Coordinated Entry System in Alameda County is intended to address homelessness more efficiently and equitably. The system standardizes the assessment process and prioritizes resources for individuals who are assessed to have the highest need. Helping the highest need homeless individuals get through the assessment process can be challenging given the need for clients to participate in an assessment appointment. Also, some individuals served in the FSP were reluctant to acknowledge their mental health and substance use issues which in turn lowered their “needs” assessment score and chances of obtaining permanent supported housing resources.

- **COVID-19 Pandemic:** The COVID-19 pandemic continued to present challenges in FY21 in providing services to clients. In-person visits continued to occur at somewhat reduced levels to minimize unnecessary risks to clients and staff. Hospitals, Board and Cares and various other programs closed sites to visitors during periods of outbreak.
- **Staffing:** Retaining and hiring staff was difficult. Several staff left the team and it has been very difficult to fill those vacancies. There have been significantly fewer applicants over the past year than in years past. Staff that applied for and were offered positions reported receiving multiple job offers from other organizations. The pandemic has likely played a role in the hiring crisis. The FSP requires working in the community with individuals who are considered the highest need within the service system. The work can be challenging. Current employees also had to manage their concerns about possible exposure to COVID-19 while doing front line services as well as managing their burnout as staffing levels decreased. It is anticipated that the current vacancies will be filled in the coming fiscal year.

Going forward the FSP will continue to develop staff expertise in treating co-occurring substance use disorders by providing ongoing training in Motivational Interviewing. The team will also continue to work on increasing fidelity to the Assertive Community Treatment model.

### **Homeless Full Service Partnership**

Through the previously approved MHSA FY20 Annual Update, and as a result of the need to ensure ongoing services and supports for homeless individuals following the ending of the Homeless Outreach and Treatment Team (HOTT) Pilot Program, a Homeless Full Services Partnership was developed. This program provides services and supports for homeless individuals who are experiencing mental health needs. It was implemented in the last quarter of FY21. During that timeframe one individual was served. The projected number of individuals to be served through this program in FY23 by age category is as follows: 5 Transition Age Youth; 35 Adults; and 10 Older Adults.

## **MULTI-CULTURAL OUTREACH AND ENGAGEMENT**

### **Diversity & Multicultural Services**

The Diversity & Multicultural Coordinator (DMC) provides leadership in identifying, developing, implementing, monitoring, and evaluating services and strategies that lead to continuous cultural, ethnic, and linguistic improvements within the organization's system of care, with a special emphasis on unserved, underserved, inappropriately served, and emerging populations. The DMC also collaborates with the state, regional counties, other city divisions, local agencies, and community groups in order to address mental health inequities and disparities for targeted populations and communities, and the community-at-large in Berkeley.

#### **The Diversity & Multicultural Coordinator accomplishes these goals by:**

- Providing cultural competency training to all behavioral health, community partners, and all stakeholders in Berkeley and other geographic locations in the region as a collaborative partner;
- Performing outreach and engagement to unserved, underserved, inappropriately served and emerging communities and populations;

- Developing long and short-term goals and objectives to promote cultural/ethnic and linguistic competency within the system of care;
- Developing an annual training plan and budget;
- Chairing the agency's Diversity and Multicultural Committee;
- Attending continuous trainings in the areas of cultural competency;
- Monitoring Interpreter and Translation Services for the agency;
- Collaborating with State, Regional, County, and local groups and organizations, and
- Developing and updating BMH's Cultural Competency Plan as needed.

Program services, events and activities conducted in FY21, are summarized below:

### **Activity Update**

Participants involved in Berkeley Mental Health's trainings, committees, groups, cultural/ethnic community events and activities are city staff, service providers, consumers/peers, family members, and residents from diverse groups and populations. There is a focus on improving services for unserved, underserved, inappropriately served, and emerging populations and communities throughout the cities of Berkeley and other areas within the region.

### **Diversity & Multicultural Trainings & Events: (Culturally Diverse Participants)**

- Latino/Latinx Conference 2020 – Latino Intercambio: Together We Are Stronger!/Juntos Somos Fuertes! Friday, October 23, 2020.  
(Zoom Event - 110 individuals attended this event) - Attendees included staff, consumers, family members, community partners, students, and residents. This training was a collaboration with the City of Berkeley Public Health and Aging Services Divisions; BAHIA, Inc.; and RISE.
- BMH Event - Black Expressions of the Soul in All Forms – Celebrating Black Joy – Thursday, February 18, 2021- (Zoom Event - 62 individuals attended this event) - Attendees included staff, consumers, and residents.
- Black History Month Youth Celebration - Thursday, February 20, 2021 - (Zoom Event - 46 individuals attended this event) - Attendees included youth, family members, teachers, staff, and residents. This event was a collaboration with BUSD.
- Berkeley in Solidarity with Asian Americans and Pacific Islanders – May 10, 2021 – A collaboration with the University of California at Berkeley (Zoom Event – 73 individuals attended this event) – Attendees included students, professors, staff and residents.
- May Is Mental Health Month – COVID-19: Challenges, Hope, and Resiliency - Increasing Community Mental Health and Wellness – May 26, 2021 - (Zoom Event - 52 individuals attended this event) - Attendees included staff, consumers, and residents.
- PRIDE Month 2021 - Transgender Tay: Finding Self and Love in Transition – Thursday, June 17, 2021 (Zoom Event - 15 individuals attended this event) - Attendees included staff, consumers, and residents.

### **Staff Training Coordinator**

The Staff Training Coordinator prepares, facilitates, presents, monitors, evaluates and documents training activities for BMH's system of care. The position also collaborates with staff

from state, counties, local agencies and community groups in order to enhance staff development of employees in the cities of Berkeley, and other areas in the region.

**The Training Coordinator accomplishes these goals by:**

- Providing staff training in the area of behavioral health to all stakeholders in Berkeley and other geographic locations in the region as a collaborative partner;
- Developing long and short term goals and objectives to promote staff development and competencies within our system of care;
- Developing an annual budget;
- Chairing the agency's Staff Training Committee;
- Attending continuous trainings in the areas of behavioral health services and other trainings as needed;
- Collaborating with State, Regional, County, and local groups and organizations; and
- Developing a two-year staff training work plan.

**Workforce, Education, and Training (WET) Services: (Culturally Diverse Participants)**

- "Motivational Interviewing: Introductory & Continuing the Journey - Wednesday, September 2, 2020, and Thursday, September 3, 2020 - (Zoom Event - 56 individuals attended this training) - Attendees included staff and community partners.
- Berkeley Mental Health - Dr. Hardy - Staff Cultural Humility 2 - Day Training – 2020 (September 14th & 21<sup>st</sup>; September 15th & 22<sup>nd</sup>; September 16th & 23<sup>rd</sup>; September 17th & 24<sup>th</sup>) – Zoom Event - BMH Staff Attended
- Suicide Prevention and Intervention Skills Building Workshop - Friday, November 13, 2020 - (Zoom Event - 48 individuals attended this training) - Attendees included staff and community partners.
- City of Berkeley - Law & Ethics for County Healthcare Providers - Wednesday, March 10, 2021 - (Zoom Event - 43 individuals attended this training) Attendees included staff and community partners.

**Committees/Groups:**

- BMH Diversity & Multicultural Committee, Chair
- BMH Staff Training Committee, Chair
- Alameda County BHCS PRIDE Committee Member
- BHS Community Resource Committee
- Statewide Spirituality Liaison, Spirituality Initiative Committee Member
- State and County Ethnic Services Managers/Cultural Competency Coordinators, Committee Member
- Alameda County BHCS African American Steering Committee for Health and Wellness, Committee Member
- BMH Health Equity Committee – Co-Chair
- African American Holistic Resource Center, Community Leadership Committee, Co-Chair

**Outreach and Engagement:**

- Native American Health Center – Indigenous Community
- Black Infant Health –Women & Children
- Berkeley Drop-In – Homeless Population
- McGee Baptist Church – African Americans

- The Way Christian Center – African Americans
- Village Connect, Inc., African American & Latino/a/x populations
- Pacific Center – LGBTQI2-S Community
- BAHIA, Inc. – Latino/a/x population
- Healthy Black Families – African American Women & Children Population
- BUSD – Staff, Students, and Families

Due to the COVID-19 pandemic all trainings went virtual and online from May 2020-present.

### **Transition Age Youth (TAY) Support Services**

The Transition Age Youth (TAY) Support Services program provides outreach, services, supports, and/or referrals to TAY with serious mental health issues who are homeless or marginally housed and not currently receiving services. Priority is given to youth coming out of foster care and/or the juvenile justice system and particular outreach strategies are utilized to engage youth from various ethnic communities, including African Americans, Asian and Latino/a/x populations, among others. Program services include: Culturally appropriate outreach and engagement; peer counseling and support; assessment; individual and group therapy; family education; case management, coaching, ancillary program referrals and linkages. Also provided are services in housing attainment and retention, financial management, employment, schooling, and community involvement. Services are designed to be culturally relevant, tailored to each individual's needs, and delivered in multiple, flexible environments. The main goals of the program are to increase outreach, treatment services, and supports for mentally ill TAY in need, and to promote self-sufficiency, resiliency and wellness. This program serves 15-20 youth at a time.

In FY21, a total of 129 TAY individuals were served. Demographics on individuals served were as follows:

| <b>DEMOGRAPHICS N=129</b>        |                      |                   |
|----------------------------------|----------------------|-------------------|
| <i>Gender Identity</i>           | <i>Number Served</i> | <i>% of Total</i> |
| Male                             | 82                   | 64%               |
| Female                           | 47                   | 36%               |
| <b>Race/Ethnicity</b>            |                      |                   |
| <i>Race/Ethnicity</i>            | <i>Number Served</i> | <i>% of Total</i> |
| African American                 | 71                   | 55%               |
| American Indian or Alaska Native | 4                    | 3%                |
| Asian Pacific Islander           | 5                    | 4%                |
| White                            | 19                   | 15%               |
| Latino/a/x                       | 34                   | 26%               |
| More than one Race               | 15                   | 12 %              |
| Other                            | 11                   | 8%                |
| Declined to Answer (or Unknown)  | 4                    | 3%                |
| <b>Age Category</b>              |                      |                   |
| <i>Age</i>                       | <i>Number Served</i> | <i>% of Total</i> |
| 16-25 years                      | 129                  | 100%              |
| <b>Sexual Orientation</b>        |                      |                   |
| <i>Sexual Orientation</i>        | <i>Number Served</i> | <i>% of Total</i> |
| Gay or Lesbian                   | 13                   | 10%               |

|                                 |    |     |
|---------------------------------|----|-----|
| Heterosexual or Straight        | 80 | 62% |
| Bisexual                        | 16 | 12% |
| Questioning or unsure           | 4  | 3%  |
| Other                           | 1  | 1%  |
| Declined to Answer (or Unknown) | 15 | 12% |

During FY21, 345 outreach activities were conducted with a total of 126 duplicated contacts. A total of 129 individuals participated in ongoing mental health program services. There were 476 referrals to the following services and supports: 112 Mental Health; 104 Physical Health; 87 Social Services; 76 Housing; and 97 other unspecified services. Per a Satisfaction Survey that was administered, youth participants reported the following: 96% indicated satisfaction with the treatment services they received; 22% exited the program into stable housing; and 39% became employed or entered into school.

In FY21 there were both changes in leadership and a move of the program to a new location. These changes were challenging but ultimately fruitful and provided immeasurable benefits for youth who participated in the program.

### **SYSTEM DEVELOPMENT**

System Development includes Wellness Recovery Support Services that are intended to expand collaboration with stakeholders, promote the values of wellness, recovery and resilience, and move the Division towards a more consumer and family member driven system. Services are comprised of the following main components: Wellness/Recovery System Integration and Family Advocacy Services. Together, both ensures that consumers and family members are informed of, and able to be involved in, opportunities to provide input and direction in the service delivery system and/or to participate in recovery-oriented or other supportive services of their choosing. Strategies designed to reach program goals include: developing policies that facilitate the Division in becoming more Wellness & Recovery oriented and consumer/family member driven; outreach to, and inclusion of, consumers and family members on Division committees; provision of family support & education; supported employment and vocational services; wellness activities; peer supportive services; and client advocacy. Some of the additional services and supports that CSS System Development provides funding for are as follows: Housing Services and Supports; Benefits Advocacy; Employment/Educational Services; Wellness Recovery Center; Counseling Services for Senior Citizens; Youth Case Management Services; Hearing Voices Groups; Transitional Outreach Team; Flex Funds and Sub-Representative Payee Services for clients, etc.

#### **Wellness Recovery System Integration**

The BMH Wellness Recovery Team works with staff, stakeholders, community members and clients to advance the goals of Wellness and Recovery on a system wide level. In order to accomplish these goals, some of the various tasks include: recruiting consumers for Division committees; convening committees around Wellness Recovery system initiatives; oversight/administration of peer stipends; convening and conducting meetings for the Berkeley "Pool of Consumer Champions (POCC)"; working with staff to develop various Wellness and Recovery related policy and procedures; and oversight of the Division's "Wellness Recovery Activities". The Consumer Liaison is also a resource person around "Mental Health Advance

Directives” for consumers desiring to express their treatment preferences in advance of a crisis; and is a participant on a number of local MHSA initiatives. The combination of individual services and system-level initiatives impact all clients and their family members across the system in a given year. In FY21, there were a total of 418 clients in the BMH system.

During the reporting timeframe, some of the various activities of the Wellness Recovery Team that were conducted under the direction of the Consumer Liaison included:

### **Berkeley Pool of Consumer Champions (POCC)**

In FY21, the Berkeley Pool of Consumer Champions (POCC) met seven times, as meetings were paused for awhile due to the pandemic. During the meetings the POCC primarily focused on creating a position for new members, reviewing the mission statement, and having members apply for roles and responsibilities within the POCC. The Alameda County POCC has 2 identified positions, a Chair and Note-Taker for their meetings, so the Berkeley POCC decided to make all 6 stipend positions, roles for members who have to apply to hold a position. The following six positions were created along with job descriptions: Chair, Note-Taker, Outreach, Ambassador to the City, MHSA/MHC representative, and Event’s Organizer. The Berkeley POCC also has a member who is a representative of the Alameda County POCC Steering Committee. Other activities the POCC focused on were: presenting about their work at the Alameda County POCC Steering Committee; attending the cultural holiday event online; helping out with food giveaways in person; making executive decisions for the entire POCC, reviewing polices; and organizing the POCC conference. A total of 14 unduplicated individuals participated in the POCC meetings and activities.

### **Wellness Recovery Activities**

Designed with, and building on the talents of consumers, wellness recovery activities is a group that highlights consumer facilitation and creativity skills. In FY21, due to the COVID-19 pandemic and shelter in place protocol, this group was not held.

#### Walking Groups

In FY21 the Wellness Recovery Team began walking groups to help with isolation and the restrictions of having groups indoors. This group is a new addition to the Wellness Recovery Activities/groups. The walks took place at local parks and neighborhoods in Berkeley and they varied in physical intensity. People were required to wear masks and socially distance. The walks were advertised in the Wellness Recovery monthly newsletter. There were 43 walks scheduled throughout the year. During the colder months in January and February walks were not scheduled due to the increase of COVID-19 cases and weather. The parks visited were Ohlone, Grove, Strawberry Creek, Codornices, Aquatic, and San Pablo Park and the University of California at Berkeley campus and Rose Garden. A total of 11 unduplicated individuals participated in the Walking Groups.

#### Field Trips

In FY21 all field trips were canceled due to shelter-in-place and COVID-19 restrictions.

#### Card Party Groups

In FY21 a total of 40 Card Party groups were offered to inspire consumers to create inspirational cards for individuals in psychiatric hospitals. This program is modeled after the Do-Send-A-Card program created by the San Francisco Mental Health Association. BMH Wellness Recovery

staff partnered with the Alameda Network of Mental Health Clients' Reach-Out Program to distribute the cards that were created from the Card Party groups when they visit the hospitals throughout the County. Patients can choose the card they want to receive. Through this program 184 cards were created and given to the Reach-Out Program. This program has been operating on the zoom platform and the participants used their personal craft materials to make cards for others. A total of 13 unduplicated individuals participated in the Card Party Groups.

### Mood Groups

The Mood group is designed for people to share their thoughts and feelings in a safe place where support is also offered. In FY21 the weekly support group focused on reviewing mood scales to help people identify where they are and then share whatever they wanted among non-judgmental peers. This group was impacted in the attendance by the COVID-19 pandemic and began again in February 2021. A total of 8 unduplicated individuals participated in 9 groups.

### Mental Health Advance Directives

One-on-One Consultations on Mental Health Advance Directives are available through Wellness Recovery Staff. Although consultations were advertised in the Wellness Recovery Newsletter, in FY21 there weren't any individuals who requested this service.

The Wellness Recovery Team also conducted and participated in the following activities during the reporting timeframe: Developed a monthly Newsletter in April 2020 and the newsletter has been written, edited and prepared by the Wellness Staff every month of the FY 20-21. The team began to publish a 6-page newsletter highlighting wellness tool, community resources, food recipes, fun activities, information about diagnosis, and interviews with community members. These mailings were sent to approximately 150 individuals via mail and another 130 individuals via email; Worked on the development of a Mission Statement for the Wellness Recovery Team; hosted a special we small group for the "We move for health" event for Berkeley residents, Participated in the planning and implementation of the May is Mental Health Month event in Berkeley, Health and Human Resource and Education Center-10x10 8 Dimensions of Wellness, "We move for Health 10x10 campaign, POCC listen sessions and Alameda County Peer Support Specialist certification forums; Conducted Consumer Perception surveying in June 2021 by mail, during the State survey period as well as submitting completed surveys to the state; The following conferences were attended– CAMHPRO LEAD Conference in Sacramento and many put on by the Mental Health Division.

### **Hearing Voices Support Groups**

The Hearing Voices Support Groups are offered through a contract with the Bay Area Hearing Voices Network. A weekly free drop-in Support Group is for adults who experience voices, visions, special messages, unusual beliefs or extreme states of consciousness. The support group is co-facilitated by trained group leaders both of whom have lived experience in the mental health system. Per the approved MHSA FY20 Annual Update, two additional new support groups were implemented through this program in December 2019, one for Transition Age Youth and one for Family Members of individual participants.

In FY21, 590 individuals were served through weekly online support groups. A survey questionnaire was sent to group participants in January 2021 with a total of 25 individuals responding to the survey. The survey results were as follows:



| <b>DEMOGRAPHIC SURVEY RESPONSES N=25</b> |                      |                   |
|------------------------------------------|----------------------|-------------------|
| <i>Gender Identity</i>                   | <i>Number Served</i> | <i>% of total</i> |
| Male                                     | 7                    | 28%               |
| Female                                   | 15                   | 60%               |
| Declined to Answer (or Unknown)          | 3                    | 12%               |
| <b>Race/Ethnicity</b>                    |                      |                   |
| <i>Race/Ethnicity</i>                    | <i>Number Served</i> | <i>% of total</i> |
| African American                         | 1                    | 4%                |
| Asian Pacific Islander                   | 3                    | 12%               |
| White                                    | 15                   | 60%               |
| Latino/a/x                               | 5                    | 20%               |
| More than one Race                       | 1                    | 4%                |
| <b>Age Category</b>                      |                      |                   |
| <i>Age Category</i>                      | <i>Number Served</i> | <i>% of total</i> |
| Adult                                    | 14                   | 56%               |
| Older Adult                              | 11                   | 44%               |
| <b>Sexual Orientation</b>                |                      |                   |
| Heterosexual or Straight                 | 14                   | 56%               |
| Bi-Sexual                                | 2                    | 8%                |
| Gay                                      | 4                    | 16%               |
| Declined to Answer (or Unknown)          | 5                    | 20%               |

Responses to some of the survey questions on the impact of the group were as follows:

How has the group helped you?

- Knowing that we are not alone. Getting others people opinions on different situations. I appreciate hearing about other people's experiences, especially when they resonate with mine. It's so freeing to share experiences in such a nonjudgmental space. Even though I've only gone a couple of times so far, I've been able to share and get advice about issues that were really troubling me. has given me tips and insights on communicating with my loved one. Let me know I'm not alone with this issue.
- support group fellowship with others who hear voices It helps me find the strength to go out into the world after being with people who understand what I'm going through.
- Validation to understand my own experiences and provide support to others who have different challenges but equally significant ones. To have a community.
- It helped me normalize myself
- To feel not so alone with these problems
- I get ideas for how to manage life with my loved one.
- Normalized the situation
- Allowed me to talk to folks about my voices.
- it is an open forum where I can let loose and say what I need to say about my voices
- By a lot it helps me understand others and myself
- Really supportive
- This group has helped me understand how to support and handle people who hear voices.
- I feel less alone knowing other people hear voices, too.

- Given me a safe haven to talk about our situation here with our son.
- Group has offered me support and new perspectives on my family relationships and myself.
- Its nice to talk to other people who hear voices.
- Showing me that I am not alone.
- Place to talk about hearing voices

How have you seen your life improve since you started coming to the group?

- My life has changed knowing that I have the support.
- Knowing that I can turn to the group at difficult times.
- Continues being a challenge
- I have more hope for the future.
- I have community. I also have the support to advocate for the alternative senses if reality community in my work life and personal life as well.
- I have more self respect and I respect my limits more and have a better relationship with myself
- not yet except for feeling better about the future
- When I was participating regularly I had improved relationships
- Less depression and anxiety during the time I am talking to the group.
- Been able to talk to people a lot more compared to less social activity
- more aware of my voices
- It's an outlet and hope. It is something I look forward to.
- I don't need to filter as much in this group as I do in other groups.
- Our son respects that both of his parents are spending time each week in an effort to better understand him. And we parents are doing a better job talking to the other about our different ways of being with our son.
- It gives me a place to talk for support for 2 hours.
- Better understanding of my voices

### **Family Support Services**

The Family Service Specialist works with family members, staff, community-based organizations etc. to improve services and supports for BMH clients and their family members on a system-wide level. Services provide both individual family services and supports, and system-wide change initiatives. This family/caregiver-centered program provides information, education, advocacy and support for family/caregivers of children, adolescents, TAY, adults and older adults with serious emotional disturbance or severe mental illness. Services are provided in a culturally responsive manner providing outreach to people of various ethnicities and language groups.

The Family Services Specialist serves as a point of contact for family members who are currently accessing or attempting to access services and/or who have questions and concerns about the mental health system, providing them with supports, and as needed, referrals to additional community resources. Outreach is provided to families through existing BMH family support groups, NAMI of the East Bay, community clinics and the Alameda County Family

Education Resource Center (FERC). Additionally, the Family Services Specialist coordinates forums for family members to share their experiences with the system; recruit's family members to serve on BMH committees; supports family members through a "Warm line"; conducts a Family Support Group; and creates training opportunities to educate mental health staff on how to effectively work with families. The combination of individual services and system-level initiatives impact all clients and their family members across the system in a given year. In FY21, there were a total of 438 clients in the BMH system.

During the reporting timeframe, the following individual or group services and supports were conducted through this program:

**Warm Line Phone Support:** A phone Warm Line provided a sympathetic resource for family members needing information, referrals, supports, and assistance in navigating the complex mental health system. Through the Warm Line, the Family Services Specialist helped families find services and resources as needed.

**Family Support Group:** Provides supports for parents, children, siblings, spouses, significant others or caregivers. The group met once a month for two hours.

As the Family Services Specialist position has been vacant since April 2019, the previous position holder has continued the Family Support Group and occasional Warm Line Phone support. In addition, the global COVID-19 pandemic resulted in a pause of the Family Support Group which is reflected in the low number of individuals served.

During FY21 a total of 15 family members were served. Demographics of individuals served are outlined below:

| <b>DEMOGRAPHICS N=15</b>        |                      |                                       |
|---------------------------------|----------------------|---------------------------------------|
| <i>Gender Identity</i>          | <i>Number Served</i> | <i>Percent of Total Number Served</i> |
| Male                            | 5                    | 33%                                   |
| Female                          | 10                   | 67%                                   |
| <b>Race/Ethnicity</b>           |                      |                                       |
| <i>Race/Ethnicity</i>           | <i>Number Served</i> | <i>Percent of Total Number Served</i> |
| African American                | 1                    | 7%                                    |
| Asian Pacific Islander          | 2                    | 13%                                   |
| White                           | 7                    | 47%                                   |
| Declined to answer (or unknown) | 5                    | 33%                                   |
| <b>Age Category</b>             |                      |                                       |
| <i>Age in Years</i>             | <i>Number Served</i> | <i>Percent of Total Number Served</i> |
| 25-44 years                     | 1                    | 7%                                    |
| 45-64 years                     | 10                   | 67%                                   |
| 65+ years                       | 4                    | 26%                                   |
| <b>Sexual Orientation</b>       |                      |                                       |
| Declined to answer (or unknown) | 15                   | 100%                                  |

## **Employment Services**

Previously, a BMH Employment Specialist provided services to support consumers in job readiness and accessing employment opportunities. It was envisioned that these services would at a minimum, create and nurture supported vocational, educational and volunteer “try-out” opportunities in the community; build employment and educational readiness; and increase the numbers of consumers who are gainfully employed and/or engaging in other meaningful activities such as school or volunteer work. Different strategies were implemented along the way including utilizing the Dartmouth model of supported employment. The Dartmouth model helps to promote wellness and recovery by enabling clients to work alongside other non-mentally ill workers in a competitive environment in their community. In this model, employment supports were provided to clients from multiple sources including the following: Employment Specialist; Case Manager; Psychiatrist; and any involved Family Members. The Employment Specialist also: provided supports to clients who were interested in starting their own business by guiding them through the necessary steps of getting a license, advertising, etc.; assisted clients who weren’t quite ready to obtain employment, in becoming involved in volunteer opportunities; connected clients with the Department of Rehabilitation for computer skills training; worked with staff to ensure clients were adhering to their medication regimen; and supported clients in filling out job applications and or practicing their interview skills.

Although various strategies were implemented over the years, client participation and employment outcomes remained low through FY12, followed in FY13, with an unexpected vacancy in the Employment Specialist position. Low client outcomes coupled with a vacancy in the position prompted BMH to evaluate current best practices for mental health client employment. Additionally, input received during various MHSA Community Program Planning processes, provided recommendations on strategies to better support clients in reaching their employment goals, such as: assisting clients on interviews and on what to share with an employer regarding reasonable accommodations; providing mentoring and job shadowing; implementing technology training for clients; having services be integrated and supported, and implementing evidence based practices.

A new Employment Specialist position was proposed through a previously approved Three Year Plan. It was envisioned that once hired, the Employment Specialist would be focused on utilizing an evidenced based model for supporting individuals with serious mental illness in obtaining and retaining competitive employment. The hiring process for this position has not occurred yet, as the City of Berkeley has been evaluating whether the best use of funds would be to hire the full-time position, or to contract the services out to a local organization that focuses on employment services and supports for mental health consumers. As a decision on the best approach had not been finalized yet, in the previously approved MHSA FY19 Annual Update, the Division requested to have flexibility on how to best utilize funds allocated for the Employment Services Specialist position.

## **Housing Services and Supports**

The Housing Specialist provides housing resource services for clients; working with landlords to increase housing opportunities; collaborating with case management staff, landlords, and Board & Care Managers to provide additional supports for clients who are already housed; and working in tandem with the City of Berkeley HHCS Department Hub (which serves as a single

entry point into emergency shelter and transitional housing, where clients are triaged based on their housing and service needs). Some of the various places where clients with subsidies are housed are the Berkeley Food and Housing Project Russell Street Residence Board and Care, McKinley House, and Lakehurst Hall.

### Benefits Advocacy Services

Through this project a community-based organization, the Homeless Action Center (HAC), assists clients in obtaining public benefits. Services are provided for approximately 10 BMH clients a year. In FY21, 9 clients were served through this agency. Demographics on those served were as follows:

| <b>DEMOGRAPHICS N=9</b>         |                      |                                       |
|---------------------------------|----------------------|---------------------------------------|
| <i>Gender Identity</i>          | <i>Number Served</i> | <i>Percent of Total Number Served</i> |
| Male                            | 5                    | 56%                                   |
| Female                          | 4                    | 44%                                   |
| <b>Race/Ethnicity</b>           |                      |                                       |
| <i>Race/Ethnicity</i>           | <i>Number Served</i> | <i>Percent of Total Number Served</i> |
| African American                | 3                    | 34%                                   |
| White                           | 4                    | 44%                                   |
| Latino/a/x                      | 1                    | 11%                                   |
| Other                           | 1                    | 11%                                   |
| <b>Age Category</b>             |                      |                                       |
| <i>Age</i>                      | <i>Number Served</i> | <i>Percent of Total Number Served</i> |
| 18-24 years                     | 2                    | 22%                                   |
| 25-44 years                     | 5                    | 56%                                   |
| 45-64 years                     | 2                    | 22%                                   |
| <b>Sexual Orientation</b>       |                      |                                       |
| Declined to Answer (or Unknown) | 9                    | 100%                                  |

Pandemic related challenges of connecting with disabled and homeless or indigent clients made it more difficult to keep cases moving along, and harder to get cases started or finished. Additionally, the Social Security Administration's challenges for these clients were magnified by the pandemic as the administration was harder to contact and slower to process every aspect of a claim. All case processes took a longer period of time. Among It all, there was a 100% success rate of clients who won their claim, as each time a case was closed in FY21, it was due to the client successfully being awarded public benefits.

### Flexible Funds for Level One Clients

A contract with the community-based organization, Berkeley Food & Housing Project, enables flexible funds to be used with clients across the system for supports such as housing, clothing assistance, food, transportation, etc. This use of flexible funds aids individuals in achieving better stability in areas where they are less capable of addressing their daily living needs. This program is set up to aid any clients in need across the system in a given year. In FY21, there were a total of 418 clients in the BMH system.

### Mobile Crisis Team (MCT) Expansion

Through the previously approved MHSA FY14/15 - 16/17 Three Year Plan, and as a result of staff and community input on increasing and improving services for those experiencing a mental health crisis, the following additions to BMH have been or are in the process of being implemented through CSS System Development funds:

- Increase in staff to expand the Mobile Crisis Team (MCT) capacity and hours of operation;
- Mental Health First Aid Trainings to teach community members how to assist individuals who are in crisis or are showing signs and symptoms of a mental illness;
- A Consumer/Family Member Satisfaction Survey for Crisis services.

### Transitional Outreach Team (TOT)

The Transitional Outreach Team (TOT) was added thru the previously approved FY16 MHSA Annual Update to support Crisis Services, through interventions that address issues individuals experience either immediately prior to, or following a mental health crisis. This team, follows up with individuals and families that have had a recent crisis. The goal of the team is brief outreach and engagement to assist the individual and/or family in getting connected to the resources they may need.

In FY21, 306 individuals were served through this project. Demographics on those served were as follows:

| <b>DEMOGRAPHICS N=306</b>       |                      |                                       |
|---------------------------------|----------------------|---------------------------------------|
| <i>Gender Identity</i>          | <i>Number Served</i> | <i>Percent of Total Number Served</i> |
| Male                            | 151                  | 49%                                   |
| Female                          | 143                  | 47%                                   |
| Transgender                     | 3                    | 1%                                    |
| Declined to Answer (or Unknown) | 9                    | 3%                                    |
| <b>Race/Ethnicity</b>           |                      |                                       |
| <i>Race/Ethnicity</i>           | <i>Number Served</i> | <i>Percent of Total Number Served</i> |
| African American                | 65                   | 21%                                   |
| Asian                           | 24                   | 8%                                    |
| White                           | 94                   | 31%                                   |
| Latino/a/x                      | 18                   | 6%                                    |
| Other                           | 105                  | 34%                                   |
| <b>Age Category</b>             |                      |                                       |
| <i>Age in Years</i>             | <i>Number Served</i> | <i>Percent of Total Number Served</i> |
| 0-18                            | 22                   | 8%                                    |
| 18-25                           | 34                   | 11%                                   |
| 25-44                           | 90                   | 29%                                   |
| 45-64                           | 59                   | 19%                                   |
| 65+                             | 28                   | 9%                                    |
| Declined to Answer (or Unknown) | 73                   | 24%                                   |
| <b>Sexual Orientation</b>       |                      |                                       |
| Declined to Answer (or Unknown) | 306                  | 100%                                  |

Services provided by this team are subject to the number of referrals that are generated by the Mobile Crisis Team crisis calls. Clients served by TOT often enter the crisis system with fewer

resources such as collateral supports, lack of insurance, etc. As a result of the pandemic many services were switched from in-person to telephone supports and tele-health.

Outcomes of the program during the reporting timeframe:

- Continuation of successful follow up with residents who have had contact with Mobile Crisis by phone and/or in person.
- Connection of individuals and families to needed and wanted mental health, housing, literacy, family, and emergency medication services.
- Offered intensive short term support to individuals and families who experienced a mental health crisis, including referrals, linkage, psycho-education, and active support in connecting with needed services in Berkeley or elsewhere in the Alameda County system of care.
- Provided in person outreach and engagement to individuals in inpatient settings who needed assistance connecting to treatment and were unlikely to make it to the clinic for an intake. Settings included John George Psychiatric Facility, Villa Fairmont, Herrick Hospital, Woodrow House, and other sites. TOT staff worked with facility staff in addition to mental health consumers.
- Provided in person outreach and engagement to individuals receiving homeless services and staff at homeless service provider agencies, including MASC, BOSS, BFHP, and others. Also conducted in person outreach at homeless encampments throughout the City.
- Coordinated with other programs within the City's Mental Health Division, including the Crisis/Assessment/Triage (CAT) On Duty staff, field based services such as Mobile Crisis (MCT) and the Homeless Outreach and Treatment Team (HOTT), and with the case management teams at the Adult and Children's clinics.

Program Successes:

- The TOT provided numerous individuals and families with follow up services. These services continued as the newer staff gained more skill and facility with the program and working with the population.
- Responses from service recipients have been generally positive and conveyed an appreciation of services received.
- Started regular discussions and integration of cultural humility training, and practices into both teams and client care.
- Continued to link individuals who may have had barriers, ambivalence, or difficulty engaging with the mental health system to appropriate and desired services through persistent outreach and engagement at inpatient facilities and in the community.

Program Challenges:

- Facility and system issues affecting the BMH Adult Services Program as a whole continue to affect consistency.
- Outreach efforts are hampered by system issues outside of BMH, for example, the County psychiatric facility's decisions regarding patient admission/length of stay over which TOT Staff have no control.
- TOT as a program has continued to struggle with the best way to coordinate care with other units within the City system. Staff continue to work on improving procedures and protocols that support the program mission and clarify roles.

- The data collection system does not capture all necessary information that would support accurate outcome reporting.
- The COVID-19 pandemic changed many service procedures and availability of services to the public, including with the TOT. Facilities that normally would have accepted in person services and visits were no longer open; many resources changed their operating hours/availability; many services closed or were no longer accessible; and many residents refocused their efforts on basic needs rather than mental health service linkages which changed the interface and usage of the TOT services.

### Sub-Representative Payee Program

In the previously approved MHSA FY2014/15 – 2016/17 Three Year Plan the Division proposed to use a portion of CSS System Development funds to outsource Sub-Representative Payee services, as the practice for many years at the BMH Adult Clinic was for clinicians to act as representative payees, managing client's money. While on some levels this practice improved clients' attendance at regular appointments, it also presented an array of other challenges around the dual role of clinician/money manager.

In FY20, Sub-Representative Payee services was contracted out to Building Opportunities for Self Sufficiency (BOSS) who were chosen through a competitive RFP process. BOSS began these services in April 2019. Approximately 79 individuals receive services a year. In FY21, 78 individuals were served. Demographics on individuals served were as follows:

| <b>DEMOGRAPHICS N=78</b>        |                      |                   |
|---------------------------------|----------------------|-------------------|
| <i>Gender Identity</i>          | <i>Number Served</i> | <i>% of total</i> |
| Male                            | 56                   | 72%               |
| Female                          | 22                   | 28%               |
| <b>Race/Ethnicity</b>           |                      |                   |
| <i>Race/Ethnicity</i>           | <i>Number Served</i> | <i>% of total</i> |
| African American                | 46                   | 59%               |
| Asian Pacific Islander          | 3                    | 4%                |
| Latino/a/x                      | 6                    | 8%                |
| Native American                 | 1                    | 1%                |
| White                           | 25                   | 32%               |
| More than one Race              | 3                    | 4%                |
| <b>Age Category</b>             |                      |                   |
| <i>Age In Years</i>             | <i>Number Served</i> | <i>% of total</i> |
| 18-24                           | 4                    | 5%                |
| 25-44                           | 14                   | 18%               |
| 45-64                           | 26                   | 33%               |
| 65 years or older               | 34                   | 44%               |
| <b>Sexual Orientation</b>       |                      |                   |
| Declined to Answer (or Unknown) | 78                   | 100%              |

### Berkeley Wellness Center

The Berkeley Wellness Center is an MHSA funded collaboration between the City of Berkeley, Mental Health Division and Alameda County BHCS. This program implemented through the community-based organization, Bonita House, provides: mental health and substance abuse



counseling; living skills training; community integration and educational activities and opportunities; pre-vocational training; wellness recovery programming; support groups; referrals to community resources; computer training; Art Therapy and other activities.

The main goals of the program are to assist individuals in functioning as highly as possible so they can become integrated into the community. The Berkeley Wellness Center opened in November 2019 and was open for in-person services up until the closure of offices in March 2020 due to the pandemic. Beginning in March 2020 and through FY21, services were provided via phone or tele-health. Group services, Crisis support and other mental health services were also provided via the Zoom platform.

In FY21, 78 individuals participated in this program. Demographics on individuals served were as follows:

| <b>DEMOGRAPHICS N=78</b>       |                      |                   |
|--------------------------------|----------------------|-------------------|
| <i>Gender Identity</i>         | <i>Number Served</i> | <i>% of total</i> |
| Male                           | 27                   | 35%               |
| Female                         | 51                   | 65%               |
| <b>Race/Ethnicity</b>          |                      |                   |
| <i>Race/Ethnicity</i>          | <i>Number Served</i> | <i>% of total</i> |
| African American               | 8                    | 10%               |
| White                          | 53                   | 69%               |
| Latino/a/x                     | 5                    | 6%                |
| Other                          | 12                   | 15%               |
| <b>Age Category</b>            |                      |                   |
| <i>Age in Years</i>            | <i>Number Served</i> | <i>% of total</i> |
| 25-44 years                    | 19                   | 24%               |
| 45-64 years                    | 59                   | 76%               |
| <b>Sexual Orientation</b>      |                      |                   |
| Declined to State (or Unknown) | 100                  | 100%              |

#### Program Successes:

The Berkeley Wellness Center pivoted their services to attempt to continue to address needs during the shelter-in-place environment. This included running virtual groups and meeting with individuals over the phone and via zoom. For the average 3-4 clients that were regularly participating, the continuation of these groups in a virtual platform was very useful. Though everyone has been encouraged to return to the physical space, the addition of a virtual option in addition to in-person services is something that will continue to expand access and going forward a hybrid services approach will continue to be maintained so that individuals who are not able or ready to participate in person can continue to be apart of program activities.

#### Program Challenges:

During the COVID-19 shelter-in-place many Wellness Center participants were unable to access the technology that would have enabled them to connect to the virtual platforms; be it due to lacking devices or skills to use the devices. They either did not own the technology or their underlying mental health symptoms factored into their lack of desire to use the technology to connect with services. Some individuals preferred to wait until the Wellness Center was open again for in-person services.

### BMH Peer and Family Member Positions

Since the first MHSA Plan, BMH has included positions for peers and family members with lived experience to be added to various programs throughout the Division. The BMH Division utilizes existing City job classifications to create an employment track for peer or family member providers. The entry level position is Community Health Worker, the mid-level is Assistant Mental Health Clinician, and the top-level is Social Services Specialist. All of these classifications are used broadly for differing purposes throughout the City. For the specific positions where the MHSA Plan envisioned utilizing peer or family providers, BMH has had success in establishing employment lists where there are applicants who describe themselves as peer providers or family member providers. In 2018, a Peer Specialist was hired to support the Wellness Recovery services work. This position became vacant in December 2021 and the Division is currently seeking to fill the vacancy.

Two additional positions were added through the FY22 Annual Update, to increase the Wellness Recovery work. The addition of peer staff will enable a greater ability to provide a variety of peer led services, and the provision of activities and supports to individuals in the waiting room. It is envisioned that this service addition will create a more welcoming environment for individuals waiting for their appointments.

### Case Management for Youth and Transition Age Youth

In response to a high need for additional services and supports for youth and TAY who are suffering from mental health issues and may be homeless or marginally housed, case management services for TAY are provided through a local community partner, Youth Spirit Artworks (YSA). This project serves approximately 50 youth a year.

In March 2020, due to the pandemic, YSA was forced to close its facilities in Berkeley. Staff and youth participants quickly transitioned to online services. During the pandemic, staff social workers communicated with youth primarily through phone calls and tele-conferencing via the Zoom platform. As YSA transitioned back to in-person service provision, remote services remained as an option.

In FY21, a total of 30 youth were served through this project. Demographic data on youth participants is outlined below:

| <b>DEMOGRAPHICS N=30</b>        |                      |                   |
|---------------------------------|----------------------|-------------------|
| <i>Gender Identity</i>          | <i>Number Served</i> | <i>% of total</i> |
| Male                            | 11                   | 37%               |
| Female                          | 11                   | 37%               |
| Gender Queer                    | 1                    | 3%                |
| Transgender                     | 4                    | 13%               |
| Gender Non-Conforming           | 2                    | 7%                |
| Declined to Answer (or Unknown) | 1                    | 3%                |
| <b>Race/Ethnicity</b>           |                      |                   |
| <i>Race/Ethnicity</i>           | <i>Number Served</i> | <i>% of total</i> |
| African American                | 13                   | 44%               |
| Asian Pacific Islander          | 4                    | 13%               |
| White                           | 2                    | 7%                |
| Latino/a/x                      | 6                    | 20%               |

| Other                           | 4                    | 13%               |
|---------------------------------|----------------------|-------------------|
| More than one race              | 7                    | 23%               |
| Declined to Answer (or Unknown) | 1                    | 3%                |
| <b>Age Category</b>             |                      |                   |
| <i>Age Category</i>             | <i>Number Served</i> | <i>% of total</i> |
| 0-18 years                      | 14                   | 47%               |
| 18-24 years                     | 16                   | 53%               |
| <b>Sexual Orientation</b>       |                      |                   |
| Heterosexual or Straight        | 12                   | 40%               |
| Bisexual                        | 10                   | 33%               |
| Gay                             | 3                    | 10%               |
| Lesbian                         | 4                    | 13%               |
| Queer                           | 1                    | 4%                |

**Program Successes:** Successes included getting staff and youth trained in the use of Zoom for remote conferencing for meetings and workshops and laying the groundwork for a larger referral system. Outreach and collaborations were expanded with the County's Department of Juvenile Probation and with agencies who work with youth in the Berkeley Schools and individuals involved with Juvenile Justice.

**Program Challenges:** Service delivery the entire year was a challenge, due to the pandemic. Program services were delivered remotely, via phone or Zoom meetings. This made it much more difficult to reach and engage new youth Outreach work to engage disenfranchised youth and provide case management is much more effective if there is face-to-face interaction and peer support. During the year, many of the agencies YSA receives referrals from, were not in operation.

The pandemic also made it more difficult to hire new staff that YSA needed to provide case management and mental health services, and new staff had a more difficult time engaging youth, as there were fewer opportunities, due to the physical distancing requirements, to develop a trusting relationship.

### **Additional Services for Asian Pacific Islanders**

The Asian Pacific Islander (API) population is significantly underserved in the mental health system. In an effort to better meet the needs of this underserved population, BMH proposed through the previously approved MHSA FY19 Annual Update to allocate CSS System Development funds to contract with a local community-based organization or to partner with Alameda County BHCS to increase funding for a contractor selected for similar purposes. It was envisioned that the contractor would provide access to additional services and supports for this population. In FY20 and in FY22 three separate RFP processes were executed to find a community partner that the Division could contract with who would provide these services, however the Division was unable to secure a Contractor. As a result, the Division will re-assess the best way to provide additional services and supports for the API population.

### **Results Based Accountability Evaluation**

Feedback received over recent years focused on implementing evaluation measures that help BMH, MHSA Stakeholders and community members more fully understand and determine how well programs are meeting participant and community needs. Integral to this type of outcome

measure is to engage the voice of the program participant around the services they received. Despite best intentions of staff there is simply not the time or expertise to effectively accomplish this objective and the specialized skills of a consultant would ensure the most successful outcome.

As a result, in the previously approved MHSA FY19 Annual Update, BMH allocated CSS System Development funds for a Consultant who would conduct an evaluation on all BMH programs across the system utilizing the “Results Based Accountability” (RBA) framework. The RBA framework will measure how much was done, how well it was done, and whether individuals are better off as a result of the services they received. In FY19 a competitive RFP process was executed, and Resource Development Associates (RDA) was the chosen consultant.

In FY21, the following activities occurred for the RBA evaluation project:

- A contract was executed with Resource Development Associates (RDA), to conduct a comprehensive process to develop RBA outcomes measures for all internal Mental Health Division programs.
- A Work Plan for the full RBA project was developed
- A Community Advisory Group (CAG), consisting of key stakeholders for the project (community members, Alameda County BHCS, MH Division staff), was created to provide input and guidance throughout the life of the project.
- A data dictionary of existing data measures available for mental health division programs was developed.
- Monthly meetings for mental health program teams were initiated. These meeting were focused on developing understanding of the RBA methodology, and supporting program teams in developing RBA outcome measures.

Updates on this evaluation will be reported in future MHSA Plans and Updates.

### **Counseling Services for Older Adults**

Older Adults who only have Medicare insurance currently have great difficulty accessing mental health services, despite consistent input on the need for mental health services for this population. In an effort to increase mental health services and supports for older adults, the Division allocated additional funding in the approved FY20 MHSA Annual Update to support this population. MHSA funds are transferred to the Aging Services Division of HHCS, to implement various counseling services for Older Adults. The Aging Services Division issued a Request For Proposal (RFP), and in FY22 services began to be provided through the chosen contractor, the Wright Institute.

### **Substance Use Disorder Services**

A large portion of individuals who currently receive services at BMH are also suffering from co-occurring disorders, having both mental health issues and substance use disorders (SUD). In an effort to increase the capacity to serve individuals with SUD, funds were previously allocated through the MHSA FY22 Annual Update for the Division to work with a local SUD provider to co-locate SUD services at the Mental Health Adult clinic. This will increase the provision of SUD services for BMH clients, provide an opportunity for staff to obtain consultations on SUD services, and will make referrals into SUD services outside of the Mental Health Adult clinic

easier for consumers. The contract with a local provider for these increased SUD services is currently in the process of being executed.

### **Specialized Care Unit**

On July 14, 2020 City Council passed Resolution No, 69,501-N.S.; a package of items providing direction for the development of a new paradigm of public safety in Berkeley. One of the items adopted by City Council directed the City Manager to analyze and develop a pilot program to re-assign non-criminal police service calls to a Specialized Care Unit (SCU). The SCU will consist of trained crisis-response field workers who will respond to behavioral health occurrences that do not pose an imminent threat to safety without the involvement of law enforcement. The SCU will be implemented as a pilot model and lessons-learned will inform the long-term implementation. Through the approved FY22 Annual Update, the Division proposed to allocate a small portion of CSS and PEI funds to be leveraged with other City funds for this pilot program. This allocation was a one-time MHPA funding amount, while the City determines how to best fund this initiative.

In FY22, Resource Development Associates (RDA), chosen through a competitive Request for Proposal (RFP) process to evaluate the current crisis system in Berkeley, received an expanded scope of work to provide recommendations on the implementation of the SCU. To oversee and advise RDA in their work, the City formed an SCU Steering Committee consisting of Health, Housing and Community Services Department and Fire Department staff, and community representatives from the Mental Health Commission and the Berkeley Community Safety Commission. The Steering Committee met from January 2021 through January 2022 and advised on RDA's completion of three critical reports. The first two reports summarized crisis response programs in the United States and internationally as well as gathered perspectives from community and City stakeholders regarding the crisis response system. This included gathering input from City of Berkeley and Alameda County agencies, local community-based organizations (CBOs), local community leaders, and utilizers of Berkeley's crisis response services. These reports laid the foundation for the twenty-five recommendations that were the subject of the third and final report to inform the SCU model. Each recommendation put forth in the final report is deeply rooted in the stakeholder feedback included in the two previous reports.

The work of the SCU Steering Committee has now transitioned from planning to implementation. It is envisioned that the SCU will begin operations in late FY22 or early FY23 through a community partner that will be chosen through a competitive Request for Proposal process.

### **PREVENTION & EARLY INTERVENTION (PEI)**

The original City of Berkeley Prevention & Early Intervention (PEI) Plan was approved in April 2009. Since the approval of the original plan, Three Year Plans or Annual Updates outlining proposed PEI funding and programming have been approved on an annual basis. From the original PEI Plan and/or through subsequent plan updates, some of the many services the City of Berkeley has provided through the PEI funding component are as follows:

- An early identification, assessment, treatment and referral program for children (0-5 years old) and their families;

- Prevention and short-term intervention services in the Berkeley school system;
- Trauma support services for youth, adults and older adults in unserved, underserved and inappropriately served populations;
- An anti-stigma support program for mental health consumers and family members; and
- Intervention services for at-risk children.

### **PEI Reporting Requirements**

Per MHSAs PEI regulations, all PEI funded programs must collect specified state identified outcome measures and detailed demographic information. MHSAs also requires Evaluation Reports for PEI funded programs. Beginning in FY19, PEI Evaluations were required to be included in each MHSAs Annual Update or Three Year Plan. Included in Appendix A of this Annual Update is the Prevention & Early Intervention (PEI) Fiscal Year (FY) 2018/2019 – 2020/2021 Three Year Evaluation Report.

### **Impact Berkeley**

In FY18, the City of Berkeley introduced a new initiative in the HHCS Department called “Impact Berkeley”. Central to this effort is using a highly regarded framework called Results Based Accountability (RBA) to account for the work of the Department. RBA provides a new way of understanding the quality and impact of services provided by collecting data that answer three basic questions:

- How much did you do?
- How well did you do it?
- Is anyone better off?

RBA has been incorporated into selected programs within the Department. This has included community agency programs funded through the MHSAs Prevention & Early Intervention Community Education & Supports program. Through this initiative the Department worked with each contractor to envision, clarify and develop measures on the outcomes and results each program is seeking to achieve, and used a rigorous framework to begin measuring and enhancing progress towards these results. Page 54 of this Annual Update provides an aggregated summary of some of the results of this initiative.

### **PEI Regulations**

Per PEI State Regulations, Mental Health jurisdictions are to utilize PEI funds to implement the following programs: Prevention, Early Intervention, Access and Linkage to Treatment, Stigma and Discrimination Reduction, and Outreach for Increasing Recognition of Early Signs of Mental Illness. Programs and/or strategies within programs can also be combined. Jurisdictions may also opt to utilize some PEI funds to implement a Suicide Prevention program. The definitions of each program are outlined below along with the City of Berkeley corresponding program:

| PEI Program Type                                                     | Program Definition                                                                                                                                                                                                                                                                                                                                               | City of Berkeley PEI Program(s)                                                                                                                                                                                                                                                                                      |
|----------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Prevention                                                           | A set of related activities to reduce risk factors for developing a potentially serious mental illness and to build protective factors.                                                                                                                                                                                                                          | <ul style="list-style-type: none"> <li>• Mental Health Promotion Campaign</li> <li>• High School Prevention</li> <li>• DMIND</li> <li>• MEET</li> <li>• African American Succes</li> </ul>                                                                                                                           |
| Early Intervention                                                   | Treatment and other services and interventions, including relapse prevention, to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the applicable negative outcomes that may result from untreated mental illness.                                                                             | <ul style="list-style-type: none"> <li>• High School Prevention</li> <li>• Be A Star</li> <li>• DMIND</li> <li>• MEET</li> <li>• African American Success</li> <li>• Supportive Schools</li> <li>• Child &amp; Youth At Risk</li> <li>• Community Education and Supports</li> <li>• Specialized Care Unit</li> </ul> |
| Outreach for Increasing Recognition of Early Signs of Mental Illness | A process of engaging, encouraging, educating, and/or training, and learning from potential responders about ways to recognize and respond effectively to early signs of potentially severe and disabling mental illness.                                                                                                                                        | <ul style="list-style-type: none"> <li>• Mental Health First Aid (non-PEI funded program)</li> </ul>                                                                                                                                                                                                                 |
| Stigma and Discrimination                                            | Direct activities to reduce negative feelings, attitudes, beliefs, perceptions, stereotypes and/or discrimination related to being diagnosed with a mental illness, having a mental illness, or to seeking mental health services and to increase acceptance, dignity, inclusion, and equity for individuals with mental illness, and members of their families. | <ul style="list-style-type: none"> <li>• Social Inclusion</li> </ul>                                                                                                                                                                                                                                                 |
| Access and Linkage to Treatment                                      | Connecting children who are seriously emotionally disturbed, and adults and seniors with severe mental illness as early in the onset of these conditions as practicable, to medically necessary care and treatment, including but not limited to care provided by county mental health programs.                                                                 | <ul style="list-style-type: none"> <li>• Homeless Outreach and Treatment*</li> <li>• High School Prevention</li> <li>• Specialized Care Unit</li> </ul>                                                                                                                                                              |
| <u>OPTIONAL</u><br>Suicide Prevention                                | Activities to prevent suicide as a consequence of mental illness.                                                                                                                                                                                                                                                                                                | <ul style="list-style-type: none"> <li>• CalMHSA PEI Statewide Project</li> </ul>                                                                                                                                                                                                                                    |

\*Prior project that was in operation during FY21, the reporting timeframe of this annual update)

Beginning January 1, 2020, per Senate Bill (SB) 1004, Welfare and Institutions Code (WIC) 5840.7 (a) directed the Mental Health Oversight and Accountability Commission (MHSOAC) to establish priorities for the use of MHSA PEI funds. Section 5840.7 (d)(1) states that mental health jurisdictions shall, through their MHSA Three Year Program and Expenditure Plans and Annual

Updates, focus use of their PEI funds on the Commission-established priorities or other priorities as determined through their respective, local stakeholder processes. If a mental health jurisdiction chooses to focus on priorities other than or in addition to those established by the Commission, “the plan shall include a description of why those programs are included and metrics by which the effectiveness of those programs is to be measured” (WIC Section 5840.7 (d)(1)).

At the time of the writing of this Annual Update, the MHSOAC had not established additional priorities to the following specifically enumerated required priorities in WIC Section 5840.7 (a) for the use of PEI funding:

- Childhood trauma prevention and early intervention to deal with the early origins of mental health needs;
- Early psychosis and mood disorder detection and intervention, and mood disorder and suicide prevention programming that occurs across the lifespan;
- Youth outreach and engagement strategies that target secondary school and transition age youth, with a priority on partnership with college mental health programs;
- Culturally competent and linguistically appropriate prevention and intervention;
- Strategies targeting the mental health needs of older adults;
- Early identification programming of mental health symptoms and disorder, including but not limited to, anxiety, depression, and psychosis.

In order to meet the requirements, each mental health jurisdiction is required to show in the PEI Component of the Three Year Plan or Annual Update the following:

- Which specific PEI priorities the mental health jurisdictions plan addresses, an estimate of the share of PEI funding allocated to each priority, and an explanation of how stakeholder input contributed to those allocations;
- If the mental health jurisdiction has determined to pursue alternative or additional priorities to those listed in Section 5840.7(a), how the determinations were made through its stakeholder process;
- For any alternative or additional priority identified by the mental health jurisdiction, what metric or metrics relating to assessment of the effectiveness of programs intended to address that priority the county will measure, collect, analyze, and report to the Commission, in order to support statewide learning.

All MHSA programs and projected funding amounts were vetted through the Community Program Planning process for this Annual Update. Many PEI projects meet multiple established priorities. Per PEI regulations, outlined below are the City of Berkeley PEI programs, priorities, and FY23 projected funding amounts:

| CITY OF BERKELEY PEI PROGRAMS                                                               | PEI PRIORITIES                                                                                            | FY23 Projected Funding Per Priority |
|---------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|-------------------------------------|
| <ul style="list-style-type: none"> <li>• Be A Star</li> <li>• Supportive Schools</li> </ul> | Childhood trauma prevention and early intervention to deal with the early origins of mental health needs. | \$144,658                           |



| CITY OF BERKELEY PEI PROGRAMS                                                                                                                                                                                                                             | PEI PRIORITIES                                                                                                                                                                                                                                                                                                                                  | FY23 Projected Funding Per Priority                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| <ul style="list-style-type: none"> <li>• High School Youth Prevention Project</li> <li>• Mental Health Peer Mentor Program</li> <li>• Dynamic Mindfulness Program</li> <li>• African American Success Project</li> <li>• Specialized Care Unit</li> </ul> | <p>Youth Engagement and Outreach Strategies that target secondary school and transition age youth,</p> <p>Early identification programming of mental health symptoms and disorders, including but not limited to, anxiety, depression, and psychosis</p> <p>Culturally competent and linguistically appropriate prevention and intervention</p> | <p>\$308,663</p> <p>\$376,663</p> <p>\$100,000</p> |
| <ul style="list-style-type: none"> <li>• Mental Health Promotion Campaign</li> <li>• Social Inclusion</li> <li>• Community Education &amp; Supports</li> </ul>                                                                                            | <p>Culturally competent and linguistically appropriate prevention and intervention</p> <p>Youth Engagement and Outreach Strategies that target secondary school and transition age youth, with a priority on partnership with college mental health programs</p> <p>Strategies targeting the mental health needs of older adults.</p>           | <p>\$409,000</p> <p>\$32,046</p> <p>\$32,046</p>   |

### **PEI Funded Children and Youth and TAY Services**

Per MHSR regulations 51% of PEI funds are to be used on services and supports for Children, Youth, and TAY. Small counties, of which the City of Berkeley is considered, may elect to forego this regulation as long as a community vetted, locally approved justification is provided as to why children and youth services are funded at a lower level. Since the initial PEI Plan, the City of Berkeley has allocated more than 51% of PEI funds to services and supports for children, youth and TAY as the majority of PEI funds has been utilized to serving these populations.

Currently, seven out of ten local PEI programs provide services for children and youth, 6 of which are in the Berkeley Unified School District (BUSD). Programs are as follows: Behavioral-Emotional Assessment, Screening, Treatment and Referral (BE A STAR); Supportive Schools Project; Mental Emotional Education Team (MEET); Dynamic Mindfulness (DMIND); African American Success Project; High School Youth Prevention Project, and the TAY Trauma Support Project. Additionally, from FY11 through FY20, the City of Berkeley utilized a portion of PEI funds to provide services for children, youth and TAY in the Albany Unified School District, through the Albany Trauma Project.

Programs and services funded with PEI funds, and FY21 data are outlined below by PEI Program type.

### **PREVENTION PROGRAMS**

Prevention Program – Includes a set of related activities to reduce risk factors for developing a potentially serious mental illness and to build protective factors.

Through the FY22 Annual Update the City of Berkeley funded the following Prevention initiative that will be implemented in FY23:

### **Mental Health Promotion Campaign**

As a result of the impact of the pandemic, and public input around the overwhelming need for mental health supports in the community, the Division proposed through the FY22 Annual Update to allocate PEI funds for a community Mental Health Promotion Campaign to support the wellness and self-care of Berkeley residents. The Division will partner with the community and consider using a social marketing firm to develop and implement the campaign.

**PEI Goals:** The goal of this campaign is to increase prevention efforts and response to early signs of emotional and behavioral health problems.

**PEI Priority:** Culturally competent and linguistically appropriate prevention and intervention.

It is envisioned that this campaign will get implemented in FY23 and the Division will continue to work with the community to determine how to best promote mental health and wellness in Berkeley.

### **EARLY INTERVENTION PROGRAMS**

Early Intervention Program – Provides treatment and other services and interventions, including relapse prevention, to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the applicable negative outcomes that may result from untreated mental illness.

The City of Berkeley Early Intervention programs are as follows:

#### **Behavioral-Emotional Assessment, Screening, Treatment, and Referral (BE A STAR)**

The Be A Star program is a collaboration with the City of Berkeley's Public Health Department providing a coordinated system in Berkeley and Albany that identifies children birth to age five and their parents, who are at risk of childhood development challenges including developmental, social, emotional, and/or behavioral concerns. The program specifically targets low income families, including those with teen parents, who are homeless, substance abusing, or in danger of foster care. Services include triage, assessment, treatment and referrals to appropriate community-based or specialist services as needed. Children and families are accessed through targeted efforts at the following: Black Infant Health; Vera Casey Teenage Parenting programs; Child Health and Disability Prevention programs, Pediatric providers, and through state-subsidized Early Childhood Development Centers. The goals of the program are to identify, screen and assess families early, and connect them with services and supports as needed. The program uses the "Ages and Stages Questionnaires" (ASQ) screening tool to assess children in need. The ASQ consists of a series of 20 questionnaires that correspond to age intervals from birth to 6 years designed to help parents check their child's development. Each questionnaire contains simple questions for parents to answer that reflect developmental milestones for each age group. Answers are scored and help to determine whether the child's development is on schedule or whether the child should be referred for a developmental checkup with a professional. Over 400 children are assessed each year.

**PEI Goals:** The goal of this program is to bring about mental health, including the reduction of school failure and the removal of children from their homes.

**PEI Priority:** Childhood trauma prevention and early intervention to deal with the early origins of mental health needs.

In FY21, a total of 2,203 children were screened through this program however data was not collected on all individuals screened. Only Race/Ethnicity data was collected on a subset of 141 children as follows:

| <b>DEMOGRAPHICS N=2,203</b>                                |      |
|------------------------------------------------------------|------|
| <b>Age Groups</b>                                          |      |
| 0-15 (Children/Youth)                                      | 100% |
| <b>Race N=141</b>                                          |      |
| Asian                                                      | 30%  |
| Black or African American                                  | 32%  |
| White                                                      | 8%   |
| More than one Race                                         | 1%   |
| Other                                                      | 29%  |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx N=141</b>   |      |
| Unspecified Hispanic or Latino/Latina/Latinx               | 29%  |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Primary Language</b>                                    |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Disability</b>                                          |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Gender: Assigned Sex at Birth</b>                       |      |
| Declined to Answer (or Unknown)                            | 100% |

**Program Successes:**

- A total of 154 referrals to resources/services were made as a result of the developmental screens conducted at BUSD preschools and pediatric sites.
- Overall, there was an increase in developmental screenings in pediatric settings. For example, when compared to data in FY20, two Berkeley pediatric sites increased their number of screenings by 211% and 76%.
- Sites demonstrated great adaptability due to the challenges that COVID-19 caused. Several sites were able to transition to doing developmental screenings online. Be A Star was able to provide training and Technical Assistance to help ensure a smooth transition.

Program Challenges:

- Although many pediatric sites and BUSD preschools were able to provide more services this year, there were still challenges caused by COVID-19, including delayed trainings for pediatric sites and decreases in available referral services.
- Be A Star staffing was impacted by the City of Berkeley's COVID-19 response. All Public Health nursing positions supported the emergency response in some capacity. A new Be A Star Public Health Nurse started in January 2021 and there has been a transition as this nurse has settled into the role.
- There were program challenges in being able to collect an accurate full data set as some of the Berkeley pediatric sites do not collect and report out on various demographic information and other screening sites only captured general demographic information.

**Supportive Schools Program**

Through this program leveraged MHSA PEI funds support the provision of mental health prevention and early intervention services at each of the Elementary Schools in Berkeley. Services include: outreach; mental health programming; classroom, group, and one-on-one psycho-social education and support; and consultation with parents and/or teachers.

**PEI Goals:** The goal of this program is to bring about mental health, including the reduction of school failure and the removal of children from their homes.

**PEI Priority:** Childhood trauma prevention and early intervention to deal with the early origins of mental health needs.

In FY21 Early Intervention Services were provided at each of the BUSD elementary schools. BUSD sub-contracted with local agencies to provide early intervention services based upon the standard of evidence-based practices. Bay Area Community Resources (BACR), Child Therapy Institute (CTI), and Lifelong Medical (Lifelong) were subcontracted to provide services at BUSD elementary schools. Additionally, a counselor provided support at two elementary schools. As a result of the pandemic, schools began the year in distance learning. BUSD then transitioned to small cohorts at each elementary school, before moving to in-person learning in the spring of 2021. During the academic year, supports were provided both virtually, and in-person.

BACR provided services to improve emotional functioning and success in school and life, including individual and group therapy, family consultation, conflict resolution/restorative justice, suicide prevention, check-in/check-out, crisis intervention, and classroom presentations. Additionally, BACR participated in weekly Coordination of Services (COST), Student Success Team (SST), and Individualized Education Program (IEP) meetings for students, providing mental health and trauma informed perspectives. BACR consults with staff on many issues and provides trauma informed coaching for teachers, and referrals to outside providers, parenting classes/support groups, crisis hotlines, and other programs.

In addition, other agency and district staff providers led social skills groups, early intervention social and emotional support, playground social skills, "check in/check out," individual counseling, and support for parents and guardians from diverse backgrounds. As aligned with priority and focus on equity, providers participated in COST team meetings, and linked parents and guardians with resources within the school district, and in the community.

Supports for each school per each service provider, and numbers served in FY21 were as follows:

| Elementary School                                                                                                                                                    | Agency/Provider                     | Number of Students Served |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|---------------------------|
| <ul style="list-style-type: none"> <li>• Cragmont</li> <li>• Emerson</li> <li>• Malcolm X</li> <li>• Oxford</li> <li>• Ruth Acty</li> <li>• Thousand Oaks</li> </ul> | Bay Area Community Resources (BACR) | 115                       |
| <ul style="list-style-type: none"> <li>• Bay Area Arts Magnet (BAM)</li> <li>• Washington</li> </ul>                                                                 | Child Therapy Institute             | 39                        |
| <ul style="list-style-type: none"> <li>• John Muir</li> <li>• Sylvia Mendez</li> </ul>                                                                               | School Site Counselor               | 25                        |
| <ul style="list-style-type: none"> <li>• Rosa Parks</li> </ul>                                                                                                       | Lifelong Medical Care               | No Data Available         |
| <b>Total</b>                                                                                                                                                         |                                     | <b>179</b>                |

Demographic data provided by BUSD on 179 students that were served through this project in FY21, is outlined below:

| <b>DEMOGRAPHICS N= 179</b>                                  |      |
|-------------------------------------------------------------|------|
| <b>Age Group</b>                                            |      |
| 0-15 (Children/Youth)                                       | 100% |
| <b>Race</b>                                                 |      |
| American Indian or Alaska Native                            | 1%   |
| Asian                                                       | 6%   |
| Black or African American                                   | 25%  |
| Native Hawaiian/Pacific Islander                            | 1%   |
| White                                                       | 33%  |
| More than one Race                                          | 19%  |
| Declined to Answer (or Unknown)                             | 11%  |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>          |      |
| Central American                                            | 1%   |
| Mexican/Mexican-American/Chicano                            | 1%   |
| South American                                              | 1%   |
| Declined to Answer (or Unknown)                             | 20%  |
| <b>Ethnicity: Non-Hispanic or Non- Latino/Latina/Latinx</b> |      |
| American Indian                                             | 1%   |

|                                                                                                                                             |      |
|---------------------------------------------------------------------------------------------------------------------------------------------|------|
| Asian Indian/South Asian                                                                                                                    | 1%   |
| Chinese                                                                                                                                     | 1%   |
| Eastern European                                                                                                                            | 1%   |
| Filipino                                                                                                                                    | 1%   |
| Korean                                                                                                                                      | 1%   |
| More than one Ethnicity                                                                                                                     | 3%   |
| Declined to Answer (or Unknown)                                                                                                             | 68%  |
| <b>Primary Language Used</b>                                                                                                                |      |
| English                                                                                                                                     | 30%  |
| Spanish                                                                                                                                     | 4%   |
| Other                                                                                                                                       | 1%   |
| Declined to Answer (or Unknown)                                                                                                             | 65%  |
| <b>Sexual Orientation</b>                                                                                                                   |      |
| Declined to Answer (or Unknown)                                                                                                             | 100% |
| <b>Disability</b>                                                                                                                           |      |
| Communication Domain                                                                                                                        | 1%   |
| Mental domain not including a mental illness<br>(including but not limited to a learning disability,<br>developmental disability, dementia) | 11%  |
| Declined to Answer (or Unknown)                                                                                                             | 88%  |
| <b>Veteran Status</b>                                                                                                                       |      |
| No                                                                                                                                          | 100% |
| <b>Gender: Assigned sex at birth</b>                                                                                                        |      |
| Male                                                                                                                                        | 53%  |
| Female                                                                                                                                      | 43%  |
| Declined to Answer (or Unknown)                                                                                                             | 4%   |
| <b>Current Gender Identity</b>                                                                                                              |      |
| Male                                                                                                                                        | 52%  |
| Female                                                                                                                                      | 43%  |
| Non-binary                                                                                                                                  | 1%   |
| Other Gender Identity                                                                                                                       | 4%   |

### Community-Based Child & Youth Risk Prevention Program

This program targets children (aged 0-5) who are impacted by multiple risk factors including trauma, family or community violence, familial distress, and/or family substance abuse, (among other issues). A BMH clinician has served as the Mental Health Consultant on this project

providing information, services and supports to teachers and parents at the YMCA Head Start program in South Berkeley. Services include individual case consultation for teachers and parents, group consultations, classroom observations and interventions, assessments, brief treatment, and referrals to other resources as needed. The main goals are to reduce risk factors or other stressors, and promote positive cognitive, social, and emotional well-being. This program serves approximately 50 Children & Youth a year.

**PEI Goals:** The goal of this program is to bring about mental health including the reduction of school failure and the removal of children from their homes.

**PEI Priority:** Childhood trauma prevention and early intervention to deal with the early origins of mental health needs.

In FY21, 49 children were served through this program. Demographics on those served is as follows:

| <b>DEMOGRAPHICS N=49</b>                                   |      |
|------------------------------------------------------------|------|
| <b>Age Groups</b>                                          |      |
| 0-15 (Children/Youth)                                      | 100% |
| <b>Race</b>                                                |      |
| American Indian                                            | 2%   |
| Asian                                                      | 12%  |
| Black or African American                                  | 45%  |
| White                                                      | 14%  |
| More than one Race                                         | 5%   |
| Declined to Answer (or Unknown)                            | 22%  |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |      |
| Declined to Answer or Unknown                              | 100% |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Primary Language</b>                                    |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Disability</b>                                          |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Gender: Assigned Sex at Birth</b>                       |      |
| Declined to Answer (or Unknown)                            | 100% |

Program Successes:

All of the general mental health consultation duties outlined below continued to be provided remotely via Tele-Care/Zoom until they were transitioned to in-person services in early FY22:

- Facilitated weekly Early Childhood Mental Health Reflective Case Consultation group/meetings to five classrooms. Case consultation meetings allowed teachers to develop clear plans and interventions for individual children and families in their classroom that present with high risk factors including but not limited to: complicated family dynamics; trauma; mental health concerns; social-emotional needs; and/or overall developmental needs.
- Provided general classroom observation to five infant care, toddler care and pre-school classrooms, serving a total of 49 children.
- Provided individual and group consultation to the Center Program Supervisor, 15-20 Early Childhood Teachers, and two family advocates
- Coordinated with the Inclusion Program which includes Inclusion Specialists and a Speech Pathologist to help observation and assessment efforts that facilitate early intervention screenings and referrals to BUSD and the Regional Center.
- Provided planning and assistance with implementation of behavior plans for children with behavioral and social-emotional needs.
- Provided direct interventions around classroom interventions including providing visuals and classroom tools to help teach children self-regulation skills, social skills, and skills to help with transitions, and to improve the overall functioning of individual children in the classroom setting.
- Provided individual mental health consultations to parents, and provided direct psycho-education around developmental concerns, social-emotional issues/behavioral concerns, parenting issues, and information regarding mental health services as well as information regarding community services including First 5 Alameda, Help Me Grow, the Regional Center, primary care Doctors, and BUSD services.

Program Challenges:

- The downside of continuing services and not being on site was not having access to families. This posed some difficulties in being able to build relationships with children and families directly.
- There was an increased need to provide crisis interventions during the pandemic as staff managed the stress of returning to their work as essential workers in the middle of a pandemic.
- There was an increase of collective stress as a result of the pandemic.
- As the pandemic continued into FY21 the center continued to experience disruptions to care with staff and children being quarantined at times.
- It was a challenge to work off-site during the COVID-19 pandemic to observe the child and teacher interactions. With not being onsite in-person there were no continuous conversations, spontaneous consultations, nor in-vivo modeling interactions. The ability to demonstrate for staff by working with the children and practicing certain interventions with children in-person along with observing staff implementing the techniques was limited.
- There was no ability to model in-person for the teachers, as these elements were a part of the challenge in working remotely via telehealth (Zoom).



In FY23, this program will be discontinued as the YMCA Head Start program has created a staff position for an internal Mental Health Specialist.

**Community Education & Supports**

The Community Education & Supports program implements culturally-responsive psycho-educational trauma support services for individuals (18 and above) in various cultural, ethnic and age specific populations that are unserved, underserved and inappropriately served in Berkeley including: African Americans; Latino/a/x; LGBTQIA+; TAY; and Senior Citizens. All services are conducted through area community-based organizations. In FY21, three of the five projects were in operation as indicated in the data below. In order to ensure fair contracting opportunities in the City, in FY21 the Community Education & Supports services were put out for a re-bid through a Request for Proposal Process for the FY22 services. Updates on those services will be reported in the next Three Year Plan.

In FY21 the Community Education & Supports projects participated in the HHCS Results-Based Accountability (RBA) Evaluation. RBA evaluation results are presented in an aggregated format across all programs as follows:

| How Much Did We Do?                                                                                                                                                                                                                                                                                  | How Well Did We Do It?                                                                                                                                                                                                                                                                                                                    | Is Anyone Better Off?                                                                                                                                                                                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• 578 Support Groups/Workshops</li> <li>• 1,247 Support Groups/Workshop Encounters</li> <li>• 118 Individual Contacts (2 of 3 programs reporting)</li> <li>• 2,524 Outreach Activities</li> <li>• 225 Outreach Contacts</li> <li>• 1,179 Referrals</li> </ul> | <ul style="list-style-type: none"> <li>• 9 Support groups or workshop sessions attended on average per person</li> <li>• 85% Survey respondents reported satisfaction with services</li> <li>• Referrals by type:<br/>223 Mental Health<br/>200 Social Services<br/>213 Physical Health<br/>124 Housing<br/>419 Other Services</li> </ul> | <ul style="list-style-type: none"> <li>• 86% of program participants reported an increase in social supports or trusted people they can turn to for help (2 of 3 programs reporting)</li> <li>• 90% of program participants reported positive changes in terms of coping strategies, feeling anxious or overwhelmed (2 of 3 programs reporting)</li> </ul> |

Descriptions for each project within the Community Education & Supports program and FY21 data are outlined below:

• **Transition Age Youth Trauma Support Project**

In FY21 this project was implemented through the Covenant House, Youth Engagement Advocacy Housing (YEAH!) program. This project provides supportive services for Transition Age Youth (TAY) who are suffering from the impact of trauma and/or other life stressors and are homeless, marginally housed, or housed but in need of supports. The project serves a wide range of youth from various cultural and ethnic backgrounds who share the common goal of living lives less impacted by trauma and more impacted by wellness. The project consists of the following four components: One-on-one sessions that assess individuals needs around trauma supports and support group readiness; psycho-educational support groups; youth social outings that provide TAY with exposure to healthy settings designed to enhance life skills and choices; and youth celebratory events that are held monthly to convene youth around a positive occasion to acknowledge the various small and large accomplishments of TAY participants, and build trust and community. Approximately 30-35 TAY receive services through this project a year.

**PEI Goals:** The goal of this project is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

**PEI Priorities:**

- Culturally competent and linguistically appropriate prevention and intervention;
- Youth engagement and outreach strategies that target secondary school and transition age youth.

In FY21, 150 TAY participated in one or more project services. Services were continued during the pandemic through tele-health and tele-conferencing platforms. Support Group sessions included: Harm Reduction and Substance Use; Mindfulness; Coping Skills; Creative Expression, among others. There was a total of 9 Youth Social Outings with 37 unduplicated TAY participants, and 68 unduplicated TAY, participated in 18 Youth Celebratory Events.

Demographics on youth served were as follows:

| <b>DEMOGRAPHICS N = 150</b>                                |      |
|------------------------------------------------------------|------|
| <b>Age Group</b>                                           |      |
| 16-25 (Transition Age Youth)                               | 100% |
| <b>Race</b>                                                |      |
| American Indian or Alaska Native                           | 3%   |
| Asian                                                      | 3%   |
| Black or African American                                  | 57%  |
| Native Hawaiian or Other Pacific Islander                  | 1%   |
| White                                                      | 15%  |
| More than one Race                                         | 15%  |
| Other                                                      | 3%   |
| Decline to Answer (or Unknown)                             | 3%   |
| <b>Ethnicity: Latino/Latina/Latinx</b>                     |      |
| Central American                                           | 14%  |
| Mexican/Mexican-American                                   | 9%   |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |      |
| African                                                    | 19%  |
| Asian Indian/South Asian                                   | 1%   |
| European                                                   | 4%   |
| Filipino                                                   | 1%   |
| Japanese                                                   | 1%   |
| More than one Ethnicity                                    | 21%  |
| Other                                                      | 29%  |

|                                      |      |
|--------------------------------------|------|
| Declined to Answer (or Unknown)      | 1%   |
| <b>Primary Language Used</b>         |      |
| English                              | 89%  |
| Spanish                              | 11%  |
| <b>Sexual Orientation</b>            |      |
| Gay or Lesbian                       | 6%   |
| Heterosexual or Straight             | 47%  |
| Bisexual                             | 12%  |
| Questioning or unsure                | 4%   |
| Other                                | 20%  |
| Declined to Answer (or Unknown)      | 11%  |
| <b>Disability Status</b>             |      |
| Mental (not mental health)           | 15%  |
| Physical/Mobility Disability         | 4%   |
| Chronic Health Condition             | 3%   |
| Other Disability                     | 31%  |
| No Disability                        | 35%  |
| Declined to Answer (or Unknown)      | 12%  |
| <b>Veteran Status</b>                |      |
| No                                   | 100% |
| <b>Gender: Assigned sex at birth</b> |      |
| Male                                 | 61%  |
| Female                               | 39%  |
| <b>Current Gender Identity</b>       |      |
| Male                                 | 60%  |
| Female                               | 37%  |
| Transgender                          | 3%   |

During the reporting timeframe 2,510 outreach activities were conducted. There were 493 referrals for additional services and supports. The number and type of referrals was as follows: 112 Mental Health; 104 Physical Health; 87 Social Services; 76 Housing; 114 other unspecified services. A total of 25% of project participants received individual counseling; 24% exited the project into stable housing; 53% obtained employment or entered school during the project. Per participant feedback, 79% reported being satisfied with project services.

- **Trauma Support Project for LGBTQIA+ Population**

Implemented through the Pacific Center for Human Growth, this project provides outreach, engagement and support group services for individuals (18 and above) in the LGBTQIA+ community who are suffering from the impact of oppression, trauma and other life stressors. Particular emphasis is on outreaching and providing supportive services to identified underserved populations within the local LGBTQIA+ community. Approximately 12-15 weekly or bi-weekly support groups are held throughout the year targeting various populations and needs within the LGBTQIA+ community. Support groups are led by Peer Facilitator community volunteers who are trained in Group Facilitation/Conflict Resolution and who have opportunities to participate in additional Skill Building workshops in order to share methods used to address group challenges and to learn new facilitator techniques. Approximately 250 individuals a year are served through this project.

**PEI Goals:** The goal of this project is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

**PEI Priorities:**

- Culturally competent and linguistically appropriate prevention and intervention;
- Youth Engagement and Outreach Strategies that target secondary school and transition age youth.
- Strategies targeting the mental health needs of older adults.

In FY21, 12 outreach activities reached approximately 155 duplicated individuals. A total of 480 support groups were conducted. Through 20 Peer Support groups, weekly or bi-weekly sessions were conducted which were all led by a trained facilitator on Zoom. All of the long time running peer groups were offered and one new group was added. A total of 69 individuals participated in support groups throughout the year. Demographics on individuals served include the following:

| <b>DEMOGRAPHICS N=69</b>            |     |
|-------------------------------------|-----|
| <b>Age Groups</b>                   |     |
| 16-25 (Transitional Age Youth)      | 26% |
| 26-59 (Adult)                       | 46% |
| Ages 60+ (Older Adult)              | 20% |
| Declined to Answer (or Unknown)     | 8%  |
| <b>Race</b>                         |     |
| American Indian or Alaska Native    | 4%  |
| Asian                               | 13% |
| Black or African American           | 6%  |
| Native Hawaiian or Pacific Islander | 1%  |
| White                               | 41% |

|                                                            |      |
|------------------------------------------------------------|------|
| More than one Race                                         | 14%  |
| Declined to Answer (or Unknown)                            | 21%  |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |      |
| Caribbean                                                  | 1%   |
| Central American                                           | 1%   |
| Mexican/Mexican-American/Chicano                           | 1%   |
| South American                                             | 1%   |
| Declined to Answer (or Unknown)                            | 4%   |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |      |
| African                                                    | 4%   |
| Asian Indian/South Asian                                   | 3%   |
| Chinese                                                    | 7%   |
| Eastern European                                           | 6%   |
| European                                                   | 43%  |
| Filipino                                                   | 1%   |
| Korean                                                     | 1%   |
| Vietnamese                                                 | 1%   |
| More than one Ethnicity                                    | 16%  |
| Other                                                      | 1%   |
| Declined to Answer (or Unknown)                            | 9%   |
| <b>Primary Language Used</b>                               |      |
| English                                                    | 100% |
| <b>Sexual Orientation</b>                                  |      |
| Gay or Lesbian                                             | 25%  |
| Heterosexual or Straight                                   | 6%   |
| Bisexual                                                   | 12%  |
| Questioning or Unsure                                      | 3%   |
| Queer                                                      | 22%  |

|                                                |     |
|------------------------------------------------|-----|
| Other                                          | 29% |
| Declined to Answer (or Unknown)                | 3%  |
| <b>Disability</b>                              |     |
| Difficulty Seeing                              | 1%  |
| Difficulty Hearing or Having Speech Understood | 3%  |
| Mental (not Mental Health)                     | 4%  |
| Physical/Mobility Disability                   | 6%  |
| Chronic Health Condition                       | 14% |
| No Disability                                  | 36% |
| Declined to Answer (or Unknown)                | 36% |
| <b>Veteran Status</b>                          |     |
| Yes                                            | 1%  |
| No                                             | 99% |
| <b>Gender: Assigned Sex at Birth</b>           |     |
| Male                                           | 30% |
| Female                                         | 36% |
| Declined to Answer (or Unknown)                | 34% |
| <b>Current Gender Identity</b>                 |     |
| Male                                           | 6%  |
| Female                                         | 23% |
| Transgender                                    | 33% |
| Genderqueer                                    | 9%  |
| Questioning or Unsure                          | 4%  |
| Other                                          | 23% |
| Declined to Answer (or Unknown)                | 2%  |

During the reporting timeframe 38 Peer Facilitators were trained. The offering of Skills Building Workshops that included trainings on Intersectionality; Disability, Justice and Accessibility; and Micro-aggressions were provided to 38 Peer Facilitator participants. Services were adjusted to accommodate for the pandemic, and Support Group and other services were able to continue virtually on the Zoom platform. There were 91 referrals for additional services and supports.

The number and type of referrals was as follows: 51 Mental Health; 7 Physical Health; 7 Social Services; 26 other unspecified services. To assess the project services, a self-administered Peer Support Group Survey was distributed to all peer group members. Survey results were as follows:

- 93% indicated they would recommend the organization to a friend or family member;
- 79% felt like staff and facilitators were sensitive to their cultural background;
- 93% reported they deal more effectively with daily problems;
- 71% indicated they have trusted people they can turn to for help;
- 86% felt like they belong in their community.

#### Project Successes:

- Of the 20 peer support groups that were running prior to Shelter-In-Place (SIP), 19 groups successfully transitioned to Zoom and flourished on the virtual platform and 1 new group was launched.
- Staff increased consultation meeting frequency to support the facilitators for a portion of the fiscal year.
- Peer groups gained returning attendees who had moved out of town and who, for a variety of reasons, ie, disability, transportation barriers and child-care and other caregiving needs, were able to attend due to online access.
- Three 6-hour Facilitator Orientation and Trainings were provided to community members welcoming them as trained peer group facilitators.
- Three Diversity, Equity and Inclusion trainings were offered: Intersectionality; Disability, Justice and Accessibility; and Micro-aggressions.
- A Social Work student provided case management and wellness checks to older adults.
- A handful of peer groups requested to hold their meetings throughout the winter break when the agency is typically closed for all services.
- Peer group facilitators were invited to join the white accountability group or the Black, Indigenous and People of Color (BIPOC) affinity group (spaces to discuss various challenges, explore and examine topics relating to privilege and oppression, dynamics of power, etc.) to explore how they show up in relationships for added accountability and support.
- The virtual/online outreach started to pick up by the end of the fiscal year. To make up for the reduction in outreach opportunities, email lists were utilized with community partners and networks and social media platforms, such as Meet-up, Instagram, and Facebook to inform and engage the community.
- A new pilot clinical consultation 'on-call' system was offered for facilitators to access a clinician to be invited to their virtual group space as needed should a group member bring mental health concerns and/or behaviors outside of the peer group scope of service.

#### Project Challenges:

- Continual adjustment to being in the virtual space. There was a learning curve for peer group facilitators in navigating the virtual space, for which program staff and fellow peer group facilitators provided support and guidance. Zoom safety tips and guidelines were

created to assist the facilitators.

- Some community members, including a few peer group facilitators, were no longer able to attend their peer group when it moved to a virtual space due to a lack of privacy in their home, anxiety when in virtual spaces, or the lack of the necessary equipment and/or sufficient internet connection.
- Since paper forms were adapted to be received digitally, many group members had challenges completing and submitting the demographic forms.
- Due to the Shelter In Place, the typical in-person outreach opportunities drastically declined.
- Peer group facilitators expressed concern for their group members' stress level in regards to the anxiety producing November Presidential election, and the aftermath of the January 6<sup>th</sup> violent events in Washington DC.

- **Living Well Project**

Implemented through Center for Independent Living, this project provides services for Senior Citizens (aged 50 and over) who are coping with trauma and/or mental health issues associated with acquired disabilities. Senior Citizens with acquired disabilities are one of the most difficult groups to reach with disability services. It is similarly difficult to intervene with this group's developing mental health issues related to aging and the traumatic impact of acquiring one or more disabilities (such as loss of mobility, vision, hearing, et al). The core of the project is a wellness workshop series entitled "Living Well with a Disability". Through a combination of education, goal setting, group and peer counseling, the workshop series is designed to promote positive attitudinal shifts in a population who, despite the tremendous need for care, are often typically not responsive to mental health intervention. The workshop series includes a 10 week, one to two-hour class conducted by Peer Facilitators, and an optional 30-minute counseling session. Counseling sessions are designed to monitor curriculum impact and continually assess individual goals and resource needs. This project serves up to 150 Older Adults a year.

**PEI Goals:** The goal of this project is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

**PEI Priorities:**

- Culturally competent and linguistically appropriate prevention and intervention;
- Strategies targeting the mental health needs of older adults.

In FY21, 49 Living Well Workshop sessions were conducted. Each Living Well Workshop series included the following sessions: Orientation; Goal Setting; Problem Solving; Healthy Reactions; Beating the Blues (Depression and Moods); Healthy Communication; Seeking Information; Physical Activity; Eating Well (Nutrition); Advocacy (Self and Systems Change); and Maintenance. Topics of Grief and Loss, Depression, Retirement, and Senior Invisibility were also incorporated into the project. In all 25 Senior Citizens participated in the Living Well Workshops. Demographics of Workshop participants are outlined below:

| DEMOGRAPHICS N=25 |     |
|-------------------|-----|
| Age Groups        |     |
| 26-59 (Adult)     | 16% |



|                                                            |     |
|------------------------------------------------------------|-----|
| Age 60+ (Older Adult)                                      | 84% |
| <b>Race</b>                                                |     |
| Asian                                                      | 4%  |
| Black or African American                                  | 56% |
| White                                                      | 28% |
| Other                                                      | 12% |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |     |
| Caribbean                                                  | 4%  |
| South American                                             | 4%  |
| Other                                                      | 8%  |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |     |
| African                                                    | 36% |
| Eastern European                                           | 8%  |
| European                                                   | 20% |
| Filipino                                                   | 4%  |
| More than one Ethnicity                                    | 4%  |
| Other                                                      | 12% |
| <b>Primary Language Used</b>                               |     |
| English                                                    | 96% |
| Spanish                                                    | 4%  |
| <b>Sexual Orientation</b>                                  |     |
| Gay or Lesbian                                             | 4%  |
| Heterosexual or Straight                                   | 76% |
| Bisexual                                                   | 8%  |
| Other                                                      | 4%  |
| Declined to Answer (or Unknown)                            | 8%  |
| <b>Disability</b>                                          |     |
| Physical/mobility disability                               | 24% |
| Chronic health condition                                   | 24% |
| Other Disability                                           | 16% |
| No Disability                                              | 28% |

|                                      |     |
|--------------------------------------|-----|
| Declined to Answer (or Unknown)      | 8%  |
| <b>Veteran Status</b>                |     |
| Yes                                  | 4%  |
| No                                   | 96% |
| <b>Gender: Assigned Sex at birth</b> |     |
| Male                                 | 16% |
| Female                               | 84% |
| <b>Current Gender Identity</b>       |     |
| Male                                 | 16% |
| Female                               | 80% |
| Other                                | 4%  |

During the reporting timeframe 2 outreach and informational events were conducted reaching 12 individuals, with 93 unduplicated individuals receiving further engagement services. Services were moved to virtual format providing tele-workshops and tele-support services to accommodate the pandemic. There were 595 referrals for additional services and supports. The number and type of referrals were as follows: 60 Mental Health; 102 Physical Health; 106 Social Services; 48 Housing; 279 other unspecified services. A total of 88% of project participants completed a Living Well Workshop Series. Feedback per participant self-report was as follows:

- 91% reported they felt satisfied with the workshops;
- 91% indicated an improvement in feeling satisfied in general;
- 91% had increased feelings of social supports;
- 91% felt prepared to make positive changes; and
- 88% reported they felt less overwhelmed and helpless.

#### Project Successes:

To help seniors stay connected 96 tele-support group sessions were held. Living Well Program virtual/tele-workshops were offered every Monday and tele-support groups every Tuesday. In December laptops and technical training were provided to previous participants and also in May to participants who completed The Living Well Workshop Series.

#### Project Challenges:

The workshops were well attended with lively engagement. Some Living Well seniors gave painful testimonies of isolation, sadness and fear and others of loneliness. Many missed their families, their grandchildren, and friends. Some needed to travel out of state to support adult children with life-threatening illnesses and two struggled with potentially life-threatening diagnoses themselves. There was a lot of uncertainty revolving around the COVID-19 pandemic. Many seniors had difficulties connecting with others due to the technological gap. The Workshop Series facilitator also had to learn systems she never had to use before.

### **SoulSpace Project**

In FY22, following a competitive Request For Proposal (RFP) process, OnTrack Program Resources began implementing the SoulSpace Project for African Americans in Berkeley. The project assists African Americans in Berkeley to access culturally, ethnically, and linguistically responsive and trauma-informed prevention and early intervention services. Project services include: community education; outreach and engagement; assessment; coaching; referrals; navigation supports; support groups; and life skills training.

**PEI Goals:** The goal of this project is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

**PEI Priorities:**

- Culturally competent and linguistically appropriate prevention and intervention;
- Youth Engagement and Outreach Strategies that target secondary school and transition age youth.
- Strategies targeting the mental health needs of older adults.

This project was not in operation in FY21. Future MHSA Three Year Plans and Annual Updates will include a reporting on the data and activities of this project.

- **Latinx Trauma Support Project**

In FY22, following a competitive Request For Proposal (RFP) process, East Bay Sanctuary Covenant began implementing the Latinx Trauma Support Project. This project assists low-income, Latinx families in Berkeley to access culturally, ethnically, and linguistically responsive and trauma-informed prevention and intervention services. Project services are in direct response to, and in collaboration with, Latinx community members, and are largely facilitated by individuals from within the targeted community and conducted in Spanish or an indigenous language. Services include: One-on-one outreach and support; support groups; staff and partner training and warm referrals.

**PEI Goals:** The goal of this project is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

**PEI Priorities:**

- Culturally competent and linguistically appropriate prevention and intervention.
- Youth Engagement and Outreach Strategies that target secondary school and transition age youth.
- Strategies targeting the mental health needs of older adults.

This project was not in operation in FY21. Future MHSA Three Year Plans and Annual Updates will include a reporting on the data and activities of this project.

### **PREVENTION & EARLY INTERVENTION COMBINED PROGRAMS**

Prevention Program – Includes a set of related activities to reduce risk factors for developing a potentially serious mental illness and to build protective factors.

Early Intervention Program – Provides treatment and other services and interventions, including relapse prevention, to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the applicable negative outcomes that may result from untreated mental illness.

The City of Berkeley Prevention & Early Intervention combined programs are as follows:

### **Dynamic Mindfulness Program (DMind)**

Through the previously approved MHSA FY19 Annual Update BMH allocated PEI funds to support the BUSD Dynamic Mindfulness (DMind) Program. BUSD partners with the Niroga Institute to provide DMind for students and staff at Berkeley High, Berkeley Technology Academy, Berkeley Independent Study, MLK Jr., Willard, and Longfellow. DMind is an evidence-based trauma-informed program implemented in BUSD middle and high schools. Validated by independent researchers as a transformative program for teaching children and youth, skills for optimal stress resilience and healing from trauma, the DMind program integrates mindful action, breathing, and centering into an intervention that is implemented in the classroom in 5-15 minute sessions, 3 to 5 times a week. This program has proven to be successful with vulnerable students who are exhibiting signs of chronic stress/trauma/PTSD from Adverse Childhood Experiences (ACEs), and/or disengagement from school, chronic absences, and significant behavioral challenges, including emotion regulation, impulse control, anger management, and/or getting frequent referrals/suspensions and at high risk of school failure. DMind also enables teacher and staff well-being, which has been shown to enhance student learning. Program components include in-class and after-school DMind sessions for students, student peer leadership development, training and coaching of school staff, and program evaluation.

**PEI Goals:** The goal of this program is to bring about mental health, including the reduction of school failure and the removal of children from their homes.

### **PEI Priorities:**

- Youth Engagement and Outreach Strategies that target secondary school and transition age youth, with a priority on partnership with college mental health programs.
- Early identification programming of mental health symptoms and disorders, including but not limited to, anxiety, depression, and psychosis.

Due to the pandemic, in FY21 all supports were shifted to online in the second half of the school year. Data on individuals served were not provided by BUSD. Per anecdotal evidence from site leadership, the program presents positive use.

### **Mental and Emotional Education Team (MEET)**

Through the previously approved MHSA FY19 Annual Update BMH provides PEI funds to support the BUSD MEET Program. This program implements a peer-to-peer mental health education curriculum to 9<sup>th</sup> graders and an internship program for a cohort of high school students to serve as peers to their fellow students. The goals of the program are to increase student awareness of common mental health difficulties, resources, and healthy coping and intervention skills. Through this program, students are trained by a licensed BUSD clinician to

conduct class presentations covering common mental health disorders, on and off campus resources, and basic coping and intervention skills.

**PEI Goals:** The goal of this program is to bring about mental health, including the reduction of school failure and the removal of children from their homes.

**PEI Priorities:**

- Youth Engagement and Outreach Strategies that target secondary school and transition age youth, with a priority on partnership with college mental health programs.
- Early identification programming of mental health symptoms and disorders, including but not limited to, anxiety, depression, and psychosis.

In FY21 and FY22, this program was not in operation.

**African American Success Project**

The African American Success Project (AASP) implements “Umoja” - a daily elective class offered at Longfellow Middle School. Umoja provides African American students a safe affinity space to explore their cultural heritage and identity, while building positive peer relationships and establishing relational trust with adults. Umoja provides an ongoing focus on social and emotional development, including building skills, habits and mindsets that enable self-regulation, interpersonal skills, perseverance and resilience.

Umoja provides a unique chance to expose learners to content traditionally overlooked by educational institutions. Umoja course lessons are rooted in African and African American cultural precepts, and are composed to guide African American learners through:

- An exploration of their identities;
- An interrogation (questioning or query) of their ancestral history.
- Development of a positive sense of purpose and cultural pride.
- Envisioning their futures and outlining a path for fulfillment.
- Developing an awareness of their communal role.

Direct services for parents and guardians:

Umoja seeks to increase entry points for caregivers to be informed and involved in their child’s learning. Highlights in this area include:

- Community meetings/engagements (monthly typically).
- Coordinating and hosting Parent teacher conferences.
- Individual parent meetings/contacts, including advising, problem-solving, and updates regarding student progress.
- Coordinating and hosting community events: Kwanzaa Celebration, Black History Month event and activities.

Direct services for students (academic, social, behavioral):

- School-day cultural enrichment designed to uplift and empower African American learners using African centered pedagogical approaches.
- Equity centered support sessions (weekly).
- Structured class check-in sessions.

**PEI Goals:** The goal of this program is to bring about mental health, including the reduction of school failure and the removal of children from their homes.

**PEI Priority:**

- Culturally competent and linguistically appropriate prevention and intervention.
- Early identification programming of mental health symptoms and disorders, including but not limited to, anxiety, depression, and psychosis.

In FY21, 63 students participated in this project. Outlined below are demographics on individuals served through this project:

| <b>DEMOGRAPHICS N=63</b>                           |      |
|----------------------------------------------------|------|
| <b>Age Groups</b>                                  |      |
| Children/Youth (0-15)                              | 100% |
| <b>Race</b>                                        |      |
| Black or African American                          | 68%  |
| More than one Race                                 | 11%  |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b> |      |
| Hispanic/Latino/Latina/Latinx                      | 21%  |
| <b>Primary Language</b>                            |      |
| English                                            | 98%  |
| Other                                              | 2%   |
| <b>Sexual Orientation</b>                          |      |
| Declined to Answer (or Unknown)                    | 100% |
| <b>Disability</b>                                  |      |
| Other                                              | 8%   |
| <b>Veteran Status</b>                              |      |
| No                                                 | 100% |
| <b>Gender: Assigned sex at birth</b>               |      |
| Male                                               | 56%  |
| Female                                             | 44%  |
| <b>Current Gender Identity</b>                     |      |
| Male                                               | 56%  |
| Female                                             | 44%  |

### **ACCESS AND LINKAGE TO TREATMENT PROGRAM**

Access and Linkage to Treatment Program - Connects children who are seriously emotionally disturbed, and adults and seniors with severe mental illness as early in the onset of these

conditions as practicable, to medically necessary care and treatment, including but not limited to care provided by county mental health programs.

The City of Berkeley had one Access and Linkage to Treatment Program from April 2017-March 2021:

### **Homeless Outreach and Treatment Team (HOTT)**

The Homeless Outreach and Treatment Team (HOTT) program was established out of an effort to address the homeless crisis, and as a result of input received through various MHSA community program planning processes. Utilizing a portion of PEI and CSS funds, blended with realignment and general funds HOTT is a pilot program to support homeless mentally ill individuals in Berkeley and to connect them into the web of services that currently exist within the system of care. Key program components include the following: Persistent and Consistent Outreach; Supportive Case Management; Linkage to Care; and Treatment. HOTT was in operation until March 2021 when the Homeless FSP began.

**PEI Goals:** The goal of this program is to connect individuals who have severe mental illnesses as early in the onset of these conditions as practicable, to medically necessary care and treatment, including but not limited to, care provided by county mental health programs.

**PEI Priority:** Early identification programming of mental health symptoms and disorders, including but not limited to, anxiety, depression, and psychosis.

The HOTT program was a three-year pilot project that was originally intended to run from May 2017 through April 2020. Due to the COVID-19 pandemic, the program was extended through February 2021 with a redirected focus mainly towards encampment outreach, in addition to the original purpose of serving unhoused Berkeley residents with linkage, resource, housing, and short-term treatment services.

A local consultant, Resource Development Associates (RDA), was hired to conduct a dedicated independent evaluation to assess the program accomplishments and to ascertain whether HOTT should continue past the initial funding period.

The RDA [Homeless Outreach and Treatment Team Final Evaluation Report](#) which covered the timeframe from January 2018 – February 2020, showed the following program outcomes:

- A total of 4,435 total encounters were conducted with individuals who were either enrolled or non-enrolled in the program, averaging 171 encounters per month;
- The number of contacts provided in-person in the field was 73%, while 26% were provided by phone;
- A total of 81% of HOTT encounters were with clients who were enrolled in the program;
- Enrolled clients had an average of 20 total encounters with HOTT staff, with an average of 4 encounters per month;
- During encounters, HOTT staff provided at least 1,845 material supports and services (including food, transportation or BART or bus passes, Hygiene Kits, Emergency Housing Vouchers, Blankets, etc.); to respond to clients' immediate and longer-term needs;
- During 488 encounters, HOTT provided emergency or temporary housing vouchers (e.g., for a motel) to individuals who required immediate shelter;

- Approximately three-quarters of enrolled clients (75%) and over a third of non-enrolled individuals (38%) were referred or connected to housing support services;
- In addition to connecting individuals to housing services, HOTT also connected individuals to other supportive services to help reduce or address initial barriers to obtaining housing;
- Approximately 27% of HOTT clients and 6% of non-enrolled individuals successfully enrolled in social service benefits. In comparison, only 9% of HOTT clients and 1% of non-enrolled clients ultimately enrolled in mental health services;
- Over 58% of all HOTT clients, and 9% of non-enrolled individuals obtained emergency or temporary housing (e.g., motel or shelter) at some point during their engagement with HOTT. In comparison, 12% of HOTT clients and 1% of non-enrolled individuals obtained permanent housing;
- To assess changes in self-sufficiency, HOTT staff completed a Client Self-Sufficiency Matrix (SSM) on enrolled clients at program intake, on a quarterly basis after program enrollment, and/or at program discharge. Overall, HOTT clients' SSM scores remained relatively unchanged from baseline to follow-up.

During interviews that were conducted with several HOTT existing and previous clients regarding their experience with the program, interviewees reported the following:

- “They help people, not just me. I introduce people on the street to them, and I say you can talk to the HOTT team and they will help you.”
- “I really didn’t expect anything, but when I called the City, they said someone [from HOTT] would meet me right then. They got me a hotel room that day. I wasn’t expecting the City to help.”
- “They were so helpful. I felt like if I didn’t get the hotel room, they would have let me stay at their personal house.”

In addition to these interviews, RDA conducted focus groups with HOTT clients during a previous year of the evaluation, and developed brief client impact stories based on clients’ experiences. In one of the impact stories, client self-report was as follows:

“I would still be on the streets and probably dead if it wasn’t for HOTT. I could have died and no one would have cared. Doctors told me I had months to live and I gave up on living. I gave up on everything for help. No one cared but the HOTT team did care. I’m the type of person that never asks for help, and here they were offering to help and they never gave up on me. I lived on the same spot for six years and never got medical care. They checked up on me and came back multiple times, even though I was turning them away in the beginning. I figured HOTT team was just like the other programs where they would just disappear after the first meeting. But I know the HOTT team is there. And everything the HOTT team said they would do came true. Now I am in hospice care getting the care that I need. I don’t know how much longer I have to live, but it’s a hell of a lot longer than a couple months which is what the doctors said. This gives me the opportunity to live my life with dignity. The HOTT team provided me with the positive energy just like hospice care that is so needed for people like me.”

The program continued into FY21 which was past the original end-date and the evaluation timeline. Data, and successes and challenges in FY21 are outlined below. In FY21, 91 individuals were served. Demographics on individuals served were as follows:



| <b>DEMOGRAPHICS N= 91</b>                                  |      |
|------------------------------------------------------------|------|
| <b>Age Groups</b>                                          |      |
| 25-44 years                                                | 21%  |
| 45-64                                                      | 25%  |
| 65 years and older                                         | 8%   |
| Declined to Answer (or Unknown)                            | 46%  |
| <b>Race</b>                                                |      |
| Black or African American                                  | 37%  |
| Latino/a/x                                                 | 5%   |
| White                                                      | 43%  |
| Other                                                      | 15%  |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |      |
| Declined to State (or Unknown)                             | 100% |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Disability</b>                                          |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Veteran Status</b>                                      |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Gender: Assigned Sex at Birth</b>                       |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Current Gender Identity</b>                             |      |
| Male                                                       | 58%  |
| Female                                                     | 40%  |
| Transgender                                                | 2%   |
| <b>Sexual Orientation</b>                                  |      |
| Declined to Answer (or Unknown)                            | 100% |

In FY21 Flex funds were used to provide various supports for HOTT program participants including: Hotel stays/rental or housing assistance for 42 participants; Food/groceries for 26 participants; Bus passes or transportation for 3 participants; and on Pharmacy needs for 1 participant.

Due to the nature of the many brief interactions attempting to engage with clients, as well as trying to avoid barriers to bringing clients into services, some data wasn't able to be collected in order to best support effective service provision. Additionally, some limitations to the current

data collection system prevented certain data from being gathered and provided for this project and report.

#### Program Successes:

The HOTT pilot demonstrated that a dedicated team of workers could effectively engage and work with a large number of unhoused residents providing short term services and connections to longer term treatment and care. It also demonstrated that the team could be flexible in redirecting its efforts to support the needs of the unhoused community during the pandemic:

- HOTT was responsive to both enrolled and unenrolled clients when providing outreach and engagement: responding to community referrals, providing direct in-person outreach, and responding to immediate service calls and needs.
- The project provided an array of material supports, including but not limited to basic necessities, transportation (direct and voucher), hygiene kits, emergency housing/respice support, COVID-related supplies (masks, testing, resource information, sanitizer, etc).
- HOTT facilitated linkages and referrals to treatment, housing, primary care, material support, and other community resources.
- Community needs were supported by encampment outreach by the HOTT, including outreach, material support, and other COVID related needs.

#### Program Challenges:

With the change in HOTT's mission and staffing, it became increasingly difficult to effectively serve the community. The needs and resources in the community, especially due to COVID-19, drastically changed:

- Staff left the team steadily over this time period from a supervisor and 4 staff until only one staff was left, and then the program ended.
- With the pandemic, many of the resources to which the HOTT team would normally link clients had either: changed their hours, gone to only remote service, changed their services available, or closed their doors.
- The directions from the Emergency Operations Center (EOC) during the pandemic were not consistent due to the changing nature of the COVID-19 response. This also made consistent services difficult to maintain.
- Since most of the services HOTT was directed to perform during this time period were COVID-19/encampment outreach related, the previous linkage services were no longer the focus of the team and its work.

HOTT continued to be in operation until March 2021, when the Homeless FSP was fully implemented.

### **ACCESS AND LINKAGE TO TREATMENT AND PREVENTION & EARLY INTERVENTION COMBINED PROGRAM**

Access and Linkage to Treatment Program – Connects children who are seriously emotionally disturbed, and adults and seniors with severe mental illness as early in the onset of these conditions as practicable, to medically necessary care and treatment, including but not limited to care provided by county mental health programs.

Prevention Program – Includes a set of related activities to reduce risk factors for developing a potentially serious mental illness and to build protective factors.

Early Intervention Program – Provides treatment and other services and interventions, including relapse prevention, to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the applicable negative outcomes that may result from untreated mental illness.

The City of Berkeley has one combined Access and Linkage to Treatment and Prevention & Early Intervention combined program:

### **High School Youth Prevention Program**

This program operates in conjunction with other health related services offered at Berkeley High School (BHS) and Berkeley Technology Academy (BTA) and has become a successful partnership between BUSD and the Public Health and Mental Health Divisions of Berkeley's HHCS Department. The program provides young people with the information and individual support they need to make positive and healthy decisions in their lives. The program includes: outreach activities designed to provide students with basic information around the risks of certain behaviors, and ways to protect themselves and make positive and safer decisions; classroom presentations to enable students to receive more in-depth information around a variety of health topics and available resources, and provide the opportunity for students to do a personal assessment of risk and current lifestyle choices; drop-in crisis, counseling services; individual appointments to identify young people who may need more intensive intervention; and short-term treatment. The individual appointments, held at the school-based health center, provide young people with the opportunity to hold very in-depth discussions around the choices they are making and the risks that are involved in their choices. They receive guidance about changes they can make to reduce or eliminate their risks, and are given the opportunity to identify barriers that might exist for them that prevent them from making healthier choices. In addition, they complete a 40 question, in-depth HEADSSS (Home, Education, Activities, Drugs/Alcohol, Sexuality, Safety, and Suicidality) assessment. Based on the outcome of the individual appointment and/or assessment, a young person may be referred to either a medical or mental health professional for follow-up care and intervention and/or treatment.

**PEI Goals:** The goal of this program is to bring about mental health, including the reduction of school failure or dropout.

#### **PEI Priorities:**

- Youth engagement and outreach strategies that target secondary school and transition age youth.
- Early identification programming of mental health symptoms and disorders, including but not limited to, anxiety, depression, and psychosis.

In FY21, approximately 101 students received services through this project. Demographics on youth served are outlined below:

| <b>DEMOGRAPHICS N=101</b> |     |
|---------------------------|-----|
| <b>Age Groups</b>         |     |
| 0-15 Years                | 27% |
| 16-25 Years               | 73% |

| <b>Race</b>                                        |      |
|----------------------------------------------------|------|
| Asian                                              | 16%  |
| Black or African American                          | 15%  |
| White                                              | 32%  |
| More than one Race                                 | 19%  |
| Other                                              | 10%  |
| Declined to Answer (or Unknown)                    | 8%   |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b> |      |
| Other                                              | 32%  |
| Declined to Answer (or Unknown)                    | 9%   |
| <b>Primary Language</b>                            |      |
| English                                            | 87%  |
| Spanish                                            | 13%  |
| <b>Sexual Orientation</b>                          |      |
| Declined to Answer (or Unknown)                    | 100% |
| <b>Disability</b>                                  |      |
| Declined to Answer (or Unknown)                    | 100% |
| <b>Veteran Status</b>                              |      |
| No                                                 | 100% |
| <b>Gender: Assigned sex at birth</b>               |      |
| Male                                               | 40%  |
| Female                                             | 60%  |
| <b>Current Gender Identity</b>                     |      |
| Male                                               | 37%  |
| Female                                             | 52%  |
| Transgender                                        | 3%   |
| Genderqueer                                        | 8%   |

Program Successes:

- In spite of the numerous and multi-faceted challenges associated with COVID-19 and distance learning, the Health Center was still able to provide mental health counseling services to over 100 students and was able to provide longer-term support to more students due to the lower than typical number of unduplicated clients. The Health Center was able to host a small, diverse, and talented graduate-level MFT trainee cohort.
- Adapted care provision to utilize these new platforms and was able to flexibly provide services while also mitigating potential safety risks associated with COVID-19.

- During the course of the school year, the Health Center’s mental health team was able to develop and implement use of a JotForm application in order to digitize referral processes, make referrals accessible online, and thereby improve overall accessibility. Transition to this HIPAA-compliant online referral process has been maintained into the FY22 school year and is now being more broadly used by all Health Center programs.
- The online referral process was implemented in January 2021 and promoted across student/parent bulletins, emails to the school community from BHS and BTA principals, and presentations to teacher leads and other school staff. Upon successfully implementing this new method for referrals, the Health Center phased out use of its phone-based Mental Health Warm Line, which was initially utilized in Spring 2020 shortly after the COVID-19 pandemic began. The Warm Line was phased out in order to simplify the referral pathway for accessing mental health services from the Health Center.
- Throughout the COVID-19 pandemic and for the duration of the FY21 school year, the Health Center’s mental health team maintained a positive and collaborative relationship with school administration, the BHS and BTA COST teams, and the school-based Intervention and IEP counselors. Collaboration and coordination with school-based stakeholders enabled program staff to effectively triage and refer students/families to EPSDT/ERMHS services in addition to short-term Health Center services.

#### Program Challenges:

- During the FY21 school year, BUSD provided all educational instruction via remote “distance learning” using platforms like Zoom and Google Meet due to COVID-19-related safety concerns. Students were not present on campus from the start of the school year in August 2020 through spring break in April 2021. From mid-April through early June of 2021, a small percentage of the student body was on campus two hours per day, 2-3 days per week. Health Center counseling rooms were not usable for in-person services due to spatial limitations, inadequate social distancing, and inadequate ventilation. An alternative physical space on the BHS campus was identified for crisis-only use during this timeframe.
- For the duration of the FY21 school year, one Health Center clinician was on parental leave. The Health Center’s graduate-level trainee cohort was also downsized by 50%, from four to two, due to COVID-19-related constraints.
- Up until COVID-19, the Health Center relied upon a paper-based referral process where referrals needed to be submitted in person to staff. Accessing services remotely was not feasible until workflow adjustments were made, which required technological advancements and collaboration with the City’s IT department. The planning and implementation of a digital, online, HIPAA-compliant referral portal took approximately five months.

### **ACCESS AND LINKAGE TO TREATMENT AND EARLY INTERVENTION COMBINED PROGRAM**

Access and Linkage to Treatment Program – Connects children who are seriously emotionally disturbed, and adults and seniors with severe mental illness as early in the onset of these conditions as practicable, to medically necessary care and treatment, including but not limited to care provided by county mental health programs.

Early Intervention Program – Provides treatment and other services and interventions, including relapse prevention, to address and promote recovery and related functional outcomes for a

mental illness early in its emergence, including the applicable negative outcomes that may result from untreated mental illness.

Through the FY22 Annual Update the City of Berkeley provided a one-time amount of CSS and PEI funding to support a pilot program. Per PEI program type definitions, this program would be considered as an Access to Treatment and Early Intervention combined program. The program is as follows:

### **Specialized Care Unit**

As outlined in the CSS section of this Annual Update, on July 14, 2020 City Council passed Resolution No, 69,501-N.S; a package of items providing direction for the development of a new paradigm of public safety in Berkeley. One of the items adopted by City Council directed the City Manager to analyze and develop a pilot program to re-assign non-criminal police service calls to a Specialized Care Unit (SCU). The SCU will consist of trained crisis-response field workers who will respond to behavioral health occurrences that do not pose an imminent threat to safety without the involvement of law enforcement. The SCU will be a pilot model that will inform the long-term implementation of the program. Through the approved FY22 Annual Update, the Division proposed to allocate a small portion of CSS and PEI funds to be leveraged with other City funds for this pilot program. This allocation was a one-time MHPA funding amount, while the City determines how to best fund this initiative.

**PEI Goals:** The goal of this program is to connect individuals who have severe mental illnesses as early in the onset of these conditions as practicable, to medically necessary care and treatment, including but not limited to, care provided by county mental health programs.

**PEI Priority:** Early identification programming of mental health symptoms and disorders, including but not limited to, anxiety, depression, and psychosis.

In FY22, Resource Development Associates (RDA), who was chosen through a competitive Request For Proposal (RFP) process to evaluate the current crisis system in Berkeley, received an expanded scope of work to provide recommendations on the implementation of the SCU. To oversee and advise RDA in their work, the City formed an SCU Steering Committee consisting of Health, Housing and Community Services Department and Fire Department staff, and community representatives from the Mental Health Commission and the Berkeley Community Safety Commission. The Steering Committee met from January 2021 through January 2022 and advised on RDA's completion of three critical reports. The first two reports summarized crisis response programs in the United States and internationally as well as gathered perspectives from community and City stakeholders regarding the crisis response system. This included gathering input from City of Berkeley and Alameda County agencies, local community-based organizations (CBOs), local community leaders, and utilizers of Berkeley's crisis response services. These reports laid the foundation for the twenty-five recommendations that were the subject of the third and final report to inform the SCU model. Each recommendation put forth in the final report is deeply rooted in the stakeholder feedback included in the two previous reports.

The work of the SCU Steering Committee has now transitioned from planning to implementation. It is envisioned that the SCU will begin operations in late FY22 or early FY23 through a community partner that will be chosen through a competitive Request for Proposal process.

## **STIGMA AND DISCRIMINATION PROGRAM**

Stigma and Discrimination Program - Directs activities to reduce negative feelings, attitudes, beliefs, perceptions, stereotypes and/or discrimination related to being diagnosed with a mental illness, having a mental illness, or to seeking mental health services and to increase acceptance, dignity, inclusion, and equity for individuals with mental illness, and members of their families.

The City of Berkeley Stigma and Discrimination program is as follows:

### **Social Inclusion Program**

**PEI Goals:** To reduce negative feelings, attitudes, beliefs, perceptions, stereotypes and/or discrimination related to being diagnosed with a mental illness, having a mental illness, or to seeking mental health services and to increase acceptance, dignity, inclusion, and equity for individuals with mental illness, and members of their families. To create changes in attitude, knowledge and/or behaviors related to seeking mental health services or related to mental illness.

- **PEI Priority:** Culturally competent and linguistically appropriate prevention and intervention.

The Social Inclusion program was created to combat stigma, attitudes and discrimination around individuals with mental health issues. Through this program, a “Telling Your Story” group provides mental health consumers with opportunities to be trained, compensated and empowered to share their stories of healing in a supportive peer environment. When they feel ready, consumers can elect to be community presenters, sharing their inspirational stories at pre-arranged local public venues to dispel myths and educate others. This program serves approximately 10-20 individuals a year.

In FY21, the “Telling Your Story” group held 25 meetings with 21 unduplicated persons attending for a total of 168 visits. This group has met through the virtual platform “zoom”. On average there were 6.72% attendees. Program participants spent time discussing and practicing what makes a good story based on the topics given by the instructors.

Demographics on individuals served were as follows:

| <b>DEMOGRAPHICS N= 21</b>                 |     |
|-------------------------------------------|-----|
| <b>Age Groups</b>                         |     |
| 26-59 (Adult)                             | 52% |
| Ages 60+ (Older Adult)                    | 48% |
| <b>Race</b>                               |     |
| Asian                                     | 5%  |
| Black or African American                 | 9%  |
| Native Hawaiian or other Pacific Islander | 5%  |

|                                                            |      |
|------------------------------------------------------------|------|
| White                                                      | 71%  |
| Other                                                      | 5%   |
| More than one Race                                         | 5%   |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |      |
| African                                                    | 14%  |
| Asian Indian/South Asian                                   | 5%   |
| European                                                   | 14%  |
| Filipino                                                   | 9%   |
| Japanese                                                   | 5%   |
| Middle Eastern                                             | 5%   |
| Declined to Answer (or Unknown)                            | 48%  |
| <b>Primary Language Used</b>                               |      |
| English                                                    | 100% |
| <b>Sexual Orientation</b>                                  |      |
| Gay or Lesbian                                             | 5%   |
| Heterosexual or Straight                                   | 52%  |
| Bisexual                                                   | 9%   |
| Another Sexual Orientation                                 | 5%   |
| Declined to Answer (or Unknown)                            | 29%  |
| <b>Disability</b>                                          |      |
| Difficulty Hearing                                         | 14%  |
| Mental Domain not including a mental illness               | 14%  |
| Physical Mobility domain                                   | 14%  |
| Chronic Health Condition                                   | 14%  |
| Other (Specify): PTSD                                      | 10%  |
| Declined to Answer (or Unknown)                            | 34%  |
| <b>Veteran Status</b>                                      |      |
| No                                                         | 48%  |
| Declined to Answer (or Unknown)                            | 52%  |
| <b>Gender: Assigned sex at birth</b>                       |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Current Gender Identity</b>                             |      |



|                                 |     |
|---------------------------------|-----|
| Male                            | 14% |
| Female                          | 67% |
| Declined to Answer (or Unknown) | 19% |

Program Successes:

The Telling Your Story group has grown to having more consistent attendees who better able prepared to share based on the topics provided. Some participants enjoy having the group virtually in the comfort of their home, they feel safer and the hassle of commuting has been eliminated. People have felt more prepared during their shares and they enjoy the support they receive from their peers.

Program Challenges:

The Telling Your Story group challenges have been a lack of in-person connection and some people not having zoom are unable to see others on the screen.

### **SUICIDE PREVENTION PROGRAM**

Suicide Prevention Program – An optional program that provides activities to prevent suicide as a consequence of mental illness.

The City of Berkeley partners with the California Mental Health Services Authority to locally provide Suicide Prevention resources through the PEI Statewide Projects initiative:

#### **California Mental Health Services Authority (CalMHSA) - PEI Statewide Projects**

In 2009, California's counties formed the California Mental Health Services Authority (CalMHSA) as a Joint Powers Authority to implement PEI statewide program initiatives. With an approved combined funding level of \$40 million per year for four years during the timeframe of 2011 through 2015, CalMHSA implemented statewide initiatives in the following areas: Suicide Prevention, Stigma and Discrimination Reduction, and Student Mental Health. Following 2015, funding for PEI Statewide projects was generated through pooled contributions from individual counties. Contributing counties are members of a CalMHSA board that provides direction into the types of initiatives that are implemented. In order to continue to sustain programming, CalMHSA previously asked counties to allocate 4% of their annual local PEI allocation each year to these statewide initiatives. In the City of Berkeley, this has varied from year to year between \$42,000 - \$66,000 depending on the amount of PEI revenue received. Through the previously approved Three Year Plan the City of Berkeley allocated PEI funds for one year towards this statewide initiative, and for the remaining two years, elected to assess on an annual basis whether or not to continue to allocate funds to this initiative. The Division allocated funding for services in FY22, and was required to execute a Participation Agreement with CalMHSA in order to provide the funding to participate in this initiative. In FY23 the Division is recommending to continue funding this initiative as in previous years at 4% of the projected PEI funding amount (approximately \$70,907) and to amend the Participation Agreement with CalMHSA to allocate funds to participate in this project.

In FY21, through this initiative resources on Suicide Prevention, Student Mental Health and Stigma and Discrimination reached approximately 1,620 individuals. Additionally, resources were distributed via email to local schools, community agencies and community members.

### **INNOVATIONS (INN)**

The City of Berkeley's initial INN Plan was approved in February 2012. Subsequent updates to the initial plan were approved in May 2013, January 2014, June 2014 and January 2015. Per the initial INN Plan and/or through Plan Updates the following seven pilot projects were implemented from June 2012 – June 2015 through this funding component:

- A Community Empowerment project for African Americans;
- Services and supports for Ex-offenders re-entering the community, Veterans returning home from being deployed or at war, and their families;
- Cultural Wellness strategies for Asian Pacific Islanders;
- A Holistic Health care project for TAY;
- Technology Support Groups for senior citizens;
- Nutrition, Healthy Meal Preparation, and Exercise classes for Board and Care residents;
- Mental Health services and supports for LGBTQI located in community agencies.

Since the initial plan was approved, INN requirements were changed to require approvals from the State Mental Health Services Oversight and Accountability Commission (MHSOAC) in addition to local approval.

In May 2016, the second MHSA INN Plan was approved by the MHSOAC. This plan implemented a Trauma Informed Care project in BUSD for students, educators, and school staff. An update to this plan was subsequently approved by the MHSOAC in December 2018 which added funds to the project and switched the initial target population from BUSD students and staff to children, teachers and parents at YMCA Head Start sites in Berkeley.

In September 2018, the Division received approval from the MHSOAC for a third INN project to allocate funds to join the Technology Suite Multi-County Collaborative (later re-named Help@Hand Project) and in April 2022, the Division received approval for a fourth INN Project to allocate funds for an Encampment Based Mobile Wellness Center Project.

#### **INN Reporting Requirements**

Per MHSA INN regulations, all INN funded programs have to collect additional state identified outcome measures and detailed demographic information. Beginning in FY19, INN Evaluations were required to be included in each MHSA Annual Update or Three Year Plan. The Innovations (INN) Fiscal Year (FY) 2020/2021 Annual Evaluation Report is located in Appendix B of this Annual Update.

A description of current INN programs, and INN programs funded during the reporting timeframe as well as FY21 data are outlined below:

### **Early Childhood Trauma Resiliency (ECTR) - Trauma Informed Care Project**

In May 2016, the City of Berkeley received approval from the MHSOAC to implement a [Trauma Informed Care \(TIC\) for Educators project](#) (which is posted on the MHSA Plans and Updates webpage) into several BUSD schools to assess whether educators who are trained to become aware of their own trauma and trauma triggers (and how to address them), are better equipped to recognize and make appropriate decisions on how to help students who are exhibiting trauma symptoms, and assist them in accessing the mental health services and supports they may need.

The project was implemented through the 20/20 Vision Program which is operated out of the City of Berkeley, City Manager's Office. After a year of the TIC Project being executed, there were two vacancies in the 20/20 Vision Program which impacted the ability to continue the implementation of the TIC Project. The project was only able to be implemented for one year in FY17 and during that timeframe an evaluation was conducted by Hatchuel Tabernik & Associates (HTA) on the project outcomes. The HTA [Training Informed Systems Training Program 2016-17 Pilot Year Evaluation Report](#) is located on the City of Berkeley MHSA Plans and Updates webpage.

In FY18, due to staffing vacancies the TIC project was not able to be implemented. When staffing vacancies were filled in mid FY18, meetings were held with several BUSD principals who indicated that although their schools received a lot of positive benefits out of the TIC project, additional training requirements within the school system had been added for teachers and administrators that needed to be fulfilled over the next couple of years. As a result, the TIC Project would not be able to be prioritized within the school system at that time. In light of the changes in the school system, staff conducted outreach and found that area YMCA Head Start Centers were interested in executing the same TIC Project for their early childhood educators and staff, to impact the children and families who are served at the centers. As such, proposed changes to the population and funding amount of the original TIC Plan were vetted through community program planning, and an update to the TIC Plan underwent a 30 Day Public Review and Public Hearing process. The [City of Berkeley Trauma Informed Care Plan Update](#) (which is posted on the MHSA Plans and Updates webpage) was approved through City Council in October 2018 and by the MHSOAC in December 2018. The modified project implements TIC Training for Educators and interested parents in four local Head Start sites.

The TIC modified project, "Early Childhood Trauma and Resiliency" (ECTR) was implemented from January 2019 through June 2021 at four YMCA Head Start sites located in Berkeley: Ocean View, South YMCA, Vera Casey, and West YMCA. The project provided training and supports to enable Head Start staff to recognize trauma and its effects on themselves and the children and families they serve, and to integrate trauma and resiliency informed approaches into their work. The project provided training, coaching and peer support to staff and parents who have children enrolled in Head Start and advanced Berkeley's 2020 Vision priority, that all Berkeley children enter kindergarten ready to learn.

The learning objectives of this project were as follows:

- To create a change in the way Head Start educators and staff view and handle challenging student and parent behaviors (which often mask trauma);
- To create an increase in access to mental health services and supports for children/families in need;

- To promote better mental health outcomes by increasing child/family referrals to “appropriate” mental health services.

In FY21, 178 children received services through this program. For all program outcomes refer to the [ECTR Final Three Year Evaluation Report](#) which was developed by HTA during the reporting timeframe and is located on the MHSA webpage and in Appendix B of this Annual Update. Below are demographics of individuals impacted by this program:

| <b>DEMOGRAPHICS N=178</b>                                  |      |
|------------------------------------------------------------|------|
| <b>Age Groups</b>                                          |      |
| 0-15 (Children)                                            | 100% |
| <b>Race</b>                                                |      |
| Asian                                                      | 9%   |
| Black or African American                                  | 29%  |
| White                                                      | 9%   |
| Other                                                      | 28%  |
| More than one Race                                         | 17%  |
| Declined to Answer (or Unknown)                            | 8%   |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |      |
| Central American                                           | 2%   |
| Mexican/Mexican-American/Chicano                           | 32%  |
| Puerto Rican                                               | 1%   |
| South American                                             | 2%   |
| Other                                                      | 2%   |
| More than one ethnicity                                    | 7%   |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |      |
| African                                                    | 6%   |
| Cambodian                                                  | <1%  |
| Chinese                                                    | 3%   |
| Middle Eastern                                             | <1%  |
| Vietnamese                                                 | 1%   |
| Other                                                      | 9%   |
| More than one Ethnicity                                    | 2%   |
| Declined to Answer (or Unknown)                            | 20%  |
| <b>Primary Language</b>                                    |      |
| English                                                    | 67%  |
| Spanish                                                    | 23%  |
| Urdu                                                       | <1%  |

|                                                  |     |
|--------------------------------------------------|-----|
| Arabic                                           | 2%  |
| French                                           | 1%  |
| Berber                                           | 1%  |
| Mongolian                                        | <1% |
| Amharic                                          | <1% |
| Tigrina                                          | 1%  |
| Chinese/Mandarin                                 | 1%  |
| Nepalese                                         | <1% |
| Declined to Answer (or Unknown)                  | <1% |
| <b>Disability</b>                                |     |
| Communication: other, speech/language impairment | 39% |
| Physical domain                                  | 7%  |
| Other                                            | 7%  |
| No Disability                                    | 47% |
| <b>Gender</b>                                    |     |
| Female                                           | 41% |
| Male                                             | 59% |

### Help@Hand Project

In September 2018, following a four-month community planning process and approval from City Council, the [City of Berkeley Technology Suite Project](#) (which has since been renamed “Help@Hand) was approved by the MHSOAC. This project allocates a total of \$462,916 to participate in a Statewide Collaborative with other California counties to pilot a Mental Health Technology Project that makes various technology-based mental health services and supports applications (Apps) locally available in Berkeley. The Help@Hand project seeks to learn whether the use of the Apps will increase access to mental health services and supports; and whether it will increase the quality of mental health services, including leading to better outcomes.

Since plan approval and through FY21, the City of Berkeley worked both internally and with the California Mental Health Services Authority (CalMHSA), the fiscal intermediary for this project to prepare for citywide implementation. Due to a need for additional community mental health supports as a result of the pandemic, the priority population for accessing Apps was changed from the original primary focus on TAY and Older Adults, to include anyone who lives, works and goes to school in Berkeley.

Per a competitive recruitment process, the Division contracted with Resource Development Associates (RDA), who conducted Project Coordination work through early FY22 on this project. Additionally, on behalf of the City and with locally designated Help@Hand project funds, CalMHSA executed a contract with Uptown Studios, a local Marketing company in early FY22 to conduct a marketing and social media campaign for this project. In November 2021, as a result

of this project, free access to the HeadSpace and MyStrength Apps became locally available for a limited timeframe to anyone who lives, works or goes to school in Berkeley.

The City is currently participating in a State Evaluation with other counties in this project. The evaluation is being conducted by the University of California at Irvine (UCI). Additionally, following a competitive recruitment process, the City of Berkeley entered into a contract with Hatchuel, Tabernik & Associates to conduct a local evaluation of this project.

### **Encampment-Based Mobile Wellness Center**

In FY20, the community program planning process for the next round of INN funded Projects was provided by Resource Development Associates (RDA), who was chosen through a competitive recruitment process to conduct this work. Based on community input received around the need for additional services and supports for individuals who are experiencing homelessness and mental health needs, including direct feedback from individuals who reside in homeless encampments, an Encampment-Based Mobile Wellness Center project was developed.

In April 2022, the Division received approval to implement the [Encampment-Based Mobile Wellness Center Project](#) from the Berkeley City Council and the State Mental Health Oversight and Accountability Commission (MHSOAC). This new project will pilot a five year, 2.8 million dollar Mobile Wellness Center at Homeless encampments in Berkeley that will provide an on-site, customizable menu of services that are chosen by individuals who reside at the encampments. The project will be led by peers with lived experience of homelessness, and include partners from encampment communities to encourage participation, help define service needs, and support service provision at the site. The project will be implemented through a community partner who will be chosen through a competitive Request For Propoosal (RFP) process.

The project will seek to learn whether on-site wellness center services have a positive impact on mental health outcomes including an increase in the uptake of mental health services. The project will also assess the impact of how having individuals from the community help to provide services, shapes service delivery, and the participant satisfaction with services.

### **WORKFORCE, EDUCATION & TRAINING (WET)**

The City of Berkeley WET Plan was approved in July 2010. A subsequent update was approved in May 2013. Specific programs in the approved WET Plan include:

- Peer Leadership Coordination;
- Staff Development and MHSA Training;
- High School Career Pathways Program;
- Graduate Level Training Stipend Program;
- Peer Leader Stipend Program.

WET programs were funded for an initial period through FY18 and FY19, and per the local [MHSA AB114 Reversion Expenditure Plan](#) (which is posted on the City of Berkeley MHSA

Plans and Updates Webpage) the Graduate Level Training Stipend Program was extended through FY20.

### **Greater Bay Area Workforce, Education & Training Regional Partnership**

The Office of Statewide Health Planning and Development (OSHPD) allocated \$40 million in Workforce, Education and Training funds through FY25 for Regional Partnerships across the state for various mental health workforce strategies. A total of 2.6 million of OSHPD was allocated to the Greater Bay Area (GBA) Workforce, Education & Training Regional Partnership. In order to participate in the GBA Regional Partnership, mental health jurisdictions were required to contribute a portion of local funds towards this initiative. For the Berkeley contribution the amount was \$40,127, which the Division allocated through the previously approved Three Year Plan.

Since the approval of the Three Year Plan, the Division has participated in meetings with representatives from other counties in the GBA Regional Partnership. All participating counties decided to allocate these funds for the Loan Repayment program. This program will enable funds to be made available to repay a portion of student loans for a given number of staff who are in hard-to-fill positions, in exchange for a number of years of service in the Public Mental Health system.

As some local counties have decided not to participate in this initiative, the GBA Regional Partnership was notified that each participating mental health jurisdiction will need to increase the amount of funds they are contributing to this initiative. The additional amount for Berkeley is \$1,361. Per this Annual Update, the Division is proposing to transfer \$1,361 of CSS System Development Funds to the Workforce, Education and Training (WET) funding component, through the following process:

*Per MHSa Statute, (Welfare and Institutions Code, Section 5892 (b)): "In any year after 2007 -08, programs for services pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division may include funds for technological needs and capital facilities, human resource needs, and a prudent reserve to ensure services do not have to be significantly reduced in years in which revenues are below average of previous years. The total allocation for purposes authorized by this subdivision shall not exceed 20 percent of the average amount of funds allocated to that county for the previous five years pursuant to this section."*

Funds will be utilized to participate in this initiative, which is being administered through a joint powers authority, the California Mental Health Services Authority (CalMHSA). Through this Annual Update the Division is requesting to enter into a Participation Agreement with CalMHSA to allocate the designated funds through FY25 to participate in this initiative.

### **CAPITAL FACILITIES AND TECHNOLOGICAL NEEDS (CFTN)**

The original City of Berkeley CFTN Plan was approved in April 2011, with updates to the plan in May 2015, June 2016, January 2017. Through previously approved MHSa Plans and/or Annual Updates, BMH allocated a total of \$3,773,811 towards the renovation of the Adult Mental Health Clinic.

The Adult Clinic serves Berkeley's most at-risk and fragile population through crisis intervention, case management, individual/or group supports, psychiatric medication support, Full Services Partnership Intensive Case Management Teams, Clinical services, Mobile Crisis, and Transitional Outreach Services. In its previous condition, use of the Adult Clinic space was inefficient and inadequately aligned with MHSA goals, including not having welcoming spaces for client and family centered wellness and recovery programs and services. In addition to electrical, HVAC and other environmental upgrades, CFTN funds were used to re-configure shared work spaces to increase safety; improve clinical, wellness/recovery, support services, and administrative functions; and to support the implementation of electronic health records and other emerging technologies.

Construction on the Adult Clinic began in FY19, and in June 2021, the renovation was completed, staff moved back into the building, and the clinic was re-opened for services. There is approximately \$199,572 in remaining CFTN funds. It is anticipated that approximately \$35,000 of these funds will be utilized in FY23 to alleviate water damage at the Adult Clinic and \$75,000 will be utilized to conduct a Renovation Study on the adjacent property to the Adult Clinic (2636 Martin Luther King Jr. Way) where some Adult Clinic staff offices are located.



**FY21 AVERAGE COST PER CLIENT**

\*(Includes FY21 expenditures attributed to the MHSA Funding component)

| <b>COMMUNITY SERVICES &amp; SUPPORTS</b>                                                                                                                                                                                                                                 |                             |              |                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|--------------|--------------------------------|
| <b>Program Name</b>                                                                                                                                                                                                                                                      | <b>Approx. # of Clients</b> | <b>Cost</b>  | <b>Average Cost Per Client</b> |
| Children and Youth Intensive Support Services FSP                                                                                                                                                                                                                        | 16                          | \$119,135    | \$7,446                        |
| TAY, Adult & Older Adult FSP                                                                                                                                                                                                                                             | 79                          | \$550,410.07 | \$6,967                        |
| Homeless FSP                                                                                                                                                                                                                                                             | 1                           | \$292,767    | \$292,767                      |
| TAY Support Services                                                                                                                                                                                                                                                     | 129                         | \$122,856    | \$952                          |
| System Development (includes: Wellness Recovery Services; Family Support Services; Benefits Advocacy; Employment/Educational Services; Housing Services and Supports; Crisis Services; TOT; FIT; TAY Case Management Services; Hearing Voices; Berkeley Wellness Center) | 1,232                       | \$2,742,199  | \$2,226                        |
| <b>PREVENTION &amp; EARLY INTERVENTION</b>                                                                                                                                                                                                                               |                             |              |                                |
| Be A Star                                                                                                                                                                                                                                                                | 2,203                       | \$61,154     | \$28                           |
| Supportive Schools Program                                                                                                                                                                                                                                               | 179                         | \$55,000     | \$307                          |
| Living Well Project                                                                                                                                                                                                                                                      | 25                          | \$32,046     | \$1,282                        |
| LGBTQI Trauma Project                                                                                                                                                                                                                                                    | 69                          | \$32,046     | \$464                          |
| TAY Trauma Project                                                                                                                                                                                                                                                       | 150                         | \$32,046     | \$214                          |
| High School Youth Prevention Program                                                                                                                                                                                                                                     | 101                         | \$339,900    | \$3,365                        |
| Homeless Outreach and Treatment Team                                                                                                                                                                                                                                     | 91                          | \$52,416     | \$576                          |
| Child And Youth at Risk Project                                                                                                                                                                                                                                          | 49                          | \$35,924     | \$733                          |
| Dynamic Mindfulness                                                                                                                                                                                                                                                      | Unknown                     | \$95,000     | Unknown                        |
| African American Success Project                                                                                                                                                                                                                                         | 63                          | \$150,000    | \$2,381                        |
| <b>INNOVATION</b>                                                                                                                                                                                                                                                        |                             |              |                                |
| Trauma Informed Care Project                                                                                                                                                                                                                                             | 178                         | \$233,059.22 | 1,309                          |

## BUDGET NARRATIVE

The enclosed budget provides an update to the estimated revenue and expenditures that were projected for FY23 in the approved Three Year Plan. As with all MHSA Plans and Annual Updates, revenue and expenditures in this Annual Update are estimates.

The Division obtains financial projections from the state on the amount of MHSA revenue to be allocated in a given year. Previous FY23 projections received, which were utilized to calculate MHSA revenue the City would receive in the three-year timeframe, were included in the approved Three Year Plan. Financial projections for the Three Year Plan were provided at a time of great uncertainty of the amount of revenue that would be generated during the pandemic, and were based on a projected downturn of revenue in the MHSA Fund. As has been reflected nationally regarding the wealth divide, there was an increase of MHSA revenue in FY22, and funds are projected to increase in FY23 in the MHSA Fund. Additionally, the expenditure projections for FY22 in the approved Three Year Plan reflected the total costs of each program if it was fully operable. The actual expenditures in FY22 were less than what was projected, due to several factors including staff attrition and vacancies, and slower start-ups with new programs.

The savings from the FY22 expenditures, and the projected additional revenue in FY23, will provide increased monies to support MHSA programs and services over the next couple of years. Additionally, the budgets in this MHSA Annual Update reflect the following: a movement of some staff from being fully funded on the MHSA Fund, to being partially funded on Medi-Cal and partial MHSA; a 10% vacancy across all programs; and funding amounts for the proposed additional positions based on staff being hired by mid FY23 with 30% of the costs of the positions offset by Medi-Cal reimbursement. This funding projection more fully reflects the realities of spending amid vacancies, delays in hiring positions, and the movement of staff to blended funding streams.

The Division will continue to closely monitor the City of Berkeley MHSA allotments and expenditures to assess whether program changes are needed in the future. Any proposed program changes will be vetted for community input and reflected in the next Three Year Plan.

# **PROGRAM BUDGETS**

1A

**FY 2022/23 Mental Health Services Act Annual Update  
Funding Summary**

County: City of BerkeleyDate: 6/24/22

|                                                    | MHSA Funding                    |                                   |            |                                  |                                            |                 |
|----------------------------------------------------|---------------------------------|-----------------------------------|------------|----------------------------------|--------------------------------------------|-----------------|
|                                                    | A                               | B                                 | C          | D                                | E                                          | F               |
|                                                    | Community Services and Supports | Prevention and Early Intervention | Innovation | Workforce Education and Training | Capital Facilities and Technological Needs | Prudent Reserve |
| <b>A. Estimated FY2022/23 Funding</b>              |                                 |                                   |            |                                  |                                            |                 |
| 1. Estimated Unspent Funds from Prior Fiscal Years | 5,002,253                       | 1,897,440                         | 1,730,975  | 41,248                           | 199,572                                    |                 |
| 2. Estimated New FY2022/23 Funding                 | 7,088,391                       | 1,772,679                         | 482,230    |                                  |                                            |                 |
| 3. Transfer in FY 2022/23 <sup>a/</sup>            |                                 |                                   |            | 1,361                            |                                            |                 |
| 4. Transfer Local Prudent Reserve in FY 2022/23    |                                 |                                   |            |                                  |                                            |                 |
| 5. Estimated Available Funding for FY 2022/23      | 12,090,644                      | 3,670,119                         | 2,213,205  | 42,609                           | 199,572                                    |                 |
| <b>B. Estimated FY22/23 Expenditures</b>           | 8,514,903                       | 1,805,605                         | 548,650    | 42,609                           | 110,000                                    |                 |
| <b>G. Estimated FY22/23 Fund Balance</b>           | 3,575,741                       | 1,864,514                         | 1,664,555  | 0                                | 89,572                                     |                 |

| <b>H. Estimated Local Prudent Reserve Balance</b>            |           |
|--------------------------------------------------------------|-----------|
| 1. Estimated Unspent Local Prudent Reserve on June 30, 2022  | 1,237,629 |
| 2. Contributions to the Local Prudent Reserve in FY2022/23   | 0         |
| 3. Distributions from the Local Prudent Reserve in FY2022/23 | 0         |
| 4. Estimated Local Prudent Reserve balance on June 30, 2023  | 1,237,629 |

a/ Pursuant to Welfare and Institutions Code Section 5892(b), Counties may use a portion of their CSS funds for WET, CFTN, and the Local Prudent Reserve. The total amount of CSS funding used for this purpose shall not exceed 20% of the total average amount of funds allocated to that County for the previous five years.

**FY 2022/23 Mental Health Services Act Annual Update  
Community Services and Supports (CSS) Funding**

County: City of Berkeley

Date: 6/24/22

|                                                 | <b>Fiscal Year 2022/23</b>                                |                                  |                                    |                                       |                                                           |                                    |
|-------------------------------------------------|-----------------------------------------------------------|----------------------------------|------------------------------------|---------------------------------------|-----------------------------------------------------------|------------------------------------|
|                                                 | <b>A</b>                                                  | <b>B</b>                         | <b>C</b>                           | <b>D</b>                              | <b>E</b>                                                  | <b>F</b>                           |
|                                                 | <b>Estimated Total<br/>Mental Health<br/>Expenditures</b> | <b>Estimated CSS<br/>Funding</b> | <b>Estimated Medi-<br/>Cal FFP</b> | <b>Estimated 1991<br/>Realignment</b> | <b>Estimated<br/>Behavioral<br/>Health<br/>Subaccount</b> | <b>Estimated Other<br/>Funding</b> |
| <b>FSP Programs</b>                             |                                                           |                                  |                                    |                                       |                                                           |                                    |
| 1. TAY, Adult & Older Adult FSP                 | 1,997,481                                                 | 1,997,481                        |                                    |                                       |                                                           |                                    |
| 2. Children's FSP                               | 427,313                                                   | 427,313                          |                                    |                                       |                                                           |                                    |
| 3. Homeless FSP                                 | 1,542,847                                                 | 1,542,847                        |                                    |                                       |                                                           |                                    |
| 4.                                              | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 5.                                              | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 6.                                              | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 7.                                              | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 8.                                              | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 9.                                              | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 10.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 11.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 12.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 13.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 14.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 15.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 16.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 17.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 18.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 19.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| <b>Non-FSP Programs</b>                         |                                                           |                                  |                                    |                                       |                                                           |                                    |
| 1. Multicultural Outreach & Engagement          | 337,592                                                   | 337,592                          |                                    |                                       |                                                           |                                    |
| 2. System Development, Wellness & Recovery      | 3,564,591                                                 | 3,564,591                        |                                    |                                       |                                                           |                                    |
| 3. Crisis Services                              | 261,794                                                   | 261,794                          |                                    |                                       |                                                           |                                    |
| 4.                                              |                                                           |                                  |                                    |                                       |                                                           |                                    |
| 5.                                              |                                                           |                                  |                                    |                                       |                                                           |                                    |
| 6.                                              |                                                           |                                  |                                    |                                       |                                                           |                                    |
| 7.                                              | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 8.                                              | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 9.                                              | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 10.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 11.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 12.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 13.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 14.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 15.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 16.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 17.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 18.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| 19.                                             | 0                                                         |                                  |                                    |                                       |                                                           |                                    |
| <b>CSS Administration</b>                       | 383,285                                                   | 383,285                          |                                    |                                       |                                                           |                                    |
| <b>CSS MHSa Housing Program Assigned Funds</b>  |                                                           |                                  |                                    |                                       |                                                           |                                    |
| <b>Total CSS Program Estimated Expenditures</b> | 8,514,903                                                 | 8,514,903                        | 0                                  | 0                                     | 0                                                         | 0                                  |
| <b>FSP Programs as Percent of Total</b>         | 46.6%                                                     |                                  |                                    |                                       |                                                           |                                    |

**FY 2022/23 Mental Health Services Act Annual Update  
Prevention and Early Intervention (PEI) Funding**

County: City of BerkeleyDate: 6/24/22

|                                                                   | Fiscal Year 2022/23                              |                          |                            |                               |                                                 |                            |
|-------------------------------------------------------------------|--------------------------------------------------|--------------------------|----------------------------|-------------------------------|-------------------------------------------------|----------------------------|
|                                                                   | A                                                | B                        | C                          | D                             | E                                               | F                          |
|                                                                   | Estimated Total<br>Mental Health<br>Expenditures | Estimated PEI<br>Funding | Estimated Medi-<br>Cal FFP | Estimated 1991<br>Realignment | Estimated<br>Behavioral<br>Health<br>Subaccount | Estimated Other<br>Funding |
| <b>PEI Programs - Prevention</b>                                  |                                                  |                          |                            |                               |                                                 |                            |
| 1. High School Prevention Program                                 | 188,930                                          | 188,930                  |                            |                               |                                                 |                            |
| 2. African American Success Project                               | 37,500                                           | 37,500                   |                            |                               |                                                 |                            |
| 3. CalMHSA                                                        | 70,907                                           | 70,907                   |                            |                               |                                                 |                            |
| 4. Dynamic Mindfulness                                            | 71,250                                           | 71,250                   |                            |                               |                                                 |                            |
| 5. Mental Health Promotion Campaign                               | 100,000                                          | 100,000                  |                            |                               |                                                 |                            |
| 6. Mental and Emotional Education Team                            | 23,194                                           | 23,194                   |                            |                               |                                                 |                            |
| 7.                                                                |                                                  |                          |                            |                               |                                                 |                            |
| 8.                                                                |                                                  |                          |                            |                               |                                                 |                            |
| 9.                                                                | 0                                                | 0                        |                            |                               |                                                 |                            |
| 10.                                                               | 0                                                | 0                        |                            |                               |                                                 |                            |
| <b>PEI Programs - Early Intervention</b>                          |                                                  |                          |                            |                               |                                                 |                            |
| 11. High School Prevention Program                                | 236,163                                          | 236,163                  |                            |                               |                                                 |                            |
| 12. African American Success Project                              | 112,500                                          | 112,500                  |                            |                               |                                                 |                            |
| 13. BEA STAR                                                      | 34,658                                           | 34,658                   |                            |                               |                                                 |                            |
| 14. Community Education & Supports                                | 364,092                                          | 364,092                  |                            |                               |                                                 |                            |
| 15. Dynamic Mindfulness                                           | 23,750                                           | 23,750                   |                            |                               |                                                 |                            |
| 16. Supportive Schools                                            | 110,000                                          | 110,000                  |                            |                               |                                                 |                            |
| 17. Specialized Care Unit                                         | 68,000                                           | 68,000                   |                            |                               |                                                 |                            |
| 18. Mental and Emotional Education Team                           | 23,195                                           | 23,195                   |                            |                               |                                                 |                            |
| 19.                                                               |                                                  |                          |                            |                               |                                                 |                            |
| <b>PEI Programs - Stigma &amp; Discrimination</b>                 |                                                  |                          |                            |                               |                                                 |                            |
| 20. Social Inclusion                                              | 9,000                                            | 9,000                    |                            |                               |                                                 |                            |
| <b>PEI Programs - Outreach for Incr. Recog. Of Mental Illness</b> |                                                  |                          |                            |                               |                                                 |                            |
| 21. High School Prevention Program                                | 47,233                                           | 47,233                   |                            |                               |                                                 |                            |
| <b>PEI Administration</b>                                         | 285,233                                          | 285,233                  |                            |                               |                                                 |                            |
| <b>PEI Assigned Funds</b>                                         |                                                  |                          |                            |                               |                                                 |                            |
| <b>Total PEI Program Estimated Expenditures</b>                   | 1,805,605                                        | 1,805,605                | 0                          | 0                             | 0                                               | 0                          |

**FY 2022/23 Mental Health Services Act Annual Update  
Innovations (INN) Funding**

County: City of Berkeley

Date: 6/24/22

|                                                 | Fiscal Year 2022/23                              |                          |                            |                               |                                                 |                            |
|-------------------------------------------------|--------------------------------------------------|--------------------------|----------------------------|-------------------------------|-------------------------------------------------|----------------------------|
|                                                 | A                                                | B                        | C                          | D                             | E                                               | F                          |
|                                                 | Estimated Total<br>Mental Health<br>Expenditures | Estimated INN<br>Funding | Estimated Medi-<br>Cal FFP | Estimated 1991<br>Realignment | Estimated<br>Behavioral<br>Health<br>Subaccount | Estimated Other<br>Funding |
| <b>INN Programs</b>                             |                                                  |                          |                            |                               |                                                 |                            |
| 1. Help@Hand - Technology Suite Project         | 21,900                                           | 21,900                   |                            |                               |                                                 |                            |
| 2. New INN Homeless Encampment Project          | 526,750                                          | 526,750                  |                            |                               |                                                 |                            |
| 3.                                              |                                                  |                          |                            |                               |                                                 |                            |
| 4.                                              | 0                                                |                          |                            |                               |                                                 |                            |
| 5.                                              | 0                                                |                          |                            |                               |                                                 |                            |
| 6.                                              | 0                                                |                          |                            |                               |                                                 |                            |
| 7.                                              | 0                                                |                          |                            |                               |                                                 |                            |
| 8.                                              | 0                                                |                          |                            |                               |                                                 |                            |
| 9.                                              | 0                                                |                          |                            |                               |                                                 |                            |
| 10.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 11.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 12.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 13.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 14.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 15.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 16.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 17.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 18.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 19.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 20.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| <b>INN Administration</b>                       |                                                  |                          |                            |                               |                                                 |                            |
| <b>Total INN Program Estimated Expenditures</b> | 548,650                                          | 548,650                  | 0                          | 0                             | 0                                               | 0                          |

**FY 2022/23 Mental Health Services Act Annual Update  
Workforce, Education and Training (WET) Funding**

County: City of Berkeley

Date: 6/24/22

|                                                 | Fiscal Year 2022/23                              |                          |                            |                               |                                                 |                            |
|-------------------------------------------------|--------------------------------------------------|--------------------------|----------------------------|-------------------------------|-------------------------------------------------|----------------------------|
|                                                 | A                                                | B                        | C                          | D                             | E                                               | F                          |
|                                                 | Estimated Total<br>Mental Health<br>Expenditures | Estimated WET<br>Funding | Estimated Medi-<br>Cal FFP | Estimated 1991<br>Realignment | Estimated<br>Behavioral<br>Health<br>Subaccount | Estimated Other<br>Funding |
| <b>WET Programs</b>                             |                                                  |                          |                            |                               |                                                 |                            |
| 1. Greater Bay Area Regional Partnership        | 42,609                                           |                          |                            |                               |                                                 |                            |
| 2.                                              | 0                                                |                          |                            |                               |                                                 |                            |
| 3.                                              | 0                                                |                          |                            |                               |                                                 |                            |
| 4.                                              | 0                                                |                          |                            |                               |                                                 |                            |
| 5.                                              | 0                                                |                          |                            |                               |                                                 |                            |
| 6.                                              | 0                                                |                          |                            |                               |                                                 |                            |
| 7.                                              | 0                                                |                          |                            |                               |                                                 |                            |
| 8.                                              | 0                                                |                          |                            |                               |                                                 |                            |
| 9.                                              | 0                                                |                          |                            |                               |                                                 |                            |
| 10.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 11.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 12.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 13.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 14.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 15.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 16.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 17.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 18.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 19.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| 20.                                             | 0                                                |                          |                            |                               |                                                 |                            |
| <b>WET Administration</b>                       | 0                                                |                          |                            |                               |                                                 |                            |
| <b>Total WET Program Estimated Expenditures</b> | 42,609                                           | 0                        | 0                          | 0                             | 0                                               | 0                          |



**FY 2022/23 Mental Health Services Act Annual Update  
Capital Facilities/Technological Needs (CFTN) Funding**

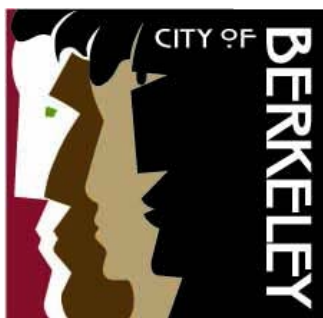
County: City of Berkeley

Date: 6/24/22

|                                                     | Fiscal Year 2022/23                              |                           |                            |                               |                                                 |                            |
|-----------------------------------------------------|--------------------------------------------------|---------------------------|----------------------------|-------------------------------|-------------------------------------------------|----------------------------|
|                                                     | A                                                | B                         | C                          | D                             | E                                               | F                          |
|                                                     | Estimated Total<br>Mental Health<br>Expenditures | Estimated CFTN<br>Funding | Estimated Medi-<br>Cal FFP | Estimated 1991<br>Realignment | Estimated<br>Behavioral<br>Health<br>Subaccount | Estimated Other<br>Funding |
| <b>CFTN Programs - Capital Facilities Projects</b>  |                                                  |                           |                            |                               |                                                 |                            |
| 1. Renovation Study of 2636 MLK                     | 75,000                                           | 75,000                    |                            |                               |                                                 |                            |
| 2. Water Damage Repairs 2640 MLK                    | 35,000                                           | 35,000                    |                            |                               |                                                 |                            |
| 3.                                                  |                                                  |                           |                            |                               |                                                 |                            |
| 4.                                                  |                                                  |                           |                            |                               |                                                 |                            |
| 5.                                                  |                                                  |                           |                            |                               |                                                 |                            |
| 6.                                                  |                                                  |                           |                            |                               |                                                 |                            |
| 7.                                                  |                                                  |                           |                            |                               |                                                 |                            |
| 8.                                                  |                                                  |                           |                            |                               |                                                 |                            |
| 9.                                                  |                                                  |                           |                            |                               |                                                 |                            |
| 10.                                                 |                                                  |                           |                            |                               |                                                 |                            |
| <b>CFTN Programs - Technological Needs Projects</b> |                                                  |                           |                            |                               |                                                 |                            |
| 11.                                                 |                                                  |                           |                            |                               |                                                 |                            |
| 12.                                                 |                                                  |                           |                            |                               |                                                 |                            |
| 13.                                                 |                                                  |                           |                            |                               |                                                 |                            |
| 14.                                                 |                                                  |                           |                            |                               |                                                 |                            |
| 15.                                                 |                                                  |                           |                            |                               |                                                 |                            |
| 16.                                                 |                                                  |                           |                            |                               |                                                 |                            |
| 17.                                                 |                                                  |                           |                            |                               |                                                 |                            |
| 18.                                                 |                                                  |                           |                            |                               |                                                 |                            |
| 19.                                                 |                                                  |                           |                            |                               |                                                 |                            |
| 20.                                                 |                                                  |                           |                            |                               |                                                 |                            |
| <b>CFTN Administration</b>                          |                                                  |                           |                            |                               |                                                 |                            |
| <b>Total CFTN Program Estimated Expenditures</b>    | 75,000                                           | 75,000                    |                            |                               |                                                 |                            |

**APPENDIX A**  
Prevention and Early  
Intervention  
Fiscal Years 2019 – 2021  
Three Year Evaluation Report

# City of Berkeley Mental Health Services Act



## Prevention and Early Intervention Fiscal Years 2019 - 2021 Three Year Evaluation Report



WELLNESS • RECOVERY • RESILIENCE

## **INTRODUCTION**

Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) funds are used to prevent mental illnesses from becoming severe and disabling. Programs funded under the MHSA PEI component are focused on individuals across the life span and should emphasize improving timely access to services for underserved populations. Programs shall also include the following:

- Outreach to increase knowledge and recognition of the early signs of mental health challenges or potentially severe and disabling mental illnesses.
- Reduction in stigma associated with either having or being diagnosed with a mental illness or seeking mental health services.
- Reduction in discrimination against individuals with mental health challenges or mental illness.
- Access and linkages to necessary medical care for individuals in need of additional services.
- Emphasis on strategies to reduce the following negative outcomes that may result from untreated mental health challenges and mental illness: Suicide; Incarcerations; School failure or dropout; Unemployment; Prolonged suffering; Homelessness; Removal of children from their homes.

Beginning in 2017, per MHSA State requirements, Mental Health jurisdictions are required to submit a PEI Evaluation Report to the Mental Health Services Oversight and Accountability Commission (MHSOAC) on an annual basis. Additionally, beginning December 2018, a Three Year PEI Evaluation Report is due to the MHSOAC every three years. Regulations also require mental health jurisdictions to submit either a Three Year Evaluation Report or an Annual Evaluation Report to the State Department of Healthcare Services (DHCS). The PEI Evaluation Report is to be included with the MHSA Annual Update or Three Year Program and Expenditure Plan and undergo a 30 Day Public Review period and approval from the local governing board. In FY22, the Prevention and Early Intervention (PEI) Fiscal Years 2018/2019 – 2020/2021 (FY18/19 –20/21) Three Year Evaluation Report is due.

This PEI FY18/19 – 2/021 Three Year Evaluation Report provides descriptions of currently funded MHSA services, and reports on program and demographic data during the reporting timeframe, to the extent possible. The main obstacles in collecting data for this PEI Three Year Evaluation Report continue to be with limited staffing and resources both within the City and at Contractor sites to implement and oversee all the necessary data collection requirements. While, it may be a multi-year process before the City of Berkeley will be able to present a complete data set for each PEI Program on an Annual basis, ongoing efforts will continue towards accomplishing this goal.

### **Impact Berkeley Initiative**

In FY18, the City of Berkeley introduced a new initiative in the Health Housing and Community Services (HHCS) Department called “Impact Berkeley”. Central to this effort is using a highly regarded framework called Results Based Accountability (RBA) to account for the work of the Department. RBA provides a new way of understanding the quality and impact of services provided by collecting data that answer three basic questions:

1. How much did you do?
2. How well did you do it?
3. Is anyone better off?

RBA has been incorporated into selected programs within the Department. Since FY18 this has included community agency programs funded through the MHSA Prevention & Early Intervention Community Education & Supports program. Through this initiative the Department worked with each contractor to envision, clarify and develop measures on the outcomes and results each program is seeking to achieve, and used a rigorous framework to begin measuring and enhancing progress towards these results. Results of the RBA Evaluation are captured in this report and will continue to be reported in future PEI Evaluation Reports.

### **BACKGROUND**

In 2007, the California Department of Mental Health (DMH) issued State Requirements (through DMH Information Notice 07-17) outlining how Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) funds were to be used for local programs. Through these requirements, PEI Programs were to be utilized on the following Key Community Mental Health Needs and Priority Populations:

Key Community Mental Health Needs:

- Disparities in Access to Mental Health Services – Reduce disparities in access to early mental health interventions due to stigma, lack of knowledge about mental health services or lack of suitability (i.e., cultural competency) of traditional mainstream services.
- Psycho-Social Impact of Trauma – Reduce the negative psycho-social impact of trauma on all ages.
- At-Risk Children, Youth and Young Adult Populations – Increase prevention efforts and response to early signs of emotional and behavioral health problems among specific at-risk populations.
- Stigma and Discrimination – Reduce stigma and discrimination affecting individuals with mental illness and mental health problems.
- Suicide Risk – Increase public knowledge of the signs of suicide risk and appropriate actions to prevent suicide.

PEI Priority Populations:

- Underserved Cultural Populations – Projects that address individuals who are unlikely to seek help from any traditional mental health services whether because of stigma, lack of knowledge, or other barriers (such as members of ethnically/racially diverse communities, members of gay, lesbian, bisexual, transgender communities, etc.) and would benefit from PEI programs and interventions.
- Individuals Experiencing Onset of Serious Psychiatric Illness – Individuals identified by providers, including but not limited to primary health care, as presenting signs of mental illness first break, including individuals who are unlikely to seek help from any traditional mental health service.
- Children and Youth in Stressed Families – Children and youth placed out-of-home or individuals in families where there is substance abuse or violence, depression or other mental illnesses or lack of caregiving adults (e.g., as a result of a serious health condition or incarceration), rendering the children and youth at high risk of behavioral and emotional problems.
- Trauma-Exposed – Individuals who are exposed to traumatic events or prolonged traumatic conditions including grief, loss and isolation, including individuals who are unlikely to seek help from any traditional mental health service.
- Children and Youth at Risk for School Failure – Due to unaddressed emotional and behavioral problems.
- Children and Youth at Risk of or Experiencing Juvenile Justice Involvement – Individuals with signs of behavioral/emotional problems who are at risk of or have had any contact with any part of the

juvenile justice system, and who cannot be appropriately served through MHSA Community services and Supports funded services.

In April 2009, following a nine-month long Community Planning Process, the original City of Berkeley Prevention and Early Intervention plan was approved. Since the approval of the original plan, Three Year Plans or Annual Updates outlining proposed PEI funding and programming have been developed and approved on an annual basis. Based on the DMH Regulations, through the original PEI Plan (or subsequent updates) programs were created to address Key Community Mental Health Needs and PEI Priority Populations as follows:

| PEI Programs                                                                                                                                                                            | Key Community Mental Health Needs                                                                                                                                                                            | PEI Priority Populations                                                                                                                                                                                                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Behavioral-Emotional Assessment, Screening, Treatment and Referral – (BE A STAR) Program<br><br>Supportive Schools Program<br><br>Community Based Child & Youth Risk Prevention Program | <ul style="list-style-type: none"> <li>➤ At-Risk Children, Youth and Young Adult Populations</li> </ul>                                                                                                      | <ul style="list-style-type: none"> <li>• Children and Youth in Stressed Families</li> <li>• Children and Youth at Risk for School Failure</li> <li>• Underserved Cultural Populations</li> </ul>                                  |
| High School Youth Prevention Project<br><br>Mental Health Peer Mentor Program<br><br>Dynamic Mindfulness Program<br><br>African American Success Project                                | <ul style="list-style-type: none"> <li>➤ At-Risk Children, Youth and Young Adult Populations</li> <li>➤ Disparities in Access to Mental Health services</li> <li>➤ Psycho-social Impact of Trauma</li> </ul> | <ul style="list-style-type: none"> <li>• Trauma Exposed</li> <li>• Children and Youth in Stressed Families</li> <li>• Children and Youth at Risk for School Failure</li> <li>• Underserved Cultural Populations</li> </ul>        |
| Community Education & Supports                                                                                                                                                          | <ul style="list-style-type: none"> <li>➤ Psycho-social Impact of Trauma</li> <li>➤ At-Risk Children, Youth and Young Adult Populations</li> </ul>                                                            | <ul style="list-style-type: none"> <li>• Trauma Exposed</li> <li>• Underserved Cultural Populations</li> <li>• Children/Youth in Stressed Families</li> <li>• Children and Youth at Risk for School Failure</li> <li>•</li> </ul> |
| Homeless Outreach & Treatment Team (HOTT)                                                                                                                                               | <ul style="list-style-type: none"> <li>➤ Psycho-social Impact of Trauma</li> <li>➤ Disparities in Access to Mental Health services</li> <li>➤ At-Risk Children, Youth and Young Adult Populations</li> </ul> | <ul style="list-style-type: none"> <li>• Underserved Cultural Populations</li> <li>• Trauma Exposed</li> </ul>                                                                                                                    |
| Social Inclusion                                                                                                                                                                        | <ul style="list-style-type: none"> <li>➤ Stigma and Discrimination</li> <li>➤ Psycho-social Impact of Trauma</li> </ul>                                                                                      | <ul style="list-style-type: none"> <li>• Trauma Exposed</li> <li>• Underserved Cultural Populations</li> </ul>                                                                                                                    |

On October 6, 2015, updated PEI regulations designed by the Mental Health Services Oversight and Accountability Commission (MHSOAC) became effective. The updated regulations changed the PEI requirements. Per new PEI State Regulations, Mental Health jurisdictions are to utilize PEI funds to implement the following programs: Prevention, Early Intervention, Access and Linkage to Treatment, Stigma and Discrimination Reduction, and Outreach for Increasing Recognition of Early Signs of Mental Illness. Programs or strategies within programs can also be combined. Jurisdictions may also opt to utilize some PEI funds to implement a Suicide Prevention program. The definitions of each program are outlined below:

### PREVENTION

Activities to reduce risk factors for developing a potentially serious mental illness and to build protective factors.

### EARLY INTERVENTION

Treatment and other services and interventions, to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the applicable negative outcomes that may result from untreated mental illness.

### ACCESS and LINKAGE to TREATMENT

Connecting children who are seriously emotionally disturbed, and adults and seniors with severe mental illness as early in the onset of these conditions as practicable, to medically necessary care and treatment, including but not limited to care provided by county mental health programs.



**STIGMA and DISCRIMINATION REDUCTION**

Activities to reduce negative feelings, attitudes, beliefs, perceptions, stereotypes and/or discrimination related to being diagnosed with a mental illness, having a mental illness, or to seeking mental health services and to increase acceptance, dignity, inclusion, and equity for individuals with mental illness, and members of their families.

**OUTREACH FOR INCREASING RECOGNITION OF EARLY SIGNS OF MENTAL ILLNESS**

Engaging, encouraging, educating, and/or training, and learning from potential responders about ways to recognize and respond effectively to early signs of potentially severe and disabling mental illness.

**OPTIONAL - SUICIDE PREVENTION**

Activities to prevent suicide as a consequence of mental illness.

Within each PEI program the following strategies should also be implemented: Access and Linkage, Improve Timely Access, and Reduce and Circumvent Stigma. The definitions of each strategy are outlined below:

| Access and Linkage                                                                                                                                                                                                                              | Improve Timely Access                                                                                                                                                                                                                                             | Reduce and Circumvent Stigma                                                                                                                                                                                                                                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Activities that engage and connect youth, adults, and seniors with severe mental illness, as early in the onset of the condition as practicable, to medically necessary care and treatment.</li> </ul> | <ul style="list-style-type: none"> <li>• Improve timely access to mental health services for underserved populations through accessibility, cultural and language appropriateness, transportation, family focus, hours available, and cost of services</li> </ul> | <ul style="list-style-type: none"> <li>• Reduce and circumvent stigma, including self-stigma, and discrimination related to being diagnosed with a mental illness, or seeking mental health services. Make services accessible, welcoming, and positive.</li> </ul> |

PEI Regulations, also include program and demographic data requirements that are to be reported to the MHSOAC through Annual and Triennial PEI Evaluation Reports.

The following pages outline the PEI Program and Demographic reporting requirements.

### PEI PROGRAM REQUIREMENTS

| PROGRAM TYPE                        | PROGRAM DEFINITION                                                                                                                                                                                                                                                                               | PROGRAM AND DATA COLLECTION REQUIREMENTS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Prevention                          | A set of related activities to reduce risk factors for developing a potentially serious mental illness and to build protective factors.                                                                                                                                                          | <ul style="list-style-type: none"> <li>➤ Describe the target population- type of risk(s) and the criteria used for establishing/identifying those at risk</li> <li>➤ Measure the impact of one or more of the negative outcomes listed in the MHSA (suicide, incarcerations, school failure or dropout, unemployment, homelessness, and removal of children from their homes)</li> <li>➤ Demonstrate the use of an evidence-based or promising practice or a community or practice-based evidence standard*</li> <li>➤ Collect all PEI demographic variables</li> </ul>                                                                                                                                     |
| Early Intervention                  | Treatment and other services and interventions, including relapse prevention, to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the applicable negative outcomes that may result from untreated mental illness.             | <ul style="list-style-type: none"> <li>➤ Provide services that do not exceed 18 months</li> <li>➤ Program may include services to parents, caregivers, and other family members of the person with early onset of a mental illness.</li> <li>➤ Program may be combined with a Prevention program</li> <li>➤ Measure the impact of one or more of the negative outcomes listed in the MHSA (suicide, incarcerations, school failure or dropout, unemployment, homelessness, removal of children from their homes).</li> <li>➤ Demonstrate the use of an evidence-based or promising practice or a community or practice-based evidence standard*</li> <li>➤ Collect all PEI demographic variables</li> </ul> |
| Access and Linkage to Treatment     | Connecting children who are seriously emotionally disturbed, and adults and seniors with severe mental illness as early in the onset of these conditions as practicable, to medically necessary care and treatment, including but not limited to care provided by county mental health programs. | <ul style="list-style-type: none"> <li>➤ Collect # of unduplicated individuals served</li> <li>➤ Collect # of unduplicated referrals made to a Treatment program (and type of program)</li> <li>➤ Collect # of individuals who followed through (participated at least once in Treatment)</li> <li>➤ Measure average time between referral and engagement in services per each individual</li> <li>➤ Measure duration of untreated mental illness (interval between onset of symptoms and start of treatment)per each individual</li> <li>➤ Collect all PEI demographic variables</li> </ul>                                                                                                                |
| Stigma and Discrimination Reduction | Direct activities to reduce negative feelings, attitudes, beliefs, perceptions, stereotypes and/or discrimination related to being                                                                                                                                                               | <ul style="list-style-type: none"> <li>➤ Collect the number of individuals reached by activity (e.g., # who participated in each service or activity)</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

| PROGRAM TYPE                                                         | PROGRAM DEFINITION                                                                                                                                                                                                            | PROGRAM AND DATA COLLECTION REQUIREMENTS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                      | diagnosed with a mental illness, having a mental illness, or to seeking mental health services and to increase acceptance, dignity, inclusion, and equity for individuals with mental illness, and members of their families. | <ul style="list-style-type: none"> <li>➤ Measure changes in attitude, knowledge, and/or behavioral related to seeking mental health services or related to mental illness</li> <li>➤ Collect all PEI demographic variables</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Outreach for Increasing Recognition of Early Signs of Mental Illness | A process of engaging, encouraging, educating, and/or training, and learning from potential responders about ways to recognize and respond effectively to early signs of potentially severe and disabling mental illness.     | <ul style="list-style-type: none"> <li>➤ May include reaching out to individuals with signs and symptoms of a mental illness, so they can recognize and respond to their own symptoms.</li> <li>➤ May be a stand-alone program, a strategy within a Prevention program, a strategy within an Early Intervention program, a strategy within another program funded by PEI funds, or a combination thereof.</li> <li>➤ Unduplicated # of individual potential responders</li> <li>➤ The types of potential responders engaged in each setting (e.g., nurses, principals, parents, etc.)</li> <li>➤ The # and kind of settings in which the potential responders were engaged</li> <li>➤ Measure impact to 1 or more of the negative outcomes listed in the Act (suicide, incarcerations, school failure or dropout, unemployment, homelessness, and removal of children from their homes)</li> <li>➤ Collect all demographic variables for all unduplicated individual potential responders</li> </ul> |
| <u>OPTIONAL</u><br>Suicide Prevention                                | Activities to prevent suicide as a consequence of mental illness.                                                                                                                                                             | <ul style="list-style-type: none"> <li>➤ Collect available #of individuals reached</li> <li>➤ Collect # of individuals reached by activity (ex. # trained, # who accessed website)</li> <li>➤ Select and use a validated method to measure changes in attitudes, knowledge and/or behavior regarding suicide related mental illness</li> <li>➤ Collect all PEI demographic variables for all individuals reached</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

\* Evidence-based practice standard: Activities for which there is scientific evidence consistently showing improved mental health outcomes for the intended population, including, but not limited to, scientific peer-reviewed research using randomized clinical trials.

Promising practice standard: Programs and activities for which there is research showing positive outcomes, but the research does not meet the standards used to establish evidence-based practices and does not have enough research or replication to support generalizable positive public health outcomes.

Community and/or practice-based evidence standard: A set of practices that communities have used and determined to yield positive results by community consensus over time, which may or may not have been measured empirically. Takes a number of factors into consideration, including worldview, historical, and social contexts of a given population or community, which are culturally rooted.

## **PEI Demographic Reporting Requirements**

For the information reported under the various program categories, each program will need to report disaggregate numbers served, number of potential responders engaged, and number of referrals for treatment and other services by:

**(A) The following Age groups:**

- 0-15 (children/youth)
- 16-25 (transition age youth)
- 26-59 (adult)
- ages 60+ (older adults)
- Number of respondents who declined to answer the question

**(B) Race by the following categories:**

- American Indian or Alaska Native
- Asian
- Black or African American
- Native Hawaiian or other Pacific Islander
- White
- Other
- More than one race
- Number of respondents who declined to answer the question

**(C) Ethnicity by the following categories:**

**(i) Hispanic or Latino as follows**

- Caribbean
- Central American
- Mexican/Mexican-American/Chicano
- Puerto Rican
- South American
- Other
- Number of respondents who declined to answer the question

**(ii) Non-Hispanic or Non-Latino as follows**

- African
- Asian Indian/South Asian
- Cambodian
- Chinese
- Eastern European
- European
- Filipino
- Japanese
- Korean
- Middle Eastern
- Vietnamese
- Other
- Number of respondents who declined to answer the question
- More than one ethnicity

**(D) Primary language used listed by threshold languages for the individual county**

- English
- Spanish
- Number of respondents who declined to answer the question

**(E) Sexual orientation**

- Gay or Lesbian
- Heterosexual or Straight
- Bisexual
- Questioning or unsure of sexual orientation
- Queer
- Another sexual orientation
- Number of respondents who declined to answer the question

**(F) Disability**, defined as a physical or mental impairment or medical condition lasting at least six months that substantially limits a major life activity, which is not the result of a severe mental illness

- If Yes, report the number that apply in each domain of disability(ies)
- Communication domain separately by each of the following:
  - difficulty seeing,
  - difficulty hearing, or having speech understood)
  - other, please specify
- Mental domain not including a mental illness (including but not limited to a learning disability, developmental disability, dementia)
- Physical/mobility domain
- Chronic health condition (including but not limited to chronic pain)
- Other (specify)
- No
- Number of respondents who declined to answer the question

**(G) Veteran Status,**

- Yes
- No
- Number of respondents who declined to answer the question

**(H) Gender**

- (i) Assigned sex at birth:
  - (a) Male
  - (b) Female
  - (c) Number of respondents who declined to answer the question
- (ii) Current gender identity:
  - (a) Male
  - (b) Female
  - (c) Transgender
  - (d) Genderqueer
  - (e) Questioning or unsure of gender identity
  - (f) Another gender identity
  - (g) Number of respondents who declined to answer the question

Effective July 2018 amended PEI regulations specified the following:

- For projects/programs serving children or youth younger than 18 years of age, the demographic information collected and reported should only be done so to the extent permissible by privacy laws.
- For projects/programs serving minors younger than 12 years of age, demographic information shall be collected and reported, except for sexual orientation, current gender identity, and veteran status.
- Information that cannot be obtained directly from the minor may be obtained from the minor's parent, legal guardian, or other authorized source.

### **CITY OF BERKELEY PEI PROGRAMS**

Since the release of the 2018 PEI Regulations, the City of Berkeley has regularly reviewed PEI programs to ensure they fit within the required program definitions. As a result, local PEI funded programs have been re-classified from the previous construct. Outlined below is a listing of the PEI program type, definition and the City of Berkeley programs that were funded during the timeframe of this report:

| <b>PEI Program Type</b>                                              | <b>Program Definition</b>                                                                                                                                                                                                                                                            | <b>City of Berkeley PEI Program(s)</b>                                                                                                                                                                                                                                                                               |
|----------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Prevention                                                           | A set of related activities to reduce risk factors for developing a potentially serious mental illness and to build protective factors.                                                                                                                                              | <ul style="list-style-type: none"> <li>• Mental Health Promotion Campaign</li> <li>• High School Prevention</li> <li>• DMIND</li> <li>• MEET</li> <li>• African American Success</li> </ul>                                                                                                                          |
| Early Intervention                                                   | Treatment and other services and interventions, including relapse prevention, to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the applicable negative outcomes that may result from untreated mental illness. | <ul style="list-style-type: none"> <li>• High School Prevention</li> <li>• Be A Star</li> <li>• DMIND</li> <li>• MEET</li> <li>• African American Success</li> <li>• Supportive Schools</li> <li>• Child &amp; Youth At Risk</li> <li>• Community Education and Supports</li> <li>• Specialized Care Unit</li> </ul> |
| Outreach for Increasing Recognition of Early Signs of Mental Illness | A process of engaging, encouraging, educating, and/or training, and learning from potential responders about ways to recognize and respond effectively to early signs of potentially severe and disabling mental illness.                                                            | <ul style="list-style-type: none"> <li>• Mental Health First Aid (non-MHSA funded program)</li> </ul>                                                                                                                                                                                                                |

|                                       |                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                         |
|---------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| Stigma and Discrimination             | Direct activities to reduce negative feelings, attitudes, beliefs, perceptions, stereotypes and/or discrimination related to being diagnosed with a mental illness, having a mental illness, or to seeking mental health services and to increase acceptance, dignity, inclusion, and equity for individuals with mental illness, and members of their families. | <ul style="list-style-type: none"> <li>• Social Inclusion</li> </ul>                                                                                    |
| Access and Linkage to Treatment       | Connecting children who are seriously emotionally disturbed, and adults and seniors with severe mental illness as early in the onset of these conditions as practicable, to medically necessary care and treatment, including but not limited to care provided by county mental health programs.                                                                 | <ul style="list-style-type: none"> <li>• Homeless Outreach and Treatment*</li> <li>• High School Prevention</li> <li>• Specialized Care Unit</li> </ul> |
| <u>OPTIONAL</u><br>Suicide Prevention | Activities to prevent suicide as a consequence of mental illness.                                                                                                                                                                                                                                                                                                | <ul style="list-style-type: none"> <li>• CalMHSA PEI Statewide Project</li> </ul>                                                                       |

\*Prior project that was in operation during FY21, the reporting timeframe of this annual update)

Beginning January 1, 2020, per Senate Bill (SB) 1004, Welfare and Institutions Code (WIC) 5840.7 (a) directed the Mental Health Oversight and Accountability Commission (MHSOAC) to establish priorities for the use of MHSA PEI funds. Section 5840.7 (d)(1) states that mental health jurisdictions shall, through their MHSA Three Year Program and Expenditure Plans and Annual Updates, focus use of their PEI funds on the MHSOAC established priorities or other priorities as determined through their respective, local stakeholder processes. If a mental health jurisdiction chooses to focus on priorities other than, or in addition to, those established by the MHSOAC, “the plan shall include a description of why those programs are included and metrics by which the effectiveness of those programs is to be measured” (WIC Section 5840.7 (d)(1)).

At the time of the writing of this Annual Update, the MHSOAC had not established additional priorities to the following specifically enumerated required priorities in WIC Section 5840.7 (a) for the use of PEI funding:

- Childhood trauma prevention and early intervention to deal with the early origins of mental health needs;
- Early psychosis and mood disorder detection and intervention, and mood disorder and suicide prevention programming that occurs across the lifespan;
- Youth outreach and engagement strategies that target secondary school and transition age youth, with a priority on partnership with college mental health programs;
- Culturally competent and linguistically appropriate prevention and intervention;
- Strategies targeting the mental health needs of older adults;
- Early identification programming of mental health symptoms and disorders, including but not limited to, anxiety, depression, and psychosis.



In order to meet the requirements, each mental health jurisdiction is required to show in the PEI Component of the Three Year Plan or Annual Update the following:

- Which specific PEI priorities the mental health jurisdictions plan addresses, an estimate of the share of PEI funding allocated to each priority, and an explanation of how stakeholder input contributed to those allocations;
- If the mental health jurisdiction has determined to pursue alternative or additional priorities to those listed in Section 5840.7(a), how the determinations were made through its stakeholder process;
- For any alternative or additional priority identified by the mental health jurisdiction, what metric or metrics relating to assessment of the effectiveness of programs intended to address that priority the county will measure, collect, analyze, and report to the MHSOAC, in order to support statewide learning.

Many PEI projects meet multiple established priorities. Per PEI regulations, outlined below is a crosswalk of the City of Berkeley PEI Programs with the MHSOAC PEI Priorities:

| <b>CITY OF BERKELEY<br/>PEI PROGRAMS</b>                                                                                                                                                                                                                  | <b>PEI PRIORITIES</b>                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Be A Star</li> <li>• Supportive Schools</li> </ul>                                                                                                                                                               | Childhood trauma prevention and early intervention to deal with the early origins of mental health needs.                                                                                                                                                                                                                                |
| <ul style="list-style-type: none"> <li>• High School Youth Prevention Project</li> <li>• Mental Health Peer Mentor Program</li> <li>• Dynamic Mindfulness Program</li> <li>• African American Success Project</li> <li>• Specialized Care Unit</li> </ul> | Youth Engagement and Outreach Strategies that target secondary school and transition age youth,<br><br>Culturally competent and linguistically appropriate prevention and intervention<br><br>Early identification programming of mental health symptoms and disorders, including but not limited to, anxiety, depression, and psychosis |
| <ul style="list-style-type: none"> <li>• Mental Health Promotion Campaign</li> <li>• Social Inclusion</li> <li>• Community Education &amp; Supports</li> </ul>                                                                                            | Culturally competent and linguistically appropriate prevention and intervention<br><br>Youth Engagement and Outreach Strategies that target secondary school and transition age youth, with a priority on partnership with college mental health programs<br><br>Strategies targeting the mental health needs of older adults.           |

This PEI FY18/19 – 20/21 Three Year Evaluation Report documents program measures and demographic elements to the extent data was available. While, it may be a multi-year process before the City of Berkeley will be able to present a complete data set for each PEI Program on an Annual basis, ongoing efforts will continue towards accomplishing this goal.

### **PEI Funded Children and Youth and TAY Services**

Per MHSA regulations 51% of PEI funds are to be used on services and supports for Children, Youth, and TAY. Small counties, of which the City of Berkeley is considered, may elect to forego this regulation as long as a community vetted, locally approved justification is provided as to why children and youth services are funded at a lower level. Since the initial PEI Plan, the City of Berkeley has allocated more than 51% of PEI funds to services and supports for children, youth and TAY as the majority of PEI funds has been utilized to serving these populations.

Currently, seven out of ten local PEI programs provide services for children and youth, 6 of which are in the Berkeley Unified School District (BUSD). Programs are as follows: Behavioral-Emotional Assessment, Screening, Treatment and Referral (BE A STAR); Supportive Schools Project; Mental Emotional Education Team (MEET); Dynamic Mindfulness (DMIND); African American Success Project; High School Youth Prevention Project, and the TAY Trauma Support Project. Additionally, from FY11 through FY20, the City of Berkeley utilized a portion of PEI funds to provide services for children, youth and TAY in the Albany Unified School District, through the Albany Trauma Project.

Programs and services funded with PEI funds, and FY18/19 – 20/21 data are outlined below by PEI Program type.

## ***PREVENTION PROGRAM***

Prevention Program - A set of related activities to reduce risk factors for developing a potentially serious mental illness and to build protective factors.

Through the FY22 Annual Update the City of Berkeley funded the following Prevention initiative that will be implemented in FY23:

### **Mental Health Promotion Campaign**



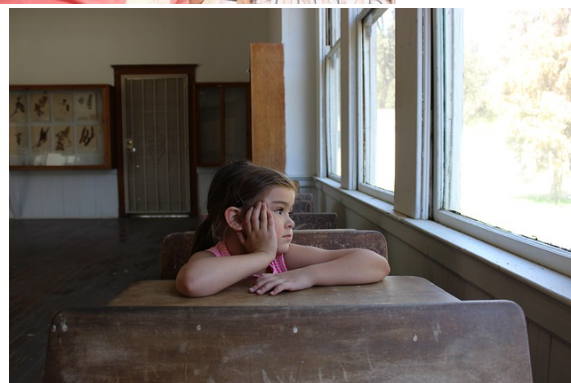
As a result of the impact of the pandemic, and public input around the overwhelming need for mental health supports in the community, a community Mental Health Promotion Campaign will be implemented to support the wellness and self-care of Berkeley residents. The Division will partner with the community and may consider using a social marketing firm to develop and implement the campaign.

**PEI Goals:** The goal of this campaign is to increase prevention efforts and response to early signs of emotional and behavioral health problems.

**PEI Priority:** Culturally competent and linguistically appropriate prevention and intervention.

It is envisioned that this campaign will be implemented in FY23 and the Division will continue to work with the community to determine how to best promote mental health and wellness in Berkeley.

# EARLY INTERVENTION AND PREVENTION & EARLY INTERVENTION COMBINED PROGRAMS



**EARLY INTERVENTION PROGRAMS**

Early Intervention Program - Provides treatment and other services and interventions, including relapse prevention, to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the applicable negative outcomes that may result from untreated mental illness.

The City of Berkeley Early Intervention programs are as follows:

**Behavioral-Emotional Assessment, Screening, Treatment, and Referral (BE A STAR)**

The Be A Star program is a collaboration with the City of Berkeley’s Public Health Department providing a coordinated system in Berkeley and Albany that identifies children birth to age five and their parents, who are at risk of childhood development challenges including developmental, social, emotional, and/or behavioral concerns. The program specifically targets low income families, including those with teen parents, who are homeless, substance abusing, or in danger of foster care. Services include triage, assessment, treatment and referrals to appropriate community-based or specialist services as needed. Children and families are accessed through targeted efforts at the following: Black Infant Health; Vera Casey Teenage Parenting programs; Child Health and Disability Prevention programs, Pediatric providers, and through state-subsidized Early Childhood Development Centers. The goals of the program are to identify, screen and assess families early, and connect them with services and supports as needed. The program uses the “Ages and Stages Questionnaires” (ASQ) screening tool to assess children in need. The ASQ consists of a series of 20 questionnaires that correspond to age intervals from birth to 6 years designed to help parents check their child’s development. Each questionnaire contains simple questions for parents to answer that reflect developmental milestones for each age group. Answers are scored and help to determine whether the child's development is on schedule or whether the child should be referred for a developmental checkup with a professional. Over 400 children are assessed each year.

**PEI Goals:** The goal of this program is to bring about mental health, including the reduction of school failure and the removal of children from their homes.

**PEI Priority:** Childhood trauma prevention and early intervention to deal with the early origins of mental health needs.

In FY19, there were vacancies in staff, as such program data for the reporting timeframe is unavailable.

In FY20, there were vacancies in staff, and shortly after a staff person was hired, they were deployed to work in the City’s Emergency Operations Center as a result of the pandemic. A total of 1,538 children were able to be screened through community partners.

In FY21, a total of 2,203 children were screened through this program however data was not collected on all individuals screened. Only Race/Ethnicity data was collected on a subset of 141 children as follows:

| DEMOGRAPHICS N=2,203  |      |
|-----------------------|------|
| Age Groups            |      |
| 0-15 (Children/Youth) | 100% |

| <b>Race N=141</b>                                          |      |
|------------------------------------------------------------|------|
| Asian                                                      | 30%  |
| Black or African American                                  | 32%  |
| White                                                      | 8%   |
| More than one Race                                         | 1%   |
| Other                                                      | 29%  |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx N=141</b>   |      |
| Unspecified Hispanic or Latino/Latina/Latinx               | 29%  |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Primary Language</b>                                    |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Disability</b>                                          |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Gender: Assigned Sex at Birth</b>                       |      |
| Declined to Answer (or Unknown)                            | 100% |

Program Successes:

- A total of 154 referrals to resources/services were made as a result of the developmental screenings conducted at BUSD preschools and pediatric sites.
- Overall, there was an increase in developmental screenings in pediatric settings. For example, when compared to data in FY20, two Berkeley pediatric sites increased their number of screenings by 211% and 76%.
- Sites demonstrated great adaptability due to the challenges that COVID-19 caused. Several sites were able to transition to doing developmental screenings online. Be A Star was able to provide training and Technical Assistance to help ensure a smooth transition.

Program Challenges:

- Although many pediatric sites and BUSD preschools were able to provide more services this year, there were still challenges caused by COVID-19, including delayed trainings for pediatric sites and decreases in available referral services.
- Be A Star staffing was impacted by the City of Berkeley's COVID-19 response. All Public Health nursing positions supported the emergency response in some capacity. A new Be A Star Public Health Nurse started in January 2021 and there has been a transition as this nurse has settled into the role.
- There were program challenges in being able to collect an accurate full data set as some of the Berkeley pediatric sites do not collect and report out on various demographic information and other screening sites only captured general demographic information.

### Community-Based Child & Youth At Risk Prevention

This program targets children (aged 0-5) who are impacted by multiple risk factors including trauma, family or community violence, familial distress, and/or family substance abuse, (among other issues). A BMH clinician serves as the Mental Health Consultant on this project providing information, services and supports to teachers and parents at the YMCA Head Start program in South Berkeley. Services have included individual case consultation for teachers and parents, group consultations, classroom observations and interventions, assessments, brief treatment, and referrals to other resources as needed. The main goals are to reduce risk factors or other stressors, and promote positive cognitive, social, and emotional well-being. This program serves approximately 50 Children & Youth a year.

**PEI Goals:** The goal of this program is to bring about mental health including the reduction of school failure and the removal of children from their homes.

**PEI Priorities:** Childhood trauma prevention and early intervention to deal with the early origins of mental health needs.

In FY19, 54 children were served through this program. Demographics on those served is as follows:

| <b>DEMOGRAPHICS N=54</b>                     |      |
|----------------------------------------------|------|
| <b>Age Groups</b>                            |      |
| 0-15 (Children/Youth)                        | 100% |
| <b>Race</b>                                  |      |
| Asian                                        | 6%   |
| Black or African American                    | 55%  |
| White                                        | 4%   |
| Other                                        | 33%  |
| More than one Race                           | 2%   |
| <b>Ethnicity: Hispanic or Latino</b>         |      |
| Mexican/Mexican-American/Chicano             | 33%  |
| <b>Ethnicity: Non-Hispanic or Non-Latino</b> |      |
| Declined to Answer (or Unknown)              | 67%  |
| <b>Primary Language</b>                      |      |
| Declined to Answer (or Unknown)              | 100% |
| <b>Disability</b>                            |      |
| Declined to Answer (or Unknown)              | 100% |
| <b>Gender: Assigned Sex at Birth</b>         |      |
| Declined to Answer (or Unknown)              | 100% |

In FY19, the following services were provided:

- Fifteen Early Childhood Mental Health Reflective Case Consultation groups for five classrooms;
- General Classroom Consultations in five classrooms;
- Individual and group consultations to the Center Program Supervisor, 15-18 Childhood Teachers, and two Family Advocates;
- Coordination with the “Inclusion Program” which includes Inclusion Specialists and a Speech Pathologist to help observation and assessment efforts that facilitate early intervention screenings and referrals to BUSD and Regional Center;
- Planning and assistance with implementation of behavior plans for children with behavioral and social-emotional needs;
- Direct interventions including providing visuals and classroom tools to help teach children self-regulation skills, social skills, and skills to help with transitions and to improve the overall functioning of individual children in the classroom setting;
- Mental Health consultations to 15 parents which included a variety of direct psycho-education around developmental concerns, social-emotional issues/behavioral concerns, parenting issues, providing information regarding mental health services as well as information regarding community services such as: First 5 Alameda, Help Me Grow, Regional Center, BUSD, and Primary Care physicians; and
- Co-facilitation of monthly Resiliency Circles to promote self-care and trauma informed care principles with teaching staff.

According to the HeadStart Center Supervisor, the consistency with the current Mental Health Consultant allowed for relationship building and establishing rapport with teachers and their families, which are essential to providing successful and effective mental health consultations.

In FY20, 54 children were served through this program. Demographics on those served is as follows:

| <b>DEMOGRAPHICS N=54</b>                                   |      |
|------------------------------------------------------------|------|
| <b>Age Groups</b>                                          |      |
| 0-15 (Children/Youth)                                      | 100% |
| <b>Race</b>                                                |      |
| Asian                                                      | 5%   |
| Black or African American                                  | 56%  |
| White                                                      | 4%   |
| Other                                                      | 19%  |
| More than one Race                                         | 2%   |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |      |
| Mexican/Mexican-American/Chicano                           | 33%  |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |      |
| Declined to Answer (or Unknown)                            | 67%  |



| <b>Primary Language</b>              |      |
|--------------------------------------|------|
| Declined to Answer (or Unknown)      | 100% |
| <b>Disability</b>                    |      |
| Declined to Answer (or Unknown)      | 100% |
| <b>Gender: Assigned Sex at Birth</b> |      |
| Declined to Answer (or Unknown)      | 100% |

FY20 services were as follows:

- Consultation meetings allowed teachers to develop clear plans and interventions in the classroom for individual children (and families) who had high risk factors including but not limited to complicated family dynamics, trauma, mental health and social-emotional needs as well as overall developmental needs of individual children
- General classroom consultations were held in five classrooms;
- Individual and group consultations to the Center Program Supervisor, 15-18 Childhood Teachers, and two Family Advocates;
- Coordination with the “Inclusion Program” which includes Inclusion Specialists and a Speech Pathologist to help observation and assessment efforts that facilitate early intervention screenings and referrals to BUSD and Regional Center;
- Planning and assistance with implementation of behavior plans for children with behavioral and social-emotional needs;
- Direct interventions including providing visuals and classroom tools to help teach children self-regulation skills, social skills, and skills to help with transitions and to improve the overall functioning of individual children in the classroom setting;
- Mental Health consultations to over 15 parents which included a variety of direct psycho-education around developmental concerns, social-emotional issues/behavioral concerns, parenting issues, providing information regarding mental health services as well as information regarding community services as as: First 5 Alameda, Help Me Grow, Regional Center, BUSD, and Primary Care physicians;
- Co-facilitation of monthly Resiliency Circles to promote self-care and trauma informed care principles with teaching staff; and
- Over 15 Early Childhood Mental Health Reflective Case Consultation groups for five classrooms. Case maintenance despite the impact of the pandemic.

In FY21, 49 children were served through this program. Demographics on those served were as follows:

| <b>DEMOGRAPHICS N=49</b>  |      |
|---------------------------|------|
| <b>Age Groups</b>         |      |
| 0-15 (Children/Youth)     | 100% |
| <b>Race</b>               |      |
| American Indian           | 2%   |
| Asian                     | 12%  |
| Black or African American | 45%  |

|                                                            |      |
|------------------------------------------------------------|------|
| White                                                      | 14%  |
| More than one Race                                         | 5%   |
| Declined to Answer (or Unknown)                            | 22%  |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |      |
| Declined to Answer or Unknown                              | 100% |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Primary Language</b>                                    |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Disability</b>                                          |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Gender: Assigned Sex at Birth</b>                       |      |
| Declined to Answer (or Unknown)                            | 100% |

Program Successes:

All of the general mental health consultation duties outlined below continued to be provided remotely via tele-care/Zoom until they were transitioned to in-person services in early FY22:

- Facilitated weekly Early Childhood Mental Health Reflective Case Consultation group/meetings to five classrooms. Case consultation meetings allowed teachers to develop clear plans and interventions for individual children and families in their classroom that present with high risk factors including but not limited to: complicated family dynamics; trauma; mental health concerns; social-emotional needs; and/or overall developmental needs.
- Provided general classroom observation to five infant care, toddler care and pre-school classrooms, serving a total of 49 children.
- Provided individual and group consultation to the Center Program Supervisor, 15-20 Early Childhood Teachers, and two family advocates
- Coordinated with the Inclusion Program which includes Inclusion Specialists and a Speech Pathologist to help observation and assessment efforts that facilitate early intervention screenings and referrals to BUSD and the Regional Center.
- Provided planning and assistance with implementation of behavior plans for children with behavioral and social-emotional needs.
- Provided direct interventions around classroom interventions including providing visuals and classroom tools to help teach children self-regulation skills, social skills, and skills to help with transitions, and to improve the overall functioning of individual children in the classroom setting.
- Provided individual mental health consultations to parents, and provided direct psycho-education around developmental concerns, social-emotional issues/behavioral concerns, parenting issues, and information regarding mental health services as well as information regarding community services including First 5 Alameda, Help Me Grow, the Regional Center, primary care Doctors, and BUSD services.

Program Challenges:

- The downside of continuing services and not being on site was not having access to families. This posed some difficulties in being able to build relationships with children and families directly.
- There was an increased need to provide crisis interventions during the pandemic as staff managed the stress of returning to their work as essential workers in the middle of a pandemic.
- There was an increase of collective stress as a result of the pandemic.
- As the pandemic continued into FY21 the center continued to experience disruptions to care with staff and children being quarantined at times.
- It was a challenge to work off-site during the COVID-19 pandemic to observe the child and teacher interactions. With not being onsite in-person there were no continuous conversations, spontaneous consultations, nor in-vivo modeling interactions. The ability to demonstrate for staff by working with the children and practicing certain interventions with children in-person along with observing staff implementing the techniques was also limited.
- There was no ability to model in-person for the teachers, as these elements were a part of the challenge in working remotely via telehealth (Zoom).

In FY23, MHSA funding for this program will be discontinued as the YMCA Head Start program has created a staff position for an internal Mental Health Specialist.

### **Supportive Schools Program**

Through this program leveraged MHSA PEI funds provide resources to support mental health prevention and intervention services in the Berkeley Elementary schools. Services include: outreach; mental health programming; classroom, group, and one-on-one psycho-social education and support; and consultation with parents and/or teachers.

**PEI Goals:** The goal of this program is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the reduction of school failure and the removal of children from their homes.

**PEI Priority:** Childhood trauma prevention and early intervention to deal with the early origins of mental health needs.

In FY19, BUSD sub-contracted with the following local agencies to provide services: Bay Area Community Resources (BACR), Child Therapy Institute (CTI), and LifeLong Medical Care. Agency and district staff providers led social skills groups, provided early intervention social and emotional support services, playground social skills, “check in/check out,” individual counseling, and support for parents and guardians from diverse backgrounds. As aligned with priority and focus on equity, providers participated in Coordination of Services Team (COST) meetings, and linked parents and guardians with resources at the school, within the school district, and in the community. A total of 1,065 elementary age students were served through this program.

Note: data provided by BUSD in FY19 combined the demographics for the Supportive Schools Project, the MEET Program, and DMind. Program data for all three projects is outlined below:

| <b>DEMOGRAPHICS N= 3,065</b>                                                                                                                |     |
|---------------------------------------------------------------------------------------------------------------------------------------------|-----|
| <b>Age Group</b>                                                                                                                            |     |
| 0-15 (Children/Youth)                                                                                                                       | 81% |
| 16-25 (Transition Age Youth)                                                                                                                | 13% |
| 26-59 (Adult)                                                                                                                               | 6%  |
| Ages 60+ (Older Adult)                                                                                                                      | <1% |
| <b>Race</b>                                                                                                                                 |     |
| American Indian or Alaska Native                                                                                                            | 1%  |
| Asian                                                                                                                                       | 11% |
| Black or African American                                                                                                                   | 19% |
| Native Hawaiian/Pacific Islander                                                                                                            | <1% |
| White                                                                                                                                       | 41% |
| Other                                                                                                                                       | 1%  |
| More than one race                                                                                                                          | 4%  |
| Declined to Answer (or Unknown)                                                                                                             | 9%  |
| <b>Ethnicity: Hispanic or Latino</b>                                                                                                        |     |
| Mexican/Mexican-American/Chicano                                                                                                            | 14% |
| <b>Primary Language Used</b>                                                                                                                |     |
| English                                                                                                                                     | 86% |
| Spanish                                                                                                                                     | 7%  |
| Mandarin                                                                                                                                    | 1%  |
| Declined to Answer (or Unknown)                                                                                                             | 6%  |
| <b>Sexual Orientation</b>                                                                                                                   |     |
| Gay or Lesbian                                                                                                                              | 7%  |
| Heterosexual or Straight                                                                                                                    | 49% |
| Bisexual                                                                                                                                    | 2%  |
| Questioning or unsure of sexual orientation                                                                                                 | <1% |
| Queer                                                                                                                                       | <1% |
| Declined to Answer (or Unknown)                                                                                                             | 41% |
| <b>Disability</b>                                                                                                                           |     |
| Mental domain not including a mental illness<br>(including but not limited to a learning disability,<br>developmental disability, dementia) | 9%  |

|                                          |      |
|------------------------------------------|------|
| Physical/mobility domain                 | <1%  |
| <b>Veteran Status</b>                    |      |
| Declined to Answer (or Unknown)          | 100% |
| <b>Gender: Assigned sex at birth</b>     |      |
| Male                                     | 58%  |
| Female                                   | 42%  |
| <b>Current Gender Identity</b>           |      |
| Male                                     | 54%  |
| Female                                   | 39%  |
| Transgender                              | <1%  |
| Questioning or unsure of gender identity | <1%  |
| Another gender identity (Non-Binary)     | <1%  |
| Declined to Answer (or Unknown)          | 6%   |

In FY20, Early Intervention Services were provided at all eleven BUSD elementary schools. Funding was allocated at each elementary school to provide early intervention services. BUSD sub-contracted with local agencies to provide early intervention services based upon the standard of evidence-based practices. Bay Area Community Resources (BACR), Child Therapy Institute (CTI), and Lifelong Medical (Lifelong) were subcontracted to provide services at BUSD elementary schools. Additionally, a counselor was provided to support two elementary schools. As a result of the pandemic, schools finished the year in distance learning. During the academic year, supports were initially provided in-person, before shifting to online. It was reported that providing remote therapy sessions had its challenges. Supports for each school, per service provider, and numbers served in FY20 were as follows:

| Elementary School                                                        | Agency/Provider                      | Number of Students Served |
|--------------------------------------------------------------------------|--------------------------------------|---------------------------|
| Cragmont<br>Emerson<br>Malcolm X<br>Oxford<br>Ruth Acty<br>Thousand Oaks | Bay Area Community Resources<br>BACR | 229                       |
| Bay Area Arts Magnet (BAM)<br>Washington                                 | Child Therapy Institute              | 39                        |
| John Muir<br>Sylvia Mendez                                               | School Site Counselor                | No Data Available         |
| Rosa Parks                                                               | Child Therapy Institute              | No Data Available         |
| <b>Total</b>                                                             |                                      | <b>268</b>                |

BACR provides services to improve emotional functioning and success in school and life, including individual and group therapy, family consultation, conflict resolution/restorative justice, suicide prevention, check-in/check-out, crisis intervention, and classroom presentations. Additionally, BACR participated on the weekly Coordination of Services (COST) team, Student Success Team (SST), and Individualized Education Program (IEP) meetings for students, providing mental health and trauma informed perspectives. BACR consults with staff on many issues and provides trauma informed coaching for teachers, referrals and care coordination to outside providers, parenting classes/support groups, crisis hotlines, and other programs.

In addition, other agency and district staff providers led social skills groups, early intervention social and emotional supports, playground social skills, “check in / check out,” individual counseling, and supports for parents and guardians from diverse backgrounds. As aligned with the priority and focus on equity, providers participated in the COST team meetings, and linked parents and guardians with resources within the school district, and in the community.

Data provided by BUSD, on 248 students that were served from this project in FY20, is outlined below:

| <b>DEMOGRAPHICS N= 248</b>                                  |      |
|-------------------------------------------------------------|------|
| <b>Age Group</b>                                            |      |
| 0-15 (Children/Youth)                                       | 100% |
| <b>Race</b>                                                 |      |
| American Indian or Alaska Native                            | 7%   |
| Asian                                                       | 4%   |
| Black or African American                                   | 34%  |
| Native Hawaiian/Pacific Islander                            | 1%   |
| White                                                       | 24%  |
| More than one Race                                          | 19%  |
| Declined to Answer (or Unknown)                             | 11%  |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>          |      |
| Mexican/Mexican-American/Chicano                            | 22%  |
| Declined to Answer (or Unknown)                             | 5%   |
| <b>Ethnicity: Non-Hispanic or Non- Latino/Latina/Latinx</b> |      |
| Asian Indian/South Asian                                    | 1%   |
| Filipino                                                    | <1%  |
| More than one Ethnicity                                     | 10%  |
| Declined to Answer (or Unknown)                             | 62%  |
| <b>Primary Language Used</b>                                |      |
| English                                                     | 13%  |

|                                                                                                                                             |      |
|---------------------------------------------------------------------------------------------------------------------------------------------|------|
| Spanish                                                                                                                                     | 3%   |
| Other                                                                                                                                       | <1%  |
| Declined to Answer (or Unknown)                                                                                                             | 84%  |
| <b>Sexual Orientation</b>                                                                                                                   |      |
| Declined to Answer (or Unknown)                                                                                                             | 100% |
| <b>Disability</b>                                                                                                                           |      |
| Mental domain not including a mental illness<br>(including but not limited to a learning disability,<br>developmental disability, dementia) | 6%   |
| No Disability                                                                                                                               | 11%  |
| Declined to Answer (or Unknown)                                                                                                             | 83%  |
| <b>Veteran Status</b>                                                                                                                       |      |
| No                                                                                                                                          | 100% |
| <b>Gender: Assigned sex at birth</b>                                                                                                        |      |
| Male                                                                                                                                        | 55%  |
| Female                                                                                                                                      | 45%  |
| <b>Current Gender Identity</b>                                                                                                              |      |
| Male                                                                                                                                        | 55%  |
| Female                                                                                                                                      | 45%  |

In FY21 Early Intervention Services were provided at each of the BUSD elementary schools. BUSD subcontracted with local agencies to provide early intervention services based upon the standard of evidence-based practices. Bay Area Community Resources (BACR), Child Therapy Institute (CTI), and Lifelong Medical (Lifelong) were subcontracted to provide services at BUSD elementary schools. Additionally, a counselor provided support at two elementary schools. As a result of the pandemic, schools began the year in distance learning. BUSD then transitioned to small cohorts at each elementary school, before moving to in-person learning in the spring of 2021. During the academic year, supports were provided both virtually, and in-person.

BACR provided services to improve emotional functioning and success in school and life, including individual and group therapy, family consultation, conflict resolution/restorative justice, suicide prevention, check-in/check-out, crisis intervention, and classroom presentations. Additionally, BACR participated in weekly Coordination of Services (COST), Student Success Team (SST), and Individualized Education Program (IEP) meetings for students, providing mental health and trauma informed perspectives. BACR consults with staff on many issues and provides trauma informed coaching for teachers, and referrals to outside providers, parenting classes/support groups, crisis hotlines, and other programs.

In addition, other agency and district staff providers led social skills groups, early intervention social and emotional support, playground social skills, “check in / check out,” individual counseling, and support for parents and guardians from diverse backgrounds. As aligned with priority and focus on equity, providers

participated in COST team meetings, and linked parents and guardians with resources within the school district, and in the community.

Supports for each school per each service provider, and numbers served in FY21 were as follows:

| Elementary School                                                                                                                                                    | Agency/Provider                     | Number of Students Served |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|---------------------------|
| <ul style="list-style-type: none"> <li>• Cragmont</li> <li>• Emerson</li> <li>• Malcolm X</li> <li>• Oxford</li> <li>• Ruth Acty</li> <li>• Thousand Oaks</li> </ul> | Bay Area Community Resources (BACR) | 115                       |
| <ul style="list-style-type: none"> <li>• Bay Area Arts Magnet (BAM)</li> <li>• Washington</li> </ul>                                                                 | Child Therapy Institute             | 39                        |
| <ul style="list-style-type: none"> <li>• John Muir</li> <li>• Sylvia Mendez</li> </ul>                                                                               | School Site Counselor               | 25                        |
| <ul style="list-style-type: none"> <li>• Rosa Parks</li> </ul>                                                                                                       | Lifelong Medical Care               | No Data Available         |
| <b>Total</b>                                                                                                                                                         |                                     | <b>179</b>                |

Data provided by BUSD, on 179 students that were served through this project in FY21, is outlined below:

| <b>DEMOGRAPHICS N= 179</b>                         |      |
|----------------------------------------------------|------|
| <b>Age Group</b>                                   |      |
| 0-15 (Children/Youth)                              | 100% |
| <b>Race</b>                                        |      |
| American Indian or Alaska Native                   | 1%   |
| Asian                                              | 6%   |
| Black or African American                          | 25%  |
| Native Hawaiian/Pacific Islander                   | 1%   |
| White                                              | 33%  |
| More than one Race                                 | 19%  |
| Declined to Answer (or Unknown)                    | 11%  |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b> |      |
| Central American                                   | 1%   |
| Mexican/Mexican-American/Chicano                   | 1%   |
| South American                                     | 1%   |
| Declined to Answer (or Unknown)                    | 20%  |



| <b>Ethnicity: Non-Hispanic or Non- Latino/Latina/Latinx</b>                                                                                 |      |
|---------------------------------------------------------------------------------------------------------------------------------------------|------|
| American Indian                                                                                                                             | 1%   |
| Asian Indian/South Asian                                                                                                                    | 1%   |
| Chinese                                                                                                                                     | 1%   |
| Eastern European                                                                                                                            | 1%   |
| Filipino                                                                                                                                    | 1%   |
| Korean                                                                                                                                      | 1%   |
| More than one Ethnicity                                                                                                                     | 3%   |
| Declined to Answer (or Unknown)                                                                                                             | 68%  |
| <b>Primary Language Used</b>                                                                                                                |      |
| English                                                                                                                                     | 30%  |
| Spanish                                                                                                                                     | 4%   |
| Other                                                                                                                                       | 1%   |
| Declined to Answer (or Unknown)                                                                                                             | 65%  |
| <b>Sexual Orientation</b>                                                                                                                   |      |
| Declined to Answer (or Unknown)                                                                                                             | 100% |
| <b>Disability</b>                                                                                                                           |      |
| Communication Domain                                                                                                                        | 1%   |
| Mental domain not including a mental illness<br>(including but not limited to a learning disability,<br>developmental disability, dementia) | 11%  |
| Declined to Answer (or Unknown)                                                                                                             | 88%  |
| <b>Veteran Status</b>                                                                                                                       |      |
| No                                                                                                                                          | 100% |
| <b>Gender: Assigned sex at birth</b>                                                                                                        |      |
| Male                                                                                                                                        | 53%  |
| Female                                                                                                                                      | 43%  |
| Declined to Answer (or Unknown)                                                                                                             | 4%   |
| <b>Current Gender Identity</b>                                                                                                              |      |
| Male                                                                                                                                        | 52%  |
| Female                                                                                                                                      | 43%  |
| Non-binary                                                                                                                                  | 1%   |
| Other Gender Identity                                                                                                                       | 4%   |

### Community Education & Supports Program

The Community Education & Supports program implements culturally-responsive psycho-educational trauma support services for individuals (18 and above) in various cultural, ethnic and age specific populations that are unserved, underserved and inappropriately served in Berkeley and Albany including: African Americans; Asian Pacific Islanders; Latinos/Latinas/Latinx; LGBTQIA+; TAY; and Senior Citizens. All services are conducted through area community-based organizations.

Since 2019 the Community Services & Supports projects have participated in the Health, Housing and Community Services Department “Impact Berkeley” Results Based Accountability (RBA) Evaluation. RBA seeks to answer the quantity of services provided, how well the program is providing services, and whether participants are better off as a result of participating in the services.

In FY19, RBA aggregated results across all Community Education & Supports projects were as follows:

| How Much Did We Do?                                                                                                                                                                                                         | How Well Did We Do It?                                                                                                                                                                                                                                                                                                       | Is Anyone Better Off?                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>651 Support Groups/Workshops</li> <li>3,524 Support Groups/Workshop Encounters</li> <li>419 Outreach Activities</li> <li>6,938 Outreach Contacts</li> <li>1,308 Referrals</li> </ul> | <ul style="list-style-type: none"> <li>7 Support groups or workshop sessions attended on average per person</li> <li>96% Survey respondents were satisfied with services</li> <li>Referrals by type:<br/>251 Mental Health<br/>240 Social Services<br/>227 Physical Health<br/>156 Housing<br/>434 Other Services</li> </ul> | <ul style="list-style-type: none"> <li>92% of program participants reported an increase in social supports or trusted people they can turn to for help (3 of 5 projects reported in this measure).</li> <li>88% of program participants reported positive changes in terms of coping strategies, feeling anxious or overwhelmed (4 out of 5 programs reported on this measure).</li> </ul> |

In FY20 the aggregated results across all Community Education & Supports projects were as follows:

| How Much Did We Do?                                                                                                                                                                                                                     | How Well Did We Do It?                                                                                                                                                                                                                                                                                                                                                                                                             | Is Anyone Better Off?                                                                                                                                                                                                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>555 Support Groups/Workshops</li> <li>5,183 Support Groups/Workshop Encounters</li> <li>188 Individual Contacts/Individuals</li> <li>3,342 Outreach Contacts</li> <li>1,245 Referrals</li> </ul> | <ul style="list-style-type: none"> <li>13 Support groups or workshop sessions attended on average per person (5 out of 7 programs reporting).</li> <li>98% Survey respondents were satisfied with services (4 out of 7 programs reporting)</li> <li>Referrals by type:<br/>277 Mental Health<br/>252 Social Services<br/>230 Physical Health<br/>125 Housing<br/>361 Other Services<br/>(6 out of 7 programs reporting)</li> </ul> | <ul style="list-style-type: none"> <li>90% of program participants reported an increase in social supports or trusted people they can turn to for help (2 out of 7 programs reporting).</li> <li>88% of program participants reported positive changes in terms of coping strategies, feeling anxious or overwhelmed (3 out of 7 programs reporting).</li> </ul> |

In FY21, the aggregated results across all Community Education & Supports projects were as follows:

| How Much Did We Do?                                                                                                                                                                                                                                                                                  | How Well Did We Do It?                                                                                                                                                                                                                                                                                                                    | Is Anyone Better Off?                                                                                                                                                                                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• 578 Support Groups/Workshops</li> <li>• 1,247 Support Groups/Workshop Encounters</li> <li>• 118 Individual Contacts (2 of 3 programs reporting)</li> <li>• 2,524 Outreach Activities</li> <li>• 225 Outreach Contacts</li> <li>• 1,179 Referrals</li> </ul> | <ul style="list-style-type: none"> <li>• 9 Support groups or workshop sessions attended on average per person</li> <li>• 85% Survey respondents reported satisfaction with services</li> <li>• Referrals by type:<br/>223 Mental Health<br/>200 Social Services<br/>213 Physical Health<br/>124 Housing<br/>419 Other Services</li> </ul> | <ul style="list-style-type: none"> <li>• 86% of program participants reported an increase in social supports or trusted people they can turn to for help (2 of 3 programs reporting)</li> <li>• 90% of program participants reported positive changes in terms of coping strategies, feeling anxious or overwhelmed (2 of 3 programs reporting)</li> </ul> |

To ensure fair contracting practices in the City, the Division proposed in the approved FY20 MHSA Annual Update, to execute a new Request for Proposal (RFP) process for the Community Education & Supports Project contracts that have been in place for five or more years. It was anticipated that the RFP process would be executed in the Spring of FY20. Due to Covid-19 the Division decided it would be best to delay this RFP Process, and RFP’s for each project were executed in the Spring of FY21. All Community Education & Supports contracts were continued through June 30, 2021. In FY22, the chosen bidders from the RFP processes, began providing services to each population.

Per the previously approved Three Year Plan, in an effort to ensure each unserved, underserved and inappropriately served population has an equitable amount of dedicated MHSA funds for programs and services, the Division made the following changes to this program, which began in FY22: Increased the amount up to \$100,000 per each of the following populations, African Americans, Latinos/Latinas/Latinx and LGBTQIA+; and no longer funded the API population in this program, as the Division is providing \$100,000 of dedicated CSS funds for services and supports for this community.

Outlined below are descriptions of services provided and numbers served through this program during the reporting timeframe:

**Albany Trauma Project**

Implemented through Albany Unified School District this project provides trauma support services to Latinx, Asian Pacific Islanders and African American TAY, and Adults. Through various supports the project: provides helpful information and coping strategies around the effects of trauma; offers interventions to keep at-risk individuals and families from developing serious mental health symptoms and behaviors; provides a forum for clinicians to monitor trauma-exposed individuals and families who may need more intensive mental health services; and creates a venue to explore trauma and stress management through symbols of healing, artwork, and alternative coping strategies. Services include one-on-one outreach and engagement for adults, and support groups in the Elementary and High School in Albany. Additional one time cultural activities to promote healing through reflection groups and art projects are also conducted throughout the year. This project annually serves approximately 40-55 children/youth and 25-45 adults.

Descriptions of services provided and numbers served through this project are outlined below:

**Adult Support Groups:** This project used to implement outreach and engagement activities and support groups to Latino/Latina/Latinx immigrant adults dealing with trauma issues, who live and work the backstretch of Golden Gate Field’s race track as groomers; exercise jockeys and caretakers of the horses.

Over the years this project has migrated to more of a one-on-one engagement project to support individuals in need, with occasional cultural and strength building group activities.

**PEI Goals:** The goal of this project was to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

**PEI Priority:** MHSOAC priorities were not required during the timeframe that this project was implemented.

In FY19, 24 individuals received supports through one-on-one engagement sessions. Eleven referrals were provided, 1 to Physical Health services, 3 for Legal services, 1 for Tax Preparation, and 6 to other unspecified supports.

**Children/Youth Support Groups:** Young children and high school youth experiencing trauma are unlikely to seek services at traditional mental health clinics. Schools are an essential vehicle of treatment for trauma exposed individuals and their families. By aiming psycho-educational interventions for elementary age children and high school youth, it is possible to introduce youth and their families to information about trauma, coping mechanisms, and to combat the isolation that trauma brings.

The purpose of the groups was to reduce at-risk behaviors, reduce a sense of alienation, and increase a sense of belonging among group members. Various psycho-educational techniques were used to achieve these goals, such as improving communication skills, using role modeling and feedback, increasing empathy by encouraging self-disclosure and emotional engagement in the group, and developing trust via positive interactions in the group. The support group program provided information about the effects of trauma, and helpful coping strategies; served a preventive function by offering interventions that will keep at-risk individuals and families from developing serious symptoms and behaviors; provided a forum for clinicians to monitor trauma-exposed individuals and families who may need more intensive mental health services; and created a venue to explore trauma and stress management through symbols of healing, artwork, and alternative coping strategies.

**PEI Goals:** The goal of this project was to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the reduction of school failure or drop out.

**Elementary School Support Groups:** Through this project, Support Groups were provided to Elementary aged students to reduce children's negative responses to trauma, correct maladaptive beliefs and attributions, and build resilience and reduce anxiety. Student participants were referred from parents, teachers or school staff. Students with experiences of community violence, physical assault, significant separations, witness to domestic or sexual violence, and lack of food, clothing, or shelter were invited to attend groups. As these experiences can lead to the child's regulatory capacity being overwhelmed, his or her daily life behaviors, school performance, attention, self-perception and emotional regulation may all be affected. Support Groups provided psycho-education, coping skills, and a safe environment in which to address and process traumatic experiences.

In FY19, 18 support groups were provided to a total of 10 participants. Each group met for 1-2 hours in duration. There were two referrals for additional mental health services. Fifty-one outreach activities were also conducted. From teacher, school staff, and parental report, outcomes for students participating in support groups were as follows: 60% took a more active role in learning; 90% received increased positive attention from peers; and 80% exhibited less anxiety in the classroom.

**Youth Support Groups:** The use of Support Groups or Group Therapy are considered to be a highly effective and preferred intervention for adolescents who tend to be more likely to accept feedback from their peers than from adults. Through this project, separate weekly therapeutic support groups were provided at Albany High School for Asian Pacific Islander, Latinx, and African American youth. Groups met for 1-2 hours a week throughout the school year and were focused on helping participants process various traumatic events through the development of trust, close connections to each other, and creating a safe space for the expression and understanding of feelings.

In FY19, three separate support groups were held at Albany high School. Each group met weekly for 1 hour and continued until the end of the school year. Students were assigned to three groups based on racial or ethnic identity: Latinx, African-American, and Asian-American. This was done in order to help promote connection, identification and group cohesion. Students that participated in the trauma groups at Albany High School were initially recommended by counselors, mental health coordinators, or administrators who believed that these selected students may have experienced trauma in their lives. These students were then interviewed individually to assess and determine if they wished to participate in the groups. Forty-five students were interviewed and assessed for all three groups. Of those 45 students, 32 students attended at least 1 group session, and 22 students continued in group for 6 or more sessions. The initial group meeting was set up specifically as a way to allow prospective members to experience group and to determine if they wanted to participate. After the initial group sessions, students were asked to either commit to attend group for 8 sessions or to opt out. As expected, some students who attended the initial group chose not to participate in the groups, while most students signed up for 8 initial sessions and then continued to attend groups through the remainder of the year. In aggregate, there were a total of 58 individual meetings with students and 63 group sessions. The 45 students served by this program received 422 total contacts, and there were 4 referrals for additional mental health services.

A pre-test questionnaire was administered at the 2nd group meeting, and a post-test questionnaire was administered at the last group meeting. The pre-test was completed by 25 students and the post-test was completed by 19 students. Several group members were unable to complete the post-test due to not being able to attend the final group session. Student responses on the pre-test questionnaire are outlined below:

| <b>QUESTIONNAIRE RESULTS N = 25</b>                                                                                  |                                                          |
|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| <b>QUESTIONS</b>                                                                                                     | <b>PARTICIPANT RESPONSES</b>                             |
| Have you lost someone close to you?                                                                                  | Yes – 64%<br>No – 36%                                    |
| Have you witnessed violence in your family?                                                                          | Yes – 52%<br>No – 48%                                    |
| Have you witnessed violence in your home?                                                                            | Yes – 7 – 28%<br>No – 18 – 72%                           |
| Have you been a victim of violence or abuse?                                                                         | Yes – 72%<br>No – 28%                                    |
| If yes, have you spoken to anyone about this?                                                                        | Yes – 100%<br>No – 0%                                    |
| Do you feel that you've had the support in your life to cope effectively with the painful things you've experienced? | Rarely – 8%<br>Sometimes – 48%<br>Most of the Time – 44% |

|                                                                                                                          |                                                                         |
|--------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Do you use healthy ways to cope with stress in your life?                                                                | Never – 4%<br>Rarely – 20%<br>Sometimes – 32%<br>Most of the Time – 44% |
| Do you use drugs or alcohol to help cope with your feelings, i.e. relax, calm down, quiet your mind, reduce anger, etc.? | Never – 48%<br>Rarely – 20%<br>Sometimes – 24%<br>Most of the Time – 8% |
| Are there adults at your school who you can talk openly to about personal issues?                                        | Yes – 76%<br>No – 24%                                                   |

Pre-test results indicated that many of the group members had experienced significant trauma in their lives. Other traumas experienced by group members that were discussed in group included institutionalized racism, unjust police practices, poverty, immigration, parental incarceration, death of a family member, parental substance abuse, mental illness of a parent, and physical/emotional abuse. Student responses on the post-test questionnaire were as follows:

| <b>QUESTIONNAIRE RESULTS N = 19</b>                                                                                |                                                                                                             |
|--------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| <b>QUESTIONS or STATEMENTS</b>                                                                                     | <b>PARTICIPANT RESPONSES</b>                                                                                |
| I felt welcomed into group.                                                                                        | Strongly Disagree – 0%<br>Disagree – 0%<br>Neutral – 0%<br>Agree – 37%<br>Strongly Agree – 63%<br>N/A – 0%  |
| I felt the group was a place I could express my feelings.                                                          | Strongly Disagree – 0%<br>Disagree – 0%<br>Neutral – 0%<br>Agree – 53%<br>Strongly Agree – 47%<br>N/A – 0%  |
| I felt supported by other group members.                                                                           | Strongly Disagree – 0%<br>Disagree – 0%<br>Neutral – 0%<br>Agree – 32%<br>Strongly Agree – 68%<br>N/A – 0%  |
| As a direct result of participating in the group, I feel like I have more support to help me deal with challenges. | Strongly Disagree – 0%<br>Disagree – 0%<br>Neutral – 11%<br>Agree – 63%<br>Strongly Agree – 26%<br>N/A – 0% |
| As a direct result of participating in the group, I cope with stress in healthier ways.                            | Strongly Disagree – 0%<br>Disagree – 5%<br>Neutral – 32%<br>Agree – 32%<br>Strongly Agree – 26%<br>N/A – 5% |

|                                                                                                                                                                                      |                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| As a direct result of participating in the group, I have reduced the use of drugs and/or alcohol to cope with difficult feelings.                                                    | Strongly Disagree – 0%<br>Disagree – 5%<br>Neutral – 11%<br>Agree – 21%<br>Strongly Agree – 5%<br>N/A – 58%  |
| As a direct result of participating in the group, I would consider seeking help from a mental health professional in the future for a personal problem that was really bothering me. | Strongly Disagree – 0%<br>Disagree – 5%<br>Neutral – 32%<br>Agree – 11%<br>Strongly Agree – 26%<br>N/A – 26% |
| Would you recommend this group to a friend?                                                                                                                                          | Yes – 100%<br>No – 0%                                                                                        |

Post-test results suggested that all group members reported a positive experience in the support groups. All students who completed the post-test responded that they felt welcomed into the group, felt that the group was a place where they could express their feelings, and felt supported by the other group members. Additionally, all students who completed the post-test responded “Yes” to the question, “Would you recommend this group to a friend?” Group members also reported significant improvements in various metrics related to their coping skills as outlined below:

- 89% felt more supported in dealing with challenges;
- 72% indicated that they coped with stress in healthier ways;
- 63% reported a reduction in their use of drugs and alcohol to cope with difficult feelings;
- 71% expressed willingness to seek help from a mental health professional in the future.

The sole adverse finding from the post-test results was related to school truancy. Among the 19 students who participated in support group sessions, school truancy increased by 90% between the FY18 academic year (31 unexcused absences) to the FY19 academic year (59 unexcused absences). According to the AUSD program report, several factors may account for this surprising finding. First, the groups were disproportionately comprised of seniors (16 of the 19 students), many of whom spoke repeatedly in group about their “senioritis” and corresponding lack of motivation to attend school. Additionally, a small number of students (4) accounted for 31 of the 59 unexcused absences for the current school year. The truancy of these 4 students – which resulted from a complicated series of factors (e.g., adverse changes in one student’s home environment; a bout of clinical depression for another student) – likely skewed the overall data. If the attendance numbers of these 4 students were removed from the analyses, the difference in school truancy between the FY18 academic year (20 unexcused absences) and the FY19 academic year (28 unexcused absences) would be much less pronounced.

Among all services conducted for children, youth and Adults through the Albany Trauma Project, a total of 79 individuals were served. Demographics on individuals served were as follows:

| <b>DEMOGRAPHICS N=79</b> |     |
|--------------------------|-----|
| <b>Age Group</b>         |     |
| 0-15                     | 13% |
| 16-25                    | 58% |

|                                              |     |
|----------------------------------------------|-----|
| 26-59                                        | 20% |
| 60+                                          | 9%  |
| <b>Race</b>                                  |     |
| Asian                                        | 20% |
| Black or African American                    | 15% |
| Native Hawaiian or other Pacific Islander    | 1%  |
| White                                        | 32% |
| Other                                        | 24% |
| More than one race                           | 8%  |
| <b>Ethnicity: Hispanic or Latino</b>         |     |
| Central American                             | 6%  |
| Mexican/Mexican-American/Chicano             | 44% |
| South American                               | 3%  |
| <b>Ethnicity: Non-Hispanic or Non-Latino</b> |     |
| African                                      | 14% |
| Asian Indian/South Asian                     | 5%  |
| Chinese                                      | 4%  |
| European                                     | 1%  |
| Filipino                                     | 6%  |
| Japanese                                     | 1%  |
| More than one ethnicity                      | 8%  |
| Other                                        | 3%  |
| Declined to Answer (or Unknown)              | 5%  |
| <b>Primary Language Used</b>                 |     |
| English                                      | 72% |
| Spanish                                      | 28% |
| <b>Sexual Orientation</b>                    |     |
| Gay or Lesbian                               | 3%  |
| Heterosexual or Straight                     | 57% |
| Bisexual                                     | 3%  |
| Declined to Answer (or Unknown)              | 37% |
| <b>Disability</b>                            |     |
| Difficulty Seeing                            | 1%  |



|                                      |      |
|--------------------------------------|------|
| Mental (not mental health)           | 1%   |
| Physical/Mobility Disability         | 1%   |
| No Disability                        | 42%  |
| <b>Veterans Status</b>               |      |
| No                                   | 100% |
| <b>Gender: Assigned sex at birth</b> |      |
| Male                                 | 61%  |
| Female                               | 39%  |
| <b>Current Gender Identity</b>       |      |
| Male                                 | 61%  |
| Female                               | 39%  |

In FY20, 18 individuals received supports through one-on-one engagement sessions. Services were not able to continue between March and June due to the pandemic. Nine Elementary School Support Groups served a total of 10 participants. Each group met for 1-2 hours in duration. There were seven referrals for additional mental health services, four for Social Services, and one referral to an unspecified service. Thirty-five outreach activities were also conducted. School ended abruptly in mid-March in response to the pandemic. Students who had participated in individual counseling continued to receive weekly services over Zoom. Twenty-nine support group sessions were held at Albany high School, and served a total of 29 students. Students were assigned to three groups based on racial or ethnic identity: Latinx, African-American, and Asian-American. This was done in order to help promote connection, identification and group cohesion. Students that participated in the trauma groups at Albany High School were initially recommended by counselors, mental health coordinators, or administrators who believed that these selected students may have experienced trauma in their lives. These students were then interviewed individually to assess and determine if they wished to participate in the groups. Each group met weekly for one hour, and were able to continue by Zoom when schools were abruptly closed in March due to the pandemic.

Among all services conducted for children, youth, adults and older adults through the Albany Trauma Project, a total of 65 individuals were served. Demographics on individuals served were as follows:

| <b>DEMOGRAPHICS N=65*</b>            |                                             |                              |                               |
|--------------------------------------|---------------------------------------------|------------------------------|-------------------------------|
| <b>Age Group</b>                     | Golden Gate Fields<br>Racetrack<br>Supports | Elementary<br>Support Groups | High School<br>Support Groups |
| Percent of total participants served | 28%                                         | 15%                          | 57%                           |
| 0-15                                 |                                             | 90%                          |                               |
| 16-25                                | 6%                                          | 10%                          | 100%                          |
| 26-59                                | 56%                                         |                              |                               |

|                                                            |                                             |                                        |                               |
|------------------------------------------------------------|---------------------------------------------|----------------------------------------|-------------------------------|
| 60+                                                        | 39%                                         |                                        |                               |
| <b>Race</b>                                                |                                             |                                        |                               |
| Asian                                                      | 6%                                          |                                        | 24%                           |
| Black or African American                                  |                                             | 50%                                    | 27%                           |
| White                                                      | 56%                                         | 20%                                    | 41%                           |
| Other                                                      | 39%                                         | 30%                                    |                               |
| More than one Race                                         |                                             |                                        | 8%                            |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         | Golden Gate Fields<br>Racetrack<br>Supports | Elementary<br>School<br>Support Groups | High School<br>Support Groups |
| Mexican/Mexican-American/Chicano                           | 94%                                         | 10%                                    | 32%                           |
| Central American                                           |                                             |                                        | 3%                            |
| Puerto Rican                                               |                                             | 10%                                    | 5%                            |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |                                             |                                        |                               |
| Asian Indian/South Asian                                   |                                             | 10%                                    | 3%                            |
| Chinese                                                    |                                             |                                        | 14%                           |
| Filipino                                                   | 6%                                          |                                        | 5%                            |
| Japanese                                                   |                                             |                                        | 3%                            |
| More than one Ethnicity                                    |                                             |                                        | 35%                           |
| Declined to Answer (or Unknown)                            |                                             | 70%                                    |                               |
| <b>Primary Language Used</b>                               |                                             |                                        |                               |
| English                                                    | 17%                                         | 100%                                   | 100%                          |
| Spanish                                                    | 83%                                         |                                        |                               |
| <b>Sexual Orientation</b>                                  |                                             |                                        |                               |
| Gay or Lesbian                                             |                                             |                                        | 3%                            |
| Heterosexual or Straight                                   | 100%                                        | 100%                                   | 95%                           |
| Bisexual                                                   |                                             |                                        | 3%                            |
| <b>Disability</b>                                          |                                             |                                        |                               |
| Other Disability                                           | 22%                                         |                                        |                               |
| No Disability                                              | 78%                                         | 30%                                    | 100%                          |
| Declined to Answer (or Unknown)                            |                                             | 70%                                    |                               |
| <b>Veterans Status</b>                                     |                                             |                                        |                               |

|                                      |      |      |      |
|--------------------------------------|------|------|------|
| No                                   | 100% | 100% | 100% |
| <b>Gender: Assigned sex at birth</b> |      |      |      |
| Male                                 | 83%  | 50%  | 51%  |
| Female                               | 17%  | 50%  | 49%  |
| <b>Current Gender Identity</b>       |      |      |      |
| Male                                 | 83%  | 50%  | 51%  |
| Female                               | 17%  | 50%  | 49%  |

\*Percentages may not add up to 100% due to rounding.

In FY21 this project was discontinued as Albany services began to be funded through Alameda County MHSA Funds. Beginning in FY22, Trauma Support Services for the Latinx population in Berkeley began to be provided through the East Bay Sanctuary Covenant, who were chosen through a competitive Request For Proposal (RFP) process.

### **Latinx Trauma Support Project**

In FY22, following a competitive Request For Proposal (RFP) process, East Bay Sanctuary Covenant began implementing the Latinx Trauma Support Project. This project assists low-income, Latinx families in Berkeley to access culturally, ethnically, and linguistically responsive and trauma-informed prevention and intervention services. Project services are in direct response to and in collaboration with Latinx community members, and are largely facilitated by individuals from within the targeted community and conducted in Spanish or an indigenous language. Services include: One-on-one outreach and support; support groups; staff and partner training; and warm referrals.

**PEI Goals:** The goal of this project is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

#### **PEI Priorities:**

- Culturally competent and linguistically appropriate prevention and intervention;
- Youth Engagement and Outreach Strategies that target secondary school and transition age youth.
- Strategies targeting the mental health needs of older adults.

As this project was not in operation in FY21, future MHSA Three Year Plans and Annual Updates will include a reporting on program data and activities.

### **Transition Age Youth Trauma Support Project**

Implemented through the Covenant House, Youth Engagement Advocacy Housing (YEAH!) program through FY21, this project provides supportive services for Transition Age Youth (TAY) who are suffering from the impact of trauma and/or other life stressors and are homeless, marginally housed, or housed but in need of supports. The project serves a wide range of youth from various cultural and ethnic backgrounds who share the common goal of living lives less impacted by trauma and more impacted by wellness. The project consists of the following four components: One-on-one sessions that assess individuals needs around trauma supports and support group readiness; psycho-educational support groups; youth social outings that provide TAY with exposure to healthy settings designed to enhance life skills and choices; and youth

celebratory events that are held monthly to convene youth around a positive occasion to acknowledge the various small and large accomplishments of TAY participants, and build trust and community. Approximately 30-35 TAY receive services through this project a year.

**PEI Goals:** The goal of this project is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

**PEI Priorities:**

- Culturally competent and linguistically appropriate prevention and intervention;
- Youth engagement and outreach strategies that target secondary school and transition age youth.

In FY19, 142 TAY participated in one or more project services over the year. Support Group sessions included: Harm Reduction and Substance Use; Mindfulness; Coping Skills; Creative Expression, among others. Twelve Youth Social Outings included 48 TAY participants, and 123 TAY, participated in 21 Youth Celebratory Events. Demographics on youth served were as follows:

| <b>DEMOGRAPHICS N = 142</b>                  |      |
|----------------------------------------------|------|
| <b>Age Group</b>                             |      |
| 16-25 (Transition Age Youth)                 | 100% |
| <b>Race</b>                                  |      |
| Asian                                        | 1%   |
| Black or African American                    | 46%  |
| Native Hawaiian or Other Pacific Islander    | 1%   |
| White                                        | 33%  |
| Other                                        | 4%   |
| More than one Race                           | 13%  |
| Decline to State (or Unknown)                | 2%   |
| <b>Latino Ethnicity</b>                      |      |
| Central American                             | 16%  |
| Mexican/Mexican-American                     | 74%  |
| South American                               | 10%  |
| <b>Ethnicity: Non-Hispanic or Non-Latino</b> |      |
| African                                      | 34%  |
| Asian Indian/South Asian                     | 1%   |
| Eastern European                             | 6%   |
| European                                     | 14%  |

|                                                |      |
|------------------------------------------------|------|
| Filipino                                       | 2%   |
| More than one Ethnicity                        | 14%  |
| Other                                          | 1%   |
| Declined to Answer (or Unknown)                | 28%  |
| <b>Primary Language Used</b>                   |      |
| English                                        | 91%  |
| Spanish                                        | 8%   |
| Other                                          | 1%   |
| <b>Sexual Orientation</b>                      |      |
| Gay or Lesbian                                 | 14%  |
| Heterosexual or Straight                       | 48%  |
| Bisexual                                       | 8%   |
| Questioning or Unsure                          | 4%   |
| Queer                                          | 1%   |
| Decline to State                               | 25%  |
| <b>Disability</b>                              |      |
| Difficulty Hearing or Having Speech Understood | 1%   |
| Mental (not mental health)                     | 33%  |
| Physical/Mobility Disability                   | 5%   |
| Chronic Health Condition                       | 5%   |
| Other Disability                               | 44%  |
| No Disability                                  | 11%  |
| Decline to State                               | 1%   |
| Difficulty Hearing or Having Speech Understood | 1%   |
| <b>Veteran Status</b>                          |      |
| No                                             | 100% |
| <b>Gender: Assigned sex at Birth</b>           |      |
| Male                                           | 58%  |
| Female                                         | 42%  |
| <b>Gender Identity</b>                         |      |
| Male                                           | 50%  |
| Female                                         | 36%  |
| Transgender                                    | 9%   |

|             |    |
|-------------|----|
| Genderqueer | 1% |
| Other       | 4% |

During the reporting timeframe 246 outreach activities were conducted, with 4,930 duplicated contacts. There were 405 referrals for additional services and supports. The number and type of referrals were as follows: 68 Mental Health; 71 Physical Health; 116 Social Services; 49 Housing; 101 other unspecified services. A total of 23% of project participants received individual counseling; 20% exited the project into stable housing; and 24% obtained employment or entered school during the project. Per participant feedback, 83% reported being satisfied with project services.

In FY20, 96 TAY participated in one or more project services. Services were continued during the pandemic through tele-health and tele-conferencing platforms. A total of 96 TAY participated in support groups over the year. Support Group sessions included: Harm Reduction and Substance Use; Mindfulness; Coping Skills; Creative Expression, among others. There was a total of 24 Youth Social Outings with 68 unduplicated TAY participants, and 82 unduplicated TAY, participated in 24 Youth Celebratory Events. Demographics on youth served were as follows:

| <b>DEMOGRAPHICS N = 96*</b>                                |      |
|------------------------------------------------------------|------|
| <b>Age Group</b>                                           |      |
| 16-25 (Transition Age Youth)                               | 100% |
| <b>Race</b>                                                |      |
| American Indian or Alaska Native                           | 5%   |
| Asian                                                      | 1%   |
| Black or African American                                  | 46%  |
| Native Hawaiian or Other Pacific Islander                  | 4%   |
| White                                                      | 28%  |
| More than one Race                                         | 15%  |
| Decline to Answer (or Unknown)                             | 1%   |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |      |
| Central American                                           | 5%   |
| Mexican/Mexican-American                                   | 15%  |
| South American                                             | 1%   |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |      |
| African                                                    | 35%  |
| Asian Indian/South Asian                                   | 1%   |

|                                      |     |
|--------------------------------------|-----|
| Chinese                              | 1%  |
| Eastern European                     | 5%  |
| European                             | 15% |
| Filipino                             | 3%  |
| More than one Ethnicity              | 17% |
| Declined to Answer (or Unknown)      | 2%  |
| <b>Primary Language Used</b>         |     |
| English                              | 86% |
| Spanish                              | 14% |
| <b>Sexual Orientation</b>            |     |
| Gay or Lesbian                       | 8%  |
| Heterosexual or Straight             | 81% |
| Bisexual                             | 10% |
| <b>Disability</b>                    |     |
| Mental (not mental health)           | 50% |
| Chronic Health Condition             | 11% |
| Other Disability                     | 20% |
| No Disability                        | 16% |
| Decline to Answer (or Unknown)       | 3%  |
| <b>Veteran Status</b>                |     |
| Yes                                  | 1%  |
| No                                   | 99% |
| <b>Gender: Assigned sex at Birth</b> |     |
| Male                                 | 33% |
| Female                               | 26% |
| Decline to Answer (or Unknown)       | 41% |
| <b>Gender Identity</b>               |     |
| Male                                 | 59% |
| Female                               | 36% |
| Transgender                          | 2%  |
| Other                                | 2%  |

\*Percentages may not add up to 100% due to rounding.

During the reporting timeframe 1,615 outreach activities were conducted, with 2,351 duplicated contacts. There were 423 referrals for additional services and supports. The number and type of referrals were as follows: 77 Mental Health; 102 Physical Health; 88 Social Services; 76 Housing; 80 other unspecified services. A total of 46% participants received individual counseling; 29% exited the project into stable housing; and 39% obtained employment or entered school during the project. Per participant feedback, 100% reported being satisfied with project services.

In FY21, 150 TAY participated in one or more project services. Services were continued during the pandemic through tele-health and tele-conferencing platforms. Support Group sessions included: Harm Reduction and Substance Use; Mindfulness; Coping Skills; Creative Expression, among others. There was a total of 9 Youth Social Outings with 37 unduplicated TAY participants, and 68 unduplicated TAY, participated in 18 Youth Celebratory Events. Demographics on youth served were as follows:

| <b>DEMOGRAPHICS N = 150</b>                                |      |
|------------------------------------------------------------|------|
| <b>Age Group</b>                                           |      |
| 16-25 (Transition Age Youth)                               | 100% |
| <b>Race</b>                                                |      |
| American Indian or Alaska Native                           | 3%   |
| Asian                                                      | 3%   |
| Black or African American                                  | 57%  |
| Native Hawaiian or Other Pacific Islander                  | 1%   |
| White                                                      | 15%  |
| More than one Race                                         | 15%  |
| Other                                                      | 3%   |
| Decline to Answer (or Unknown)                             | 3%   |
| <b>Ethnicity: Latino/Latina/Latinx</b>                     |      |
| Central American                                           | 14%  |
| Mexican/Mexican-American                                   | 9%   |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |      |
| African                                                    | 19%  |
| Asian Indian/South Asian                                   | 1%   |
| European                                                   | 4%   |
| Filipino                                                   | 1%   |
| Japanese                                                   | 1%   |



|                                      |      |
|--------------------------------------|------|
| More than one Ethnicity              | 21%  |
| Other                                | 29%  |
| Declined to Answer (or Unknown)      | 1%   |
| <b>Primary Language Used</b>         |      |
| English                              | 89%  |
| Spanish                              | 11%  |
| <b>Sexual Orientation</b>            |      |
| Gay or Lesbian                       | 6%   |
| Heterosexual or Straight             | 47%  |
| Bisexual                             | 12%  |
| Questioning or unsure                | 4%   |
| Other                                | 20%  |
| Declined to Answer (or Unknown)      | 11%  |
| <b>Disability Status</b>             |      |
| Mental (not mental health)           | 15%  |
| Physical/Mobility Disability         | 4%   |
| Chronic Health Condition             | 3%   |
| Other Disability                     | 31%  |
| No Disability                        | 35%  |
| Declined to Answer (or Unknown)      | 12%  |
| <b>Veteran Status</b>                |      |
| No                                   | 100% |
| <b>Gender: Assigned sex at birth</b> |      |
| Male                                 | 61%  |
| Female                               | 39%  |
| <b>Current Gender Identity</b>       |      |
| Male                                 | 60%  |
| Female                               | 37%  |
| Transgender                          | 3%   |

During the reporting timeframe 2,510 outreach activities were conducted. There were 493 referrals for additional services and supports. The number and type of referrals were as follows: 112 Mental Health; 104 Physical Health; 87 Social Services; 76 Housing; 114 other unspecified services. A total of 25% of project participants received individual counseling; 24% exited the project into stable housing; and 53% obtained

employment or entered school during the project. Per participant feedback, 79% reported being satisfied with project services.

### **Living Well Project**

Implemented through Center for Independent Living, this project provides services for Senior Citizens (aged 50 and over) who are coping with trauma and/or mental health issues associated with acquired disabilities. Senior Citizens with acquired disabilities are one of the most difficult groups to reach with disability services. It is similarly difficult to intervene with this group's developing mental health issues related to aging and the traumatic impact of acquiring one or more disabilities (such as loss of mobility, vision, hearing, et al). The core of the project is a wellness workshop series entitled "Living Well with a Disability". Through a combination of education, goal setting, group and peer counseling, the workshop series is designed to promote positive attitudinal shifts in a population who, despite the tremendous need for care, are often typically not responsive to mental health intervention. The workshop series includes a 10 week, one to two-hour class conducted by Peer Facilitators, and an optional 30-minute counseling session. Counseling sessions are designed to monitor curriculum impact and continually assess individual goals and resource needs. This project serves up to 150 Older Adults a year.

**PEI Goals:** The goal of this project is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

#### **PEI Priorities:**

- Culturally competent and linguistically appropriate prevention and intervention;
- Strategies targeting the mental health needs of older adults.

In FY19, 52 Living Well workshops were conducted. Each Living Well Workshop series included the following sessions: Orientation; Goal Setting; Problem Solving; Healthy Reactions; Beating the Blues (Depression and Moods); Healthy Communication; Seeking Information; Physical Activity; Eating Well (Nutrition); Advocacy (Self and Systems Change); and Maintenance. Topics of Grief and Loss, Depression, Retirement, and Senior Invisibility were also incorporated into the project. In all 118 Senior Citizens participated in the Living Well Workshops. Demographics of Workshop participants are outlined below:

| <b>DEMOGRAPHICS N=118</b>           |     |
|-------------------------------------|-----|
| <b>Age Groups</b>                   |     |
| 26-59 (Adult)                       | 4%  |
| Age 60+ (Older Adult)               | 94% |
| Declined to Answer (or Unknown)     | 4%  |
| <b>Race</b>                         |     |
| Asian                               | 6%  |
| Black or African American           | 46% |
| Native Hawaiian or Pacific Islander | 1%  |
| White                               | 35% |
| Other                               | 3%  |

| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |     |
|------------------------------------------------------------|-----|
| Caribbean                                                  | 2%  |
| Central American                                           | 2%  |
| Mexican/Mexican-American/Chicano                           | 7%  |
| Declined to Answer (or Unknown)                            | 89% |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |     |
| African                                                    | 20% |
| Chinese                                                    | 3%  |
| European                                                   | 8%  |
| Filipino                                                   | 3%  |
| Japanese                                                   | 1%  |
| Other                                                      | 3%  |
| Declined to Answer(or Unknown)                             | 62% |
| <b>Primary Language Used</b>                               |     |
| English                                                    | 90% |
| Spanish                                                    | 2%  |
| Other                                                      | 1%  |
| Declined to Answer (or Unknown)                            | 62% |
| <b>Sexual Orientation</b>                                  |     |
| Gay or Lesbian                                             | 3%  |
| Heterosexual or Straight                                   | 75% |
| Other                                                      | 1%  |
| Declined to Answer (or Unknown)                            | 21% |
| <b>Disability</b>                                          |     |
| Difficulty seeing                                          | 5%  |
| Difficulty hearing or Having Speech Understood             | 10% |
| Mental (not mental health)                                 | 5%  |
| Physical/mobility disability                               | 12% |
| Chronic health condition                                   | 15% |
| No Disability                                              | 11% |
| Declined to Answer (or Unknown)                            | 42% |

| <b>Veteran Status</b>                |     |
|--------------------------------------|-----|
| Yes                                  | 2%  |
| No                                   | 95% |
| Declined to Answer (or Unknown)      | 3%  |
| <b>Gender: Assigned Sex at Birth</b> |     |
| Male                                 | 20% |
| Female                               | 77% |
| Declined to Answer (or Unknown)      | 3%  |
| <b>Current Gender Identity</b>       |     |
| Male                                 | 20% |
| Female                               | 76% |
| Transgender                          | 1%  |
| Declined to Answer (or Unknown)      | 4%  |

During the reporting timeframe 16 outreach and informational events were conducted reaching 317 individuals, with 249 individuals receiving further engagement services. There were 640 referrals for additional services and supports. The number and type of referrals were as follows: 121 Mental Health; 137 Physical Health; 109 Social Services; 101 Housing; 172 other unspecified services. A total of 39% of project participants completed a Living Well Workshop Series. The workshop series received very positive feedback per participant self-report. Project participants reported 100% on all of the measures outlined below: feeling satisfied with the workshops; improvement in feeling satisfied in general; increased feeling of social supports; preparedness to make positive changes; and feeling less overwhelmed and helpless.

In FY20, 63 Living Well workshops were conducted. Each Living Well Workshop series included the following sessions: Orientation; Goal Setting; Problem Solving; Healthy Reactions; Beating the Blues (Depression and Moods); Healthy Communication; Seeking Information; Physical Activity; Eating Well (Nutrition); Advocacy (Self and Systems Change); and Maintenance. Topics of Grief and Loss, Depression, Retirement, and Senior Invisibility were also incorporated into the project. In all 59 Senior Citizens participated in the Living Well Workshops. Demographics of Workshop participants are outlined below:

| <b>DEMOGRAPHICS N=59*</b>       |     |
|---------------------------------|-----|
| <b>Age Groups</b>               |     |
| 26-59 (Adult)                   | 2%  |
| Age 60+ (Older Adult)           | 97% |
| Declined to Answer (or Unknown) | 1%  |

| <b>Race</b>                                                |     |
|------------------------------------------------------------|-----|
| American Indian or Alaska Native                           | 2%  |
| Asian                                                      | 5%  |
| Black or African American                                  | 54% |
| White                                                      | 29% |
| Other                                                      | 2%  |
| More than one Race                                         | 5%  |
| Declined to Answer (or Unknown)                            | 3%  |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |     |
| African                                                    | 32% |
| Asian Indian/South Asian                                   | 2%  |
| Chinese                                                    | 2%  |
| European                                                   | 19% |
| Filipino                                                   | 2%  |
| Middle Eastern                                             | 3%  |
| More than one Ethnicity                                    | 2%  |
| Other                                                      | 12% |
| Declined to Answer(or Unknown)                             | 27% |
| <b>Primary Language Used</b>                               |     |
| English                                                    | 92% |
| Other                                                      | 3%  |
| Declined to Answer (or Unknown)                            | 5%  |
| <b>Sexual Orientation</b>                                  |     |
| Gay or Lesbian                                             | 2%  |
| Heterosexual or Straight                                   | 68% |
| Bisexual                                                   | 2%  |
| Declined to Answer (or Unknown)                            | 29% |
| <b>Disability</b>                                          |     |
| Difficulty seeing                                          | 5%  |
| Difficulty hearing or Having Speech Understood             | 8%  |
| Mental (not mental health)                                 | 5%  |
| Physical/mobility disability                               | 14% |

|                                      |     |
|--------------------------------------|-----|
| Chronic health condition             | 22% |
| No Disability                        | 31% |
| Declined to Answer (or Unknown)      | 15% |
| <b>Veteran Status</b>                |     |
| Yes                                  | 2%  |
| No                                   | 95% |
| Declined to Answer (or Unknown)      | 3%  |
| <b>Gender: Assigned Sex at Birth</b> |     |
| Male                                 | 14% |
| Female                               | 83% |
| Declined to Answer (or Unknown)      | 3%  |
| <b>Current Gender Identity</b>       |     |
| Male                                 | 14% |
| Female                               | 71% |
| Declined to Answer (or Unknown)      | 15% |

\*Percentages may not add up to 100% due to rounding.

During the reporting timeframe 5 outreach and informational events were conducted reaching 84 individuals, with 235 individuals receiving further engagement services. Services were moved to virtual format providing tele-workshops and tele-support services to accommodate the pandemic. There were 653 referrals for additional services and supports. The number and type of referrals was as follows: 115 Mental Health; 147 Physical Health; 112 Social Services; 58 Housing; 221 other unspecified services. A total of 39% of project participants completed a Living Well Workshop Series. Feedback per participant self-report was as follows:

- 100% reported they felt satisfied with the workshops;
- 98% indicated an improvement in feeling satisfied in general;
- 98% had increased feelings of social supports;
- 100% felt prepared to make positive changes; and
- 88% reported they felt less overwhelmed and helpless.

In FY21, 49 Living Well Workshop sessions were conducted. Each Living Well Workshop series included the following sessions: Orientation; Goal Setting; Problem Solving; Healthy Reactions; Beating the Blues (Depression and Moods); Healthy Communication; Seeking Information; Physical Activity; Eating Well (Nutrition); Advocacy (Self and Systems Change); and Maintenance. Topics of Grief and Loss, Depression, Retirement, and Senior Invisibility were also incorporated into the project. In all 25 Senior Citizens participated in the Living Well Workshops. Demographics of Workshop participants are outlined below:

| <b>DEMOGRAPHICS N=25</b>                                   |     |
|------------------------------------------------------------|-----|
| <b>Age Groups</b>                                          |     |
| 26-59 (Adult)                                              | 16% |
| Age 60+ (Older Adult)                                      | 84% |
| <b>Race</b>                                                |     |
| Asian                                                      | 4%  |
| Black or African American                                  | 56% |
| White                                                      | 28% |
| Other                                                      | 12% |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |     |
| Caribbean                                                  | 4%  |
| South American                                             | 4%  |
| Other                                                      | 8%  |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |     |
| African                                                    | 36% |
| Eastern European                                           | 8%  |
| European                                                   | 20% |
| Filipino                                                   | 4%  |
| More than one Ethnicity                                    | 4%  |
| Other                                                      | 12% |
| <b>Primary Language Used</b>                               |     |
| English                                                    | 96% |
| Spanish                                                    | 4%  |
| <b>Sexual Orientation</b>                                  |     |
| Gay or Lesbian                                             | 4%  |
| Heterosexual or Straight                                   | 76% |
| Bisexual                                                   | 8%  |
| Other                                                      | 4%  |
| Declined to Answer (or Unknown)                            | 8%  |

| <b>Disability</b>                    |     |
|--------------------------------------|-----|
| Physical/mobility disability         | 24% |
| Chronic health condition             | 24% |
| Other Disability                     | 16% |
| No Disability                        | 28% |
| Declined to Answer (or Unknown)      | 8%  |
| <b>Veteran Status</b>                |     |
| Yes                                  | 4%  |
| No                                   | 96% |
| <b>Gender: Assigned Sex at Birth</b> |     |
| Male                                 | 16% |
| Female                               | 84% |
| <b>Current Gender Identity</b>       |     |
| Male                                 | 16% |
| Female                               | 80% |
| Other                                | 4%  |

During the reporting timeframe 2 outreach and informational events were conducted reaching 12 individuals, with 93 unduplicated individuals receiving further engagement services. Services were moved to virtual format providing tele-workshops and tele-support services to accommodate the pandemic. There were 595 referrals for additional services and supports. The number and type of referrals was as follows: 60 Mental Health; 102 Physical Health; 106 Social Services; 48 Housing; 279 other unspecified services. A total of 88% of project participants completed a Living Well Workshop Series. Feedback per participant self-report was as follows:

- 91% reported they felt satisfied with the workshops;
- 91% indicated an improvement in feeling satisfied in general;
- 91% had increased feelings of social supports;
- 91% felt prepared to make positive changes; and
- 88% reported they felt less overwhelmed and helpless.

#### Project Successes:

To help seniors stay connected 96 tele-support group sessions were held. Living Well Project virtual/tele-workshops were offered every Monday and tele-support groups were held every Tuesday. In December, laptops and technical training were provided to previous participants and also in May to participants who completed The Living Well Workshop Series.

#### Project Challenges:

The workshops were well attended with lively engagement. Some Living Well participants gave painful testimonies of isolation, sadness and fear and others of loneliness. Many missed their families, their



grandchildren, and friends. Some needed to travel out of state to support adult children with life-threatening illnesses and two struggled with potentially life-threatening diagnoses themselves. There was a lot of uncertainty revolving around the COVID-19 pandemic. Many seniors had difficulties connecting with others due to the technological gap. The Workshop Series facilitator also had to learn systems she never had to use before.

### **Harnessing Hope Project**

Implemented through GOALS for Women this project provided community-based, culturally competent, outreach and support services for African Americans residing in the South and West Berkeley neighborhoods who experienced traumatic life events including racism and socioeconomic oppression and had unmet mental health support needs. The primary goals of the project were to normalize stress responses and empower families through psycho-education, consciousness raising, strength-based coping skills, and supportive services through the following: Outreach through community presentations and “Mobile Tenting”; one-on-one supportive engagement services; screening and assessment; psycho-education; family education; support groups such as “Kitchen Table Talk groups (non-stigmatizing, culturally responsive, peer centered groups) and “Just Like Sunday Dinners” ( a space for African Americans from all generations to come together to gain supports from one another); workshops and classes; mental health referrals and community linkages; peer counseling and support. A key component of this project was to train and mentor community leaders to become Peer Facilitators of Kitchen Table Talk and Just Like Sunday Dinner groups. This project served approximately 50-130 individuals a year.

**PEI Goals:** The goal of this project was to address and promote recovery and related functional outcomes for a mental illness early in its emergence including the prevention of suicide.

**PEI Priority:** MHSOAC priorities were not required during the timeframe that this project was implemented.

In FY19, 29 individuals were served through this project. Demographics on individuals served were as follows:

| <b>DEMOGRAPHICS N=29</b>         |     |
|----------------------------------|-----|
| <b>Age Groups</b>                |     |
| 0-15 (Children/Youth)            | 3%  |
| 16-25 (Transition Age Youth)     | 17% |
| 26-59 (Adult)                    | 69% |
| Ages 60+ (Older Adult)           | 11% |
| <b>Race</b>                      |     |
| American Indian or Alaska Native | 3%  |
| Black or African American        | 38% |
| White                            | 7%  |
| Other                            | 14% |
| More than one Race               | 28% |

|                                              |     |
|----------------------------------------------|-----|
| Declined to Answer (or Unknown)              | 10% |
| <b>Ethnicity: Hispanic or Latino</b>         |     |
| Carribbean                                   | 4%  |
| Mexican/Mexican-American/Chicano             | 7%  |
| Other                                        | 3%  |
| Declined to Answer (or Unknown)              | 3%  |
| <b>Ethnicity: Non-Hispanic or Non-Latino</b> |     |
| African                                      | 3%  |
| Asian Indian/South Asian                     | 7%  |
| More than one Ethnicity                      | 10% |
| Other                                        | 10% |
| Declined to Answer (or Unknown)              | 52% |
| <b>Primary Language Used</b>                 |     |
| English                                      | 86% |
| Spanish                                      | 10% |
| Other                                        | 4%  |
| <b>Sexual Orientation</b>                    |     |
| Heterosexual or Straight                     | 62% |
| Queer                                        | 3%  |
| Other                                        | 10% |
| Declined to Answer (or Unknown)              | 25% |
| <b>Disability</b>                            |     |
| Chronic Heart Condition                      | 7%  |
| Other Disability                             | 3%  |
| No Disability                                | 62% |
| Declined to Answer (or Unknown)              | 28% |
| <b>Veteran Status</b>                        |     |
| No                                           | 55% |
| Declined to Answer (or Unknown)              | 45% |
| <b>Gender: Assigned Sex at Birth</b>         |     |
| Male                                         | 28% |
| Female                                       | 62% |

|                                 |     |
|---------------------------------|-----|
| Declined to Answer (or Unknown) | 10% |
| <b>Current Gender Identity</b>  |     |
| Male                            | 28% |
| Female                          | 62% |
| Genderqueer                     | 3%  |
| Declined to Answer (or Unknown) | 7%  |

During the reporting timeframe 8 outreach presentations were conducted reaching 58 individuals, 29 of whom received supportive engagement services. Five facilitators were also trained. Primary services included psycho-education and promotion of mental health through one-on-one and telephone engagement, networking supports, and referrals. One Just Like Sunday Dinner group was held for 15 participants. There were 25 referrals for additional services and supports. The number and type of referrals were as follows: 6 Mental Health; 1 Physical Health; 2 Social Services; 2 Housing; and 14 other unspecified services. Lower numbers this year were due to a variety of staffing, and unforeseen programmatic constraints.

On a Satisfaction Survey that was conducted, project participants reported 100% on all of the following measures: Felt respected; would return if they or their family member needed help; experienced increased awareness of community services and supports; and improved their skills in coping with challenges.

In FY20, 22 individuals were served through this project. Demographics on individuals served were as follows:

| <b>DEMOGRAPHICS N=22*</b>                                  |     |
|------------------------------------------------------------|-----|
| <b>Age Groups</b>                                          |     |
| 0-15 (Children/Youth)                                      | 4%  |
| 16-25 (Transition Age Youth)                               | 18% |
| 26-59 (Adult)                                              | 73% |
| Ages 60+ (Older Adult)                                     | 5%  |
| <b>Race</b>                                                |     |
| Asian                                                      | 14% |
| Black or African American                                  | 82% |
| Other                                                      | 5%  |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |     |
| African                                                    | 77% |
| Asian Indian/South Asian                                   | 9%  |

|                                      |      |
|--------------------------------------|------|
| Vietnamese                           | 5%   |
| More than one Ethnicity              | 5%   |
| Declined to Answer (or Unknown)      | 5%   |
| <b>Primary Language Used</b>         |      |
| English                              | 100% |
| <b>Sexual Orientation</b>            |      |
| Heterosexual or Straight             | 95%  |
| Questioning or Unsure                | 5%   |
| <b>Disability</b>                    |      |
| Chronic Health Condition             | 18%  |
| No Disability                        | 82%  |
| <b>Veteran Status</b>                |      |
| No                                   | 100% |
| <b>Gender: Assigned Sex at Birth</b> |      |
| Female                               | 100% |
| <b>Current Gender Identity</b>       |      |
| Female                               | 100% |

\*Percentages may not add up to 100% due to rounding.

During the reporting timeframe 9 outreach presentations were conducted reaching 63 individuals, 16 of whom received supportive engagement services. Primary services included psycho-education and promotion of mental health through one-on-one and telephone engagement, networking supports, and referrals. Some services were able to continue during the pandemic, through phone and tele-conferencing. During the reporting timeframe the Training of Trainers and Just like Sunday Dinners were not able to be held. There were 20 referrals for additional services and supports. The number and type of referrals were as follows: 8 Mental Health; 4 Social Services; 3 Housing; 5 other unspecified services.

On a Satisfaction Survey that was conducted, program participants reported the following:

- 100% Felt respected;
- 95% indicated they would return if they or their family member needed help;
- 82% experienced increased awareness of community services and supports; and
- 95% improved their skills in coping with challenges.

In FY21, MHSA funded services did not continue with GOALS, as the program was no longer in operation. A Request For Proposal (RFP) process was executed in April 2021 for these services. In FY22, the SoulSpace project was implemented for African Americans in Berkeley.

### **SoulSpace Project**

In FY22, following a competitive Request For Proposal (RFP) process, OnTrack Program Resources began implementing the SoulSpace Project for African Americans in Berkeley. This project assists African Americans in accessing culturally, ethnically, and linguistically responsive and trauma-informed prevention and early intervention services. Project services include: community education; outreach and engagement; assessment; coaching; referrals; navigation supports; support groups; and life skills training.

**PEI Goals:** The goal of this project is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

#### **PEI Priorities:**

- Culturally competent and linguistically appropriate prevention and intervention;
- Youth Engagement and Outreach Strategies that target secondary school and transition age youth.
- Strategies targeting the mental health needs of older adults.

As this project was not in operation in FY21, future MHSA Three Year Plans and Annual Updates will include a reporting on the data and activities.

### **Trauma Support Project for LGBTQIA+ Population**

Implemented through the Pacific Center for Human Growth, this project provides outreach, engagement and support group services for individuals (18 and above) in the LGBTQIA+ community who are suffering from the impact of oppression, trauma and other life stressors. Particular emphasis is on outreaching and providing supportive services to identified underserved populations within the local LGBTQIA+ community. Approximately 12-15 weekly or bi-weekly support groups are held throughout the year targeting various populations and needs within the LGBTQIA+ community. Support groups are led by Peer Facilitator community volunteers who are trained in Group Facilitation/Conflict Resolution and who have opportunities to participate in additional Skill Building workshops in order to share methods used to address group challenges and to learn new facilitator techniques. Approximately 250 individuals a year are served through this project.

**PEI Goals:** The goal of this project is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

#### **PEI Priorities:**

- Culturally competent and linguistically appropriate prevention and intervention;
- Youth Engagement and Outreach Strategies that target secondary school and transition age youth.
- Strategies targeting the mental health needs of older adults.



In FY19, 40 outreach activities reached approximately 1,572 duplicated individuals. Outreach was provided at various locations including Street Fairs, Community Agencies, and area events. Through 15 Peer Support groups, 446 weekly or bi-weekly sessions were conducted which were all led by a trained facilitator. Peer Support Groups were as follows: Female to Male; Women Coming Out of Straight Marriage; Married/Once Married Gay/Bisexual Men's Group; Queer Femmes; Transgender Support Group; Lesbian & Queer Women of Color; Partners of Trans and Gender Non-Conforming Folk; Middle Eastern Femmes; Senior Gay Men's Group; Bi-sexual Women; Primetime Men (40's-50's); LezBold (old lesbians); Wicked Transcendent Folk; R.E.A.L. Queer (TAY), and QPAD – for Queer Men in their 20's and 30's. A total of 168 individuals participated in support groups throughout the year. Demographics on individuals served include the following:

| <b>DEMOGRAPHICS N=168</b>                 |     |
|-------------------------------------------|-----|
| <b>Age Groups</b>                         |     |
| 16-25 (Transition Age Youth)              | 32% |
| 26-59 (Adult)                             | 54% |
| Ages 60+ (Older Adult)                    | 13% |
| Declined to Answer (or Unknown)           | 1%  |
| <b>Race</b>                               |     |
| American Indian or Alaska Native          | 2%  |
| Asian                                     | 8%  |
| Black or African American                 | 4%  |
| Native Hawaiian or Other Pacific Islander | 63% |
| White                                     | 1%  |
| More than one race                        | 16% |
| American Indian or Alaska Native          | 2%  |
| Asian                                     | 8%  |
| Black or African American                 | 4%  |
| Native Hawaiian or Other Pacific Islander | 63% |
| Declined to Answer (or Unknown)           | 6%  |

| <b>Ethnicity: Hispanic or Latino</b>         |     |
|----------------------------------------------|-----|
| Caribbean                                    | 8%  |
| Central American                             | 21% |
| Mexican/Mexican-American/Chicano             | 38% |
| Puerto Rican                                 | 13% |
| South American                               | 8%  |
| Other                                        | 8%  |
| Declined to Answer (or Unknown)              | 4%  |
| Caribbean                                    | 8%  |
| Central American                             | 21% |
| <b>Ethnicity: Non-Hispanic or Non-Latino</b> |     |
| African                                      | 4%  |
| Asian Indian/South Asian                     | 3%  |
| Chinese                                      | 3%  |
| Eastern European                             | 10% |
| European                                     | 26% |
| Filipino                                     | 3%  |
| Japanese                                     | 1%  |
| Korean                                       | 1%  |
| Middle Eastern                               | 4%  |
| Vietnamese                                   | 1%  |
| African                                      | 4%  |
| Asian Indian/South Asian                     | 3%  |
| More than one Ethnicity                      | 12% |
| Other                                        | 4%  |
| Declined to Answer (or Unknown)              | 28% |
| <b>Primary Language Used</b>                 |     |
| English                                      | 96% |
| Spanish                                      | 1%  |
| Mandarin                                     | 1%  |
| Other                                        | 1%  |
| Declined to Answer (or Unknown)              | 1%  |
| <b>Sexual Orientation</b>                    |     |
| Gay or Lesbian                               | 24% |
| Heterosexual or Straight                     | 4%  |
| Bisexual                                     | 20% |
| Questioning or Unsure                        | 5%  |
| Queer                                        | 27% |

|                                                |     |
|------------------------------------------------|-----|
| Other                                          | 15% |
| Declined to Answer (or Unknown)                | 5%  |
| <b>Disability</b>                              |     |
| Difficulty Hearing or Having Speech Understood | 2%  |
| Mental (not Mental Health)                     | 6%  |
| Physical/Mobility Disability                   | 3%  |
| Chronic Health Condition                       | 6%  |
| Other Disability                               | 2%  |
| No Disability                                  | 80% |
| Declined to Answer (or Unknown)                | 1%  |
| <b>Veteran Status</b>                          |     |
| Yes                                            | 5%  |
| No                                             | 91% |
| Declined to Answer (or Unknown)                | 4%  |
| <b>Gender: Assigned Sex at Birth</b>           |     |
| Male                                           | 24% |
| Female                                         | 36% |
| Declined to Answer (or Unknown)                | 40% |
| <b>Current Gender Identity</b>                 |     |
| Male                                           | 18% |
| Female                                         | 32% |
| Transgender                                    | 9%  |
| Genderqueer                                    | 11% |
| Questioning or Unsure                          | 8%  |
| Other                                          | 18% |
| Declined to Answer (or Unknown)                | 4%  |

During the reporting timeframe 16 new Peer Facilitators were trained, 98% of whom went on to facilitate peer group sessions. The offering of Skills Building Workshops was expanded to include trainings on: Nonviolent Communication; Crisis Intervention; and Implicit Bias as it Relates to Race and workshops were provided to 51 Peer Facilitator participants. There were 221 referrals for additional services and supports. The number and type of referrals was as follows: 50 Mental Health; 17 Physical Health; 13 Social Services; 4 Housing; 137 other unspecified services. To assess the project services, a self-administered Peer Support Group Survey was distributed to all peer group members. A total of 123 Peer Support Group members (or 72%) completed the survey. Survey results were as follows:

- 100% indicated they would recommend the organization to a friend or family member;
- 94% felt like staff and facilitators were sensitive to their cultural background;
- 81% reported they deal more effectively with daily problems;
- 84% indicated they have trusted people they can turn to for help;
- 87% felt like they belong in their community.



A vast majority of individuals who completed the survey reported having improved social connections and community-building, and a deep gratitude for a safe environment to freely express and explore their authentic self.

In FY20, 11 outreach activities reached approximately 835 duplicated individuals. Through 19 Peer Support groups, weekly or bi-weekly sessions were conducted which were all led by a trained facilitator. While some of the long time running Peer Support Groups continued, a few were discontinued and the following five new groups were added: Queer Crips United - for people who live at the intersection of LGBTQ!A+ and Disability; Thursday Night Men's Group for gay, bisexual, transgender and cisgender men; Parents and Caregivers of Trans Tweens; Parents and Caregivers of Trans Youth of all ages; and Love Letter- for Black Indigenous and People of Color (BIPOC) Women of Color. A total of 151 individuals participated in support groups throughout the year. Demographics on individuals served include the following:

| <b>DEMOGRAPHICS N=151*</b>                                 |     |
|------------------------------------------------------------|-----|
| <b>Age Groups</b>                                          |     |
| 16-25 (Transition Age Youth)                               | 28% |
| 26-59 (Adult)                                              | 41% |
| Ages 60+ (Older Adult)                                     | 26% |
| Declined to Answer (or Unknown)                            | 4%  |
| <b>Race</b>                                                |     |
| American Indian or Alaska Native                           | 1%  |
| Asian                                                      | 11% |
| Black or African American                                  | 6%  |
| White                                                      | 57% |
| Other                                                      | 3%  |
| More than one Race                                         | 12% |
| Declined to Answer (or Unknown)                            | 11% |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |     |
| Caribbean                                                  | 1%  |
| Central American                                           | 2%  |
| Mexican/Mexican-American/Chicano                           | 5%  |
| Puerto Rican                                               | 1%  |
| South American                                             | 1%  |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |     |
| African                                                    | 3%  |
| Asian Indian/South Asian                                   | 3%  |

|                                                |     |
|------------------------------------------------|-----|
| Chinese                                        | 6%  |
| Eastern European                               | 10% |
| European                                       | 27% |
| Filipino                                       | 1%  |
| Japanese                                       | 1%  |
| Korean                                         | 1%  |
| Middle Eastern                                 | 4%  |
| Vietnamese                                     | 1%  |
| More than one Ethnicity                        | 7%  |
| Other                                          | 2%  |
| Declined to Answer (or Unknown)                | 24% |
| <b>Primary Language Used</b>                   |     |
| English                                        | 98% |
| Spanish                                        | 1%  |
| Mandarin                                       | 1%  |
| <b>Sexual Orientation</b>                      |     |
| Gay or Lesbian                                 | 23% |
| Heterosexual or Straight                       | 7%  |
| Bisexual                                       | 25% |
| Questioning or Unsure                          | 2%  |
| Queer                                          | 25% |
| Other                                          | 17% |
| Declined to Answer (or Unknown)                | 3%  |
| <b>Disability</b>                              |     |
| Difficulty Seeing                              | 2%  |
| Difficulty Hearing or Having Speech Understood | 6%  |
| Mental (not Mental Health)                     | 8%  |
| Physical/Mobility Disability                   | 6%  |
| Chronic Health Condition                       | 9%  |
| Other Disability                               | 1%  |
| No Disability                                  | 64% |
| Declined to Answer (or Unknown)                | 4%  |
| <b>Veteran Status</b>                          |     |

|                                      |     |
|--------------------------------------|-----|
| Yes                                  | 1%  |
| No                                   | 99% |
| <b>Gender: Assigned Sex at Birth</b> |     |
| Male                                 | 26% |
| Female                               | 50% |
| Declined to Answer (or Unknown)      | 24% |
| <b>Current Gender Identity</b>       |     |
| Male                                 | 12% |
| Female                               | 34% |
| Transgender                          | 27% |
| Genderqueer                          | 8%  |
| Questioning or Unsure                | 3%  |
| Other                                | 13% |
| Declined to Answer (or Unknown)      | 4%  |

\*Percentages may not add up to 100% due to rounding.

During the reporting timeframe 25 new Peer Facilitators were trained. The offering of Skills Building Workshops that included trainings on: Nonviolent Communication; Crisis Intervention; and Implicit Bias as it Relates to Race and workshops were provided to 57 Peer Facilitator participants. Services were adjusted to accommodate for the pandemic and support group and other services were able to continue virtually on the Zoom platform. There were 93 referrals for additional services and supports. The number and type of referrals was as follows: 45 Mental Health; 11 Physical Health; 3 Housing; 34 other unspecified services. To assess the project services, a self-administered Peer Support Group Survey was distributed to all peer group members. Survey results were as follows:

- 92% indicated they would recommend the organization to a friend or family member;
- 88% felt like staff and facilitators were sensitive to their cultural background;
- 84% reported they deal more effectively with daily problems;
- 76% indicated they have trusted people they can turn to for help;
- 76% felt like they belong in their community.

Per contractor report, they received complaints from Queer and Trans, Black, Indigenous and People of Color (QTBIPOC) group members regarding their difficulties bringing their full selves (all of their identity markers, including race, ethnicity) to groups, citing examples of micro-aggressions. To mitigate this lack of safety, listening sessions were held. Plans were put in place to train new QTBIPOC facilitators, develop new required group agreements and trainings, and implement a QTBIPOC Support Group.

In FY21, 12 outreach activities reached approximately 155 individuals. A total of 480 support groups were conducted. Through 20 Peer Support groups, weekly or bi-weekly sessions were conducted which were all led by a trained facilitator on Zoom. All of the long time running peer groups were offered and one new group was added. A total of 69 individuals participated in support groups throughout the year.

Demographics on individuals served included the following:

| <b>DEMOGRAPHICS N=151*</b>                                 |     |
|------------------------------------------------------------|-----|
| <b>Age Groups</b>                                          |     |
| 16-25 (Transition Age Youth)                               | 26% |
| 26-59 (Adult)                                              | 46% |
| Ages 60+ (Older Adult)                                     | 20% |
| Declined to Answer (or Unknown)                            | 8%  |
| <b>Race</b>                                                |     |
| American Indian or Alaska Native                           | 4%  |
| Asian                                                      | 13% |
| Black or African American                                  | 6%  |
| Native Hawaiian or Pacific Islander                        | 1%  |
| White                                                      | 41% |
| More than one Race                                         | 14% |
| Declined to Answer (or Unknown)                            | 21% |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |     |
| Caribbean                                                  | 1%  |
| Central American                                           | 1%  |
| Mexican/Mexican-American/Chicano                           | 1%  |
| South American                                             | 1%  |
| Declined to Answer (or Unknown)                            | 4%  |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |     |
| African                                                    | 4%  |
| Asian Indian/South Asian                                   | 3%  |
| Chinese                                                    | 7%  |
| Eastern European                                           | 6%  |
| European                                                   | 43% |
| Filipino                                                   | 1%  |
| Korean                                                     | 1%  |
| Vietnamese                                                 | 1%  |
| More than one Ethnicity                                    | 16% |
| Other                                                      | 1%  |
| Declined to Answer (or Unknown)                            | 9%  |

| <b>Primary Language Used</b>                   |      |
|------------------------------------------------|------|
| English                                        | 100% |
| <b>Sexual Orientation</b>                      |      |
| Gay or Lesbian                                 | 25%  |
| Heterosexual or Straight                       | 6%   |
| Bisexual                                       | 12%  |
| Questioning or Unsure                          | 3%   |
| Queer                                          | 22%  |
| Other                                          | 29%  |
| Declined to Answer (or Unknown)                | 3%   |
| <b>Disability</b>                              |      |
| Difficulty Seeing                              | 1%   |
| Difficulty Hearing or Having Speech Understood | 3%   |
| Mental (not Mental Health)                     | 4%   |
| Physical/Mobility Disability                   | 6%   |
| Chronic Health Condition                       | 14%  |
| No Disability                                  | 36%  |
| Declined to Answer (or Unknown)                | 36%  |
| <b>Veteran Status</b>                          |      |
| Yes                                            | 1%   |
| No                                             | 99%  |
| <b>Gender: Assigned Sex at Birth</b>           |      |
| Male                                           | 30%  |
| Female                                         | 36%  |
| Declined to Answer (or Unknown)                | 34%  |
| <b>Current Gender Identity</b>                 |      |
| Male                                           | 6%   |
| Female                                         | 23%  |
| Transgender                                    | 33%  |
| Genderqueer                                    | 9%   |
| Questioning or Unsure                          | 4%   |
| Other                                          | 23%  |
| Declined to Answer (or Unknown)                | 2%   |

During the reporting timeframe 38 Peer Facilitators were trained. The offering of Skills Building Workshops that included trainings on Intersectionality; Disability, Justice and Accessibility; and Micro-aggressions were provided to 38 Peer Facilitator participants. Services were adjusted to accommodate for the pandemic and support group and other services were able to continue virtually on the Zoom platform. There were 91 referrals for additional services and supports. The number and type of referrals was as follows: 51 Mental Health; 7 Physical Health; 7 Social Services; 26 other unspecified services. To assess the project services, a self-administered Peer Support Group Survey was distributed to all peer group members. Survey results were as follows:

- 93% indicated they would recommend the organization to a friend or family member;
- 79% felt like staff and facilitators were sensitive to their cultural background;
- 93% reported they deal more effectively with daily problems;
- 71% indicated they have trusted people they can turn to for help;
- 86% felt like they belong in their community.

#### Project Successes:

- Of the 20 peer support groups that were running prior to Shelter-In-Place, 19 groups successfully transitioned to Zoom and flourished on the virtual platform and in addition, 1 new group was launched.
- Staff increased consultation meeting frequency to support the facilitators for a portion of the fiscal year.
- Peer groups gained returning attendees who had moved out of town and who, for a variety of reasons, ie, disability, transportation barriers and child-care and other caregiving needs, were able to attend due to online access.
- Three 6-hour Facilitator Orientation and Trainings were provided to community members welcoming them as trained peer group facilitators.
- Three Diversity, Equity and Inclusion trainings were offered: Intersectionality; Disability, Justice and Accessibility; and Micro-aggressions.
- A Social Work student provided case management and wellness checks to older adults.
- A handful of peer groups requested to hold their meetings throughout the winter break when the agency is typically closed for all services.
- Peer group facilitators were invited to join the white accountability group or the Black, Indigenous and People of Color (BIPOC) affinity group (spaces to discuss various challenges, explore and examine topics relating to privilege and oppression, dynamics of power, etc.) to explore how they show up in relationships for added accountability and support.
- Virtual/online outreach started to pick up by the end of the fiscal year. To make up for the reduction in outreach opportunities, email lists were utilized with community partners and networks and social media platforms, such as Meet-up, Instagram, and Facebook to inform and engage the community.
- A new pilot clinical consultation ‘on-call’ system was offered for facilitators to access a clinician to be invited to their virtual group space as needed should a group member bring mental health concerns and/or behaviors outside of the peer group scope of service. This was utilized twice during the reporting timeframe.

#### Project Challenges:

- Continual adjustment to being in the virtual space. There was a learning curve for peer group facilitators in navigating the virtual space, for which program staff and fellow peer group facilitators provided support and guidance. Zoom safety tips and guidelines were created to assist the facilitators.

- Some community members, including a few peer group facilitators, were no longer able to attend their peer group when it moved to a virtual space due to a lack of privacy in their home, anxiety when in virtual spaces, or the lack of the necessary equipment and/or sufficient internet connection.
- Since paper forms were adapted to be received digitally, many group members had serious challenges completing and submitting the demographic forms.
- Due to COVID-19, the typical in-person outreach opportunities drastically declined.
- Peer group facilitators expressed concern for their group members' stress level in regards to the anxiety-producing November Presidential election, and the aftermath of the January 6th violent events in Washington DC.

## **PREVENTION & EARLY INTERVENTION COMBINED PROGRAMS**

Prevention Program – Includes a set of related activities to reduce risk factors for developing a potentially serious mental illness and to build protective factors.

Early Intervention Program – Provides treatment and other services and interventions, including relapse prevention, to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the applicable negative outcomes that may result from untreated mental illness.

The City of Berkeley Prevention & Early Intervention combined programs are as follows:

### **Mental Health Peer Education Program**

The Mental Health Peer Education Program was added through the MHSA FY19 Annual Update. This program implements a mental health curriculum for 9th graders, and an internship program for a cohort of high school students, in Berkeley Unified School District (BUSD), in an effort to increase student awareness of common mental health difficulties, resources, and healthy coping and intervention skills. Through this program students are trained by a licensed BUSD clinician to conduct class presentations covering common mental health disorders, on and off campus resources, as well as basic coping and intervention skills.

**PEI Goals:** The goal of this program is to bring about mental health, including the reduction of school failure or dropout.

#### **PEI Priorities:**

- Youth Engagement and Outreach Strategies that target secondary school and transition age youth, with a priority on partnership with college mental health programs.
- Early identification programming of mental health symptoms and disorders, including but not limited to, anxiety, depression, and psychosis.

In FY19, a Berkeley High School (BHS) Counselor, led and facilitated weekly MEET trainings throughout the school year for thirteen high school students for the purpose of establishing and implementing a peer-led mental health education curriculum. Weekly trainings prepared MEET students to provide classroom presentations. Seven pairs of MEET students provided a total of twenty-eight psycho-educational presentations in 9<sup>th</sup> grade classes. The presentations aimed to reduce mental health stigma, teach coping skills, create awareness about depression and anxiety, and demonstrate to students how to access mental health resources on campus and in the community. A total of 882 students were served. Four encore follow-

up presentations were provided to 108 students in the 10<sup>th</sup> grade. Additional MEET student accomplishments were as follows:

- Provided stress management tips through interactive presentations in ten classrooms, before the 1<sup>st</sup> semester exams to assist 271 students in increasing stress reduction strategies;
- Assisted in designing surveys to measure students' knowledge before and after the classroom presentations;
- Conducted lunch-time meetings to assist 11 students through peer-to-peer services and supports;
- Distributed 1000 bookmarks with Crisis Services on them to 9<sup>th</sup> graders and other high school students;
- Assisted in designing mental health survey questions that were used in the school-wide Berkeley High School Student (BHS) Survey;
- Created videos to promote mental health awareness: "MEET Members Speak Out", "Mental Health and Homeless Youth", and "Welcome to the Health Center";
- Assisted in designing a MEET Website with a resources page;
- Created a MEET Instagram account, promoting mental health awareness;
- Participated in the school-run podcast, "The BHS Jacket";
- Attended the BMH MHSA Advisory Committee meeting to voice the need and advocate for increased funding for mental health resources at Berkeley public schools; and
- Hosted a panel discussion to help incoming seniors manage stress.

MEET conducted two surveys to measure learning outcomes of the 9<sup>th</sup> grade classroom presentations. A pre and post test was conducted. A majority of the 9<sup>th</sup> graders surveyed improved their scores from pre to post-test. Areas measured were as follows:

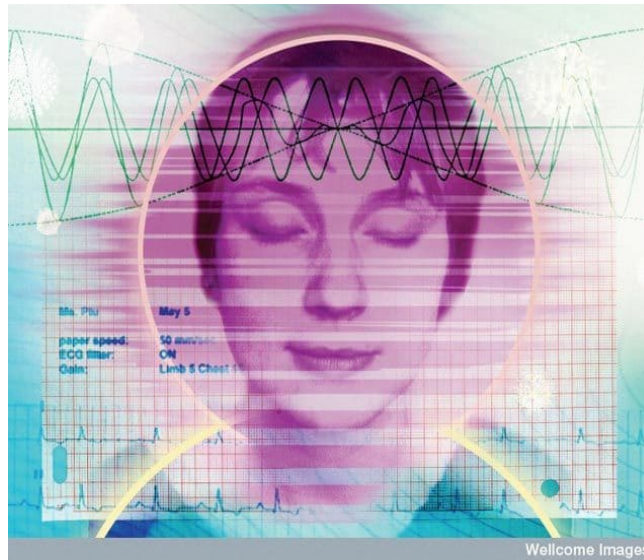
1. Knowledge of mental health resources – where to find them
2. Identifying symptoms of anxiety and depression
3. Mental health stigma – willingness to talk about mental health
4. Learning mental health coping strategies
5. How to respond to a mental health crisis, especially suicidal ideation

Program outcomes showed that numerous 9<sup>th</sup> grade student participants as well as 100% of 9<sup>th</sup> grade teachers, verbally reported being satisfied with MEET's classroom presentations. The BHS Health Center also reported a correlative increase in student self-referrals after MEET's presentations. Students often arrived at the Health Center holding a Crisis Resource Bookmark, of which MEET distributed.

Demographics on the 13 students who were in the MEET program were as follows: 31% Male; 69% Female; 15% African American; 15% Asian; 46% Caucasian; 8% Latinx; 16% mixed race. A total of 1,285 students participated in prevention services offered by MEET. Demographics on student participants were as follows: 16% African American; 19% Asian; 29% Caucasian; 18% Latinx; and 18% were of mixed race or did not specify race or ethnicity. Additional demographics on PEI funded programs at BUSD were provided in aggregate format for the following programs: MEET, Dynamic Mindfulness (DMind), African America Success Project and Supportive Schools. These aggregated demographics for FY19 are provided following the DMind program. In FY20 and FY21 this program was not in operation.



### Dynamic Mindfulness Program (DMind)



The Dynamic Mindfulness (DMind) program was added through the MHSA FY19 Annual Update. BUSD partners with the Niroga Institute to provide DMind for students and staff at Berkeley High, Berkeley Technology Academy, Berkeley Independent Study, MLK Jr., Willard, and Longfellow. DMind is an evidence-based trauma-informed program in each of the BUSD middle and high schools. Validated by independent researchers as a transformative program for teaching children and youth, skills for optimal stress resilience and healing from trauma, the DMind program integrates mindful action, breathing, and centering into an intervention that can be implemented in the classroom in 5-15 minute sessions, 3 to 5 times a week. This program has proven to be successful with vulnerable students who are exhibiting signs of trauma/PTSD from Adverse Childhood Experiences (ACEs), and/or disengagement from school, chronic absences, and significant behavioral challenges, including emotion regulation, impulse control, and anger management. DMind also enables teacher well-being, which has been shown to enhance student learning. The program components include in-class and after-school DMind sessions for students, student peer leadership development, training and coaching of school staff, and program evaluation.

**PEI Goals:** The goal of this program is to bring about mental health, including the reduction of school failure or dropout and the removal of children from their homes.

**PEI Priorities:**

- Youth engagement and outreach strategies that target secondary school and transition age youth, with a priority on partnership with college mental health programs.
- Early identification programming of mental health symptoms and disorders, including but not limited to, anxiety, depression, and psychosis.

In FY19, planning, design and customization of DMind for each school site was conducted. DMind training for staff was provided, as well as post-training follow-up supports. Niroga Instructors provided in-classroom DMind instruction. DMind curriculum supports, including the DMind video library was also made available.

According to the DMind program report, specific program outcomes were as follows:

- School Administrators and staff, as well as students, enthusiastically embraced the DMind program;
- Special Education students seemed to especially take to DMind. In addition to other classrooms, 13 Special Education classes were provided with the DMind program;
- The DMind program for chronic absentees led to a 1.8% increase in attendance.

A total of 520 students and 117 staff were served through this program in FY19, as follows:

| School                           | Number of Students Served | Number of Staff Served |
|----------------------------------|---------------------------|------------------------|
| Berkeley High School             | 125                       | 75                     |
| Berkeley Technology Academy      | 28                        | 25                     |
| Martin Luther King Middle School | 215                       | 6                      |
| Williard Middle School           | 152                       | 11                     |
| TOTAL                            | 520                       | 117                    |

Data provided by BUSD for FY19, which combined demographics for the Supportive Schools Project, the MEET Program, and DMind, is outlined below:

| <b>DEMOGRAPHICS N= 3,065</b>         |     |
|--------------------------------------|-----|
| <b>Age Group</b>                     |     |
| 0-15 (Children/Youth)                | 81% |
| 16-25 (Transition Age Youth)         | 13% |
| 26-59 (Adult)                        | 6%  |
| Ages 60+ (Older Adult)               | <1% |
| <b>Race</b>                          |     |
| American Indian or Alaska Native     | 1%  |
| Asian                                | 11% |
| Black or African American            | 19% |
| Native Hawaiian/Pacific Islander     | <1% |
| White                                | 41% |
| Other                                | 1%  |
| More than one race                   | 4%  |
| Declined to Answer (or Unknown)      | 9%  |
| <b>Ethnicity: Hispanic or Latino</b> |     |
| Mexican/Mexican-American/Chicano     | 14% |

| <b>Primary Language Used</b>                                                                                                                |      |
|---------------------------------------------------------------------------------------------------------------------------------------------|------|
| English                                                                                                                                     | 86%  |
| Spanish                                                                                                                                     | 7%   |
| Mandarin                                                                                                                                    | 1%   |
| Declined to Answer (or Unknown)                                                                                                             | 6%   |
| <b>Sexual Orientation</b>                                                                                                                   |      |
| Gay or Lesbian                                                                                                                              | 7%   |
| Heterosexual or Straight                                                                                                                    | 49%  |
| Bisexual                                                                                                                                    | 2%   |
| Questioning or unsure of sexual orientation                                                                                                 | <1%  |
| Queer                                                                                                                                       | <1%  |
| Declined to Answer (or Unknown)                                                                                                             | 41%  |
| <b>Disability</b>                                                                                                                           |      |
| Mental domain not including a mental illness<br>(including but not limited to a learning disability,<br>developmental disability, dementia) | 9%   |
| Physical/mobility domain                                                                                                                    | <1%  |
| <b>Veteran Status</b>                                                                                                                       |      |
| Declined to Answer (or Unknown)                                                                                                             | 100% |
| <b>Gender: Assigned Sex at Birth</b>                                                                                                        |      |
| Male                                                                                                                                        | 58%  |
| Female                                                                                                                                      | 42%  |
| <b>Current Gender Identity</b>                                                                                                              |      |
| Male                                                                                                                                        | 54%  |
| Female                                                                                                                                      | 39%  |
| Transgender                                                                                                                                 | <1%  |
| Questioning or unsure of gender identity                                                                                                    | <1%  |
| Another gender identity (Non-Binary)                                                                                                        | <1%  |
| Declined to Answer (or Unknown)                                                                                                             | 6%   |

Due to the pandemic, in FY20, all supports were shifted to online in the second half of the school year. 380 students participated in DMind during the reporting timeframe. Demographics on individuals served were not provided by BUSD. In FY21, all supports remained online. Data on individuals served were not provided by BUSD. Per anecdotal evidence from site leadership, the program presents positive use.

### African American Success Project



The African American Success Project (AASP) was first implemented in FY19 in four Berkeley Unified School District Schools (King, Longfellow, Willard and Berkeley High School). Closely aligned with the work of Berkeley's 2020 Vision, the AASP works with African American youth and their families to actively engage students in the classroom and school life while creating a pathway for their long-term success. The project implements a three-pronged approach that includes case management and mentorship (which are individualized and tailored to meet each student's needs), community building, and family engagement. Through this approach a case manager engages and works with each student on school success planning. This work includes establishing student check-ins, family connections, teacher and staff collaborations, advocacy, and community building sessions. The project supports students who have disproportionately faced barriers in Berkeley public schools to promote an individual's learning, mental, and socio-emotional well-being. During the first year the project team worked with 84 students and their families while assessing the effectiveness of the project and identifying ways to strengthen the service model. One key finding was that the project could only have limited impact when staff were spread across four school sites.

Following FY19, the project was only going to be implemented at Longfellow. A second key learning was that services could be strengthened if they were integrated into the school day through a class that African American students could elect to take that would provide a safe space to focus on ongoing social and emotional development, skill-building, habits and mindsets that enable self-regulation, interpersonal skills, and perseverance and resilience. The class would be facilitated by a Counselor/Instructor who would follow-up with students in one-on-one counseling sessions on issues of concern that are raised in class and

would provide referrals to mental health services and supports as needed. To support the implementation of this additional component, through the FY20 Annual Update the Division allocated PEI funds to BUSD to support this project.

**PEI Goals:** The goal of this program is to bring about mental health, including the reduction of school failure and the removal of children from their homes.

**PEI Priorities:**

- Culturally competent and linguistically appropriate prevention and intervention.
- Early identification programming of mental health symptoms and disorders, including but not limited to, anxiety, depression, and psychosis.

During the FY20 school year students participated/were enrolled in Umoja- a daily elective class offered through the African American Success Project (AASP), at Longfellow Middle School. Umoja provides African American students a safe affinity space to explore their cultural heritage and identity, while building positive peer relationships and establishing relational trust with adults. Umoja provides an ongoing focus on social and emotional development, including building skills, habits and mindsets that enable self-regulation, interpersonal skills, perseverance and resilience.

In addition to the opportunities identified above, Umoja provides a unique chance to expose learners to content traditionally overlooked by educational institutions. Umoja course lessons are touted in African and African American cultural percepts, and are composed to guide African American learners through:

- An exploration of their identities;
- An interrogation (questioning or query) of their ancestral history;
- Development of a positive sense of purpose and cultural pride;
- Envisioning their futures and outlining a path for fulfillment;
- Developing an awareness of their communal role.

Direct services for parents and guardians:

Umoja seeks to increase entry points for caregivers to be informed and involved in their child's learning. Highlights in this area include:

- Community meetings/engagements (monthly typically).
- Coordinating and hosting Parent teacher conferences.
- Individual parent meetings/contacts, including advising, problem-solving, and updates regarding student progress.
- Coordinating and hosting community events: Kwanzaa Celebration, Black History Month events and activities.

Direct services for students (academic, social, behavioral):

- School-day cultural enrichment designed to uplift and empower African American learners using African centered pedagogical approaches;
- Equity centered support sessions (weekly);
- Structured class check-in sessions.

In FY20, 23 students were provided services through this program. Outlined below are demographics on individuals served:

| <b>DEMOGRAPHICS N=23</b>                                   |      |
|------------------------------------------------------------|------|
| <b>Age Groups</b>                                          |      |
| Children/Youth (0-15)                                      | 100% |
| <b>Race</b>                                                |      |
| Black or African American                                  | 74%  |
| More than one Race                                         | 26%  |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |      |
| More than one Ethnicity                                    | 17%  |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |      |
| Black/African American                                     | 74%  |
| More than one ethnicity                                    | 4%   |
| Other                                                      | 4%   |
| Declined to Answer (or Unknown)                            | 1%   |
| <b>Primary Language</b>                                    |      |
| English                                                    | 99%  |
| Other                                                      | 1%   |
| <b>Sexual Orientation</b>                                  |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Disability</b>                                          |      |
| Other                                                      | 43%  |
| <b>Veteran Status</b>                                      |      |
| No                                                         | 100% |
| <b>Gender: Assigned Sex at Birth</b>                       |      |
| Male                                                       | 70%  |
| Female                                                     | 30%  |
| <b>Current Gender Identity</b>                             |      |
| Male                                                       | 70%  |
| Female                                                     | 30%  |

In FY21, 63 students participated in this project. Outlined below are demographics on individuals served through this project:

| <b>DEMOGRAPHICS N=63</b>                           |      |
|----------------------------------------------------|------|
| <b>Age Group</b>                                   |      |
| Children/Youth (0-15)                              | 100% |
| <b>Race</b>                                        |      |
| Black or African American                          | 68%  |
| More than one Race                                 | 11%  |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b> |      |
| Hispanic/Latino/Latina/Latinx                      | 21%  |
| <b>Primary Language</b>                            |      |
| English                                            | 98%  |
| Other                                              | 2%   |
| <b>Sexual Orientation</b>                          |      |
| Declined to Answer (or Unknown)                    | 100% |
| <b>Disability</b>                                  |      |
| Other                                              | 8%   |
| <b>Veteran Status</b>                              |      |
| No                                                 | 100% |
| <b>Gender: Assigned Sex at Birth</b>               |      |
| Male                                               | 56%  |
| Female                                             | 44%  |
| <b>Current Gender Identity</b>                     |      |
| Male                                               | 56%  |
| Female                                             | 44%  |

*ACCESS AND LINKAGE TO TREATMENT PROGRAM  
and COMBINED PROGRAMS*





## ACCESS & LINKAGE TO TREATMENT PROGRAMS

Access and Linkage to Treatment Program - Connects children who are seriously emotionally disturbed, and adults and seniors with severe mental illness as early in the onset of these conditions as practicable, to medically necessary care and treatment, including but not limited to care provided by county mental health programs.

The City of Berkeley Access & Linkage to Treatment program that was in operation during this reporting timeframe was as follows:

### Homeless Outreach and Treatment Team (HOTT)

The Homeless Outreach and Treatment Team (HOTT) program was established out of an effort to address the homeless crisis, and as a result of input received through various MHSA community program planning processes. Utilizing a portion of PEI and CSS funds, blended with realignment and general funds HOTT was a pilot program to support homeless mentally ill individuals in Berkeley and to connect them into the web of services that exist within the system of care. Key program components included the following: Persistent and Consistent Outreach; Supportive Case Management; Linkage to Care; and Treatment.

**PEI Goals:** The goal of this program was to connect individuals who have severe mental illnesses as early in the onset of these conditions as practicable, to medically necessary care and treatment, including but not limited to, care provided by county mental health programs.

**PEI Priorities:**

- Early identification programming of mental health symptoms and disorders, including but not limited to, anxiety, depression, and psychosis.

A local consultant, Resource Development Associates (RDA), was hired to conduct a dedicated independent evaluation to assess the program accomplishments and to ascertain whether HOTT should continue past the initial funding period. The initial report in FY18 showed many positive findings including the following:

- HOTT was serving as an important resource for the local community and homeless service continuum;
- The program had been very effective in persistent and consistent outreach, especially for chronically homeless individuals with a history of refusing services;
- HOTT met individual where they were, in parks, encampments, motels;
- The program had successfully connected homeless individuals to critical resources and service linkages.

In FY19, 147 individuals were served through this program. Demographics on individuals that received services through this pilot project were as follows:

| DEMOGRAPHICS N= 147             |     |
|---------------------------------|-----|
| Age Groups                      |     |
| 16-25 (Transition Age Youth)    | 4%  |
| 26-59 (Adult)                   | 41% |
| Ages 60+ (Older Adult)          | 14% |
| Declined to Answer (or Unknown) | 41% |

| <b>Race</b>                                  |      |
|----------------------------------------------|------|
| Asian                                        | 3%   |
| Black or African American                    | 42%  |
| White                                        | 40%  |
| Other                                        | 15%  |
| <b>Ethnicity: Hispanic or Latino</b>         |      |
| Mexican/Mexican-American/Chicano             | 7%   |
| <b>Ethnicity: Non-Hispanic or Non-Latino</b> |      |
| Non-Hispanic or Non-Latino                   | 8%   |
| <b>Primary Language Used</b>                 |      |
| Declined to Answer (or Unknown)              | 100% |
| <b>Sexual Orientation</b>                    |      |
| Declined to Answer (or Unknown)              | 100% |
| <b>Disability</b>                            |      |
| Declined to Answer (or Unknown)              | 100% |
| <b>Veteran Status</b>                        |      |
| Declined to Answer (or Unknown)              | 100% |
| <b>Gender: Assigned Sex at Birth</b>         |      |
| Declined to Answer (or Unknown)              | 100% |
| <b>Current Gender Identity</b>               |      |
| Male                                         | 57%  |
| Female                                       | 42%  |
| Declined to Answer (or Unknown)              | 1%   |

Due to the nature of the many brief interactions attempting to engage with individuals, as well as trying to not put up barriers to bringing them into services, some data wasn't able to be collected in order to best support effective service provision.

The RDA [Homeless Outreach and Treatment Team Final Evaluation Report](#) (posted on the City of Berkeley MHSA Plans and Updates webpage) covered the timeframe from January 2018 – February 2020, showed the following outcomes:

- A total of 4,435 total encounters were conducted with individuals who were either enrolled or non-enrolled in the program, averaging 171 encounters per month;
- The number of contacts provided in-person in the field was 73%, while 26% were provided by phone;
- A total of 81% of HOTT encounters were with individuals who were enrolled in the program;
- Enrolled individuals had an average of 20 total encounters with HOTT staff, with an average of 4 encounters per month;

- During encounters, HOTT staff provided at least 1,845 material supports and services (including food, transportation or BART or bus passes, Hygiene Kits, Emergency Housing Vouchers, Blankets, etc.); to respond to an individuals immediate and longer-term needs;
- During 488 encounters, HOTT provided emergency or temporary housing vouchers (e.g., for a motel) to individuals who required immediate shelter;
- Approximately three-quarters of enrolled individuals (75%) and over a third of non-enrolled individuals (38%) were referred or connected to housing support services;
- In addition to connecting individuals to housing services, HOTT also connected individuals to other supportive services to help reduce or address initial barriers to obtaining housing;
- Approximately 27% of HOTT participants and 6% of non-enrolled individuals successfully enrolled in social service benefits. In comparison, only 9% of HOTT participants and 1% of non-enrolled individuals ultimately enrolled in mental health services;
- Over 58% of all HOTT participants, and 9% of non-enrolled individuals obtained emergency or temporary housing (e.g., motel or shelter) at some point during their engagement with HOTT. In comparison, 12% of HOTT participants and 1% of non-enrolled individuals obtained permanent housing;
- To assess changes in self-sufficiency, HOTT staff completed a Client Self-Sufficiency Matrix (SSM) on enrolled participants at program intake, on a quarterly basis after program enrollment, and/or at program discharge. Overall, HOTT participants SSM scores remained relatively unchanged from baseline to follow-up.

During interviews that were conducted with several HOTT existing and previous participants regarding their experience with the program, interviewees reported the following:

- “They help people, not just me. I introduce people on the street to them, and I say you can talk to the HOTT team and they will help you.”
- “I really didn’t expect anything, but when I called the City, they said someone [from HOTT] would meet me right then. They got me a hotel room that day. I wasn’t expecting the City to help.”
- “They were so helpful. I felt like if I didn’t get the hotel room, they would have let me stay at their personal house.”

In addition to these interviews, RDA conducted focus groups with HOTT participants during a previous year of the evaluation, and developed brief impact stories based on participant experiences. In one of the impact stories, the individual self-report was as follows:

“I would still be on the streets and probably dead if it wasn’t for HOTT. I could have died and no one would have cared. Doctors told me I had months to live and I gave up on living. I gave up on everything for help. No one cared but the HOTT team did care. I’m the type of person that never asks for help, and here they were offering to help and they never gave up on me. I lived on the same spot for six years and never got medical care. They checked up on me and came back multiple times, even though I was turning them away in the beginning. I figured HOTT team was just like the other programs where they would just disappear after the first meeting. But I know the HOTT team is there. And everything the HOTT team said they would do came true. Now I am in hospice care getting the care that I need. I don’t know how much longer I have to live, but it’s a hell of a lot longer than a couple months which is what the doctors said. This gives me the opportunity to live my life with dignity. The HOTT team provided me with the positive energy just like hospice care that is so needed for people like me.”

In FY20, 616 individuals were served through this project. Demographics on individuals that received services through this pilot project were as follows:

| <b>DEMOGRAPHICS N= 616</b>                                 |      |
|------------------------------------------------------------|------|
| <b>Age Groups</b>                                          |      |
| 16-25 (Transition Age Youth)                               | 2%   |
| 26-59 (Adult)                                              | 36%  |
| Ages 60+ (Older Adult)                                     | 16%  |
| Declined to Answer (or Unknown)                            | 46%  |
| <b>Race</b>                                                |      |
| Asian                                                      | 4%   |
| Black or African American                                  | 36%  |
| White                                                      | 45%  |
| More than one Race                                         | 1%   |
| Other                                                      | 7%   |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |      |
| Hispanic                                                   | 7%   |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Primary Language Used</b>                               |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Sexual Orientation</b>                                  |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Disability</b>                                          |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Veteran Status</b>                                      |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Gender: Assigned Sex at Birth</b>                       |      |
| Male                                                       | 61%  |
| Female                                                     | 37%  |
| Declined to Answer (or Unknown)                            | 2%   |
| <b>Current Gender Identity</b>                             |      |
| Male                                                       | 61%  |

|                                 |     |
|---------------------------------|-----|
| Female                          | 37% |
| Declined to Answer (or Unknown) | 2%  |

Flex funds were used to provide various supports for HOTT program participants. In FY20, 57 participants were provided hotel stays, and 142 flex funds were used for 46 individuals on the following: 113 food and groceries; 15 transportation; 9 clothing/hygiene; 4 household items; 1 housing.

HOTT, planned as a short term pilot project, was initially slated to wrap up in April of 2020. During the last four months of FY20, the duties of the HOTT team were redirected due to the pandemic and focused on encampment support and response. As discussed in the HOTT final report, the HOTT team provided important community functions: providing flexible and broadly available service to community requests, relatively quick response to unhoused individuals experiencing mental health issues, and broad services to a large number of individuals. The HOTT team linked a large number of individuals to resources, housing, service providers, and short term housing during their pilot.

A result of the COVID-19 pandemic was a shift from many in-person services to telephonic or tele-health. The incidence of the pandemic changed the face of services and resources throughout the landscape, including systems of care and access to them. The data used for the final HOTT report, for example, was truncated due to the unavailability of consistent information and the redirection of services as dictated by the City of Berkeley and its Emergency Operations Center. Similarly, data gathered after February 2020 is likely less reflective of the services as planned, but more in the emergency response and shift of focus to emergency support of vulnerable communities and individuals. Maintaining regular staffing was also difficult in this pilot. Since the positions were temporary project based appointments, any staff who were hired for this team did not have job security with the City of Berkeley unless they transferred with a pre-existing permanent career status. This resulted in the exit of two staff during this time period who found other employment.

HOTT continued to be in operation until March 2021, when the Homeless Full Service Partnership was fully operational. As the program continued past the original projected end-date and final evaluation timeline, data, successes and challenges in FY21 are outlined below. In FY21, 91 individuals were served. Demographics on individuals served were as follows:

| <b>DEMOGRAPHICS N= 91</b>       |     |
|---------------------------------|-----|
| <b>Age Groups</b>               |     |
| 25-44 years                     | 21% |
| 45-64                           | 25% |
| 65 years and older              | 8%  |
| Declined to Answer (or Unknown) | 46% |
| <b>Race</b>                     |     |
| Black or African American       | 37% |
| Latino/a/x                      | 5%  |
| White                           | 43% |

|                                                            |      |
|------------------------------------------------------------|------|
| Other                                                      | 15%  |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |      |
| Declined to State (or Unknown)                             | 100% |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Disability</b>                                          |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Veteran Status</b>                                      |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Gender: Assigned Sex at Birth</b>                       |      |
| Declined to Answer (or Unknown)                            | 100% |
| <b>Current Gender Identity</b>                             |      |
| Male                                                       | 58%  |
| Female                                                     | 40%  |
| Transgender                                                | 2%   |
| <b>Sexual Orientation</b>                                  |      |
| Declined to Answer (or Unknown)                            | 100% |

In FY21 Flex funds were used to provide various supports for HOTT program participants including: Hotel stays/rental or housing assistance for 42 participants; food/groceries for 26 participants; bus passes or transportation for 3 participants; and on Ppharmacy needs for 1 participant.

Program Successes:

The HOTT pilot demonstrated that a dedicated team of workers could effectively engage and work with a large number of unhoused residents providing short term services and connections to longer term treatment and care. It also demonstrated that the team could be flexible in redirecting its efforts to support the needs of the unhoused community during the pandemic:

- HOTT was responsive to both enrolled and unenrolled individuals when providing outreach and engagement: responding to community referrals, providing direct in-person outreach, and responding to immediate service calls and needs.
- The project provided an array of material supports, including but not limited to basic necessities, transportation (direct and voucher), hygiene kits, emergency housing/respite support, COVID-related supplies (masks, testing, resource information, sanitizer, etc.).
- HOTT facilitated linkages and referrals to treatment, housing, primary care, material support, and other community resources.
- Community needs were supported by encampment outreach by the HOTT, including outreach, material support, and other COVID related needs.

Program Challenges:

With the change in HOTT's mission and staffing, it became increasingly difficult to effectively serve the community. The needs and resources in the community, especially due to COVID-19, drastically changed:

- Staff left the team steadily over this time period from a supervisor and 4 staff until only one staff was left, and then the program ended.
- With the pandemic, many of the resources to which the HOTT team would normally link clients had either: changed their hours, gone to only remote service, changed their services available, or closed their doors.
- The directions from the Emergency Operations Center (EOC) during the pandemic were not consistent due to the changing nature of the COVID-19 response. This also made consistent services difficult to maintain.
- Since most of the services HOTT was directed to perform during this time period were COVID-19 encampment outreach related, the previous linkage services were no longer the focus of the team and its work.

### **ACCESS AND LINKAGE TO TREATMENT AND PREVENTION & EARLY INTERVENTION COMBINED PROGRAM**

Prevention Program – Includes a set of related activities to reduce risk factors for developing a potentially serious mental illness and to build protective factors.

Early Intervention Program – Provides treatment and other services and interventions, including relapse prevention, to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the applicable negative outcomes that may result from untreated mental illness.

Access and Linkage to Treatment Program– Connects children who are seriously emotionally disturbed, and adults and seniors with severe mental illness as early in the onset of these conditions as practicable, to medically necessary care and treatment, including but not limited to care provided by county mental health programs.

The City of Berkeley has one combined Prevention, Early Intervention, and Access and Linkage to Treatment combined program:

#### **High School Youth Prevention Program**

This program operates in conjunction with other health related services offered at Berkeley High School (BHS) and Berkeley Technology Academy (BTA) to provide young people with the information and individual support they need to make positive and healthy decisions in their lives. The program includes: outreach activities designed to provide students with basic information around the risks of certain behaviors, and ways to protect themselves and make positive and safer decisions; classroom presentations to enable students to receive more in-depth information around a variety of health topics and available resources, and provide the opportunity for students to do a personal assessment of risk and current lifestyle choices; drop-in crisis and counseling services; individual appointments to identify young people who may need more intensive intervention; and short-term treatment. The individual appointments, held at the school-based health center, provide young people with the opportunity to hold very in-depth discussions around the choices they are making and the risks that are involved in their choices. They receive guidance about

changes they can make to reduce or eliminate their risks, and are given the opportunity to identify barriers that might exist for them that prevent them from making healthier choices. In addition, they complete a 40 question, in-depth HEADSSS (Home, Education, Activities, Drugs/Alcohol, Sexuality, Safety, Suicidality) assessment. Based on the outcome of the individual appointment and/or assessment, a young person may be referred to either a medical or mental health professional for follow-up care and intervention and/or treatment. Approximately 2,600 Berkeley High School Students and 100 B-Tech students receive some level of services through this program each year.

This program was implemented in FY13 and has become a successful partnership between BUSD and the Public Health and Mental Health Divisions of Berkeley's Health, Housing & Community Services (HHCS) Department. As the program has developed, the staffing structure has increased and evolved to better meet the needs of the participants of both BHS and B-Tech. Additionally, BMH has been involved in implementing and assessing the Cognitive, Behavioral, Intervention for Trauma in Schools (CBITS) as a model of care at these locations. The need for additional supports and resources for this program will continue to be accessed and adjusted accordingly.

**PEI Goals:** The goal of this program is to bring about mental health, including the reduction of school failure or dropout.

**PEI Priorities:**

- Youth engagement and outreach strategies that target secondary school and transition age youth.
- Early identification programming of mental health symptoms and disorders, including but not limited to, anxiety, depression, and psychosis.

In FY19, approximately 1,059 students at BHS and BTA received services at the school's Student Health Center, with 1,511 visits for Behavioral Health Individual sessions, and 321 visits for Behavioral Health Group sessions. Demographics on youth served are outlined below:

| <b>DEMOGRAPHICS N=1,059</b>          |     |
|--------------------------------------|-----|
| <b>Age Groups</b>                    |     |
| 0-15 (Children/Adult)                | 6%  |
| 16-25 (Transition Age Youth)         | 13% |
| Declined to Answer (or Unknown)      | 81% |
| <b>Race</b>                          |     |
| Asian                                | 7%  |
| Black or African American            | 20% |
| White                                | 33% |
| More than one Race                   | 17% |
| Declined to Answer (or Unknown)      | 7%  |
| <b>Ethnicity: Hispanic or Latino</b> |     |
| Mexican/Mexican-American/Chicano     | 16% |



| <b>Ethnicity: Non-Hispanic or Non-Latino</b> |      |
|----------------------------------------------|------|
| Declined to Answer (or Unknown)              | 84%  |
| <b>Primary Language</b>                      |      |
| Declined to Answer (or Unknown)              | 100% |
| <b>Sexual Orientation</b>                    |      |
| Declined to Answer (or Unknown)              | 100% |
| <b>Disability</b>                            |      |
| Declined to Answer (or Unknown)              | 100% |
| <b>Veteran Status</b>                        |      |
| No                                           | 100% |
| <b>Gender: Assigned Sex at Birth</b>         |      |
| Male                                         | 66%  |
| Female                                       | 34%  |
| <b>Current Gender Identity</b>               |      |
| Male                                         | 66%  |
| Female                                       | 34%  |

In FY20, approximately 801 students at BHS and B-Tech received services at the school's Student Health Center. A total of 325 individuals received Behavioral Health services with 1,206 visits for Behavioral Health Individual sessions, and 169 visits for Behavioral Health Group sessions. Demographics on youth served are outlined below:

| <b>DEMOGRAPHICS N=801</b>                                  |      |
|------------------------------------------------------------|------|
| <b>Age Groups</b>                                          |      |
| 14-18 (Youth)                                              | 100% |
| <b>Race</b>                                                |      |
| Asian                                                      | 6%   |
| Black or African American                                  | 19%  |
| White                                                      | 36%  |
| More than one Race                                         | 20%  |
| Declined to Answer (or Unknown)                            | 3%   |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |      |
| Mexican/Mexican-American/Chicano                           | 16%  |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |      |
| Declined to Answer (or Unknown)                            | 84%  |

| <b>Primary Language</b>                                                               |      |
|---------------------------------------------------------------------------------------|------|
| Declined to Answer (or Unknown)                                                       | 100% |
| <b>Sexual Orientation</b>                                                             |      |
| Declined to Answer (or Unknown)                                                       | 100% |
| <b>Disability</b>                                                                     |      |
| Declined to Answer (or Unknown)                                                       | 100% |
| <b>Veteran Status</b>                                                                 |      |
| No                                                                                    | 100% |
| <b>Gender: Assigned Sex at Birth</b>                                                  |      |
| Male                                                                                  | 30%  |
| Female                                                                                | 70%  |
| <b>Current Gender Identity</b>                                                        |      |
| Male                                                                                  | 30%  |
| Female                                                                                | 68%  |
| Students who identified as either transgender, gender queer, or gender non-conforming | 2%   |

The last day of in-person classes was on March 12<sup>th</sup> due to the pandemic and related school closure. Mental Health in-person and group services were suspended the following day and on April 28<sup>th</sup> a Warm Line was implemented to support student's mental health needs.

Results on a survey from the Alameda County School Health Center Evaluation for BHS and BTA students was as follows:

- 100% reported that the people who work at the Health Center “treat me with respect” and “keep my information private”;
- 100% reported that the Health Center “helped me to feel like there is an adult at school who cares about me”;
- 100% reported that the Health Center “is easy to get help from when I need it”, “is a good place to go if I have a problem”, and “helps me to meet many of my health needs”;
- 98% reported that the people who work at the Health Center “listen carefully to what I have to say”;
- 98% of students surveyed reported that the Health Center “helps me to miss less school or class time than going somewhere else for help”;
- 97% reported that “the Health Center helped me to deal with stress/anxiety better”.

Program Successes:

- Applied for and was awarded the SB-82 Crisis Triage Grant in order to fund 1.0 FTE Behavioral Health Clinician II position, which enabled more consistent and reliable provision of assessment and crisis assessment services;

- In response to COVID-19, shelter in place restrictions, and transition to virtual learning, the Mental Health team developed and implemented a “Mental Health Warm Line” for students, parents, and school staff;
- Provided ongoing individual Mental Health remote tele-health services from March through June 2020 for all existing Health Center clients;
- Increased awareness and the de-stigmatization of services;
- Increased access to services for historically marginalized student communities;
- Increased BHS campus presence through several tabling events, presentations, and gatherings with students, families, and school staff;
- Successful internal/external linkages to ongoing care;
- Ongoing collaborative partnerships with school administration, teachers, and school-based programs;
- Diverse/eclectic staff backgrounds supported embedding foundational framework of cultural humility across clinical practice; and
- Maintained a 100% staff retention.

Program Challenges:

- Student need continued to exceed clinician/team capacity during the months where in-person learning took place (August 2019 through mid-March 2020);
- Difficulties with external linkages due to fractured nature of larger Mental Health healthcare systems, insurance barriers, etc.;
- Limited staff time to promote prevention and early intervention services due to high volume of Tier 3 therapy services;
- Transition of in-person services and workflows to remote tele-health services and workflows due to the pandemic;
- Utilization of new technology to support remote tele-health services;
- Decline in accessibility and utilization of Mental Health services due to the pandemic;
- Impact of the pandemic on staff;
- Vicarious trauma for staff due to the nature and content of the therapeutic work, high volume, and impact of the pandemic; and
- Limited staff time for team meetings to discuss/plan/review administrative and programmatic considerations.

In FY21, approximately 101 students received services through this project. Demographics on youth served are outlined below:

| <b>DEMOGRAPHICS N=101</b> |     |
|---------------------------|-----|
| <b>Age Groups</b>         |     |
| 0-15 Years                | 27% |
| 16-25 Years               | 73% |
| <b>Race</b>               |     |
| Asian                     | 16% |
| Black or African American | 15% |

|                                                    |      |
|----------------------------------------------------|------|
| White                                              | 32%  |
| More than one Race                                 | 19%  |
| Other                                              | 10%  |
| Declined to Answer (or Unknown)                    | 8%   |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b> |      |
| Other                                              | 32%  |
| Declined to Answer (or Unknown)                    | 9%   |
| <b>Primary Language</b>                            |      |
| English                                            | 87%  |
| Spanish                                            | 13%  |
| <b>Sexual Orientation</b>                          |      |
| Declined to Answer (or Unknown)                    | 100% |
| <b>Disability</b>                                  |      |
| Declined to Answer (or Unknown)                    | 100% |
| <b>Veteran Status</b>                              |      |
| No                                                 | 100% |
| <b>Gender: Assigned Sex at Birth</b>               |      |
| Male                                               | 40%  |
| Female                                             | 60%  |
| <b>Current Gender Identity</b>                     |      |
| Male                                               | 37%  |
| Female                                             | 52%  |
| Transgender                                        | 3%   |
| Genderqueer                                        | 8%   |

**Program Successes:**

- In spite of the numerous and multi-faceted challenges associated with COVID-19 and distance learning, the Health Center was still able to provide mental health counseling services to over 100 students and was able to provide longer-term support to more students due to the lower than typical number of unduplicated clients. The Health Center was able to host a small, diverse, and talented graduate-level MFT trainee cohort.
- Adapted care provision to utilize these new platforms and was able to flexibly provide services while also mitigating potential safety risks associated with COVID-19.
- During the course of the school year, the Health Center's MH team was able to develop and implement use of a JotForm application in order to digitize referral processes, make referrals accessible online, and

thereby improve overall accessibility. Transition to this HIPAA-compliant online referral process has been maintained into the FY22 school year and is now being more broadly used by all Health Center programs.

- The online referral process was implemented in January 2021 and promoted across student/parent bulletins, emails to the school community from BHS and BTA principals, and presentations to teacher leads and other school staff. Upon successfully implementing this new method for referrals, the Health Center phased out use of its phone-based Mental Health Warm Line, which was initially utilized in Spring 2020 shortly after the COVID-19 pandemic began. The Warm Line was phased out in order to simplify the referral pathway for accessing mental health services from the Health Center.
- Throughout the COVID-19 pandemic and for the duration of the FY21 school year, the Health Center's MH team maintained a positive and collaborative relationship with school administration, the BHS and BTA COST teams, and the school-based Intervention and IEP counselors. Collaboration and coordination with school-based stakeholders enabled program staff to effectively triage and refer students/families to EPSDT/ERMHS services in addition to short-term Health Center services.

#### Program Challenges:

- During the FY21 school year, BUSD provided all educational instruction via remote "distance learning" using platforms like Zoom and Google Meet due to COVID-19-related safety concerns. Students were not present on campus from the start of the school year in August 2020 through spring break in April 2021. From mid-April through early June of 2021, a small percentage of the student body was on campus two hours per day, 2-3 days per week. Health Center counseling rooms were not usable for in-person services due to spatial limitations, inadequate social distancing, and inadequate ventilation. An alternative physical space on the BHS campus was identified for crisis-only use during this timeframe.
- For the duration of the FY21 school year, one Health Center clinician was on parental leave. The Health Center's graduate-level trainee cohort was also downsized by 50%, from four to two, due to COVID-19-related constraints.
- Up until COVID-19, the Health Center relied upon a paper-based referral process where referrals needed to be submitted in person to staff. Accessing services remotely was not feasible until workflow adjustments were made, which required technological advancements and collaboration with the City's IT department. The planning and implementation of a digital, online, HIPAA-compliant referral portal took approximately five months.

### **ACCESS & LINKAGE TO TREATMENT AND EARLY INTERVENTION COMBINED PROGRAM**

Access and Linkage to Treatment Program – Connects children who are seriously emotionally disturbed, and adults and seniors with severe mental illness as early in the onset of these conditions as practicable, to medically necessary care and treatment, including but not limited to care provided by county mental health programs.

Early Intervention Program – Provides treatment and other services and interventions, including relapse prevention, to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the applicable negative outcomes that may result from untreated mental illness.

Through the FY22 Annual Update the City of Berkeley provided a one-time amount of CSS and PEI funding to support a pilot program. Per PEI program type definitions, this program would be considered as an Access to Treatment and Early Intervention combined program. The program is as follow:

### **Specialized Care Unit**

On July 14, 2020 City Council passed Resolution No, 69,501-N.S.; a package of items providing direction for the development of a new paradigm of public safety in Berkeley. One of the items adopted by City Council directed the City Manager to analyze and develop a pilot program to re-assign non-criminal police service calls to a Specialized Care Unit (SCU). The SCU will consist of trained crisis-response field workers who will respond to behavioral health occurrences that do not pose an imminent threat to safety without the involvement of law enforcement. The SCU will be implemented as a pilot model and lessons-learned will inform the long-term implementation. Through the approved FY22 Annual Update, the Division proposed to allocate a small portion of CSS and PEI funds to be leveraged with other City funds for this pilot program. This allocation was a one-time MHSA funding amount, while the City determines how to best fund this initiative.

**PEI Goals:** The goal of this program is to connect individuals who have severe mental illnesses as early in the onset of these conditions as practicable, to medically necessary care and treatment, including but not limited to, care provided by county mental health programs.

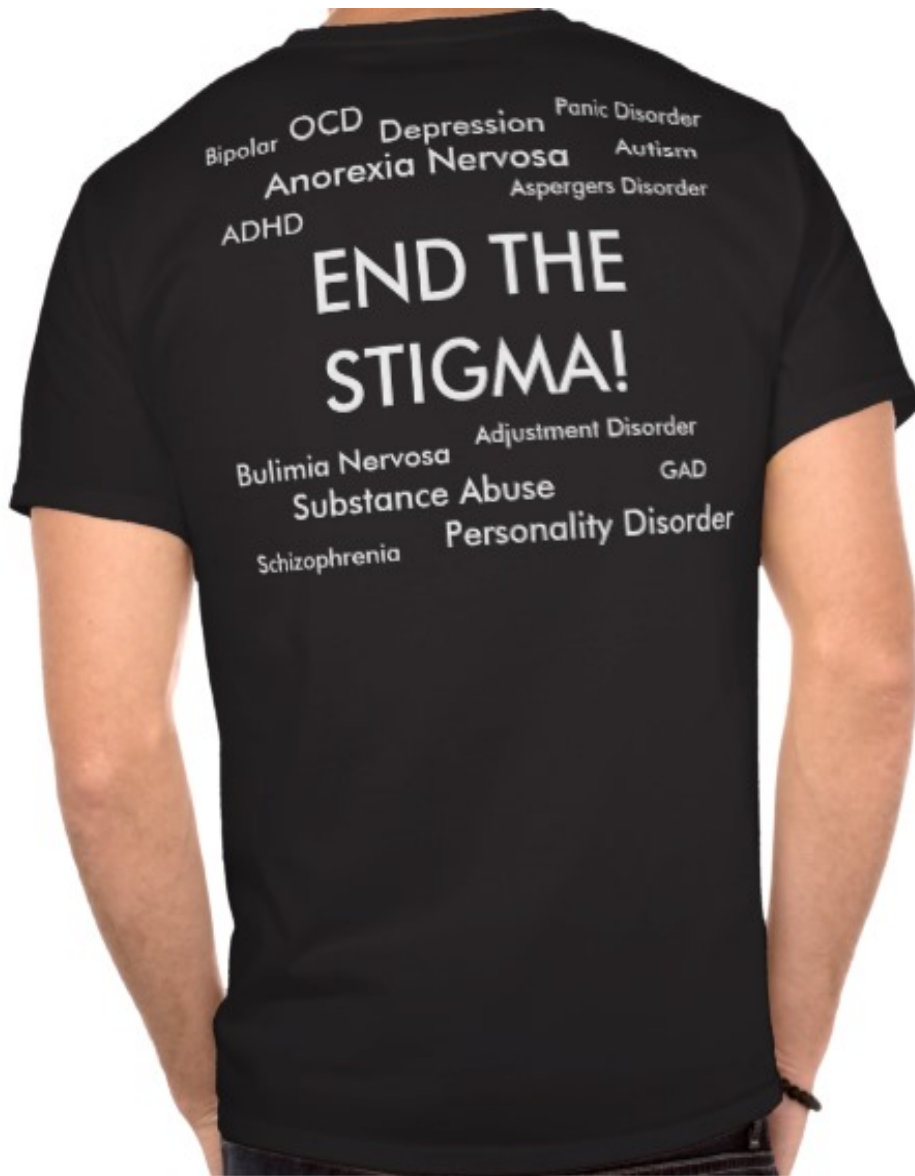
**PEI Priority:**

- Early identification programming of mental health symptoms and disorders, including but not limited to, anxiety, depression, and psychosis.

In FY22, Resource Development Associates (RDA), chosen through a competitive Request for Proposal (RFP) process to evaluate the current crisis system in Berkeley, received an expanded scope of work to provide recommendations on the implementation of the SCU. To oversee and advise RDA in their work, the City formed an SCU Steering Committee consisting of Health, Housing and Community Services Department and Fire Department staff, and community representatives from the Mental Health Commission and the Berkeley Community Safety Commission. The Steering Committee met from January 2021 through January 2022 and advised on RDA's completion of three critical reports. The first two reports summarized crisis response programs in the United States and internationally as well as gathered perspectives from community and City stakeholders regarding the crisis response system. This included gathering input from City of Berkeley and Alameda County agencies, local community-based organizations (CBOs), local community leaders, and utilizers of Berkeley's crisis response services. These reports laid the foundation for the twenty-five recommendations that were the subject of the third and final report to inform the SCU model. Each recommendation put forth in the final report is deeply rooted in the stakeholder feedback included in the two previous reports.

The work of the SCU Steering Committee has now transitioned from planning to implementation. It is envisioned that the SCU will begin operations in late FY22 or early FY23 through a community partner that will be chosen through a competitive Request for Proposal process.

# *STIGMA AND DISCRIMINATION REDUCTION PROGRAM*



Stigma and Discrimination Program - Direct activities to reduce negative feelings, attitudes, beliefs, perceptions, stereotypes and/or discrimination related to being diagnosed with a mental illness, having a mental illness, or to seeking mental health services and to increase acceptance, dignity, inclusion, and equity for individuals with mental illness, and members of their families.

The City of Berkeley has one Stigma and Discrimination program:

### **Social Inclusion Program**

The Social Inclusion program was created to combat stigma, attitudes and discrimination around individuals with mental health issues. Through this program, a “Telling Your Story” group provides mental health consumers with opportunities to be trained, compensated and empowered to share their stories of healing in a supportive peer environment. When they feel ready, consumers can elect to be community presenters, sharing their inspirational stories at pre-arranged local public venues to dispel myths and educate others. This program serves approximately 10-20 individuals a year.

**PEI Goals:** To reduce negative feelings, attitudes, beliefs, perceptions, stereotypes and/or discrimination related to being diagnosed with a mental illness, having a mental illness, or to seeking mental health services and to increase acceptance, dignity, inclusion, and equity for individuals with mental illness, and members of their families. To create changes in attitude, knowledge and/or behaviors related to seeking mental health services or related to mental illness.

**PEI Priority:** Culturally competent and linguistically appropriate prevention and intervention.



In FY19, the “Telling Your Story” group met 24 times with 20 unduplicated persons attending for a total of 144 visits. Groups averaged 6 attendees. Due to a vacancy in the Consumer Liaison position until February 2019, demographic data for this program during FY19 is not available.



In FY20, the “Telling Your Story” group met 19 times with 22 unduplicated persons attending for a total of 119 visits. There were 4 virtual zoom groups included in the total meetings. On average there were 6.2 attendees. Program participants spent time discussing and practicing what makes a good story based on the topics given by the instructors. Demographics on individuals served were as follows:

| <b>DEMOGRAPHICS N= 22*</b>                                 |     |
|------------------------------------------------------------|-----|
| <b>Age Groups</b>                                          |     |
| 26-59 (Adult)                                              | 18% |
| Ages 60+ (Older Adult)                                     | 36% |
| Declined to Answer (or Unknown)                            | 46% |
| <b>Race</b>                                                |     |
| American Indian or Alaska Native                           | 9%  |
| Asian                                                      | 14% |
| Black or African American                                  | 14% |
| Native Hawaiian or other Pacific Islander                  | 9%  |
| White                                                      | 32% |
| Other                                                      | 9%  |
| Declined to Answer (or Unknown)                            | 13% |
| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |     |
| Mexican                                                    | 4%  |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |     |
| Declined to Answer (or Unknown)                            | 96% |
| <b>Primary Language Used</b>                               |     |
| English                                                    | 41% |
| Declined to Answer (or Unknown)                            | 59% |
| <b>Sexual Orientation</b>                                  |     |
| Gay or Lesbian                                             | 4%  |
| Heterosexual or Straight                                   | 27% |
| Bisexual                                                   | 4%  |
| Queer                                                      | 4%  |
| Questioning                                                | 9%  |
| Declined to Answer (or Unknown)                            | 52% |

| <b>Disability</b>                            |      |
|----------------------------------------------|------|
| Difficulty Seeing                            | 9%   |
| Communication (other)                        | 9%   |
| Mental Domain not including a mental illness | 9%   |
| Physical Mobility domain                     | 18%  |
| Chronic Health Condition                     | 9%   |
| Declined to Answer (or Unknown)              | 46%  |
| <b>Veteran Status</b>                        |      |
| Declined to Answer (or Unknown)              | 100% |
| <b>Gender: Assigned Sex at Birth</b>         |      |
| Female                                       | 41%  |
| Declined to Answer (or Unknown)              | 59%  |
| <b>Current Gender Identity</b>               |      |
| Female                                       | 41%  |
| Declined to Answer (or Unknown)              | 59%  |

\*Demographics were based on a survey that was mailed back and returned. Not all participants responded to the survey.

Staff changed the formation of the group to better prepare the participants before coming to the meeting. Topics were mailed out or people were called to help them prepare for the group. The staff also created more guidelines to help participants tell their story within a given timeframe, focusing on the topic and give effective feedback to their peers. This format will help prepare the story tellers when there are opportunities for panels to break stigma about Mental Health.

Staff then assessed participant's involvement within the group by sending out surveys to capture how they feel about the group. The "Telling Your Story" group brainstormed and discussed criteria on what makes a good story. The list of criteria that was generated was re-visited at many meetings and each criteria were discussed by the group. The group then practiced giving feedback to each person based on the criteria. A survey that included the criteria, with emphasis on participants understanding and awareness of turning points in their stories was then developed. The survey was then administered towards the end of the fiscal year and the results were tallied. The results indicated that the highest rated question pertained to participants' confidence in telling a story that would change negative perceptions of mental health challenges. The results also guided the group to work on effectively using pauses and timing in telling a story, catchy first lines, and descriptive use of language to describe recovery to others.

In FY21, the "Telling Your Story" group held 25 meetings with 21 unduplicated persons attending for a total of 168 visits. This group met through the virtual platform "Zoom". On average there were 6.72% attendees. Program participants spent time discussing and practicing what makes a good story based on the topics given by the instructors. Demographics on individuals served were as follows:

| <b>DEMOGRAPHICS N= 21</b>                                  |      |
|------------------------------------------------------------|------|
| <b>Age Groups</b>                                          |      |
| 26-59 (Adult)                                              | 52%  |
| Ages 60+ (Older Adult)                                     | 48%  |
| <b>Race</b>                                                |      |
| Asian                                                      | 5%   |
| Black or African American                                  | 9%   |
| Native Hawaiian or other Pacific Islander                  | 5%   |
| White                                                      | 71%  |
| Other                                                      | 5%   |
| More than one Race                                         | 5%   |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |      |
| African                                                    | 14%  |
| Asian Indian/South Asian                                   | 5%   |
| European                                                   | 14%  |
| Filipino                                                   | 9%   |
| Japanese                                                   | 5%   |
| Middle Eastern                                             | 5%   |
| Declined to Answer (or Unknown)                            | 48%  |
| <b>Primary Language Used</b>                               |      |
| English                                                    | 100% |
| <b>Sexual Orientation</b>                                  |      |
| Gay or Lesbian                                             | 5%   |
| Heterosexual or Straight                                   | 52%  |
| Bisexual                                                   | 9%   |
| Another Sexual Orientation                                 | 5%   |
| Declined to Answer (or Unknown)                            | 29%  |
| <b>Disability</b>                                          |      |
| Difficulty Hearing                                         | 14%  |
| Mental Domain not including a mental illness               | 14%  |
| Physical Mobility domain                                   | 14%  |
| Chronic Health Condition                                   | 14%  |

|                                      |      |
|--------------------------------------|------|
| Other (Specify): PTSD                | 10%  |
| Declined to Answer (or Unknown)      | 34%  |
| <b>Veteran Status</b>                |      |
| No                                   | 48%  |
| Declined to Answer (or Unknown)      | 52%  |
| <b>Gender: Assigned Sex at Birth</b> |      |
| Declined to Answer (or Unknown)      | 100% |
| <b>Current Gender Identity</b>       |      |
| Male                                 | 14%  |
| Female                               | 67%  |
| Declined to Answer (or Unknown)      | 19%  |

Program Successes:

The Telling Your Story group has grown to having more consistent attendees and participants being prepared to share based on the topics provided. Some participants enjoyed having the group virtually in the comfort of their home, they felt safer and the hassle of commuting was eliminated. Participants felt more prepared during their shares and they enjoyed the support they received from their peers.

Program Challenges:

The Telling Your Story group challenges have been a lack of in-person connection and some individuals not having Zoom were unable to see others on the screen.

## *OUTREACH FOR INCREASING RECOGNITION OF EARLY SIGNS OF MENTAL ILLNESS*



Outreach for Recognizing the Early Signs of Mental Illness Program - A process of engaging, encouraging, educating, and/or training, and learning from potential responders about ways to recognize and respond effectively to early signs of potentially severe and disabling mental illness.

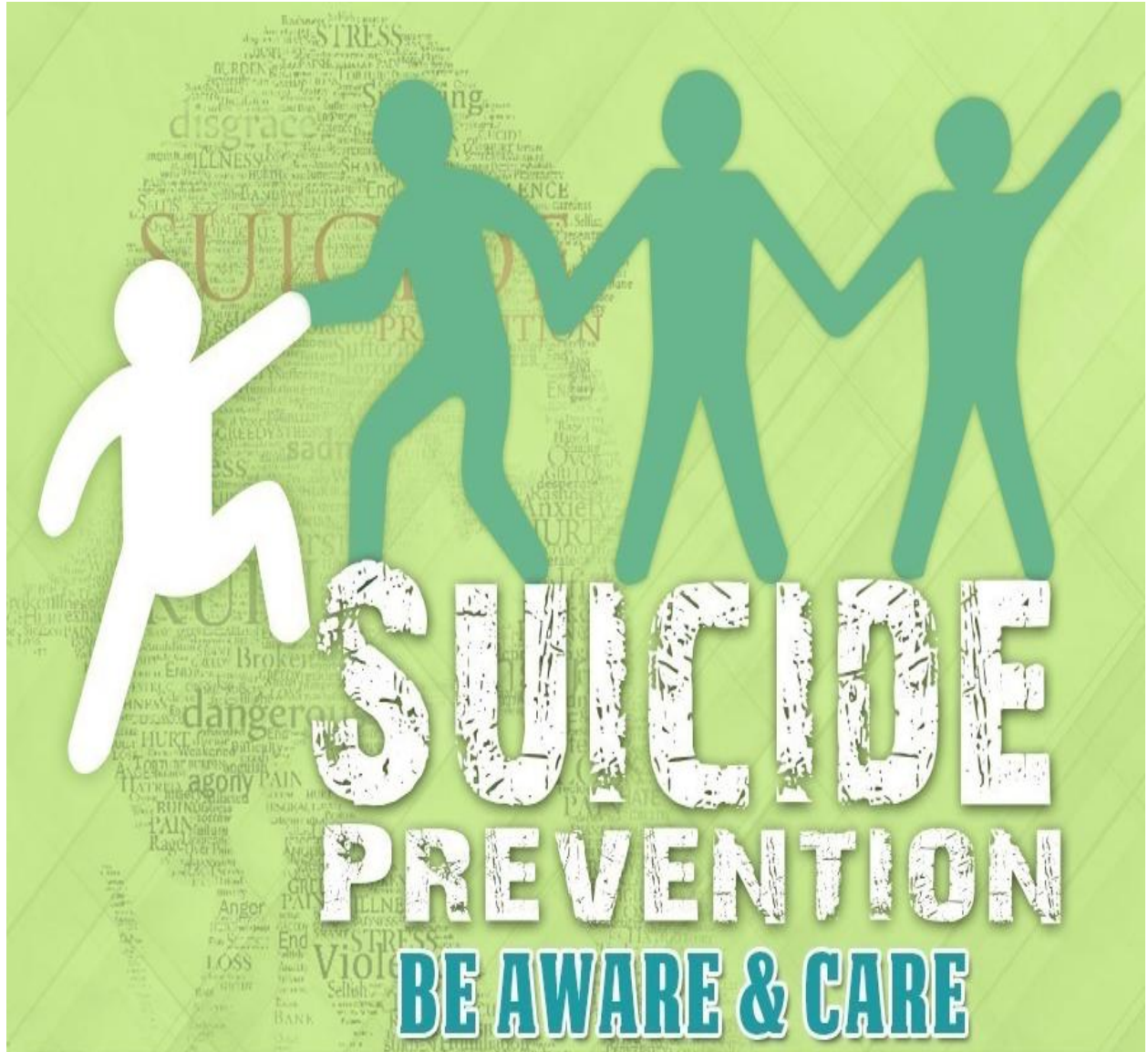
Per PEI State Regulations in addition to having the required “Outreach for Increasing Recognition of Early Signs of Mental Illness Program”, mental health jurisdictions may also offer required Outreach for Increasing Recognition of Early Signs of Mental Illness as: a strategy within a Prevention program, a strategy within an Early Intervention program, a strategy within another program funded by PEI funds, or a combination thereof. Additionally, an Outreach for Increasing Recognition of Early Signs of Mental Illness program, may be provided through other MHSA components as long as it meets all of the program requirements.

### **Mental Health First Aid**

City of Berkeley Mental Health staff have previously implemented a Mental Health First Aid Training to the community through non-MHSA funds. Mental Health First Aid is a groundbreaking public education program that helps the public identify, understand, and respond to signs of mental health issues and substance use disorders. Mental Health First Aid presents an overview of mental health issues and substance use disorders and introduces participants to risk factors and warning signs of mental health problems, builds understanding of their impact, and provides an overview of common treatments. Through this training a five step action plan is taught that encompasses the skills, resources and knowledge to help an individual in crisis connect with appropriate professional, peer, social, and self-help care. Due to the pandemic and vacancies in staff, Mental Health First Aid trainings have not been provided in the past several years.



**SUICIDE PREVENTION**  
**(OPTIONAL PEI PROGRAM)**



Suicide Prevention Program (Optional) - Activities to prevent suicide as a consequence of mental illness.

The City of Berkeley has one PEI funded Suicide Prevention program:

### **California Mental Health Services Authority (CalMHSA) PEI Statewide Projects**

Per PEI State Regulations Mental Health jurisdictions have an option on whether to utilize MHSA PEI funds on Suicide Prevention programs. While the City of Berkeley has not previously chosen to utilize PEI funds to implement a local Suicide Prevention program, in FY18 BMH began contributing funding to the California Mental Health Services Authority (CalMHSA) PEI Statewide Projects in order to obtain State resources locally on Suicide Prevention, Student Mental Health, and Stigma and Discrimination.

In FY19, through the CalMHSA Statewide Projects initiative, resources on Suicide Prevention, Student Mental Health and Stigma and Discrimination reached an excess amount of 1,546 individuals.

Additionally, an excess of 1,315 pamphlets and resources on Suicide Prevention, Student Mental Health and Stigma and Discrimination were distributed in local schools and the community. BMH also participated in the CalMHSA “Each Mind Matters” campaign and distributed materials and giveaways at the local “May is Mental Health Month” event.

In FY20, resources from this initiative reached an excess amount of 1,680 individuals. Additionally, an excess of 1,225 pamphlets and resources on Suicide Prevention, Student Mental Health and Stigma and Discrimination were distributed in local schools and the community.

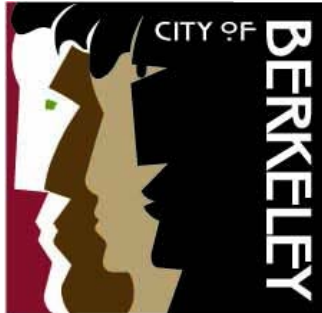
In FY21, through this initiative resources on Suicide Prevention, Student Mental Health and Stigma and Discrimination reached approximately 1,620 individuals. Additionally, resources were distributed via email to local schools, community agencies and community members.





**APPENDIX B**  
Innovation  
Fiscal Year 2020/2021  
Annual Evaluation Report

# City of Berkeley Mental Health Services Act



## Innovation Fiscal Year 2020/2021 Annual Evaluation Report



WELLNESS • RECOVERY • RESILIENCE

## **INTRODUCTION**

Mental Health Services Act (MHSA) Innovation (INN) funds are to be utilized for short-term projects that contribute to new learning in the mental health field. This MHSA component provides the opportunity to pilot test and evaluate new strategies that can inform future practices in communities/or mental health settings. INN projects can target any population and any aspect of the mental health system as long as the strategies or approaches that are being implemented address at least one of the following areas:

- Increase access to mental health services;
- Increase access to mental health services for underserved groups;
- Increase the quality of mental health services, including better outcomes;
- Promote interagency collaboration.

INN projects should also have one of the following primary practices: introduce new mental health practices or approaches that have never been done before; or make changes to existing mental health practices/approaches, including adapting them to a new setting or community; or introduce a new promising community-driven practice/approach that has been successful in non-mental health contexts or settings.

Per MHSA State requirements, Mental Health jurisdictions are to submit an INN Evaluation Report to the Mental Health Services Oversight and Accountability Commission (MHSOAC) on an annual basis. INN Regulations released in 2018 also require mental health jurisdictions to submit an Annual Evaluation Report to the State each fiscal year. The Evaluation Report should be included with the MHSA Annual Update or Three Year Program and Expenditure Plan and undergo a 30 Day Public Review period and approval from the local governing board. Per state regulations in 2022, the MHSA INN Fiscal Year 2020/2021 (FY21) Annual Evaluation Report that covers data from FY21 is due.

This INN FY21 Annual Evaluation Report provides descriptions of currently funded MHSA INN services, and reports on FY21 program and demographic data.

## **BACKGROUND**

On October 6, 2015, updated INN regulations designed by the Mental Health Services Oversight and Accountability Commission (MHSOAC) became effective. The new INN Regulations, included program and demographic data requirements that are to be reported to the MHSOAC through INN Annual Evaluation Reports. Per the new requirements, Mental Health Jurisdictions should report on the following INN Program and Demographic elements.

- Name of the Innovative Project.
- Whether changes were made to the Innovative Project during the reporting period and descriptions and reasons for the changes.
- Available evaluation data, including outcomes of the Innovative Project and information about which elements of the project are contributing to outcomes.
- Program information collected during the reporting period, including for applicable Innovative Projects that serve individuals, number of participants served.
- All Demographic Data as applicable per project. (as outlined below)

### **INN Demographic Reporting Requirements**

For the information reported under the various program categories, each program will need to report disaggregate numbers served, number of potential responders engaged, and number of referrals for treatment and other services by:

**(A) The following Age groups:**

- 0-15 (children/youth)
- 16-25 (transition age youth)
- 26-59 (adult)
- ages 60+ (older adults)
- Number of respondents who declined to answer the question

**(B) Race by the following categories:**

- American Indian or Alaska Native
- Asian
- Black or African American
- Native Hawaiian or other Pacific Islander
- White
- Other
- More than one race
- Number of respondents who declined to answer the question

**(C) Ethnicity by the following categories:****(i) Hispanic or Latino as follows**

- Caribbean
- Central American
- Mexican/Mexican-American/Chicano
- Puerto Rican
- South American
- Other
- Number of respondents who declined to answer the question

**(ii) Non-Hispanic or Non-Latino as follows**

- African
- Asian Indian/South Asian
- Cambodian
- Chinese
- Eastern European
- European
- Filipino
- Japanese
- Korean
- Middle Eastern
- Vietnamese
- Other
- Number of respondents who declined to answer the question
- More than one ethnicity
- Number of respondents who declined to answer the question

**(D) Primary language used listed by threshold languages for the individual county**

- English
- Spanish
- Number of respondents who declined to answer the question

**(D) Primary language used listed by threshold languages for the individual county**

- English
- Spanish
- Number of respondents who declined to answer the question

**(E) Sexual orientation**

- Gay or Lesbian
- Heterosexual or Straight
- Bisexual
- Questioning or unsure of sexual orientation
- Queer
- Another sexual orientation
- Number of respondents who declined to answer the question

**(F) Disability**, defined as a physical or mental impairment or medical condition lasting at least six months that substantially limits a major life activity, which is not the result of a severe mental illness

- If Yes, report the number that apply in each domain of disability(ies)
  - Communication domain separately by each of the following:
    - difficulty seeing,
    - difficulty hearing, or having speech understood)
    - other, please specify
  - Mental domain not including a mental illness (including but not limited to a learning disability, developmental disability, dementia)
  - Physical/mobility domain
  - Chronic health condition (including but not limited to chronic pain)
  - Other (specify)
- No
- Number of respondents who declined to answer the question

**(G) Veteran Status,**

- Yes
- No
- Number of respondents who declined to answer the question

**(H) Gender**

- (i) Assigned sex at birth:
  - (a) Male
  - (b) Female
  - (c) Number of respondents who declined to answer the question
- (ii) Current gender identity:
  - (a) Male
  - (b) Female
  - (c) Transgender
  - (d) Genderqueer
  - (e) Questioning or unsure of gender identity
  - (f) Another gender identity
  - (g) Number of respondents who declined to answer the question.

Effective July 2018 amended INN regulations specified the following:

- For projects/programs serving children or youth younger than 18 years of age, the demographic information collected and reported should only be done so to the extent permissible by privacy laws;
- For projects/programs serving minors younger than 12 years of age, demographic information shall be collected and reported, except for sexual orientation, current gender identity, and veteran status;
- Information that cannot be obtained directly from the minor may be obtained from the minor's parent, legal guardian, or other authorized source.

### **CITY OF BERKELEY INN PROGRAMS**

A description of the currently funded INN programs and FY21 data are outlined below:

#### **Early Childhood Trauma Resiliency (ECTR) - Trauma Informed Care Project**

In May 2016, the City of Berkeley received approval from the MHSOAC to implement a [Trauma Informed Care \(TIC\) for Educators project](#) (which is posted on the MHSA Plans and Updates webpage) into several BUSD schools to assess whether educators who are trained to become aware of their own trauma and trauma triggers (and how to address them), are better equipped to recognize and make appropriate decisions on how to help students who are exhibiting trauma symptoms, and assist them in accessing the mental health services and supports they may need.

The project was implemented through the 20/20 Vision Program which at the time was operated out of the City of Berkeley, City Manager's Office. After a year of the TIC Project being executed, there were two vacancies in the 20/20 Vision Program which impacted the ability to continue the implementation of the TIC Project. The project was only able to be implemented for one year in FY17 and during that timeframe an evaluation was conducted by Hatchuel Tabernik & Associates (HTA) on the project outcomes. The HTA [Training Informed Systems Training Program 2016-17 Pilot Year Evaluation Report](#) is located on the City of Berkeley MHSA Plans and Updates webpage.

In FY18, due to staffing vacancies the TIC project was not able to be implemented. When staffing vacancies were filled in mid FY18, meetings were held with several BUSD principals who indicated that although their schools received a lot of positive benefits out of the TIC project, additional training requirements within the school system had been added for teachers and administrators that needed to be fulfilled over the next couple of years. As a result, the TIC Project would not be able to be prioritized within the school system at that time. In light of the changes in the school system, staff conducted outreach and found that area YMCA Head Start Centers were interested in executing the same TIC Project for their early childhood educators and staff, to impact the children and families who are served at the centers. As such, proposed changes to the population and funding amount of the original TIC Plan were vetted through community program

planning, and an update to the TIC Plan underwent a 30 Day Public Review and Public Hearing process. The [City of Berkeley Trauma Informed Care Plan Update](#) (which is posted on the MHSA Plans and Updates webpage) was approved through City Council in October 2018 and by the MHSOAC in December 2018. This modified project implemented TIC Training for Educators and interested parents in four local Head Start sites.

The TIC modified project, “Early Childhood Trauma and Resiliency” (ECTR) was implemented from January 2019 through June 2021 at four YMCA Head Start sites located in Berkeley: Ocean View, South YMCA, Vera Casey, and West YMCA. The project provided training and supports to enable Head Start staff to recognize trauma and its effects on themselves and the children and families they serve, and to integrate trauma and resiliency informed approaches into their work. The project provided training, coaching and peer support to staff and parents who have children enrolled in Head Start and advanced Berkeley’s 2020 Vision priority, that all Berkeley children enter kindergarten ready to learn.

The learning objectives of this project were as follows:

- To create a change in the way Head Start educators and staff view and handle challenging student and parent behaviors (which often mask trauma);
- To create an increase in access to mental health services and supports for children/families in need;
- To promote better mental health outcomes by increasing child/family referrals to “appropriate” mental health services.

In FY21, 178 children received services through this program. Below are demographics of individuals impacted in FY21 by this program. The final evaluation conducted during the reporting timeframe by HTA, is attached to this report.

| <b>PARTICIPANT DEMOGRAPHICS N=178</b> |      |
|---------------------------------------|------|
| <b>Age Groups</b>                     |      |
| 0-15 (Children)                       | 100% |
| <b>Race</b>                           |      |
| Asian                                 | 9%   |
| Black or African American             | 29%  |
| White                                 | 9%   |
| Other                                 | 28%  |
| More than one Race                    | 17%  |
| Declined to Answer (or Unknown)       | 8%   |



| <b>Ethnicity: Hispanic or Latino/Latina/Latinx</b>         |     |
|------------------------------------------------------------|-----|
| Central American                                           | 2%  |
| Mexican/Mexican-American/Chicano                           | 32% |
| Puerto Rican                                               | 1%  |
| South American                                             | 2%  |
| Other                                                      | 2%  |
| More than one ethnicity                                    | 7%  |
| <b>Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx</b> |     |
| African                                                    | 6%  |
| Cambodian                                                  | <1% |
| Chinese                                                    | 3%  |
| Middle Eastern                                             | <1% |
| Vietnamese                                                 | 1%  |
| Other                                                      | 9%  |
| More than one Ethnicity                                    | 2%  |
| Declined to Answer (or Unknown)                            | 20% |
| <b>Primary Language</b>                                    |     |
| English                                                    | 67% |
| Spanish                                                    | 23% |
| Urdu                                                       | <1% |
| Arabic                                                     | 2%  |
| French                                                     | 1%  |
| Berber                                                     | 1%  |
| Mongolian                                                  | <1% |
| Amharic                                                    | <1% |
| Tigrina                                                    | 1%  |
| Chinese/Mandarin                                           | 1%  |
| Nepalese                                                   | <1% |
| Declined to Answer (or Unknown)                            | <1% |

| Disability                                       |     |
|--------------------------------------------------|-----|
| Communication: other, speech/language impairment | 39% |
| Physical domain                                  | 7%  |
| Other                                            | 7%  |
| No Disability                                    | 47% |
| Gender                                           |     |
| Female                                           | 41% |
| Male                                             | 59% |

### Help@Hand - Technology Suite Project

In September 2018, following a four-month community planning process and approval from City Council, the [City of Berkeley Technology Suite Project](#) (which has since been renamed “Help@Hand) was approved by the MHSOAC. This project allocates a total of \$462,916 to participate in a Statewide Collaborative with other California counties to pilot a Mental Health Technology Project that makes various technology-based mental health services and supports applications (Apps) locally available in Berkeley. The Help@Hand project seeks to learn whether the use of the Apps will increase access to mental health services and supports; and whether it will increase the quality of mental health services, including leading to better outcomes.

Since plan approval and through FY21, the City of Berkeley worked both internally and with the California Mental Health Services Authority (CalMHSA), the fiscal intermediary for this project, to prepare for citywide implementation. Due to a need for additional community mental health supports as a result of the pandemic, the priority population for accessing Apps was changed from the original primary focus on TAY and Older Adults, to include anyone who lives, works and goes to school in Berkeley.

Per a competitive recruitment process, the Division contracted with Resource Development Associates (RDA), who conducted Project Coordination work through early FY22 on this project. Additionally, on behalf of the City, and with locally designated Help@Hand project funds, CalMHSA executed a contract with Uptown Studios, a local Marketing company in early FY22 to conduct a marketing and social media campaign for this project. In November 2021, as a result of this project, free access to the HeadSpace and MyStrength Apps became locally available for a limited timeframe to anyone who lives, works or goes to school in Berkeley.

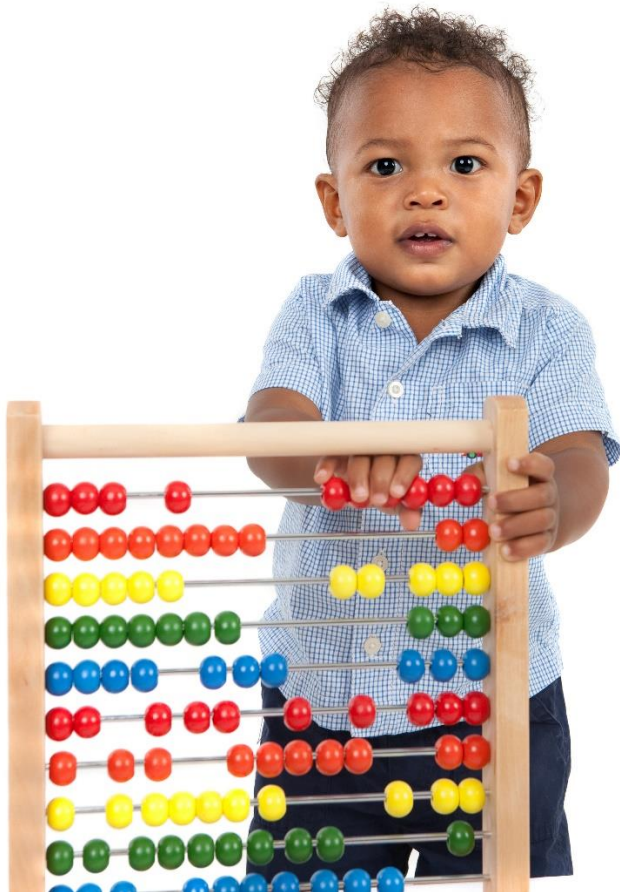
The City is currently participating in a State Evaluation with other counties in this project. The evaluation is being conducted by the University of California at Irvine (UCI). Additionally,

following a competitive recruitment process, the City of Berkeley entered into a contract with Hatchuel, Tabernik & Associates to conduct a local evaluation of this project. Outcomes of this project will be outlined in future reports.

# Early Childhood Trauma and Resiliency Project (ECTR)

City of Berkeley, Berkeley's 2020 Vision

Final 3-Year Evaluation Report, August 2021



Prepared by  
Ruthie Chang, EdM  
Hatchuel Tabernik and Associates

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## Project Description

Berkeley's 2020 Vision is a citywide partnership that strives to eliminate racial disparities in Berkeley's public education system, with a primary focus on African American and Latinx children and their families. Berkeley's 2020 Vision advances the following City of Berkeley's strategic plan goal: to champion and demonstrate social and racial equity.

In December 2019, Berkeley's 2020 Vision was awarded \$336,825 in Mental Health Services Act (MHSA) funding through June 30<sup>th</sup>, 2021, to implement the Early Childhood Trauma and Resiliency (ECTR) Project in partnership with the YMCA of the East Bay. The ECTR project advances Berkeley's 2020 Vision priority that all Berkeley children enter kindergarten ready to learn.

The ECTR Project provides training, coaching, and peer support to staff and parents with children enrolled in YMCA's four Head Start sites located in Berkeley: Ocean View, South YMCA, Vera Casey, and West YMCA. This project's core strategy is to build the capacity of YMCA Head Start staff to recognize trauma and its effects on themselves, children, and families, and integrate a trauma- and resiliency-informed approach into their work with children and families. The ultimate goal of this project is to improve mental health care access and outcomes for children, ages 0 through 5 years old who are enrolled at each of the YMCA's four sites.

## Key Partners

Nina Goldman of Berkeley's 2020 Vision is managing this project on behalf of the City of Berkeley. Anita Smith, Psy.D., who oversees the work of Head Start's mental health services, is the Project Coordinator of the ECTR Project on behalf of the YMCA of the East Bay. Dr. Smith works closely with Melanie Mueller, Executive Director, who is responsible for early childhood development programs at YMCA of the East Bay, replacing Pamm Shaw as of Winter/Spring 2020. Head Start has contracted with Julie Kurtz, MS, LMFT, to conduct trauma training, coaching, and guidance to the ECTR Project. Ms. Kurtz is a private consultant and author with extensive expertise in trauma, early childhood development, training, and curriculum development. She co-authored the book, **Trauma-Informed Practices for Early Childhood Educators**, published in 2019. Before opening her consulting practice, Ms. Kurtz served as Co-Director of Trauma-Informed Practices in Early Childhood Education at WestEd's Center for Child & Family Studies. Berkeley's 2020 Vision has also contracted with Hatchuel Tabernik and Associates (HTA) to lead the evaluation of the ECTR project.

## Theory of Change

The underlying theory of change creates a chain of reasoning from resources to outcomes that is used to test assumptions and inform the evaluation. ECTR's theory of change is as follows:

- Trauma has a significant impact on the mental health of Head Start students, parents/guardians, educators and staff.
- Introducing a trauma-informed approach and strategies to Head Start educators and staff will enable them to better recognize their own trauma and triggers.
- This knowledge will help educators and staff approach students and parents/guardians from a trauma-informed perspective (including shifting from "What's wrong with you?" to "What happened to you?").

- Supported by agency-wide trainings, peer support learning circles, and in-class coaching, teachers and staff will develop more positive, empathic relationships with students and their parents/guardians, helping them to better identify trauma in the children/families they serve.
- Equipped with trauma-informed tools and stronger relationships with students and parents, educators will make more successful and “appropriate” mental health referrals.
- This project will build Head Start’s in-house capacity to lead trainings, facilitate peer support circles, and onboard new staff to ensure sustainability beyond the current funding term.

“It is easier to build strong children than to repair broken men.”

-Frederick Douglass

## Methodology

The overall purpose of this evaluation is to determine the impact of the ECTR model implementation on the way that Head Start educators and staff view trauma, how they handle challenging behavior, and their capacity to provide “appropriate” mental health referrals. Through a mixed-methods, collaborative, and client-centered approach, HTA uses a **utilization-focused approach** for the ECTR evaluation, combining surveys, focus groups/interviews, and archival data to address the impact of the program on participants and mental health referrals. Utilization-based evaluation is an approach whereby the evaluation activities from beginning to end are focused on the intended use by the intended users.<sup>1</sup> HTA also attempts to account for the developmental nature of the program as it is designed and continues to evolve while the evaluation is underway.

The following research questions (RQs) were developed to guide the evaluation activities:

### ***Project Goal 1: To create a change in the way Head Start educators and staff view and handle challenging student and parent behaviors (which often mask trauma)***

**RQ1:** What is the impact of the ECTR model on participants (Head Start staff and educators, resiliency champions, peer support learning circle participants)?

Specifically, do they view themselves, the parents, and children they work with differently? Do they view student behavior issues differently? When parents attend trainings, what is the impact on them?

### ***Project Goal 2: To create an increase in access to mental health services and supports for children/families in need***

**RQ2:** What is the impact on Head Start families’ and children’s access to mental health services?

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<sup>1</sup> Patton, M.Q. (2012). *Essentials of Utilization-Focused Evaluation*. Thousand Oaks, CA: SAGE Publications, Inc.

Specifically, are Head Start educators and staff more comfortable talking about mental health with families, both before and after referrals are made? Do they see themselves as allies in helping families access mental health services? Do Head Start educators and staff feel better equipped to utilize the mental health referral process? Is there a change in the number of mental health referrals?

**Project Goal 3: To promote better mental health outcomes by increasing child/family referrals to “appropriate” mental health services**

**RQ3:** Is there an increase in the number of “appropriate” mental health referrals from Head Start educators and staff?

In order to answer the evaluation questions, HTA is collecting the following data from ECTR program staff and developing instruments (e.g., staff survey, focus group protocols) as needed.

**Table 1. ECTR Data Sources**

| Data Source                                  | Description of Data Source                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Training attendance sheets</b>            | Collected by YMCA at each training, these attendance sheets indicate all YMCA staff who attended the training. Attendance sheets include training date, training location, names, job titles, and sites.                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Annual participant survey</b>             | Online survey completed by YMCA staff annually. The survey was developed by HTA in collaboration with ECTR program leaders adapting some questions from existing surveys from the City of Berkeley’s 2016-17 Trauma-Informed Systems pilot program and a trauma-informed practices self-assessment from <i>defendingchildhoodoregon.org</i> . Topics covered include how staff better understand how their own past trauma impacts their work, how staff view students and families who have experienced trauma that impacts their behavior, and how staff approach behavioral issues. The same survey will be completed each year to see change over time. |
| <b>YMCA Child Plus</b>                       | YMCA database with demographics of children for MHSR reporting requirements.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>YMCA supplemental demographics survey</b> | YMCA survey administered at the door to families to collect missing demographic data for MHSR that is missing from ChildPlus.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Program Information Reports (PIR)</b>     | YMCA Mental Health Consultants complete this worksheet on a monthly basis for submission to the Program Manager. This worksheet reports mental health referrals to agencies outside of the YMCA Head Start program.                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Mental health referral follow-up form</b> | HTA helped YMCA develop this form. Mental Health Consultants complete this form to document “appropriateness” of referral, in other words, whether they contacted referral agencies before the referral, whether families utilized the referral, and whether it met their needs.                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Focus group</b>                           | A focus group was conducted with staff from each site in the second year. Focus groups gather information about how educators and staff view themselves, children, and parents, how they handle challenging behaviors, and changes to their capacity to make referrals.                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Staff Interviews</b>                      | Four staff and leadership interviews were conducted in the third and final year of the project to understand the long-term impacts of the trauma trainings.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Post-training surveys</b>                 | Surveys developed by trainers and administered post-training via paper surveys to measure understanding and satisfaction.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |



# Implementation

## Implementation Activities to Date

This report covers program activities and outcomes cumulatively over the past 30 months of program implementation from January 1<sup>st</sup> 2019 through June 30<sup>th</sup>, 2021.

### Year 1

Head Start kicked off the ECTR project in February 15<sup>th</sup>, 2019 with its first all-staff (e.g., teachers, counselors, administrators) training, **“Understanding Trauma Informed Practices for Early Childhood Programs: Creating Strength-Based Environments to Support Children’s Health and Healing”** (also referred to as “Trauma Informed Care 101”). See Table 3 below for training dates and attendance counts.

The subsequent training was designed for Head Start’s leadership team to begin preparing management staff to effectively guide their teams/supervisees through organizational culture change. This session, **“Kick-off and Leadership Reflective Practices,”** was held on June 10<sup>th</sup>, 2019. It specifically focused on how to create a safe and strong supervisor-supervisee relationship through a reflective practice.

The Resiliency Champion component of this project was designed to help establish and maintain a trauma-informed care environment at the Head Start Centers by developing staff leadership and putting in place a mechanism to onboard new staff to trauma-informed practices quickly and effectively. In early summer 2019, Dr. Smith recruited and selected a group of 15 “Resiliency Champions” to serve as internal leaders and future trainers of the trauma-informed curriculum to new staff. Resiliency Champions include program managers, area managers, workforce development staff, health specialists, family advocates, a center director, and a lead teacher.

The **Resiliency Champion trainings and Learning Circles** launched on June 10<sup>th</sup>, 2019. Champions attended ten three-hour training sessions through November 1<sup>st</sup>, 2019. Training sessions were co-facilitated by Julie Kurtz and Dr. Smith. Training handouts describe the purpose of the Resiliency Champions sessions as: “to reflect and go deeper in discussion about how to practically apply social-emotional and trauma sensitive strategies to the work we do with each other, families and children every day. To seek to understand human behavior so that we can grow in our awareness and help make our own lives, others and the planet a more humane place to live in. To take an inquiry stance where we are eager to learn and seek to understand. Growth comes from self-reflection and self-awareness.”

Resiliency Champion sessions covered topics including: **Understanding the Neurobiology of Trauma, Foundations of Trauma-Informed Practices for Early Childhood Education and Trauma Sensitive Early Childhood Programs**. Participants discussed case studies, including those of an infant and mother in a homeless shelter, a toddler with a history of neglect and three foster care placements, a preschooler with an undocumented father who has been deported, and a child who witnessed a drive-by shooting while at school. The text for these sessions is a book co-authored by Julie Kurtz, [Trauma Informed Practices for Early Childhood Educators: Relationship-](#)

Based Approaches that Support Healing and Build Resilience in Young Children. The Resiliency Champions also learned and practiced delivering three new staff trainings developed by Ms. Kurtz for this project, each with its own PowerPoint slide deck. A later session covered: **The Importance of Self-Care: Taking Care of Yourself in Order to Prevent Burnout, Compassion Fatigue and Secondary Traumatic Stress**.

“We were always gardening, but now we can be better gardeners because we can name the plants.”

-May 2020 Trauma Training Attendee

## Year 2

Four all-staff trainings were held during this second year of the program. The first, a four-hour training, was held on August 22<sup>nd</sup>, 2019 and covered the topic, **Self-Care: Getting a PhD in You**, focused on provider self-care while doing trauma-informed work and was facilitated by Julie Kurtz. Attendees had positive feedback in post-training evaluations, sharing that they learned techniques regarding internal dialogue and self-talk. One participant expressed that “when we care for ourselves in a great way, meeting all of our needs, we can better care for others.” The next all-staff training on October 14<sup>th</sup> discussed the topic of **Trauma Informed Practices: Classroom Strategies** and was also facilitated by Julie Kurtz. This 6-hour training was attended by 67 staff and covered strategies such as supporting relationship practices and environments that promote safety, predictability, empowerment, and control as well as direct skill-building of social-emotional skills.

After these trainings, staff provided feedback about them to ECTR leaders, as well as to HTA, in a focus group held on November 27<sup>th</sup>. Focus group participants expressed thoughts and opinions about the training and the trainer that program leaders felt would be addressed by bringing on additional trainers to provide a wider variety of perspectives, strategies, and cultural vantage points. On January 27<sup>th</sup>, 2020, Valentina Torrez, a trainer through Optimal Brain Integration, along with Julie Kurtz, facilitated a follow-up to the Self-Care training for all staff entitled **Self-Care Part 2**. Training evaluations reflect staff’s appreciation of having Ms. Torrez’s expertise to build upon Ms. Kurtz’s knowledge base.

In February 2020, Dr. Smith, the Project Coordinator, began leading **Resiliency/Learning Circles** with staff at each site. In sessions with staff at the South Y and Vera Casey Head Start sites, Dr. Smith facilitated two-hour discussions around **Expectations and Self-Care**.

As part of this project’s effort to ensure the long-term sustainability of the trauma-informed approach throughout the organization, Dr. Smith also conducted two 1.5-hour training sessions on **Intro to Trauma-Informed Care** for twelve new staff onboarded on January 8<sup>th</sup> and February 6<sup>th</sup>. Staff included a center director, program assistants, family advocates, teachers and kitchen staff. Because of the challenges of conducting trainings remotely, Dr. Smith led the onboarding processes by herself without participation from the Resiliency Champions. Moving into the next school next year, part of the introduction to trauma trainings will be delivered through webinars produced by

YMCA staff. Resiliency Champions will be an integral part of delivering the training materials with support and oversight by Dr. Smith.

### Pivots to Programming During COVID-19

On March 16<sup>th</sup>, 2020, Alameda County issued stay-at-home orders in response to Covid-19, the novel coronavirus. Head Start had to close its doors without notice and shift its services to reach out to and support families and children in this new reality. Staff who work directly with children conducted outreach to families once or twice weekly, depending on the family's needs and circumstances. Parents were most responsive through phone calls (audio only) and primarily communicated with staff this way. About half of our families engaged either over video (e.g., Zoom) or over email. As indicated in Table 2 (below), nearly three-quarters of Head Start teachers and outreach staff created and shared activities remotely with children and families, 40% referred families to resources, and 37% developed resources and media such as recording story time on YouTube. Nearly a third distributed diapers and emergency supplies to families, and one in five distributed gift cards to families for emergency needs. Other staff were involved in crisis management issues or managed Head Start hiring and administrative tasks as they transitioned online.

**Table 2. Ways Staff Worked with Children and Families as a Result of the COVID-19 Pandemic**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | %   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| <b>Providing activities for children/families</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                | 73% |
| <b>Diaper/supply distribution</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 31% |
| <b>Referring families to resources</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 40% |
| <b>Crisis management</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 12% |
| <b>Learning kits for each family</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 14% |
| <b>Gift card distribution for emergency support</b>                                                                                                                                                                                                                                                                                                                                                                                                                                              | 20% |
| <b>Developing resources and media</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 37% |
| <b>Not working with children/families</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 6%  |
| <b>Other</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 11% |
| <ul style="list-style-type: none"> <li>• <i>Call families once or twice a week to meet their needs and know about children learning and development at home</i></li> <li>• <i>Call parents once a week and check on children.</i></li> <li>• <i>More managerial tasks--putting much of the work we do online, hiring, supporting Family Advocates, etc.</i></li> <li>• <i>Other management task</i></li> <li>• <i>referring to our mental health</i></li> <li>• <i>Take trainings</i></li> </ul> |     |

Source: ECTR Evaluation Staff Survey, May/June 2020 (N=52)

In the midst of this upheaval, the ECTR program continued its work. Julie Kurtz and Lawanda Wesley (of Optimal Brain Integration) were scheduled to lead an in-person **Family Engagement Trauma Training** on May 18<sup>th</sup>, 2020. In response to the pandemic, the Head Start team transitioned this planned training into a two-part virtual training over three hours on May 18<sup>th</sup> and three hours on the 28<sup>th</sup>. In addition to discussing strategies to engage families from a trauma-based lens, the trainers adjusted the topics to meet the immediate needs of staff, including: anxiety as a result of Covid-19, coping strategies, wellness, and self-care. Staff also discussed what would make them feel safe when Head Start re-opened. Feedback from these trainings was extremely positive based on post-training evaluations. Attendees wanted even more training for staff “to better handle

families that are dealing with trauma as they [staff] may be dealing with trauma themselves” and others recommended that families take the training as well. Another attendee reportedly expressed how the training helped her to name the issues she sees with children, “We were always gardening but now we can be better gardeners because we can name the plants.”

The ECTR team also reconvened staff in online, monthly **Resiliency/Learning Circles** starting the week of April 9<sup>th</sup>, 2020. These forums provided a critical space for teachers and staff to come together, by site, and talk through their own apprehensions and fears amidst the pandemic, and those being experienced by the children and families they serve. The ECTR Project Coordinator, Dr. Smith, led the Resiliency Circles and invited all site staff, except for the Center Director (by design), to join on their lunch break. This was an opportunity to have time to reflect together on the current challenges, wellness during Covid-19, and also how to re-open sites safely.

According to Dr. Smith, the Circles were sometimes emotional, teachers were in distress, and many attendees were in tears but “feeling uplifted and challenged together.” It became clear to Dr. Smith that Covid-19 is a traumatic event and “if we teach the strategies about trauma, we have to be about it.” The manner in which she led the Resiliency Circles with teachers and staff was critical in reinforcing and modeling how staff need to work with children. She acknowledged all feelings, fears, and anxiety and allowed them to name it. She acknowledged that they were in a safe place and normalized their tears without judgment, just as they do with the children.

A **Leadership Team Peer Support Learning Circle** for managers on May 21<sup>st</sup>, 2020, led by Kriss Sulka, LCSW, an Oakland-based early childhood mental health expert, allowed leaders to come together and learn, receive support, and troubleshoot issues associated with the impacts of the pandemic, implementing ECTR and adopting a trauma-centered organizational approach. Kriss Sulka also led a similar one-hour training on June 4<sup>th</sup>, 2020 for the Head Start Inclusion Team to discuss the impacts of the pandemic on their work specifically.

While these activities continued, YMCA was also making plans to re-open on July 6<sup>th</sup>, 2020. While also managing staff anxiety about re-opening, YMCA staff and leaders plan to conduct a reorientation with families to make their return as smooth and safe as possible and to ensure that everyone knows what to expect. An important element of this re-opening plan will involve building on the knowledge and expertise that Head Start staff has learned about trauma-informed care. The students, their families and many of the Head Start staff have experienced trauma as a result of the Covid-19 outbreak. The ECTR project has positioned Head Start to better support children, families and out own staff through this traumatic time.

### Year 3

In the third and final year, the program leaders continued to listen to staff feedback that trainers should have relatable lived experience and that they would like new faces and perspectives. Several of this year’s all-staff trainings were led by DB Bedford, a trainer and speaker on the topics of emotional intelligence based on his own life experience in his youth in the criminal justice system. Program leaders also expanded the audiences of the trainings to offer them to parents as well.

On August 13, 2020, all staff attended the training on **Emotional Intelligence**. Through personal stories from his early life in Oakland, Bedford described how he lost several of his childhood friends

to murder over emotionally charged incidents and struggled with his own emotional outbursts and violent behavior. His behavior consequently landed him in jail facing serious time for losing his temper and attempting to take another man's life. Staff were able to apply prior learning from trauma-informed training as well as see an undesirable path for some of the children in their classrooms if their emotions and trauma were not addressed properly.

The last all-staff training was held on June 4, 2021 during Wellness Day on the topic of **Belief Theory**. The trainer, Steve Bacon, led a training on the topic of one's self-image related to trauma and traumatic experiences. He discussed strategies for shifting one's mindset about trauma.

*"We are the ones that hold power and we can learn a lot from children by listening and watching them, their verbal and physical reactions and using that to support them." – Health and Family Service Specialist, 2021*

Bedford returned on October 23, 2020 to conduct the same **Emotional Intelligence** training with parents and again on January 25, 2021 to conduct an **Emotional Detox** training with all staff. The trainings were well-received by staff who appreciated his relatable style and approach.

In the fall and into the following summer, Dr. Anita Smith continued to lead **Resiliency Circles** at each of the four sites on the topics of **Self Care Strategies and Wellness during Covid-19**. These circles allowed staff a space to reflect on and apply the self-care strategies learned in the prior year and to share their personal stresses and challenges as well as those related to the children and families they work with. Dr. Smith also led a training for Resiliency Champions to continue the "train the trainer" model for Champions to hold these spaces for staff at each site.

*"My emotional well-being was affected [by Covid-19]. Meditation was the biggest thing that helped me. Tuning into my body and understanding what was happening. I used to have lots of panic attacks –tingling, breathing signs. I started meditation. I would think about families and kids... I used these concepts at work and at home." – Health and Family Service Specialist, 2021*

In addition to the **Emotional Intelligence** training for parents, other trainings for parents included **Resiliency and Trauma** on September 25, 2020 and **Surviving Covid** on December 16, 2020. This was a critical component of the program's trauma-informed design to ensure everyone involved at the YMCA sites, from teachers, staff, leadership to parents, were able to use the same language and call upon the same concepts learned in trainings around trauma.

**Table 3. Training Sessions and Attendance**

| Training Name                                                                    | Date          | Length  | # Attendees |
|----------------------------------------------------------------------------------|---------------|---------|-------------|
| <b><u>Year One Trainings</u></b>                                                 |               |         |             |
| Understanding Trauma Informed Practices for Early Childhood Programs (All Staff) | Feb 15, 2019  | 8 hours | 62          |
| Kick-off and Leadership Reflective Practices                                     | June 10, 2019 | 3 hours | 17          |
| Resiliency Champion Meeting 1                                                    | June 10, 2019 | 3 hours | 15          |
| Resiliency Champion Meeting 2                                                    | June 24, 2019 | 3 hours | 15          |
| <b><u>Year Two Trainings</u></b>                                                 |               |         |             |
| Resiliency Champion Meeting 3                                                    | July 1, 2019  | 3 hours | 13          |
| Resiliency Champion Meeting 4                                                    | July 15, 2019 | 3 hours | 13          |
| Resiliency Champion Meeting 5                                                    | Aug 19, 2019  | 3 hours | 11          |
| Trauma-Informed Practices: Self-Care for Early Childhood Providers (All Staff)   | Aug 22, 2019  | 3 hours | 86          |
| Resiliency Champion Meeting 6                                                    | Sept 9, 2019  | 3 hours | 11          |
| Resiliency Champion Meeting 7                                                    | Sept 23, 2019 | 3 hours | 10          |
| Resiliency Champion Meeting 8                                                    | Oct 7, 2019   | 3 hours | 10          |
| Resiliency Champion Meeting 9                                                    | Oct 21, 2019  | 3 hours | 8           |
| Trauma-Informed Practices: Classroom Strategies (All Staff)                      | Oct 14, 2019  | 6 hours | 67          |
| Resiliency Champion Meeting 10                                                   | Nov 1, 2019   | 3 hours | 7           |
| Self-Care Part 2 (All Staff)                                                     | Jan 27, 2020  | 3 hours | 85          |
| <b><u>Resiliency Circles (site-based)</u></b>                                    |               |         |             |
| South Y                                                                          | Feb 19, 2020  | 2 hours | 12          |
| Vera Casey                                                                       | Mar 10, 2020  | 2 hours | 8           |
| <b><u>Resiliency Circles-virtual (site-based)</u></b>                            |               |         |             |
| South Y (Self-Care and Wellness During Covid-19)                                 | Apr 9, 2020   | 1 hour  | 15          |
| West Y (Self-Care and Wellness During Covid-19)                                  | Apr 15, 2020  | 1 hour  | 15          |
| Vera Casey (Self-Care and Wellness During Covid-19)                              | Apr 23, 2020  | 1 hour  | 15          |
| Oceanview (Self-Care and Wellness During Covid-19)                               | Apr 29, 2020  | 1 hour  | 15          |
| South Y (Prioritizing to Minimize Stress & New Normal)                           | May 13, 2020  | 1 hour  | 15          |
| Vera Casey (Prioritizing to Minimize Stress & New Normal)                        | May 14, 2020  | 1 hour  | 15          |
| West Y (Prioritizing to Minimize Stress & New Normal)                            | Jun 12, 2020  | 1 hour  | 15          |
| Oceanview (Prioritizing to Minimize Stress & New Normal)                         | Jun 19, 2020  | 1 hour  | 15          |
| Family Engagement Part 1 -virtual (All Staff)                                    | May 18, 2020  | 3 hours | 65          |
| Leadership Team Peer Support Learning Circle (leadership)                        | May 21, 2020  | 1 hour  | 9           |
| Family Engagement Part 2 -virtual (All Staff)                                    | May 28, 2020  | 3 hours | 65          |
| Peer Support Learning Circle (Inclusion Team)                                    | Jun 4, 2020   | 1 hour  | 4           |
| <b><u>Year Three Trainings</u></b>                                               |               |         |             |
| Emotional Intelligence (All Staff)                                               | Aug 13, 2020  | 90 min  | 85          |
| <b><u>Resiliency Circles (site based)</u></b>                                    |               |         |             |
| South Y                                                                          | Jul 11, 2020  | 1 hour  | 15          |
| West Y                                                                           | Sept 11, 2020 | 1 hour  | 15          |
| West Y (Self-Care and Wellness During Covid-19)                                  | Oct 28, 2020  | 2 hours | 13          |
| Oceanview (Self-Care and Wellness During Covid-19)                               | Nov 18, 2020  | 2 hours | 10          |
| Vera Casey (Self-Care and Wellness During Covid-19)                              | Dec 10, 2020  | 1 hour  | 5           |
| West Y                                                                           | Jun 24, 2021  | 1 hour  | 15          |
| South Y                                                                          | Jun 25, 2021  | 1 hour  | 15          |
| Oceanview                                                                        | Jun 28, 2021  | 1 hour  | 10          |
| Vera Casey                                                                       | Jun 29, 2021  | 1 hour  | 5           |
| Resiliency and Trauma (Parents)                                                  | Sept 25, 2020 | 1 hour  | 35          |
| Resiliency Champions Training                                                    | Nov 20, 2020  | 1 hour  | 3           |
| Emotional Intelligence (Parents)                                                 | Oct 23, 2020  | 90 min  | 35          |
| Surviving Covid (Parents)                                                        | Dec 16, 2020  | 90 min  | 6           |
| Emotional Detox (All Staff)                                                      | Jan 25, 2021  | 1 hour  | 85          |
| Wellness Day: Belief Theory                                                      | Jun 4, 2021   | 1 hour  | 85          |

Source: ECTR program documents

## Findings

### Demographic Data

While the ECTR program activities are aimed at teachers and staff, the ultimate long-term goal of the program is to improve the lives of the children they serve. We, therefore, consider children the primary participants of the program and provide their demographics below. Demographic data was collected from Head Start's ChildPlus system as well as a supplemental parent/guardian survey for demographics not collected in ChildPlus (e.g., MHSA ethnicity categories). The program's Theory of Change posits that more immediate changes will first occur in teachers and staff, as described in Figure 1 later in the report.

#### Child (Participant) Demographics

The ECTR program served 197 children at the four program sites in 2018-19, 197 in 2019-20, and 178 in 2020-21 (see Table 4). The majority of children's primary language is English (67%), and 23% primarily speak Spanish. There are more male (59%) than female (41%) children. All children are in the 0-5 age group. The most common disability among the children is a speech/language impairment (39%).



Table 4. ECTR Child Demographics<sup>2</sup>

|                                                         | n   | Year 1<br>(N=197)<br>% | n   | Year 2<br>(N=197)<br>% | n   | Year 3<br>(N=178)<br>% |
|---------------------------------------------------------|-----|------------------------|-----|------------------------|-----|------------------------|
| <b>Site</b>                                             |     |                        |     |                        |     |                        |
| <i>Oceanview</i>                                        | 49  | 25%                    | 48  | 24%                    | 42  | 24%                    |
| <i>South YMCA</i>                                       | 69  | 35%                    | 63  | 32%                    | 56  | 31%                    |
| <i>Vera Casey</i>                                       | 16  | 8%                     | 19  | 10%                    | 18  | 10%                    |
| <i>West YMCA</i>                                        | 63  | 32%                    | 67  | 34%                    | 62  | 35%                    |
| <b>Total</b>                                            | 197 | 100%                   | 197 | 100%                   | 178 | 100%                   |
| <b>Gender (assigned at birth)</b>                       |     |                        |     |                        |     |                        |
| <i>Female</i>                                           | 97  | 49%                    | 93  | 47%                    | 73  | 41%                    |
| <i>Male</i>                                             | 100 | 51%                    | 104 | 53%                    | 105 | 59%                    |
| <b>Total</b>                                            | 197 | 100%                   | 197 | 100%                   | 178 | 100%                   |
| <b>Age</b>                                              |     |                        |     |                        |     |                        |
| <i>0-5</i>                                              | 197 | 100%                   | 197 | 100%                   | 178 | 100%                   |
| <b>Primary Language</b>                                 |     |                        |     |                        |     |                        |
| <i>English</i>                                          | 130 | 66%                    | 119 | 60%                    | 120 | 67%                    |
| <i>Spanish</i>                                          | 41  | 21%                    | 43  | 22%                    | 41  | 23%                    |
| <i>Urdu</i>                                             | 5   | 3%                     | 2   | 1%                     | 1   | <1%                    |
| <i>Arabic</i>                                           | 4   | 2%                     | 4   | 2%                     | 4   | 2%                     |
| <i>French</i>                                           | 4   | 2%                     | 2   | 1%                     | 2   | 1%                     |
| <i>American Sign Language</i>                           | 2   | 1%                     | 0   | 0%                     | 0   | 0%                     |
| <i>Berber</i>                                           | 2   | 1%                     | 2   | 1%                     | 2   | 1%                     |
| <i>Mongolian</i>                                        | 2   | 1%                     | 0   | 0%                     | 1   | <1%                    |
| <i>Punjabi</i>                                          | 2   | 1%                     | 1   | <1%                    | 0   | 0%                     |
| <i>Tigrina</i>                                          | 2   | 1%                     | 1   | <1%                    | 2   | 1%                     |
| <i>Amharic</i>                                          | 0   | 0%                     | 1   | <1%                    | 1   | <1%                    |
| <i>Chinese/Mandarin</i>                                 | 1   | 1%                     | 1   | <1%                    | 2   | 1%                     |
| <i>Laotian</i>                                          | 1   | 1%                     | 0   | 0%                     | 0   | 0%                     |
| <i>Nepalese</i>                                         | 0   | 0%                     | 1   | <1%                    | 1   | <1%                    |
| <i>Russian</i>                                          | 1   | 1%                     | 0   | 0%                     | 0   | 0%                     |
| <i>Korean</i>                                           | 0   | 0%                     | 0   | 0%                     | 0   | 0%                     |
| <i>Missing</i>                                          | 0   | 0%                     | 20  | 10%                    | 1   | <1%                    |
| <b>Total</b>                                            | 197 | 100%                   | 197 | 100%                   | 178 | 100%                   |
| <b>Disability</b>                                       |     |                        |     |                        |     |                        |
| <i>Communication: difficulty seeing</i>                 | 0   | 0%                     | 0   | 0%                     | 0   | 0%                     |
| <i>Communication: difficulty hearing</i>                | 0   | 0%                     | 0   | 0%                     | 0   | 0%                     |
| <i>Communication: other, speech/language impairment</i> | 39  | 20%                    | 20  | 10%                    | 70  | 39%                    |
| <i>Mental domain</i>                                    | 4   | 2%                     | 2   | 1%                     | 0   | 0%                     |
| <i>Physical/mobility domain</i>                         | 3   | 2%                     | 0   | 0%                     | 12  | 7%                     |
| <i>Chronic health condition</i>                         | 11  | 6%                     | 1   | <1%                    | 0   | 0%                     |
| <i>Other</i>                                            | 11  | 6%                     | 3   | 2%                     | 13  | 7%                     |
| <i>[No Disability]</i>                                  | 129 | 65%                    | 171 | 87%                    | 83  | 47%                    |
| <b>Total</b>                                            | 197 | 100%                   | 197 | 100%                   | 178 | 100%                   |

Source: YMCA ChildPlus

<sup>2</sup> The MHSA categories of sexual orientation, veteran status, and current gender identity are excluded as instructed.



A supplemental survey asking only the following race and ethnicity questions was administered to families in May 2021. Black/African American children are the largest ethnic/racial group served (29%) followed by children reporting “Other” (28%) (See Table 5).

**Table 5. ECTR Child Race and Ethnicity Demographics<sup>3</sup>**

|                                                                | Year 1<br>(N=154) |             | Year 2<br>(N=158) |             | Year 3<br>(N=109) |             |
|----------------------------------------------------------------|-------------------|-------------|-------------------|-------------|-------------------|-------------|
|                                                                | n                 | %           | n                 | %           | n                 | %           |
| <b>Race</b>                                                    |                   |             |                   |             |                   |             |
| <i>American Indian or Alaska Native</i>                        | 3                 | 2%          | 4                 | 3%          | 0                 | 0%          |
| <i>Asian</i>                                                   | 8                 | 5%          | 6                 | 4%          | 10                | 9%          |
| <i>Black or African American</i>                               | 64                | 42%         | 75                | 47%         | 32                | 29%         |
| <i>Native Hawaiian or other Pacific Islander</i>               | 0                 | 0%          | 0                 | 0%          | 0                 | 0%          |
| <i>White</i>                                                   | 17                | 11%         | 36                | 23%         | 10                | 9%          |
| <i>Other</i>                                                   | 42                | 27%         | 15                | 9%          | 30                | 28%         |
| <i>More than one race</i>                                      | 18                | 12%         | 20                | 13%         | 18                | 17%         |
| <i>Declined to answer/Unspecified</i>                          | 2                 | 1%          | 2                 | 1%          | 9                 | 8%          |
| <b>Total</b>                                                   | <b>154</b>        | <b>100%</b> | <b>158</b>        | <b>100%</b> | <b>109</b>        | <b>100%</b> |
| <b>Ethnicity: Hispanic or Latino</b>                           |                   |             |                   |             |                   |             |
| <i>Caribbean</i>                                               | 0                 | <1%         | 1                 | <1%         | 0                 | 0%          |
| <i>Central American</i>                                        | 2                 | 1%          | 1                 | <1%         | 2                 | 2%          |
| <i>Mexican/Mexican-American/Chicano</i>                        | 37                | 30%         | 42                | 27%         | 35                | 32%         |
| <i>Puerto Rican</i>                                            | 0                 | <1%         | 1                 | <1%         | 1                 | 1%          |
| <i>South American</i>                                          | 1                 | <1%         | 2                 | 3%          | 2                 | 2%          |
| <i>Other</i>                                                   | 1                 | <1%         | 0                 | 0%          | 2                 | 2%          |
| <i>More than one ethnicity</i>                                 | 5                 | 4%          | 15                | 9%          | 8                 | 7%          |
| <i>Declined to specify</i>                                     | 0                 | 3%          | 1                 | <1%         | 0                 | 0%          |
| <b>Total Hispanic or Latino</b>                                | <b>46</b>         | <b>30%</b>  | <b>63</b>         | <b>40%</b>  | <b>50</b>         | <b>49%</b>  |
| <b>Ethnicity: Non-Hispanic or Non-Latino</b>                   |                   |             |                   |             |                   |             |
| <i>African</i>                                                 | 53                | 34%         | 59                | 37%         | 7                 | 6%          |
| <i>Asian Indian/ South Asian</i>                               | 2                 | 1%          | 3                 | 2%          | 0                 | 0%          |
| <i>Cambodian</i>                                               | 1                 | 1%          | 2                 | 1%          | 1                 | <1%         |
| <i>Chinese</i>                                                 | 1                 | 1%          | 2                 | 1%          | 3                 | 3%          |
| <i>Eastern European</i>                                        | 0                 | 0%          | 1                 | <1%         | 0                 | 0%          |
| <i>European</i>                                                | 1                 | 1%          | 2                 | 1%          | 0                 | 0%          |
| <i>Filipino</i>                                                | 0                 | 0%          | 0                 | 0%          | 0                 | 0%          |
| <i>Japanese</i>                                                | 0                 | 0%          | 1                 | <1%         | 0                 | 0%          |
| <i>Korean</i>                                                  | 3                 | 2%          | 0                 | 0%          | 0                 | 0%          |
| <i>Middle Eastern</i>                                          | 6                 | 4%          | 2                 | 1%          | 2                 | 2%          |
| <i>Vietnamese</i>                                              | 0                 | 0%          | 0                 | 0%          | 1                 | <1%         |
| <i>Other</i>                                                   | 4                 | 3%          | 11                | 7%          | 10                | 9%          |
| <i>More than one ethnicity</i>                                 | 4                 | 3%          | 0                 | 0%          | 2                 | 2%          |
| <i>Declined to specify</i>                                     | 5                 | 3%          | 12                | 8%          | 21                | 20%         |
| <b>Total Non-Hispanic or Non-Latino</b>                        | <b>80</b>         | <b>52%</b>  | <b>95</b>         | <b>60%</b>  | <b>50</b>         | <b>45%</b>  |
| <b>Ethnicity: Both Hispanic/Latino and Non-Hispanic Latino</b> | <b>16</b>         | <b>10%</b>  | <b>0</b>          | <b>0%</b>   | <b>3</b>          | <b>3%</b>   |
| <b>Ethnicity: Declined to answer</b>                           | <b>12</b>         | <b>8%</b>   | <b>0</b>          | <b>0%</b>   | <b>9</b>          | <b>8%</b>   |

Source: ECTR Supplemental MHSA Race/Ethnicity Survey

<sup>3</sup> The MHSA categories of sexual orientation, veteran status, and current gender identity are excluded as instructed.

### Staff Demographics

In this third year of the program, a total of 41 staff who work at the four Berkeley YMCA Head Start sites responded to an online survey in the summer of 2021 for the evaluation. The survey was sent to 61 YMCA Head Start staff, including teachers and assistant teachers, managers, directors, coaches, family advocates, mental health consultants, and program assistants. The response rate was 67%.

Survey respondents in this third year of the ECTR program reflect the general breakdown of respondents over the past three years. They work at West YMCA (37%), South YMCA (32%), Oceanview (17%), and Vera Casey (12%) (See Table 6 below). Over half of survey participants have worked at the YMCA for greater than six years (52%), with 39% who have worked for Head Start for over 9 years. About a quarter of respondents have worked at YMCA for 3-5 years (27%) and about one in five have worked there for two years or fewer (22%). Participants include teachers (44%) and teacher assistants (24%), family advocates (12%), and administrative staff such as center directors (7%), and other staff (10%). The great majority are female (83%), and nearly half identified as either Hispanic/Latinx (34%) or Black/African-American (17%). Just under half of respondents were also Resiliency Champions (42%).

**Table 6. Demographics of ECTR Staff Surveyed**

|                                                               | Year 1 % | Year 2 % | Year 3 % |
|---------------------------------------------------------------|----------|----------|----------|
| <b>Site</b>                                                   |          |          |          |
| <i>Oceanview</i>                                              | 17%      | 21%      | 17%      |
| <i>South YMCA</i>                                             | 30%      | 31%      | 32%      |
| <i>Vera Casey</i>                                             | 8%       | 12%      | 12%      |
| <i>West YMCA</i>                                              | 43%      | 35%      | 37%      |
| <i>Other (responses: all sites, admin office)</i>             | 2%       | 2%       | 2%       |
| <b>Length of time at YMCA</b>                                 |          |          |          |
| <i>Less than one year</i>                                     | 12%      | 8%       | 5%       |
| <i>1-2 years</i>                                              | 22%      | 14%      | 17%      |
| <i>3-5 years</i>                                              | 20%      | 27%      | 27%      |
| <i>6-8 years</i>                                              | 12%      | 10%      | 12%      |
| <i>More than 9 years</i>                                      | 35%      | 42%      | 39%      |
| <b>Job Title/Role</b>                                         |          |          |          |
| <i>Teacher Assistant</i>                                      | 30%      | 25%      | 24%      |
| <i>Teacher/Head Teacher</i>                                   | 37%      | 48%      | 44%      |
| <i>Area Manager</i>                                           | 5%       | 6%       | 0%       |
| <i>Center Director</i>                                        | 5%       | 6%       | 7%       |
| <i>Coach</i>                                                  | 2%       | 0%       | 0%       |
| <i>Family Advocate</i>                                        | 5%       | 8%       | 12%      |
| <i>Mental Health Consultant</i>                               | 5%       | 0%       | 0%       |
| <i>Program Assistant</i>                                      | 3%       | 0%       | 0%       |
| <i>Other Manager</i>                                          | 7%       | 0%       | 0%       |
| <i>Other (responses: floater, inclusion manager, kitchen)</i> | 2%       | 6%       | 10%      |
| <i>Missing</i>                                                | 0%       | 2%       | 2%       |
| <b>Sex</b>                                                    |          |          |          |
| <i>Female</i>                                                 | 77%      | 85%      | 83%      |
| <i>Male</i>                                                   | 5%       | 0%       | 0%       |
| <i>Missing/Declined to answer</i>                             | 18%      | 15%      | 17%      |
| <b>Race</b>                                                   |          |          |          |
| <i>American Indian or Alaska Native</i>                       | 2%       | 0%       | 0%       |
| <i>Asian</i>                                                  | 7%       | 10%      | 12%      |
| <i>Black or African American</i>                              | 18%      | 17%      | 17%      |
| <i>Native Hawaiian or other Pacific Islander</i>              | 0%       | 0%       | 0%       |
| <i>White</i>                                                  | 5%       | 8%       | 12%      |
| <i>Hispanic or Latinx</i>                                     | 30%      | 37%      | 34%      |
| <i>Other</i>                                                  | 5%       | 2%       | 5%       |
| <i>More than one race</i>                                     | 3%       | 0%       | 0%       |
| <i>Missing/Declined to answer</i>                             | 30%      | 27%      | 12%      |
| <b>Staff is a Resiliency Champion</b>                         |          |          |          |
| <i>Yes</i>                                                    | N/A      | 35%      | 42%      |
| <i>No</i>                                                     |          | 50%      | 51%      |
| <i>Missing</i>                                                |          | 15%      | 7%       |

Source: ECTR Evaluation Staff Survey, June/July 2019 (N=60), May/June 2020 (N=52), May/June 2021 (N=41)

HTA developed and administered a 39-item online survey to teachers and staff at the four sites in May and June 2020. The survey was developed by HTA in collaboration with ECTR program leaders adapting some questions from the Year 1 survey as well as existing surveys from the City of Berkeley’s 2016-17 Trauma-Informed Systems pilot program and a 2016 trauma-informed practices self-assessment from [defendingchildhoodoregon.org](http://defendingchildhoodoregon.org). The survey is administered annually to assess change in how staff understand how their own past trauma impacts their work, how staff view children and families who have experienced trauma and how that impacts their behavior, and changes in how staff approach the children and families with whom they work. In the first year, the survey was administered in the summer of 2019 and designed slightly differently as a post-retrospective survey. It asked staff how they would have answered questions prior to ECTR trainings began and then how they would answer in the past 30 days. A few questions were added over the next two years in response to Covid-19 and other programmatic changes.

ECTR’s Theory of Change posits that as staff attend trainings and learn about recognizing trauma, their own triggers, and strategies to working with children and families struggling with trauma, staff will change their own perceptions and feelings about trauma through reflections on their own lives and how that affects the way they work with children. Subsequently, they will begin to approach students and parents/guardians from a trauma-informed perspective (including shifting their framing from “What’s wrong with you?” to “What happened to you?”) and develop more positive, empathic relationships with students and their parents/guardians helping them to better identify trauma in the children/families they serve. Ultimately, staff will then change their actions and behaviors as it relates to children and families, and make more successful and “appropriate” mental health referrals. (See Figure 1 below).

**Figure 1. ECTR Theory of Change for Staff**



Source: Adapted from the ECTR Theory of Change

While there was incremental growth in the Year 1 survey results across staff views, their perceptions of children and their parents, as well as their behavior working with children and families there is limited growth in this second year. The YMCA and its ECTR project entered uncharted territory as a result of the stay-at-home orders resulting from the Covid-19 pandemic. While the ECTR trainings continued online and staff remained engaged with families, the ECTR project model is built on the premise that staff have day-to-day, intensive, in-person interactions with children throughout the school day, five days a week. Once the Head Start program shifted to virtual, children were no longer in the care of YMCA staff and YMCA staff did not have many opportunities to employ the strategies they continued to learn in trainings and Resiliency Circles. Their work with families was frequently limited to quick phone calls to check in. Likewise, the survey was not designed to measure the impact of a program that is shifting and pivoting to such a degree but rather for a structured and set program. This is important to highlight in order to contextualize those findings in that very unique year of ECTR programming.

Staff's familiarity with trauma-informed approaches continues to grow every year of this ECTR project. Over a third (39%) of participants expressed that they were “very” familiar with trauma-informed approaches this year which is an increase from 29% who expressed this last year, and 18% who expressed it in the first year (See Table 7 below).

**Table 7. Staff Familiarity with Trauma Trainings**

| How familiar are you with trauma-informed approaches to support children/families? | Pre |     | Post Year 2 |     | Post Year 3 |     |
|------------------------------------------------------------------------------------|-----|-----|-------------|-----|-------------|-----|
|                                                                                    | n   | %   | n           | %   | n           | %   |
| <b>Very familiar</b>                                                               | 11  | 18% | 15          | 29% | 16          | 39% |
| <b>Somewhat familiar</b>                                                           | 39  | 65% | 36          | 69% | 23          | 56% |
| <b>Not at all familiar</b>                                                         | 7   | 12% | 1           | 2%  | 0           | 0%  |
| <b>Not Sure</b>                                                                    | 1   | 2%  | 0           | 0%  | 2           | 5%  |
| <b>No response</b>                                                                 | 2   | 3%  | 0           | 0%  | 0           | 0%  |

Source: ECTR Evaluation Staff Survey, June/July 2019 (N=60), May/June 2020 (N=52), May/June 2021 (N=41)

On average, survey respondents attended more trainings (3.42) than the year prior (2.25) through the ECTR project. See Table 8 below.

**Table 8. Number of Trauma Trainings Attended by Staff**

|                                     | Post Year 2 |     | Post Year 3 |     |
|-------------------------------------|-------------|-----|-------------|-----|
|                                     | n           | %   | n           | %   |
| <b>0 trainings</b>                  | 7           | 14% | 3           | 7%  |
| <b>1 training</b>                   | 13          | 25% | 9           | 22% |
| <b>2 trainings</b>                  | 8           | 15% | 3           | 7%  |
| <b>3 trainings</b>                  | 10          | 19% | 7           | 17% |
| <b>4 trainings</b>                  | 12          | 23% | 5           | 12% |
| <b>5 trainings</b>                  | 2           | 4%  | 5           | 12% |
| <b>6 trainings</b>                  | n/a         |     | 6           | 15% |
| <b>7 trainings</b>                  | n/a         |     | 7           | 2%  |
| <b>8 trainings</b>                  | n/a         |     | 8           | 5%  |
| <b>Mean # of trainings attended</b> | <b>2.25</b> |     | <b>3.42</b> |     |

Source: ECTR Evaluation Staff Survey, May/June 2020 (N=52) Month 2021 (N=41)

## Staff Views and Perceptions

In the survey, staff were asked about their views and perceptions of their own trauma and triggers, as well as their perceptions of children and families. In this third year of the program, staff felt most confident “that my actions had the ability to help a child who has been exposed to trauma” (76%) and “in using trauma informed strategies” (69%). These results are reflective of those in Year 2 (See Table 9 below). In questions pertaining to triggers, there was an increased awareness by staff of what their triggers were both in terms of their own trauma (49% compared to 29% in Year 2), and that of the behavior of a child (56% up from 49% in Year 2).

We see two years in a row recently where very few staff report they had difficulty maintaining a positive learning environment because of challenging classroom behavior (3% in Year 2 and 7% in Year 3). This may be related to the fact that staff were not regularly working directly with children at the time of the survey as a result of closures for Covid-19.

**Table 9. Staff Self-Perception**

|                                                                                                               | Pre<br>% "Often" or<br>"Always" | Post Y1<br>% "Often" or<br>"Always" | Post Y2<br>% "Often" or<br>"Always" | Post Y3<br>% "Often" or<br>"Always" |
|---------------------------------------------------------------------------------------------------------------|---------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| <b>I felt I could handle every serious behavioral issue by myself</b>                                         | 38%                             | 43%                                 | 38%                                 | 38%                                 |
| <b>I reflected on my own trauma and triggers</b>                                                              | 38%                             | 67%                                 | 29%                                 | 49%                                 |
| <b>I noticed when I felt triggered by a child's behavior</b>                                                  | 51%                             | 70%                                 | 49%                                 | 56%                                 |
| <b>I felt confident in using trauma informed strategies</b>                                                   | 69%                             | 74%                                 | 67%                                 | 69%                                 |
| <b>I had difficulty maintaining a positive learning environment because of challenging classroom behavior</b> | 21%                             | 26%                                 | 3%                                  | 7%                                  |
| <b>I felt confident that my actions had the ability to help a child who has been exposed to trauma</b>        | 76%                             | 81%                                 | 72%                                 | 76%                                 |

**Source:** ECTR Evaluation Staff Survey, June/July 2019 (N=60), May/June 2020 (N=52) May/June 2021 (N=41)

**Note:** Percentages are valid (i.e. exclude missing and N/A responses). Pre and Post Y1 results are among staff who responded to the item for both the Pre and Post time periods. Percentage of missing or N/A responses for perception, behavior, and morale items in the Pre/Post Year 1 survey ranged from 20-36%, and from 15%-44% in the Post Year 2 survey and 12%-27% in Post-Year 3 Survey.

For the survey items regarding staff perceptions of students and parents, staff sentiment about children and their future demonstrated a generally positive trend over the duration of this project that are increasingly seen and understood family and child trauma and the benefit of their using trauma-informed strategies in their work. (See Table 10 below). None of the staff "felt that a child's actions/behavior made me irritated" (from 14% in post-Year 1 to 6% in post-Year 2 and 0% in Post Year 3) and most continued to feel generally hopeful about the lives of the children" (78% in Year 2 and Year 3) and "saw" how "class disruptions" or "behavior problems" could be related to trauma the child has experienced" (74% compared to 38% in Year 2). In Post Year 3, there was an increase in how staff 'saw' how children (from 56% to 62%) and parents (from 46% to 56%) were impacted by trauma and also how staff saw "improvements in a child's behavior after I used trauma-informed strategies" (from 33% in Year 2 to 63% in Year 3).

Staff understanding "why families may not seek out or accept mental health services/programs they need" dropped from 78% in Year 2 to 56% in Year 3. This may be an area worth investigating, whether staff need to revisit training topics or whether this is just a symptom of their frustration working with certain families they feel would benefit from services.

*"I have learned a lot, especially a few years ago with the anger issues. Parents are not getting help. We have to treat the parent as a child when trying to tell them what is going on. Explain it slow. I understand where parents are coming from too."* – Pre-school Teacher, 2021

As staff described in a Year One focus group, participants described the challenges of getting parents to see the issues with their child and to get them to agree to seek services.

- "It's difficult if families don't agree that there are behavioral issues, they don't want to see it."
- "At the end of the day it's the family's choice to get extra services, and it is frustrating when they decline."
- "Parents don't want their kids labeled"
- "We will put in referrals for extra services, but it's up to the parents to accept."
- "We need to educate the parents."

An extra question was added in Post Year 3 that reflected on the impact of the trauma training taken by staff on ability to see strengths in families. Just over half (56%) of the staff felt that they were better able to recognize this than before the training.

**Table 10. Changes in Perceptions of Students and Parents**

|                                                                                                                  | Pre<br>% "Often" or<br>"Always" | Post Y1<br>% "Often" or<br>"Always" | Post Y2<br>% "Often" or<br>"Always" | Post Y3<br>% "Often" or<br>"Always" |
|------------------------------------------------------------------------------------------------------------------|---------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| <b>A child's actions/behavior irritated me</b>                                                                   | 11%                             | 14%                                 | 6%                                  | 0%                                  |
| <b>I saw how children at my site have been impacted by trauma</b>                                                | 67%                             | 69%                                 | 56%                                 | 62%                                 |
| <b>I saw how parents/families have been impacted by trauma</b>                                                   | 66%                             | 66%                                 | 46%                                 | 56%                                 |
| <b>I saw how "class disruptions" or "behavior problems" could be related to trauma the child has experienced</b> | 67%                             | 74%                                 | 38%                                 | 74%                                 |
| <b>I saw improvements in a child's behavior after I used trauma-informed strategies</b>                          | 46%                             | 59%                                 | 33%                                 | 63%                                 |
| <b>I felt hopeful about the lives of the children at my site</b>                                                 | 81%                             | 84%                                 | 78%                                 | 78%                                 |
| <b>I understood why families may not seek out or accept mental health services/programs they need</b>            | 70%                             | 70%                                 | 78%                                 | 56%                                 |
| <b>I see strengths in families I would not have recognized before the trauma trainings</b>                       | --                              | --                                  | --                                  | 56%                                 |

Source: ECTR Evaluation Staff Survey, June/July 2019 (N=60), May/June 2020 (N=52), May/June 2021 (N=41)

Note: Percentages are valid (i.e. exclude missing and N/A responses). Pre and Post Y1 results are among staff who responded to the item for both the Pre and Post time periods. Percentage of missing or N/A responses for perception, behavior, and morale items in the Pre/Post Year 1 survey ranged from 20-36%, and from 15%-44% in the Post Year 2 survey, and from 17%-22% in Post Year 3.

## Staff Behaviors

Nearly all staff (91%) reported that they kept themselves "calm and regulated in moments working with a student who is challenging." As with Year 2, about one in five respondents (21%) still "felt hesitant to refer students to mental health resources." (See Table 11 below.) A high percentage of staff emphasized teamwork in their role with 80% "working with other co-worker to support a child with emotional or behavior issues related to trauma" (from 68% in Post Year 2).

The percentage of staff who "knew where or to whom to go when I had questions about a child's or parent's mental health", while still high, had dropped from 85% in Post Year 2 to 80% in Post Year 3. However, **the percentage of staff who "used strategies rooted in trauma informed practices" dropped more dramatically from 74% in Post Year 2 to 58%, a proportion below those at Year One of 67%. It would seem that although staff still knew where and who to turn to with questions about a child or parents mental health, their ability to draw on their trauma informed training and use the tools they had learned to cope with their responses to challenging behaviors had dropped.**

With a return to in-school teaching, the results remained stable or showed a slight increase to "pre pandemic" percentages on questions about relationship-building with families like "I felt comfortable talking to parents about their child's emotional, developmental, or behavioral issues" (68% to 71%), "I worked with a child's parent/family to support a child's emotional or behavior issues related to trauma" (53% to 61%), "I was able to build rapport with most parents/families" (66% to 65%). However, while 71% of staff "felt comfortable talking to parents/families about their child's emotional, developmental, or behavioral issues related to trauma", an increase from 68% in Post Year 2, there was a drop from Post Year 2 in sharing information on trauma and its effects on child's behavior with families (53% to 38%) as well as sharing ways to "manage challenging trauma-related



behavior” (50% to 38%). Three quarters (77%) of the staff reported feeling “more compassion for the families/children I work with.”

**Table 11. Changes in Staff Behaviors**

|                                                                                                                                     | Pre<br>% “Often” or<br>“Always” | Post Y1<br>% “Often” or<br>“Always” | Post Y2<br>% “Often” or<br>“Always” | Post Y3<br>% “Often” or<br>“Always” |
|-------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| I was able to build rapport with most parents/families                                                                              | 79%                             | 81%                                 | 66%                                 | 65%                                 |
| I felt comfortable talking to parents/families about their child’s emotional, developmental, or behavioral issues related to trauma | 67%                             | 79%                                 | 68%                                 | 71%                                 |
| I worked with a co-worker to support a child with emotional or behavior issues related to trauma                                    | 80%                             | 84%                                 | 64%                                 | 80%                                 |
| I worked with a child’s parent/family to support a child who had emotional or behavior issues related to trauma                     | 63%                             | 75%                                 | 53%                                 | 61%                                 |
| I shared information about trauma and its effects on behavior with parents/families                                                 | 50%                             | 67%                                 | 53%                                 | 38%                                 |
| I used strategies rooted in trauma informed practices                                                                               | 67%                             | 79%                                 | 74%                                 | 58%                                 |
| I shared ways that I manage challenging trauma-related behavior with parents/families                                               | 51%                             | 63%                                 | 50%                                 | 38%                                 |
| I felt hesitant to refer a child to mental health resources (e.g., mental health specialist, outside mental health services)        | 21%                             | 28%                                 | 21%                                 | 12%                                 |
| I knew where or to whom to go when I had questions about a child’s or parent’s mental health                                        | 79%                             | 81%                                 | 85%                                 | 80%                                 |
| I kept myself calm and regulated when working with a child with challenging behavior                                                | 87%                             | 93%                                 | 94%                                 | 91%                                 |
| I feel more compassion for the families/children I work with                                                                        | --                              | --                                  | --                                  | 77%                                 |

**Source:** ECTR Evaluation Staff Survey, June/July 2019 (N=60), May/June 2020 (N=52), May/June 2021(N=41)

**Note:** Percentages are valid (i.e. exclude missing and N/A responses). Pre and Post Y1 results are among staff who responded to the item for both the Pre and Post time periods. Percentage of missing or N/A responses for perception, behavior, and morale items in the Pre/Post Year 1 survey ranged from 20-36%, and from 15%-44% in the Post Year 2 survey, and from 15% -22% in Post Year 3 of the Survey.

In open-ended survey responses, staff described how the trauma trainings and/or resiliency circles impacted their awareness of how trauma impacts families and children:

**“The trauma training to me brought about an awareness of some of the after effects trauma have on children and families. It taught sensitivity, empathy, and compassion.”**

**“I am much more empathetic and understanding towards the struggles families are facing, and how they might project those struggles.”**

**“Just to understand their emotions and be a good listener about families emotional needs, look for mental support when family need it, and the most important support our children emotionally in the classroom.”**

Some were more specific in how the training had given them a new perspective and greater understanding of the impact of trauma on children and families:



**“I learn that [it] depend[s] on us if we want to keep a negative thought all the time with us or we can move on to a positive way.”**

**“The circles help me to stop and think carefully before responding to a situation.”**

**“More compassionate and understanding. More reflective about behaviors I see as associated to trauma.”**

**“I understand that how we feel, this will be the environment in which those around us will be. So we have to know how to control our emotions and have a positive mind.”**

**“The trainings have helped remind me of the signs of trauma in young children and how challenging behaviors can sometimes be connected to trauma experiences as well.”**

Others appreciated the training and how it enabled them to do their job better:

**“I appreciate the opportunity to received quality trauma trainings, which help me to provide support to the families and myself.”**

Or helped them at home or in their world outside YMCA:

**“After having trauma training, I think about what type of trauma a child may be going thru at home. It also helps me with my grandchildren that I am raising.”**

Staff also reflected on how the resiliency circles helped them to understand how trauma impacted themselves and the importance of self-care:

**“The training helped me to understand first myself and then understand others.”**

**“The resiliency circles have been a good reminder that self-care and a supportive environment is crucial to reduce stress levels which have been higher than normal with the impact of the pandemic on staff, families and children.”**

**“I am thoughtful instead of reactive.”**

**“I let out my inner want[s] and hopes.”**

**“Learn to always take care of myself. Self-care is important for me. If I don’t maintain myself strong and healthy no one will.”**

One respondent referred to the context of the last two years and the impact it has had on everyone:

**“We all had experienced a hard time for this pandemic, and we all need help for support this feelings. I believe that we need to help each other.”**

## **Staff Morale**

The evaluation also asked five questions, 2 from Post Y1 and Y2 and 3 new questions for Post Y3 to assess staff morale at the YMCA Head Start sites. Although the positive responses to these questions were higher in Year 2, the two questions reveal that a high proportion of staff continue to enjoy working at the school (89%), and staff

relationships are overall positive and supportive (80%). For the three extra questions added in Year 3, responses for two were at the same level for other items in this category, with 80% of staff feeling “more compassion for my fellow staff member” and “I take care of myself” (81%). However, a comparatively lower proportion of the staff (62%) felt “seen and heard at YMCA, as a full human” (See Table 12 below).

As the program evolves post-grant funding and staff are expected to work together to address children’s mental health issues, we anticipate that staff morale and the quality of staff relationships will remain high or even increase. This is also important to monitor as staff morale could help reveal whether there are other issues impeding the program’s successful implementation.

**Table 12. Staff Morale**

|                                                                                                | Pre<br>% “Often” or<br>“Always” | Post Y1<br>% “Often” or<br>“Always” | Post Y2<br>% “Often” or<br>“Always” | Post Y3<br>% “Often” or<br>“Always” |
|------------------------------------------------------------------------------------------------|---------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| <b>The relationships among the staff at this school were generally positive and supportive</b> | 85%                             | 85%                                 | 91%                                 | 80%                                 |
| <b>I enjoyed working at this school</b>                                                        | 98%                             | 94%                                 | 93%                                 | 89%                                 |
| <b>I feel seen and heard at YMCA, as a full human</b>                                          | --                              | --                                  | --                                  | 62%                                 |
| <b>I feel more compassion for my fellow staff members</b>                                      | --                              | --                                  | --                                  | 80%                                 |
| <b>I take care of myself</b>                                                                   | --                              | --                                  | --                                  | 81%                                 |

**Source:** ECTR Evaluation Staff Survey, June/July 2019 (N=60), May/June 2020 (N=52), May/June 2021 (N=41)

**Note:** Percentages are valid (i.e. exclude missing and N/A responses). Pre and Post Y1 results are among staff who responded to the item for both the Pre and Post time periods. Percentage of missing or N/A responses for perception, behavior, and morale items in the Pre/Post Year 1 survey ranged from 20-36%, and from 15%-44% in the Post Year 2 survey and from 12% to 17% in Post Year 3.

“Our teaching staff have exhibited a level of empathy towards the children and families whereas they have purposed themselves to see them differently with the intention to better understand rather than labeling or pathologizing. Another layer to this shift has been their own awareness of their past historical trauma and how close their adverse childhood experiences are to the children and families we serve. With the heightened awareness and knowledge, they too have begun the work towards healing and restoration within their own lives.” -Dr. Anita Smith, ECTR Project Coordinator, 2020

## Mental Health Referrals

### Number of Mental Health Referrals

As a critical component of the MHSA grant, mental health referrals were to be tracked every year of the evaluation in order to measure change over time. Based on Program Information Reports (PIR) completed by the Mental Health Consultants and submitted to the Program Manager over the past three years, the number of mental health referrals slightly increased to five referrals last year and then decreased to 0 in this third year (Table 13). In theory, the number of referrals, a longer-term outcome, is expected to increase as more staff understand their role in identifying and supporting access to children’s mental health services.

**Table 13. Number of Mental Health Referrals**

| School Year        | # Children Referred |
|--------------------|---------------------|
| 2017-18 (baseline) | 9                   |
| 2018-19            | 4                   |
| 2019-20            | 5                   |
| 2020-21            | 0                   |

Source: YMCA Program Information Reports (PIR) forms

The reality of this outcome measure however is that ECTR leaders have since concluded that connecting children via Mental Health Referrals to an external service may not be the best or most appropriate method of serving children who need services, especially now that site-based staff are holding children and their needs differently.

### Referrals to “Appropriate” Mental Health Services

Originally, ECTR project leaders established a mental health consultation process where the teachers start their own early observations of children in collaboration with the observations of Mental Health Consultants/Specialists. They also complete forms that show patterns of behavior which allows for questions, rather than complaints, about a child for whom they would previously have no tangible behavioral examples. These forms provide an opportunity to discuss and initiate Trauma Informed Care strategies within the consultation meetings and classrooms.

Additionally, a new Mental Health Referral form, implemented in the fall of 2019, was initiated to be intentional about outside referrals and determine if they were “appropriate.” In other words, documenting whether staff contacted referral agencies before the referral, whether the agency was a thoughtful match for the child, whether families utilized the referral, and whether it met families’ needs. These are used by the Mental Health Consultants/Specialist during the parent meetings with their approval, to refer children out for mental health services to appropriate organizations that are trauma-trained and informed. Our Mental Health Consultants/Specialists initiate the connection with organizations and the parents to begin the intake process with the purpose of building rapport with the organization as a secondary contact if they have challenges connecting with the parents afterwards. Mental Health Consultants/Specialists do a 15- to 30-day follow-up with the parents to inquire about the follow through on acquiring services. If the parents have not followed through, then the Mental Health Consultants/Specialist inquires to see if they can help facilitate any further. If it is decided collaboratively with the parents that a therapeutic preschool setting would be a better fit for their child, then a Mental Health Consultant/Specialist would support them by accompanying them on a tour/visit of the new preschool. This initiates the intake process and move.

Four children received five referrals between December 2019 and July 2020. All (5 of 5) referrals were appropriate, in other words, the referral agency had availability to take new clients, is located somewhere accessible to the client, has experience with children age 0-5, is a cultural match for the child, and was given information about the child’s needs. Three of the four families utilized the services of the referral, and all families who utilized the services expressed that it met the families’ needs. One child/family was referred to the same agency twice but did not utilize the service the first time (February 2020) because of the stay-at-home orders. The second time (July 2020) the family did not utilize the service because the child’s mom indicated that she had not been contacted.

The ECTR project leaders have expanded their categorization to include mental health as well as behavioral health referrals. When designing the project, the project team initially thought referring more families to external mental health specialists would be the ideal scenario. As the project team has come to learn, that may not be the best option in terms of getting the right support to the children who need it. Additionally, getting families to agree that their child requires services and to agree to see a specialist is an ongoing challenge. Based on these learnings, the ECTR project has pivoted to support children who need a higher level of care in a much more appropriate and expeditious manner by bringing specialists directly into the classroom. As described by the project coordinator in 2020:

“Due to the early establishment of the new procedure which encourages early observations and inquiries, we have been able to have several children placed at two therapeutic preschools in the Bay Area being Maya Angelou Academy in Oakland and EBAC (East Bay Agency for Children) here in Berkeley. This can be seen as a rarity; due to classroom room size being considerably smaller than our classrooms, they fill up very fast. The collaboration with teachers and parents helps consider the wellbeing of the child and do not allow for things to be overlooked, ignored or dismissed. We have also had the benefit of working in collaboration with our Inclusion Team to coordinate having Behavioral Aides through Juvo (Autism and Behavioral Health Services) come into our classrooms to work with children who have both behavioral, developmental, and trauma concerns. We have been fortunate to witness the effectiveness of this support for current children within our program that would have otherwise been unmanageable within the classroom setting. These children’s parents were not able to benefit from mental health services due to many personal and systemic issues, so to provide these services has been a true turn around for these children.”

In this third year of the program and definitely since the pandemic began, leaders also see many outside referral agencies (e.g., therapeutic preschools) are no longer accepting new referrals for safety reasons. Outside referrals that were accepting new children were for virtual meetings that are not as effectively for children of this age, especially when they are with someone with whom children are unfamiliar. Program leaders describe that the need also changed as a result of trauma trainings because staff engagement with children changed. There was also the added benefit that when classrooms re-opened, spaces were limited initially to children of essential workers. These small class sizes were one of the benefits of the therapeutic preschools to begin with. The YMCA also increased the number of ADA aides available for one-on-one support for behavior and emotional issues in the classroom. This staff person was allowed into the classroom during the pandemic which allowed them to stay at the YMCA rather than be referred out. An unintended benefit was that all the other children in the classroom also learned to think differently about that child in terms of how to interact and play with them, rather than seeing them as “bad.”

As program leaders see it, building the YMCA sites’ internal capacity was always central to the design of the grant. When it comes to mental health referrals, “the action is where the kids are” and periodic pull outs takes a long time. If they are able to bring in aid to the classroom for a child, that is more efficient than sending the child out twice a week. They plan to prioritize funding to internal specialists because external mental health referrals are only a small part of the picture. Having the internal capacity to support children builds staff confidence and what sets this program apart. They want the YMCA classroom to be the place for daily habit making, emotional development, learning how to work productively with others, and how to manage having a hard time. “We saw that investment in the last three years. We saw this lead to fewer mental health referrals. There was no outside capacity for referrals anyway but there was also less need.”

## Conclusion

In this final year of the ECTR program, staff have demonstrated a commitment to trauma-informed and resiliency strategies and applying these strategies and others from trainings on topics such as Self Care and Emotional Intelligence in their day-to-day work with children and families as well as in their personal lives. Program leaders and staff describe in interviews how integrated these concepts have become in the culture of the YMCA sites and they are “rippling outward” to other sites based on the success other sites are seeing at the Berkeley YMCA sites.

ECTR leaders reflected on what would have happened over the past three years, especially during Covid closures, without the ECTR program:

“People would have been withdrawn, the resiliency wouldn’t have been there. If we were not prepared for the overload of emotional tension, we could do more harm than good... But because [foundation was] put in place, the rain boots were on when it’s storming, the majority of your body has been protected. You were affected by the pandemic but had the padding to bounce off stresses. We were always in community in sites –big community and

small community at each site. I saw how they banded together. You can feel like a teenager, so dysregulated. You can't leave the house. We'd get on zoom and get together with your colleagues. No staff ended up in a corner in the fetal position. They can't say they don't know about trauma. They have a common language... I would go to staff meetings during the closure and noticed a different type of capacity among staff. Center directors had some words to acknowledge people. There was consistency around empathy, appreciation, and sharing feelings. People were crying during staff meetings –sharing 'this is so hard for me.' People felt comfortable having these outpourings and knowing how to respond. And setting up that positive experience was remarkable. We would not have had that without the foundation [we built three years ago]... Some county sites were also able to ask for help –management was a part of our meetings even though they weren't part of grant. They knew they needed something although they couldn't name it. They knew we existed but they didn't have a mental health specialist. They implemented what we told them –I was floored. I hadn't worked with them but they received [my recommendations] and put it onto action. It trickled down.”

We did see an unexpected finding in this third year of the staff survey where the percentage of staff who “used strategies rooted in trauma informed practices” dropped from 74% in Year 2 to 58% in Year 3, a proportion below those at Year One of 67%. While newly onboarded staff receive training on trauma-informed strategies, it may be beneficial for all staff to have a “refresher” training on the topic, either by an outside trainer or the Resiliency Champions.

As the grant funding ends, ECTR program leaders plan to continue, sustain, and evolve this trauma-informed work with the Berkeley sites and across other YMCA sites.

1. Systems change:
  - a. While work still needs to be done to implement trauma-informed systems, trauma-informed language has been incorporated into the program. The CEO now talks about trauma-informed systems. The seeds have been planting for program leaders to carry this work forward and enact system-level changes.
  - b. Providing more mental health support has become a priority, and there is a desire to increase the number of mental health staff rather than outsourcing mental health services to outside providers. ECTR program leaders have also committed to integrating mental health employees into teams and have provided teachers with additional mental health training and support.
2. Funding and Fundraising Priorities:
  - a. ECTR leaders are looking into additional grant funding after the current grant expires. There are also potential sources of federal funding.
  - b. One priority area will be securing funding to ensure that every site eventually has its own mental health and behavioral specialists (mental health staff are currently split across three local sites). Program leaders anticipate that, following the pandemic, there will be an increased interest in funding opportunities for mental health programming.
  - c. Training for teachers around trauma-informed care and emotional intelligence will also be prioritized.
  - d. ECTR leaders will also seek out additional funding to address early Head Start wellness goals. Wellness goals are usually centered around physical health (e.g., asthma and obesity), but ECTR leaders hope to find funding to implement a multi-faceted approach to wellness.
3. Developing Wellness Policy:
  - a. ECTR leaders are in the process of developing a wellness policy that pulls together themes of wellness, self-care, coping, and emotional intelligence. There has been a programmatic and cultural shift to a growth mindset, and goals have shifted from surviving to thriving. One way that this reframing has been put into practice has been the implementation of Wellness Day, which used to be Staff Appreciation Day. Now, the day is spent on addressing different components of wellness through activities like yoga, a trip to the park, music and dance, games, and socializing with peers.
4. Incorporation of PEARLS:

- a. ECTR has begun incorporating the Pediatric ACEs and Related Life-events Screener (PEARLS) into programming. Additionally, ECTR staff have worked to improve parental awareness of PEARLS through parent trainings, though not all components of PEARLS have yet been covered.

# Appendix

## Interview Summary

### ECTR Staff Interview Analysis

1. Please tell me your role at YMCA and how long you've been in that role. Are you also a Resiliency Champion?

Nutrition Specialist: Has been in YMCA Nutrition Spec. Nutrition Ed for about a year and a half. Prior to this role, was a family advocate for about 2 years as part of Resiliency Champions.

Health and Family Service Specialist: Has been working as Health and Family Service Specialist for about 2 years now and at the YMCA almost 6 years. Family advocate before and shifted to more health aspects.

Pre-school Teacher: Pre-school teacher, 3-5 for 7 years now. Started with infants and toddlers. Pre-schoolers last 4 years. Not a Resiliency Champion.

2. What, if anything, have you taken from the trainings in your work with children, their parents, your colleagues or your personal life?

Overall, all interviewed staff described the trainings as helpful both professionally and personally. One common theme across interviewed staff was that staff have been able to apply what they learned through these trainings in their day-to-day interactions with children, their colleagues and with their own children. For instance, one staff member relayed that deep breathing is a common practice that she uses every day with her students. These trainings have also helped staff better communicate with students.

What follows is a high-level summary of staff feedback by training type:

#### **Brain training:**

- All staff found this training helpful and reinforce what they knew before the training.
- Staff have applied what they have taken from the trainings in their work and personal lives.
- One staff member noted that this training provided tools that were realistic for staff use.
- One staff member shared that the training introduced her to different terminology and approaches to support her students. Additionally, the training helped her reflect on her own triggers and sparked an interest in mental health.

#### **Self-care trainings (Emotional intelligence and Emotional Detox):**

- One staff member appreciated that all staff were in the same space and that the speaker was someone staff could relate to.
- Another interview staff relayed that these trainings were helpful to shared and hear what others were doing to cope with pandemic-related stress.
- Interviewed staff learned skills that they have applied while at work and/or at school. For instance, one staff member noted that it helped her frame how she might approach or process someone else's behavior (i.e., pausing intentionally before reacting to something). Another staff member shared one practice she took from the training is going on walks and taking breaks so that she is able to present and fully engaged with her students or with her own children at home.

*"When I go home, set work aside to focus on kids. This was hard to do before but with self-care training and experience it has gotten easier."* – Health and Family Service Specialist



*“I talked with other staff about these trainings about what’s going on and/or give approaches and suggestions to take care of ourselves. We’re all feeling this way so became a great way to accept that and it’s ok to take time.” – Health and Family Service Specialist*

*“We are the ones that hold power and we can learn a lot from children by listening and watching them, their verbal and physical reactions and using that to support them.” – Health and Family Service Specialist*

- Only one of the three interviewed staff members participated in a resiliency circle. This staff member said that while she likes the idea of these circles, she had some reservations about sharing what she felt. She added that maybe with more time she would warm up to being more open during the conversations.

### **Resiliency Champion Trainings:**

- All interviewed staff appreciated that staff from different sites and roles within the organization participated in these trainings.
- One staff member noted that these trainings reinforced what she already knew and that the case studies examined during the training provided a framework for this work.
- Trainer (Julie) taught them how to share this information with colleagues and parents.

*“The Resiliency Champion Trainings helped reinforce what I already knew. We as childcare providers, I was looking at it as helpful for staff. Not everything is peaches and cream. There are issues that come with staff. I could see this as something they could use.” – Nutrition Specialist*

*“I really appreciated coming together. We all hold the same values. The resiliency circles helped us support those conversations without making it burdensome to talk about things that are hard. I was able to confide in them.” – Health and Family Service Specialist*

3. MH referrals to therapeutic schools/places outside YMCA etc now shifted to behavior aides in classrooms. How is that different? Better? Worse?

Interviewed staff believe that staff who participated in the recent trainings are more aware of mental health needs of children before referring them out than before receiving the trainings. One staff member noted that she refers children to their mental health consultant but that only a few students have required a referral.

4. Work during Covid? Self-care, self-regulation, trauma lens? In what ways are you using these skills if at all during covid?

Two of the three staff members reported using skills they learned from the self-care and stress management training during the pandemic. One staff member shared that meditation was very helpful to check-in with herself. She added that she not only shared meditation exercises with her mom, but also told her parents about it.

Nutrition Specialist:

Yes, hard, distance learning. Self-care and stress management were most useful. The strategies mentioned before were probably most useful.

Health and Family Service Specialist:

Helpful, had a lot of personal situations. Families past away. My emotional well-being was affected. Meditation was the biggest thing that helped me. Tuning into my body and understanding what was happening. Used to



have lots of panic attacks –tingling, breathing signs. Started meditation. Would think about family and kids. Mom is a teacher at West Y. Shared these with her too. Used these concepts at work and at home. Supported staff –being at home, Zoom meetings. Having them talk to teachers and staff -kids are stuck at home they need more activities. At home, you can meditate, read books together. Tell parents they need time to support child at home but also take care of themselves.

Pre-school Teacher:

Did help. Reminder you're stuck in house you can only do a couple things. Reminder of what is occurring in other people's homes maybe not your own home. Trauma doesn't end just bc it's not in your home and we're not at work. Still happening.

5. Anything else you'd like to share about these trainings, your work with colleagues, families or children?

- One staff member would've wanted to see the Resiliency Circles continue past the sunset of the grant.
- A staff member would like to see more support for staff/adults to reduce staff burnout.
- Two staff members shared that the trainings provided tools to better support parents

*"They may feel like not great parents –this gives us support that there are diff parenting styles and it's ok if you don't have all the tools. But we're here to support you with what you do have." – Health and Family Service Specialist*

Nutrition Specialist:

Something that came up during trainings, didn't cover physical touch re: trauma. Know that has come up in prior work. Thought I had.

Since grant is sunseting, this is a great start to make everyone more aware of work. Would have loved to see R Circles to continue w staff. Education staff on trauma informed practices is important for providing care to children, but staff burnout and lack of support for adults when there are challenges. Not sure what has been going on. Want that more visible and strengthened. Would be really impactful. For entire program.

What have you heard about end of grant activities?

Haven't had good pulse on activities since stopped R Champions. Large trainings are one and done. Haven't had sense this is ending or closing. With such a big program. Want to make work visible –can be challenge to get everyone up speed.

Health and Family Service Specialist:

Trauma and resiliency trainings, really enjoyed it. Sparked my interest in this work. Excited to start with field work w Dr. Anita. Now w staffing support. Will be able in Sept to be able to do it more differently with families. Is this effective and maybe change it. Even though I do hear needs, want to apply it with parents. Trust, if we can be emotionally tuned in with them they will be more communicative w us. They may feel like not great parents –this gives us support that there are diff parenting styles and it's ok if you don't have all the tools. But we're here to support you with what you do have.

Pre-school Teacher:

I have learned a lot, esp a few years ago with the anger issues. Parents not getting help. Have to treat parent as a child when trying to tell them what is going on. Explain it slow. Understand where parents are coming from too. Self-care recently –trying to help morale improvement. Could apply to personal lives. If you deal with that on outside. Can leave it at door when you come in.

Her strategy: Changing the environment. Same mess but diff toilet. Can't moving and changing jobs bc have to do work on inside. Not something I've always done but now I see it. Others are like me, hear that too.

Also DB example relationship w mother –have seen relationship with mother and kids. Could offer help who is having same struggles.

## Focus Group Notes

Date of Focus Group: 11/27/2019

Facilitator: Sophie Lyons, HTA

Participants:

- Family advocate
- Teacher
- Teacher
- Enrollment and childcare
- Teacher
- Teacher
- Teacher

### 6. Tell me about your work with children. What are one or two examples of the MOST challenging behaviors for you and how do you typically handle them?

- Sometimes kids have not been identified as having or needing an individual family service plan; teachers and staff do not know their diagnosis
  - Teachers are not always equipped to deal with behavior issues, causes strain
  - Need to work with kid one on one to address their individual needs – discipline and positive reinforcement
- Parents are low income, affects the social life of families
  - Some kids are in single parent households
  - Often behavioral issues are physical in the classroom– fighting, pushing, biting
  - Teachers have years of experience and can recognize
- It's the undiagnosed children or kids who have family issues who have behavior issues
  - Children are physical towards the adults, not always towards other kids
  - Teachers take a child development classes, and learn a little bit about how to handle issues, but is it not always enough
  - Personal experience as parent with a child at Head Start - she had a child with behavioral issues, so has learned from that and understands the parent perspective, but it is still very challenging to work with some parents
  - Parents are not as educated (about child development) and are in denial; they also pass down generational trauma
- Difficult if families don't agree that there are behavioral issues, they don't want to see it
  - At the end of the day it's the family's choice to get extra services, and it is frustrating when they decline
  - Parents don't want their kids labeled
- Staff/teachers will put in referrals for extra services, but it's up to the parents to accept
  - Need to educate the parents
- In past 5 years, has seen/experienced more aggression from the kids, but not sure why
  - Kids are impulsive and quick to anger, short tempers, quick to react

### Steps teachers and staff take to address issues

- Not allowed to call a parent for pick up, so they have to manage the behavior at school

- Teachers rely on each other to take over when they need a break – They are often able to recognize when they need to be separated from the child because they are getting overwhelmed/tired/too frustrated
  - They use a team approach in the classroom
- Document using ABC charts and they call parents to talk about their child when they complete these forms
  - Teachers try to focus on the positive with the parent when they come pick up the child, but also talk about the challenges with the parent
  - Use parent teacher conferences to talk about the challenges and the help kids need
- Teachers and staff try to drive home the point of safety to parents – help parents understand that they have a goal of keeping classrooms safe, so when one child is having behavioral issues, it means that one teacher has to work individually with them, which can decrease safety in the classroom
- When they talk to parents who blame other kids, they need to help parents see the good and the bad – they try to help parents see that all kids need to and deserve to be here
- Some parents are in denial – say the kid is fine with them and behaviors only happen in school
  - Have to try and get parents to see why that might be the case, that kids behave differently in different environments
- Try to give the kids all the love they can, but there is still a lot of stress
  - Even one challenging behavior kid can be a lot as they need the one on one time with teachers and staff

**7. Tell me about your relationships with parents. How do you handle difficult conversations around their child's behavior/needs? What is your process like when working with parents around their child's challenging behavior/needs?**

- A lot of times parent issues take priority over the child's issues
  - Talking about the child turns into a conversation about the parents' issues and needs
  - Parents get this help from family advocates, but cannot get out the mindset when they talk to teachers as well
  - The teachers are focused on the child's needs, while the FA is focused more on working with the whole family
- Many parents are in denial – “they don't do this at home...”
  - Or the challenging behavior is normal at home, so parent doesn't see it as an issue
  - Or parents who say they will be involved in finding a solution, but then they avoid the conversation with teachers
- If a parent does come to school to discuss the child during the day, a teacher has to leave the classroom to talk to a parent who is upset and could cause another safety issue
  - Parents say hurtful things to the teachers, sometimes they are discriminatory and disrespectful
  - Parent treat teachers like they are their employees sometimes

**What could help the conversations with parents:**

- Need a more strictly enforced code of conduct for anyone who comes in – parents need to stick to it, there is no consequence when parents do not follow it
  - At most there is a conversation
  - They just want parents to understand that they are trying to help the child in a school setting, trying to get them ready for bigger schools – teachers need help getting parents to understand what school is, that it's not just childcare
- Parents also experience a lot of trauma – teachers and staff know and recognize this

- It's important to think about who is talking to the parents, a white staff member telling a parent of color what to do may not be effective

**8. What has been your experience with working with colleagues to help a child/family who has challenging behavior issues? What role do you see for yourself in helping families access mental health services? (Have you tried to help a child or family get mental health support? Why or why not?)**

- Sometimes there is a misunderstanding – teachers know they are supposed to serve families
  - But sometimes teachers don't feel that they have the support they need from administration – there's a lot of turnover
- Have mental health consultation meetings to talk about development of children
  - When families meet with different people who are telling them the same thing, this can help the family get on board
- Try and learn the personality of the family, who is the best person/teacher to approach them
- Case consultation is important, it's when you get to sit down with families
- Inclusion specialists and speech consultants are very helpful, teachers feel like they can go to them for help with a kid
- If you're a new teacher, you'll get walked over by the parents, need to have a veteran teacher in the room with you
- Staff have to be on the same page, need to have good working relationships
  - Teachers will talk to parents and then they will go to FA, the FA needs to know what's going on before they talk to the parent
  - Some parents would rather talk to the FA, so all teachers and staff need to be aware and on the same page, FAs sometimes know more about what is going on with the family
  - But sometimes it is challenging when parents feel more comfortable talking to the FA (rather than the teacher) – raises a red flag for the teacher, they feel as if families should be comfortable talking to the teacher
- Line of support exists, but sometimes the inclusion/mental health consultants are not available enough or you are too busy to do the one on one with them
- When you do a referral form, but then the ball gets dropped or there is no follow up, this can be very frustrating

**9. Some of you may have taken an online survey from us a few months ago. We have some results that we want to share. Are these numbers surprising? Do they sound accurate? Why or why not?**

- a. **The percentage of staff who reflected on their own trauma and triggers increased from before to after the program started: 38% to 67%.**
  - b. **The percentage of staff who could identify when they felt triggered by a child's behavior or actions increased from before to after the program started: 51% to 70%.**
- First statistic is accurate likely – Julie's training could have helped staff see their own trauma and triggers, her introduction about herself was the best thing she presented
    - Not sure about the second stat – may not be accurate

**10. Have you attended any of the recent trauma trainings (Understanding Trauma Informed Practices for Early Childhood Programs with Julie Kurtz; Self Care: Getting a PhD in You! with Julie Kurtz; Resiliency Champion trainings)?**

- Didn't find the trainings helpful – not agreeable to Julie's approach (*agreement from one other person in the group*)
- Initial story that Julie told about her own background was interesting and helpful, but then the rest of the presentations were not as helpful
  - Would be more helpful to have this person be able to show what they can do in the classroom, not just tell them what might work
- Every situation in the classroom is different, so what they are being trained on will not be the same or work for everyone
  - Training needs to be tweaked for different situations
- The “if you do x, then y will happen” way of training doesn't help as staff knows that kids have differences in what they need
  - Training is too “basic” teachers are more aware of trauma, they know more than the trainers expected
- The trainings are way too long – a multi hour training is hard to pay attention to (*group agreement on this*)
- Maybe the trainings should be done in smaller groups (*group agreement on this*)
  - Not everyone is paying attention, therefore they won't bring what they learned back to the classroom
  - Center by center would be better, smaller group trainings would be more effective
- Some teachers are not ready because they have their own traumas
  - Teachers have to deal with their own traumas
  - Trainings may heighten some people's awareness of traumas
- Anita provides more individualized care for teachers, which has helped
  - Teachers love working with Anita
- There has been progress in getting teachers to understand and recognize trauma, but there is still work to do
- It's the person, not the trainings themselves, that might be the problem
  - Didn't vibe with the style, too lecture based, too long
  - Interactive activities were better, need movement activities

**11. Has anything you learned in trainings changed or helped with your relationships with children? Parents? Colleagues? In your personal life?**

- Learning the physicality of what happens when they are triggered by a child's behavior
  - Smell reminders, etc.
- Talking about the importance of self-care was helpful, now they think about the self-care when a child is exhibiting challenging behavior
- There is a line that parents cross, we can't blame the teachers for reacting poorly sometimes
  - How do you “train” teachers to not have their own reactions, to not take things personally
- Need concrete strategies for how to work with parents
- Teachers are champions for each other, they feel protective of each other
- But parents also need actual consequences when they break the code of conduct, it can't just be
  - Bargaining team with the union is working on the importance of the code of conduct and holding parents accountable

## Full Narrative Transcript, ECTR Project Coordinator

1. How did Head Start address trauma in children/families before the ECTR program?

Previous to the City of Berkeley Trauma grant the YMCA of the East Bay had established Mental Health Consulting whereas monthly classroom consultation meetings were conducted with teachers, Center Directors, Family Advocates and Mental Health Consultants/Specialists. Within these meetings, classroom dynamics were discussed which includes those children with what was considered “challenging behaviors” as well as resources that could be utilized to support them. This collaboration meeting would yield mental health consultation strategies and plans that would include social and emotional strategies to support the children on the radar and the classrooms as a whole.

In addition to these meetings individual child consultation meetings would be held with parents in order to gain more developmental and historical information that would help to better understand what was going on with their child and any family dynamics that were attributing to their child’s presentation within the classroom. Additionally, within these parent meetings, a Positive Behavioral Support Plan would be established with strategies for the classroom and for the parents to utilize at home. Within these meeting outside resources were discussed like mental health services for the child and family as well as the possibility of a new small therapeutic preschool placement and possible psychological assessments needed to diagnosis with the intention of effective interventions. Parents would sign this document as an indication of acknowledgement and acceptance of their role and the steps that are necessary to support their child. This was to ensure the parental role in promoting their child’s developmental and academic advances not only within the classroom setting but, in their child’s, everyday life. This is seen as preventative care rather than intervention. Frederick Douglass stated that “it is easier to build strong children than to repair broken men.”

2. What did you change with the ECTR grant? How? Why?

Our intention as The YMCA of the East Bay in applying for and accepting the City of Berkeley Trauma grant, is to empower or teaching staff, administration and management with evidenced based knowledge that is trauma informed with the purpose of changing the lens from what is wrong with this child to what has happened to this child. We believe that this knowledge would empower those within these classroom settings to change their individual understanding, mindset and heart set towards the children and families we serve. Therefore, since the onset of Trauma Informed trainings on the foundations of trauma which include the developmental and neurological effects of trauma, Trauma Informed care strategies, self-care strategies and engaging with families an allowed for a systemic anticipated shift to occur. Our teaching staff have exhibited a level of empathy towards the children and families whereas they have purposed themselves to see them differently with the intention to better understand rather than labeling or pathologizing. Another layer to this shift has been their own awareness of their past historical trauma and how close their adverse childhood experiences are to the children and families we serve. With the heightened awareness and knowledge, they too have begun the work towards healing and restoration within their own lives.

3. What systems, policies, procedures have you put in place in order to better address the mental health and behavioral needs of children?

At the onset of this City of Berkeley Trauma grant, we established a Mental Health consultation procedure whereas the teachers start their own early observations in collaboration with Mental Health Consultants/Specialists observations. They also keep behavioral forms that show patterns of behavior which allows for questions, rather than complaints about a child that they would previously have no tangible behavioral examples of. These forms provide an opportunity to discuss and initiate Trauma Informed Care strategies within the consultation meetings and classrooms.

Newly established Mental Health Referral forms were also initiated to be intentional about outside referrals. These are used by the Mental Health Consultants/Specialist during the parent meetings with their approval, to refer children out for mental health services to appropriate organizations who are Trauma trained and informed. Our Mental Health Consultants/Specialists initiate the connection with organizations and the parents to begin the intake process with the purpose of building rapport with the organization as a secondary contact if they have challenges connecting with the parents afterwards. Our Mental Health Consultants/Specialists do a 15-30 day follow up with the parents to inquire about the follow through on acquiring services. If the parents have not followed through, then the Mental Health Consultants/Specialist inquire to see if they can help facilitate any further. If it is decided collaboratively with the parents that a therapeutic preschool setting would be a better fit for their child, then a Mental Health Consultant/Specialist would support them by accompanying them on a tour/visit of the new preschool which initiates the intake process and move.

4. When did you put these in place and why? What are some examples of children/families these have worked for?

Due to the early establishment of the new procedure which encourages early observations and inquiries, we have been able to have several children placed at two therapeutic preschools in the Bay Area being Maya Angelou Academy in Oakland and EBAC ( East Bay Agency for Children) here in Berkeley. This can be seen as a rarity due to classroom room size begin considerably smaller than our classrooms, they fill up very fast. The collaboration with teachers and parents help consider the wellbeing of the child and not allow for things to be overlooked, ignored or dismissed. We have also had the benefit of working in collaboration with our Inclusion Team to coordinate having Behavioral Aids through JUVO come into our classrooms to work with children who have both behavioral, developmental and trauma concerns. We have been fortunate to witness the effectiveness of this support for current children within our program that would have others wise been unmanageable within the classroom setting. These children's parents were not able to benefit from mental health services due to many personal and systemic issues, so to provide these services has been a true turn around for these children.

We continue to look forward to the work ahead of us with empowering the parents in our program with the same trainings that we have provided for our staff. This is with the hope that it will not only allow them to have a better understanding of their children but to connect the dots on their own adverse childhood experiences along with historical and cultural trauma that has been in the way of their own healing and the work that needs to be done to shift the trajectory of their family with hope leading the way.

### Open-Ended Responses from Staff Survey (May/June 2020)

How have the trauma trainings or Resiliency Circles changed how you work with families/children?

- As in apprentice I have learned a lot. The YMCA has taught me a lot in this horrible times of the pandemic the trainings I have taken and how it's preparing me for any guide the children and families will need as a resource or activities children can do for trauma the way they need to be treated to help them to learn and have a healthy and happy growth.
- Channels your inner thought process
- Help me more to get more knowledge to support to families may needed by using different strategies and referred to our mental health supported as well out of the agency mental health supported.
- I can see the difference Corona has impacted families. Some people show how much it effected them and others don't show it. From the training, I get to hear other peoples stories
- I didn't have this experience yet
- I don't work directly with families and children.
- I feel that I understand better how trauma impact children and families
- I got a more detailed understanding of how trauma effects children's learning in the classroom environment.
- I have a better understanding of my own trauma and how I am impacted by others, ie triggers, etc
- I have good relationship with the families



- I have realized that some of the trauma that our children and families have suffered is a lot deeper than what we may be able to handle and that we need to make sure that we have resources for our families.
- I talked to the family weekly and have zoom meeting with kids and families Give one on one time Read book to the kids do so interactive activities through video and zoom
- I understand my own trauma triggers and I can manage them appropriately.
- I will more confident more knowledge and have more resource to handle the traumatize kids or families
- It has made me more understanding of why some families may react to things different and has given me an opportunity to address these families in a more understanding way.
- it really break down the difference between behavior and trauma, and what is really trauma.
- It's easier to communicate with families and support them
- My perspective on impact of trauma has changed and deepened. I see TIC as ongoing tool when supporting all children, families and staff.
- No change, just reassurance
- Teach me more strategies to use.
- teaches me a lot
- The training have been a good review of past trainings I've attended during my years at HS or trainings from the masters credential program. Some things are refreshers and others have built upon previous concepts.
- The trauma add more knowledge to the little experience I have before and I will be confident to help and support a traumatic child.
- The trauma training has changed the way I work with families and children because it gave me a better understanding.
- The Trauma Trainings have helped me to understand the many characteristics of a child's behavior, and of the parent's as well. It also made me realize that it's important for teachers to try to remain calm when dealing with parent's because sometimes parents can be overwhelmed.
- to always support parents with their needs. referring them to specialists
- Trauma trainings during this time have helped understand more the resiliency circles. Also gave me more tools in order to be able to help and support my families and children.
- Understanding a child's behavior in the classroom.
- Using positive strategy that we learn in the training
- We can use strategies we get on training

In what ways has your relationship with families changed since you attended the trauma trainings or resiliency circles, if at all?

- At first I was nervous about building relationships with parents, because I didn't know what the outcome would be, and I was worried that parents would not like me. Now I have built relationships with parents, and it's easier for me to communicate with them.
- Better communication with them
- Better communication with them
- Better understand the families because we all have trauma especially at this time
- depend on the behavior of the child
- Didn't have this experience yet
- I am more compassionate towards myself.
- I feel like my relationships with parents have gotten a lot better.
- I feel more confident.
- I feel more confident talking to families about strategies to cope with trauma
- I have a better understanding of why families sometimes do not accept mental health support. I can also see more clearly generational impact of trauma.



- I Having been trained I can now better handle the kids. With the shelter in place, I proactively guide the parents to be patient with the kids. This help the parents to have an easy happy time at home while the shelter in place is active.
- I'm learning to step back when triggers arise and remain calm until I develop a plan of action.
- it did not change much but i have a better understand on how parents do not share.
- Keep calm and listen to parents and give them positive environment To open up more
- More understanding of the children's situation at home.
- My relationships have changed because I am more knowledgeable of trauma and it gives me the tools to better help the families.
- My relationships with families has not changed science the trauma training.
- My relationships with my parents are positive.
- n/a for now. I will hear and listen to their problems and try to give them suggestions on what to do
- Offering activities to work with kids.
- parents are willing to help child and their needs
- still same
- The families and I have been more connected, even when this has happened remotely.
- The relationships are still good but a little strained by the COVID - 19.
- The training are reminder to remember that experienced shape a person. Not to take a response personally because words, actions, expression can be triggering. Remember to remain calm.
- Understanding more about emotions personal things that can trigger them. Feelings can burst for any reason because trauma can live within them at all times. We must be strong to thrive forward and keep the families healthy and strong.

#### Additional thoughts and comments

- Am glad to do the trauma trainings on the 18th May and the 28th of May 2020
- I am very grateful with the organization because they have always provided the tools and trainings to grow professionally and improve my practices. THANK YOU for this opportunity!
- I answered questions personally, what I'm experiencing in my own household in this time. As I have not been present in a classroom since 3/16/2020
- I do not have additional thoughts, comments and responses.
- Thank you for provide us those training to reinforce my knowledge and get a new information or resources to support the families as well to us.
- Trauma is harmful and difficult. Only the strong survive.





Office of the City Manager

CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Lisa Warhuus, Director, Health, Housing, and Community Services  
Subject: Contract No. 32200185 Amendment: Sonya Dublin Consulting to Provide Evaluation Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32200185 with Sonya Dublin Consulting to provide evaluation services, and any subsequent amendments or extensions, to add \$93,600 and bring the contract total to an amount not to exceed \$109,200 and extending the end date from June 30, 2022 to June 30, 2025.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the external evaluator is available through Local Lead Agency funding through the California Tobacco Control Program (CTCP). The not to exceed amount of the contract is currently \$15,600.00 and the amendment will increase the limit by \$93,600 (ERMA GL 157-51-506-559-2053-000-451-612990) for a total not to exceed amount of \$109,200. The contract end date will be extended to June 30, 2025.

| ERMA GL                            | Amount      |
|------------------------------------|-------------|
| 157-51-506-559-2053-000-451-612990 | \$93,600.00 |
| Total                              | \$93,600.00 |

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley receives funding from the California Tobacco Program as a Local Lead Agency and is required to contract with an external evaluator as part of the program’s contract deliverables.

BACKGROUND

As a Local Lead Agency receiving funding from the California Tobacco Program, the City of Berkeley is required to contract with an external evaluator that is responsible for designing the evaluation plan and providing consultation on the entire scope of work; developing data collection instruments, protocols, and methodology; analyzing data; and preparing evaluation reports. The external evaluator coordinates with the Tobacco Control Program Director, and will execute a variety of evaluation-related tasks.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

Execution of this contract will allow the City of Berkeley's Tobacco Prevention Program to comply with the California Tobacco Control Program's external evaluator requirement as a Local Lead Agency awardee.

ALTERNATIVE ACTIONS CONSIDERED

None. Failure to contract with an external evaluator would render the City of Berkeley's Tobacco Prevention Program unable to complete program deliverables and would place the City of Berkeley out of compliance with its contract with the California Tobacco Control Program.

CONTACT PERSON

Janice Chin, Public Health Division Manager, HHCS, (510) 981-5212

Attachments:

1: Resolution

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

CONTRACT NO. 32200185 AMENDMENT: SONYA DUBLIN CONSULTING TO  
PROVIDE EVALUATION SERVICES

WHEREAS, the Health, Housing & Community Services Department's Public Health Division Tobacco Prevention Program, as a State funded LLA grantee, fosters collaboration and engagement in grassroots community mobilization activities to support social norm change and education to reduce tobacco use and address the tobacco industry strategies through a comprehensive tobacco control plan; and

WHEREAS, on February 21, 2022, Contract 32200185 was previously executed; and

WHEREAS, Local Lead Agency funding is available through the California Tobacco Control Program (CTCP) for FY23-FY25 in budget code 157-51-506-559-2053-000-451-612990 (\$109,200 total).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute an amendment to Contract No. 32200185, and any subsequent amendments or extensions with Sonya Dublin Consulting to provide external evaluation services for the Health, Housing & Community Services Department's Public Health Division Tobacco Prevention Program, adding \$93,600 for a total amount not to exceed \$109,200, and extending the contract through June 30, 2025. 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  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services Department  
 Subject: Shelter Plus Care Program Renewal Grants

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to receive funds and execute any agreements and amendments resulting from the renewal of the following grants:

1. Two Shelter Plus Care grants from U.S. Department of Housing and Urban Development (HUD): a) \$3,949,021 for Supportive Housing Collaborative Project (SHC) for the period June 1, 2022 through May 31, 2023; b) \$2,327,914 for COACH Project (COACH) for the period of January 1, 2022 through December 31, 2022.
2. One grant from HUD administered through the County of Alameda for \$881,045 to provide tenant-based rental assistance to individuals who are chronically homeless and disabled from March 1, 2022 through February 28, 2023.

FISCAL IMPACTS OF RECOMMENDATION

Each of the Shelter Plus Care grants and the grant from Alameda County provides funds for rental subsidies from the federal Department of Housing and Urban Development (HUD). These grants serve homeless and disabled individuals and families in Berkeley, and must be renewed on an annual basis. These grants fund the rental subsidies for these units while city staff and community agency partners provide the supportive services that fulfills the 25% in-kind service match required for these grants.

HUD allows up to 7% of each grant to be used to administer the rental subsidies which supports the Health, Housing and Community Service Department's grant-related administrative activities. (For the four HUD grants budget codes 347-51-504-530/535 various; funds to be deposited in revenue accounts 805-7906-331-1023 and 6064 (FUND\$) and 347-51-504-535-0000-000-000-431110 (ERMA). For the contract with Alameda County, budget codes 348-51-504-530-535-various and funds to be deposited in revenue accounts 806-7906-331-1023 and 6064 (FUND\$) and 348-51-504-535-0000-000-000-431110 (ERMA).

### CURRENT SITUATION AND ITS EFFECTS

Based on a national competition, the federal Department of Housing and Urban Development and the County of Alameda awarded funding to the City of Berkeley to renew three Shelter Plus Care grants that provide rental assistance to a minimum of 220 households. The City's Shelter Plus Care Program provides federal rental subsidies that are matched by locally provided services to transition formerly homeless, disabled individuals and families into permanent, supportive housing. These grants currently provide tenant-based rental subsidies for approximately 300 households to rent from private property owners in Berkeley, Albany, Alameda, Oakland, and Emeryville. The number of households currently leased up is at 136% of the 220 number as required by HUD due to careful grant management.

Each of the participants in the program receives case management and other supportive services provided by one or more of the following agencies: Bay Area Community Services (BACS), Berkeley Food and Housing Project (BFHP); City of Berkeley Mental Health Division (BMH); City of Berkeley Aging Services Division (Aging); Bonita House, Inc.(Bonita); Building Opportunities for Self-Sufficiency (BOSS); East Bay AIDS Center (EBAC); Lifelong Medical Care (LLMC); and the Women's Daytime Drop-In Center (WDDC).

### BACKGROUND

Since 1995, the City of Berkeley Shelter Plus Care Program has been an important component of the continuum of housing available to disabled homeless families and individuals. The Shelter Plus Care Program is funded by HUD and the County of Alameda to provide housing subsidies for people who are homeless with a disability. The program combines a rental subsidy with ongoing supportive services to assist chronically homeless individuals and families to obtain and maintain housing.

The Berkeley Shelter Plus Care Program is a partnership between the Health, Housing and Community Services Department and seven community agencies. The Health, Housing and Community Services Department provides operational and programmatic oversight, and inspects rental units to ensure that each unit meets federal housing quality standards and makes monthly rental subsidy payments to property owners. The community agencies along with the Department's Aging Services and Mental Health Divisions provide ongoing case management and support to participants in the program.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

### RATIONALE FOR RECOMMENDATION

The City of Berkeley Shelter Plus Care Program successfully provides stable housing and ongoing services to some of the City's most vulnerable residents. Authorizing the acceptance of the three Shelter Plus Care renewal grants, will assure that 300



homeless and disabled individuals and families in Berkeley continue to benefit from receiving ongoing rental assistance and the supportive services necessary to retain stable housing.

ALTERNATIVE ACTIONS CONSIDERED

Staff did not identify any alternative actions that would be consistent with the City's Strategic Plan goals to "create affordable housing and housing support services for our most vulnerable community members" and "champion and demonstrate social and racial equity".

CONTACT PERSON

Paul Chang, Community Services Specialist III HHCS, (510) 981-5446

Attachment:  
1: Resolution

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

SHELTER PLUS CARE PROGRAM RENEWAL GRANTS

WHEREAS, the U.S. Department of Housing and Urban Development and the County of Alameda have awarded the City of Berkeley Health, Housing & Community Services Department the following five Shelter Plus Care grants: 1) a) \$3,949,021 for Supportive Housing Collaborative Project (SHC) for the period June 1, 2022 through May 31, 2023; b) \$2,327,914 for COACH Project (COACH) for the period of January 1, 2022 through December 31, 2022; and 2) One grant from the County of Alameda for \$881,045 to provide tenant-based rental assistance to individuals who are chronically homeless and disabled from March 1, 2022 through February 28, 2023; and

WHEREAS, the combined total for the three grants is an estimated \$7,157,980 to provide direct rental assistance, and of this amount approximately 7% is available to support the Health, Housing and Community Service Department's grant-related administrative activities (For the four HUD grants budget codes 347-51-504-530/535 various; funds to be deposited in revenue accounts 805-7906-331-1023 and 6064 (FUND\$) and 347-51-504-535-0000-000-000-431110 (ERMA). For the contract with Alameda County, budget codes 348-51-504-530-535-various and funds to be deposited in revenue accounts 806-7906-331-1023 and 6064 (FUND\$) and 348-51-504-535-0000-000-000-431110 (ERMA); and

WHEREAS, these Shelter Plus Care grants are an annual renewal of an existing program that provides rental subsidies and ongoing support services for more than 300 homeless and disabled individuals and families in Berkeley; and

WHEREAS, the rent subsidies provided through the City's Shelter Plus Care Program are matched by services provided by the City's Mental Health Division and Aging Services Division and seven community-based agencies that assist formerly homeless, disabled individuals and families to retain stable housing.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to receive funds and execute any agreements and amendments resulting from the three grants awarded from the U.S. Department of Housing and Urban Development and the County of Alameda for the City's Shelter Plus Care Program as follows: 1) Two Shelter Plus Care grants from U.S. Department of Housing and Urban Development (HUD): a) \$3,949,021 for Supportive Housing Collaborative Project (SHC) for the period June 1, 2022 through May 31, 2023; b) \$2,327,914 for COACH Project (COACH) for the period of January 1, 2022 through December 31, 2022; and 2) One grant from HUD administered through the County of Alameda for \$881,045 to provide tenant-based rental assistance to individuals who are chronically homeless and disabled from March 1, 2022 through February 28, 2023. A signed copy of said documents, agreements and any amendments will be kept on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services

Subject: Contract Amendments: Mental Health Services Act Community Services and Supports, and Prevention and Early Intervention

RECOMMENDATION

Adopt ten Resolutions authorizing the City Manager or her designee to execute amendments for the following contracts that are funded through Mental Health Services Act (MHSA) Community Services and Supports (CSS) and Prevention and Early Intervention (PEI); increasing the contract amounts as outlined below; totaling \$1,571,966 and extending the contracts through June 30, 2023:

1. Increasing CSS Contract No. 100042-1 with Lakehurst Hall by \$36,000 for a total contract amount not to exceed \$185,500 for Room Rental Fees for Berkeley Mental Health clients;
2. Increasing CSS Contract No. 108800-1 with Bay Area Hearing Voices Network by \$46,941 for a total contract amount not to exceed \$184,855 for hearing voices support groups;
3. Increasing CSS Contract No. 31900132 with Building Opportunities for Self-Sufficiency by \$100,000 for a total contract amount not to exceed \$400,000 for representative payee services;
4. Increasing CSS Contract No. 32200130 with Alameda County Behavioral Health Care Services by \$491,933 for a total contract amount not to exceed \$983,866 for Wellness Center operations;
5. Increasing CSS and PEI Contract No. 32000094 with Youth Spirit Artworks by \$100,000 for Transition Age Youth case management and linkage services, and \$32,046 for trauma support services. This amendment also includes \$78,000 for Tiny House Village services, which is non-MHSA funding, for a total contract amount not to exceed \$737,092;

6. Increasing PEI Contract No. 32000240 with Berkeley Unified School District by \$355,000 for a total contract amount not to exceed \$1,347,778 for services to support Berkeley students;
7. Increasing PEI Contract No. 088999-1 with Center for Independent Living by \$32,046 for a total contract amount not to exceed \$352,722 for services to support Older Adults;
8. Increasing PEI Contract No. 052129-1 with Pacific Center for Human Growth by \$100,000 for a total contract amount not to exceed \$515,150 for services to support the Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Agender, Plus (LGBTQIA+) population;
9. Increasing PEI Contract No. 32200146 with OnTrack Program Resources by \$100,000 for a total contract amount not to exceed \$175,000 for services to support African Americans; and
10. Increasing PEI Contract No. 3200111 with East Bay Sanctuary Covenant by \$100,000 for a total contract amount not to exceed \$200,000 for services to support the Latinx/Latina/Latino population.

**FISCAL IMPACTS OF RECOMMENDATION**

Funding from MHSA revenue received from the State of California is available in the Fiscal Year 2023 budget in the following ERMA GL Accounts: Community Services and Supports programs \$36,000 in 315-51-503-521-2006-000-451-636110, Community Services and Supports programs \$738,874 in 315-51-503-526-2016-000-451-636110, and Prevention and Early Intervention programs \$719,092 in 315-51-503-526-2016-000-451-636110. In addition, funding in the amount of \$78,000 for Tiny House Village housing services is available in the Fiscal Year 2023 budget in ERMA GL Code 011-51-503-523-5002-000-451-636110.

**CURRENT SITUATION AND ITS EFFECTS**

The table below shows the City’s current commitment of MHSA funds for CSS and PEI.

| <b>MHSA Funding Component</b> | <b>Vendor</b>                               | <b>Funds Added with this Recommendation</b> | <b>New Contract Total</b> |
|-------------------------------|---------------------------------------------|---------------------------------------------|---------------------------|
| CSS                           | Lakehurst Hall                              | \$36,000                                    | \$185,500                 |
| CSS                           | Bay Area Hearing Voices Network             | \$46,941                                    | \$184,855                 |
| CSS                           | Building Opportunities for Self-Sufficiency | \$100,000                                   | \$400,000                 |

|                                            |                                               |                                   |             |
|--------------------------------------------|-----------------------------------------------|-----------------------------------|-------------|
| CSS                                        | Alameda County Behavioral Healthcare Services | \$491,933                         | \$983,866   |
| CSS<br>PEI<br>Non-MHSA Funds:<br>Measure P | Youth Spirit Artworks                         | \$100,000<br>\$36,000<br>\$78,000 | \$737,092   |
| PEI                                        | Berkeley Unified School District              | \$355,000                         | \$1,347,778 |
| PEI                                        | Center for Independent Living                 | \$32,046                          | \$352,722   |
| PEI                                        | Pacific Center for Human Growth               | \$100,000                         | \$515,150   |
| PEI                                        | ONTRACK Program Resources Inc.                | \$100,000                         | \$175,000   |
| PEI                                        | East Bay Sanctuary Covenant                   | \$100,000                         | \$200,000   |

The MHSA Fiscal Year 2022-2023 (FY23) Annual Update is the local plan that, informed by area stakeholders, details the uses of MHSA funds. This Annual Update, which is on the City Council Agenda this evening for approval, includes funding to continue the CSS and PEI programs and services outlined above.

Development of the FY23 Annual Update included conducting community program planning, writing a draft plan, providing a 30-day public review period from May 26 through June 23, 2022, and conducting a public hearing on June 23, 2022 at the Mental Health Commission. At the close of the public hearing the Mental Health Commission made the motion:

M/S/C (Fine, Jones) Recommend that the City Council approve this funding and submit the MHSA Plan to the State.

Ayes: Fine, Jones, Opton, Pritchett Noes: None; Abstentions: None; Absent: Escarcega; Taplin.

### BACKGROUND

Since the passage of Proposition 63 in 2004, the Health, Housing and Community Services Department, Mental Health Division, has received annual MHSA funding which is utilized to expand and transform the mental health service delivery system to better meet the needs of underserved and inappropriately served communities, among others. This initiative has provided new opportunities for the Mental Health Division to further develop and expand its system of care, adding new programs to the Division's own program and utilizing non-profit providers in the planning and delivery of comprehensive

mental health services. The contracts this report seeks to extend advance this goal and provide improved coordination between the City and its partner system of care agencies. The City Council has previously amended these contracts.

Community Services and Supports (CSS): A portion of MHPA Community Services and Supports (CSS) funds are allocated to community-based organizations to provide case management services for Transition Age Youth; housing supports; Hearing Voices support groups; and to support a Wellness Center, operated in collaboration with Alameda County.

Prevention and Early Intervention (PEI): Some of the MHPA Prevention and Early Intervention (PEI) funds have been utilized to provide services and supports for students in the Berkeley Unified School District, and for support services for individuals who are underserved or inappropriately served in the mental health system including the following populations: African Americans; Latinx; Older Adults; Transition Age Youth; and Lesbian, Bisexual, Gay, Transgender, Queer/Questioning, Intersex, and Agender (LGBTQIA) individuals.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

#### RATIONALE FOR RECOMMENDATION

Each of the programs funded by these contracts were developed as a result of feedback from stakeholders and went through a lengthy community input process before being presented to City Council as part of the MHPA Plan Annual Update. All current vendors are performing at an effective level under their current contracts, and are trusted partners in meeting community health needs.

#### ALTERNATIVE ACTIONS CONSIDERED

Staff did not identify an alternative action that would be consistent with the adopted MHPA Three-Year Program and Expenditure Plans.

#### CONTACT PERSON

Karen Klatt, Community Services Specialist III, HHCS, (510) 981-7644  
Conor Murphy, Assistant Management Analyst, HHCS, (510) 981-7611

#### Attachments:

- 1: Resolution – Contract No. 100042-1 Amendment: Lakehurst Hall
- 2: Resolution – Contract No. 108800-1 Amendment: Bay Area Hearing Voices Network
- 3: Resolution – Contract No. 31900132 Amendment: Building Opportunities for Self-Sufficiency

- 4: Resolution – Contract No. 32200130 Amendment: Alameda County Behavioral Health Care Services
- 5: Resolution – Contract No. 32000094 Amendment: Youth Spirit Artworks
- 6: Resolution – Contract No. 32000240 Amendment: Berkeley Unified School District
- 7: Resolution – Contract No. 088999-1 Amendment: Center for Independent Living
- 8: Resolution – Contract No. 052129-1 Amendment: Pacific Center for Human Growth
- 9: Resolution – Contract No. 32200111 Amendment: OnTrack Program Resources, Inc.
- 10: Resolution – Contract No. 32200146 Amendment: East Bay Sanctuary Covenant

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

CONTRACT NO. 100042-1 AMENDMENT: LAKEHURST HALL, INC FOR  
TEMPORARY HOUSING SUBSIDIES

WHEREAS, the Department of Health, Housing and Community Services, Mental Health Division is allocated annual funding under the State Mental Health Services Act for the provision of comprehensive mental health services; and

WHEREAS, the Mental Health Division works cooperatively and in partnership with community-based agencies in the provision of such mental health services; and

WHEREAS, on April 18, 2014 the City Manager authorized Contract No. 100042-1 with Lakehurst Hall, Inc. for the provision of temporary housing in the amount not to exceed \$30,000; and

WHEREAS, on October 30, 2015 the City Manager authorized an amendment to Contract No. 100042-1 with Lakehurst Hall, Inc. to increase the amount by \$19,500 for a total contract amount not to exceed \$49,500; and

WHEREAS, on January 24, 2017 by Resolution No. 67,801-N.S. City Council authorized the City Manager to approve amending Contract No. 100042-1 with Lakehurst Hall, Inc. in an amount not to exceed \$149,500; and

WHEREAS, funds are available in the Fiscal Year 2023 budget code 315-51-503-521-2006-000-451-636110 in the MHSA fund received from the State of California.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute an amendment to Contract No. 100042-1 with Lakehurst Hall, Inc. for temporary housing subsidy funds increasing the contract by \$36,000 for a new total not to exceed amount of \$185,500, and extending the contract through June 20, 2023. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.



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

CONTRACT NO. 108800-1 AMENDMENT: BAY AREA HEARING VOICES NETWORK  
FOR HEARING VOICES SUPPORT GROUPS

WHEREAS, Mental Health Services Act (MHSA) funds are allocated to mental health jurisdictions across the state for the purposes of transforming the mental health system into one that is consumer and family driven, culturally competent, wellness and recovery oriented, includes community collaboration, and implements integrated services; and

WHEREAS, on July 23, 2019 by Resolution No. 69,033-N.S., City Council authorized the City Manager to approve the MHSA Plan FY2019-2020 Annual Update; and

WHEREAS, on December 3, 2019 by Resolution No. 69,193-N.S., City Council authorized the City Manager to amend Contract No. 108800-1 for an expenditure limit not to exceed \$68,442; and

WHEREAS, on July 14, 2020 by Resolution No. 69,493-N.S., City Council authorized the City Manager to amend Contract No. 108800-1 for an expenditure limit not to exceed \$103,178; and

WHEREAS, on September 14, 2021 by Resolution No. 70,011-N.S., City Council authorized the City Manager to amend Contract No. 108800-1 for an expenditure limit not to exceed \$137,914; and

WHEREAS, funds in the amount of \$46,941 are available in the Fiscal Year 2023 budget in the MHSA ERMA GL Code 315-51-503-526-2017-000-451-612990.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute an amendment to Contract No. 108800-1 with the Bay Area Hearing Voices Network for Hearing Voices Support Groups through June 30, 2023 increasing the contract by \$46,941 for a new total amount not to exceed \$184,855. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.

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

CONTRACT NO. 31900132 AMENDMENT: BUILDING OPPORTUNITIES FOR SELF-SUFFICIENCY FOR REPRESENTATIVE PAYEE SERVICES

WHEREAS, Mental Health Services Act (MHSA) funds are allocated to mental health jurisdictions across the state for the purposes of transforming the mental health system into one that is consumer and family driven, culturally competent, wellness and recovery oriented, includes community collaboration, and implements integrated services; and

WHEREAS, on May 26, 2015 by Resolution No. 67,026-N.S., the City Council authorized the City Manager to approve the MHSA Fiscal Years 2015 through 2017 Three Year Program and Expenditure Plan; and

WHEREAS, within the City Council approved MHSA Fiscal Years 2015 through 2017 Three Year Program and Expenditure Plan was the goal of contracting with a community based organization to provide Representative Payee Services; and

WHEREAS, on May 29, 2018 City Council approved the Finance Department's request to issue a Request for Proposals for Representative Payee Services; and

WHEREAS, the City of Berkeley's Mental Health Division issued a Request for Proposals for Representative Payee Services, and selected Building Opportunities for Self-Sufficiency as the vendor; and

WHEREAS, on February 26, 2019 by Resolution No. 68,768-N.S., the City Council authorized the City Manager to execute contract No. 31900132 with Building Opportunities for Self Sufficiency for Representative Payee services; and

WHEREAS, on January 21, 2020 by Resolution No. 69,249-N.S., the City Council authorized the City Manager to amend contract No. 31900132; and

WHEREAS, on June 30, 2020 by Resolution No. 69,470-N.S., the City Council authorized the City Manager to amend contract No. 31900132; and

WHEREAS, on September 28, 2021 by Resolution No. 70,036-N.S., the City Council authorized the City Manager to amend contract No. 31900132; and

WHEREAS, Building Opportunities for Self-Sufficiency has been the vendor for Representative Payee services for the City of Berkeley since March 1, 2019, and has acted in a satisfactory capacity;

WHEREAS, funds are available in the Fiscal Year 2023 Budget in ERMA GL Code 315-51-503-526-2017-000-451-636110.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute an amendment to Contract No.

31900132 with Building Opportunities for Self-Sufficiency for Representative Payee services through June 30, 2023 increasing the contract by \$100,000 for a new total amount not to exceed \$400,000. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.

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

MEMORANDUM OF UNDERSTANDING WITH ALAMEDA COUNTY  
BEHAVIORAL HEALTHCARE SERVICES FOR WELLNESS CENTER  
OPERATIONS

WHEREAS, as part of the Mental Health Services Act (MHSA), the State of California designated a process for all mental health jurisdictions for expenditures from Community Services and Supports (CSS); and

WHEREAS, on October 13, 2015, via Resolution No. 67,228-N.S., City Council approved a Memorandum of Understanding with Alameda County Behavioral Health Care Services to implement, manage, and evaluate a Mental Health Wellness Center (Wellness Center); and

WHEREAS, on January 29, 2019, via Resolution No. 68,749-N.S. City Council approved funding the construction of the Wellness Center located in Berkeley in partnership with Alameda County Behavioral Health Care Services; and

WHEREAS, on September 15, 2020 via Resolution No. 69,549-N.S. City Council approved funding operational costs of the Wellness Center located in Berkeley in partnership with Alameda County Behavioral Health Care Services; and

WHEREAS, on September 28, 2021 via Resolution No. 70,038-N.S. City Council approved funding operational costs of the Wellness Center located in Berkeley in partnership with Alameda County Behavioral Health Care Services; and

WHEREAS, a Memorandum of Understanding provides the mechanism whereby the City of Berkeley Mental Health Services Act CSS funds can be transferred to the lead agency, Alameda County Behavioral Health Care Services, to be utilized for the operational costs of the Mental Health Wellness Center; and

WHEREAS, funds are available in the Fiscal Year 2023 budget code 315-51-503-525-2020-000-451-636110 in the MHSA fund received from the State of California.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute an amendment to Contract No. 32200130 with Alameda County Behavioral Health Care Services through June 30, 2023 increasing the contract by \$491,933 for a new total not to exceed amount of \$983,866 to fund the operational costs of a Mental Health Wellness Center (Wellness Center) located in the City of Berkeley.

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

CONTRACT NO. 32000094 AMENDMENT: YOUTH SPIRIT ARTWORKS FOR TRANSITION AGE YOUTH CASE MANAGEMENT AND LINKAGE SERVICES AND TINY HOUSE CASE MANAGEMENT

WHEREAS, Mental Health Services Act (MHSA) funds are allocated to mental health jurisdictions across the state for the purposes of transforming the mental health system into one that is consumer and family driven, culturally competent, wellness and recovery oriented, includes community collaboration, and implements integrated services; and

WHEREAS, on July 23, 2019 by Resolution No. 69,033-N.S., City Council authorized the City Manager to approve the MHSA Plan FY2019-2020 Annual Update; and

WHEREAS, within the City Council approved MHSA Plan FY2019-2020 Annual Update was an allocation of \$100,000 for contracted Transition Age Youth (TAY) Case Management and Linkage Services; and

WHEREAS, on December 3, 2019 by Resolution No. 69,194-N.S., City Council authorized the City Manager to approve amending Contract No. 32000094 through June 30, 2020 in an amount not to exceed \$100,000; and

WHEREAS, on June 2, 2020 by Resolution No. 69,436-N.S., City Council authorized the City Manager to approve amending Contract No. 32000094 through June 30, 2021 in an amount not to exceed \$217,000; and

WHEREAS, on July 28, 2020 by Resolution No. 69,511-N.S., City Council authorized the City Manager to approve amending Contract No. 32000094 through June 30, 2021 in an amount not to exceed \$317,000; and

WHEREAS, on November 30, 2021 by Resolution No. 70,121-N.S., City Council authorized the City Manager to approve amending Contract No. 32000094 through June 30, 2022 in an amount not to exceed \$527,046; and

WHEREAS, funds are available in the current budget year from the Mental Health Services Act (\$100,000 from ERMA GL Code 315-51-503-526-2017-000-451-636110 and \$32,046 from ERMA GL Code 315-51-503-526-2016-000-451-636110) and Measure P (\$78,000 from ERMA GL Code 011-51-503-523-5002-000-451-636110).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute an amendment to Contract No. 32000094 with Youth Spirit Artworks for Transition Age Youth case management and linkage services and Tiny House case management increasing the contract by \$210,046 for a new total not to exceed amount of \$737,092, and extending the contract through June 20, 2023. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.

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

CONTRACT NO. 32000240 AMENDMENT: BERKELEY UNIFIED SCHOOL DISTRICT (BUSD) FOR MENTAL HEALTH MHSA-FUNDED PROGRAMS

WHEREAS, the City's Department of Health, Housing and Community Services, Mental Health Division, currently receives Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) Funds on an annual basis to improve early access to services and programs; including the reduction of stigma and discrimination; and for strategies to prevent mental illness from becoming severe and disabling; and

WHEREAS, the Mental Health Division works in partnership with community-based agencies and the Berkeley Unified School District in the provision of such services and supports; and

WHEREAS, on November 12, 2019 via Resolution No. 69,168-N.S., City Council approved entering into a contract with BUSD to fund the Mental Health Peer Education and Supports Project, the Dynamic Mindfulness Program, the Supportive Schools Program, and the African American Success Project; and

WHEREAS, on May 11, 2021 via Resolution No. 69,836-N.S., City Council approved amending Contract No. 32000240; and

WHEREAS, on February 22, 2022 via Resolution No. 70,221-N.S., City Council approved amending Contract No. 32000240; and

WHEREAS, community input and stakeholder feedback has determined a need for the programs being funded; and

WHEREAS, the Berkeley Unified School District (BUSD) has been a trusted partner in the implementation of a variety of programs in collaboration with the City; and

WHEREAS, funding for this contract has been included in the Fiscal Year 2023 Budget and are available in ERMA GL Account 315-51-503-526-2016-000-451-636110.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council ratifies the action taken by the City Manager to execute an amendment to Contract No. 32000240 with the Berkeley Unified School District for MHSA-funded programs through June 30, 2023 increasing the contract by \$355,000 for a new total not to exceed amount of \$1,347,778. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.

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

CONTRACT NO. 088999-1 AMENDMENT: CENTER FOR INDEPENDENT LIVING  
FOR TRAUMA SUPPORT SERVICES FOR OLDER ADULTS

WHEREAS, the City's Department of Health, Housing and Community Services, Mental Health Division, currently receives Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) Funds on an annual basis to improve early access to services and programs; including the reduction of stigma and discrimination; and for strategies to prevent mental illness from becoming severe and disabling; and

WHEREAS, the Mental Health Division works in partnership with community-based agencies and the Berkeley Unified School District in the provision of such services and supports; and

WHEREAS, pursuant to the City of Berkeley's Mental Health Services Act Approved Prevention and Early Intervention Plan, funds are to be allocated to support the successful implementation of trauma supports for underserved populations; and

WHEREAS, one of the underserved populations in Berkeley are Older Adults; and

WHEREAS, in April 2010, bid Specification No. 10-10508-C was issued for proposals targeting trauma exposed older adults and/or those in need of coping strategies for stress related issues and Center for Independent Living was determined to be the chosen bidder; and

WHEREAS, on April 26, 2011 by Resolution No. 65,237-N.S., City Council authorized a contract with Center for Independent Living to provide mental health services and supports for older adults in an amount not to exceed \$26,520 for the period of February 1, 2011 through June 30, 2011; and

WHEREAS, from July 19, 2011 by Resolution No. 65,395-N.S., City Council authorized an amendment to Contract No. 8648 with Center for Independent Living to increase the amount by \$26,520 for a total contract amount not to exceed \$53,040, and to extend the Term to June 30, 2012; and

WHEREAS, Contract No. 8648 expired before the approved amendment was executed, and a new Contract No. 8801 was executed by the City Manager with Center for Independent Living for the amount of \$26,520 for the term July 1, 2011 through June 30, 2012; and

WHEREAS, the City Council authorized amendments to Contract 8801G each year from June 2012 through June 2019 for a total contract amount not to exceed \$224,538; and

WHEREAS, Contract 8801G became ERMA Contract No. 088999-1; and

WHEREAS, on July 23, 2019 by Resolution No. 69,036-N.S., City Council authorized an amendment to ERMA Contract No. 088999-1 with Center for Independent Living to increase the amount by \$32,046 for a total amount not to exceed \$256, 584 and to extend the term to June 30, 2020; and

WHEREAS, on June 30, 2020 by Resolution No. 69,468-N.S., City Council authorized an amendment to ERMA Contract No. 088999-1 with Center for Independent Living to increase the amount by \$24,035 for a total amount not to exceed \$280,619 and to extend the term to March 31, 2021; and

WHEREAS, on December 1, 2020 by Resolution No. 69,620-N.S., the City Council approved the MHSA FY20/21 – 22/23 Three Year Program and Expenditure Plan, which continued the allocation of PEI funds for Trauma Support Services for the Older Adult population; and

WHEREAS, per the City Council approved MHSA FY20/21 – 22/23 Three Year Program and Expenditure Plan a Request for Proposal (RFP) process was included to be executed for these Trauma Support Services for Older Adults, which had been provided by the Center for Independent Living over a period of time; and

WHEREAS, on March 30, 2021 by Resolution No. 69,768-N.S., City Council authorized an amendment to ERMA Contract No. 088999-1 with Center for Independent Living to increase the amount by \$8,011 for a total not to exceed amount \$288,830 and to extend the term to June 30, 2021; and

WHEREAS, the additional funding and extension of the current contract to June 30, 2021, was to enable the time to execute the RFP and contracting processes and to provide service coverage for individual participants, in the event there was a change in contractors following the RFP process; and

WHEREAS, in March 2021 per Bid Specification number 21-11432, an RFP was issued and the Center for Independent Living submitted a proposal; and

WHEREAS, following proposal review and rating from a panel of reviewers which included a community member, the Center for Independent Living was the chosen vendor to continue implementing these services in Berkeley; and

WHEREAS, on July 27, 2021, by Resolution No. 69,976-N.S., City Council authorized an amendment to ERMA Contract No. 088999-1 with Center for Independent Living to increase the amount by \$31,846 for a total amount not to exceed \$320,676 and to extend the term to June 30, 2022; and

WHEREAS, funds are available in the FY23 budget in the Mental Health Services Act Fund, budget code: 315-51-503-526-2016-000-451-636110.



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 an amendment to Contract No. 088999-1 with Center for Independent Living to provide mental health services and supports for Older Adults, to increase the contract amount by \$32,046 for a total contract amount not to exceed \$352,722 and to extend the term to June 30, 2023. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.

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

CONTRACT NO. 052129-1 AMENDMENT: PACIFIC CENTER FOR HUMAN GROWTH TO PROVIDE MENTAL HEALTH SERVICES AND SUPPORTS FOR LGBTQIA+ INDIVIDUALS

WHEREAS, the City's Department of Health, Housing and Community Services, Mental Health Division, currently receives Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) Funds on an annual basis to improve early access to services and programs; including the reduction of stigma and discrimination; and for strategies to prevent mental illness from becoming severe and disabling; and

WHEREAS, the Mental Health Division works in partnership with community-based agencies and the Berkeley Unified School District in the provision of such services and supports; and

WHEREAS, pursuant to the City of Berkeley's Mental Health Services Act approved Prevention and Early Intervention Plan, funds are to be allocated to support the successful implementation of trauma supports for underserved populations; and

WHEREAS, one of the underserved populations in Berkeley are individuals who identify as Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex, Agender, Plus (LGBTQIA+); and

WHEREAS, in April 2010, Bid Specification No. 10-10508-C was issued for proposals targeting trauma exposed individuals in underserved populations and Pacific Center for Human Growth who provides services to the LGBTQIA+ population was determined to be the most responsible bidder; and

WHEREAS, on December 6, 2010, City Council authorized Contract No. 8516 with Pacific Center for Human Growth to provide mental health services and supports to LGBTQIA+ individuals who are suffering from the impact of oppression, trauma, and other life stressors in an amount not to exceed \$26,520 for the period of November 1, 2010 through June 30, 2011; and

WHEREAS, the City Council authorized amendments to Contract 8516 each year from June 2011 through July 2019 for a total contract amount not to exceed \$283,104; and

WHEREAS, Contract No. 8516(I) became ERMA Contract No. 052129-1; and

WHEREAS, on June 30, 2020 by Resolution No. 69,469-N.S., City Council authorized an amendment to ERMA Contract No. 052129-1 with Pacific Center for Human Growth to increase the amount by \$24,035 for a total amount not to exceed \$307,139 and to extend the term to March 31, 2021; and

WHEREAS, on December 1, 2020 by Resolution No. 69,620-N.S., the City Council approved the MHSA FY20/21 – 22/23 Three Year Program and Expenditure Plan, which continued and increased the allocation of PEI Funds for Trauma Support Services for the LGBTQIA+ population; and

WHEREAS, per the City Council approved MHSA FY20/21 – 22/23 Three Year Program and Expenditure Plan a Request for Proposal (RFP) process was included to be executed for these Trauma Support Services for LGBTQIA+ individuals, which had been provided by the Pacific Center for Human Growth over a period of time; and

WHEREAS, on March 30, 2021 by Resolution No. 69,769-N.S., City Council authorized an amendment to ERMA Contract No. 052129-1 with Pacific Center for Human Growth to increase the amount by \$8,011 for a total amount not to exceed \$315,150 and to extend the term to June 30, 2021; and

WHEREAS, the additional funding and extension of the contract to June 30, 2021, was to enable the time to execute the RFP and contracting processes and to provide service coverage for individual participants, in the event there was a change in contractors following the RFP process; and

WHEREAS, in March 2021 per Bid Specification No. 21-11430-C, and RFP was issued and Pacific Center for Human Growth submitted a proposal; and

WHEREAS, following proposal review and rating from a panel of reviewers which included a community member, the Pacific Center for Human Growth was the chosen vendor to continue implementing these services in Berkeley; and

WHEREAS, on July 27, 2021 per Resolution No. 69,975-N.S., City Council authorized an amendment to ERMA Contract No. 052129-1 with Pacific Center for Human Growth to increase the amount by \$100,000 for a total amount not to exceed \$415,150 and to extend the term to June 30, 2022; and

WHEREAS, funds are available in the FY23 budget in the Mental Health Services Act Fund, budget code: 315-51-503-526-2016-000-451-636110.

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 an amendment to Contract No. 052129-1 with Pacific Center for Human Growth to provide mental health services and supports for LGBTQIA+ Individuals, to increase the contract amount by \$100,000 for a total contract amount not to exceed \$515,150 and to extend the term to June 30, 2023. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.

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

CONTRACT NO. 32200146 AMENDMENT: ONTRACK PROGRAM RESOURCES  
INC., FOR SUPPORT SERVICES FOR AFRICAN AMERICANS

WHEREAS, the City's Department of Health, Housing and Community Services, Mental Health Division, currently receives Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) Funds on an annual basis to improve early access to services and programs; including the reduction of stigma and discrimination; and for strategies to prevent mental illness from becoming severe and disabling; and

WHEREAS, in order to utilize MHSA Funds, stakeholder informed Three Year Program and Expenditure Plans and Annual Updates that outline how funds will be utilized are required to be developed and locally approved; and

WHEREAS, the Mental Health Division works in partnership with community-based agencies and the Berkeley Unified School District in the provision of such services and supports; and

WHEREAS, since the initial MHSA PEI Plan, funds have been allocated for support services for the African American population; and

WHEREAS, these support services for African Americans were previously implemented by the same community partner over a period of time; and

WHEREAS, on December 1, 2020 by Resolution No. 69,620-N.S., the City Council approved the MHSA FY20/21 – 22/23 Three Year Program and Expenditure Plan, which continued and increased the allocation of PEI Funds for support services for the African American population; and

WHEREAS, per the City Council approved MHSA FY20/21 – 22/23 Three Year Program and Expenditure Plan a Request for Proposal (RFP) process was included to be executed for these support services for African Americans, which had been provided by the same community partner over a period of time; and

WHEREAS, in May 2021 per Bid Specification No. 21-11434-C, the RFP was issued and ONTRACK Program Resources Inc., submitted a proposal and was determined to be the chosen bidder; and

WHEREAS; on November 16, 2021 by Resolution No. 70,106-N.S., City Council authorized ERMA Contract No. 32200146 with ONTRACK Program Resources Inc., for support services for African Americans, in an amount not to exceed \$75,000 through June 30, 2022; and

WHEREAS, funds are available in the FY23 budget in the Mental Health Services Act Fund, budget code: 315-51-503-526-2016-000-451-636110.

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 an amendment to Contract No. 32200146 with ONTRACK Program Resources, Inc., to provide services and supports for African Americans, to increase the contract amount by \$100,000 for a total contract amount not to exceed \$175,000 and to extend the term to June 30, 2023. A record signature copy of said contract and any amendments to be on file the City Clerk Department.

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

CONTRACT NO. 32200111 AMENDMENT: EAST BAY SANCTUARY COVENANT  
FOR TRAUMA SUPPORT SERVICES FOR LATINX/LATINAS/LATINOS

WHEREAS, the City's Department of Health, Housing and Community Services, Mental Health Division, currently receives Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) Funds on an annual basis to improve early access to services and programs; including the reduction of stigma and discrimination; and for strategies to prevent mental illness from becoming severe and disabling; and

WHEREAS, in order to utilize MHSA Funds, stakeholder informed Three Year Program and Expenditure Plans and Annual Updates that outline how funds will be utilized are required to be developed and locally approved; and

WHEREAS, the Mental Health Division works in partnership with community-based agencies and the Berkeley Unified School District in the provision of such services and supports; and

WHEREAS, since the initial MHSA PEI Plan, funds have been allocated for Trauma Support Services for the Latinx/Latina/Latino population; and

WHEREAS, these Trauma Support Services for Latinx/Latinas/Latinos were previously implemented by the same community partner over a period of time; and

WHEREAS, on December 1, 2020 by Resolution No. 69,620-N.S., the City Council approved the MHSA FY20/21 – 22/23 Three Year Program and Expenditure Plan, which continued and increased the allocation of PEI Funds for Trauma Support Services for the Latinx/Latina/Latino population; and

WHEREAS, per the City Council approved MHSA FY20/21 – 22/23 Three Year Program and Expenditure Plan a Request for Proposal (RFP) process was included to be executed for these Trauma Support Services for Latinx/Latinas/Latinos, which previously had been provided by the same community partner over a period of time; and

WHEREAS, in March 2021 per Bid Specification No. 21-11433-C, an RFP was issued and East Bay Sanctuary Covenant submitted a proposal and was determined to be the chosen bidder; and

WHEREAS; on July 27, 2021, by Resolution No. 69,974-N.S., City Council authorized ERMA Contract No. 32200111 with East Bay Sanctuary Covenant for Trauma Support Services for Latinx/Latinas/Latinos, in an amount not to exceed \$100,000 through June 30, 2022; and

WHEREAS, funds are available in the FY23 budget in the Mental Health Services Act Fund, budget code: 315-51-503-526-2016-000-451-636110.

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 an amendment to Contract No. 32200111 with East Bay Sanctuary Covenant to provide Trauma Support Services for Latinx/Latinas/Latinos to increase the contract amount by \$100,000 for a total contract amount not to exceed \$200,000 and to extend the term to June 30, 2023. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.







CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Tess Mayer, Director of Library Services  
 Subject: Revision of the Tool Lending Specialist Classification to Reflect an Accurate Scope of Duties with a Four Percent (4%) Salary Increase

RECOMMENDATION

Adopt a Resolution approving the revision of the Tool Lending Specialist job specification to accurately reflect the scope of duties and to increase the current salary schedule by four percent (4%) effective March 16, 2021 or the employee's start date, if more recent.

FISCAL IMPACTS OF RECOMMENDATION

The Library's personnel budget is funded by the Library Tax Fund. The current salary range for this position is \$5,954.00 - \$6,597.07 monthly. The proposed adjusted monthly salary range would be \$6192.16 - \$6860.95, reflecting the 4% increase. There are three full-time Tool Lending Specialist positions in the team. These team members would also be receiving retroactive backpay dating back to 3/16/21 or their date of hire if more recent, for the difference between their current pay rate and this proposed adjusted rate.

CURRENT SITUATION AND ITS EFFECTS

The Tool Lending Library's collection expanded to include the lending of culinary tools in March 2021. Prior to that, the emphasis of the collection had been on gardening, home maintenance and repair and the tools and equipment used in the building trades. Because the culinary tools represent a distinct and significant body of knowledge, this increase in scope needs to be reflected in both the classification language and compensation of the position.

BACKGROUND

The Tool Lending Library has provided Berkeley residents with access to free home repair tools for over 40 years. It is a beloved institution in Berkeley and beyond and has served as a model for other such libraries nationally. The Tool Lending Specialist is a unique classification to the Library within the City of Berkeley, as well as unique in its kind amongst other public library systems. Although a few other library systems have tool lending libraries, such as Oakland Public Library, the staffing model for those entities is different and does not feature specialists who offer subject matter expertise

that is shared with residents as a critical aspect of the service. The Tool Lending Specialist classification was established in 1988 and was revised once in 2004.

Changes to this City classification must be reviewed by the Personnel Board and the Board of Library Trustees for adoption.

The Personnel Board approved this change on May 9, 2022. Action: Motion/Second/Carry): Gilbert/Wenk to approve the Recommendation to Revise the Tool Lending Specialist Job Duties and Compensation. Vote: Ayes: Bartlow, Dixon, Gilbert, Karpinski, Lacey, Wenk, Noes: None, Absent: None, Abstentions: None. Board of Library Trustees approved this change on June 1, 2022. Action: Motion/Second/Carry: Trustee Davenport / Trustee Selawsky to adopt resolution #R22-030. Vote: Ayes: Trustees Davenport, Greene, Hahn, Roth and Selawsky. Noes: None. Absent: None. Abstentions: None.

The City Council is charged with establishing job classifications and the compensation of all employees (Sections 31 and 32 of City Charter) thus these changes need to be reviewed by the City Council for final approval.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental impacts associated with the recommendations in this report.

#### RATIONALE FOR RECOMMENDATION

The Tool Lending Specialist classification has not been updated for 18 years. It is important to ensure that the classification and compensation accurately reflect the full scope of work that is being supported by this team, particularly since a significant change occurred.

#### ALTERNATIVE ACTIONS CONSIDERED

The City Council could refrain from approving this classification and compensation change, although the Personnel Board and the Board of Library Trustees have. This would require Library staff to renegotiate Tool Lending Specialist duties with SEIU 1021 Maintenance and Clerical and potentially find alternatives to the current service model.

#### CONTACT PERSON

Tess Mayer, Director of Library Services, Library, 510-981-6195

#### Attachments

1. Resolution
2. City of Berkeley Tool Lending Specialist Classification (showing changes)

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

CLASSIFICATION AND SALARY RESOLUTION FOR SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1021 MAINTENANCE AND CLERICAL CHAPTERS AND AMENDING RESOLUTION NO. 62,558-N.S.

WHEREAS, the Tool Lending Specialist classification, which is represented by Service Employees International Union, Local 1021 Maintenance and Clerical, and a classification unique to the Library; and

WHEREAS, this position was established upon Board of Library Trustees recommendation in 1988, with no major revisions since 2004; and

WHEREAS, the addition of culinary tools represents a distinct and significant body of knowledge that is shared with Berkeley residents as an aspect of service; and

WHEREAS, the Board of Library Trustees may recommend to the Personnel Board and the City Council revisions to this classification so that the specifications meet Library needs; and

WHEREAS, the Human Resources Department maintains the Classification and Compensation plan for the City of Berkeley; and

WHEREAS, an updated salary structure to reflect a four percent (4%) increase will better reflect the scope of responsibility and make the position more desirable and competitive in future recruitments.

WHEREAS, the Personnel Board recommended on May 9, 2022 and the Board of Library Trustees approved on June 1, 2022 to increase the Salary Schedule for Tool Lending Specialist to an hourly 5-step salary range of Step 1 (n/a), Step 2 (n/a), Step 3: \$35.7256, Step 4: \$37.6060, and Step 5: \$39.5851, reflecting an increase of four percent (4%) to each step effective March 16, 2021.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Resolution No. 62,558, Classification and Salary Resolution for Service Employees International Union Local 1021 Maintenance and Clerical Chapters is amended to increase the salary range for Tool Lending Specialist to an hourly salary structure shown below effective March 16, 2021.

| <b>Classification</b>          | <b>Step 1</b> | <b>Step 2</b> | <b>Step 3</b> | <b>Step 4</b> | <b>Step 5</b> |
|--------------------------------|---------------|---------------|---------------|---------------|---------------|
| <b>Tool Lending Specialist</b> | n/a           | n/a           | \$ 35.7256    | \$ 37.6060    | \$ 39.5851    |

## TOOL LENDING SPECIALIST

### DEFINITION

Under supervision, provides tools, equipment, instructional manuals, and basic reference service regarding home maintenance and repair to patrons of the Berkeley Tool Lending Library; orders, maintains, and repairs tools and equipment; performs related work as assigned.

### CLASS CHARACTERISTICS

The Tool Lending Specialist is a skilled library support class assigned to the Berkeley Tool Lending Library. The duties require a sound working knowledge of home improvement and culinary arts used by the do-it-yourself community. This class is distinguished from other library support classes in that the duties specifically apply to basic home improvement, building construction, culinary arts-related reference service, and the circulation of tools and home improvement equipment. ~~home maintenance and repair and the tools and equipment used in the building trades (carpentry, plumbing, electrical and painting). This class is distinguished from other library support classes in that the duties specifically apply to basic home improvement and building construction related reference service and the circulation of tools and building construction equipment.~~

### EXAMPLES OF DUTIES

1. Selects and lends a variety of culinary, building trade and gardening tools and equipment to residents of the City;
2. Recommends to the Library the purchase of tools and equipment; advises on the purchase of instructional manuals for the Tool Lending Library collection;
3. Maintains tools and equipment in an operable condition, including making necessary repairs; sends tools out to private tool repair companies when a more difficult repair is required;
4. Processes lending requests and answers patron questions in person or by phone;
5. Maintains the reserve and waiting list, retrieves overdue materials, and collects fines;
6. Advises patrons on the correct and safe use of tools and equipment; answers basic patron reference questions regarding home maintenance and repair;
7. Collects and maintains records and prepares reports regarding tools and equipment borrowed, patron demographics, telephone inquiries, and the amount of fees and fines collected;
8. Monitors expenditures related to tool repair and purchase;
9. Attends community meetings and public hearings to explain functions of the Tool Lending Library;
10. Maintains library in a clean and orderly condition;

11. Monitors developments related to tools, equipment, and instructional material on home maintenance and repair;
12. Maintains inventory records;
13. May instruct staff or volunteers on job duties; and
14. Performs related work as assigned.

### **QUALIFICATIONS**

Note: The level and scope of the knowledge, skills, and abilities listed below are related to job duties as defined under Class Characteristics.

#### Knowledge of:

1. Tools, equipment, and instructional manuals used in culinary tools, building repair, and construction trades;
2. Standard culinary and building maintenance repair and maintenance procedures and terminology;
3. Basic stock and inventory control methods, including requisitioning, receiving, storing, and lending;
4. Record keeping, report preparation, and filing methods and techniques;
5. Basic business arithmetic;
6. Standard safety practices and techniques in the building trades;
7. Basic tool and equipment repair, and repair resources; and
8. Operation of standard office equipment.

#### Skill in and ability to:

1. Provide sound information and appropriate tools and equipment to patrons;
2. Develop and implement lending and inventory control procedures;
3. Understand and follow oral and written instructions;
4. Organize work, set priorities, and exercise sound independent judgment;
5. Prepare and maintain accurate records and reports;
6. Establish and maintain effective working relationships with those contacted in the course of the work;
7. Gather and evaluate data and make logical recommendations; and
8. Instruct others in work procedures.

### **OTHER REQUIREMENTS:**

Must be able to work evenings, weekends and irregular shifts.

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS: Equivalent to graduation from high school and two years of experience which has provided a working knowledge of the tools and equipment used in the building construction trades (carpentry, plumbing, painting, masonry, and electrical).

Established: 12/1988

Revised: 04/2004; 04/2022

cc: Tess Mayer, Director of Library Services  
My Chan, Associate Human Resources Analyst



Office of the City Manager

CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Michael Sinor, Director, Information Technology  
Subject: Contract No. 32100168 Amendment: Robert Half International/Protiviti for Professional Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32100168 to increase spending authority with Robert Half International/Protiviti for professional services in support of the cyber-resilience projects in the Fiscal Year (FY) 2023 using the General Services Agency’s (GSA) purchasing vehicle no. GS-35F-0280X to increase the contract by \$312,000 for a total amount not to exceed \$552,432 through June 30, 2023.

FISCAL IMPACTS OF RECOMMENDATION

One-time funding for this project is available in the Department of Information Technology’s Fiscal Year (FY) 2023 General Fund allocation as itemized below.

|                  |                                                          |
|------------------|----------------------------------------------------------|
| \$312,000        | FY 2023: Professional Services                           |
|                  | FY 2023 Budget Code: 011-35-363-382-0000-000-472-612990- |
|                  | (General Fund, IT Department, Professional Services)     |
| <b>\$312,000</b> | <b>Total FY 2023 Professional Services</b>               |

CURRENT SITUATION AND ITS EFFECTS

The City’s existing cyber-resilience plan prioritizes and organizes cyber security projects, objectives, and requirements needed within the next five years to improve the City’s cyber-resilience posture. The cyber resiliency plan categorizes all projects into five focus areas, which include Data Transparency, Data Privacy and Data Security, Program Functional Design, Policy and Rationale, Monitoring, Response & Mitigation, and Training and Culture. In December 2020, Council approved several top-priority projects for FY21 and FY22 and later approved funding that allowed the City to move forward on six of these high-priority projects during the remainder of FY21 and eight in FY22.

The demand of these projects exceeds our current skillset and resource capacity. And, Robert Half International/Protiviti was selected to bridge the gaps by providing professional services in the form of project management for the initial set of projects and for FY22's projects. This increase in spending authority extends the current set of purchase orders work for FY23.

### BACKGROUND

In May 2019, the City engaged with a consultant to complete an "as-is" assessment of the City's cyber resiliency. The consultant developed a cyber-resilience plan that recommended and prioritized cyber security projects, objectives, and requirements over the span of five years. In May 2020, the consultant also recommended a roadmap to the City with large-scale and coordinated projects that would create and mature the City's cyber-resilience capabilities and controls in the most efficient and effective manner.

In December 2020, staff presented to Council the assessment of the threats currently facing the City's information and computer-networks, the recommended roadmap, and prioritized six of the projects, setting their completion date to be on or by June 30, 2021. The City has been pursuing this roadmap each fiscal year since.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Robert Half International/Protiviti will conduct their work remotely thus reducing greenhouse gas emissions from travel to and from City facilities.

### RATIONALE FOR RECOMMENDATION

The City is currently using Robert Half International/Protiviti under GSA contract across several departments for specific professional services engagements. Robert Half International/Protiviti was able to source immediately a cybersecurity analyst with the skillset and experience required to work on four of the six approved top-priority projects so a purchase order was then cut to obtain this resource.

It is important for the City to have continuity in these projects and the existing consultant has gained much of the institutional knowledge in the past year and a quarter. Replacing the consultant would cause delays to the ongoing projects. Staff thus recommends fully funding Robert Half International/Protiviti for FY23 in order to complete FY23's projects that these professional services are supporting.

Additionally, staff determined that not continuing to use Protiviti Government Services for some projects, such as multi-year ones, puts them in jeopardy of not being completed on time and within budget.

### ALTERNATIVE ACTIONS CONSIDERED

Staff considered hiring individual project managers with the skill set specialization for each project. However, the project manager does not warrant such specialization.



Contract No. 32100060 Amendment: Cyber Security for Professional Services RevolutionCyber, LLC for Data Safety Program Launch

CONSENT CALENDAR  
July 26, 2022

Furthermore, hiring individual consultants would involve additional time and expenses to become familiar with the City's technologies, departments, and controls.

CONTACT PERSON

Michael Sinor, Director, Information Technology, 510-981-6541

Attachments:

1: Resolution

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

CONTRACT NO. 32100168 AMENDMENT: ROBERT HALF  
INTERNATIONAL/PROTIVITI FOR PROFESSIONAL SERVICES

WHEREAS, in May 2019, the City engaged a consultant to complete an “as-is” assessment of the City’s cyber resiliency, which produced a cyber-resilience plan that recommended and prioritized cyber security projects, objectives, and requirements for the next five years; and

WHEREAS, in December 2020, staff presented to Council the assessment of the threats currently facing the City’s information and computer-networks, the recommended roadmap, and prioritized projects; and

WHEREAS, Robert Half International/Protiviti has provided a well-qualified cybersecurity analyst that has been working on projects for the City since late Fiscal Year 21, and

WHEREAS, Robert Half International/Protiviti has the outside perspective that provides industry best practices and experience in working with municipalities on cybersecurity operations and implementations; and

WHEREAS, one time funding for this project is available in the Department of Information Technology’s Fiscal Year (FY) 2023 General Fund allocation.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend Contract No. 32100168 with Robert Half International/Protiviti for Professional Services, for an amount not to exceed \$312,000 and a total contract value not to exceed \$552,432 through June 30, 2023.



Office of the City Manager

CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Michael Sinor, Director, Information Technology  
Subject: Contract No. 7167M Amendment: Superior, LLC for AS400 Software Maintenance and Support

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 7167M with Superior, LLC for software maintenance and support of the City's FUND\$ system on the AS400 platform, increasing the contract amount by \$154,926.66 for a total not-to-exceed amount of \$2,549,482.53 from July 1, 2006 through June 30, 2023.

FISCAL IMPACTS OF RECOMMENDATION

Funds for additional software maintenance and support will be available in the Department of Information Technology's Fiscal Year (FY) 2023 IT Cost Allocation fund as itemized below, and is subject to Council approval of the proposed citywide budget and Annual Appropriation Ordinances.

|                     |                                                                                                                         |
|---------------------|-------------------------------------------------------------------------------------------------------------------------|
|                     | FY2023 – Software Maintenance                                                                                           |
| \$154,926.66        | Budget Code: 680-35-363-384-6005-000-472-613130-<br>(IT Cost Allocation, Enterprise Applications, Software Maintenance) |
| <b>\$154,926.66</b> | <b>FY 2023 Software Maintenance</b>                                                                                     |

CURRENT SITUATION AND ITS EFFECTS

Currently, the City uses Superior's Public Sector software (FUND\$) to support operations for all City departments. Software licensing and maintenance is required for all FUND\$ modules and includes 24x7 support, documentation, and periodic patches to incorporate enhancements and repairs.

As incremental replacement of the FUND\$ system continue with the implementation of Tyler-Munis ERP system (ERMA) and other enterprise applications, the City's maintenance contract with Superior will continue to decrease as support will be required for fewer modules each year until all remaining FUND\$ modules are

replaced and retired. However, till all the modules are completely off the FUNDS\$ system, the City will still rely on Superior support for many of the key modules, reporting and auditing purposes.

### BACKGROUND

FUNDS\$ has supported City operations in all departments for over two decades. Its initial implementation in 1989 focused on automating core financial functions including the Payroll, General Ledger, Accounts Payable, and Purchasing modules. After the initial implementation, the City implemented extensive customizations of the FUNDS\$ software to expand its use throughout all departments.

On June 1, 2010, Council received a FUNDS\$ Status Report outlining usability challenges, an incremental replacement plan, and estimated costs and replacement timelines ([www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_City\\_Council/2010/06Jun/2010-06-01\\_Item\\_54\\_FUNDS\\_Status\\_Report.pdf](http://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_City_Council/2010/06Jun/2010-06-01_Item_54_FUNDS_Status_Report.pdf)).

On March 25, 2014, Council received an updated FUNDS\$ Status Report, which discussed FUNDS\$ replacement successes and challenges, as well as a strategy for expediting replacement

([www.cityofberkeley.info/Clerk/City\\_Council/2014/03\\_Mar/Documents/2014-0325\\_Item\\_34\\_FUNDS\\_Status\\_Report.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2014/03_Mar/Documents/2014-0325_Item_34_FUNDS_Status_Report.aspx)).

On January 26, 2016, Council authorized staff to release a Request for Proposal (RFP) to solicit proposals to replace FUNDS\$. Through RFP No. 2016-11012-C, Staff identified a qualified company to provide a comprehensive public sector ERP system that met the City's functional scope. On March 28, 2017, Council authorized the City Manager to execute a contract with Tyler Technologies for the purchase of Tyler-Munis' ERP software and implementation services

([https://www.cityofberkeley.info/Clerk/City\\_Council/2017/03\\_Mar/Documents/2017-03-28\\_Item\\_14\\_Contract\\_Tyler\\_Technologies.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/03_Mar/Documents/2017-03-28_Item_14_Contract_Tyler_Technologies.aspx)).

In September 2018, Superior, LLC merged with TriTech Software, and Zuercher Technolgoies, and Aptean to form CentralSquare Technologies. As a merged company, CentralSquare Technologies will be able to provide better customer service through a larger support organization.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The incremental replacement of FUNDS\$ modules with more modern, best-of-breed software includes opportunities for providing online services. For example, it will be possible to apply and pay online for an array of licensing, permitting, and zoning certifications, eliminating the need for the public to visit City offices for routing applications. This helps with the Digital Strategic Plan goals of providing more online services. In addition, this helps reduce vehicle emissions, in keeping with the City's Climate Action Plan.

RATIONALE FOR RECOMMENDATION

SunGard(aka Superior) retains exclusive rights to provide maintenance for its software; no other vendor provides authorized maintenance. Staff considered terminating this agreement and providing maintenance without vendor assistance, but given the critical operations supported by FUND\$, the risk of limited support would be inappropriate, especially since staff resources are focused on configuring, testing, and implementing FUND\$ module replacements, rather than supporting the aged FUND\$ system.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered terminating this agreement and providing maintenance without vendor assistance, but given the critical operations supported by FUND\$, the associated costs for staffing and training would be more than the maintenance agreement.

CONTACT PERSON

Michael Sinor, Director, Information Technology, 510-981-6541

## Attachments:

1: Resolution

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

CONTRACT NO. 7167M AMENDMENT: SUPERION, LLC FOR AS400 SOFTWARE  
MAINTENANCE AND SUPPORT

WHEREAS, Superion LLC's AS400 software, known to the City as FUND\$, has supported the City of Berkeley's critical business operations in all departments for over two decades, including the Payroll, General Ledger, Accounts Payable, and Purchasing modules; and

WHEREAS, Superion, LLC is the only vendor authorized to provide software licenses and support for the AS400 software; and

WHEREAS, in January 2016, Council authorized staff to release a Request for Proposal (RFP) to solicit proposals to replace FUND\$. Through RFP No. 2016-11012-C, Staff identified a qualified company to provide a comprehensive public sector ERP system that met the City's functional scope; and

WHEREAS, as incremental replacement of the FUND\$ system continue with the implementation of Tyler-Munis ERP system (ERMA), the City's maintenance contract with Superion will continue to decrease in scope since support will be required for fewer modules each year until all remaining FUND\$ modules are replaced and retired; and

WHEREAS, funding for additional software maintenance and support will be available in the Department of Information Technology 's Fiscal Year (FY) 2023 IT Cost Allocation fund as itemized below, and is subject to Council approval of the proposed city- wide budget and Annual Appropriation Ordinances.

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. 7167M with Superion, LLC for the software maintenance and support of the City's FUND\$ system on the AS400 platform, increasing the contract amount by \$154,926.66 for a total not-to-exceed amount of \$2,549,482.53 from July 1, 2006 through June 30, 2023.



Office of the City Manager

CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Michael Sinor, Director, Information Technology

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

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to issue purchase orders with Protiviti Government Services for the purchase of professional services using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X for an amount not to exceed \$350,000 through September 30, 2023.

FISCAL IMPACTS OF RECOMMENDATION

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

|           |                                                            |
|-----------|------------------------------------------------------------|
|           | FY 2023: Professional Services                             |
|           | Budget Code: 680-35-362-376-0000-000-472-612990-           |
| \$200,000 | (IT Cost Allocation, IT Department, Professional Services) |
|           | FY 2023: Professional Services                             |
| \$150,000 | Budget Code: 503-35-362-376-0000-000-412-612990-           |
|           | (FUND\$ Replacement, IT Department, Professional Services) |

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**\$350,000 Total FY 2023 Professional Services**

CURRENT SITUATION AND ITS EFFECTS

The City's Department of Information Technology (DoIT) is currently working and supporting many of the enterprise projects and systems, as we transition from FUND\$ to other enterprise systems. As we continue the migration from FUND\$ to other enterprise systems, there is still a need to continue maintaining our Fund\$ system, so that we can keep supporting many of the modules like Property Tax and AR/GB which are still in Fund\$. In order to be compliant with IT Security requirements, and vendor support

limitations, City needs to upgrade Fund\$ to be on the current version. For migrated modules like Payroll we still need to be able to access the data for auditing and reporting.

The City has several other key projects that also requires additional expert knowledge in interfaces, reporting and various integrations across enterprise systems.

Key efforts to date are as follows: 1) Creation of Reports/Interfaces for the HR/Payroll projects like Vacancy Reports, and Timecard Reports, 2) design, development and configuration for Accela Reports/Interfaces like Delinquency reports, Overpayments etc. 3) enabled Business License renewal for all license types, 4) Upgrade of key components in FUND\$ to a supported version, and 4) support for the Business License module.

Ongoing projects are enabling online Business License applications for all license types, changing business rules for various applications, automation of delinquent reports, reconciliation of refund transactions, upgrades to the enterprise systems to stay current on maintenance and security, reporting projects, and ongoing Property Tax support.

The demand for technology exceeds our current skillset and resource capacity. For successful implementation of these projects, we need expert level skills in multiple areas. Currently, Robert Half consultants are helping us bridge the gap, allowing us to complete these projects.

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

### BACKGROUND

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

The existing consultants have learned the City's systems and have been helping us with day to day operations, as well as providing expertise in the project management, technical functions, upgrades on various projects.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Protiviti Government Services staffs will conduct their work remotely thus reducing greenhouse gas emissions from travel to and from City facilities. There are no other identifiable environmental effects, climate impacts, or sustainability opportunities associated with this report.



**RATIONALE FOR RECOMMENDATION**

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

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

**ALTERNATIVE ACTIONS CONSIDERED**

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

**CONTACT PERSON**

Michael Sinor, Director, Information Technology, 510-981-6541

Attachments:

1: Resolution

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

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

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

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

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

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

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized issue purchase orders with Protiviti Government Services for the purchase of professional services using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X for an amount not to exceed \$350,000 through September 30, 2023.



Office of the City Manager

CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Michael Sinor, Director, Department of Information Technology  
Subject: Contract No. 047162-1 Amendment: ESI Group for the IBM Hardware and Software Lease

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 047162-1 with ESI Group for leasing, maintenance, and technical support for International Business Machines (IBM) hardware lease and software maintenance and support, increasing the current contract by \$140,000, for a total not to exceed \$2,294,769 from June 2, 2003 through June 30, 2023.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the additional scope of work in the amount of \$140,000 will be provided by the Department of Information Technology's Cost Allocation Fund baseline budget in Fiscal Year 2023. Spending for this amendment in future fiscal years is subject to Council approval of the proposed citywide budget and Annual Appropriation Ordinances.

FY23 - Hardware Lease including IBM Software Maintenance and Support  
\$140,000 Budget Code: 680-35-363-384-6005-000-472-613130-  
(IT Cost Allocation, TechISF, Software Renewal)

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**\$140,000 FY 2023 Software Maintenance**

CURRENT SITUATION AND ITS EFFECTS

ESI Group provides lease servicing, hardware and software maintenance, technical support, disaster recovery, and consulting services for the IBM infrastructure that hosts the City's current FUND\$ system. This contract is critical to providing a high-availability infrastructure for all nineteen FUND\$ modules, including accounts receivable, cash receipts, payroll, accounting, billing, property tax, zero waste billing, and fleet management.

BACKGROUND

IBM infrastructure has been required to host FUND\$ since its initial implementation in 1989. In 2003, the City contracted with ESI Group for IBM infrastructure leasing, 24x7

telephone/web support, 4-hour maximum parts replacement, co-location for disaster recovery, and hardware/software maintenance.

In January 2013, the City issued a Request for Proposals (RFP), Specification # 13-10703-C, to explore additional options for this lease; ESI Group was the only certified IBM Partner to respond. Staff continue to renew the support contract with ESI Group to provide uninterrupted service while the City reassesses infrastructure needs as FUND\$ module replacements progress.

In 2018, the City replaced the general ledger and procurement modules, or “core financials”. In January 2021, the City also replaced payroll-entry and HR functionality in FUND\$. Throughout the next 5 years, the City will continue to replace additional FUND\$ modules including: budget, work orders, asset management modules, facilities management, zero waste billing, fleet management, property taxes, accounts receivables/general billing.

Staff recommends renewing the contract with ESI Group for one year to provide uninterrupted service while the City reassesses infrastructure needs as FUND\$ module replacements continue.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The IBM hardware and software platform are optimized for maximum energy efficiency. The recent upgrade to newer hardware provides energy efficient equipment and the online disaster recovery capability reduced the need for the tape backups thus resulting in carbon footprint savings and transfer of tapes to offsite facility.

#### RATIONALE FOR RECOMMENDATION

ESI Group has extensive experience in supporting the AS400 system. Additionally, ESI Group was the only IBM certified partner to respond to the City’s RFP # 13-10703-C. Providing uninterrupted support for the AS400 system is critical to the City’s core operations, and ESI Group has continued to provide excellent technical support and customer service throughout the term of their agreement.

#### ALTERNATIVE ACTIONS CONSIDERED

Staff considered the possibility of switching vendors and issued an RFP to examine the City’s options; however, ESI Group was the only certified IBM Business Partner to respond.

#### CONTACT PERSON

Michael Sinor, Director, Department of Information Technology, 510-981-6541

Attachments:

1: Resolution

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

CONTRACT NO. 047162-1 AMENDMENT: ESI GROUP FOR IBM HARDWARE AND SOFTWARE LEASE

WHEREAS, the City of Berkeley relies upon software systems for critical business activities such as including, accounting, billing, fleet management, and permitting; and

WHEREAS, International Business Machines (IBM) hardware and software is required to host these systems; and

WHEREAS, ESI Group has extensive experience in supporting the AS400 system, and was the only IBM certified partner to respond to the City's RFP # 13-10703-C; and

WHEREAS, providing uninterrupted support for the AS400 system is critical to the City's core operations, and ESI Group has continued to provide excellent technical support and customer service throughout the term of their agreement; and

WHEREAS, funding is allocated in the Department of Information Technology's Fiscal Year 2023 Cost Allocation Fund.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend Contract No. 047162-1 with ESI Group for leasing, maintenance, and technical support for International Business Machines (IBM) hardware lease and software maintenance and support, increasing the current contract by \$140,000, for a total not to exceed \$2,294,769 from June 2, 2003 through June 30, 2023.





Office of the City Manager

CONSENT CALENDAR

July 26, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks, Recreation & Waterfront

Subject: Donation: New sign at Berkeley Waterfront - from Caltrans

RECOMMENDATION

Adopt a Resolution approving a donation of a new sign from Caltrans to be placed at the entrance to the Berkeley Waterfront with a value up to \$250,000.

FISCAL IMPACTS OF RECOMMENDATION

In early 2022, CalTrans contacted the City of Berkeley with a proposal to beautify the Caltrans property at the intersection of Interstate-80 and University Avenue and Frontage Road. Included in the \$3.4 million Caltrans project is the installation of an architectural element in the form of a welcome sign that will be installed on City right of way. The new sign has a value of up to \$250,000, which includes permitting, design, and installation. The City will be responsible for maintaining the sign.

CURRENT SITUATION AND ITS EFFECTS

In February of 2022, the State of California launched a \$1.1 billion-dollar Clean California initiative for beautification projects along the state highway system. This is a multiyear clean-up effort led by Caltrans to remove trash, create thousands of jobs, and engage communities to transform public spaces.

The Clean California Project at the University Ave Exit at I-80 in Berkeley will include new fencing, landscaping, pollinator gardens, and a new welcome sign provided by CalTrans, and is slated for the completion in late 2023. It will augment the recently completed \$8 million City-led "Marina Roadway Improvement Project" by improving the eyebrows and cloverleaves on CalTrans property with fencing, landscaping, a palate of native and pollinator-friendly plants.

The sign that is planned for City of Berkeley right-of-way will be installed by CalTrans and maintained by the City of Berkeley.

On June 16, 2022, Caltrans and the City of Berkeley joined forces to celebrate both projects, the start of the Clean California Berkeley Waterfront Beautification Project and the Completion of the Berkeley Marina Roadway Improvement Project. Together, these

Donation: New sign at Berkeley Waterfront - from Caltrans

CONSENT CALENDAR  
July 26, 2022

two projects, including the new “welcome” element, will improve the gateway and user-experience for visitors entering the Berkeley Waterfront. Currently, there is a sign identifying the Berkeley Marina at the intersection of University Ave and Marina Blvd, but there is no welcome sign at the entrance to the Waterfront as a whole. This will help with placemaking at the Waterfront and beautify the beginning of University Avenue just west of Frontage Road.

#### BACKGROUND

The City’s Open Governance Ordinance (OGO) requires City Council approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.050, Ord. 7,166-N.S.)

#### CONTACT PERSON

Ali Endress, Waterfront Manager, 981-6737

Attachments:

1: Resolution



RESOLUTION NO. -N.S.

DONATION FROM CALIFORNIA DEPARTMENT OF TRANSPORTATION  
(CALTRANS) TO INSTALL A NEW SIGN AT BERKELEY MARINA

WHEREAS, in February 2022, the State of California launched a \$1.1 billion-dollar Clean California initiative for beautification projects along the state highway system. This is a multiyear clean-up effort led by Caltrans to remove trash, create of jobs, and engage communities to transform public spaces; and

WHEREAS, in March 2022, the California Department of Transportation (Caltrans) contacted the City of Berkeley with a proposal to beautify the Caltrans property at the intersection of Interstate-80 and University Avenue and Frontage Road. The \$3.4 million dollar project is slated for completion in late 2023; and

WHEREAS, included in the project is the installation of an architectural element in the form of a welcome sign that will be installed on City right of way. The new sign has a value of up to \$250,000; and

WHEREAS, there is no cost or match requirement for the City of Berkeley for the installation of the sign or the project;

WHEREAS, the City would be responsible for maintenance of the sign upon its installation as a part of routine maintenance operations; and

WHEREAS, the City's Open Governance Ordinance (OGO) requires City Council approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.050, Ord. 7,166-N.S.)

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City approve a donation of a new sign from the California Department of Transportation to install a new sign at the Berkeley Marina with a value of up to \$250,000.





Office of the City Manager

CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks, Recreation & Waterfront

Subject: Contract: AE3 Partners, Inc. for Architectural Services for the African American Holistic Resource Center

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a not-to-exceed \$900,000 contract with AE3 Partners, Inc. for architectural services for the African American Holistic Resource Center (AAHRC) for a contract period of August 1, 2022 through July 31, 2025.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this architectural services contract will come from Measure T1 Phase 2 funds (511-52-545-000-0000-000-461-612320-PRWT122002). Funding will be recommended for appropriation through the amendment to the appropriations ordinance in the Measure T1-Capital Fund (Fund 511). The project scope will be divided into task orders and they will be processed as the project proceeds.

CURRENT SITUATION AND ITS EFFECTS

On December 15, 2020 City Council approved phase 2 projects for the Measure T1 Infrastructure Bond that was passed by voters by an 86.5% margin on November 3, 2016. Phase 2 included a \$7M allocation for the AAHRC. Staff recommends council approval of a contract with AE3 Partners, Inc. for architectural services for the AAHRC.

BACKGROUND

In April 2011, the African American/Black Professionals & Community Network (AABPCN) crafted a report titled *A Community Approach for African American/Black Culturally Congruent Services*. The AABPCN report identified challenges that the African American community faces in areas of education, employment, health, mental health, housing, and community relationships. A vision and framework were provided in the report for the development of an African American Holistic Resource Center in South Berkeley. The center would include the use of culturally congruent practices, embedded in an integrated service delivery system, which would help to decrease inequities and disparities in the African American/Black community in Berkeley.

Members of the AABPCN shared the vision for the AAHRC and began gathering information from the community via focus groups, town hall meetings, small group discussions, and formal presentations to several Berkeley Commissions, the Berkeley City Council, and other stakeholder groups. In 2016 City of Berkeley Community Health Commission strongly recommended that the City of Berkeley “take immediate action steps towards the development and support of the African American Holistic Resource Center in South Berkeley, with City Council support. Following the commission reports and community advocacy, the City of Berkeley funded the development of a feasibility study. Building on prior work, many of the same dedicated community members continued working towards the vision of an African American Holistic Resource center spending countless hours deepening the plans, developing the feasibility study in 2019, and continuing to advocate for its creation with council and others.

On December 15, 2020 the Berkeley City Council approved \$7 million in revenue from measure T1 for the creation of an African American Holistic Resource Center in South Berkeley.

A Request for Qualifications (RFQ) was issued on April 14, 2022 seeking qualified firms or individuals to provide architectural services for the AAHRC. On May 17, 2022, the City received four proposals from professional consultant firms. On June 3, a panel of 1 City staff, 1 consultant project manager and 3 AAHRC Steering Committee members reviewed, evaluated and ranked the 4 proposals according to the criteria in the RFQ. This panel referred the two highest ranking proposals to the City Manager’s Office, who received presentations from both firms. After these presentations, AE3 Partners, Inc. was identified as the highest ranked firms.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no anticipated negative environmental effects of this action. The execution of this contract will help ensure successful completion of the AAHRC project that will incorporate the sourcing of sustainable and renewable resources used in construction projects, as well as compliance with all regulatory agency requirements. This promotes environmental sustainability and meets the Strategic Plan Goal 1 to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

#### RATIONALE FOR RECOMMENDATION

The team assembled by the AE3 Partners, Inc. is highly qualified and responsive. They have particular expertise in fulfilling the criteria stated in the RFQ. The City does not have the in-house expertise to perform these design services.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Paul Buddenhagen, Deputy City Manager, 981-7014  
Scott Ferris, Director, Parks, Recreation & Waterfront, 981-6711

Contract: AE3 Partners, Inc. Architectural Services for  
the African American Holistic Resource Center

CONSENT CALENDAR  
July 26, 2022

Attachment:  
Resolution

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

CONTRACT: AE3 PARTNERS, INC. FOR ARCHITECTURAL SERVICES FOR THE  
AFRICAN AMERICAN HOLISTIC RESOURCE CENTER

WHEREAS, AABPCN and later the AAHRC Steering Committee has been meeting, creating a vision for holistic African American health, and advocating for the funding to build this facility since 2011; and

WHEREAS, on December 15, 2020 City Council approved phase 2 projects for the Measure T1 Infrastructure Bond, which included a \$7M allocation to complete the AAHRC; and

WHEREAS, a Request for Qualifications (RFQ) was issued on April 14, 2022 seeking qualified firms or individuals to provide architectural services for the AAHRC; and

WHEREAS, on May 17, 2022, the City received four proposals from professional consultant firms; and

WHEREAS, on June 3, 2022 a panel of City staff and AAHRC Steering Committee members reviewed, evaluated and ranked the 4 proposals according to the criteria in the RFQ; and the City Manager's Office, received presentations from the two highest ranking firms, and identified AE3 Partners, Inc. as the highest rated firm; and

WHEREAS, funding for this architectural services contract will come from Measure T1 Phase 2 funds (511-52-545-000-0000-000-461-612320-PRWT122002).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to approve a contract and any amendments with AE3 Partners, Inc. for architectural services for the African-American Holistic Resources Center for a contract period of August 1, 2022 through July 31, 2025 in an amount not to exceed \$900,000. 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  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Extension of Exclusive Negotiating Agreement with Innovation Properties Group for 199 Seawall Drive

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an Amended and Restated Exclusive Negotiating Agreement (ENA) with Innovation Properties Group (IPG), extending the existing ENA for 9 months with two 3-month options to work toward a long-term lease of City property at 199 Seawall Drive and short-term lease to activate a portion of the adjacent parking lot.

FISCAL IMPACTS OF RECOMMENDATION

There are no direct fiscal impacts associated with this recommendation. The City would continue to carry the same costs for an unoccupied building as it would without this ENA. The extension of this ENA provides a path to revenue for the Waterfront, but does not require either party to enter into a master lease.

CURRENT SITUATION AND ITS EFFECTS

On April 5, 2021, IPG submitted a letter of interest for a long-term lease of 199 Seawall Drive, the City-owned building formerly known as Hs Lordships Restaurant at the Berkeley Waterfront.

On September 28, 2021, Council authorized the City Manager to execute an ENA with IPG to develop a pre-development agreement that could lead to a long-term lease of 199 Seawall Drive and a short-term license for a portion of the adjacent parking lot, (Reso. 70,043-N.S.).

On February 1, 2022, the City and IPG entered into an ENA for the property at 199 Seawall Drive and a portion of the adjacent parking lot.

On May 1, 2022, the City Manager extended the ENA for an additional three months as authorized by Council. The ENA is set to expire on July 31, 2022.

Over the course of the ENA, IPG has assembled a project team of potential funding partners and subtenants, and refined a project concept. The project concept includes a

restaurant and event/entertainment space in the building and a temporary outdoor recreation space in a portion of the parking lot. In addition to a food truck village, immersive art installations and events to attract the community are also being explored.

An extension of the ENA is now needed to allow time for IPG and its partners to develop a proposed project and negotiate potential lease terms. The shared goal is to complete this work within 9 months, with a master lease agreement developed for Council consideration by May 2023. Two 3-month options-to-extend are requested should additional time be needed to complete negotiations, Council review and lease execution.

The project trajectory is below:

### **Phase 1: Exclusive Negotiating Agreement (February – July, 2021)**

A six-month Exclusive Negotiating Agreement (ENA) has been necessary in order for IPG to assemble partners and obtain funding support. During the ENA period, the City agrees to not entertain any other offers for 199 Seawall, and to work with IPG towards developing a future long-term lease agreement.

### **Phase 2: Exclusive Negotiating Agreement Extension (August 2022-April 2023)**

During the ENA extension, IPG would conduct feasibility studies, including conceptual design, financial analysis, and marketing. By November 1, 2022, IPG would submit for City review a proposed project concept, including description of proposed partners, activities/use of the space, conceptual drawing, gross revenue estimates, and draft term sheet. By May 1, 2022, and based on Council feedback, IPG would complete their due diligence, finalize the proposed project concept and negotiate lease terms.

### **Phase 3: Master Lease Agreement (May 2023)**

A long-term master lease agreement would be targeted for Council review in May 2023.

The expectation is that there would no longer be a need for a pre-development agreement; and that the ENA extension would suffice. The short-term use of the parking lot would be incorporated into a future master lease agreement.

All other existing terms of the ENA would continue. The City would agree to not entertain any other offers for 199 Seawall during this period. The ENA would continue to include a “non-circumvention” clause, which would preclude the City from separately engaging with the specific contacts provided by IPG for a period of 12-months after the date of this Agreement. Based on Council feedback, the ENA also states the expectation that any future lease would include labor provisions that the operator would not interfere with workers’ rights to organize, and that former employees of Hs Lordships would be offered opportunities to apply for positions in the new operation.



The ENA does not commit the City to any future agreements.

### BACKGROUND

In 1967, the City and Specialty Restaurant Corporation entered into a 50-year ground lease to develop a restaurant and event space that opened in 1969 as “Hs. Lordships”. While the lease was set to expire in August, 2019, Specialty Restaurant Corporation terminated their lease 13-months early and Hs. Lordships closed its doors on July 1, 2018. On August 9, 2018, the City entered into an agreement with Collier’s Parish International, a provider of real-estate services, to help the City find entities to lease the space (Contract Number 10960). To date, the building has remained unleased for four years.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

There are no environmental impacts associated with the Exclusive Negotiating Agreement.

### RATIONALE FOR RECOMMENDATION

If adopted, the amended and restated ENA would set the City on a path toward a long-term lease of the building at 199 Seawall Drive and would activate an underutilized parking area on a short-term basis. This is the most viable engagement the City has had to date, in that it includes the highest revenue potential and the most reputable operators.

The City and our real estate consultants have reviewed several proposals for the building since Hs. Lordships closed four years ago in July, 2018. All of these other proposals were ultimately withdrawn, citing the City’s lack of ability to fund building improvements, an inability to secure investment, or overall concerns about the location’s ability to sustain demand.

### CONTACT PERSON

Scott Ferris, Director, Parks, Recreation and Waterfront, 981-6700

Christina Erickson, Deputy Director, Parks, Recreation and Waterfront, 981-6703

Ali Endress, Waterfront Manager, Parks, Recreation and Waterfront, 981-6737

### Attachments:

1: Resolution

Exhibit A: Exclusive Negotiating Agreement

Exhibit B: Potential Term Sheet for Future Master Lease

RESOLUTION NO. ##-###

AUTHORIZING AN AMENDED AND RESTATED EXCLUSIVE NEGOTATING AGREEMENT WITH INNOVATION PROPERTIES GROUP, INC. (IPG) FOR CITY PROPERTY AT 199 SEAWALL DRIVE

WHEREAS, City received a grant of state tidelands to be held in trust for uses that include wharves, docks, piers, slips, commercial and industrial purposes, aviation facilities, transportation and utility facilities, public buildings, parks, playgrounds, marinas, snack bars, cafes, restaurants, and motels, including but not limited to the property located at 199 Seawall Drive, Berkeley; and

WHEREAS, on April 5, 2021, IPG submitted a letter of interest for a long-term lease of 199 Seawall, the City-owned building formerly known as Hs Lordships Restaurant at the Berkeley Waterfront; and

WHEREAS, IPG's proposal has several components: activation of a five-year food truck village and outdoor recreation space in a portion of the adjacent parking lot, improvements to the building and building's outdoor spaces, and operation of a restaurant and indoor event space; and

WHEREAS on February 1, 2022, the City and IPG entered into the initial phase of the ENA. In April, 2022, the City Manager extended the duration of the ENA from three months to six months, as authorized by Council. The ENA is currently set to expire on July 31, 2022.

WHEREAS, an extension of the ENA is now needed to develop a proposed project and negotiate potential lease terms.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Berkeley hereby authorizes the City Manager to execute an Amended and Restated Exclusive Negotiating Agreement with IPG, extending the existing ENA by nine months with two 3-month options, as described in Exhibit A.

Exhibit:

A: Amended and Restated Exclusive Negotiating Agreement

B: Potential Term Sheet for Future Master Lease

Exhibit A: Exclusive Negotiating Agreement

**AMENDED AND RESTATED EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN THE CITY OF BERKELEY AND INNOVATION PROPERTIES GROUP REGARDING THE REDEVELOPMENT AND REUSE OF THE PROPERTY AT 199 SEAWALL DR.**

This Amended and Restated Exclusive Negotiating Agreement (“Agreement”) is made and entered into this 1st day of August, 2022 (“Effective Date”), and amends and restates in its entirety the Exclusive Negotiating Agreement, which was dated as of February 1, 2022, and is entered into by and between the City of Berkeley, a municipal corporation (“City”) and Innovation Properties Group, Inc., a California Corporation, dba Innovation Properties Group (“IPG”).

**RECITALS**

WHEREAS, City was granted certain tidelands in the Berkeley Marina to be held in trust for uses that include the establishment, improvement and conduct of small boat harbors, marinas, aquatic playgrounds and similar recreational facilities, and for all works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of any such uses, including but not limited to snack bars, cafes, restaurants, motels, launching ramps and hoists, storage sheds, boat repair facilities with cranes and marine ways, administration buildings, public restrooms, bait and tackle shops, chandleries, boat sales establishments, service stations and fuel docks, yacht club buildings, parking areas, roadways, pedestrian ways and landscaped areas, including but not limited to the property located at 199 Seawall Drive, Berkeley (“Property”); and

WHEREAS, on April 5, 2021, IPG submitted a letter of interest for a long-term lease of 199 Seawall Drive, the City-owned building formerly known as Hs Lordships Restaurant at the Berkeley Waterfront; and

WHEREAS, on September 28, 2021, Council authorized the City Manager to execute an ENA with IPG to develop a pre-development agreement that could lead to a long-term lease of 199 Seawall Drive and a short-term license for a portion of the adjacent parking lot, (Reso. 70,043-N.S.); and

WHEREAS, on February 1, 2022, the City and IPG entered into an ENA for the property at 199 Seawall Drive and a portion of the adjacent parking lot; and

WHEREAS, on May 1, 2022, the City Manager extended the ENA for an additional three months as authorized by Council. The ENA is set to expire on July 31, 2022; and

WHEREAS, the City and IPG mutually wish to evaluate (A) the construction of improvements to and a master lease of the Property based on IPG’s qualifications and concept to use the Property as a restaurant and event space, and (B) the operation of an outdoor food truck village with recreation components, as outlined in more detail in the attached proposed Term Sheet;

WHEREAS, an amended and restated ENA is now needed to allow time for IPG to develop a proposed project and to negotiate terms of the potential lease agreements;

NOW, THEREFORE, City and IPG agree as follows:

1. RECITALS

The recitals to this Agreement, above, are incorporated herein and made a part hereof.

2. PURPOSE OF AGREEMENT

- a. This Agreement confirms the selection of IPG by City to enter into exclusive negotiations with City to determine if IPG can be the developer and master tenant of a restaurant and event space (the “Project”) at the Property.
- b. The purpose of this Agreement is to affirm the mutual intent of IPG and the City to consider generating (A) a master ground lease of 199 Seawall and (B) a 5- year term lease agreement for a portion of the parking lot adjacent to 199 Seawall.

3. AGREEMENTS

Subject to the terms of this Agreement, City and IPG each hereby agree to negotiate in good faith during the “Exclusivity Period,” as that term is defined in Section 6.a, in order to attempt to cause the execution of written definitive agreements (the “Agreements”), together with such changes and modifications as the parties shall mutually agree. The Agreements shall include, without limitation, (A) a master ground lease agreement at 199 Seawall Drive, and (B) a lease for the short-term use of a portion of the parking lot for five years.

4. CONFIDENTIALITY

Except where disclosure is required by law, including but not limited to the California Public Records Act (California Government Code section 6250 *et seq.*), IPG and City shall treat as confidential (the “Confidential Information”) (i) all documents, studies, electronic materials and information furnished to the other party by its officers, trustees, executives, employees, agents or representatives (collectively, the “Representatives”) relating to the Property, whether furnished before, on or after the date of this Agreement and whether furnished orally, in writing or by any other medium, and (ii) all reports, studies and other documents and information prepared by or for IPG which contain or reflect any such documents or information furnished by a party’s Representatives or any information obtained through inspection or review of the Property (collectively, the “Evaluation Materials”). Confidential Information does not include the Final Documents, which are subject to public disclosure by the City. The Evaluation Materials shall not include any information which (a) is or becomes generally available to the public other than as a result of disclosure by a party’s Representatives, in breach of this Agreement, (b) was already available to or in the possession of a party prior to its disclosure by the other party’s Representatives, unless obtained from a source which was not permitted to disclose such information, or (c) is or becomes available to a party from a source other than the other party’s Representatives, unless such source was not permitted to disclose such information to IPG. Notwithstanding the provisions of this Section 4, IPG may commence marketing the Project and disclose its selection to potential tenants and other third parties so long as IPG does not disclose any Confidential Information unless IPG has obtained an appropriate confidentiality agreement from such party), or the written consent of the City.

5. NO REPRESENTATIONS OR WARRANTIES

City makes no express or implied representations or warranties as to the accuracy or completeness of any Evaluation Materials provided by the City. IPG acknowledges and agrees that neither City nor any of City's Representatives has or will have any liability to IPG or any other person resulting from any use of the Evaluation Materials by IPG or IPG's Representatives. Only those representations or warranties, if any, made to IPG in Final Documents, if executed, and subject to the limitations specified therein, shall have any legal effect.

6. EXCLUSIVE NEGOTIATIONS

- a. City and IPG agree that this Agreement shall be effective for a period of nine (9) months commencing on the Effective Date, and continuing in full force and effect until expiration or earlier termination pursuant to Section 10 ("Exclusivity Period"). The City Manager is authorized to extend this Agreement by two (2) additional three (3) month periods with the consent of IPG.
- b. During the Exclusivity Period, IPG and the City shall negotiate diligently and in good faith to prepare the Agreements. The execution of the Agreements shall be subject to the approval of the Berkeley City Council. During the Exclusivity Period, the City shall not negotiate for the development of the Property, or any portion thereof, with any party other than IPG, or approve or conduct a public hearing for any other development of the Property, or any portion thereof.

7. DUTIES AND RESPONSIBILITIES DURING THE EXCLUSIVITY PERIOD

- a. During the Exclusivity Period, IPG and the City shall negotiate in good faith to attempt to cause the execution of (A) a master ground lease agreement at 199 Seawall Drive; and (B) a 5-year lease for a portion of the adjacent parking lot.
- b. During this Period, IPG will assemble partners, obtain funding support, conduct feasibility studies, conceptual design, financial analysis, and marketing.
- c. IPG and the City agree to the following milestones:
  - i. By November 1, 2022, IPG will submit for City review a proposed project concept, including description of proposed partners, activities/use of the space, conceptual drawing, gross revenue estimates, and draft term sheet.
  - ii. By May 1, 2022, and based on Council feedback, IPG will complete their due diligence, finalize the proposed project concept and negotiate terms for the lease of 199 Seawall.
  - iii. The City may extend this ENA for up to two 3-month periods to complete negotiations, Council review and lease execution.
- d. Nothing in this Agreement requires any party to enter into any further agreement or requires the City to commit to any course of action with respect to the future development of the Property. Nothing in this Agreement is intended to or shall be

construed as a commitment to approve any project or any subsequent agreement(s) contemplated herein. The approval of any subsequent agreement negotiated pursuant to this Agreement shall be subject to approval of the Berkeley City Council, and nothing in this Agreement shall alter or limit the discretion the Berkeley City Council possesses pursuant to the City's Charter and applicable law to approve, disapprove, or modify any such subsequent agreement.

## 8. TERMS

City and IPG hereby agree to the following terms.

- a. Due Diligence and Inspection of Property. During the Exclusivity Period, the City shall allow IPG, at IPG's sole cost and expense, to inspect the Property, accompanied by City staff, and review due diligence relating to the Property as made reasonably available to IPG by the City. Such reviews and inspections by IPG shall be conducted in accordance with reasonable restrictions or limitations imposed by the City. IPG shall deliver to City (without charge to City) true and complete copies of all third-party reports, findings, and test results relating to any inspections or testing of the Property, in both draft or final form, when the same are completed, without any prior modification by IPG, regarding activities undertaken by, on behalf of, or at the request of IPG, but excluding any internally prepared proprietary reports.
- b. IPG Responsible for Own Costs. IPG acknowledges and agrees that all expenses and costs of IPG arising from this Agreement or the performance of IPG's obligations hereunder shall be the sole responsibility of IPG.
- c. Assignments; Ownership Changes. IPG acknowledges that the City's consent to issue this Agreement is based on the prior experience and qualifications of IPG. Therefore, IPG shall not assign, sell, or otherwise transfer any rights under this Agreement without the prior written approval of the City in its sole and absolute discretion.
- d. Conflicts of Interest. The parties to this Agreement have read and are aware of the provisions of California Government Code sections 1090 *et seq.* and 87100 *et seq.*, relating to conflict of interest of public officers and employees, as well as the conflict of interest provisions in Berkeley City Charter Section 36 and Berkeley Municipal Code Chapter 3.64. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the City may immediately terminate this Agreement by giving written notice thereof.
- e. Labor Peace. IPG understands that it is the City's expectation that any future Master Lease, and any potential sublease agreements, would include provisions that a hospitality operation at the 199 Seawall Drive property shall be required to

provide evidence satisfactory to the City that it is party to a labor peace agreement that protects the City's proprietary interest in the property.

- f. Employment Opportunities for Former Hs Lordships Employees. IPG understands that it is the City's expectation that employees of the former Hs Lordships restaurant located at 199 Seawall Drive employed at the time of the restaurant's closure would be offered an opportunity to apply for positions in new business operations conducted on the property.

#### 9. LIMITATION ON REMEDIES FOR BREACH OR DEFAULT AND RELEASE OF CLAIMS

- a. In the event of an uncured default by a party, the non-defaulting party's sole remedy shall be to terminate this Agreement. Following such termination, neither party shall have any further right, remedy or obligation under this Agreement, except that Developer's indemnification obligations pursuant to Section 11 shall survive termination.
- b. In no event shall either party be entitled to damages of any kind in the event of termination of this Agreement. Except as expressly provided in subsection (a) of this Section 9, neither party shall have any liability to the other party for damages arising out of or related to performance under this Agreement or otherwise for any default, nor shall either party have any other claims with respect to performance or default under this Agreement. Each party specifically waives and releases any such rights or claims it may otherwise have at law or in equity.

#### 10. TERMINATION

This agreement may be terminated by mutual agreement. Unless terminated by City or IPG pursuant to this Section, this Agreement shall terminate without notice on the earlier of (i) the expiration of the Exclusivity Period; or (ii) the execution of the City and IPG of the Agreements. The City has the right to terminate this agreement if a project proposal, as described in section 7.c.i., is not received pursuant to the milestones set forth above.

#### 11. INDEMNITY

IPG releases and discharges, and agrees to defend, indemnify and hold harmless, the City and the City's former, present and future governing bodies, elected and appointed officials, employees, officers, directors, representatives, agents, departments, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing from and against any and all rights, claims, demands, damages, debts, liabilities, accounts, liens, attorneys' fees, costs, expenses, actions and causes of action arising from or related to this Agreement, the Property and/or the proposed redevelopment.

#### 12. NON-CIRCUMVENTION

Non-Circumvention. The City shall not propose any transaction, project, or financing to any IPG Associate, affiliates, partners introduced to the City by IPG with respect to a Business

Relationship that would interfere with or provide a substitute for any transaction, financing, redevelopment, or project proposed and/or being negotiated by IPG with respect to IPG's interest to the Property and Project, without the prior written consent of IPG. The City agrees not to engage in any such transaction for a period of six months from the termination date of this Agreement. This section shall not apply in the event of breach of contract or wrongdoing by IPG.

13. STATE TIDELANDS GRANT

Tenant acknowledges that the Property is located on State tidelands held by the City of Berkeley in trust pursuant to Chapter 347 of the California Statutes of 1913, as amended (“the Grant”). Tenant agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

14. MISCELLANEOUS

- a. This Agreement together with all exhibits hereto constitutes the entire agreement between the parties with respect to the subject matter hereof. Any amendment or modification of this Agreement must be in writing and signed by all of the parties hereto, and any waiver of any provision of this Agreement must be by written instrument signed by the party charged with the alleged waiver.
- b. This Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns.
- c. This Agreement shall be construed and enforced in accordance with the laws of the State of California and may be signed in any number of counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

IPG:

Innovation Real Estate Group, Inc.,  
a California Corporation  
dba Innovation Properties Group, Inc.

CITY:

City of Berkeley,  
a California municipal corporation

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

By: \_\_\_\_\_  
B.D. Williams,  
City Manager

Approved as to form:

Registered by:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Auditor



Attest:

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City Clerk

Exhibit B: Potential Term Sheet for Future Master Lease

The following is a summary of draft terms between the City of Berkeley and Innovation Properties Group (IPG) for a potential future Master Lease Agreement for the property at 199 Seawall Drive at the Berkeley Waterfront:

Use: The premises shall be used primarily as a restaurant and event space, and may include ancillary culinary and innovation space.

State Tidelands: Tenant acknowledges that the premises is located on State of California Tidelands and must be used in a manner consistent with the Public Trust Doctrine.

Term: 45 years with two 10-year tenant options to extend.

Parking Lot: Tenant shall operate a food truck area and outdoor event space in a portion of the parking lot. Use of the parking lot shall not extend beyond five years without written consent from the City.

Rent: The NNN Base rate shall be \$15,000/ month + 6% of Gross Sales accrued within the Premises. Base rent shall increase 3% annually.

Condition of Delivery: The landlord will deliver the premises in as-is condition.

Improvements: Tenant will fund all necessary improvements to upgrade the facility.

Sublease & Assignment: Tenant shall have the right to Sublease all or any portion of the Premises provided that sublessees comply with State Lands Commission requirements for tidelands. Subleasing must be approved by the Landlord with prior written consent, which shall not be unreasonably withheld.

Non-Binding: This term sheet is only a proposal to negotiate and is neither an offer nor a contract.

Approval/Execution: This Term Sheet is only a list of the above terms and conditions that may or may not become a part of the final Master Lease. This Term Sheet is not intended to be binding or to impose any obligations whatsoever on either party, including any obligation to bargain in good faith. No covenants are implied. The parties do not intend to be bound by an agreement until both parties have executed a formal written Master Lease contract.

In addition, this Term Sheet is subject to review and acceptance of the final terms and conditions of the Master Lease and related documents. Nothing contained herein shall be binding on either party unless and until such documents are approved, fully executed and exchanged by both parties.

Either party is free to terminate the negotiations at any time, and will not by doing so incur any additional obligations or liability.





Office of the City Manager

CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront

Subject: Approval of Funds for Electric Vehicle Charging Stations at Tuolumne Camp

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to allocate up to \$350K to add electric vehicle charging stations at Tuolumne Camp.

FISCAL IMPACTS OF RECOMMENDATION

The total project budget for the Tuolumne Camp project is approximately \$53.75M. In April of 2017, City Council allocated \$3.3M from the City's General Fund Catastrophic Reserve for the project. Of this amount, the project has spent approximately \$2.35M, leaving a current balance of \$950,000. Over 95% of the project was covered by insurance proceeds, the Federal Emergency Management Agency (FEMA) Public Assistance Grant, and donations from the Friends of Berkeley Tuolumne Camp, a non-profit organization.

CURRENT SITUATION AND ITS EFFECTS

In August, 2013, the City's Berkeley Tuolumne Camp was destroyed by the Rim Fire, a federally declared major disaster event. On January 24, 2017, the City Council adopted Resolution No. 67,821-N.S.<sup>1</sup>, establishing the City Council's policy for the General Fund Reserves. On April 4, 2017, City Council adopted Resolution No. 67,889-N.S.<sup>2</sup>, allocating \$3,300,000 from the City's Catastrophic Reserve Fund for the Berkeley Tuolumne Camp Rebuild Project (Project).

Berkeley Tuolumne Camp (BTC) is currently in the final phase of reconstruction. The BTC ribbon cutting was on Saturday, June 4, 2022 and the camp opened to the public on

1

<https://www.cityofberkeley.info/recordsonline/api/Document/AWBFPPEyf2Sd%C3%81hncgFhKGFINS6%C3%89Fr0YuordmvjQlznqV6gig1QxhOXtsqqZBJ5ihkvkFEbuZ%C3%81Wg9yKvjSBR5bg%3D/>

2

<https://www.cityofberkeley.info/recordsonline/api/Document/AcKiUQNtKNjXEFaOvz%C3%89lkGnZubDFDTXIURON3MXMFz5ym8YsuKpDoR%C3%813Gt9sDdO7voKHIQU17lieZ6RvxEnOqw%3D/>

Wednesday, June 22, 2022. A project update was provided to Council on October 15, 2021<sup>3</sup>. The total Project budget is \$53.75M. Over 95% of the Project is funded by insurance proceeds, the City's Federal Emergency Management Agency (FEMA) Public Assistance Grant, and donations from the Friends of Berkeley Tuolumne Camp non-profit organization.

The City proposes allocating \$350,000 of the remaining balance of \$900,000 from the City's General Fund Catastrophic Reserve for the construction of Electric Vehicle Charging Stations (EVCS) at Berkeley Tuolumne Camp. EVCS at Camp directly serve City-wide climate action and resiliency goals, including decreased dependence on fossil fuels and the City's Net-Zero Carbon Emissions commitments.

Conceptual design of the EVCS has been completed. A change order must be funded in order to complete this additional work in FY 2023. If not authorized now, this work must be rebid when funding has been identified at a later date.

### BACKGROUND

Berkeley Tuolumne Camp, established in 1922, is a 30-acre property operated under a Special Use Permit with the US Forest Service (USFS). The camp has served primarily as a family camp, but also offered teen leadership programs, adult hiking camps, and private group rental opportunities. Prior to the fire, BTC had the capacity to host approximately 280 campers, 60 staff members, and 10 counselors-in-training at one time, and served over 4,000 campers each year. The major facilities at the Camp included a Dining Hall; a Recreation Hall, 77 small single-story wood-frame camper tent cabins; staff cabins; maintenance and storage structures; a bridge across the river; parking and loading areas, and electric, water supply, and wastewater utilities.

In August 2013, the California Rim Fire destroyed the Berkeley Tuolumne Camp (BTC), a residential family camp located within the Stanislaus National Forest.

On January 24, 2020 the City issued a request for bids for the reconstruction of Berkeley Tuolumne Camp. Bids were due on March 12, 2020. The California state-wide "Stay at Home" order due to COVID-19 was issued on March 19, 2020. On April 14, 2020, City Council awarded the contract to the lowest responsible and responsive bidder, Robert E. Boyer Construction, Inc. Construction began in June, 2021 and is substantially complete.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The construction of EVCS at Berkeley Tuolumne Camp would reduce carbon emissions at Camp and encourage the use of electric vehicles by Campers. Achieving these goals will further the City commitment to decreased use and dependence on fossil fuels and progress towards net-zero carbon emission commitments.

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<sup>3</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_General/Resident%20Camps%20Update%20101521.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Resident%20Camps%20Update%20101521.pdf)

RATIONALE FOR RECOMMENDATION

The purpose of constructing EVCS at Berkeley Tuolumne Camp is to further City-wide climate action goals.

ALTERNATIVE ACTIONS CONSIDERED

The City could opt to not construct EVCS at Berkeley Tuolumne Camp resulting in the no availability of electric vehicle charging available at Camp

CONTACT PERSON

Scott Ferris, Director, PRW, 981-6700

Attachments:

1: Resolution

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

APPROVAL OF FUNDS FOR ELECTRIC VEHICLE CHARGING STATIONS AT  
TUOLUMNE CAMP

WHEREAS, in August, 2013, the City's Berkeley Tuolumne Camp was destroyed by the Rim Fire, a federally declared major disaster event; and

WHEREAS, the total project budget is \$53.75M. Over 95% of the Project is funded by insurance proceeds, the City's Federal Emergency Management Agency (FEMA) Public Assistance Grant, and donations from the Friends of Berkeley Tuolumne Camp non-profit organization; and

WHEREAS, on April 4, 2017, City Council adopted Resolution No. 67,889-N.S., allocating \$3,300,000 from the City's Catastrophic Reserve Fund for the Berkeley Tuolumne Camp Rebuild Project (Project); and

WHEREAS, of this amount, the project has spent approximately \$2.35M, leaving a current balance of \$950,000; and

WHEREAS, the City proposes allocating \$350,000 of the remaining balance of \$950,000 from the City's General Fund Catastrophic Reserve for the construction of Electric Vehicle Charging Stations (EVCS) at Berkeley Tuolumne Camp.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to allocate up to \$350K to add electric vehicle charging stations at Tuolumne Camp.





Office of the City Manager

CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police

Subject: Accept Grant Funding from the California Highway Patrol (CHP) Cannabis Tax Fund Grant Program to Reduce Impaired Driving in the City of Berkeley

RECOMMENDATION

Adopt a Resolution authorizing the City Manager, or designee, to accept the “Cannabis Tax Fund Grant (CTFGP)” and enter into the resultant grant agreement and any amendments to fund impaired driving detection/investigation training for officers, community educational programs and supplemental impaired driving enforcement. The tentative grant allocation is for \$112,336.60 for the period of July 1, 2022 through June 30, 2023.

FISCAL IMPACTS OF RECOMMENDATION

There is no fiscal impact for adopting the authorizing resolution to accept funding. There is no match requirement and/or leveraging of funds required. The total funding available for this project is \$112,336.60, which will be deposited into budget code 336-71-703-812-0000-000-421-432110. Grant funding will be used to offset expenditures. The grant will fund overtime, benefits, and training costs with no additional General Fund expenditures. The grant funds will be officially appropriated in the First Amendment to the FY 2023 Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

Securing CHP grant funding is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

Currently, the Traffic Bureau of the Berkeley Police Department is staffed by two motor officers, one traffic data analyst, one sergeant and one lieutenant. Motor officers’ responsibilities include injury-collision investigations and traffic enforcement; however, resources often deplete rapidly due to ancillary duties and personnel shortages in the Operations/Patrol Division. Additionally, the Berkeley Police Department is in the midst of a staffing shortage and is forecasting even more staffing challenges in the near

future. Grant funding would build upon our current traffic safety efforts by allowing patrol and motor officers opportunities to address traffic safety and impaired driving – in addition to and outside of their regularly scheduled duties. Additionally, the funds would provide opportunities for leadership development and learning in traffic safety and DUI/impaired driving enforcement and enhance the department's overall mission of public safety.

### BACKGROUND

In California, there are 49 cities with larger populations than Berkeley. In Alameda County, Berkeley is ranked number four in population behind Oakland, Fremont, and Hayward. Yet, the City of Berkeley is famous around the globe.

As of 2018, Berkeley's population was over 121,000. The population density was over 11,000 per square mile. Nearly 48 percent of Berkeley residents use a motor vehicle to commute to work, just under 8 percent used a bicycle and 16 percent walked. Berkeley makes up only 8 percent of Alameda County's population but more than 37 percent of the county's population of people who walk and ride bikes to work. Additionally, there are 5 dispensaries in the city, and as of February 2020 smoking, vaping and consuming cannabis in storefront retailers (previously referred to as dispensaries) was authorized.

In November 2016, California voters passed AB 64: Cannabis: licensure and regulation as a statewide initiative legalizing the cultivation, sale, and adult use of marijuana. As a result, and pursuant to Revenue and Taxation Code 34019 (f)(3)(B), the State was required to set aside tax funding for the CHP to provide grants to local governments and qualified non-profit organizations. This section states that the grant funding is to be used for the *“education, prevention, and enforcement of laws related to driving under the influence of alcohol and other drugs, including cannabis; programs that help enforce traffic laws, educate the public in traffic safety, provide varied and effective means of reducing fatalities, injuries, and economic losses from collisions; and for the purchase of equipment related to enforcement of laws related to driving under the influence of alcohol and other drugs, including cannabis.”*

In 2018, adult-use and medicinal use marijuana businesses began opening in cities that chose to grant local cannabis licenses, including the City of Berkeley. There is substantial evidence that cannabis use increases the risk of motor vehicle crashes, and driving while under the influence of cannabis has become a significant concern for law enforcement and public safety.

In 2021, Berkeley Police made 96 misdemeanor DUI arrests (73 alcohol, 14 drugs only, 9 combination), 12 felony DUI arrests, and 1 minor with a blood alcohol concentration over .05%.

Over the past seven years (1/2015 – 1/2022), 190 injuries occurred in collisions where alcohol or drugs were a factor. Continued, proactive enforcement through DUI saturation patrols funded through the CHP grant provide an effective aid to remove

Accept Grant Funding from the California Highway Patrol (CHP)  
Cannabis Tax Fund Grant Program to Reduce Impaired Driving  
in the City of Berkeley

CONSENT CALENDAR

dangerously impaired drivers from the roadway, and will also assist us in educating the community to the dangers of drug and alcohol impaired driving.

The Berkeley Police Department has received notice of a conditional approval for grant funding. CHP requires the local governing body adopt a resolution authorizing the Berkeley Police Department to receive the grant funding.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

#### RATIONALE FOR RECOMMENDATION

The purpose of this grant funding is to address impaired driving, including opportunities and projects to prevent the loss of life, injuries, and property damage caused by driving under the influence of alcohol and/or drugs. These funds are to be used for training, education, prevention, and the enforcement of laws related to DUI of alcohol and other drugs, including cannabis and cannabis products.

Grant funds will assist our training program. Training officers in Standardized Field Sobriety Testing (SFST), Advanced Roadside Impaired Driving Enforcement (ARIDE), and Drug Recognition Evaluation (DRE) will enhance our overall effectiveness as a department in detecting, deterring, and apprehending impaired drivers.

Grant funding builds upon our current traffic safety efforts by allowing officers opportunities in saturation enforcement to address impaired driving- in addition to and outside of their regularly scheduled duties. Additionally, the funds provide opportunities for community outreach with emphasis on impaired driving through education to include many types of media.

The Police Department requests this funding be approved to enhance our current efforts to provide a safe environment to every individual who utilizes City of Berkeley sidewalks and roadways. These efforts will include a partnership with the Berkeley Community through outreach and education regarding traffic safety and impaired driving.

#### ALTERNATIVE ACTIONS CONSIDERED

No other alternatives would result in preserving the shrinking General Fund resources while increasing the safety of the citizens of Berkeley.

#### CONTACT PERSON

Lieutenant Jen Tate, Police, Traffic Bureau, (510) 981-5383

Attachments:

- 1: Resolution
- 2: Department of California Highway Patrol Grant Agreement

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

ACCEPTANCE OF CHP CANNABIS TAX FUND LAW ENFORCEMENT GRANT  
FY2022/2023

WHEREAS, the California Highway Patrol has been delegated the responsibility by the Legislature of the State of California for the administration of the Cannabis Tax Fund Grant Program, setting up the necessary procedures governing the application; and

WHEREAS, said procedures established by the California Highway Patrol require the Applicant to certify by resolution the approval of the application to the State; and

WHEREAS, successful Applicants will enter into an agreement with the California Highway Patrol to complete the Grant Scope; and

WHEREAS, the Berkeley Police Department applied for funding from the CHP Cannabis Tax Fund Grant Program FY2022/2023; for the following items:

- Police Officer Training/Education
  - DUI Detection – Field Sobriety Training; and
  - Drug Influence (Health & Safety Code Section 11550) Training; and
  - Drug recognition Expert Training
- Conduct Community Outreach/Education (Social Media Messaging)

WHEREAS, the Berkeley Police Department has received notice of conditional approval for grant funding, Exhibit A, in the amount of \$112,336.60;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or designee, is hereby authorized to execute the agreement, and any follow up amendments with the California Highway Patrol for the CHP Cannabis Tax Fund Law Enforcement Grant FY2022/2023 in an amount of \$112,336.60 for the term of July 1, 2022 through June 30, 2023.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. GRANT TITLE</b><br>FY22/23 CTFGP Law Enforcement - Berkeley Police Department                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>2. NAME OF AGENCY</b><br>Berkeley Police                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>4. PERFORMANCE PERIOD</b><br><br>From: 07/01/2022<br>To: 06/30/2023                                                                                                                                                                                                                                                                                                                                                      |
| <b>3. AGENCY SECTION TO ADMINISTER GRANT</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>5. OPPORTUNITY INFORMATION DESCRIPTION</b><br>Law Enforcement grants provide financial assistance to allied agencies for the education, prevention, and the enforcement of laws related to driving under the influence of alcohol and other drugs, including cannabis. The intent of the program is to educate the public regarding the dangers of impaired driving, enforce impaired driving laws on the roadway, improve agency's effectiveness through training and development of new strategies.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>6. FUNDS ALLOCATED UNDER THIS AGREEMENT SHALL NOT EXCEED</b> <span style="float: right;">\$112,336.60</span>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>7. TERMS AND CONDITIONS</b><br>The Grantee agrees to complete the Project as described in the Project Description. The Grantee's Application, and the California Code of Regulations, Title 13, Division 2, Chapter 13, Sections 1890.00-1890.27 are hereby incorporated into this agreement by reference.<br><br>The parties hereto agree to comply with the terms and conditions of the following attachments: <ul style="list-style-type: none"> <li>• Schedule A - Project Description, Problem Statement, Goals and Objectives, and Method of Procedure;</li> <li>• Schedule B - Detailed Budget Estimate; and</li> <li>• Schedule B-1 - Budget Narrative.</li> </ul> We, the officials named below, hereby swear under penalty of perjury under the laws of the State of California that we are duly authorized to legally bind the Grant recipient to the above described Grant terms and conditions.<br><br>IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto. |                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>8. APPROVAL SIGNATURES</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>A. AUTHORIZED OFFICIAL OF AGENCY</b><br>Name: Jennifer Louis                      Phone: 510-981-5976<br>Title: Interim Police Chief<br><br>Address: 2100 MLK Jr Way Berkeley, CA 94704<br><br>E-Mail: jloius@cityofberkeley.info<br><br>_____<br><div style="display: flex; justify-content: space-between; width: 100%;"> <span>(Signature)</span> <span>(Date)</span> </div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>B. AUTHORIZED OFFICIAL CHP</b><br>Name: Evan Robinson                      Phone: (916) 843-4360<br>Title: Captain                                      Fax: (916) 322-3169<br><br>Address: 601 North 7th Street, Sacramento, CA 95811<br><br>E-Mail: ERobinson@chp.ca.gov<br><br>_____<br><div style="display: flex; justify-content: space-between; width: 100%;"> <span>(Signature)</span> <span>(Date)</span> </div> |
| <b>C. ACCOUNTING OFFICER OF CHP</b><br>Name: C. M. Jones                      Phone: (916) 843-3531<br>Title: Commander                      Fax: (916) 322-3159<br><br>Address: 601 North 7th Street, Sacramento, CA 95811<br><br>E-Mail: catrina.jones@chp.ca.gov<br><br>_____<br><div style="display: flex; justify-content: space-between; width: 100%;"> <span>(Signature)</span> <span>(Date)</span> </div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>D. AUTHORIZED FINANCIAL CONTACT TO RECEIVE PAYMENTS</b><br><br>Name: Chuck Gunter<br>Address: 2100 MLK Jr Way Berkeley, CA 94704                                                                                                                                                                                                                                                                                         |
| <b>9. PURCHASE ORDER NUMBER</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                             |

## TERMS AND CONDITIONS

Grantee shall comply with the California Code of Regulations, Title 13, Division 2, Chapter 13 Section 1890, et seq. and all other terms and conditions noted in this Agreement. Failure by the Grantee to comply may result in the termination of this Agreement by the California Highway Patrol (hereafter referred to as State). The State will have no obligation to reimburse the Grantee for any additional costs once the Grant Agreement has been terminated.

### A. EXECUTION

1. The State (the California Highway Patrol) hereby awards to the Grantee the sum of money stated on page one of this Agreement. This funding is awarded to the Grantee to carry out the project set forth in the Project Description and the terms and conditions set forth in this Agreement.
2. The funding for this Agreement is allocated pursuant to California Revenue and Taxation Code Section 34019(f)(3)(B). The Grantee agrees that the State's obligation to pay any sum under this Agreement is contingent upon availability of funds disbursed from the California Cannabis Tax Fund to the State. If there is insufficient funding, the State shall have the option to either: 1) terminate this Agreement, whereby no party shall have any further obligations or liabilities under this Agreement, or 2) negotiate an Agreement amendment to reduce the grant award and scope of services to be provided under this Agreement.
3. The Grantee is not to commence or proceed with any work in advance of receiving notice that the Grant Agreement has been approved. Any work performed by the Grantee in advance of the date of approval by the State shall be deemed volunteer work and will not be reimbursed by the State.
4. The Grantee agrees to provide any additional funding, beyond what the State has agreed to provide pursuant to this Agreement, necessary to complete or carry out the project as described in this Agreement. Any modification or alteration of this Agreement, as set forth in the Grant Application submitted by the Grantee and on file with the State, must be submitted in writing 30 calendar days in advance to the State for approval.
5. The Grantee agrees to complete the project within the timeframe indicated in the Performance Period, which is on page one of this Agreement.

### B. PROJECT ADMINISTRATION

1. The Grantee shall submit all reimbursements, progress, performance, and/or other required reports concerning the status of work performed in furtherance of this Agreement on a quarterly basis, or as requested by the State.
2. The Grantee shall provide the State with a final report showing all project expenditures, which includes all State and any other project funding expended, within 60 calendar days after completion of this Agreement.
3. The Grantee shall ensure all equipment which is purchased, maintained, operated, and/or developed is available for inspection by the State.
4. Equipment purchased through this Agreement shall be used for the education, prevention, and enforcement of impaired driving laws unless the Grantee is funding a portion of the purchased price not dedicated to impaired driving and that portion is not part of the project costs. Equipment purchased under this Agreement must only be used for approved project related purposes unless otherwise approved by the State in writing.
5. Prior to disposition of equipment acquired under this Agreement, the Grantee shall notify the State via e-mail, and by telephone, by calling the California Highway Patrol, Impaired Driving Section, Cannabis Grants Unit at (916) 843-4360.

## TERMS AND CONDITIONS

### C. PROJECT TERMINATION

1. Grantee or the State may terminate this Agreement at any time prior to the commencement of the project. Once the project has commenced, this Agreement may only be terminated if the party withdrawing provides 30 calendar days written notice of their intent to withdraw.
  - a. If by reason of force majeure the performance hereunder is delayed or prevented, then the term end date may be extended by mutual consent for the same amount of time of such delay or prevention. The term "force majeure" shall mean any fire, flood, earthquake, or public disaster, strike, labor dispute or unrest, embargo, riot, war, insurrection or civil unrest, any act of God, any act of legally constituted authority, or any other cause beyond the Grantee's control which would excuse the Grantee's performance as a matter of law.
  - b. Grantee agrees to provide written notice of an event of force majeure under this Agreement within 10 calendar days of the commencement of such event and within 10 calendar days after the termination of such event, unless the force majeure prohibits Grantee from reasonably giving notice within this period. Grantee will give such notice at the earliest possible time following the event of force majeure.
2. Any violations of law committed by the Grantee, misrepresentations of project information by the Grantee to the State, submission of falsified documents by the Grantee to the State, failure to provide records by the Grantee to the State when requested for audit or site visit purposes may be cause for termination. If the project is terminated for the reasons described in this paragraph, the State will have no obligation to reimburse the Grantee for any additional costs once the Agreement has been terminated.
3. The State may terminate this Agreement and be relieved of any payments should the Grantee fail to perform the requirements of this Agreement at the time and in the manner herein provided. Furthermore, the Grantee, upon termination, shall return grant funds not expended by the Grantee as of the date of termination.
4. If this Agreement is terminated, the State may choose to exclude the Grantee from future grant opportunities.

### D. FINANCIAL RECORDS

1. The Grantee agrees the State or their designated representative shall have the right to review and to copy all records and supporting documentation pertaining to the performance of this Agreement. Grantee agrees to maintain such records for possible audit for a minimum of five (5) years after final payment, unless a longer period of records retention is stipulated or required by law. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Furthermore, the Grantee agrees to include a similar right for the State to audit all records and interview staff in any subcontract related to performance of this Agreement.

### E. HOLD HARMLESS

1. The Grantee agrees to indemnify, defend and save harmless the State, its officials, agents and employees from any and all claims and losses accruing or resulting to any and all Grantee's staff, contractors, subcontractors, suppliers, and other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, agency, firm, corporation who may be injured or damaged by the Grantee in performance of this Agreement.

## TERMS AND CONDITIONS

### F. NONDISCRIMINATION

1. The Grantee agrees to comply with State and federal laws outlawing discrimination, including, but not limited to, those prohibiting discrimination because of sex, race, color, ancestry, religion, creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer or genetic characteristics), sexual orientation, political affiliation, position in a labor dispute, age, marital status, and denial of statutorily-required employment-related leave. (GC 12990 [a-f] and CCR, Title 2, Section 8103.)

### G. AMERICANS WITH DISABILITIES ACT

1. The Grantee assures the State it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

### H. DRUG-FREE WORKPLACE

1. The Grantee shall comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
  - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
  - b. Establish a Drug-Free Awareness Program to inform employees about:
    - i. The dangers of drug abuse in the workplace.
    - ii. The person's or organization's policy of maintaining a drug-free workplace.
    - iii. Any available counseling, rehabilitation, and employee assistance programs.
    - iv. Penalties that may be imposed upon employees for drug abuse violations.
  - c. Every employee who works on the project will:
    - i. Receive a copy of the company's drug-free workplace policy statement.
    - ii. Agree to abide by the terms of the company's statement as a condition of employment on the Agreement.
2. Failure to comply with these requirements may result in suspension of payments under this Agreement or termination of this Agreement or both and Grantee may be ineligible for award of any future Grant Agreements if the department determines that any of the following has occurred:
  - a. The Grantee has made false certification or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

### I. LAW ENFORCEMENT AGENCIES

1. All law enforcement organization Grantees shall comply with California law regarding racial profiling. Specifically, law enforcement Grantees shall not engage in the act of racial profiling as defined in California Penal Code Section 13519.4.



## TERMS AND CONDITIONS

### J. LABOR CODE/WORKERS' COMPENSATION

1. The Grantee is advised and made aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Grantee affirms to comply with such provisions before commencing the performance of the work of this Agreement, (refer to Labor Code Section 3700).

### K. APPLICATION INCORPORATION

1. The Grantee agrees the Application and any subsequent changes or additions approved or required by the State is hereby incorporated into this Agreement.

### L. STATE LOBBYING

1. The Grantee is advised none of the funds provided under this Agreement may be used for any activity specifically designed to urge or influence a state or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any state or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a state official whose salary is supported by this Agreement from engaging in direct communications with the state or local legislative officials, in accordance with customary state and/or local practice.

### M. REPRESENTATION AND WARRANTIES

1. The Grantee represents and warrants that:
  - a. It is validly existing and in good standing under the laws of the State of California, has, or will have the requisite power, authority, licenses, permits, and the like necessary to carry on its business as it is now being conducted and as contemplated in this Agreement, and will, at all times, lawfully conduct its business in compliance with all applicable federal, state, and local laws, regulations, and rules.
  - b. It is not a party to any Agreement, written or oral, creating obligations that would prevent it from entering into this Agreement or satisfying the terms herein.
  - c. If the Grantee is a Nonprofit Organization, it will maintain its "Active" status with the California Secretary of State, maintain its "Current" status with the California Attorney General's Registry of Charitable Trusts, and maintain its federal and State of California tax-exempt status. If the Grantee subcontracts with a Nonprofit as part of this Agreement, the Grantee shall ensure the Nonprofit will maintain its "Active" status with the California Secretary of State, maintain its "Current" status with the California Attorney General's Registry of Charitable Trusts, and maintain its federal and State of California tax-exempt status.
  - d. All of the information in its Grant Application and all materials submitted are true and accurate.

### N. AIR OR WATER POLLUTION VIOLATION

1. Under the state laws, the Grantee shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

## TERMS AND CONDITIONS

### O. GRANTEE NAME CHANGE

1. Grantee agrees to immediately inform the State in writing of any changes to the name of person within organization with delegated signing authority.
2. An amendment is required to change the Grantee's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

### P. RESOLUTION

1. A county, city, district, or other local public body shall provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an Agreement, authorizing execution of the Agreement.

### Q. PAYEE DATA RECORD FORM STD. 204

1. This form shall be completed by all non-governmental Grantees.

### R. GOVERNMENT AGENCY TAXPAYER ID FORM

1. This form shall be completed by governmental Grantees.

### S. CONFLICT OF INTEREST

1. This section serves to make the Grantee aware of specific provisions related to current or former state employees. If Grantee has any questions regarding the status of any person rendering services or involved with the Agreement, the Grantee shall contact the State (California Highway Patrol, Impaired Driving Section) immediately for clarification.
2. Current State Employees:
  - a. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest, and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
  - b. No officer or employee shall contract on their own behalf as an independent Grantee with any state agency to provide goods or services.
3. Former State Employees:
  - a. For the two-year period from the date they left state employment, no former state officer or employee may enter into a contract in which they engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to this Agreement while employed in any capacity by any state agency.
  - b. For the 12-month period from the date they left state employment, no former state officer or employee may enter into a contract with any state agency if they were employed by that state agency in a policy-making position in the same general subject area as the proposed Agreement within the 12-month period prior to their leaving state service.
4. The authorized representative of the Grantee organization named within this Agreement warrants their organization and its employees have no personal or financial interest and no present or past

## TERMS AND CONDITIONS

employment or activity which would be incompatible with participating in any activity related to this Agreement. For the duration of this Agreement, the organization and its employees will not accept any gift, benefit, gratuity or consideration, or begin a personal or financial interest in a party who is associated with this Agreement.

5. The Grantee organization and its employees shall not disclose any financial, statistical, personal, technical, media-related, and/or other information or data derived from this Agreement made available for use by the State for the purposes of providing services to the State in conjunction with this Agreement, except as otherwise required by law or explicitly permitted by the State in writing. The Grantee shall immediately advise the State of any person(s) who has access to project confidential information and intends to disclose that information in violation of this Agreement.
6. The Grantee will not enter into any Agreement or discussions with third parties concerning materials described in paragraph 5 prior to receiving written confirmation from the State that such third party has an Agreement with the State similar in nature to this one.
7. The Grantee warrants that only those employees who are authorized and required to use the materials described in paragraph 5 will have access to them.
8. If Grantee violates any provisions of this above paragraphs, such action by Grantee shall render this Agreement void.

### T. EQUIPMENT-USE TERMS

1. The Grantee agrees any equipment purchased under this Grant Agreement shall be used for impaired driving efforts.
2. Law Enforcement Projects:
  - a. Oral Fluid Drug Screening Devices and Cannabis/Marijuana Breath Testing Equipment - The Grantee agrees to ensure all personnel using road-side drug testing equipment, including oral fluid drug testing devices and/or cannabis/marijuana breath testing devices, purchased with grant funds from this Agreement, are trained to recognize alcohol and drug impairment. At a minimum, personnel using these devices should receive Standardized Field Sobriety Testing training. These personnel are also encouraged to attend Advanced Roadside Impaired Driving Enforcement and Drug Recognition Evaluator training. Prior to using these devices, the Grantee agrees to obtain permission from their local prosecutor's office; establish a policy ensuring appropriate use; and require the staff using these devices to receive appropriate training, which may include training from the manufacturer. This will help ensure the equipment is used appropriately. The Grantee shall advise the State (California Highway Patrol, Impaired Driving Section), of any legal challenges or other items of significance that may affect the use or legal acceptance of these devices. Additionally, the State may request additional information about the performance of these devices, including information about their use, accuracy, and feedback from personnel using the devices.
  - b. Law Enforcement Vehicles – The Grantee agrees any law enforcement vehicles purchased with funds from this agreement will be primarily used for the enforcement of driving under the influence laws and/or providing public education related to the dangers of driving under the influence. Additionally, any vehicle purchased using funds from this Agreement shall comply with all California Vehicle Code and California Code of Regulation requirements. The State may require the Grantee to mark these vehicles with a decal and/or emblem indicating the vehicle is used for driving under the influence enforcement.

## **Schedule A**

### **Project Description**

According to NHTSA, traffic deaths were up 12% in the beginning of the pandemic (April to September 2020) compared to the same period in 2019. The report released in Dec. 2020 cited unsafe driving habits to include drivers with drugs or alcohol in their system. In 2021, Berkeley police officers investigated 62 collisions where the driver was impaired. Of those, 16 were injury collisions.

Best practice strategies will be conducted to reduce the number of persons killed and injured in collisions involving impaired drivers. The funded strategies will focus on reducing impaired driving through special enforcement operations, and increasing public awareness through education and media engagement. Additional training for BPD officers in SFST, ARIDE, DRE will add to our collective effort to reducing fatal and serious collisions caused by impaired drivers.

### **Problem Statement**

In California alone, there are 49 cities with larger populations than Berkeley. In Alameda County, Berkeley is ranked number fourth in population size behind Oakland, Fremont, and Hayward. Yet, the City of Berkeley is famous around the globe.

As of 2022, Berkeley's population is over 121,000. The population density is over 11,000 per square mile. Nearly 48 percent of Berkeley residents use a motor vehicle to commute to work, just under eight (8) percent used a bicycle and 16 percent walked. Berkeley makes up only eight (8) percent of Alameda County's population but more than 37 percent of the county's population of people who walk and ride bikes to work. Additionally, there are five (5) dispensaries in the city, and in February 2020, the Berkeley City Council voted unanimously to permit Smoking, vaping and consuming cannabis in storefront retailers (previously referred to as dispensaries).

In 2021, Berkeley Police made 124 misdemeanor DUI arrests (100 alcohol, 14 drugs only, 9 combo, 1 minor with BAC over .05.), and 10 felony DUI arrests.

Over the past 7 years (1/2015-1/2022), 190 injuries occurred in collisions where alcohol or drugs were a factor. Continued, proactive enforcement through DUI saturation patrols funded through the CHP grant will be an effective aid for taking dangerously impaired drivers off the road. The grant would also provide the means to educate the community of the dangers of drug and alcohol impaired driving.

Currently, the Traffic Bureau of the Berkeley Police Department is staffed by three (3) Motor Officers, one (1) Traffic Data Analyst, one (1) Sergeant and one (1) Lieutenant. Motor officer responsibilities include injury-collision investigations and traffic enforcement, however resources often deplete rapidly due to ancillary duties and personnel shortages in the Operations (Patrol) Division. Grant funding would build upon our current traffic safety efforts by allowing patrol and motor officers the ability to address traffic safety and impaired driving — in addition to and outside of their regularly scheduled duties. Additionally, the funds would provide opportunities for leadership development and education in traffic safety and DUI/impaired driving enforcement, as well as enhance the department's overall mission of public safety.

### **Proposed Solutions**

The Berkeley Police Department will continue to take a proactive, comprehensive approach to public safety where injury-collisions are concerned. The department will address impaired drivers within city limits by way of DUI saturation patrols. DUI saturation patrols allow officers to both proactively seek out impaired drivers and to deploy directed enforcement tactics based on DUI arrest and injury-collision data. This approach will help to enhance the overall training and experience of those officers.

Berkeley PD will continue to work with local media to publicize our proactive enforcement efforts and to educate the community by way of public awareness campaigns and strategies.

In addition, grant funds will assist our training program. Having the opportunity to training more officers in SFST, ARIDE and DRE will strengthen our overall effectiveness as a department in the detection, deterrence, and apprehension of impaired drivers.

## Schedule A

The Berkeley PD Traffic Bureau already employs two strategies of traffic enforcement. First, the use of internal collision and SWITRS data are used to identify the top PCF's and the most dangerous roadways in the city for vehicles, pedestrians, and bicyclists. This allows us the ability to use a data driven approach to direct the majority of available resources to those identified areas. Secondly, we seek to alter traffic violator behavior through vigorous traffic enforcement- by issuing citations, and arresting impaired drivers.

The Berkeley Police Traffic Bureau will collaborate with our Community Service Bureau and patrol officers to identify where impaired driving awareness can be included in public education opportunities.

All of these projects will be achieved throughout the grant cycle, with priority given to sending officers to training early on in the grant cycle. This prioritization will enable officers to put their newly acquired training to use during the grant cycle to enhance our ability to meet our intended enforcement and deterrence goals.

### **Performance Measures**

Grant funds would allow for officer training, public education, and enforcement opportunities, with regard to impaired driving.

Each goal, activity and overall timeline would be monitored by the grant administrator. By tracking the activity of the funded projects, BPD would be able to account for and report on the effectiveness of the proposed projects.

**Goal One - Officer Training:** Provide our community with well-trained Officers and with the skills needed to investigate impaired driving incidents/crashes. To do this, Berkeley PD will seek out SFST, ARIDE, and DRE training.

Objective 1.A. Two (2) police officers will be trained in SFST within the one-year term of this grant. This will be accomplished between Quarters 1 and 2.

Objective 1.B. Two (2) police officers will be trained in ARIDE within the one-year term of this grant. This will be accomplished during Quarter 3.

Objective 1.C. One (1) police officer will be trained and certified in SFST Instructor Training within the one-year term of this grant. This will be accomplished during Quarter 4.

**Goal Two - Education and Outreach through Press Releases and Social Media:** Change social norms within our community related to cannabis-impaired driving. Berkeley PD will create informational/educational materials to publicize the costs, risks, and dangers associated with cannabis-impaired driving.

Objective 2.A. Issue four (4) press releases; first to announce the kick-off of the grant. Subsequent releases to coincide with DUI Saturation patrol enforcement.

Objective 2.B. Collaborate with the Berkeley PD Press Information Officer to use social media to broadcast CHP approved educational messages, advisories and materials once per quarter.

**Goal Three - Enforcement:**

Objective 3.A. Implement DUI Saturation Patrols – Berkeley PD will conduct ten (10) DUI saturation patrols per quarter (a minimum of two (2) officers per saturation patrol on 8-hour shifts). These patrols will focus their efforts in areas known to have a high incidence of impaired driving crashes.

Performance Plan:

## Schedule A

| Goal Name                    | Goal Type | Goal Details             |
|------------------------------|-----------|--------------------------|
| SFST Officer Training        | 2         | Number to be Achieved 2  |
| ARIDE Training               | 2         | Number to be Achieved 2  |
| SFST Instructor Training     | 1         | Number to be Achieved 1  |
| Press Release/ Announcements | 4         | Number to be Achieved 4  |
| Saturation Patrols           | 42        | Number to be Achieved 42 |

### **Project Performance Evaluation**

Berkeley PD has a plan to evaluate the progress of each project and by the end of the grant term will be able to analyze the project success and share the results with internal and external stakeholders. This plan includes setting goals for each quarter with regard to training, public education (through media), and enforcement opportunities. At the end of each quarter the grant administrator will be able to use appropriate data to support the progress of goals and objectives set.

### **Program Sustainability**

With more officers trained in SFST's, ARIDE, and DRE, there will be more personnel on patrol who actively engage in and seek out assignments in both our DUI detection and apprehension efforts in the course of their current work assignment. As other officers see the success of this training and the resultant reduction in the number of impaired drivers, they will likely be motivated to seek out ways to receive this training as well. Having well trained officers will allow our agency to come up with more innovative approaches to combat impaired driving.

Grant funding builds upon our current traffic safety efforts by allowing officers more opportunities to work saturation enforcement to address impaired driving— in addition to and outside of their regularly scheduled duties. Additionally, the funds provide greater opportunity for community outreach focused on impaired driving through education, by way of utilizing a variety of media outlets.

### **Administrative Support**

The department maintains a fulltime Traffic Data Analyst within the Traffic Bureau for both collision data analysis and reporting. In addition, the department has a full-time civilian Administrative and Fiscal Manager, who has several years of successful management experience with grant programs at both state and local levels. We also have an Assistant Fiscal/Management Analyst whose responsibilities include preparation of fiscal reporting and justification. The Assistant Fiscal/Management Analyst and the Traffic Bureau Sergeant work in unison to effectively manage and deploy grant resources.

**Schedule B****Detailed Budget Estimate**

| <b>Award Number</b> | <b>Organization/Agency</b> | <b>Total Amount</b> |
|---------------------|----------------------------|---------------------|
| 9588                | Berkeley Police            | \$112,336.60        |

| <b>Cost Category</b>      | <b>Line Item Name</b>            | <b>Total Cost to Grant</b> |
|---------------------------|----------------------------------|----------------------------|
| <b>Personnel</b>          | Salary overtime DUI Saturation   | \$96,320.00                |
|                           | Benefits overtime DUI saturation | \$10,016.60                |
| <b>Category Sub-Total</b> |                                  | <b>\$106,336.60</b>        |
| <b>Travel</b>             | SFST                             | \$1,500.00                 |
|                           | ARIDE                            | \$1,500.00                 |
|                           | SFST Instructor                  | \$3,000.00                 |
| <b>Category Sub-Total</b> |                                  | <b>\$6,000.00</b>          |

|                    |  |                     |
|--------------------|--|---------------------|
| <b>Grant Total</b> |  | <b>\$112,336.60</b> |
|--------------------|--|---------------------|

**Schedule B-1****Budget Narrative****Personnel**

**Salary overtime DUI Saturation** \$96,320.00

660 hours of DUI saturation patrols @ a range of \$138.88 - \$168.00 per hour.

There are several Lieutenants have been proactive in their DUI enforcement effort for a number of years. We would like to give them an opportunity participate in saturation patrols as they can help younger officers become more proficient in their enforcement efforts. Therefore we are asking for a range depending on whether an officer or lieutenant is working.

**Benefits overtime DUI saturation** \$10,016.60

9.83% for benefits (WC 8.38 and Medicare 1.45%)

**Travel**

**SFST** \$1,500.00

When the SFST Schedule of classes is updated for this grant time-period we would like to send 2 officers to a location in northern CA. Some recent options have been Rhonert Park, Citrus Heights and Edwards. The 3-day class cost estimates would include but not exceed: per diem \$185 per officer, lodging \$465 per officer, and \$200 per officer. This training would ideally be completed in the 1st and 2nd quarter.

**ARIDE** \$1,500.00

When the ARIDE Schedule of classes is updated for this grant time-period we would like to send 2 officers to a location in northern CA. Some recent options have been Placerville, Citrus Heights and Edwards. The 2-day class cost estimates would include but not exceed: per diem \$111 per officer, lodging \$400 per officer, and \$239 per officer. This training would ideally be completed in the 3rd quarter.

**SFST Instructor** \$3,000.00

There is a SFST Instructor class in Glendale in the 1st quarter of this grant period. This 5-day class for 1 officer cost estimates would include but not exceed: per diem \$333, lodging \$1333, and \$1334 for travel.





Office of the City Manager

CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Liam Garland, Director, Public Works  
 Subject: Contract No. 32000078 Amendment DC Electric Group, Inc. for On-Call Electrical Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 32000078 with DC Electric Group, Inc. for on-call electrical services, increasing the current contract by \$100,000 for a total not to exceed amount of \$175,000 and extending the contract through June 30, 2025.

FISCAL IMPACTS OF RECOMMENDATION

|                                       |                                     |          |
|---------------------------------------|-------------------------------------|----------|
| Street Light Assessment District Fund | 142-54-624-694-3018-000-426-612990- | \$50,000 |
| Measure BB – Local Streets and Road   | 134-54-624-695-0000-000-431-612990- | \$3,000  |

Initial funding in the amount of \$3,000 is available in the FY 2023 budget in Fund 134. Funding from Fund 142 in the amount of \$50,000 will be carried over from FY 2022 to FY 2023 and be included in the First Amendment to the FY 2023 Annual Appropriations Ordinance. The remaining amount will be authorized by task order from similar program budgets on an as-needed basis.

CURRENT SITUATION AND ITS EFFECTS

The Public Works Electrical Division supports the City’s electrical needs and occasionally requires additional outside support or expertise. DC Electric Group, Inc. (DC Electric) provides emergency repairs for damaged street light poles, Marina pier lights, traffic signals, electrical wiring, and electrical component installation as needed for City renovations and upgrades.

Amending the DC Electric contract supports the City’s Strategic Plan Priority of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

On November 3, 2016, Public Works issued a Request for Proposals, Specification No. 16-11076-C for electrical on-call services. Four proposals were submitted and two vendors were selected to ensure the availability of these services in the event of an emergency. Both DC Electric and Colombia were selected and contract with the City.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

#### RATIONALE FOR RECOMMENDATION

DC Electric continues to provide responsive service to the City of Berkeley and are needed to supplement the City's in-house Electrical Division.

#### ALTERNATIVE ACTIONS CONSIDERED

None. The City does not have adequate resources to provide the required repairs, replacement and maintenance in a timely and cost-effective manner.

#### CONTACT PERSON

Joy Brown, Operations Manager, Public Works, (510) 981-6629  
Aaron Baker, Facilities Superintendent, Public Works, (510) 981-6452  
Andrew Brozyna, Deputy Director Public Works, (510) 981-6396

Attachment:  
1: Resolution

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

CONTRACT NO. 32000078 AMENDMENT DC ELECTRIC FOR ON-CALL  
ELECTRICAL SERVICES

WHEREAS, the City periodically requires emergency and non-emergency on-call electric services for repair, maintenance, replacement and installation of various electrical equipment in City facilities, and for traffic signals, street lights and other infrastructure at various locations; and

WHEREAS, the City does not have sufficient resources to provide the required repairs, replacement and maintenance in a timely or cost-effective manner; and

WHEREAS, the City issued a Request for Proposal (RFP) Specification No. 16-11076-C for on-call electrical services on November 3, 2016, four contractors responded to the RFP on December 8, 2016, and two contractors met all requirements and specifications of the proposal; and

WHEREAS, staff reviewed and evaluated all proposals submitted and contracted with DC Electric Group, Inc. and Columbia Electric, Inc.; and

WHEREAS, this is an on-call contract and no costs will be incurred until applicable emergencies or City projects emerge; and

WHEREAS initial funding is available in the Street Light Assessment District Fund 142 and Measure BB – Local Streets and Road Fund 134. The remaining amount will be authorized by task order from similar program budgets on an as-needed basis.

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. 32000078 with DC Electric Group, Inc. for on-call electrical services, increasing the current contract amount by \$100,000 for a total not to exceed \$175,000 and extending the contract through June 30, 2025.





Office of the City Manager

CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Public Works

Subject: Contract No. 098713-1 (9488D) Amendment: Berry Brothers Towing for On-Call Towing Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 098713-1 with Berry Brothers Towing to provide towing services for the City's Fleet equipment and vehicles, increasing the contract amount by \$75,000 for a new not to exceed amount of \$255,000 and extending the contract end date to June 30, 2025.

FISCAL IMPACTS OF RECOMMENDATION

Funding in the amount of \$25,000 is available in the FY 2022 Equipment Maintenance Fund 672 (budget code: 672-54-626-722-0000-000-472-613110) which is the anticipated expenditure for the upcoming fiscal year. For future fiscal years, funding will be subject to appropriation.

CURRENT SITUATION AND ITS EFFECTS

The Equipment Maintenance Division supports the entire City's fleet ranging from sedans to long haul trucks to fire engines. Equipment Maintenance does not have towing services in-house and relies on contracted services to tow equipment should there be a breakdown of equipment. Vehicles are towed either to the Equipment Maintenance shops at the Corporation Yard or the Transfer Station.

It is critical to have City vehicles serviced as quickly as possible and towing services support that effort. This contract amendment supports the City's Strategic Plan Priority of advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

Berry Brothers Towing is one of four towing service companies selected through a 2013 RFP conducted by the City of Berkeley Police Department for their Rotation Tow Program (Specification No. 13-10726-C.). Berry Brothers Towing is equipped to tow the City's larger fleet of vehicles such as Fire and Refuse trucks and offers on-call towing

services twenty-four hours per day, seven days per week. They have provided reliable and satisfactory towing services.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identified environmental or climate impacts.

RATIONALE FOR RECOMMENDATION

This contract increase will provide continued as-needed towing services for the City's large equipment and fleet vehicles.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered. Berry Bros was selected through a competitive bid process and has been providing consistent and satisfactory towing services for the City's larger vehicles.

CONTACT PERSON

Greg Ellington, Equipment Maintenance Superintendent, Public Works, (510) 981-6469  
Joy Brown, Operations Manager, Public Works, (510) 981-6629  
Andrew Brozyna, Deputy Director of Public Works, Public Works, (510) 981-6369

Attachment:  
1: Resolution

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

CONTRACT NO. 098713-1 AMENDMENT BERRY BROTHERS TOWING FOR ON-CALL TOWING SERVICES

WHEREAS, the services provided by Berry Brothers Towing are needed by the Department of Public Works Equipment Maintenance Division for towing large fleet equipment and vehicles; and

WHEREAS, Berry Brothers Towing was selected through a request for proposals conducted by the City of Berkeley Police Department in 2013, (Specification No. 13-10726-C); and

WHEREAS, the City Manager authorized an amendment to Contract No. 9488 increasing the contract by \$10,000 to fund services for the period October 1, 2013 through September 30, 2015; and

WHEREAS, on April 28, 2015, by Resolution No. 66,997-N.S., City Council authorized the amendment of Contract No. 9488A, increasing the contract by \$50,000 for a revised total not to exceed amount of \$90,000 and extending the contract term to June 30, 2017; further extended to December 31, 2018 by authorization of the City Manager's letter dated June 15, 2017; and

WHEREAS, on July 11, 2018, by Resolution No. 68,083-N.S., City Council authorized amendment of Contract No. 9488B, increasing the contract by \$20,000 for a revised total not to exceed amount of \$110,000 and extending the contract term to June 30, 2019; and

Whereas on July 9, 2019, by Resolution No. 69,019-N.S. City Council authorized amendment of Contract No. 9488C increasing the contract by \$70,000 for a revised total not to exceed amount of \$180,000 and extended the contract term to June 30, 2021; and

WHEREAS, by authorization of the City Manager's letter extended the contract term through June 30, 2023; and

WHEREAS, funding for this contract amendment is available from Equipment Maintenance Fund 672; and funding for future fiscal years 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. 098713-1 with Berry Brothers Towing to provide towing services for the City's Fleet equipment and vehicles, increasing the contract by \$75,000 for a new total not to exceed amount of \$255,000 and extend the contract term through June 30, 2025.







Office of the City Manager

CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Public Works

Subject: Contract No. 32000128 Amendment: Wood Environment & Infrastructure Solutions, Inc. for On-Call Environmental Consulting Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000128 with Wood Environment & Infrastructure Solutions, Inc. to increase the contract for on-call environmental consulting services by \$400,000 for a new not to exceed amount of \$700,000 and extend the contract term through November 30, 2025.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this contract amendment will be supported by multiple departments. Funding as outlined below is currently available in the FY 2023 budget:

| Department / Fund                   | ERMA Account Code                   | Amount   |
|-------------------------------------|-------------------------------------|----------|
| Public Works – Capital Improvements | 501-54-623-677-0000-000-444-612990- | \$30,000 |
| Public Works – Clean Storm          | 616-54-623-675-0000-000-472-612990- | \$40,000 |
| HHCS – Environmental Health         | 011-51-502-511-0000-000-451-612990- | \$60,000 |

All of the funding listed above is in the FY 2023 budget except for HHCS. Those funds will be carried over from FY 2022 to FY 2023 and be included in the First Amendment to the FY 2023 Annual Appropriations Ordinance.

Additional funding is subject to appropriation as needed for services during the contract term.

CURRENT SITUATION AND ITS EFFECTS

Wood Environment & Infrastructure (Wood) aids the Public Works Department's Zero Waste Division with stormwater management and environmental consulting services which are needed to comply with the requirements of the City's Solid Waste Management Center and Transfer Station's (Transfer Station) Industrial Storm Water Permit. This Storm Water Permit also includes areas occupied by the Ecology Center and Community Conservation Centers, Inc.

Wood performs sampling and testing of soils, groundwater, and surface water; and provides guidance and planning (including best management practices) to ensure the City remains in compliance with the permit. There are several upcoming Capital Improvement Program projects that will also necessitate the utilization of these environmental services including the removal of underground storage tanks at the Transfer Station. The Engineering Division will also require consultation to support compliance with the Municipal Storm Water Permit.

In addition, Wood provides on-call services to the Environmental Health Division of the Health, Housing, and Community Services Department including technical assistance with monitoring and compliance with the state maximum contaminant levels and with troubleshooting of water quality issues at the Aquatic Park Lagoon.

This contract amendment supports the Strategic Plan Priority of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities as well as being a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

#### BACKGROUND

In November 2019, City Council authorized the City Manager, by Resolution No. 69,172-N.S., to enter into a contract with Wood Environment & Infrastructure Solutions, Inc. (Wood) for on-call environmental consulting services in an amount not to exceed \$300,00 through December 31, 2022.

This is a Citywide contract supporting multiple departments as needed to assist with ongoing environmental compliance, consulting needs for planned or ongoing projects, and for unanticipated environmental consulting needs. Wood has consistently provided high-quality, timely, and professional services to the City. To avoid service interruption, staff recommends City Council adopt a resolution authorizing the City Manager to execute a contract amendment with Wood to increase the contract by \$400,000 for a new not to exceed amount of \$700,000 and extend the contract through November 30, 2025.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The services Wood currently provides improve stormwater quality and help minimize the effects of stormwater runoff at the City's Transfer Station that could otherwise negatively impact the water quality of the San Francisco Bay. In addition, services also support and improve the health of the Aquatic Park Lagoon. There are no identified climate impacts.

#### RATIONALE FOR RECOMMENDATION

This is a Citywide contract supporting crucial work of multiple departments as needed to assist with ongoing environmental compliance, consulting needs for planned or ongoing projects, and for unanticipated environmental consulting needs. Wood has consistently provided high-quality, timely, and professional services to the City.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered. The City currently contracts with two other on-call environmental firms to meet service needs.

CONTACT PERSON

Joy Brown, Public Works Operations Manager, Public Works, (510) 981-6629  
Ronald Torres, Manager of Environmental Health, Health, Housing and Community Services, (510) 981-5261  
Joe Enke, City Engineer, Public Works (510) 981-6411  
Andrew Brozyna, Deputy Director of Public Works, (510) 981-6396

Attachment:  
1: Resolution

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

CONTRACT NO. 32000128 AMENDMENT: WOOD ENVIRONMENT AND INFRASTRUCTURE SOLUTIONS, INC. FOR ON-CALL ENVIRONMENTAL CONSULTING SERVICES

WHEREAS, on July 24, 2019 the City released a Request for Qualifications (Specification No. 19-11329-C) seeking firms or individuals to provide on-call environmental consulting services; and

WHEREAS, on August 20, 2019, the City received 12 submissions, which were reviewed and rated, and the submission from Wood Environment & Infrastructure Solutions, Inc. was found to be fully qualified and responsive to the City's request; and

WHEREAS, on November 12, 2019, by Resolution No. 69,172 City Council authorized the City Manager to enter into a contract with Wood Environment & Infrastructure Solutions, Inc. in an amount not to exceed \$300,00 through December 31, 2022; and

WHEREAS, funding is available in the FY 2023 budget in the Clean Storm Fund 616 and Capital Improvements Fund 501. Funding for Environmental Health Fund 011 will be carried over from FY 2022 to FY 2023 and be included in the First Amendment to the FY 2023 Annual Appropriations Ordinance. Additional funding is subject to appropriation as needed for services during the contract term.

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. 32000128 with Wood Environment & Infrastructure Solutions, Inc. for on-call environmental consulting services increasing the contract by \$400,000 for a new not to exceed amount of \$700,000 and extend the contract through November 30, 2025. 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  
July 26, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Public Works,  
Michael Sinor, Interim Director, Information Technology

Subject: Contract No. 32100072 Amendment: CycloMedia Technology, Inc. for  
Geographic Information System Infrastructure Data

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32100072 with CycloMedia Technology Inc. for Geographic Information System Infrastructure asset data acquisition and ongoing data access to increase the contract amount by \$100,000 for an amount not to exceed \$287,401, adopt the use policy, and extend the contract term through December 30, 2025.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available in the FY 2023 budget in the following funds:

| <b>Department / Fund</b>                           | <b>ERMA Account Code</b>            | <b>Amount<br/>FY 2023</b> |
|----------------------------------------------------|-------------------------------------|---------------------------|
| Public Works – Street Light Fund                   | 142-54-621-654-0000-000-426-612990  | \$8,000                   |
| Public Works – Clean Storm Fund                    | 616-54-623-675-0000-000-472-612990  | \$8,000                   |
| Public Works – State Transportation Tax (SB1) Fund | 127-54-622-668-0000-000-431-612990  | \$2,000                   |
| Public Works – On Street Parking Fund              | 631-54-622-666-0000-000-473-651110- | \$8,000                   |
| Information Technology – IT Cost Allocation Fund   | 680-35-362-377-0000-000-472-612990  | \$16,000                  |
| Total FY 2023 Amount                               |                                     | \$42,000                  |

The first year of data renewal is \$41,100, and the annual license access fee for subsequent years will be \$4,110 per year. Additional funding for the remaining contract term will be appropriated in future fiscal years.

CURRENT SITUATION AND ITS EFFECTS

In December 2020, CycloMedia Technology, Inc. (CycloMedia) collected 360-degree imagery data and imported the information into the Nexgen work order and asset management system. The dataset resulted in high definition, three-dimensional maps, and related data showing precise measurements for distances, clearances, elevations, and other aspects of critical infrastructure. Staff currently use images to perform bike lane assessments, identify damaged infrastructure, inventory city trees, adjust parking lines and signage, as well as inventory city traffic signals. To see the usefulness of the software, a screenshot of transportation-related assets was extracted from CycloMedia and imported into the NexGen system (Attachment 2). CycloMedia also offers Street Smart software which is the interactive web viewer for all CycloMedia content and allows staff to access the City's collected data, as shown in Attachment 3.

The asset information collected by CycloMedia is utilized by staff for remote verification of City assets and infrastructure.

Several city projects and strategic initiatives now benefit from having access to high-quality and accurate street-level imagery including:

- Improved emergency operations situational awareness
- Improved planning and development using imagery
- Remote asset condition assessment (building faces and road surfaces)
- Improved remediation planning (accurate measurements of repair and replace operations)
- Improved community engagement for planning, proposals, and visualization
- Improved communication across internal stakeholders with common access to imagery and associated data.

The CycloMedia contract supports the Strategic Plan goal of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities.

### BACKGROUND

The City maintains a vast portfolio of public infrastructure assets in the public right-of-way: 142 traffic lights, over 8,000 street lights with 3,200 city-owned street light poles, 214 miles of streets, 400 miles of sanitary sewers, 78 miles of storm sewers, 2500 street signs, 35,000 trees, 300+ miles of walkways, 325 retaining walls, and over 3,750 parking meters.

Geographic Information Systems (GIS) support the activities of the City and its community. The City of Berkeley Enterprise GIS empowers staff and the community to make decisions that impact the future of the City of Berkeley in a conversant and logical approach by allowing access to geospatial data.

On November 02, 2016, the City Manager signed the original contract with Geographic Technologies Group (GTG) to develop a GIS Master Plan. On September 08, 2017, the

City Manager amended the original contract to include additional tasks including conducting a comprehensive GIS data assessment.

On August 15, 2019, the City issued a Request for Proposals (RFP) for 360-degree street-level imagery under Specification No.19-11279-C. CycloMedia Technology, Inc. met the City's operational, technology, and fiscal requirements.

On June 24, 2020, after review and discussion of the Street Level Imagery Acquisition Report and Use Policy (Attachment 4), the Police Review Commission unanimously recommended proceeding with CycloMedia Technology.

On June 30, 2020, City Council Resolution 69,482-N.S. authorized the City Manager to execute a contract with CycloMedia in an amount not to exceed \$187,401.

On May 10, 2022, City Council Resolution 70,353-N.S. accepted the Surveillance Technology Report, and the street level imagery was processed through an object detection privacy filter to permanently blur faces and license plates including reflections.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Staff can view detailed images from throughout the city on their computers rather than going out into the field thus saving significant staff time and reducing the need for travel to address an issue which consequently reduces greenhouse gas emissions. The data is hosted remotely so there is no hardware overhead. This supports the reduction of carbon footprint and the goals of the City's Climate Action Plan.

#### RATIONALE FOR RECOMMENDATION

CycloMedia Technology, Inc. has over 30 years of professional experience and innovation in street-level imagery collection and analysis, including Light Detection and Ranging (LiDAR) and asset extraction. CycloMedia Technology, Inc. has served clients similar in population to the City of Berkeley and has provided statewide services to Pacific Gas & Electric (PG&E).

The imagery and extracted data enable staff to better serve the public by:

- Saving time, effort, and money by doing virtual inspections and automated asset management
- Optimizing asset inventory & condition assessment (Public Works)
- Optimizing and updating building and zoning review processes (Planning)
- Responding to emergencies with knowledge and confidence through better situational awareness (Fire)
- Monitoring, analyzing, and documenting existing street conditions (Transportation)

The collected data also addresses a series of requirements from the City's insurer, the California Joint Powers Insurance Authority.

ALTERNATIVE ACTIONS CONSIDERED

None. This service allows City staff continued access to data that would otherwise be unavailable to inform decisions about asset management and GIS layers.

CONTACT PERSON

Joy Brown, Operations Manager, Public Works, (510) 981-6629

Farid Javandel, Transportation Manager, Public Works (510) 981-7061

Andrew Brozyna, Deputy Director, Public Works (510) 981-6396

Barry Jennings, Senior Systems Analyst, Information Technology, (510) 981-6532

Attachments:

- 1: Resolution
2. CycloMedia – Street Smart Screen Shot
3. NexGen Screen Shot of CycloMedia Captured and Imported Assets
4. Street Level Imagery Use Policy



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

CONTRACT NO. 32100072 AMENDMENT: CYCLOMEDIA TECHNOLOGY, INC. FOR  
GEOGRAPHIC INFORMATION SYSTEM INFRASTRUCTURE DATA

WHEREAS, the City of Berkeley needs access to its 360-degree street-level imagery and infrastructure assets to support data inventories in Geographic Information Systems; and

WHEREAS, on August 15, 2019, the City issued a Request for Proposals (RFP) for 360-degree street-level imagery under Specification No.19-11279-C. CycloMedia Technology, Inc. met the City's operational, technology, and fiscal requirements; and

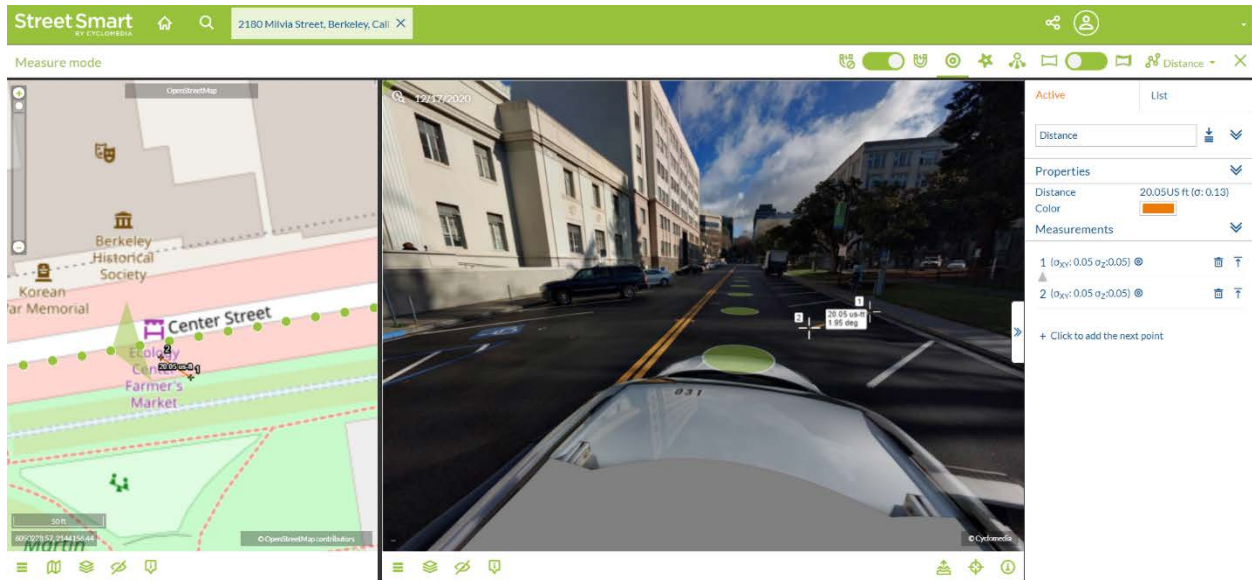
WHEREAS, on June 24, 2020, after review and discussion of the Street Level Imagery Acquisition Report and Use Policy, the Police Review Commission unanimously recommended proceeding with CycloMedia Technology; and

WHEREAS, on June 30, 2020, City Council Resolution 69,482-N.S. authorized the City Manager to execute a contract with CycloMedia Technology, Inc. in an amount not to exceed \$187,401; and

WHEREAS, funding for this contract amendment is available in the FY 2023 budget in the Street Light Fund 142, Clean Storm Fund 616, State Transportation Tax (SB1) Fund 127, On Street Parking Fund 631, and IT Cost Allocation Fund 680.

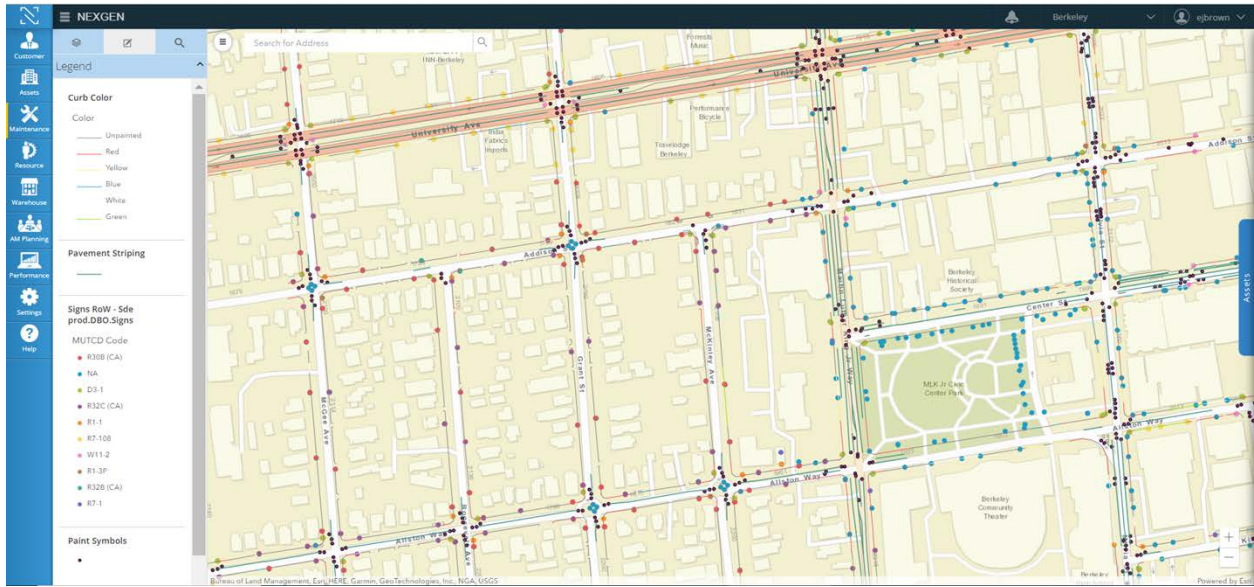
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute an amendment to Contract No. 32100072 with CycloMedia Technology, Inc. for Geographic Information System infrastructure data to increase the contract amount by \$100,000 for an amount not to exceed \$287,401, adopt the use policy, and extend the contract term through December 30, 2025.

### Attachment 2: Cyclomedia Technology, Inc. – Street Smart Screen Shot



The screenshot shows geospatial data (12/17/2020) which informs staff of where city assets are located and provide historical records.

### Attachment 3: NexGen Screen Shot of CycloMedia Captured and Imported Assets



Berkeley Information  
Technology

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## Surveillance Use Policy Street Level Imagery Project

### A. PURPOSE

The City desires to hire a contractor, CycloMedia, to provide the City with location based 360-degree street level imagery of the City's infrastructure assets in the Public Right of Way including, but not limited to, street signs, traffic signals, pavement marking, trees, and storm drain infrastructure. CycloMedia will also provide the City with an application, Street Smart™, to access the street level imagery that is collected.

Street level imagery will be utilized exclusively by authorized City staff for infrastructure asset management and planning activities. The street level imagery of City infrastructure assets in the Public Right of Way that is provided to the City will not consist of information that is capable of being associated with any individual or group.

This policy identifies the information that is collected, how it will be used, by whom, and what precautions will be taken to ensure that any information that is capable of being associated with any individual or group is properly disposed of or protected.

### B. AUTHORIZED USE

The 360-degree street level imagery that will be provided to the City will be used exclusively only by authorized City staff to create an accurate and current inventory for the following infrastructure assets:

- Bus pads / stops
- Pavement marking
- Maintenance Access Holes
- Storm drains
- Pavement Striping
- Signs
- Curb paint color
- Street trees
- Parking meters
- Traffic lights
- Pedestrian Signal

The information that is provided to the City consists of a high definition, three-dimensional map that provides precise measurements for distances, clearances and elevations to enable the City to remotely inspect the City's infrastructure assets in the Public Right of Way. Street level imagery will be incorporated into the City's Geographic Information System (GIS) and work order and asset management system and can be viewed from the desktop of only authorized City staff through the Street Smart™ application.



Office of the City Manager

CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Liam Garland, Director, Department of Public Works  
 Subject: Grant Application: Highway Safety Improvement Program Cycle 11

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to submit a grant application to the California Highway Safety Improvement Program (HSIP) Cycle 11 for the following project: Protected Left-Turn Signals at multiple signalized intersections for up to \$6 million, and accept the grant if awarded, and execute any resultant agreements and amendments.

FISCAL IMPACTS OF RECOMMENDATION

If awarded, this grant would provide a total of up to \$6,000,000 of competitive grant revenue to the City's State Capital Grants Fund (Fund 306) for traffic safety improvements at multiple signalized intersections starting in FY 2023. City matching funds are not required for this type of project under the HSIP program.

CURRENT SITUATION AND ITS EFFECTS

The HSIP provides funding to agencies to install specific counter measures to enhance traffic safety on public streets and highways. One of these counter measures is converting left turn phases at signalized intersections from permissive to protected. The term "permissive left turn" refers to the situation where drivers at signalized intersections make left turns using the same green light that is used by drivers continuing straight. This occurs in Berkeley where the signal face lacks a left-turn arrow to provide a dedicated phase for making a left turn. Drivers making a permissive left turn must yield to oncoming motor and bicycle traffic and pedestrians in the crosswalk that the driver's vehicle is about to cross. Installation of signal heads with left-turn arrows allows for the provision of a "protected left turn" wherein the driver has a dedicated signal phase for making a left turn. The driver is protected from oncoming traffic, which is stopped at a red light on the opposite side of the intersection, and pedestrians and bicyclists are protected from left-turning traffic due to proceeding during a separate signal phase. The locations included in the City's Protected Left-Turn Signal project would be selected based on the number of reported crashes related to left turns, as required by the HSIP Program.

### BACKGROUND

The proposed project is consistent with the City's adopted Vision Zero Action Plan. The Plan show violations of the pedestrian right of way at a crosswalk as the second most prevalent traffic violation associated with severe and fatal collisions in Berkeley, after unsafe speed. The Plan also shows that failure to yield while making left or U-turns is the third most prevalent traffic violation associated with severe and fatal collisions in Berkeley. By providing a dedicated signal phase for left and U-turns at various locations, the Protected Left-Turn Signal Project will reduce collisions caused by driver failure to yield while making these maneuvers.

The overall purpose of the California HSIP is to achieve a significant reduction in traffic fatalities and serious injuries on all public roads through the implementation of infrastructure-related highway safety improvements. The California HSIP is part of the federal HSIP codified under 23 CFR 924.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The project in this grant application is designed to improve traffic safety for people walking and riding bicycles for transportation, consistent with the 2009 Berkeley Climate Action Plan Policy 5.a which calls for expanding and improving Berkeley's bicycle and pedestrian infrastructure. The plan targets reducing transportation emissions by 80% below the year 2000 levels by 2050. The Plan further states that transportation modes, such as public transit, walking, and bicycling, must become the primary means of fulfilling the City's mobility needs in order to meet these targets. Reducing the number of collisions involving left turn movements could also reduce the number of automotive fluid spills that may occur after serious collisions. Spilled automotive fluid could otherwise drain to the Bay and contaminate the soil.

### RATIONALE FOR RECOMMENDATION

HSIP funding would allow the City to address traffic safety issues at multiple signalized intersections. The need for the project has been identified in the 2019 Berkeley Vision Zero Action Plan (Resolution No. 69,324-N.S.), as well as in the Berkeley Pedestrian Plan. These documents were the result of a robust public engagement process involving Transportation Commissioners and numerous other members of the Berkeley community. Not applying would mean foregoing up to \$6,000,000 in potential grant funding.

### ALTERNATIVE ACTIONS CONSIDERED

The City could choose not to apply for these funds. However, no alternative funding source has been identified to complete this traffic safety project.

### CONTACT PERSON

Farid Javandel, Transportation Division Manager, Public Works, 981-7061  
Beth Thomas, Principal Planner, Public Works, 981-7068  
Eric Anderson, Associate Planner, Public Works, 981-7062

Attachment:

1: Resolution

RESOLUTION NO. -N.S.

GRANT APPLICATION: HIGHWAY SAFETY IMPROVEMENT PROGRAM FOR  
PROTECTED LEFT-TURN SIGNALS AT MULTIPLE INTERSECTIONS

WHEREAS, the overall purpose of the California Highway Safety Improvement Program is to achieve a significant reduction in traffic fatalities and serious injuries on the State's public roads through the implementation of infrastructure-related highway and street safety improvements; and

WHEREAS, funding for local agency infrastructure projects is available in Cycle 11 of the California Highway Safety Improvement Program; and

WHEREAS, permissive left turns at signalized intersections can lead to increased fatal and severe collisions; and

WHEREAS, the City has made a commitment to promoting projects that meet the City's Vision Zero Policy (Resolution No. 68,371-N.S.) goal of zero fatal and severe collisions by 2028; and

WHEREAS, signal modifications to eliminate conflicts between left-turning traffic and pedestrians are among the potential safety improvement measures proposed in the 2020 Berkeley Pedestrian Plan; and

WHEREAS, if awarded, the grant funds will be placed in the City's State Capital Grants Fund (Fund 306) starting in FY 2023.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to submit a grant application to the California Highway Safety Improvement Program for traffic safety improvements at certain signalized intersections citywide for the amount of up to \$6 million, and accept the grants awarded, and execute any resultant agreements and amendments.







Disaster and Fire Safety Commission

ACTION CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
 From: Disaster and Fire Safety Commission  
 Submitted by: Jose Luis Bedolla, Chairperson, Disaster and Fire Safety Commission  
 Subject: Approval of Additional Disaster and Fire Safety Commission Meeting

RECOMMENDATION

Adopt a Resolution approving the request from the Disaster and Fire Safety Commission to hold one additional meeting in calendar year 2022.

FISCAL IMPACTS OF RECOMMENDATION

Minimal staff time and resources.

CURRENT SITUATION AND ITS EFFECTS

On April 27, 2022, the Disaster and Fire Safety Commission held special meetings to discuss and make recommendations on the Measure FF and Measure GG Budget as presented by the Berkeley Fire Department. Since this was a special meeting that was not on the regular meeting calendar, unless City Council approves an additional meeting, a regularly scheduled meeting during the remainder of the calendar year must be cancelled.

On May 25, the commission passed a motion to request approval for one additional meeting.

Motion to request from City Council one additional meeting for 2022: Dean, Second: Bradstreet, Vote: (6 Ayes: Bedolla, Dean, Bradstreet, Cutler, Simmons, Degenkolb;; 0 Noes;; 2 Absent: Rader, Stein; 0 Abstain;)

BACKGROUND

On December 12, 2014, Berkeley City Council adopted Resolution No. 66,861-N.S. that established a Commission Meeting Frequency Schedule for 2015. The Disaster and Fire Safety Commission was allocated a maximum of ten meetings a year. Additional meetings require Council approval.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

RATIONALE FOR RECOMMENDATION

If an additional meeting is not approved, the regular commission meeting scheduled for December 7, 2022 must be cancelled. The lack of these meetings would result in an approximately 3 month gap in meeting for the commission. In addition, December 7 Disaster and Fire Safety Commission meeting is a critical meeting and opportunity for public input within the Community Wildfire Protection Plan (CWPP) development process.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

Keith May, Assistant Fire Chief, Berkeley Fire Department, 510-981-5508

Attachments:

1: Resolution

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

APPROVAL FOR ONE ADDITIONAL DISASTER AND FIRE SAFETY COMMISSION  
MEETING IN CALENDAR YEAR 2022

WHEREAS, on December 12, 2014, the Berkeley City Council adopted Resolution No. 66,861-N.S. that established a Commission Meeting Frequency Schedule which limited the Disaster and Fire Safety Commission to a frequency of 10 meetings during calendar year 2022; and

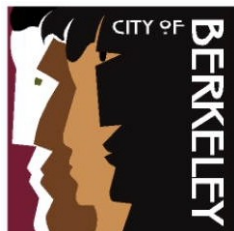
WHEREAS, the Disaster and Fire Safety Commission convened a special meeting on April 27, 2022 to make a recommendation on the Measure FF and Measure GG Budget and Expenditures as presented by the Fire Department; and

WHEREAS, without City Council approval for additional meetings, the Disaster and Fire Safety Commission meetings scheduled for December 7, 2022 will be cancelled; and

WHEREAS, the Disaster and Fire Safety Commission passed a motion on May 25, 2022, to request from City Council one additional meeting for 2022, Motion: Dean, Second: Bradstreet, Vote: (6 Ayes: Bedolla, Dean, Bradstreet, Cutler, Simmons, Degenkolb;; 0 Noes;; 2 Absent: Rader, Stein; 0 Abstain)

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council authorized the Disaster and Fire Safety Commission to convene for one additional meeting in calendar year 2022.





Office of the Mayor

CONSENT CALENDAR

July 26, 2022

To: Honorable Members of the City Council;

From: Mayor Jesse Arreguín

Subject: Authorize Three Additional Meetings in 2022 for the Homeless Services Panel of Experts

RECOMMENDATION

Authorize three additional meetings for the Homeless Services Panel of Experts for the calendar year, 2022.

CURRENT SITUATION AND ITS EFFECTS

The Homeless Services Panel of Experts (HSPE) has met three additional times prior to June 30, 2022 to make budget recommendations on the allocation of Measure P revenues. HSPE has also been merged with the Homeless Commission which now requires developing and reviewing policy recommendations on homelessness and reviewing and making recommendations for community agency funding.

HSPE needs to meet in September, October and November 2022 to conduct its regular work, incorporate the work of the Homeless Commission and prepare for the review of community-based organizations as required for future funding cycles.

FISCAL IMPACT

Staff time and commissioner stipends, if any.

CONTACT

Jesse Arreguín, Mayor (510) 981-7100





CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Rigel Robinson and Councilmember Sophie Hahn  
Subject: Resolution Supporting the Living Wage Act of 2022

### RECOMMENDATION

Adopt a Resolution supporting the Living Wage Act of 2022 to increase the California state-wide minimum wage to \$18 on a gradual timeline.

### BACKGROUND

The Living Wage Act of 2022 is a ballot initiative that would increase the state's minimum wage to \$18/hr over a staggered and gradual timeline, with a wage increase of \$1 every year. For employers with 26 or more employees, the \$15 minimum wage would begin to increase in 2023, reaching \$18 by January 1st, 2025. For employers with 25 or fewer employees, the minimum wage would begin to increase in 2024, reaching an \$18 minimum wage by January 1st, 2026.<sup>1</sup>

The Living Wage Act would continue the increases in the minimum wage initiated by Senate Bill 3 (SB 3), authored by Senator Mark Leno in 2016. SB 3 increased the state's minimum wage to \$15 per hour also using a staggered timeline, with implementation dates depending on employer size. Under SB 3, the \$15 minimum wage came into effect on January 1st, 2022 for employers of 26 or more employees, and will take effect on January 1st, 2023 for employers of 25 or fewer employees.

The City of Berkeley already enforces a higher minimum wage than the state, with an inflation adjusted rate set on July 1st of every year. The new wage increase is determined by the previous calendar year's increase in the Consumer Price Index for urban wage earners and clerical workers in the San Francisco-Oakland-San Jose Area.<sup>2</sup> Given that Berkeley's current minimum wage is \$16.99 per hour, it is likely that the local minimum wage will keep pace above the increases to the state minimum wage from the Living Wage Act of 2022. The following table lists the increases to the state minimum wage proposed by the Living Wage Act of 2022 and the already scheduled increases to the Berkeley minimum wage.

<sup>1</sup> [https://ballotpedia.org/California\\_\\$18\\_Minimum\\_Wage\\_Initiative\\_\(2022\)](https://ballotpedia.org/California_$18_Minimum_Wage_Initiative_(2022))

<sup>2</sup> <https://berkeley.municipal.codes/BMC/13.99.040>

| Date of Effect | Living Wage Act<br>(>25 workers / ≤25 workers) | Date of Effect | Berkeley Minimum Wage |
|----------------|------------------------------------------------|----------------|-----------------------|
| Jan. 1, 2022   | \$15.00 / \$15.00                              | July 1, 2022   | \$16.99               |
| Jan. 1, 2023   | \$16.00 / \$15.00                              | July 1, 2023   | \$16.99 + CPI         |
| Jan. 1, 2024   | \$17.00 / \$16.00                              | July 1, 2024   | 2023 MW + CPI         |
| Jan. 1, 2025   | \$18.00 / \$17.00                              | July 1, 2025   | 2024 MW + CPI         |
| Jan. 1, 2026   | \$18.00 / \$18.00                              | July 1, 2026   | 2025 MW + CPI         |
| Jan. 1, 2027   | \$18.00 + CPI                                  | July 1, 2027   | 2026 MW + CPI         |

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, Council District 7, (510) 981-7170

Attachments:

1: Resolution

2: Ballot Initiative Text:

[https://ballotpedia.org/California \\$18 Minimum Wage Initiative \(2022\)](https://ballotpedia.org/California_$18_Minimum_Wage_Initiative_(2022))



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

RESOLUTION IN SUPPORT OF THE LIVING WAGE ACT OF 2022

WHEREAS, the cost of living in California continues to increase dramatically due to unprecedented inflation and an ongoing housing crisis; and

WHEREAS, a sufficient minimum wage is necessary to access fundamental human rights, including housing, food, and healthcare; and

WHEREAS, the COVID-19 pandemic has exacerbated economic instability for Californians, and workers are hesitant to rejoin a more hazardous workforce for insufficient wages; and

WHEREAS, the minimum wage for large employers in California has no future increases scheduled; and

WHEREAS, the Living Wage Act of 2022 proposes to raise the minimum wage by one dollar per hour each year for three years to \$18 an hour by January 1, 2025; and

WHEREAS, an insufficient minimum wage reinforces intergenerational income inequality and perpetuate historical inequities that disproportionately impact people of color; and

WHEREAS, the lowest-paid workers in the state would gain \$6,000 per year in full time employment if the measure passes; and

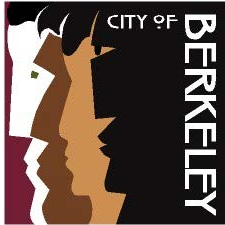
WHEREAS, the Living Wage Act of 2022 has already collected more than one million signatures and is scheduled to be on the November ballot.

NOW THEREFORE, BE IT RESOLVED that the City of Berkeley hereby endorses the Living Wage Act of 2022; and

BE IT FURTHER RESOLVED that the City of Berkeley may be listed as a supporter by the official proponents of the measure; and

BE IT FURTHER RESOLVED that copies of this resolution will be sent to Senator Nancy Skinner, Assemblymember Buffy Wicks, and Governor Gavin Newsom.





Kate Harrison  
Councilmember District 4

## **REVISED AGENDA MATERIAL for Supplemental Packet 1**

**Meeting Date:** February 25, 2020

**Item Number:** 23

**Item Description:** **Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras**

**Submitted by:** Councilmember Harrison

### **Revisions**

Revised the following Berkeley Police Department (BPD) proposed Policies 422, Policy 1302 and 1302(a) as follows:

1. Clarified that the intended purpose of ALPR technology is to capture and store digital license plate data and images for parking and scofflaw enforcement, while also recognizing data retained by BPD (limited to positive ALPR hits) may only be used to support specific criminal investigations.
2. Removed blanket provision that reasonable suspicion or probable cause is not required before ALPR use.
3. Removed ALPR crime scene canvass provision and blanket policy of entering plates into the ALPR system in an attempt to identify suspect vehicles.
4. Clarified that it shall be a violation of City policy to share a login with anyone outside of the City of Berkeley, except in cases of disaster or emergency that do not allow time for proper procedures to be followed.
5. Clarified that unauthorized access or data breaches shall be reported immediately to the City Manager.

6. Consistent with the Surveillance Ordinance BMC 2.99.020 (2) (a), clarified that third-party data-sharing shall be subject to non-privileged and non-confidential City Council notification.

## **Rationale**

Proposed Policies 1302 and 422 inappropriately expand the scope of permitted deployments of Automated License Plate Readers (ALPR) to “support criminal investigations” and “canvass license plates around any crime scene.” Both policies instruct officers that “[p]artial license plates reported during major crimes should be entered into the ALPR system in any attempt to identify suspect vehicles.”<sup>1</sup>

Council has neither given policy nor budgetary approval for such proposed ALPR uses and therefore the Resolution as proposed by staff should not be accepted without revision.

The proposed BPD Policies 1302 and 422 are inconsistent with the scope of the following effective Council and BPD policies regarding ALPR:

1. *Resolution No. 68,085-N.S.*

- Resolution No. 68,085-N.S. authorizes the collection of ALPR data for a single use: anonymized parking data supporting the goBerkeley parking program.

2. July 11, 2017 City Council Annotated Agenda

- The Annotated Agenda notes Council direction to the City Manager to amend Section 7.f of General Administrative Order #0001-2016 to defer any release of data until the surveillance policy and ordinance are adopted. To date, the City Manager has not amended Order #0001-2016.

3. *BPD General Administrative Order #001-2016*

- Section 1 of the effective BPD General Administrative Order #001-2016 specifies that only the BPD Parking Enforcement and Traffic Units may use ALPRs.
- Section 9 specifies further that “parking and scofflaw enforcement” are the only permitted use and deployment for ALPR technology in the City of Berkeley.

4. *Contract No. 9977*

- The scope of Contract No. 9977 is limited to the purchase of ALPR units in service of parking enforcement activities.

## **Attachments**

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<sup>1</sup> Sections 1302.2 (b) - (c); Sections 422.4 (b) - (c).

1. Revised Policies 422, Policy 1302 and 1302(a)
2. July 11, 2017 City Council Annotated Agenda
3. BPD General Administrative Order #001-2016
4. Contract No. 9977

**PROPOSED D4 AMENDMENTS****BPD Policy Manual 422****Automated License Plate Readers (ALPRs)****422.1 PURPOSE AND SCOPE**

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

**422.2 POLICY**

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images [for parking and scofflaw enforcement](#) while recognizing the established privacy rights of the public. All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

**422.3 ADMINISTRATION**

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

**422.3.1 ALPR ADMINISTRATOR**

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

**422.4 USE OF THE ALPR**

~~The intended purpose of an ALPR shall only be used is for official law enforcement business parking and scofflaw enforcement.~~

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

## PROPOSED D4 AMENDMENTS

(a) An ALPR may be used by Berkeley Police Department Parking Enforcement for parking and scofflaw enforcement.

(b) ~~An ALPR data obtained from parking and scofflaw enforcement may be used to support a specific criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.~~

~~(c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped vehicles to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.~~

No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

No ALPR operator may access California Law Enforcement Telecommunications System

(CLETS) data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

### 422.5 DATA COLLECTION AND RETENTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review.

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information

Technology (IT Department and associated ALPR system providers/vendors as identified below.

IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

(a) Collected images and metadata of reads showing violations will not be stored for more than 365 days.

(b) Metadata of reads showing violations will be stored for up to 30 days. Images of reads not showing violations will not be transferred to the server.

### 422.6 ACCOUNTABILITY

**PROPOSED D4 AMENDMENTS**

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code§ 1798.90.51; Civil Code§ 1798.90.53):

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.
- (c) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code§ 1798.90.52). It shall be a violation of this policy to share a login with anyone outside of the City of Berkeley, except in cases of disaster or emergency that do not allow time for proper procedures to be followed.
- (d) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action or parking enforcement.
- (e) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (f) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.
- (g) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. For security or data breaches, see the Records Release and Maintenance Policy. Any unauthorized access or data breach shall be reported immediately to the City Manager.

**422.7 RELEASING ALPR DATA**

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
  1. The name of the agency.
  2. The name of the person requesting.
  3. The intended purpose of obtaining the information.
  4. The related case number.



**PROPOSED D4 AMENDMENTS**

(b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.

(c) The approved request is retained on file. Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

[Third-party data-sharing shall be subject to non-privileged and non-confidential City Council notification pursuant to BMC 2.99.020 \(2\) \(a\).](#)

**422.8 SCOFFLAW ENFORCEMENT**

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.

The Parking Enforcement Unit will utilize vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV's Stolen Vehicle System (SVS) database for wanted and stolen vehicles.

The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding citation fees.

The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website.

When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "go Berkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit

**PROPOSED D4 AMENDMENTS**

violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.

**PROPOSED D4 AMENDMENTS****Surveillance Use Policy - ALPR****1302.1 PURPOSE**

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department ALPR Policy #422 and adds elements as required by BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images for parking and scofflaw enforcement while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review. (Ref. policy 422.2)

**1302.2 AUTHORIZED AND PROHIBITED USES USE**

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53). (Ref. policy 422.4)

(a) ~~The intended purpose of An ALPR shall only be used is~~ for parking and scofflaw enforcement. ~~official law enforcement business.~~

(b) ~~An ALPR data obtained from parking and scofflaw enforcement~~ may be used to support a ~~patrol operation or specific~~ criminal investigation. ~~Reasonable suspicion or probable cause is not required before using an ALPR.~~

~~(c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.~~

**1302.3 DATA COLLECTION**

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law. (Ref. policy 422.5)

**1302.4 DATA ACCESS**

(a) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

(b) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.

**PROPOSED D4 AMENDMENTS**

(c) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

**1302.5 DATA PROTECTION**

All saved data will be safeguarded and protected by both procedural and technological means.

The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code§ 1798.90.51; Civil Code§ 1798.90.53) (Ref. policy 422.6):

(a) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52). It shall be a violation of this policy to share a login with anyone outside of the City of Berkeley, except in cases of disaster or emergency that do not allow time for proper procedures to be followed.

(b) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.

(c) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.

(d) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question. Any unauthorized access or data breach shall be reported immediately to the City Manager.

**1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:**

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

**1302.7 DATA RETENTION**

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the

City of Berkeley's Information Technology (IT) department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role

## PROPOSED D4 AMENDMENTS

will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence. (Ref. policy 422.5)

(a) Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.

### 1302.8 PUBLIC ACCESS

(a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. (Ref. policy 422.6 (a))

(b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requester in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question. (Ref. policy 422.6 (b))

### 1302.9 THIRD-PARTY DATA-SHARING

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. ALPR data is subject to the provisions of BPD Policy 415, and hence may not be shared with federal immigration enforcement officials.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.

[Third-party data-sharing shall be subject to non-privileged and non-confidential City Council notification pursuant to BMC 2.99.020 \(2\) \(a\).](#)

(Ref. policy 422.6 (e))

### 1302.10 TRAINING

Training for the operation of ALPR Technology shall be provided by BPD personnel. All BPD employees who utilize ALPR Technology shall be provided a copy of this Surveillance Use Policy.

### 1302.11 AUDITING AND OVERSIGHT

ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. (Ref. policy 422.6 (g))

### 1302.12 MAINTENANCE

**PROPOSED D4 AMENDMENTS**

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division

Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data. (Ref. policy 422.3)

**1302.12.1 ALPR ADMINISTRATOR**

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq.

This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref. policy 422.3.1):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

**PROPOSED D4 AMENDMENTS****1302 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT-AUTOMATED LICENSE PLATE READER DEVICES****AUTOMATED LICENSE PLATE READER (ALPR) DEVICES**

Automated License Plate Readers (ALPRs) are high-speed, computer controlled camera systems that are typically mounted on Berkeley Police Department Parking Enforcement

**Vehicles.**

ALPRs capture license plate numbers which come into view, along with the location, date and time. The data, which includes a photo of the front or the back of the car displaying the license plate, is then uploaded to a central server.

**B. PURPOSE**

The Berkeley Police Department's Parking Enforcement Unit utilizes vehicles equipped with ALPRs to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's also access information in the California Law Enforcement Telecommunications System's (CLETS) Stolen Vehicle System (SVS) database, which provides information on matches for stolen and wanted vehicles.

The Berkeley Police Department's Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding parking citation fees.

**C. LOCATION**

Parking Enforcement vehicles travel throughout the city; using the ALPRs as described above.

**D. IMPACT**

The Berkeley Police Department is dedicated to promoting public safety with the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with ALPR Units will help to ensure unauthorized use of its data. The procedures will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

**E. MITIGATION**

All saved data will be safeguarded and protected by both procedural and technological means which are implemented to safeguard the public from any impacts identified in subsection (D).

**PROPOSED D4 AMENDMENTS**

See subsection (G) for further.

**F. DATA TYPES AND SOURCES**

Photographs of license plates and location data may be obtained through the use of ALPR Units.

**G. DATA SECURITY**

The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code§ 1798.90.51; Civil Code§ 1798.90.53):

1. All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code§ 1798.90.52). It shall be a violation of this policy to share a login with anyone outside of the Berkeley Police Department, except in case of disaster or emergency that does not allow time for proper procedures to be followed.
2. Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department related civil or administrative action and parking enforcement.
3. Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
4. Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

**H. FISCAL COST**

In 2015, Public Works brought an ALPR Contract to City Council. Council approved a contract for Public Works to buy five Genetec ALPR Units with PCS Mobile communication, for a pilot program for \$450,000.

In 2017, after success with the program, City Council approved an amendment to the contract, allowing Public Works to purchase 15 more ALPR Units for Parking Enforcement vehicles, and to continue its use of PCS Mobile, for 1,200,000. The money was allocated from the goBerkeley/Federal Highway Administration Parking Meter Fund.

Yearly service for the ALPR Units includes warranties, hosting services, cellular connection, mobile computing, and training which varies. The costs through fiscal year 2022 are currently estimated at \$1,175,000.

Personnel costs are minimal in that the ALPR Units are used as a resource during normal working hours.

**I. THIRD PARTY DEPENDENCE AND ACCESS**

1. Vendor Access-Scofflaw Enforcement: The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:



## PROPOSED D4 AMENDMENTS

a. All data captured by the ALPR is stored on the booting vehicle's laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.

b. When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

2. Vendor Access-General Parking Enforcement and goBerkeley Program: The contracted vendor for the City's Parking Enforcement ALPR is currently Genetec. The city uses Genetec ALPRs to support efficient enforcement of posted time limit parking and Residential Preferential Parking permits.

a. In addition, Genetec periodically provides reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that the City's program can analyze data about parking demand. These reports do not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle.

Rather, the reports consist of completely anonymized information, using identification numbers that are not associated with a particular license plate or registered owner.

b. The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and Residential Permit Pass (RPP) area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.

3. Department of Information Technology Access: Technical support and assistance for ALPR's is provided by the City of Berkeley's Department of Information Technology (IT) and associated ALPR system providers/vendors as identified herein. IT staff who do not have the proper clearance and training do not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT provides initial infrastructure set-up, and continued systems support as needed to ensure efficient and accurate performance of the ALPR hardware and software. Only IT staff members who have successfully undergone DOJ background checks and training are authorized by the Chief of Police to view specific ALPR records.

4. Other Law Enforcement Agency Access: ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. Requests for ALPR data by non-law enforcement or nonprosecutorial agencies will be processed as provided in the Records Maintenance and

Release Policy (Civil Code§ 1798.90.55). Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.

5. Member Access: No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training. No ALPR operator may access CLETS data unless

## PROPOSED D4 AMENDMENTS

otherwise authorized to do so. If practicable, the officer should verify an ALPR response through CLETS before taking enforcement action that is based solely on an ALPR alert.

6. Public Access: Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

[7. Third-party data-sharing is subject to non-privileged and non-confidential City Council notification pursuant to BMC 2.99.020 \(2\) \(a\).](#)

### J. ALTERNATIVES

None.

### K. EXPERIENCE OF OTHER ENTITIES

The use of ALPR technology is common amongst law enforcement agencies throughout the country, in support of parking enforcement, and law enforcement criminal investigations.

**ANNOTATED AGENDA  
BERKELEY CITY COUNCIL MEETING**

**Tuesday, July 11, 2017**

**6:00 P.M.**

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO  
DISTRICT 2 – CHERYL DAVILA  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – KRISS WORTHINGTON  
DISTRICT 8 – LORI DROSTE

**Preliminary Matters**

**Roll Call:** 6:03 p.m.

**Present:** Bartlett, Davila, Droste, Hahn, Maio, Wengraf, Worthington, Arreguin

**Absent:** Harrison

Councilmember Harrison present 6:14 p.m.

**Ceremonial Matters:**

1. Recognition of UN Association of California, Alpha Kappa Alpha, and Alpha Nu Omega

**City Auditor Comments:**

1. Recognition of Public Works for completing the Equipment Fund Audit

**City Manager Comments:**

1. Launch of Berkeley Bike Share Program on July 11, 2017

**Public Comment on Non-Agenda Matters:** 3 speakers.

**Public Comment on Consent Calendar and Information Items Only:** 1 speakers.

**Consent Calendar**

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

**Vote:** All Ayes.

## Consent Calendar

1. **Referral Response: Healthy Default Beverages with Children's Meals; Adding BMC Chapter 12.72**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,560-N.S. adding Berkeley Municipal Code (BMC) Chapter 12.72 to require that any food vendor that sells a children's meal with a beverage included shall make the default beverage offered with the children's meal either water or milk, with no added sweeteners.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Paul Buddenhagen, Housing and Community Services, 981-5400  
**Action:** Adopted second reading of Ordinance No. 7,560-N.S.
  
2. **Technical Corrections to the Zoning Ordinance, Amending Berkeley Municipal Code Sub-Titles 23D and 23E**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,561-N.S. amending Berkeley Municipal Code Sub-Titles 23D and 23E to make non-substantive, technical corrections to the Zoning Ordinance.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** None  
Contact: Timothy Burroughs, Planning and Development, 981-7400  
**Action:** Adopted second reading of Ordinance No. 7,561-N.S.
  
3. **Changes to Affordable Housing Mitigation Fee; Amending Berkeley Municipal Code Section 22.20.065**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,562-N.S. amending BMC Section 22.20.065 related to the Affordable Housing Mitigation Fee.  
**First Reading Vote:** Ayes – Maio, Davila, Bartlett, Harrison, Hahn, Wengraf, Worthington, Arreguin; Noes – None; Abstain - Droste; Absent – None  
**Financial Implications:** See report  
Contact: Zach Cowan, City Attorney, 981-6950  
**Action:** Adopted second reading of Ordinance No. 7,562-N.S.
  
4. **FY 2018 Annual Appropriations Ordinance**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,563-N.S. adopting the FY 2018 Annual Appropriations Ordinance (AAO) in the amount of \$476,396,570 (gross appropriations) and \$424,590,046 (net appropriations).  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000  
**Action:** Adopted second reading of Ordinance No. 7,563-N.S.

## Consent Calendar

- 5. Housing Trust Fund Recommendation – Harper Crossing**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: 1) Approving a Housing Trust Fund (HTF) reservation for Satellite Affordable Housing Associates' Harper Crossing in the amount of \$285,464, and 2) Authorizing the City Manager to execute all original or amended documents or agreements to effectuate this action.  
**Financial Implications:** See report  
 Contact: Paul Buddenhagen, Housing and Community Services, 981-5400  
**Action:** Adopted Resolution No. 68,077–N.S.
- 6. Housing Trust Fund Recommendation – Northern California Land Trust (NCLT) Scattered Site Rehabilitation**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution reserving funds for Northern California Land Trust's Scattered Sites rehabilitation, specifically by: 1. Waiving Section III.A.1 of the Housing Trust Fund (HTF) Guidelines and accepting NCLT as an eligible developer despite its lack of recent experience. 2. Adopting a finding that a City subsidy in excess of 40% of total development costs is justified by the nature of Northern California Land Trust's Scattered Site Rehab and unavailability of alternative funding, as required by the HTF Guidelines, Section V.B.7. 3. Approving a HTF reservation for Northern California Land Trust's Scattered Site Rehab project, in the amount of \$569,692. 4. Authorizing City Manager to refinance the Scattered Site Rehab properties' outstanding HTF loans, with a combined balance currently estimated at \$695,000, into the new development loan with terms consistent with the HTF Guidelines. 5. Authorizing the City Manager to execute all original or amended documents or agreements to effectuate these actions. 6. Recommending that Council recommend to the Northern California Land Trust that the organization move towards establishing a Board of Directors' structure consistent with current community land trust model standards.  
**Financial Implications:** See report  
 Contact: Paul Buddenhagen, Housing and Community Services, 981-5400  
**Action:** Moved to Action Calendar. 4 speakers. M/S/C (Maio/Harrison) to adopt Resolution No. 68,078–N.S. revised to add the two Whereas clauses below, and to direct staff to include the conversion language in the loan documents with NCLT.

*BE IT FURTHER RESOLVED that NCLT educate all current tenants about the benefits of transitioning to a limited equity co-op structure, subsequently begin negotiations to make the conversion to a limited equity co-op structure, and collaborate with an organization that has the capacity and experience to conduct the education and advise on the conversion process.*

*BE IT FURTHER RESOLVED that NCLT submit quarterly financial reports and annual reports relaying the status of their financial situation and progress in changing the structure of the Board of Directors and transition to a limited equity co-op.*

**Vote:** All Ayes.

## Consent Calendar

7. **Classification and Salary: Homeless Services Coordinator**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution amending Resolution No. 67,484-N.S. Classification and Salary Resolution for Public Employees Union - Local One, to establish the classification of Homeless Services Coordinator with a monthly salary range of \$8,200 - \$9,915 effective July 11, 2017.  
**Financial Implications:** See report  
 Contact: Sarah Reynoso, Human Resources, 981-6800  
**Action:** Adopted Resolution No. 68,079–N.S.
  
8. **Contract: AMS.NET for Network Equipment and Maintenance**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract with AMS.NET, Inc. for network hardware, support, and maintenance, for a total not to exceed \$455,335 from July 1, 2017 to June 30, 2020.  
**Financial Implications:** Capital Improvement Fund - \$455,335  
 Contact: Savita Chaudhary, Information Technology, 981-6500  
**Action:** Adopted Resolution No. 68,080–N.S.
  
9. **Contract No. 10522 Amendment: Redwood Engineering Construction for Willard Park Play Area and Pathway Renovations Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 10522 with Redwood Engineering Construction for the Willard Park Play Area and Pathway Renovation project, increasing the amount by \$115,000 for an amended total amount not to exceed \$417,400.  
**Financial Implications:** Parks Tax Fund - \$417,400  
 Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700  
**Action:** Adopted Resolution No. 68,081–N.S.
  
10. **Contract No. 9044 Amendment: Building Opportunities for Self Sufficiency (BOSS)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9044 with Building Opportunities for Self Sufficiency for leaf and litter abatement services increasing the contract amount by \$120,000 for a total not to exceed \$1,722,500.  
**Financial Implications:** Zero Waste Fund - \$120,000  
 Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,082–N.S.

## Consent Calendar

- 11. Contract No. 9488B Amendment: Berry Brothers Towing for Towing Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9488B with Berry Brothers Towing to provide towing services for Department of Public Works Equipment Maintenance, increasing the contract amount \$20,000 for an amended total not to exceed of \$110,000.  
**Financial Implications:** Equipment Maintenance Fund - \$20,000  
 Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,083–N.S.
- 12. Contract No. 9730A Amendment: Fairbanks Scales, Inc.**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9730A with Fairbanks Scales, Inc. for preventative maintenance and repairs on various scales at the City’s Solid Waste Management and Transfer Station, increasing the contract amount by \$50,000 for a total contract amount not to exceed \$140,000, and extending the term of the contract to June 30, 2019.  
**Financial Implications:** Zero Waste Fund - \$50,000  
 Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,084–N.S.
- 13. Contract No. 9977 Amendment: Portable Computer Systems dba PCS Mobile to Purchase 15 Automated License Plate Recognition (ALPR) Units**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9977 with Portable Computer Systems dba PCS Mobile to purchase fifteen additional Automated License Plate Recognition units to increase parking enforcement operations capacity and effectiveness, and increasing the total \$1,200,000 for a new amount not to exceed \$1,650,000, and extending the term from May 30, 2020 to June 30, 2022.  
**Financial Implications:** Parking Meter Fund - \$1,200,000  
 Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Moved to Action Calendar. 8 speakers. M/S/C (Worthington/Wengraf) to adopt Resolution No. 68,085–N.S. authorizing the City Manager to execute an amendment to Contract No. 9977 with Portable Computer Systems dba PCS Mobile to purchase fifteen additional Automated License Plate Recognition units to increase parking enforcement operations capacity and effectiveness, and increasing the total \$1,200,000 for a new amount not to exceed \$1,650,000, and extending the term from May 30, 2020 to June 30, 2022; and amend Section 7.f of Administrative Order #0001-2016 to defer any release of data until the surveillance policy and ordinance are adopted.  
**Vote:** Ayes – Maio, Harrison, Wengraf, Worthington, Droste, Arreguin; Noes – Davila, Bartlett, Hahn.

## Consent Calendar

- 14. Contract No. 10472 Amendments: ELS Architecture & Urban Design and Contract No. 10464 Noll & Tam Architects: On-Call Architectural Services**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions authorizing the City Manager to execute amendments to the following contracts for on-call architectural services for a combined total of \$2,000,000 as follows:
1. ELS Architecture and Urban Design, Contract No. 10472, increasing the contract amount by \$1,000,000, for a total not-to-exceed amount of \$1,500,000 and extending the contract period through June 30, 2019;
  2. Noll & Tam Architects, Contract No. 10464, increasing the contract amount by \$1,000,000, for a total not-to-exceed amount of \$1,500,000 and extending the contract period through June 30, 2019.
- Financial Implications:** Various Funds - \$2,000,000  
 Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,086–N.S. (ELS) and Resolution No. 68,087–N.S. (Noll & Tam)
- 15. Contract: Chrisp Company for Roadway Thermoplastic Markings**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Roadway Thermoplastic Markings Project, 16-11078-C; and authorizing the City Manager to execute a five year contract period from July 1, 2017 through June 30, 2022, and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications with Chrisp Company in an amount not to exceed \$1,250,000.  
**Financial Implications:** Various Funds - \$1,250,000  
 Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,088–N.S.
- 16. Contract: Clean Harbors, Inc. for Hazardous Waste Management Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract with Clean Harbors, Inc. for hazardous waste management, removal, and disposal services for the City of Berkeley in an amount not-to-exceed \$150,000 for the period August 1, 2017 through June 30, 2020.  
**Financial Implications:** Various Funds - \$150,000  
 Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,089–N.S.



## Consent Calendar

- 17. Mitigating Impacts of Outdoor Air Quality on Indoor Air Quality in Berkeley**  
**From: Community Environmental Advisory Commission**  
**Recommendation:** Direct the City Manager to request the Planning Commission use the analyses presented here, and the draft provided in Appendix II, to create new Standard Conditions of Approval (SCA) for new building construction near major sources of air pollution, to achieve an acceptable level of indoor air quality (IAQ) for sensitive receptors. Total spending for required IAQ mitigations shall be at 1-2% of estimated total project costs.  
**Financial Implications:** See report  
 Contact: Nabil Al-Hadithy, Commission Secretary, 981-7400  
**Action:** Approved recommendation as modified below.

*Refer the item to the Planning Commission to consider the analyses presented here, and the draft provided in Appendix II, to create new Standard Conditions of Approval (SCA) for new building construction near major sources of air pollution, to achieve an acceptable level of indoor air quality (IAQ) for sensitive receptors.*

- 18. Ending Tax Breaks for Private Prisons Act**  
**From: Peace and Justice Commission**  
**Recommendation:** Adopt a Resolution: 1. Directing the City Clerk to send a letter to Rep. Devin Nunes (R-CA) of the Joint Committee on Taxation with copies to all members of the Congressional Joint Committee on Taxation, and the Senate Finance Committee calling on Congress to pass the “Ending Tax Breaks for Private Prisons Act;” and 2. Having the Council of the City of Berkeley sign the MoveOn.org online petition telling congress to end private prison tax breaks.  
**Financial Implications:** None  
 Contact: Eric Brenman, Commission Secretary, 981-5400  
**Action:** Moved to Action Calendar. 1 speaker. M/S/C (Worthington/Maio) to adopt Resolution No. 68,090–N.S.

**Vote (Recommendation #1):** All Ayes.

**Vote (Recommendation #2):** Ayes – Maio, Davila, Bartlett, Harrison, Wengraf, Worthington, Droste, Arreguin; Noes – None; Abstain – Hahn.

## Council Consent Items

- 19. Vitality of University Avenue**  
**From: Councilmembers Maio, Davila, and Harrison**  
**Recommendation:** Refer to the City Manager and Economic Development to analyze storefront vacancies on University Avenue and make recommendations on how to create a more vibrant streetscape on our main boulevard.  
**Financial Implications:** Staff time  
 Contact: Linda Maio, Councilmember, District 1, 981-7110  
**Action:** Approved recommendation.
- 20. Support Oakland Public Defender Rodney Brooks' Efforts to Keep In-Custody Arraignment Hearings in Oakland and Not Move Them to the East County Hall of Justice in Dublin**  
**From: Councilmembers Davila and Harrison, and Mayor Arreguin**  
**Recommendation:** Send a letter from Berkeley City Council supporting Oakland Public Defender Rodney Brooks' efforts to keep in-custody arraignment hearings in Oakland and not move them to the East County Hall of Justice in Dublin.  
**Financial Implications:** None  
 Contact: Cheryl Davila, Councilmember, District 2, 981-7120  
**Action:** Approved recommendation.
- 21. Referral to the Community Environmental Advisory Commission: Cigarette Butt Pollution Prevention Program in South Berkeley (Item contains revised materials.)**  
**From: Councilmembers Bartlett and Harrison**  
**Recommendation:** Refer to the Community Environmental Commission (CEAC) to consider developing a Cigarette Butt Pollution Prevention Program for South Berkeley. Explore the following items: a) Location. Work with the local business associations, business owners, as well as other neighborhood and community organizations to identify key locations for cigarette butt receptacles. b) Operation. Work with local businesses to develop a system for cleanup and disposal of the contents of the receptacles. c) Cost. Identify any one-time costs associated with the program, including purchasing and installation of the receptacles. Identify any costs that should be set aside for maintenance. There should not be regular ongoing costs. CEAC should work with the businesses and neighborhoods to develop a community-based system to facilitate daily operations.  
**Financial Implications:** Staff time  
 Contact: Ben Bartlett, Councilmember, District 3, 981-7130  
**Action:** Approved recommendation as revised in Supplemental Reports Packet #1 to add Councilmember Harrison as a co-sponsor and add that the item is also referred to the City Manager.

## Council Consent Items

- 22. Support for AB 932 – Bill Giving San Francisco and San Diego Flexibility to Build Shelters and Transitional Housing for Unsheltered Homeless Residents From: Councilmembers Bartlett, Hahn, and Davila**  
**Recommendation:** Recommend that the Berkeley City Council send a letter to Senator Nancy Skinner and Governor Jerry Brown urging them to support AB 932.  
**Financial Implications:** None  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130  
**Action:** Approved recommendation with the letter revised to add the following phrase to the last sentence, “and request the addition of the City of Berkeley to the cities included in the bill.”
- 23. Support for SB 33: Bill Prohibiting Financial Institutions from Forcing Consumers to Give up Legal Rights when the Bank has Committed Intentional Fraud Against Them**  
**From: Councilmembers Bartlett, Hahn, and Davila**  
**Recommendation:** Recommend that the Berkeley City Council send a letter to Assemblymember Tony Thurmond, and Governor Jerry Brown urging them to support SB 33.  
**Financial Implications:** None  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130  
**Action:** Approved recommendation.
- 24. Support of AB 214: Postsecondary Education, Student Hunger (*Item contains revised materials.*)**  
**From: Councilmembers Harrison, Hahn, Davila, and Bartlett**  
**Recommendation:** Adopt a Resolution supporting AB 214 Postsecondary Education, Student Hunger, an act to reduce hunger and homelessness in college students in California, and sending a copy of the resolution to Governor Jerry Brown, and Assemblymembers Lorena Gonzalez Fletcher (Appropriations Chair), Frank Bigelow (Vice Chair), Richard Bloom, Raul Bocanegra, Rob Bonta, William Brough, Ian Calderon, Ed Chau, Susan Talamantes Eggman, Vince Fong, Laura Friedman, James Gallagher, Eduardo Garcia, and Adam Gray.  
**Financial Implications:** Minimal  
Contact: Kate Harrison, Councilmember, District 4, 981-7140  
**Action:** Adopted Resolution No. 68,091–N.S.

## Council Consent Items

- 25. Adopt a Resolution Approving the Allocation of \$3,131,651 in Predevelopment from the Housing Trust Fund for the Berkeley Way Project**  
**From: Councilmembers Worthington, Harrison, Hahn, and Mayor Arreguin**  
**Recommendation:** That the Council adopts a Resolution to approve the allocation of \$3,131,651 in Housing Trust Funds for the predevelopment of BRIDGE Housing Corporation and Berkeley Food and Housing Project's Berkeley Way project, in compliance with the Housing Advisory Commission's recommendation, scheduled to be voted on July 6, 2017.  
**Financial Implications:** See report  
 Contact: Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Adopted Resolution No. 68,092–N.S. as revised in Supplemental Reports Packet #2.
- 26. Support California AB 395 to Protect Internet Privacy**  
**From: Councilmember Worthington**  
**Recommendation:** That the Council support California Assembly Bill 395 (AB 395) in its aim to protect the internet security and privacy of Californians.  
**Financial Implications:** See report  
 Contact: Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Approved recommendation as Revised in Supplemental Reports Packet #2 to correct the bill number to AB 375.

## Action Calendar – Public Hearings

- 27. Amending the Berkeley Election Reform Act to Implement Public Financing**  
**From: Fair Campaign Practices Commission**  
**Recommendation:** Conduct a public hearing and upon conclusion, adopt first reading of an Ordinance amending Berkeley Municipal Code 2.12 to make changes to facilitate the implementation of the Berkeley Fair Elections Act of 2016 by a vote of not less than two-third of the City Council, in accordance with procedure for amending the Berkeley Election Reform Act set forth in Berkeley Municipal Code 2.12.051.A.  
**Financial Implications:** See report  
 Contact: Jessica Mar, Commission Secretary, 981-6950
- Public Testimony:** The Mayor opened the public hearing. 3 speakers. M/S/C (Worthington/Hahn) to close the public hearing.  
**Vote:** All Ayes.
- Action:** Adopted first reading of Ordinance No. 7,564–N.S. Second reading scheduled for July 25, 2017.  
**Vote:** All Ayes.

## Action Calendar – Old Business

**28a. Automatic Door Openers in Multi-Unit Residential Buildings** *(Continued from May 30, 2017)*

**From: Commission on Disability**

**Recommendation:** Adopt a Resolution requiring: all new construction of multi-unit residential buildings (four or more units) with a common entryway in the City of Berkeley to include automatic door openers; significant remodeling or conversion of residential multi-unit buildings with four or more units and a common entryway to include automatic door openers; and owners of existing multi-unit residential buildings (four or more units) with a common entryway must install automatic door openers at the request of a resident.

**Financial Implications:** Unknown

Contact: Ella Callow, Commission Secretary, 981-6300

**28b. Companion Report: Automatic Door Openers in Multi-Unit Residential Buildings** *(Continued from May 30, 2017)*

**From: City Manager**

**Recommendation:** The City Manager recommends the City Council evaluate the resolution requested by the Commission on Disability as an amendment to BMC § 19.28.010. If Council agrees with the substantive recommendations in the Commission on Disability (CoD) report entitled “Recommendations to Require Inclusion of Automatic Door Openers in Residential Buildings with Four or More Units and a Common Entryway,” the City Manager recommends Council consider a stand-alone ordinance (similar to BMC § 19.80) that would (1) limit the scope to privately owned buildings with four or more units and a common entryway; (2) not subsidize installation of automatic door openers by building owners/builders; (3) include language that limits the City’s responsibility to conduct inspections to ensure compliance; and (4) limit the City’s liability for torts related to automatic door openers that are installed.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, 981-6300

**Action:** 2 speakers. M/S/C (Worthington/Maio) to hold over the item to September 12, 2017.

**Vote:** All Ayes.

## Action Calendar – Old Business

29. **Housing Accountability Act** (*Continued from June 13, 2017. Item includes supplemental materials.*)

**From: City Manager**

Contact: Zach Cowan, City Attorney, 981-6950

**Action:** 5 speakers. M/S/C (Arreguin/Davila) to refer to the City Manager, Planning Commission, Zoning Adjustments Board, and Design Review Committee to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

1. Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
2. Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
3. Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
4. Quantify and set objective zooming standards and criteria under the first sentence of Government Code Section 65589.5(j) for views, shadows, and other impacts that often underlie detriment findings.

**Vote (Paragraphs 1-3):** Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Worthington, Arreguin; Noes – Bartlett, Droste.

**Vote (Paragraph 4):** Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Arreguin; Noes – Bartlett, Droste, Worthington.

Recess: 9:10 p.m. – 9:27 p.m.

30. **Amend BMC Sections 3.78.030, 040, and 050 Related to Commission Procedures** (*Continued from June 13, 2017*)

**From: Human Welfare and Community Action Commission**

**Recommendation:** Adopt a Resolution requesting that the City Manager examine the addition of language to the Berkeley Municipal Code that clarifies aspects of the management of City of Berkeley commissions and the removal and appointment of commissioners.

**Financial Implications:** See report

Contact: Wing Wong, Commission Secretary, 981-5400

**Action:** Moved to Consent Calendar. No action taken by the City Council on this item.

**Vote:** Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – Davila.

## Action Calendar – Old Business

- 31. Ordinance to Ban the Sale of Fur in Berkeley; Adding BMC Chapter 9.22**  
**From: Councilmember Worthington** (*Continued from June 13, 2017*)  
**Recommendation:** Adopt second reading of Ordinance No. 7,539-N.S. adding BMC Chapter 9.22 to eliminate the sale of fur apparel products in order to promote community awareness of animal welfare.  
 First Reading Vote: Ayes - Maio, Davila, Bartlett, Hahn, Wengraf, Arreguin; Noes – Harrison, Worthington, Droste; Abstain – None; Absent – None.  
**Financial Implications:** None  
 Contact: Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Item held over to July 25, 2017.
- 32. Support the Resilient Shoreline Program of Citizens for East Shore Parks**  
*(Continued from June 27, 2017)*  
**From: Mayor Arreguin and Councilmembers Hahn, Wengraf, and Maio**  
**Recommendation:** Adopt a Resolution supporting the Resilient Shoreline Program of Citizens for East Shore Parks (CESP) to raise awareness about the detrimental effects of sea-level rise and promote resilient shoreline solutions. Additionally, refer to the mid-year budget process a contribution of \$10,000 to participate in CESP’s Visualizing Sea-level Rise event in Berkeley.  
**Financial Implications:** General Fund - \$10,000  
 Contact: Jesse Arreguin, Mayor, 981-7100  
**Action:** Moved to Consent Calendar. Adopted Resolution No. 68.093–N.S. in support of the Resilient Shoreline Program, and Resolution No. 68,094–N.S. to authorize the expenditure of surplus funds from the Mayor’s and Councilmembers’ expense accounts for CESP from the following Councilmembers up to amounts listed: Mayor Arreguin - \$2,000; Councilmember Wengraf - \$500; Councilmember Maio - \$250; Councilmember Harrison - \$250; Councilmember Davila - \$250.
- 33. Expedited Review for Affordable Housing Projects** (*Continued from June 27, 2017. Item contains revised materials.*)  
**From: Councilmembers Hahn, Davila, and Bartlett**  
**Recommendation:** 1. Refer to the City Manager the creation of an expedited review process for housing projects in which Affordable Housing units make up more than 20% of the proposed on-site units; and  
 2. Direct the City Manager to immediately confer priority status and offer expedited review to 100% Affordable projects, pending adoption of a more formal and widely applicable expedited review process.  
**Financial Implications:** Staff time  
 Contact: Sophie Hahn, Councilmember, District 5, 981-7150  
**Action:** Item held over to July 25, 2017.

## Action Calendar – Old Business

- 34. General Fund Stability Reserve Usage Criteria** *(Continued from June 27, 2017. Item contains revised materials.)*

**From: Councilmembers Droste, Wengraf, and Maio**

**Recommendation:** Discuss the General Fund Stability Reserve Usage Policies described in the report and adopt policies such as those proposed, requiring a two-thirds vote of the City Council to amend them. Following recommendation from the City Manager, the City Council shall, from time to time, recognize and define “essential services”, “appropriate levels” of such services, and “extreme conditions”. Any draw-down of Stability Reserve funds shall coincide with the adoption of a plan to repay the dollar amount of the draw down. If adopting a repayment plan immediately is infeasible due to emergency circumstances, it shall be adopted no more than 3 months from the date of the withdrawal appropriation. The level of the Stability Reserve shall be restored as economic recovery occurs, consistent with the maintenance of essential services, with repayment to begin no more than 5 years from the date of withdrawal and be completed within 10 years from the date of withdrawal.

**Financial Implications:** See report

Contact: Lori Droste, Councilmember, District 8, 981-7180

**Action:** 4 speakers. M/S/C (Hahn/Arreguin) to continue the item to September 26, 2017.

**Vote:** All Ayes.



## Action Calendar – Old Business

### 35. **Medical Cannabis Cultivation Ordinance Revisions** *(Continued from June 27, 2017. Item contains revised materials.)*

**From: City Manager**

**Recommendation:** Consider the responses provided by the Planning Commission and Medical Cannabis Commission (MCC) to Council's referral regarding the desired maximum number of Medical Cannabis Cultivation locations (Zoning Ordinance/BMC Section 23E.72.040.A) and give direction to staff regarding any recommended changes to the Zoning Ordinance.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, 981-7400

**Action:** M/S/C (Arreguin/Maio) to suspend the rules and extend the meeting to 11:30 p.m.

**Vote:** Ayes – Maio, Davila, Bartlett, Harrison, Hahn, Wengraf, Worthington, Arreguin; Noes – None; Abstain – Droste.

**Action:** 1 speaker. M/S/Failed (Hahn/Bartlett) to adopt the proposal from Councilmember Hahn in Supplemental Reports Packet #2

1. *To initially allow 6 Standard cultivation sites at no more than 22,000 square feet per site, as allowed by State regulations, for a cumulative maximum of 132,000 square feet. The remainder of square footage, up to a cumulative maximum of 182,000 square feet, would be dedicated to a Small Sites program, reserved for local, artisan, cooperative, and green growers, with 5 additional sites allowed, each of no more than 10,000 square feet. The total combined number of Standard and Small Sites allowed would be 11, and total square footage capped at 182,000 square feet;*
2. *To direct staff to create two application processes; one for Standard Sites and another for Small Sites favoring local, artisan, cooperative, and green growers;*
3. *To allow only 1 site per operator, and create an overall preference for qualified owners from populations or groups that are or have been disproportionately targeted for enforcement, criminalization, and/or incarceration related to marijuana offenses;*
4. *One year after a site commences operations, direct staff to undertake an evaluation that includes, but is not limited to, contacting neighbors and businesses within 500 feet and evaluating potential positive and negative impacts, recommending any helpful/necessary changes to the enabling code and helping ensure the operator is in compliance with all rules and regulations. This site-by-site review will be limited to 8 sites, representing a variety of sizes and locations, as a means of identifying benefits and challenges of cultivation operations and improving the City's regulatory framework;*
5. *Once the first 11 sites have been permitted, direct staff to evaluate the overall and cumulative success and impacts of the cultivation sites program on a neighborhood and city-wide basis, review the preferences and programs for effectiveness, and consider whether the number of sites can be increased.*

**Vote:** Ayes – Bartlett, Hahn; Noes – Davila, Harrison; Abstain – Maio, Wengraf, Worthington, Droste, Arreguin.

## Action Calendar – Old Business

**Action:** M/S/C (Harrison/Maio) to adopt the proposal from Councilmember Harrison in Supplemental Reports Packet #2 amended to include paragraph #3 from Councilmember Hahn's proposal.

*Direct staff to prioritize local growers and cooperatives in the permitting process or set aside some of the allotted square footage specifically for use by local small growers and cooperatives. This could be achieved by maintaining the limit of 6 cultivation locations between 15,000 and 22,000 ft<sup>2</sup> in size for all forms of cultivators (using between 90,000 and 132,000 of the available 180,000 ft<sup>2</sup>) while allocating the remaining 48,000 ft<sup>2</sup> to local cultivators and cooperatives, without a specific location limit. During the permitting process, each operator will be limited to one site to avoid anti-competitive practices and prevent a monopoly. After one year of operation, staff will evaluate the positive and negative impacts of the cultivation site on the surrounding businesses and neighbors, and enforce on a complaint-driven basis*

*#3 Hahn: To allow only 1 site per operator, and create an overall preference for qualified owners from populations or groups that are or have been disproportionately targeted for enforcement, criminalization, and/or incarceration related to marijuana offenses;*

**Vote:** Ayes – Maio, Davila, Bartlett, Harrison, Wengraf, Worthington, Droste, Arreguin; Noes – None; Abstain – Hahn.

**Action:** M/S/Failed (Droste/Wengraf) to adjourn the meeting.

**Vote:** Ayes – Maio, Bartlett, Wengraf, Droste; Noes – Davila, Harrison, Hahn, Worthington, Arreguin.

**Action:** M/S/C (Arreguin/Maio) to suspend the rules and extend the meeting to 12:00 a.m.

**Vote:** Ayes – Maio, Davila, Bartlett, Harrison, Hahn, Worthington, Arreguin; Noes – Droste; Abstain – Wengraf.

## Action Calendar – Old Business

- 36. Analysis and Recommendations for the Pathways Project to Address Homelessness in Berkeley** *(Continued from June 27, 2017. Item contains supplemental materials.)*

**From: City Manager**

**Recommendation:** Prioritize funding decisions for proposed Pathways Project programs (an Encampment Resolution Team, a STAIR Center, a Bridge Living Community, and a Homeward Bound program) based on which homeless issue Council most wishes to address in Berkeley:

1. Fund an Encampment Resolution Team and a STAIR Center for an estimated \$2.4 million in year one, plus \$2.1 million annually thereafter, if Council most wishes to provide temporary respite for unsheltered homeless individuals with no dedicated housing exits.
2. Fund a Bridge Living Community and a Homeward Bound program for an estimated \$2.6 million in year one, plus \$2.4 million annually thereafter, if Council most wishes to house an estimated 100-120 homeless individuals per year, but add no new emergency respite programs.
3. Fund all four programs at an estimated \$4.8 million in year one, and an estimated \$4.3 million annually thereafter, if Council wishes to address both the goal of temporary respite and permanent housing concurrently.

All funding estimates include roughly \$190,000 for 1 FTE in new City Staff time for program administration.

The City Manager recommends prioritizing a Bridge Living Community and associated rental subsidies and a Homeward Bound program.

**Financial Implications:** See report

Contact: Paul Buddenhagen, Housing and Community Services, 981-5400

**Action:** M/S/C (Arreguin/Maio) to suspend the rules and extend the meeting to 12:15 a.m.

**Vote:** Ayes – Maio, Davila, Bartlett, Harrison, Hahn, Worthington, Arreguin; Noes – Droste; Abstain – Wengraf.

**Action:** 5 speakers. M/S/C (Hahn/Davila) to adopt “Option 4” as presented in the City Manager’s report to Council on June 27, 2017, submitted by Paul Buddenhagen, Director of Health, Housing and Community Services, to establish a combined STAIR Center/Bridge Living Community and associated Homeward Bound and rapid rehousing components with the following additions, as recommended by formal action of the Council’s Ad Hoc Subcommittee on Homelessness:

1. Add an Outreach Resolution Team
2. Add a program to address illegal dumping and excessive accumulations of items and materials associated with homeless encampments, in particular in the heavily impacted West Berkeley corridor

**Vote:** All Ayes.

## Action Calendar – Old Business

### 37a. Allocation of U1 Funds by the City Council *(Continued from June 27, 2017)*

**From: Housing Advisory Commission**

**Recommendation:** 1. As specified by Measure U1, the City Council shall receive and consider housing strategy recommendations from the Housing Advisory Commission prior to allocating any Measure U1 funds.

2. When considering allocations for U1 funds, the City Council will make specific findings of how the spending meets the goals of Measure U1: improve housing affordability in Berkeley and protect residents from homelessness.

**Financial Implications:** See report

Contact: Amy Davidson, Commission Secretary, 981-5400

### 37b. Companion Report: Allocation of U1 Funds by the City Council *(Continued from June 27, 2017)*

**From: City Manager**

**Recommendation:** 1. Reaffirm that, as specified in Measure U1, the City Council shall receive and consider recommendations by the Housing Advisory Commission on funding and programs to increase affordable housing and protect Berkeley residents from homelessness, either annually or biannually. 2. Take no action with regard to committing to make findings that expenditures meet the goals of Measure U1.

**Financial Implications:** See report

Contact: Jovan Grogan, Deputy City Manager, (510) 981-7000

**Action:** Item 37b moved to the Consent Calendar and approved recommendation as amended below.

*1. Reaffirm that the City Council shall receive and consider recommendations by the Housing Advisory Commission as specified in Measure U1; and 2. Take no action with regard to committing to make findings that expenditures meet the goals of Measure U1.*

### 38a. Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley *(Continued from June 27, 2017)*

**From: Housing Advisory Commission**

**Recommendation:** That the City Council not use U1 funds to backfill the Workers' Compensation Fund for the acquisition of the properties located at 1001, 1007, and 1011 University Avenue, and 1925 Ninth Street, City of Berkeley.

**Financial Implications:** See report

Contact: Amy Davidson, Commission Secretary, 981-5400

## Action Calendar – Old Business

- 38b. Companion Report: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley** *(Continued from June 27, 2017)*

**From: Housing Advisory Commission**

**Recommendation:** Accept staff's recommendation to use \$4,730,815 of Measure U1 revenue over a 5 year period (\$946,163 annually) to repay the Workers' Compensation Fund for the acquisition of the properties located at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley.

**Financial Implications:** See report

Contact: Jovan Grogan, Deputy City Manager, (510) 981-7000

**Action:** M/S/Failed (Hahn/Davila) to suspend the rules and extend the meeting to 12:25 a.m.

**Vote:** Ayes – Davila, Harrison, Hahn, Worthington, Arreguin; Noes – Maio, Bartlett, Wengraf; Abstain – None; Absent - Droste.

Councilmember Droste absent 12:05 a.m. – 12:15 a.m.

**Action:** 5 speakers. Item held over to July 25, 2017

## Action Calendar – New Business

- 39a. International Symbol of Accessibility (ISA) Change for City Signage**

**From: Commission on Disability**

**Recommendation:** Adopt a Resolution changing future signs indicating accessibility in Berkeley. The Berkeley Commission on Disability is recommending Council support a proposed change in signs that indicates accessibility.

**Financial Implications:** Minimal

Contact: Ella Callow, Commission Secretary, 981-6300

- 39b. Companion Report: International Symbol of Accessibility (ISA) Change for City Signage**

**From: City Manager**

**Recommendation:** Refer the item back to the Commission on Disability for further analysis regarding cost differences between the existing International Symbol of Accessibility signage and the recommended signage as well as specific vendors that currently provide the recommended signage to other municipalities.

**Financial Implications:** Unknown

Contact: Phillip Harrington, Public Works, 981-6300

**Action:** Item 39a moved to Consent Calendar. Adopted Resolution No. 68,095-N.S. changing future signs indicating accessibility in Berkeley.

## Action Calendar – New Business

### Information Reports

- 40. FY 2018 Civic Arts Grant Awards**  
**From: City Manager**  
Contact: Jordan Klein, Economic Development, 981-7530  
**Action:** Received and filed.
- 41. FY 2017 Investment Report: Quarter Ended March 31, 2017**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, 981-7300  
**Action:** Received and filed.
- 42. Status of City's \$6M Loan to the Ed Roberts Campus**  
**From: City Manager**  
Contact: Paul Buddenhagen, Housing and Community Services, 981-5400  
**Action:** Received and filed.
- 43. Update on Retrofit Grants Program, Activities Funded by FEMA Hazard Mitigation Grant, and Status of the Soft Story Ordinance**  
**From: City Manager**  
Contact: Timothy Burroughs, Planning and Development, 981-7400  
**Action:** Received and filed.
- 44. Status Report July 2017 - Audit of Equipment Replacement Reserve**  
**From: City Manager**  
Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Received and filed.

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

### Adjournment:

Adjourned at 12:15 a.m. in memory of:

1. Frances Rachel, Local Activist
2. David Williamson, Local Athlete and Mentor

### Communications

#### Restricting Flavored Tobacco Sales

1. Carol Denney

#### Vegetables Growing in Shade

2. Diego Aguilar-Canabal

#### Community Concerns

3. Nick Faber

**Housing and Climate Change**

4. Cameron Scherer

**Thank You Letter**

5. Berkeley Neighborhoods Council

**Housing and Zoning Suggestions**

6. Berkeley Design Advocates

**Berkeley Animal Care Services Concerns**

7. Jane Funk / Jovan Grogan

**Free Speech**

8. Therese Fitzpatrick (2)

**Environmental Health Division Concerns**

9. Leo Schwartz

**Bank Divestments**

10. Sheila Goldmacher

**Berkeley Police Department Response to Protest**

11. Rachel Lederman

**Bike Improvements for Repaving**

12. Dave Campbell

**Berkeley Rose Garden**

13. Annie Dillon

**Request for Certificate of Permissible Rent Level Form**

14. W.B.C.

**Supplemental Communications and Reports 1**

**Item 21: Referral to the Community Environmental Advisory Commission: Cigarette Butt Pollution Prevention Program in South Berkeley**

15. Revised materials, submitted by Councilmember Bartlett

**Item 24: Support of AB 214: Postsecondary Education, Student Hunger**

16. Revised materials, submitted by Councilmember Harrison

**Item 29: Housing Accountability Act**

17. Rob Wrenn

**Item 33: Expedited Review for Affordable Housing Projects**

18. Revised materials, submitted by Councilmember Hahn

**Item 35: Medical Cannabis Cultivation Ordinance Revisions**

19. Supplemental materials, submitted by Councilmember Hahn

**Item 36: Analysis and Recommendations for the Pathways Project to Address Homelessness in Berkeley**

20. Supplemental materials, submitted by Councilmember Hahn

**Item 37a: Allocation of U1 Funds by the City Council**

**Item 37b: Companion Report: Allocation of U1 Funds by the City Council**

**Item 38a: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley**

**Item 38b: Companion Report: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley**

- 21. Cecile Pineda
- 22. Norma Harrison
- 23. Tree Fitzpatrick
- 24. Nico Calavita

**Item 40: FY 2018 Civic Arts Grant Awards**

- 25. Bruce Coughran
- 26. Cherie Hill
- 27. Andrea Hirsig
- 28. Susan Muscarella
- 29. Andrew Page
- 30. Liz Ozol
- 31. Pamela Miller
- 32. Carol Lashof
- 33. Rebecca Seeman
- 34. George-Ann Bowers
- 35. Sara Gambina-Belknap
- 36. Janice Murota
- 37. Inferno Theatre
- 38. Dyana Vukovich
- 39. Sharon Dolan
- 40. Wendy Ponder
- 41. Emmerich Anklam
- 42. Rachel Nissim
- 43. Carol Handelman
- 44. Jan Zvaifler
- 45. Emily Wainacht

**Supplemental Communications and Reports 2**

**Item 6: Housing Trust Fund Recommendation – Northern California Land Trust (NCLT) Scattered Site Rehabilitation**

- 46. Revised materials, submitted by Councilmember Harrison

**Item 13: Contract No. 9977 Amendment: Portable Computer Systems dba PCS Mobile to Purchase 15 Automated License Plate Recognition (ALPR) Units**

- 47. Alfred Twu
- 48. Ryan Thorngren

**Item 21: Referral to the Community Environmental Advisory Commission: Cigarette Butt Pollution Prevention Program in South Berkeley**

- 49. Carol Denney



**Item 25: Adopt a Resolution Approving the Allocation of \$3,131,651 in Predevelopment from the Housing Trust Fund for the Berkeley Way Project**

- 50. Revised materials, submitted by Councilmember Worthington
- 51. Supplemental materials, submitted by Health, Housing & Community Services

**Item 26: Support California AB 395 to Protect Internet Privacy**

- 52. Revised materials, submitted by Councilmember Worthington

**Item 27: Amending the Berkeley Election Reform Act to Implement Public Financing**

- 53. Daniel Newman, on behalf of the Berkeley Fair Elections Coalition
- 54. Rob Wrenn
- 55. Igor Tregub

**Item 28: Automatic Door Openers in Multi-Unit Residential**

- 56. Supplemental materials, submitted by Commission on Disability

**Item 32: Support the Resilient Shoreline Program of Citizens for East Shore Parks**

- 57. Revised materials, submitted by Mayor Arreguin

**Item 33: Expedited Review for Affordable Housing Projects**

- 58. Supplemental materials, submitted by Councilmember Droste

**Item 35: Medical Cannabis Cultivation Ordinance Revisions**

- 59. Supplemental materials, submitted by Councilmember Hahn
- 60. Supplemental materials, submitted by Councilmember Harrison
- 61. Medical Cannabis Commission
- 62. Charley Pappas

**Item 37a: Allocation of U1 Funds by the City Council**

**Item 37b: Companion Report: Allocation of U1 Funds by the City Council**

**Item 38a: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley**

**Item 38b: Companion Report: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley**

- 63. Sheila Goldmacher (2)
- 64. Lynnda Ohama
- 65. Jim Latchney
- 66. Christine Schwartz
- 67. Kris Eggen
- 68. Diana Bohn
- 69. Sally Nelson (2)
- 70. Bill Bogert
- 71. Judy Nakadegawa
- 72. Pei Wu
- 73. Joshua
- 74. Joel Reed
- 75. Daniel Moore
- 76. Joshua Pfeffer
- 77. Gary Hicks
- 78. Ellen Woods

- 79. Happy Skywalker
- 80. Pam Webster
- 81. Phil Allen
- 82. Marcia Poole
- 83. Lisa Giampaoli
- 84. Maurice Catlett
- 85. Norma Harrison
- 86. Moni Law
- 87. Cassidy Crofton
- 88. Linda Franklin
- 89. Chimey Lee
- 90. Lauren Chester
- 91. Alex White

**Item 25: Adopt a Resolution Approving the Allocation of \$3,131,651 in Predevelopment from the Housing Trust Fund for the Berkeley Way Project**

- 92. 37 Communications submitted via Berkeley Considers, includes summary information.

**Supplemental Communications and Reports 3**

**Item 6: Housing Trust Fund Recommendation – Northern California Land Trust (NCLT) Scattered Site Rehabilitation**

- 93. Ian Winters

**Item 13: Contract No. 9977 Amendment: Portable Computer Systems dba PCS Mobile to Purchase 15 Automated License Plate Recognition (ALPR) Units**

- 94. Presentation, submitted by Public Works Department
- 95. Gunnar Rieth
- 96. Felipe Diaz
- 97. Blair Beekman

**Item 27: Amending the Berkeley Election Reform Act to Implement Public Financing**

- 98. Presentation, submitted by Fair Campaign Practices Commission

**Item 35: Medical Cannabis Cultivation Ordinance Revisions**

- 99. Presentation, submitted by Planning & Development

**Item 36: Analysis and Recommendations for the Pathways Project to Address Homelessness in Berkeley**

- 100. Presentation, submitted by Health, Housing & Community Services

**Item 37a: Allocation of U1 Funds by the City Council**

**Item 37b: Companion Report: Allocation of U1 Funds by the City Council**

**Item 38a: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley**

**Item 38b: Companion Report: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley**

- 101. Sheila Goldmacher
- 102. John Tortorice

## **Misc. Communications**

### **Board of Library Trustees**

103. Unknown

### **HERO Program**

104. Unknown

**DEPARTMENT ORDER**

**ADMINISTRATIVE ORDER #001-2016**

**DATE ISSUED: 02/18/16**

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**SUBJECT: AUTOMATED LICENSE PLATE READER (ALPR)**

**PURPOSE**

- 1 - This order establishes guidelines for the use of the Berkeley Police Department's Automated License Plate Reader (ALPR) technology and data. ALPR technology functions by automatically capturing an image of a vehicle's license plate, transforming that image into alphanumeric characters using optical character recognition software, and storing that information, along with relevant metadata (e.g. geo-location and temporal information, as well as data about the ALPR). ALPRs may be used by the Berkeley Police Department Parking Enforcement and Traffic Units for official law enforcement purposes.

**POLICY**

**Administration of ALPR Data**

- 2- Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain through the Traffic Bureau. The Investigations Division Captain will assign personnel under his/her command to administer the day-to-day operation of the ALPR equipment and data.

**ALPR Operation**

- 3- Department personnel shall not use, or allow others to use, the ALPR equipment or database records for any unauthorized purpose.
  - a. An ALPR shall only be used for official and legitimate law enforcement business.
  - b. Reasonable suspicion or probable cause is not required before using an ALPR.
  - c. No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
  - d. No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.

**DEPARTMENT ORDER**

**ADMINISTRATIVE ORDER #001-2016**

**DATE ISSUED: 02/18/16**

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**ALPR Data Collection and Retention**

- 4- All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law.
- 5- The Parking Enforcement Manager is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by City Department of Information Technology personnel and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.
- 6- All ALPR data shall be stored as described in this order and thereafter shall be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data shall be downloaded from the server onto portable media and booked into evidence. The records will then be subject to standard evidence retention policies and statutes.
  - a. Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.

**Accountability and Safeguards**

- 7- All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data:
  - a. Non-law enforcement requests for access to stored ALPR data shall be processed according to General Order R-23 in accordance with applicable law.
  - b. Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requestor is the registered owner of the vehicle in question, and when providing such

**DEPARTMENTAL ORDER****ADMINISTRATIVE ORDER #001-2016****DATE ISSUED: 02/18/16**

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information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

- c. ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time.
- d. Berkeley Police personnel approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relates to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
- e. ALPR data may be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes only in connection with specific criminal investigations.
- f. Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state, or federal agency or entity without the express written consent of the City Manager.
- g. Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units are marked, corrected, or deleted in accordance with the type and severity of the error in question.
- h. ALPR system audits will be conducted by personnel assigned to the Professional Standards Bureau on a regular basis, at least biennially.

**Current ALPR Deployments**

- 9- The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.
- 10- Effective 2/18/16, the Parking Enforcement Unit will utilize five (5) Parking Enforcement Go-4 vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV/SVS database (stolen and wanted vehicles). The

**DEPARTMENTAL ORDER****ADMINISTRATIVE ORDER #001-2016****DATE ISSUED: 02/18/16**

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current contracted vendor for this system is PCS Mobile using Genetec ALPR technology.

- 11- The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and checks scanned "reads" against a file of vehicles which have five or more outstanding parking citations exceeding 30-days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the city to recover outstanding citation fees and penalties. ALPR equipment is installed in the Parking Enforcement Unit's Scofflaw Enforcement vehicle.
- 12- The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:
  - a. All data captured by the ALPR is stored on the laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.
- 13- When a car is booted and/or towed, the read, hit, and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.
- 14- The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's goBerkeley parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner. The reports will provide only the date, time, location, approximate address, goBerkeley blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement

**DEPARTMENTAL ORDER**

**ADMINISTRATIVE ORDER #001-2016**

**DATE ISSUED: 02/18/16**

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officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.



Michael K. Meehan  
Chief of Police

References: NCRIC ALPR Policy  
SB 34  
General Order R-23

Cc: All BPD Personnel



**EXPENDITURE NON-CONSTRUCTION CONTRACT REVIEW FORM: NEW CONTRACT**

CMS # XUHAL  
(To be filled in by department)

Contract # 9977  
(To be filled in by Auditor)

CONTRACTOR NAME: Portable Computer Systems dba PCS Mobile

Subject of Contract: License Plate Recognition System

| This contract package contains:                                                                                                                        | Attached                            | Waiver Attached                     | Not Required                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| <b>3 Original Contracts (Department, Vital Record and Vendor) in folders</b>                                                                           |                                     |                                     |                                     |
| *The Vital Record contract MUST be in a folder.<br>*Optional: In lieu of folders, Department and Vendor copies may be assembled with an Acco-fastener. |                                     |                                     |                                     |
| 1. CONTRACT BOILERPLATE <u>W/changes - see M. Woo e-mail</u>                                                                                           | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Scope of Services (Exhibit <u>X</u> @ boilerplate) <u>Exhibit/Attachment B</u>                                                                      | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| <del>3. Payment Provisions (Exhibit <u>X</u> @ boilerplate) <u>Attachment C</u></del>                                                                  | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. Evidence of Competitive Solicitation OR Waiver by CM or by Council Resolution                                                                       | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 5. CERTIFICATIONS <u>SPICK 14-10875-C</u>                                                                                                              |                                     |                                     |                                     |
| a. Workforce Composition (businesses with 5 or more employees)                                                                                         | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| b. Nuclear Free Berkeley Disclosure                                                                                                                    | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| c. Oppressive States Disclosure (Exception: Community-based, non-profit organizations)                                                                 | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| d. Certification of Compliance with Living Wage Ordinance (LWO): <u>use current form on web*</u>                                                       | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| e. Certification of Compliance with Equal Benefits Ordinance: <u>use current form on web*</u>                                                          | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| f. Community Agency: Certification of Anti-Lobbying                                                                                                    | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| g. Community Agency: Certification of Drug-Free Workplace                                                                                              | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| <del>6. Insurance Certificate/s AND Endorsement/s OR Insurance Waiver/s (originals, not copies)</del>                                                  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 7. Authorizing Council Resolution # <u>66,917 1/27/15</u>                                                                                              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 8. Consultant Contracts: Form 700, Statement of Economic Interests                                                                                     | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| <del>9. Federally Funded Project Requirement: Debarment status printout</del>                                                                          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

Berkeley Business License # BL-002930  
 Requisition # 185183 (Hard copy attached)  
 Budget Code 674 4920 431 117D06  
840 4920 431 144 147D01  
 Was there any advance payment? No  Yes  30.38

Contract Amount \$ 450,000  
 Council Approved Amount \$ 450,000  
 If Yes, Advanced Amount \$ \_\_\_\_\_  
 If Yes, Purchase Order # \_\_\_\_\_

**Routing and signatures:**

All elements of the contract package, including information provided above, have been reviewed for completeness and accuracy and evidenced by the following signatures (Project Manager please print name):

- WILLA NG / FARID JAVANDEL PW-TRANS 981-7061 6/11/15  
Project Manager (PRINT NAME) & Department Phone No. Date
- [Signature] 6/19/15  
Department Administrative Officer/Accounting Date
- [Signature] 6/19/15  
Department Head Date
- [Signature] 26 JUN 15 6/24/15  
Contract Administrator Date
- [Signature] 6/25/15  
Budget Manager Date

Routing continues to the following persons, who sign directly on the contract:

- City Manager (Will not sign unless all signatures and dates appear above)

**RECEIVED**  
**JUN 29 2015**  
**CITY AUDITOR**

\* For current vendor forms, go to City of Berkeley website: <http://www.cityofberkeley.info/ContentDisplay.aspx?id=5418>

amb 6/29/15 JA 6/30/15

**LICENSE PLATE RECOGNITION SYSTEM SERVICES CONTRACT**

**THIS CONTRACT** is between the CITY OF BERKELEY ("City"), a Charter City organized and existing under the laws of the State of California, and Portable Computer Systems, Inc. dba PCS Mobile ("Provider"), a Colorado corporation doing business at 1200 W. Mississipp Avenue, Denver, Colorado, 80223, who agree as follows:

**Article 1. CONTRACT APPENDICES**

The Contract Appendices are as follows:

- A Security Center License Agreement
- B Scope of Services
- C Payment Terms
- D Equipment Specifications
- E Detailed Training Outline
- F Warranty Agreement and Software Maintenance Agreement
- G Equipment Acceptance Certificate
- H Current Police Administrative Order on use of aLPR Equipment

The terms of each of the appendices are incorporated herein by reference and made a part of this Contract. However, in the event of a conflict between any provision or term in this Contract and an Appendix, the terms of this Contract shall prevail.

**Article 2. SCOPE OF SERVICES**

Contractor agrees to perform all services described in Appendix A, Appendix B, Appendix E, Appendix F, Appendix G and Appendix H in accordance with its stated terms and conditions.

**Article 3. TERM AND RENEWAL**

3.1. The term of this contract shall be for a period of five (5) years. This Contract shall begin on May 1, 2015 and end on May 30, 2020. The City Manager of the City may extend the term of this contract by giving written notice.

3.2. The terms and conditions of this Contract shall not be altered or otherwise modified except by a written amendment to this Contract executed by City and Provider.

3.4. A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Contract and deposits it with the U.S. Postal Service, first class mail, postage prepaid. For purposes of this Contract, all notices to City shall be addressed as follows:

City Manager  
City of Berkeley  
2180 Milvia Street  
Berkeley, California 94704

For purposes of this Contract, all notices to Provider shall be addressed as follows:

CMS# H04AL  
AUTH# 66,917

Steve McKay, Treasurer, Manager of Finance  
Portable Computer Systems, Inc dba PCS Mobile  
1200 W. Mississippi Avenue  
Denver, CO 80233

3.5. If City terminates this Contract for convenience before Provider completes the services in Appendix B, Provider shall then be entitled to recover its costs expended up to that point plus a reasonable profit, but no other loss, cost, damage, expense or liability may be claimed, requested or recovered.

3.6. PCS Mobile warrants and represents that its officials, including its officers and employees in their official capacity, presently have no interest and agrees that its officials, including its officers and employees in their official capacity, will not acquire any interest which would represent a conflict of interest under California Government Code sections 1090 et seq. and 87100 et seq. during the performance of this Agreement.

**Article 4. PAYMENT TERMS**

4.1 For services referred to in Article 2 (Scope of Services), City will pay Provider a total amount not to exceed \$450,000. City shall make payments to Provider in accordance with the provisions described in Appendix C, which is attached to and made a part of this Contract.

**Article 5. PROVISIONS OF LICENSE PLATE RECOGNITION  
EQUIPMENT PURCHASE AND IMPLEMENTATION**

5.1. The license plate recognition ("LPR") equipment and software implementation will occur in accordance with the terms specified in Article 2 (Scope of Services).

5.2. Provider shall provide all required hosting and operations support for the System at costs identified in Appendix C.

5.3. Provider shall provide City a non-exclusive, non-transferable license to use the Hosted Software in accordance with the applicable documentation and in accordance with the terms set forth in Appendix A for the term of this Contract at a cost identified in Appendix C.

5.4. Provider shall provide five (5) LPR units, with specification described in Appendix D, to the City and provide all necessary City employees training as set forth in Appendix E to maintain this equipment for the term of this Contract.

5.5. Provider shall provide and perform the services in full compliance with all applicable laws, codes and standards (both public and private), including, but not limited to, the standards included in Appendix B and warranties expressed in Appendix F.

5.6. Provider shall provide goods for the term of this Contract as set forth in Appendix B.

5.7. Provider shall provide City technical support for the term of this Contract as set forth in Appendix B and Appendix F.

**Article 6. CITY'S RESPONSIBILITIES**

6.1. In connection with the performance of this contract and the provision of services, City shall be responsible for the following:

6.1.1 City shall be responsible for ensuring that City's use of the services and the performance of City's other obligations hereunder comply with all laws applicable to City.

6.1.2 City shall be responsible for the accuracy and completeness of all records and databases provided by City in connection with this Contract for use on Provider's system.

**Article 7. SUBCONTRACTING**

7.1. Provider is prohibited from subcontracting this Contract, or any part of it, unless such subcontracting is approved by City in advance in writing.

**Article 8. PROVIDER'S REPRESENTATIONS AND WARRANTIES**

In order to induce the City to enter into this Contract, Provider makes the following representations and warranties:

8.1. Provider has the expertise, manufacturing, management and maintenance capabilities, and financial capabilities to perform and complete all of its obligations contained in this Contract.

8.2. Provider is and will at all times be fully qualified and capable of performing its obligations under this Contract and possesses or will timely obtain all necessary licenses and/or permits required to perform such obligations.

8.3. Provider represents and agrees that the Services shall be performed in a professional manner and shall conform to established industry best practices.

8.4. Provider shall deliver all obligations undertaken in this Contract free and clear of all liens, rights of conditional vendors, encumbrances, and claims of copyright, patent or license holders, and in conformance with the requirements of this Contract.

**Article 9. INSURANCE**

9.1. Not less than ten (10) days prior to commencing any work, Provider shall furnish to City satisfactory proof that Provider has taken out for the entire period of this Contract the

following insurance in a form satisfactory to City and with an insurance carrier satisfactory to City, authorized to do business in California and rated by A.M. Best & Company A or better, which will protect those described below from claims described below which arise or are alleged to have arisen out of or result from the services of Provider, for which Provider may be legally liable, whether performed by Provider, its subcontractors or subconsultants of any tier or by those employed directly or indirectly by them or any of them, or by anyone for whose acts any of them may be liable. All insurance, except professional liability insurance, shall name the City, its officers, agents, volunteers and employees as additional insured's and shall provide primary coverage with respect to the City, and there shall be a waiver of subrogation as to each named and additional insured.

**9.1.1 Commercial general liability insurance:** Comprehensive or Commercial General Liability Insurance with limits not less than two million dollars (\$2,000,000.00) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. If the Comprehensive or Commercial General Liability Insurance is written on a Claims Made Form then, following termination of this Contract, 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 Contract.

**9.1.2 Professional liability insurance:** If any licensed professional performs services under this Contract, a professional liability insurance policy in the minimum amount of one million dollars (\$1,000,000.00) each occurrence to cover any claims arising out of Provider's performance of services under this Contract.

**9.1.3 Business automobile liability insurance:** Primary coverage shall be written on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto), if applicable. Limits shall be not less than five hundred thousand dollars (\$500,000.00) each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible of not more than ten thousand dollars (\$10,000.00) payable by Provider.

**9.1.4 Full workers' compensation liability insurance** for all persons whom Provider may employ in furnishing and providing the Services hereunder, in accordance with California law. Workers' compensation policy shall include Employer Liability Insurance with limits not less than one million dollars (\$1,000,000.00) each accident or occurrence. There shall be a waiver of subrogation as to the City and each named and additional insured under such policy.

9.2 Certificates of Insurance and Endorsements shall have clearly typed thereon the City contract number and title of contract, shall provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said policies except upon thirty (30) days written notice to City's Contract Administrator. Endorsements naming the City as additional insured shall be attached to the Certificate of Insurance.

9.3 Nothing contained herein shall be construed as limiting in any way the extent to which Provider or any of its subcontractors or sub consultants may be held responsible for payment of damages resulting from their operations.

9.4 If Provider fails to maintain insurance, the City may take out insurance to cover any damages of the above mentioned classes for which the City and others to be insured referenced above might be held liable on account of Provider's failure to pay such damages, or compensation which the City might be liable under the provision of the Worker's Compensation Insurance and Safety Act, by reason of employee of Provider being injured or killed, and deduct, and in addition to any other remedy, retain amount of premium from any sums due Provider under this Contract.

9.5 Provider shall forward all insurance documents to:

**Department Name:** Public Works Transportation Division

**Attn:** Willa Ng

**CMS#** XUHAL

**Department Address:** 1947 Center Street, 3<sup>rd</sup> Floor, Berkeley, CA 94704

**Article 10. INDEMNIFICATION**

10.1 Provider shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, commissioners, officers, agents, employees and volunteers from and against any and all loss, liability, claims, suits, actions, damages, injury (including, without limitation, injury to or death of an employee of Provider or its subcontractors), or any violation of any federal, state, or municipal law or ordinance, arising out of the willful misconduct or negligent acts or omissions of Provider or its employees, subcontractors, or agents, or by acts for which they could be held strictly liable, or by the quality or character of their work.

10.2 The foregoing obligation of Provider shall not apply when (a) the injury, loss of life, damage to property or violation of law arise wholly from the negligence or willful misconduct of the City or its officials, commissioners, officers, agents, employees and volunteers and (b) the actions of Provider or its employees, subcontractors, or agents have contributed in no part to the injury, loss of life, damage to property or violation of law. It is understood that the duty of Provider to indemnify and hold harmless includes the duty to defend as set forth in California Civil Code section 2778. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Provider from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Provider agrees to the provisions of this Section and acknowledges that it is a material element of consideration.

**Article 11. CANCELLATION AND TERMINATION**

11.1 **Termination of Provider for Default.** In the event Provider fails to perform one or more of its material obligations under this Contract and has failed within twenty (20) days

of receiving notice from City to (a) cure the default or (b) if the default cannot be cured within twenty (20) days, provide the written assurances and plan as specified in subsection 11.1.1, this Contract may be terminated and all of Provider's rights hereunder ended. Termination will be effective after twenty (20) days written notice to Provider. No new work will be undertaken after the date of receipt of any notice of termination, or five (5) days after the date of the notice, whichever is earlier. In the event of such termination, Provider will be paid for those services performed under this Contract up to the date of termination and for reasonable direct costs incurred up to the date of termination, and any annual fees will be pro-rated. However, City may offset from any such amounts due Provider any damages or other costs City has or will incur due to Provider's non-performance. Any such offset by City will not constitute a waiver of any other remedies City may have against Provider for financial injury or otherwise.

11.1.1 If the City at any time reasonably believes that Provider is or may be in default under this Contract, the City may in its sole discretion notify Provider of this fact and request written assurances from Provider of performance of the Contract and a written plan from Provider to identify and attempt to remedy any failures to perform the terms of the Contract which the City may advise the Provider of in writing. Failure of the Provider to provide written assurances of performance as required herein will constitute a separate material breach of this Contract sufficient to invoke paragraph 11.1 above.

11.1.2 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance with subsection 11.2, and Provider shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance.

**11.2 Termination of Provider for Convenience.** Termination of this Agreement for convenience shall be in accordance with 49 C.F.R. 18.44.

11.2.1 City may terminate this Contract for City's convenience and without cause at any time by giving Provider thirty (30) days written notice of such termination. In the event of such termination, Provider will be paid for those services performed, pursuant to this Contract, up to the date of termination in accordance with Appendix C (Payment Terms). In no event will City be liable for costs incurred by Provider after receipt of notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits of this Contract, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not reasonable or authorized under this section.

**11.3 Obligations of Provider Upon Termination.** Upon termination of this Contract, Provider will submit an invoice to City for an amount which represents the value of its work or services actually performed prior to the effective date of termination and for direct costs for which Provider is entitled under this Contract to be compensated, except that with respect to reimbursement for Provider's services, in no event will the compensation paid for the month in which the termination occurs be greater than the charges for the services delivered prior to the notice. Upon approval and payment of this invoice by City, City shall be under no further obligation to Provider monetarily or otherwise.

**11.4 Termination of City for Default.** City shall be in default of this Contract thirty (30) days after written notice of City's failure to comply in any respect with any material terms and conditions of this Contract and City fails to cure such breach within such thirty (30) day period. Notwithstanding the above, City shall be in default hereunder upon ten (10) business days written notice in the event the breach is due to non-payment by the City and City fails to cure such breach due to non-payment within such ten (10) day period.

**11.5 Return of City Data.** Within thirty (30) days of notification of termination of this Contract, Provider shall provide City with all City-owned data in dedicated data files suitable for importation into commercially available database software (e.g., MS-Access or MS-SQL). The dedicated data files will be comprised of City's data contained in Provider's system. The structure of the relational database will be specific to the City's data and will not be representative of the proprietary Provider's database.

## **Article 12. GENERAL WARRANTIES, LIMITATIONS ON WARRANTIES**

**12.1 Compliance with Specifications.** Provider's computer programs, files, hosted services, documentation and all other work product will strictly comply with the descriptions and representations made in Appendix D (Equipment Specifications) and including performance capabilities, completeness, specifications, configurations, and function that appear therein.

**12.2** Provider may lawfully grant the license set forth in Section 5.3 and Appendix A.

**12.3** Neither the licensed software or use of the hosted services, including all subsequent versions, updates, enhancements and/or releases, nor licensed materials, or the use thereof within the scope of the License, infringes a patent, trademark or copyright or is claimed to be a trade secret of any person who has not consented to the granting of the License. Developer shall indemnify and hold harmless City from and against any claims, including reasonable legal fees and expenses, based upon infringement of any United States copyright or patent by the Software. City agrees to notify Developer of any such claim promptly in writing and to allow Developer to control the proceedings. City agrees to cooperate fully with Developer during such proceedings. Developer shall defend and settle at its sole expense all proceedings arising out of the foregoing. In the event of such infringement, Developer may replace, in whole or in part, and at its own expense, the Software with a substantially compatible and functionally equivalent computer program or modify the Software to avoid the infringement.

**12.4** During the Initial Term, and any Renewal Term thereafter, the hosted services and software, including all subsequent versions, updates, enhancements and/or releases, will conform to the applicable printed documentation (i.e., all reference materials or manuals) delivered by Provider to City.

**12.5** Neither the software, including all subsequent versions, updates, enhancements and/or releases, nor the licensed materials or hosted services contain any virus, time bomb mechanism, or other software or code that can disable or adversely affect any and all of the software or the licensed materials or destroy any data or other software.



12.6 The limited warranty set forth in Section 12.1 is in lieu of all other warranties, express or implied warranties or merchantability and fitness for a particular purpose.

**Article 13. CONFORMITY WITH LAW AND SAFETY**

13.1 Provider 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 scope of services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, and all other applicable federal, state, municipal and local safety regulations. All services performed by Provider must be in accordance with these laws, ordinances, codes and regulations. Provider shall release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

13.2 If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Contract, Provider shall immediately notify the City's Risk Manager by telephone. If any accident occurs in connection with this Contract, Provider shall promptly submit a written report to City, in such form as the City 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 Provider's subprovider, if any; 3) name and address of Provider's liability insurance carrier; and 4) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

13.3 If a release of hazardous materials or hazardous waste that cannot be controlled occurs in connection with the performance of this Contract, Provider shall immediately notify the Berkeley Police Department and the City's Health Protection office.

13.4 Provider shall not store hazardous materials or hazardous waste within the City of Berkeley without a proper permit from the City.

**Article 14. NON-DISCRIMINATION**

14.1 Provider hereby agrees to comply with the provisions of Berkeley Municipal Code ("B.M.C.") Chapter 13.26 as amended from time to time. In the performance of this Contract, Provider agrees as follows:

14.2 Provider 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.

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

**Article 15. INDEPENDENT CONTRACTOR**

15.1 Provider shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Provider performs the services required of

Provider by the terms of this Contract. Provider shall be liable for its acts and omissions, and those of its employees and its agents. Nothing contained herein shall be construed as creating an employment, agency or partnership relationship between City and Provider.

15.2 Direction from City regarding the subject of this Contract shall be construed as providing for direction as to policy and the result of Provider's Work only and not as to the means or methods by which such a result is obtained.

15.3 Except as expressly provided in this Contract, nothing in this Contract shall operate to confer rights or benefits on persons or entities not party to this Contract.

15.4 Payment of any taxes, including California Sales and use Taxes, levied upon this Contract, the transaction, or the services or goods delivered pursuant hereto, shall be the obligation of Provider.

**Article 16. CONFLICT OF INTEREST PROHIBITED**

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

16.2 In accordance with 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 the Provider, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Provider.

16.3 Interpretation of this section shall be governed by the definitions and provisions used 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.

16.4 Provider shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of this contract, or any ensuing City construction project. Provider shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing City construction project, which will follow.

16.5 Provider hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

16.6 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

**Article 17. NUCLEAR FREE BERKELEY**

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

**Article 18. OPPRESSIVE STATES CONTRACTING PROHIBITION**

18.1 In accordance with Resolution No. 59,853-N.S., Provider certifies that it has no contractual relations with, and agrees during the term of this Contract to forego contractual relations to provide personal services to, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of 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.

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

18.3 Provider's failure to comply with this section shall constitute a default of this Contract and City may terminate this Contract pursuant to Section 3. In the event that the City terminates Provider due to a default under this provision, City may deem Provider a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

**Article 19. RECYCLED PAPER FOR WRITTEN REPORTS**

If Provider is required by this Contract to prepare a written report or study, Provider shall use recycled paper for said report or study when such paper is available at a cost of not more than ten percent more than the cost of virgin paper, and when such paper is available at the time it is needed. For the purposes of this Contract, recycled paper is paper that contains at least 50% recycled product. If recycled paper is not available, Provider shall use white paper. Written reports or studies prepared under this Contract shall be printed on both sides of the page whenever practical.

**Article 20. BERKELEY LIVING WAGE ORDINANCE**

20.1 Provider hereby agrees to comply with the provisions of the Berkeley Living Wage Ordinance, B.M.C. Chapter 13.27. If Provider is currently subject to the Berkeley Living Wage Ordinance, as indicated by the Living Wage Certification form, attached hereto, Provider will be required to provide all eligible employees with City mandated minimum compensation during the term of this Contract, as defined in B.M.C. Chapter 13.27, as well as comply with the terms enumerated herein. Provider expressly acknowledges that, even if Provider is not currently subject to the Living Wage Ordinance, cumulative contracts with City may subject Provider to the requirements under B.M.C. Chapter 13.27 in subsequent contracts.

20.2 If Provider is currently subject to the Berkeley Living Wage Ordinance, Provider shall be required to maintain monthly records of those employees providing service under the Contract. These records shall include the total number of hours worked, the number of hours spent providing service under this Contract, the hourly rate paid, and the amount paid by Provider for health benefits, if any, for each of its employees providing services under the Contract. These records are expressly subject to the auditing terms described in Section 23.

20.3 If Provider is currently subject to the Berkeley Living Wage Ordinance, Provider shall include the requirements thereof, as defined in B.M.C. Chapter 13.27, in any and all

subcontracts in which Provider engages to execute its responsibilities under this Contract. All subprovider employees who spend 25% or more of their compensated time engaged in work directly related to this Contract shall be entitled to a living wage, as described in B.M.C. Chapter 13.27 and herein.

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

Provider's failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this Contract pursuant to Section 3. In the event that City terminates Provider due to a default under this provision, City may deem Provider a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

In addition, at City's sole discretion, Provider may be responsible for liquidated damage 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 Provider'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 damage 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 or forfeiture for Provider's breach. City may deduct any assessed liquidated damages from any payments otherwise due Provider.

**Article 21. BERKELEY EQUAL BENEFITS ORDINANCE**

21.1 Provider hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Provider is currently subject to the Berkeley Equal Benefits Ordinance, as indicated by the Equal Benefits Certification form, attached hereto, Provider will be required to provide all eligible employees with City mandated equal benefits, as defined in B.M.C. Chapter 13.29, during the term of this contract, as well as comply with the terms enumerated herein.

21.2 If Provider is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Provider agrees to provide the City with all records the City deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 23 of this contract.

21.3 If Provider 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.

Provider's failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this contract pursuant to Section 3. In the event the City terminates this contract due to a default by Provider under this provision, the City may deem Provider a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

In addition, at City's sole discretion, Provider 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 Provider'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 Provider's breach. City may deduct any assessed liquidated damages from any payments otherwise due Provider.

**Article 22. PREVAILING WAGES**

Certain labor categories under this contract may be subject to prevailing wages as identified in the State of California Labor Code commencing with Sections 1720 et. seq. and 1770 et. seq. These labor categories, when employed for any "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," constitute a "Public Work" within the definition of Section 1720(a)(1) of the California Labor Code requiring payment of prevailing wages. In performing its obligations under this contract, Contractor is solely responsible to determine which, if any, of the work is governed by a labor category pursuant to California Labor Code sections 1720 et. seq. and 1770 et. seq. and pay the pertinent prevailing wage. Contractor shall defend, indemnify and hold harmless City concerning any liability arising out of Labor Code section 1720 et. seq. and 1770 et. seq.

**Article 23. AUDIT**

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office may conduct an audit of Provider's financial, performance and compliance records maintained in connection with the operations and services performed under this Contract. In the event of such audit, Provider agrees to provide the City Auditor with reasonable access to Provider's employees and make all such financial, performance and compliance records available to the Auditor's Office. City agrees to provide Provider an opportunity to discuss and respond to any findings before a final audit report is filed.

**Article 24. AMENDMENTS**

The terms and conditions of this Contract shall not be altered or otherwise modified except by a written amendment to this Contract executed by City and Provider.

**Article 25. CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER**

Provider has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Provider is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Provider shall pay all state and federal income taxes and any other taxes due. **Provider certifies under penalty of perjury that the taxpayer identification number written below is correct.**

Business License Number BL-002930  
Taxpayer ID Number 84-1396969

**Article 26. MISCELLANEOUS**

**26.1 Governing Law.** This Contract shall be deemed to have been executed in Alameda County. The formation, interpretation and performance of this Contract shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Contract shall be in Alameda County, California.

**26.2 Assignment.** Neither City nor Provider shall assign this Contract without the prior written consent of the other party and any purported assignment without the other party's consent shall be void.

**26.3 Compliance with Applicable Laws.** Provider and any subcontractors shall comply with all laws, including the Berkeley City Charter, the Berkeley Municipal Code, and all city policies, rules and regulations which are applicable to the performance of the Services hereunder.

**26.4 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Contract is invalid, void, or unenforceable, the provisions of this Contract not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

**26.5 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Contract does not constitute a waiver of any other breach of that term or any other term of the contract.

**26.6 Solicitation.** Provider agrees not to solicit business at any meeting, focus group, service call, or interview related to this Contract, either orally or through any written materials.

**26.7 Force Majeure.** Neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Contract if such delay or failure arises by any reason beyond its reasonable control, including any act of God, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, or acts of terrorism, provided, however, that lack of funds shall not be deemed to be a reason beyond a party's reasonable control. The parties will promptly inform and consult with each other as to any of the above causes which in their judgment may be the cause of a delay in the performance of this Contract.

**26.8 Integration, Incorporation:** This Contract, including all of the Appendices attached hereto, represents the entire and integrated Contract between City and Provider and supercedes all prior negotiations, representations, or Contracts, either written or oral. All exhibits attached hereto are incorporated by reference herein.

**26.9 Counterparts.** This Contract may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one Contract.

26.10 **Contract Administration.** This Contract shall be administered by Danette Perry, Parking Services Manager, Public Works Department, or her designee, who shall act as the City's representative. All correspondence shall be directed to or through Ms. Perry or her designee.

26.11 **Section Headings.** The sections and other headings of this Contract are for convenience of reference only and shall be disregarded in the interpretation of this Contract

26.12 **Notices.** Any written notice to the City shall be sent to:

Farid Javandel  
Public Works Department  
City of Berkeley  
1947 Center Street  
Berkeley, California 94704

Any written notice to Provider shall be sent to:

Steve McKay, Treasurer, Manager of Finance,  
Portable Computer Systems, Inc dba PCS Mobile  
1200 W. Mississippi Avenue  
Denver, Colorado, 80223

Article 27. **FEDERAL REQUIREMENTS**

27.1 **CONFLICT OF INTEREST**

- A. Provider shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of this contract, or any ensuing City construction project. Provider shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing City construction project, which will follow.
- B. Provider hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.
- C. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

27.2 **REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION (Verbatim)**

Provider warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any CITY employee. For breach or violation of this warranty, CITY shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

27.3 **PROHIBITION OF EXPENDING CITY STATE OR FEDERAL FUNDS FOR LOBBYING**

- A. Provider certifies to the best of his or her knowledge and belief that:
  - 1. No state, federal or City appropriated funds have been paid, or will be paid by-or-on behalf of Provider to any person for influencing or attempting to influence an officer or

employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; Provider shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. Provider also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

#### 27.4 STATEMENT OF COMPLIANCE

Provider's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Provider has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

During the performance of this Contract, Provider and its subProviders shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Provider and subProviders shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Provider and subProviders shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Provider and its subProviders shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

The Provider shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

The Provider, with regard to the work performed by it during the Agreement shall act in



accordance with Title VI. Specifically, the Provider shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of SubProviders, including procurement of materials and leases of equipment. The Provider shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

#### 27.5 DEBARMENT AND SUSPENSION CERTIFICATION

A. Provider's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Provider has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

Any exceptions to this certification must be disclosed to CITY.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Provider responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

#### 27.6 CONTINGENT FEE

Provider warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Provider for the purpose of securing business. For breach or violation of this warranty, City has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

#### 27.7 INSPECTION OF WORK

Provider and any subconsultant shall permit City, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

#### 27.8 NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, Provider hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Provider within the immediately preceding two-year period, because of Provider's failure to comply with an order of a federal court that orders Provider to comply with an order of the National Labor Relations Board.

#### 27.9 ACCESS TO RECORDS

A. In accordance with 49 C.F.R. 18.36(i), the Provider agrees to provide the CITY, the FHWA, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Provider which are directly

pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

B. The Provider agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. The Providers agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the CITY, FHWA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

**IN WITNESS WHEREOF**, City and Provider have executed this Contract as of the date written on the first paragraph of this Contract.

**FOR CITY OF BERKELEY**

Signed by:

\_\_\_\_\_  
*Christine Del*  
City Manager

Countersigned by:

\_\_\_\_\_  
*Ann Marie Hogan 6/29/15*  
City Auditor

Approved as to form by:

\_\_\_\_\_  
*Michael Woo*  
City Attorney for City of Berkeley

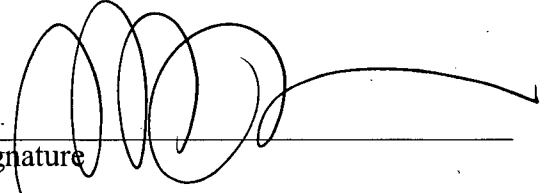
Attested by:

\_\_\_\_\_  
*Rose Hansen*  
Dep City Clerk

Provider

Portable Computer Systems Inc  
~~DA~~ PCS Mobile

Provider Name (print or type)



Signature

Martin Murphy

Print Name

Vice-President

Tax Identification



Berkeley Business License # BL-002930

Incorporated: Yes  No

Certified Woman Business Enterprise: Yes No

Certified Minority Business Enterprise: Yes No

If yes, state ethnicity: \_\_\_\_\_

Certified Disadvantaged Business Enterprise: Yes No

**TABLE OF APPENDICES**

| <b>Appendix</b> | <b>Title</b>                                       |
|-----------------|----------------------------------------------------|
| A               | SECURITY CENTER LICENSE AGREEMENT                  |
| B               | SCOPE OF SERVICES                                  |
| C               | PAYMENT TERMS                                      |
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## APPENDIX A

### SECURITY LICENSE AGREEMENT?

This Appendix A is attached to and incorporated by reference in the Contract made May 1, 2015 between the CITY OF BERKELEY ("City") and Portable Computer Systems, Inc. dba PCS Mobile, ("Provider"), providing for the licensing and services related to License Plate Recognition Equipment and Software purchase.

#### 1 GRANT OF LICENSE

- 1.1 Provider grants City a non-exclusive and non-transferable license for the term of this Contract to use the systems software that is hosted by Provider and described below in subsection 1.4.
- 1.2 **Licensed Content, Not City Owned:** Nothing in this Agreement will be construed as assigning, selling, conveying, or otherwise transferring any ownership rights or title in Genetec AutoVu , including but not limited to pre-existing or independently developed intellectual property, materials, software, methodologies, tools, or inventions, that are developed, conceived or created for any Genetec business purpose, or any derivative works to any of the foregoing.
- 1.3 **City Purchased Equipment:** Nothing in this agreement will be construed as assigning, selling, conveying, or otherwise transferring any intellectual property ownership rights in Genetec Equipment including but not limited to pre-existing or independently developed intellectual property materials, software, methodologies, tools, or inventions, that are developed, conceived or created for any PCS MOBILE / GENETEC business purpose, or any derivative works to any of the foregoing.

#### 2 RESTRICTIONS ON USE

City is authorized to use the Software hosted by Provider only for City's internal purposes. City agrees that it will not use or permit the Software to be used by any other entity.

#### 3 DATA OWNERSHIP AND RESPONSIBILITIES

3.1 Provider shall be responsible for providing all equipment and software necessary for maintaining all data files. Data files are expressly the property of the City of Berkeley. Additionally, data files shall be readily transferable to new systems that the City may choose to use in the future.

Microsoft SQL Server (MSSQL) is the City's preferred Relational Data Base Management

System. The City is currently standardized on MSSQL 2008 R2, but has begun implementing MSSQL 2012 and MSSQL 2014.

- 3.2 Provider agrees that it shall not at any time sell, assign, transfer or otherwise make available to, or allow use by Provider, agent of Provider or a third party any of the City's Proprietary Information.
- 3.3 Provider shall hold in confidence the City's Proprietary Information and allow its employees access to City's data only for the purposes of complying with this Contract.
- 3.4 Provider will take all necessary measures to secure and protect City's data including, but not limited to, daily backups, offsite storage of backup media, graphics, physical security, software access controls, encryption and proper backup rotations. Provider acknowledges that City is entitled to copy, export or otherwise duplicate City's data at any time.
- 3.5 Provider will maintain data security protocols that match or exceed safeguards for data use, storage, access and archive stated in the Berkeley Police Departments' most current Administrative or General Order on the use of Automatic LPR equipment and software. The Police Departments' current Administrative Order is incorporated by reference in this section, and included in Appendix H.
- 3.6 The provisions of this section (Data Ownership and Responsibilities) of the Contract shall survive expiration or termination of this Contract.

END OF APPENDIX A

**APPENDIX B**

**SCOPE OF SERVICES**

This Appendix B is attached to and incorporated by reference in the Contract made May 1, 2015 between the CITY OF BERKELEY ("City") and Portable Computer Systems, Inc. dba PCS Mobile., ("Provider"), providing for the License Plate Recognition Equipment and Software purchase.

**1 Deliverables**

Provider shall provide the City with complete product, installation, and training associated with delivering a License Plate Recognition Equipment and Software System.

**DEFINITIONS:**

- 1.1.LPR: The term "LPR" or "license plate recognition" refers to equipment and software that detects the presence of a vehicle and reports the numbers and letters shown on the license plate.
- 1.2.mLPR: The term "mLPR" shall mean "mobile license plate recognition", are units specifically designed for mounting on a vehicle for detection of vehicles while in motion.
- 1.3.LPR system: The term "LPR system" shall refer to all components for an operational system, including the mLPR external and in-vehicle equipment, operating software, data storage systems and data transmission equipment and software and integration equipment and software.
- 1.4.Days: The term "Day(s)" shall mean calendar days and not business or working days, unless otherwise indicated.
- 1.5.Contract Manager: The term "Contract Manager" shall mean the City employee responsible for the coordination with the Provider for the implementation, operation and management of the LPR system and for the City's day-to-day administration and coordination of City responsibilities for the LPR system pursuant to the contract.
- 1.6.Parking Occupancy: The term "parking occupancy" refers to the number of vehicles parked on a blockface, block, street segment or area, by date and time.
- 1.7.Time Limit Violation: The term "time limit violation" shall be defined as any vehicle that has been parked longer than the time limit posted by the parking sign or parking meter that governs that space, unless the vehicle displays a valid permit for that space.



- 1.8. Automatic Data Collection System: The term "Automatic Data Collection System" refers to the system by which the City collects and summarizes parking occupancy data for the purposes of analysis and setting rate and time limit policies.
- 1.9. Functional LPR. The term "Functional LPR" shall mean any of the Provider's mLPR units functioning within the normal parameters of operation. A Functional LPR will detect and report vehicle license plates, report vehicles that match criteria input by the operator, e.g. time limit violations, create summary reports and integrate with the City's Automatic Data Collection System and police enforcement systems. Acceptance of the mLPR unit by the City shall be based on the mLPR unit being a fully Functional LPR.
- 1.10. Acceptance: The term "Acceptance" shall mean the point at which the City assumes responsibility for payment of merchandise provided by the Provider. Acceptance shall occur after the City has successfully installed the equipment and the equipment is properly integrated and communicating with the City's Automatic Data Collection System and enforcement systems. mLPR units must meet the definition of Functional LPR at the time of acceptance.

## **2 PROVIDER'S RESPONSIBILITIES**

- 2.1. Provider shall deliver and install a Functional LPR, and provide an external web-based system to which the mLPR units connect and provide services to the City of Berkeley in accordance with the terms of this Agreement. The items, quantities, descriptions and unit prices that PCS MOBILE will provide under this contract are listed in Appendix C Payment Terms.
- 2.2. The provider's technology shall conform to the following standards:
- Security protocols that meet or exceed the standards set in Appendix H.
  - All applicable local, state and federal guidelines and laws.
- 2.3. Provider shall deliver and install equipment and software for five (5) operational mLPR units on City vehicles that range in size from the Go-4 parking enforcement vehicle to an SUV type vehicle. All equipment is to be new and fully tested and perform according to the specifications provided and described in Appendix D of this Agreement.
- 2.4. Provider shall develop customized software for use of the Functional LPR to collect parking occupancy data, including complete integration to the City's Automatic Data Collection System.
- 2.5. Provider shall provide and maintain an external data storage and web-based service to integrate with the City's Automatic Data Collection System.

**3 SUPPORTIVE SERVICES**

3.1 Provider shall provide the following additional services in conjunction with this Agreement:

3.1.1 Pre-delivery, detailed training and preparation of City's staff as detailed in Appendix E and as required for the following:

3.1.2 Installation of mLPR units on City's GO-4 vehicles;

3.1.3 Maintenance activities;

3.1.4 Troubleshooting problems;

3.1.5 Operations- programming, inventory, etc.:

3.1 During the term of this agreement, the Provider shall provide the following services:

**3.2.1 SERVICE DESCRIPTIONS**

| <u>Ref. No.</u> | <u>Service Name</u>          | <u>Description</u>                                                                                                                                                                                                                                                        | <u>Specifications</u>                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.              | Maintenance - Phone Support  | This is a service that will give the Customer a tool for technical support, but the Customer will apply the fix. When an issue develops, the Customer can call a PCS Mobile technician and the technician will help the Customer troubleshoot the problem over the phone. | Shall be initiated only by Customer's Designated Representative. Phone support shall support English language. Incidents (Tickets) will be tracked in AutoTask for every issue. One of the tools PCS Mobile may use is a remote session to the computer of the affected unit to determine and address problem.                                                                                                                                |
| 2.              | Maintenance -On-Site Support | Any service or support that requires a PCS Mobile technician to go to the Customer site to resolve the issue. This service will be provided on an as needed and determined basis by the City of Berkeley exclusively.                                                     | Tickets will be tracked in AutoTask for every issue.<br>Types of issues <ul style="list-style-type: none"> <li>• Mounting Issues: Issues where the mount needs to be addressed to resolve a safety concern.</li> <li>• Data Issues: Issues where the data solution is not working. This can be a connectivity issue or device failure.</li> <li>• Power Issues: Issues where the 12v power/wiring, power distribution is an issue.</li> </ul> |

|    |                          |                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                          |                                                                                                                                                                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>• Camera issues: Issues where the camera is not reading properly, etc. Must be a new issue or change in a known good operating solution. (Troubleshooting) Visits can be scheduled to handle a list of issues or for Preventative Maintenance (PM).</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 3. | Depot Repair (Warranty)  | This is a service where any hardware warranty issues are issued to PCS Mobile. The PCS Mobile technician will troubleshoot/verify the problem and facilitate the repair through the manufacturer, on behalf of the Customer.                                                                                                                       | <p>Ticket will be tracked in AutoTask for every issue.</p> <p>Equipment must be covered under the Manufacturer's Warranty.</p> <p>PCS Mobile must have physical possession of Equipment.</p> <p>Can be picked up by PCS Mobile representative or, can be shipped to PCS Mobile facility.</p> <p>PCS Mobile will set up Return Manufacturer Approval RMA with manufacturer.</p> <p>PCS Mobile will prepare the equipment to be shipped per manufacturer instructions.</p> <p>PCS Mobile will receive repaired/replaced equipment and deliver to customer.</p> <p>Warranty repair service history will be tracked and reported.</p>                                                                                                                                  |
| 4. | Spares                   | Spare equipment specifications have been provided in Appendix C.                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 5. | Preventative Maintenance | <p>Service consisting of testing individual components to assist in the prevention of failure.</p> <p>Purpose of preventative maintenance is to stay ahead of any potential issues in the Customer's mobile environment.</p> <p>PCS Mobile will provide one (1) Preventative Maintenance visit for each of 5 mLPR units deployed per 6 months.</p> | <p>Work will be performed on-site.</p> <p>All preventative maintenance will be documented in an AutoTask Ticket so that proper reporting can be delivered to customer and to internal staff.</p> <p>Preventative Maintenance work shall include:</p> <ul style="list-style-type: none"> <li>• Checking mounting equipment – sturdiness, torque on bolts, general wear and tear, etc.</li> <li>• MDC quick hardware diagnostics – this is a pass/fail test on the internal hardware components.</li> <li>• Video processor diagnostics.</li> <li>• Camera diagnostics.</li> <li>• Checking mounting of cameras.</li> <li>• Verification of proper termination, voltage and containment of all wiring.</li> <li>• Inventory of all mobile data, video and</li> </ul> |

|  |  |  |                                                                                                                                                                                                                                                                                                                                    |
|--|--|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |  |  | <p>mounting equipment.</p> <ul style="list-style-type: none"> <li>• General cleaning of external surfaces of devices.</li> <li>• Reporting features of work done, which can include preventative maintenance history, listing of common problems to determine failure rates.</li> <li>• Minor adjustments and/or fixes.</li> </ul> |
|--|--|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

3.2.2 SERVICE MANAGEMENT

3.2.2.1 SERVICE AVAILABILITY

| Ref. No. | Service Name                  | Availability                                                        | Response                                                                                                                                                                                                                | Restrictions                                          |
|----------|-------------------------------|---------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|
| 1.       | Maintenance - Phone Support   | 8 to 5 Pacific Standard Time, business days (Normal Working Hours). | PCS Mobile will respond to phone call and/or phone message within 30 minutes.                                                                                                                                           |                                                       |
| 2.       | Maintenance - On-Site Support | 8 to 5 Pacific Standard Time, business days (Normal Working Hours). | <p>PCS Mobile will respond as quickly as determined necessary by the City of Berkeley while keeping travel costs in mind.</p> <p>Visits can be scheduled to handle a list of issues or for Preventative Maintenance</p> | PCS                                                   |
| 3.       | Depot Repair (Warranty)       | 8 to 5 Pacific Standard, business days (Normal Working Hours).      | PCS Mobile will process return to Manufacturer repair facility within one (1) business day.                                                                                                                             | Repair and return limited to manufacturer's response. |
| 4.       | Spares                        | 8 to 5 Pacific Standard, business days (Normal Working Hours).      | Spare parts may be replaced through purchase by the City of Berkeley. The spare parts will be used to supplement the extended warranty and to maximize uptime of systems.                                               |                                                       |
| 5.       | Preventative Maintenance      | 8 to 5 Pacific Standard, business days (Normal Working Hours).      | Preventative maintenance time frames will average 2-3 hours, depending on services offered. This service will be provided when directed exclusively by the City of Berkeley.                                            |                                                       |

### 3.2.2.2 SERVICE REQUESTS

In support of services outlined in this Agreement, the Customer may place service requests with PCS Mobile by phone or email. PCS Mobile will respond to service related incidents and/or requests submitted by the Customer within time frames as indicated under Service Availability/Response.

### 3.2.2.3 SERVICE REPORTING

| Ref. No. | Report Name                     | Report Description                                                                                                                                                                                                          | Report Interval | Recipient |
|----------|---------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-----------|
| 1.       | Support Ticket History Report   | Custom reporting. Support history provided with detail for any time period as determined in agreement. Report would cover all activity as indicated in support activity: Phone Support, On-Site, Depot Repair, Spare Usage. | Monthly         |           |
| 2.       | Preventative Maintenance Report | Report features of work done, which can include preventative maintenance history and listing of common problems to determine failure rates.                                                                                 | Monthly         |           |

### 3.3 ADDITIONAL SERVICES

If substantial changes in any Services are required due to reasons beyond the control of the Provider, such changed Services shall be considered Additional Services and additional fees may be required. Any such changed Services will be performed only if approved by City prior to beginning of work thereon, and will be invoiced as Additional Services at the rates indicated in the table HOURLY BILLING RATES.

City further agrees to pay PCS Mobile for any Additional Services promptly upon receipt of invoice therefore. City will also reimburse PCS Mobile, promptly upon receipt of invoice, for any and all out-of-pocket expenses incurred by PCS Mobile in the performance of Additional Services.

## HOURLY BILLING RATES

| Technician Level                        | Hourly Billing Rate |
|-----------------------------------------|---------------------|
| Field Service Representative I          | \$65                |
| Field Service Representative II         | \$75                |
| Field Service Representative III        | \$90                |
| Video/LPR Specialist                    | \$125               |
| Software Engineer / Database Technician | \$156.25            |

3.4 Integration and data storage, transmission that meets the standards of the City's Automatic Data Collection System with requirements as shown in Appendix D. City customization requests may incur additional costs that will be quoted and approved by the City prior to commencement of such project.

3.6 Provider will offer all available mLPR software upgrades, including those developed for other customers, at no additional charge to the City. City shall maintain the sole authority to determine when and where such upgrades will be implemented. Additional charges may apply for new software that requires new or upgraded hardware.

3.7 All data related to the LPR system will be maintained by the Provider and replicated on one or more duplicate servers with periodic backups. Further redundancy will be provided by replicating the data daily on a secure server located within the continental United States. Data will be archived and stored according to the standards set in Appendix H.

3.8 The Provider is responsible for maintaining data integration and communication between the Provider's system and the City's designated systems:

3.8.1 For the purposes of parking occupancy collection, the Provider is responsible for the successful transfer of parking occupancy data between the Provider and the City's designated Automatic Data Collection system as shown in Appendix D

3.8.2 For the purposes of the Police Department, the Provider is responsible for the successful transfer of citation, scofflaw and stolen vehicle information between the Provider and the City's citation, scofflaw and stolen vehicle databases as shown in Appendix D

#### 4 REPORT REQUIREMENTS

##### 4.1 DISASTER RECOVERY PLAN AND SYSTEM RECOVERY

4.1.1 Disaster Recovery/Backup Plan. It is the responsibility of the Provider to take every precaution to ensure that all systems, files, data, equipment, communications, and facilities are reliable. In the event that a natural disaster or some other unanticipated event does disrupt the system, the Provider must have a detailed, City-approved recovery plan in place, tested, and ready to be implemented for all key facilities so that services are restored quickly and in accordance with City performance standards.

#### 4.2 AUDITS, RECORDS TO BE MAINTAINED, ACCESS TO RECORDS

4.2.1 The Provider shall maintain account books, records, documents and other evidence directly pertinent to performance and billing of the work under the Contract, in accordance with generally accepted accounting practices. The Provider shall also maintain the financial information and data used by the Provider in the preparation or support of cost estimates to the City. The City, or its duly authorized representative, shall have access to such account books, records, documents, and other evidence, for the purpose of inspection, audit, and copying. The Provider shall provide proper facilities for such access. The Provider shall not charge the City for time spent assisting the City in reviewing said documents.

4.2.2 Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards. The Provider agrees to provide full access to the City all information, reports, and records pursuant to this section. Where the audit concerns the Provider, the City's representative shall afford the Provider an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the Provider.

4.2.3 The Provider shall maintain copies of the complete records of the execution of the Contract, including, but not limited to documents, as necessary to assist in the defense of any legal action claiming liability or neglect of duty which may involve the City. The City shall also have access to these records. These records shall be maintained for a period of not less than three years after the earliest date which the applicable statutes may establish for the release of potential liability for the services rendered or performed under the Contract.

4.2.4 Accounting records as above shall be maintained and made available during performance of the work under the Contract for three years from date the Contract ends. In addition, those records which relate to any appeal, contract, litigation, or the settlement of claims arising out of such performance or cost, or items to which

an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeals, litigation, claims, or exception.

**5 INSTALLATION/INSPECTION SHIPPING**

5.1 Provider shall be responsible for all shipping and delivery costs associated with original order. Future orders shall be FOB Destination – Prepay and Add Shipping

5.2 Provider shall deliver new, fully-tested equipment, at mutually agreed upon time(s) and date(s) under the supervision of the City.

**6 CITY'S RESPONSIBILITIES**

6.1 City staff, in conjunction with Provider's staff, shall inspect LPR equipment following installation to ensure proper installation and operation.

6.2 City shall evidence its acceptance of the equipment under the Agreement by delivery to the Provider of an Equipment Acceptance Certificate, similar to Appendix H of this Agreement, with respect thereto.

END OF APPENDIX B



**APPENDIX C  
PAYMENT TERMS**

This Appendix C is attached to and incorporated by reference with the Contract made on May 1, 2015 between the CITY OF BERKELEY ("City") and Portable Computer Systems, Inc. dba PCS Mobile, ("Provider"), providing for the licensing and services related to the License Plate Recognition Equipment and Software.

**1 TOTAL CONTRACT PRICE:**

Contract Price for the furnishing of all Licenses, Services and Equipment shall not exceed \$450,000. For the convenience of the parties, the Contract price includes the following expenses as noted in the price chart below:

| <b>PROPOSED COST ELEMENTS - SUMMARY</b>                             |               |
|---------------------------------------------------------------------|---------------|
| Cost Element                                                        | Price         |
| Mobile LPR Equipment and Install - Overtime Kit - 5 or more systems | \$ 189,260.00 |
| Mobile Computing - Complete Kit                                     | \$ 30,875.00  |
| Spare Parts                                                         | \$ 19,235.00  |
| Cellular Connection Costs (Shown as Annual Cost)                    | \$ 4,710.00   |
| Miscellaneous On-call Services and Equipment                        | \$ 69,670.00  |

**Costs Options - Extended Warranty and Mobile Assurance - Overtime Kit (Pricing if Purchase Five (5) or More Systems)**

| Item Number                                                              | Item                      | Item Description                                                                                                                                                                                                                                                                                                                                                                                                              | Quantity | Unit Price   | Extended Price      |
|--------------------------------------------------------------------------|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|--------------|---------------------|
| <b>Extended Warranty and SMA Options</b>                                 |                           |                                                                                                                                                                                                                                                                                                                                                                                                                               |          |              |                     |
|                                                                          | <b>SMA for Five Years</b> |                                                                                                                                                                                                                                                                                                                                                                                                                               |          |              |                     |
| SMA-BASE-5Y                                                              |                           | SMA Base Package = 5 years; this item replaces SMA-BASE-1Y if purchased at time of sale ** Replaces SMA-BASE-1Y if Chosen                                                                                                                                                                                                                                                                                                     | 1        | \$ 1,200.00  | \$ 1,200.00         |
|                                                                          | <b>Extended Warranty</b>  |                                                                                                                                                                                                                                                                                                                                                                                                                               |          |              |                     |
| AU-K-OXX-EWRR-P5                                                         |                           | Extended Warranty for AU-K-OXX kit with Return and Repair coverage - Total warranty coverage of 5 Years when prepaid at time of system purchase (one year included in the selling price and four (4) additional years). This includes coverage of AutoVu vehicle hardware, Patroller software upgrades and Bing license renewal. Does not cover in-vehicle PC. **Option vs AU-K-OXX-EWRR-1Y purchased annually through Year 5 | 5        | \$ 14,840.00 | \$ 74,200.00        |
| <b>Subtotal</b>                                                          |                           |                                                                                                                                                                                                                                                                                                                                                                                                                               |          |              | <b>\$ 75,400.00</b> |
| <b>Extended Warranty and SMA for total of Five (5) years of coverage</b> |                           |                                                                                                                                                                                                                                                                                                                                                                                                                               |          |              | <b>\$ 75,400.00</b> |

| Support - Mobile Assurance (annual Cost)                  |                                        |                                                                                                                                                                                                                                                          |                           |
|-----------------------------------------------------------|----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| MOB-MAMBaseCamp                                           | Mobile Assurance®<br>Mobility BaseCamp | Any service or support that requires a PCS Mobile Mobility Specialist to work with the customer via Phone, Email, Remote, and/or at the PCS Mobile Shop to resolve issues involving the AutoVu LPR solution in the vehicle.                              | 5 \$ 100.00 \$ 500.00     |
| MOB-SUPPORT                                               | Mobile Assurance®<br>BaseCamp Server   | Any service or support that requires a PCS Mobile IT Specialist to work with the customer via Phone, Email, Remote, and/or at the PCS Mobile Shop to resolve issues involving the AutoVu LPR Software (i.e. Security Center or Patroller) on the server. | 1 \$ 1,500.00 \$ 1,500.00 |
| Subtotal                                                  |                                        |                                                                                                                                                                                                                                                          | \$ 2,000.00               |
| Annual cost for Remote Support of Five (5) AutoVu Systems |                                        |                                                                                                                                                                                                                                                          | \$ 2,000.00               |

| Support - Mobile Assurance Options (Per Incident Costs)               |                          |                                                                                                                                                                                                                                                                                                                |                           |
|-----------------------------------------------------------------------|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| MOB-MAPM                                                              | Preventative Maintenance | Optional Preventative Maintenance to include with any package. This visit includes checking and re-seating all connections, mounting hardware, testing and adjusting of hardware and software. (This cost will be incurred when instructed by City of Berkeley of needed service and at their sole discretion) | 5 \$ 200.00 \$ 1,000.00   |
| Travel_Zone_4                                                         | Travel Cost              | Travel Cost per trip for Preventative Maintenance or On-Site Support                                                                                                                                                                                                                                           | 1 \$ 1,400.00 \$ 1,400.00 |
| Subtotal                                                              |                          |                                                                                                                                                                                                                                                                                                                | \$ 2,400.00               |
| Preventative Maintenance Costs for five (5) Units - Per Incident cost |                          |                                                                                                                                                                                                                                                                                                                | \$ 2,400.00               |

| <b>Costs Options - Hosting and Custom Development</b> |                                    |                                                                                                                                                                                                                                                                     |          |             |                     |
|-------------------------------------------------------|------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-------------|---------------------|
| Item Number                                           | Item                               | Item Description                                                                                                                                                                                                                                                    | Quantity | Unit Price  | Extended Price      |
| <b>Hosting Options</b>                                |                                    |                                                                                                                                                                                                                                                                     |          |             |                     |
| GSC-Av-MS-1Y                                          | <b>Storage Server</b>              | GSC AutoVu Managed Service for one (1) year. Max ten (10) Patroller connections included. No fixed camera connection supported. Max five (5) concurrent Security Desk connections. Limited functionalities (please refer to product description)                    | 5        | \$ 3,540.00 | \$ 17,700.00        |
| <b>Hosting Configuration</b>                          |                                    |                                                                                                                                                                                                                                                                     |          |             |                     |
| PS-AV-AMS-250-NA                                      |                                    | Permit zone configuration services for AutoVu Mobile University or City with or without Wheel imaging Package (ex: Zone editor, mapping, custom enforcement rules). Maximum of 250 permit zones will be configured. (For "Autovu Managed Services" Deployment only) | 1        | \$ 1,250.00 | \$ 1,250.00         |
| <b>Services for Hosting</b>                           |                                    |                                                                                                                                                                                                                                                                     |          |             |                     |
| <b>Custom Development for Occupancy Functionality</b> |                                    |                                                                                                                                                                                                                                                                     |          |             |                     |
| PS-C-DEVELOP-NA                                       | <b>Custom Development Services</b> | **Custom development of software for Occupancy functionality. This is an hourly cost for Genetec's Engineering Services. Time sheets will be provided for all of this work.                                                                                         | 240      | \$ 156.25   | \$ 37,500.00        |
| <b>Subtotal</b>                                       |                                    |                                                                                                                                                                                                                                                                     |          |             | <b>\$ 56,450.00</b> |
| <b>Options and Services Cost Total</b>                |                                    |                                                                                                                                                                                                                                                                     |          |             | <b>\$ 56,450.00</b> |

\*\* Currently we provide a GPS coordinate for every read we export. What is proposed is we will include a BlockFace with every export. The Blockface will also be converted, using an excel spreadsheet from Berkeley, to the existing nomenclature used by Berkeley.  
 In essence we will be reporting the read data , and next to every read we will attach the block face. Xerox will need to convert that into a % of occupancy and possibly turnover.

**2 INVOICES**

Invoices shall contain itemized charges reflecting agreed upon unit prices or hourly billable rates as shown in this agreement with proper supporting documents.

**3 TIMING OF PAYMENTS**

**3.1 Payments Due Upon Delivery of Services.** City and Provider agree that any undisputed costs shown above shall be paid by the City upon completion of the service and acceptance by the City and within thirty (30) days of receipt of properly supported invoices from Provider.

Payment of any invoice shall not be deemed a waiver of any dispute.

City agrees that it shall promptly notify Provider in writing of any dispute with an invoice.

END OF APPENDIX C

**APPENDIX D****SPECIFICATIONS****LICENSE PLATE RECOGNITION EQUIPMENT AND SOFTWARE SYSTEM**

This document is intended for the Provider of the Functional LPR system that can be used for both occupancy detection and enforcement.

The system being specified here will be used by the City to capture vehicle occupancy in both demarcated and non-demarcated areas in the City. The occupancy data will be sent to the City's Automatic Data Collection system being developed by Xerox. The format of the data and the mechanism for data transfer shall be defined by Xerox.

In addition, the LPR system will integrate with City's existing systems e.g PPEO Handheld (Xerox), to provide time limit and illegal parking enforcement. The Provider shall work with the Providers of City's existing systems for the integration. The following sections and diagram describe the overall Automated Data Collection and Enforcement System solution.

**1. In-vehicle System**

- a. ALPR system: The ALPR cameras including the license plate and wheel image cameras will capture and provide images to the in-vehicle Genetec laptop which will run the Security Desk, Patroller. Provider shall provide and install the ALPR cameras, laptop and other associated hardware/software
- b. Modem/Access point: Provider shall provide a modem/access point for wireless communication between Genetec laptop and PPEO handheld and for cellular wireless communications with the Genetec backend server. Provider shall also provide the monthly data plan with sufficient bandwidth required for real-time transfer of data from the in-vehicle laptop to the backend server.
- c. Provider shall coordinate with Xerox to set up the data transfer of vehicle "hits" data between the laptop and PPEO handheld.

**2. Backend system**

- a. Provider shall provide hosting for goBerkeley Automated Data Collection and Enforcement System. This server may be hosted by Genetec. Provider shall coordinate with Xerox to set up directories in the host server to receive residential permits and Scofflaw data from Xerox on a mutually agreed upon and City-configurable schedule.
- b. Provider shall configure the host server to receive the latest California Stolen Vehicles data from the CA Department of Justice Stolen Vehicle System (SVS) on a mutually agreed upon and City-configurable schedule.

- c. Provider shall configure the host server to push the latest residential permit, Scofflaw and Stolen vehicle data to the in-vehicle Genetec laptop on a mutually agreed upon and City-configurable schedule.
- d. Vendor shall configure the host server and in-vehicle laptop to transfer the vehicle occupancy data from the laptop to the server in real-time
- e. Vendor shall make available to Xerox the following information for occupancy:
  - i. Occupancy data by block face
  - ii. Occupancy data for each vehicle including high precision GPS coordinates (which according to Genetec will be available in the upcoming release of their new software)

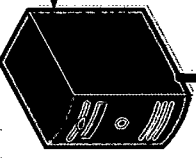
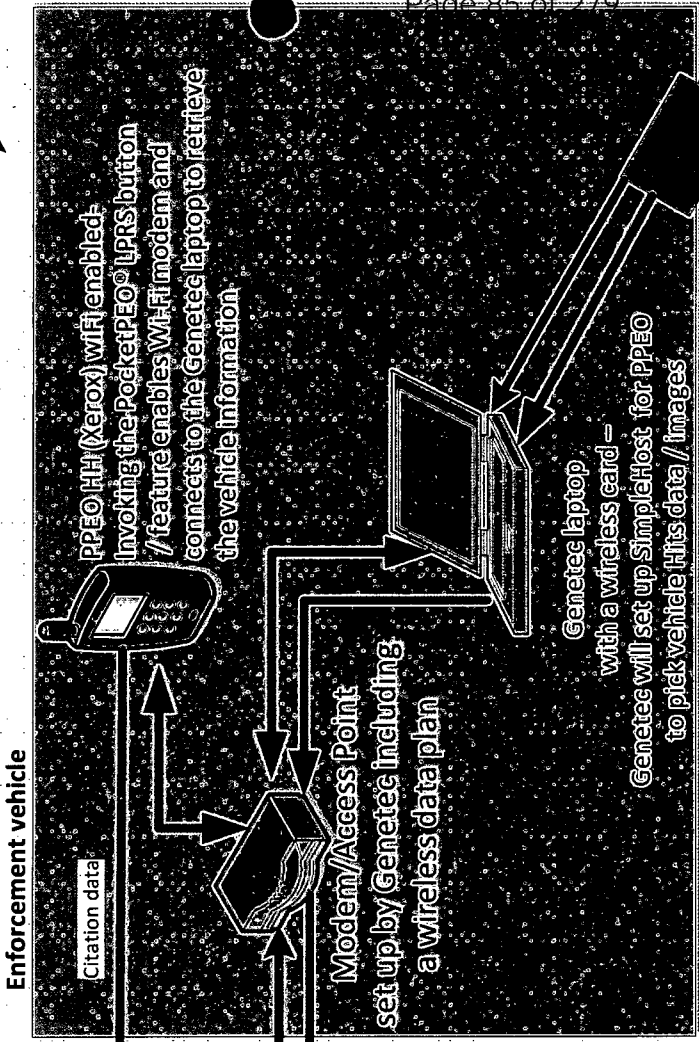
Vendor shall provide access to Xerox for a regular download the occupancy data. Xerox will download the data from Genetec server.

Enforcement data flow

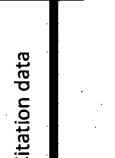
Occupancy data flow

eTIMS Server (Xerox)-  
eTIMS team will set up the  
upload of Permit and  
Scofflaw data  
to Genetec server

PPEO HHI Server (Xerox)



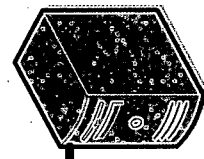
Scofflaw and Permit  
data pushed to Genetec  
server every night



Citation data

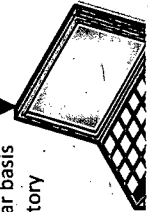
Occupancy data

Scofflaw / stolen vehicle/  
Permit data pushed to  
laptop (frequency  
configurable)



Stolen vehicle data

Xerox Analysts downloads  
occupancy data on a regular basis  
and cleans up the directory



Automatic Data Collection System

Genetec Server-  
Genetec will set up  
directory to receive Citation,  
Scofflaw and Stolen Vehicle Data

Stolen Vehicle Data Server -  
Genetec will schedule a regular  
import of stolen vehicle data into  
Genetec server

### Overall Description

The LPR system being specified here includes the hardware that will be deployed in the field and its associated backend system including hardware and software. It also includes the user interfaces that will be available to City users for monitoring the system.

### System Perspective

The LPR system will be used in conjunction with the following systems/data sources:

- a) For Occupancy
  - System being developed by Xerox
    - Occupancy reporting data hub
    - City web site displaying parking occupancy statistics
- b) For Enforcement
  - Existing systems
    - Electronic handheld ticket writer software – currently PocketPEO® (Xerox)
    - Citation database – currently eTIMS® (Xerox) through PocketPEO handheld device
    - Law Enforcement Records Management System (LERMS)
    - Residential Parking Permit database – currently eTIMS® (Xerox)

### Specifications

The LPR system must meet the following specifications:

| Spec # | Specifications                                                                                                                                                       |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | The system shall detect the presence of a parallel parked vehicle in situations where parked vehicle bumpers are at least 12 inches apart.                           |
| 2      | The system shall be able to detect the presence of a stationary angle parked vehicle- defined as a stationary vehicle (angled between 45 and 90 degrees to the curb) |



| Spec # | Specifications                                                                                                                                                                                                                     |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3      | The system shall detect the presence of a parked vehicle, notwithstanding changes in illumination (shadows, sunlight, glare, day/night lighting transition)                                                                        |
| 4      | The system shall detect a vehicle, the length of the vehicle notwithstanding ("Smart" Cars to tractor-trailer trucks, bicycles are NOT defined as vehicles in these requirements). Two and three wheeled vehicles are not included |
| 5      | The system shall detect vehicles simultaneously on both sides of the street                                                                                                                                                        |
| 6      | The system shall report the block face (per City's block face ID) where the detected vehicle is located                                                                                                                            |
| 7      | The system shall have a unique identifier for each vehicle (such as license plate, make, model, color or other unique data points) if detected as a parked vehicle                                                                 |
| 8      | The system shall incorporate existing enforcement beat areas in each record                                                                                                                                                        |
| 9      | The system shall generate statistical reports by enforcement beat areas                                                                                                                                                            |
| 10     | The system shall integrate with current parking regulations information (eTIMS, PocketPEO) to automatically detect a parking time limit violation                                                                                  |
| 11     | The system shall incorporate multiple time limit zones on the same enforcement run.                                                                                                                                                |
| 12     | The system shall integrate with current Residential Permit Parking (RPP) regulations to determine a permit zone violation; and a parking time limit violation within an RPP zone                                                   |

| Spec # | Specifications                                                                                                                                                                                                                         |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 13     | The system shall display recorded data to the Parking Enforcement Officer on the LPR system laptop.                                                                                                                                    |
| 14     | Report violation "alarms" that result from integration of recorded data with parking regulations to the Parking Enforcement Officer's handheld Computer in real-time. Violation alarms are desired for:                                |
| 15     | <ul style="list-style-type: none"> <li>• Violation of time limits in the City's 30 minute, 2 hr, 3hr and 8 hr time limit zones</li> </ul>                                                                                              |
| 16     | <ul style="list-style-type: none"> <li>• Violation of time limits and/or non-permit parking in the City's Residential Permit Parking zones</li> </ul>                                                                                  |
| 17     | The system shall allow PEO ability to override an alarm and enter an "exception" note or report. Overridden alarms will be tracked by time, day and PEO. Overridden data shall be a permanent record and cannot be modified or edited. |
| 18     | The system shall have a list of pre-defined common exceptions and allow entry of freeform comment                                                                                                                                      |
| 19     | The system shall generate daily, weekly, monthly and annual statistical reports detailing but not limited to:                                                                                                                          |
| 19.1   | Total number of vehicle license plate reads                                                                                                                                                                                            |
| 19.2   | Total number of parking violations issued as a result of read vehicle license plate data. The report shall separate data for each Berkeley Municipal Code (BMC).                                                                       |
| 19.3   | Total of parking violations not issued                                                                                                                                                                                                 |
| 19.4   | Individual PEO enforcement activity and performance                                                                                                                                                                                    |

| Spec # | Specifications                                                                                                                                                                                                                                                   |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 20     | The system shall ask the officer to login using unique security PIN and badge number                                                                                                                                                                             |
| 21     | The detection system shall be mountable with temporary mounts on the following types of vehicles:<br>(a) GO-4 (b) Sedan (c) SUV                                                                                                                                  |
| 22     | The system shall record and store the state and number of a license plate with (n-2) 98% accuracy                                                                                                                                                                |
| 23     | The vendor shall provide ample processing power with the ability to dynamically scale CPU resources as needed for up to 25,000 spaces Citywide                                                                                                                   |
| 24     | The vendor shall provide disk space that is in accordance with the specifications listed in this document.                                                                                                                                                       |
| 25     | The system shall be scalable such that when additional resources such as processing power, memory allocation, or disk space are needed; the system will dynamically scale accordingly to handle data collection and enforcement of up to 25,000 spaces Citywide. |
| 26     | The vendor shall provide the appropriate bandwidth to meet or exceed the desired level of service to handle data collection and enforcement of up to 25,000 spaces Citywide.                                                                                     |
| 27     | The system shall accurately detect the presence of a parked vehicle at least 90% of the time                                                                                                                                                                     |
| 28     | The system shall report accurate GPS coordinates at the time of vehicle detection at least 90% of the time                                                                                                                                                       |

| Spec # | Specifications                                                                                                                                                                                                                           |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 29     | The system shall accurately report the block face where the vehicle is physically located at least 90% of the time                                                                                                                       |
| 30     | The system shall have a uniquely identify each vehicle (such as license plate, make, model, color or other unique data points)at least 98% of the time                                                                                   |
| 31     | All data shall be in real-time and actively available on PEO handheld on site at least 98% of the time                                                                                                                                   |
| 32     | The vendor systems shall provide interfaces which support TCP/IP communications. Data exchange between systems shall be implemented via XML structured data over Web Services.                                                           |
| 33     | System to system communications shall be secured using SSL or IPsec.                                                                                                                                                                     |
| 34     | The vendors shall work with Xerox during the requirements & design phases of the project to define and document data exchange file formats via interface control documents and XML XSD definitions.                                      |
| 35     | The system shall record and store the date, day and time of the detection of a parked vehicle in the format defined for the Xerox-built Automatic Data Collection System                                                                 |
| 36     | The system shall integrate with the Pilot's parking regulation and capacity database. At a minimum, the parking regulation and capacity database will list the number of legal parking spaces per block face with a unique block face ID |

| Spec # | Specifications                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 37     | <p>The system shall provide data output that is compatible with the latest versions Microsoft SQL. As the new versions of Microsoft SQL become available, the provider will ensure compatibility. The proposed system should provide a way to store custom data elements and to enforce validation and business rules for that data. The system should further support the ability to include that data in reports and dashboards.</p> |
| 38     | <p>The system shall provide a data output that is compatible with ESRI data models.</p>                                                                                                                                                                                                                                                                                                                                                |
| 39     | <p>The system shall keep the captured data (license plate information) secure. Adequate information security shall be applied to protect all data collected and stored to meet or exceed the standards listed in Appendix H. Systems through which data is passed or is stored shall be protected from unauthorized access from both internal and external sources.</p>                                                                |
| 40     | <p>The system shall have the capability to specify a separate user-configurable retention period on read and hit data. The retention settings shall result in all read/hit data captured before the specified period to be automatically purged without user intervention.</p>                                                                                                                                                         |
| 41     | <p>The vendor shall host supporting networks and systems outside of the City of Berkeley network.</p>                                                                                                                                                                                                                                                                                                                                  |
| 42     | <p>The system shall provide a system with high availability and configured according to industry standard 99.999% of uptime or less than five (5) minutes of unscheduled downtime per year.</p>                                                                                                                                                                                                                                        |

| Spec # | Specifications                                                                                                                                                                                                                                                                                                                          |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 43     | The vendor shall provide adequate disaster recovery and take routine backups of the system with a four (4) hour Recovery Point Objective (RPO) and an eight (8) hour Recovery Time Objective (RTO).                                                                                                                                     |
| 44     | The vendor shall provide security in accordance with industry standard SSAE 16 Type II for hosted solutions. Provider will protect system with the appropriate industry standard security provisions including firewall protection, AES 256 bit data encryption, antivirus protection, logging access of data and manipulation of data. |
| 45     | The vendor shall provide means to authenticate City personnel to access the equipment/service management system. The solution must allow for future integration in Active Directory when the system is hosted in the City                                                                                                               |
| 46     | Provide a way to log different activities including, but not limited to, user authentication, file modification, user activity. Additionally, the system must provide a way to turn logging up such that debugging events may be achieved.                                                                                              |
| 47     | The vendor shall use virtualization technology that is compatible with VMware when the system is hosted in the City                                                                                                                                                                                                                     |
| 48     | The vendor shall provide City staff access to the system to perform any data manipulation that may be required. Ideally, this will be administered in a web based platform.                                                                                                                                                             |

| Spec # | Specifications                                                                                                                                                                                                                                                                                                     |
|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 49     | Provide an overall architecture that is in line with industry best practices. The design should use open standards protocols.                                                                                                                                                                                      |
| 50     | The vendor shall provide maintenance of the system such that service packs and patches are applied in a timely fashion. The provider is responsible for the health of the Operating System and Core applications.                                                                                                  |
| 51     | The vendor shall adhere to UML documentation standards for workflow improvement and technology implementation projects and provide the proposed process flow and high level technical specifications for interface assumptions/requirements, required 3rd party components/services, and data exchange mechanisms. |

END OF APPENDIX D

**APPENDIX E  
DETAILED TRAINING OUTLINE**

Portable Computer Systems, Inc dba PCS Mobile (“Provider”) shall provide the City with ongoing training to familiarize City staff with the mLPR units and the system. System training may be conducted by webinar or other remote educational methods; technical training must be conducted in person, no more than twice annually, not to exceed 10 business days annually. Additional training may be arranged as needed at a cost to the City.

The following training will be provided:

**1 Technical Training: (4 hour training sessions)**

The Provider shall provide City staff with in-depth, technical training on the functionality of the mLPR units. Training will be conducted in person, on an as needed basis no more than twice annually. Training dates will be scheduled, by mutual agreement, at least thirty days prior to the actual day. Technical training shall be divided into two sections: physical maintenance of the mLPR unit and virtual maintenance of the mLPR unit.

1.1 Physical Maintenance: At the conclusion of physical maintenance training, City staff will be able to maintain the hardware of the mLPR unit for day-to-day operation.

1.2 Virtual Maintenance: At the conclusion of virtual maintenance training, City staff will be able to operate system diagnostics and work with remote access staff to maintain the software that operates the mLPR units and interfaces with the City’s Automatic Data Collection System and enforcement systems.

1.3 Manual: Provider shall provide the City with a detailed training manual, discussing the above-mentioned areas of training.

END OF APPENDIX E



## APPENDIX F

### LIMITED AND EXTENDED WARRANTIES (5-YEAR) SERVICE CONTRACT AND SOFTWARE MAINTENANCE & SUPPORT AGREEMENT

- I. Portable Computer Systems, Inc. dba PCS Mobile shall provide the City with warranties and software maintenance services for the 5 year term of this contract. The terms of these warranties and software maintenance agreements are shown in the attached document titled: Warranty Levels and Software Maintenance Agreements, Version 5.
- II. **Charged-For-Enhancements.** From time to time, at Provider's sole discretion, Provider will make available to City Charged-for-Enhancements to the Software that City may license from Provider upon payment of the license fee established by Provider.
- III. **Software Functionality Enhancement Requests (Customizations).** If software functionality as outlined on the system documentation does not meet City's requirements, City may contract Provider to provided system functionality enhancements (customizations).
- Provider will evaluate customization requests and provide City with a written change order that includes a scope of work and cost estimate prior to the development of customization specifications. Upon the City's written approval of the change order, Provider will prepare detailed customization specification for City's review and written approval prior to development.
- The City must notify the Provider of customization functionality deficiencies (if customization does not function as outlined in approved specifications) within 60 days of customization delivery. Provider will correct all customization functionality deficiencies at no charge if notified within 60 days of delivery.
- At Provider's discretion customer customizations may be added to the software's standard feature set and provided to Provider's other customers.
- IV. **On-Site Support.** Provider, will provide City On-Site Support as needed, as PCS MOBILE / GENETEC based on the terms and unit rates described in Appendix B, at the request of the City.
- V. **Network Hardware & Software Support.** Support & Maintenance services do not include: network support, monitoring, backup, installation or warranty on or of City's

network hardware or software.

**VI. Obligations of City.**

- A. *City Contact.* City shall notify Provider of City's designee. To the maximum extent practicable, City's communications with Provider will be through the City's designee(s).
- B. *Facility and Personnel Access.* City agrees to grant Provider access to City's facilities and personnel concerned with the mLPR operation to enable Provider to provide services.

END OF APPENDIX F

Appendix G

# Warranty Levels & Software Maintenance Agreements

Version 5

Innovative Solutions

**Genetec**

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# 1 Overview

The following document describes the warranty levels, Software Maintenance Agreements (SMAs) and Hardware Extended Warranties offered by Genetec for products developed, manufactured and sold by Genetec.

## 2 Genetec's Standard Warranty Levels

### 2.1 Standard Software Warranty

#### 2.1.1 Standard Software Warranty Coverage

Genetec warrants that its software products will perform in all material respects in accordance with the accompanying user manual, and the media on which the Software Product resides will be free from defects in materials and workmanship under normal use.

The Standard Warranty covers any Technical Assistance required from Genetec as a result of a Software defect.

#### 2.1.2 Products Covered by Standard Software Warranty

All packaged software products developed by Genetec, including but not limited to, Security Center Security Center Mobile, Omnicast, Synergis and AutoVu Patroller.

All custom software applications developed by Genetec using one of Genetec's SDK.



### 2.1.3 Summary of Standard Software Warranty

| GTAC Support                              |                                   |
|-------------------------------------------|-----------------------------------|
| GTAC Hours                                | GTAC business hours <sup>1</sup>  |
| Support Cases                             | Optional <sup>2</sup>             |
| On-Site Support                           | Optional                          |
| Priority Queuing                          | n/a                               |
| GTAP Access                               |                                   |
| System Management                         | Included                          |
| Case Management                           | Included                          |
| Knowledge Base                            | Included                          |
| Computer Based Training Courses           | Included                          |
| User Forums                               | Included                          |
| Monthly Minute Newsletter                 | Included                          |
| Software Subscription Services            |                                   |
| Service Releases and Hot Fixes            | Included                          |
| Minor Release Upgrades                    | n/a                               |
| Major Release Upgrades                    | n/a                               |
| Value Added Services                      |                                   |
| Technical Appointments                    | Included                          |
| Remote System Assessment                  | n/a                               |
| On-site System Assessment                 | n/a                               |
| Dedicated GTAC Support Engineer           | n/a                               |
| Dedicated Onsite Support Engineer         | n/a                               |
| Discount on Services (including training) | n/a                               |
| Warranty Period                           |                                   |
| Length of SMA                             | According to product <sup>3</sup> |
| Warranty Start Date                       | 30 days after license issuance    |

<sup>1</sup> GTAC business hours are from Monday through Friday, 8am to 8pm Eastern Time. The GTAC is closed on Canadian statutory holidays.

<sup>2</sup> Support cases are available for purchase on systems without SMA coverage with the exception of license related issues and product defects.

<sup>3</sup> Product standard warranty lengths and maximum extended warranty lengths can be found in Appendix A.

## 2.2 Genetec's Standard Hardware Warranty

### 2.2.1 Standard Hardware Warranty Coverage

Genetec warrants each product it manufactures to be free from defects in materials and assembly in the course of normal use and service, and provides technical assistance related to these defects.

Genetec Hardware Warranties cover both the product Hardware and Software running on the product, with the exception of appliances running one of Genetec's software products (ex: SV-16) in which case the Software Warranty takes precedence over the hardware warranty for software related issues.

The Genetec Standard Hardware Warranty does not cover labor to send a Genetec engineer on-site to evaluate a system problem and/or determine if there is a warranty issue or not and/or replace a defective product.

### 2.2.2 Products Covered by Standard Hardware Warranty

All hardware products manufactured or resold by Genetec, including but not limited to, AutoVu Sharp, AutoVu SharpX, HID VertX, SV-16 are covered by the Standard Warranty.

### 2.2.3 Summary of Standard Hardware Warranty

| GTAC Support                              |                                                                       |
|-------------------------------------------|-----------------------------------------------------------------------|
| GTAC Hours                                | GTAC business hours <sup>1</sup>                                      |
| Support Cases                             | Unlimited                                                             |
| On-Site Support                           | Optional                                                              |
| Priority Queuing                          | n/a                                                                   |
| In Warranty Repairs                       |                                                                       |
| Product Return and Repair                 | Included <sup>3,4,5</sup>                                             |
| Advanced Replacement of Defective Product | Included within 90 days of purchase                                   |
| Unit Repair Turnaround time               | 10 business days between receipt by Genetec and ship date to customer |
| Functional Product Return                 | Service charge for returned product with no defect found              |
| Product DOA (within 90 days of shipment)  | Free advanced replacement of a new product                            |
| Product Software Updates/Upgrades         |                                                                       |
| Product Software Updates/Upgrades         | Included                                                              |
| GTAP Access                               |                                                                       |
| System Management                         | Included                                                              |
| Case Management                           | Included                                                              |
| Knowledge Base                            | Included                                                              |
| Computer Based Training Courses           | Included                                                              |
| User Forums                               | Included                                                              |
| Monthly Minute Newsletter                 | Included                                                              |
| Warranty Period                           |                                                                       |
| Length of Warranty                        | According to product <sup>6</sup>                                     |
| Warranty Start Date                       | On the day the product is delivered                                   |

<sup>1</sup>: GTAC business hours are from Monday through Friday, 8am to 8pm Eastern Time. The GTAC is closed on Canadian statutory holidays.

<sup>2</sup>: Support cases are available for purchase on systems under Standard Warranty without Extended Hardware Warranty with the exception of product defect related issues

<sup>3</sup>: Additional charges may be applied if damage is a result of using the product in a way that it is not typically intended to be used.

<sup>4</sup>: Product may be replaced by a fully functional refurbished product.

<sup>5</sup>: Customer is responsible for all shipping charges to return the product back to Genetec, and Genetec will cover the shipping charges to send the product back to the customer.

<sup>6</sup>: Product standard warranty lengths and maximum extended warranty lengths can be found in Appendix B.

#### **2.2.4 Warranty on repairs and replacement parts**

All Genetec products serviced by Genetec for repairs and replacements parts are warranted against defects in workmanship and materials for a period of 90 days, or the remainder of the original warranty, whichever is the longest.

#### **2.2.5 Exclusive Warranty Remedy**

During the applicable warranty period and in the event that a product is determined by Genetec to be defective in materials or assembly, Genetec will at its sole discretion either credit the customer the price paid for the defective product, or repair the defective product without charge, or replace the defective product with a new or refurbished product, or replace the defective product with a different product with identical or better specifications.

#### **2.2.6 Warranty Exclusions**

The following items are not covered by Genetec's Standard Hardware Warranty:

- Any equipment not furnished by Genetec
- A product which is used with non-supported ancillary equipment or software.
- Freight cost to return a product to Genetec.
- Defects or damage resulting from customer's improper testing, operation, installation, maintenance, modification, alteration, or adjustment.
- Defects or damage from misuse, accident or neglect.
- Defects or damage resulting from use of the product in other than its normal and customary manner.
- Defects or damage resulting from drilling holes, adding decals or other adhesives, or by painting the product.
- Defects or damage due to lightning or other electrical discharge.
- Product that is disassembled or repaired in such a manner as to adversely affect performance or prevent adequate inspection and testing to verify any warranty claim.
- Modification or abuse of, or tampering with, the product.
- Normal wear and tear.

#### **2.2.7 Relocation of AutoVu Mobile Systems**

Relocating a hard mounted AutoVu Mobile System from one vehicle to another will void the warranty on the cables. This does not apply to portable systems with magnetic mounts.

## 3 Software Maintenance Agreements (SMA)

### 3.1 What is an SMA?

An SMA provides customers with any new software releases, both minor and major updates, as well as unlimited access to Technical Support. The SMA protects the investment that is made in the solution by maintaining the systems up to date with the latest technological innovations developed by Genetec, by ensuring that the system operates and functions optimally and that the users leverage the system's full potential in order to generate maximum ROI of the solution.

### 3.2 Products Covered by SMA

All packaged software products developed by Genetec, including but not limited to, Security Center Security Center Mobile, Omnicast, Synergis and AutoVu Patroller.

All custom software applications developed by Genetec using one of Genetec's SDKs.

All software upgrades performed under the SMA continue to be covered by the SMA as long as it is in force.

## 3.3 SMA

| <b>GTAC Support</b>                              |                                                                         |
|--------------------------------------------------|-------------------------------------------------------------------------|
| <b>GTAC Hours</b>                                | GTAC business hours + customers business hours <sup>1</sup>             |
| <b>Support Cases</b>                             | Unlimited                                                               |
| <b>On-Site Support</b>                           | Optional                                                                |
| <b>Priority Queuing</b>                          | Included <sup>3</sup>                                                   |
| <b>GTAP Access</b>                               |                                                                         |
| <b>System Management</b>                         | Included                                                                |
| <b>Case Management</b>                           | Included                                                                |
| <b>Knowledge Base</b>                            | Included                                                                |
| <b>Computer Based Training Courses</b>           | Included                                                                |
| <b>User Forums</b>                               | Included                                                                |
| <b>Monthly Minute Newsletter</b>                 | Included                                                                |
| <b>Software Subscription Services</b>            |                                                                         |
| <b>Service Releases and Hot Fixes</b>            | Included                                                                |
| <b>Minor Release Upgrades</b>                    | Included                                                                |
| <b>Major Release Upgrades</b>                    | Included                                                                |
| <b>Value Added Services</b>                      |                                                                         |
| <b>Technical Appointments</b>                    | Included                                                                |
| <b>Remote System Assessment</b>                  | Optional                                                                |
| <b>On-site System Assessment</b>                 | Optional                                                                |
| <b>Dedicated GTAC Support Engineer</b>           | n/a                                                                     |
| <b>Dedicated Onsite Support Engineer</b>         | n/a                                                                     |
| <b>Discount on Services (including training)</b> | 5%                                                                      |
| <b>SMA Period</b>                                |                                                                         |
| <b>Length of SMA</b>                             | 1-5 year terms                                                          |
| <b>SMA Start Date</b>                            | 30 days after license issuance or on SMA anniversary date for a renewal |

- <sup>1</sup> GTAC business hours are from Monday through Friday, 8am to 8pm Eastern Time. The GTAC is closed on Canadian statutory holidays.  
<sup>2</sup> Done via pager if outside GTAC standard support hours with the exception of Canadian statutory holidays when the GTAC is closed.  
<sup>3</sup> Customers with a valid SMA will get priority queuing over customers without an SMA when contacting the GTAC via phone.  
<sup>4</sup> Each SMA includes 4 hours of Technical Appointments per year.

## 3.4 SMA Plus

| GTAC Support                              |                                                                          |
|-------------------------------------------|--------------------------------------------------------------------------|
| GTAC Hours                                | 7x24 <sup>1</sup>                                                        |
| Support Cases                             | Unlimited                                                                |
| On-Site Support                           | Optional                                                                 |
| Priority Queuing                          | Included <sup>2</sup>                                                    |
| GTAP Access                               |                                                                          |
| System Management                         | Included                                                                 |
| Case Management                           | Included                                                                 |
| Knowledge Base                            | Included                                                                 |
| Computer Based Training Courses           | Included                                                                 |
| User Forums                               | Included                                                                 |
| Monthly Minute Newsletter                 | Included                                                                 |
| Software Subscription Services            |                                                                          |
| Service Releases and Hot Fixes            | Included                                                                 |
| Minor Release Upgrades                    | Included                                                                 |
| Major Release Upgrades                    | Included                                                                 |
| Value Added Services                      |                                                                          |
| Technical Appointments                    | Included <sup>3</sup>                                                    |
| Remote System Assessment                  | Included <sup>4</sup>                                                    |
| On-site System Assessment                 | Optional                                                                 |
| Dedicated GTAC Support Engineer           | Optional                                                                 |
| Dedicated Onsite Support Engineer         | Optional                                                                 |
| Discount on Services (including training) | 10%                                                                      |
| SMA Period                                |                                                                          |
| Length of SMA                             | 1-5 year terms                                                           |
| SMA Start Date                            | 30 days after license issuance or on SMA anniversary date for a renewal. |

<sup>1</sup> Done via pager outside GTAC standard support hours.

<sup>2</sup> Customers with a valid SMA will get priority queuing over customers without an SMA when contacting the GTAC via phone.

<sup>3</sup> Each SMA Plus includes 8 hours of Technical Appointments per year.

<sup>4</sup> Each SMA Plus includes one Remote System Assessment per year.

### 3.5 SMA Value-Added Services Descriptions

#### 3.5.1 Priority Queuing

Customers with a valid SMA will get priority in the queue over customers without an SMA when calling the GTAC. When multiple customers with valid SMAs are in the queue simultaneously, priority is given on a first come first served basis.

#### 3.5.2 Technical Appointments

Customers with a valid SMA may schedule technical appointments with a Genetec Technical Support Engineer. Technical appointments may be used to discuss system design, plan a system upgrade, assist during a system upgrade or used for any other product-related technical work.

Technical appointments can be booked on the GTAP. Technical appointments must be scheduled during regular GTAC hours but are also available after hours, if needed, at an extra cost.

Each SMA type includes a predefined block of hours to be used each year for technical appointments as detailed in the table below. Additional hours may be purchased if needed.

| Type of SMA | Included appointment hours | Maximum number of appointments |
|-------------|----------------------------|--------------------------------|
| SMA         | 4 hours                    | 2                              |
| SMA Plus    | 8 hours                    | 4                              |

#### 3.5.3 Remote System Assessment

A GTAC engineer will remotely connect to the customer system and perform a standard technical system assessment and provide recommendations. A report will be sent out to the customer at the end of the remote system assessment. The Remote System Assessment is a complementary service offered to SMA Plus customers once per year. This service is also available for purchase to SMA customers.

In order to provide this service, customer must provide the GTAC with a valid remote connection to their site.

#### 3.5.4 On-Site System Assessment

Receive a visit from a Genetec Field Engineer onsite. During this visit, the Field Engineer can do a technical assessment of the system, perform system maintenance, discuss system design or perform various other tasks. The length of the visit will be evaluated by Genetec based on the Scope of Work.

#### 3.5.5 Dedicated Support Engineer

Customers will be assigned a Dedicated Support Engineer. This Engineer will act as the main point of contact for all support related issues and will be familiar with the system design and its intricacies.

There are three different options available for this service:

**a) Shared Dedicated GTAC Support Engineer**

The assigned Dedicated GTAC Support Engineer will be responsible to support several dedicated client accounts. Therefore, customers acquiring this service will essentially be sharing the Dedicated GTAC support engineer with up to 5 other customers.

Customers with a Shared Dedicated GTAC Support Engineer will be assigned a specific 1-800 number (for North American customers only) and email address. Outside of the GTAC's business hours, customers must go through the regular support queues in order to obtain immediate assistance.

**b) Dedicated GTAC Support Engineer**

The assigned Dedicated GTAC Support Engineer will be responsible to exclusively support a single customer.

Customers with a Dedicated GTAC Support Engineer will be assigned a specific 1-800 number (for North American customers only) and email address. Outside of the GTAC's business hours, customers must go through the regular support queues in order to obtain immediate assistance.

**c) Dedicated Onsite Support Engineer**

The Dedicated Onsite Support Engineer will reside at the customer's premises and provide proactive assistance, reactive support and system management.

The Dedicated Onsite Support Engineer is generally available during business hours on business days unless otherwise agreed upon.

**3.5.6 Discount on Professional Services**

Customers with a valid SMA will benefit from discounts on all Genetec professional services, including Technical Training as detailed in the table below.

| Type of SMA | Discount on Services |
|-------------|----------------------|
| SMA         | 5%                   |
| SMA Plus    | 10%                  |



## 4 Genetec's Hardware Extended Warranties

### 4.1 What is an Extended Warranty?

An Extended Warranty provides the means to extend the standard warranty length of hardware products sold by Genetec and that are eligible for a warranty extension. (See Appendix B – Hardware Warranty Lengths)

### 4.2 Summary of Extended Warranty with Return and Repair Coverage

| GTAC Support                              |                                                                       |
|-------------------------------------------|-----------------------------------------------------------------------|
| GTAC Hours                                | GTAC standard support hours <sup>1</sup>                              |
| Support Case Allowance                    | Unlimited                                                             |
| On-Site Support                           | Optional                                                              |
| Priority Queuing                          | n/a                                                                   |
| In Warranty Repairs                       |                                                                       |
| Product Return and Repair                 | Included <sup>2,3,4</sup>                                             |
| Advanced Replacement of Defective Product | Included within 90 days of product purchase                           |
| Unit Repair Turnaround time               | 10 business days between receipt by Genetec and ship date to customer |
| Functional Product Return                 | Service charge for returned product with no defect found              |
| Product Software Updates/Upgrades         |                                                                       |
| Product Software Updates/Upgrades         | Included                                                              |
| GTAP Access                               |                                                                       |
| System Management                         | Included                                                              |
| Case Management                           | Included                                                              |
| Knowledge Base                            | Included                                                              |
| Computer Based Training Courses           | Included                                                              |
| User Forums                               | Included                                                              |
| Monthly Minute Newsletter                 | Included                                                              |
| Warranty Period                           |                                                                       |
| Length of Extended Warranty               | According to product <sup>5</sup>                                     |
| Warranty Start Date                       | On the day the product is delivered                                   |

<sup>1</sup> GTAC standard support hours are from Monday through Friday, 8am to 8pm Eastern Time. The GTAC is closed on Canadian statutory holidays.

<sup>2</sup> Additional charges may be applied if damage is a result of using the product in a way that it is not typically intended to be used.

<sup>3</sup> Product may be replaced by a fully functional refurbished product.

<sup>4</sup> Customer is responsible for all shipping charges to return the product back to Genetec, and Genetec will cover the shipping charges to send the product back to the customer.

<sup>5</sup> Product standard warranty lengths and maximum extended warranty lengths can be found in Appendix B.

### 4.3 Summary of Extended Warranty with Advanced Replacement Coverage

| GTAC Support                              |                                                                                                                                                                                  |
|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| GTAC Hours                                | GTAC standard support hours <sup>1</sup>                                                                                                                                         |
| Support Case Allowance                    | Unlimited                                                                                                                                                                        |
| On-Site Support                           | Optional                                                                                                                                                                         |
| Priority Queuing                          | n/a                                                                                                                                                                              |
| In Warranty Repairs                       |                                                                                                                                                                                  |
| Product Return and Repair                 | n/a                                                                                                                                                                              |
| Advanced Replacement of Defective Product | Included <sup>2,3,4</sup>                                                                                                                                                        |
| Unit Repair Turnaround Time               | Customer is responsible for replacing and returning the defective product to Genetec <sup>3</sup> within 30 days; otherwise the MSRP of product will be invoiced to the customer |
| Functional Product Return                 | Service charge for returned product with no defect found                                                                                                                         |
| Product Software Updates/Upgrades         |                                                                                                                                                                                  |
| Product Software Updates/Upgrades         | Included                                                                                                                                                                         |
| GTAP Access                               |                                                                                                                                                                                  |
| System Management                         | Included                                                                                                                                                                         |
| Case Management                           | Included                                                                                                                                                                         |
| Knowledge Base                            | Included                                                                                                                                                                         |
| Computer Based Training Courses           | Included                                                                                                                                                                         |
| User Forums                               | Included                                                                                                                                                                         |
| Monthly Minute Newsletter                 | Included                                                                                                                                                                         |
| Warranty Period                           |                                                                                                                                                                                  |
| Length of Extended Warranty               | According to Product <sup>5</sup>                                                                                                                                                |
| Warranty Start Date                       | On the day the product is delivered                                                                                                                                              |

<sup>1</sup> GTAC standard support hours are from Monday through Friday, 8am to 8pm Eastern Time. The GTAC is closed on Canadian statutory holidays.

<sup>2</sup> Additional charges may be applied if damage is a result of using the product in a way that it is not typically intended to be used.

<sup>3</sup> Product may be replaced by a fully functional refurbished product.

<sup>4</sup> Genetec is responsible for shipping charges for both sending the replacement product to the customer and returning the defective product back to Genetec.

<sup>5</sup> Product standard warranty lengths and maximum extended warranty lengths can be found in Appendix B.

### 4.4 Exclusive Extended Warranty Remedy

See Section 2.2.5: Exclusive Warranty Remedy

### 4.5 Extended Warranty Exclusions

See Section 2.2.6: Warranty Exclusions

## 5 Pricing & Ordering

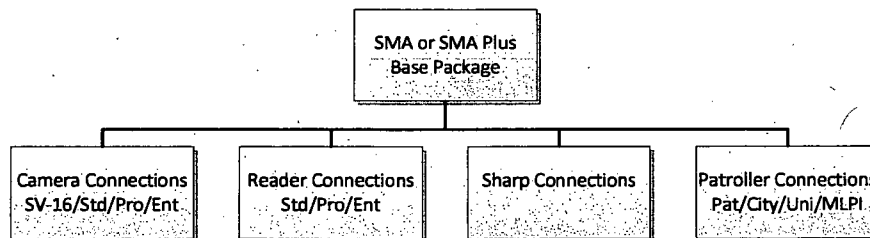
### 5.1 SMAs

#### 5.1.1 SMA Pricing Structure

SMAs are assembled in a similar fashion to Genetec software licenses, meaning that it's composed of a base package (for either an SMA or an SMA Plus) and a number of options depending on the system(s) covered by the SMA in question.

It is important to note that not all software license options have a corresponding SMA line item; in fact very few license options have that. If we take the example of Omnicast, only camera connection licenses are counted when pricing an SMA, all other license options/connections are SMA-free. It is therefore very simple to quickly assemble an SMA quote with just a few line items.

Since the difference between the SMA and the SMA Plus is taken into account in the SMA base package, all other line items that form the SMA are the same regardless what type of SMA has been selected.



#### 5.1.2 SMA Multi-Year Discount

Genetec offers multi-year SMA terms in the form of a 2-year, 3-year, 4-year or 5-year agreement. All SMA line items have their respective multi-year counterparts that are used for ordering a multi-year SMA.

Since these multi-year SMAs represent a long term commitment to Genetec, an additional discount is factored in all multi-year SMA line items. In order to benefit from this multi-year discount, the full amount for a multi-year SMA must be paid in full at the time of purchase or renewal.

#### 5.1.3 Multi System/Site SMA

An SMA can cover multiple System IDs, therefore an **end-user** with multiple system can consolidate all his systems under a single SMA for added simplicity. Since there's effectively only one SMA in this scenario, the end-user will only pay for the SMA base package once for the entire SMA and **NOT** once for every System ID covered by the SMA, therefore benefiting from a volume discount for placing all of his Genetec systems under a unique SMA.

It is important to note that a reseller **CANNOT** place multiple System IDs from multiple end-users under a single SMA.

#### 5.1.4 SMAs for License Add-ons

An SMA is mandatory for all add-ons done to an existing system that is currently under SMA. However, this applies only to software options for which Genetec charges an SMA for (Cameras, Readers, Sharps and Patrollers).

When adding a software license option that has a corresponding SMA line item, the SMA price for that add-on must be pro-rated to co-terminate with the SMA's anniversary date. This is accomplished by using a series of "1 day" SMA part numbers that are created solely to facilitate the pro-rating calculation.

In order to compute the price, simply take the appropriate SMA 1 day part number associated to the license option that is being added to the system, multiply that by the quantity of license options ordered and then multiply that again by the number of days remaining in the SMA term. Information on an SMA's anniversary date and remaining days in the agreement is readily accessible through the system management section of the GTAP.

#### 5.1.5 SMA Renewals

Renewal notices are automatically sent 90 days and 45 days prior to the anniversary date of the SMA, indicating that the SMA is about to expire. In the eventuality that the SMA is not renewed by the anniversary date, an additional notice is sent advising of the expiration of the SMA.

SMA coverage must be continuous. For example, if year two is skipped and an SMA is desired for year three, the cost of the SMA will be retroactive to include the year that was skipped, thus will cover both the second and third year.

All SMA renewals are priced according to the most recent price list in effect at the time of the renewal.

#### 5.1.6 SMA Ordering Information

SMAs must be purchased together with a new system sale or in conjunction with a system upgrade. If an SMA is purchased as an add-on to an existing system, it will be priced retroactively as if it was purchased at the same time as the system it will cover.

To order an SMA, the base package must be selected first for either an SMA or an SMA PLUS by using the following line items:

SMA-BASE-XX or SMA-PLUS-XX

Once the SMA base package has been selected, the other SMA line items are chosen based on the content of the licenses that the SMA covers. The format for all SMA part numbers follows the following standard:

SMA-0000-E-XX or SMA-0000-XX

Where:

- 0000:** License option reference: CAM (Camera Connection), RDR (Reader Connection), SHP (AutoVu Sharp Connection), PATR (AutoVu Patroller System), UNIV (AutoVU University System), CITY (AutoVu City System) and MLPI (AutoVu MLPI System)
- E:** Edition of the software if applicable: S (Standard), P (Pro), E (Enterprise)
- XX:** The term of the SMA: 1Y, 2Y, 3Y, 4Y, 5Y and 1D.

Complete SMA pricing information is found in the SMA price list.

**5.1.7 SMA Quoting Examples**

**a) Example 1: Unified Video/ACS SC5 System**

Customer purchases a unified Video/ACS SC5 system. He purchased the Enterprise version of Synergis with 50 Readers, the Pro version of Omnicast with 75 Camera, has 2 Sharp Cameras and requires a 3 year SMA.

The parts required to assemble this SMA would be as follows:

| Part No      | Description                                    | Qty |
|--------------|------------------------------------------------|-----|
| SMA-BASE-3Y  | SMA Base Package – 3 years                     | 1   |
| SMA-CAM-P-3Y | SMA for 1 Omnicast Pro Camera – 3 years        | 75  |
| SMA-RDR-E-3Y | SMA for 1 Synergis Enterprise Reader – 3 years | 50  |
| SMA-SHP-3Y   | SMA for 1 Sharp Camera – 3 years               | 2   |

**b) Example 2: Multiple Systems with a Single SMA**

Customer has an extensive multi-site deployment with federation, with both Video and ACS. Customer requires a 1 year agreement with round the clock access to Technical Support and has the following sites to deploy:

| Site   | Video                        | Access Control                 |
|--------|------------------------------|--------------------------------|
| Site A | Omnicast Enterprise 350 cams | Synergis Enterprise 40 readers |
| Site B | Omnicast Enterprise 120 cams | Synergis Enterprise 25 readers |
| Site C | Omnicast Pro 60 cams         | Synergis Enterprise 10 readers |
| Site D | Omnicast Standard 15cams     | Synergis Enterprise 5 readers  |
| Site E | Omnicast Standard 15cams     | Synergis Enterprise 5 readers  |

To summarize, the customer has 470 Omnicast Enterprise cameras, 60 Omnicast Pro cameras, 30 Omnicast Standard cameras and 85 Synergis Enterprise readers. The parts required to assemble this SMA would be as follows:

| Part No      | Description                                   | Qty |
|--------------|-----------------------------------------------|-----|
| SMA-PLUS-1Y  | SMA Plus Base Package – 1 year                | 1   |
| SMA-CAM-S-1Y | SMA for 1 Omnicast Standard Camera – 1 year   | 30  |
| SMA-CAM-P-1Y | SMA for 1 Omnicast Pro Camera – 1 year        | 60  |
| SMA-CAM-E-1Y | SMA for 1 Omnicast Enterprise Camera – 1 year | 470 |
| SMA-RDR-E-1Y | SMA for 1 Synergis Enterprise Reader – 1 year | 85  |

**c) Example 3: Single Year SMA Add-on**

Customer has an existing unified Video/ACS SC5 system. He purchased the Enterprise version of Synergis with 50 Readers, the Pro version of Omnicast with 75 Camera, has 2 Sharp Cameras and has an SMA Plus that ends on October 12<sup>th</sup> 2012. (Information available on the GTAP)

Customer adds an extra building to his system with an additional 25 Omnicast Pro cameras and 12 Synergis Enterprise readers on July 16<sup>th</sup> 2012, which means 89 days are left on his SMA. (Information available on the GTAP)

Since the customer is adding 25 cameras and 12 readers, this means that we must compute 25 x 89 Omnicast Pro Camera 1 Day SMA parts and 12 x 89 Synergis Enterprise Reader 1 Day SMA parts as shown below:

| Part No      | Description                                  | Qty   |
|--------------|----------------------------------------------|-------|
| SMA-CAM-P-1D | SMA for 1 Omnicast Pro Camera – 1 day        | 2,225 |
| SMA-RDR-E-1D | SMA for 1 Synergis Enterprise Reader – 1 day | 1,068 |

**d) Example 4 : Multi-year SMA Add-on**

Customer has an existing unified Video/LPR SC5 system. The system is composed of 500 Omnicast Enterprise Cameras, 20 AutoVu Sharp Cameras, 5 AutoVu Patrollers and has an SMA that ends on March 14<sup>th</sup> 2014. (Information is available on the GTAP)

Customer expands his fleet of AutoVu Patrollers by adding 5 extra vehicles on September 4<sup>th</sup> 2012, which means there are 557 days left in the SMA. (Information available on the GTAP)

Since the customer is adding 5 patrollers, this means that we must compute 5 x 557 Patroller 1 Day SMA parts as shown below:

| Part No     | Description                        | Qty   |
|-------------|------------------------------------|-------|
| SMA-PATR-1D | SMA for 1 AutoVu Patroller – 1 day | 2,785 |

## 5.2 Hardware Extended Warranties

### 5.2.1 Hardware Extended Warranty Availability

Extended warranties are only available for certain hardware products and kits. In order to determine for which product line is eligible for an extended warranty, please refer to "*Appendix B – Hardware Warranty Lengths*".

### 5.2.2 Hardware Extended Warranty Multi-Year Discount

Genetec offers multi-year Extended Warranty terms in the form of a 2 year, 3 year, 4 year or 5 year agreement; however the maximum length of an extended warranty will vary depending on the product it is purchased for. (See *Appendix B – Hardware Warranty Lengths*) All Extended Warranty line items have their respective multi-year counterparts that are used for ordering a multi-year Extended Warranty.

Since these multi-year agreements represent a long term commitment to Genetec, an additional discount is factored in to all multi-year Extended Warranty line items. In order to benefit from this long term commitment discount, the full amount for a multi-year Extended Warranty must be paid in full at the time of purchase or renewal.

### 5.2.3 Hardware Warranty Renewals

Hardware Warranty renewal notices are automatically sent 90 days and 45 days prior to the anniversary date, indicating that the Warranty is about to expire. In the eventuality that the Warranty is not renewed by the anniversary date, an additional notice is sent advising of the expiration of the Warranty.

Hardware Extended Warranty coverage must be **continuous**. If the warranty is not extended/renewed prior to its expiry, it will not be extendable any more.

All Hardware Extended Warranty renewals are priced according to the most recent price list in effect at the time of the renewal.

### 5.2.4 Hardware Extended Warranty Ordering Information

Genetec's hardware extended warranty prices can be found in Genetec's price book. Different product codes have been created for each product as well as their respective list of available extended warranty options. Please use the following rule to build the product code associated to the warranty options you have selected for the product you are purchasing.

AU-K-KKK-EWLL-YY or AU-S-EWLL-YY

Where:

**KKK:** Type of AutoVu kit, according to the part number of the kit that you ordered, the warranty applies to.

**LL:** Level of Warranty: RR for Return & Repair, AS for Advanced Replacement and AP for Advanced Replacement with 7x24 support

**YY:** Term of the Warranty (Y for year and P for prepaid): Y1, Y2, Y3, Y4, Y5, P2, P3, P4 and P5

When purchasing an extended warranty on a kit, only serialized items are covered by the extended warranty. Other items such as cables and mounting hardware are only covered by the standard hardware warranty.

### **5.3 “À la carte” upgrades and GTAC support**

#### **5.3.1 Software upgrade – Major Release**

Customers without an SMA may upgrade to the latest major software release, provided that their current system is only 1 major release back. For example, you may upgrade from version 4.2 to 5.0, but you cannot upgrade from version 3.5 to 5.0.

The upgrade cost is 35% of total system price based on the latest software price list and comes with a limited 90 day warranty as detailed in *section 2.1*.

#### **5.3.2 Software upgrade – Minor Release**

Customers without an SMA may upgrade to the latest minor software release provided that they are within the same major release. For example, you may upgrade from version 4.7 to 4.8, but you cannot upgrade from version 4.7 to 5.1.

The upgrade cost is 25% of total system price based on the latest software price list and comes with a limited 90 day warranty as detailed in *section 2.1*.

#### **5.3.3 GTAC Support**

Customers without an SMA may contact the GTAC but must pay a flat fee in order to open a support case, with the exception of all license related issues. Pricing information on support cases can be found in the SMA price list.

If the product is still under warranty when the support case is opened and that the investigation reveals that the root cause of the incident is a product defect, the full amount of the purchased support case will be refunded.

#### **5.3.4 On-Site Technical Support**

On-site Technical Support is available to all customers and subject to availability of the Genetec Field Engineering team. Pricing information on Genetec Field Services can be found in the Genetec Professional Services price list.



### 5.3.5 Technical Appointments

Customers with an SMA who have consumed all of their Technical Appointment hours or customers who do not have an SMA and that wish to purchase Technical Appointment hours may do so by purchasing a minimum block of 4 hours. Pricing information on Technical Appointment hours can be found in the Genetec SMA price list.

## 6 The Genetec Technical Assistance Center

### 6.1 Contacting the GTAC

#### 6.1.1 Via the Genetec Technical Assistance Portal (GTAP)

The GTAC can be contacted by opening a Support Case through the Case Management Section of the GTAP. All support cases whether opened or resolved, created through the GTAP or through other means can be consulted through the GTAP in order to get the latest status or to communicate with the GTAC Engineer assigned to the case.

GTAP URL: <http://gtap.genetec.com>

#### 6.1.2 Via Phone

The GTAC offers phone support from Monday to Friday 8am-8pm EST/EDT and is closed during Canadian Statuary Holidays. After-hour support is available to SMA and SMA Plus owners according to the terms stated in the agreement.

When calling the GTAC it is important to have the Genetec System ID and the SMA Contract number (if applicable) in order to speed up the entitlement process:

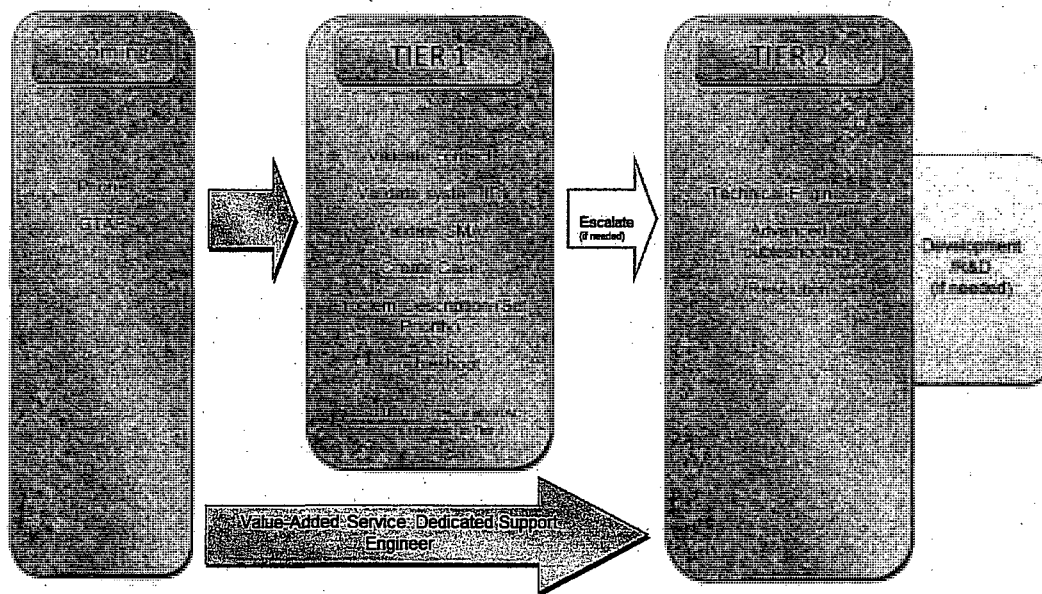
Direct Dial: 1-514-856-7100

Toll Free: 1-866-338-2988 (Canada & USA) | +800 01818200 (Europe)

### 6.2 Escalation Process

In the event a support case needs immediate attention of the GTAC's leadership team, there is a quick and simple way to ensure this will be done. Cases can be escalated via the GTAP's case management section. Clicking the "escalate" button will send a notification email to all members of the GTAC Leadership team regarding the urgency of the issue. We guarantee that the owner of the case will be contacted by a member of the GTAP leadership team within 1 business day.

### 6.3 Support Case Life-cycle



## 7 GTAC Service Levels

### 7.1 Support Case Severity Levels

#### 7.1.1 Description of Severity Levels

| Severity | Description                                                                             |
|----------|-----------------------------------------------------------------------------------------|
| Critical | Product is not functioning or functionality is significantly impaired.                  |
| High     | Major feature of product is not functioning or functionality is significantly impaired. |
| Medium   | Minor feature of product is not functioning or functionality is significantly impaired. |
| Low      | General question on functionality.                                                      |

The priority of a case may be escalated based on current customer situation or overall satisfaction level of the customer.

#### 7.1.2 Severity Level Examples

| Severity | Examples                                                                                                                                                                                                                                  |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Critical | <ul style="list-style-type: none"> <li>Major Surveillance</li> <li>Entire system down and not operational</li> <li>Video is not being recorded</li> </ul>                                                                                 |
| High     | <ul style="list-style-type: none"> <li>Access control</li> <li>None of the credentials work</li> <li>None of the doors are opening</li> <li>Main doors don't open</li> </ul>                                                              |
| Medium   | <ul style="list-style-type: none"> <li>License Plate reader</li> <li>LPR System is not starting and able to read plates</li> <li>Crashing frequently</li> <li>Touch Screen is not working</li> <li>Automatic windshield wipers</li> </ul> |

|             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|             | <ul style="list-style-type: none"> <li>✓ Right LPR / Tire camera is not working</li> <li>✓ Production database not accessible // not functional</li> <li>✓ Match process is not functional</li> <li>✓ IRWS is not functional // not able to connect to LPR Server(s)</li> <li>✓ Images are not displayed from IRWS</li> <li>✓ Not enough free space on the LPR Server(s)</li> <li>✓ LPR Server / Lane / IRWS computer is crashing frequently</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>High</p> | <p><b>General</b></p> <ul style="list-style-type: none"> <li>✓ Users unable to log in (AD)</li> <li>✓ Alarm Management not functioning</li> <li>✓ Services not being restarted by WD</li> <li>✓ Service crashes/restarts sporadically</li> <li>✓ Unable to launch client application</li> </ul> <p><b>Video Surveillance</b></p> <ul style="list-style-type: none"> <li>✓ Poor image quality</li> <li>✓ Video not recorded on a few cameras or large number of cameras not available</li> <li>✓ DFC not functioning</li> </ul> <p><b>Access Control</b></p> <ul style="list-style-type: none"> <li>✓ Secondary door does not open/lock</li> <li>✓ Synchronization problem</li> </ul> <p><b>License Plate Recognition</b></p> <ul style="list-style-type: none"> <li>✓ Hotlist not updated</li> <li>✓ Not able to offload</li> <li>✓ No wireless connection</li> <li>✓ GPS problem</li> <li>✓ Left LPR / Tire camera is not working</li> <li>✓ Mobile LPR System is working but on occasion it is crashing</li> <li>✓ Back-Office software is crashing</li> <li>✓ System is missing plates (less than 90 % read rate)</li> <li>✓ System is reading plates poorly (less than 70% perfect read)</li> </ul> |

|               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|               | <p>rate)</p> <ul style="list-style-type: none"> <li>✓ Review Server is not functional</li> <li>✓ Archive database is not created</li> <li>✓ Archive / Backup job is not enabled</li> <li>✓ Custom Replication is not enabled in a multi LPR Server environment</li> <li>✓ Images not pushed from lane computer to the LPR Server(s)</li> <li>✓ Lane computer is missing license plates (less than 90 % read rate)</li> <li>✓ Lane computer is reading license plates poorly (less than 70% perfect read rate)</li> <li>✓ Lane computer is not functional / able to capture license plates</li> <li>✓ Lane computer is not able to send transactions to the LPR Server(s).</li> <li>✓ Back-Office application is not functional on the IIS server</li> <li>✓ Back-Office application is unable to show open/closed transactions or to show images, with or without ActiveX control</li> <li>✓ Back-Office application unable to export to client / IIS computer</li> <li>✓ Lane computer is not able to send reviews</li> </ul> |
| <p>Medium</p> | <p><u>General</u></p> <ul style="list-style-type: none"> <li>✓ Licensing</li> <li>✓ PTZ functionality</li> <li>✓ USB Joystick functionality</li> <li>✓ Macros/plugin not functioning</li> <li>✓ DB problem</li> <li>✓ Unit occasionally not available</li> <li>✓ Cosmetic problems</li> <li>✓ Problem with some credential</li> </ul> <p><u>Access Control</u></p> <ul style="list-style-type: none"> <li>✓ Some controllers are offline</li> <li>✓ Badge designer issue</li> </ul> <p><u>License Plate Recognition</u></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     | <ul style="list-style-type: none"> <li>✓ System is missing patches more than 90% rear date</li> <li>✓ System is running in date locality more than 100% per day</li> <li>✓ Hardware broken but systems still can read dates</li> <li>✓ Missing functionality/Upgrade request</li> <li>✓ Lane computer is missing dates between 80% and 95% readability</li> <li>✓ Lane computer is missing dates locality between 80% and 90% per day</li> </ul> |
| Low | <ul style="list-style-type: none"> <li>✓ Feature requests</li> <li>✓ General question</li> </ul>                                                                                                                                                                                                                                                                                                                                                 |

## 7.2 Response Times

### 7.2.1 First Response

GTAC will respond to all new calls placed within the following time frames:

| Call Entry Point | Response Time             |
|------------------|---------------------------|
| Phone call       | 15 minutes <sup>1/2</sup> |
| GTAP             | 1 business day            |

<sup>1</sup>: Phone calls placed outside the scope of the customer's support agreement will be returned first thing on Genetec's next business day.  
<sup>2</sup>: GTAC objectives are 3 minutes average speed to answer and to answer 90% of calls within 10 minutes.

### 7.2.2 Status Updates

GTAC will provide continuous updates on the status of the troubleshooting based on the severity and priority of the case as detailed in the table below.

|          | In Progress (hours) <sup>1</sup> | Customer Action Required (days) <sup>1</sup> |
|----------|----------------------------------|----------------------------------------------|
| Critical | 4                                | 1                                            |
| High     | 24                               | 1                                            |
| Medium   | 48                               | 3                                            |
| Low      | 72                               | 5                                            |

<sup>1</sup>: Status updates are provided within regular GTAC business hours.

### 7.2.3 Three Strike Rule - Follow up

The GTAC will follow up with customers for cases in the Customer Response Pending (CRP) state according to the table above in order to ensure timely resolution of issues.

For low and medium severity cases, the GTAC will follow up 3 times at intervals of 3 business days. After 3 consecutive and unsuccessful attempts, the ticket will be automatically closed.

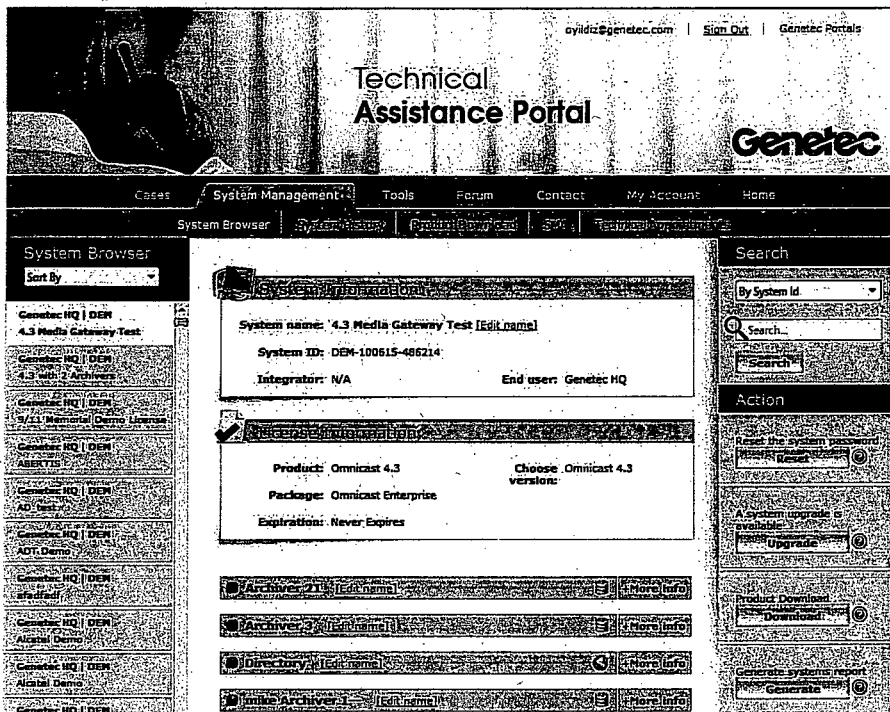
For high and critical severity cases, the GTAC will follow up 3 times at intervals of 1 business day. After 3 consecutive and unsuccessful attempts, the priority of the case will be lowered to medium severity and the cycle will start again as detailed above.

### 7.3 Resource Commitment

Genetec cannot guarantee a resolution time for issues but can guarantee resources committed to fixing the problem. The following table details the resource commitment based on the severity of the case.

| Severity | Resource Commitment                            |
|----------|------------------------------------------------|
| Critical | Full-time resource around the clock            |
| High     | Full-time resource within business hours       |
| Medium   | Based on availability with a priority over Low |
| Low      | No commitment                                  |

## 8 The Genetec Technical Assistance Portal



### 8.1 Accessing the GTAP

GTAP access is currently reserved to Genetec's customers and partners. In order to access the GTAP, you will need the following:

1. System ID and Password
  - This will only give access to the System Management (license) section of the portal for the provided System ID.
2. User Credential and Password
  - This will give full access to the Portal.
  - To Register use the following link: <https://gtap.genetec.com/Register.aspx>



## 8.2 Available Resources

### 8.2.1 System Management (Licenses)

The GTAP allows you to manage your system licenses without the intervention of a GTAC representative by:

- Resetting your system password
- Resetting your license
- Upgrading your system
- Downloading the newest product version
- Generating systems reports

### 8.2.2 GTAC Case Management

GTAP case management system allows you to manage your GTAC support cases by:

- Creating new support cases
- Browsing through opened and closed support cases
- Taking ownership of support cases in your organization
- Updating support cases and attaching files to them
- Escalating support cases to GTAC leadership
- Requesting call backs on support cases
- Closing/resolving open support cases

### 8.2.3 Documentation and Knowledge Base

The GTAP is also a repository for considerable amounts of documentation such as release notes, installations guides, user guides, tutorials, application notes, and much more. It is also a repository for a continuously updated knowledge base that contains hundreds of articles that will help you troubleshoot your system.

### 8.2.4 Video and Webinars

The GTAP is also a repository of other multimedia items such as videos. On the GTAP, you will find short tutorial videos (GTAC Tech Tube), monthly webinar archives (GTAC Tech Talk) and computer based training courses that will enable you to increase your knowledge on Genetec's products and solutions.

### **8.2.5 Community Forums**

GTAP users also form a community and share on the GTAP forums. A variety of topics regarding best practices, issues and installations are discussed on the community forums.

### **8.2.6 Arrange for Technical Appointments**

Planning for an upgrade and need the assistance of a GTAC representative? The GTAP allows you to arrange for technical appointments included in your SMA.

### **8.2.7 Supported Device Tool**

The GTAP's Support Devices tool gives you access to Genetec's comprehensive compatibility database that contains valuable information on which third party devices are supported on which version of Genetec software with which version of firmware. When available, the latest firmwares are published on this tool and available for download.

### **8.2.8 Known Issues**

On the GTAP, the known issues lists will provide you with insight on possible issues that may affect your system. From this list, you will know if there are any workarounds in knowledge base articles or hotfixes. You will also know in which version the known issue is fixed and you can also request a hotfix for your version.

### **8.2.9 GTAC Monthly Minute**

The GTAC Monthly Minute is your one-stop update on all that is happening in the GTAC. This monthly newsletter keeps you up to date with new product releases, GTAP updates and GTAC news. Subscribing to this newsletter is the best way to stay informed about what is new in the GTAC.

## 9 Appendix A – Software Warranty Lengths

| <b>Product Family</b>                   | <b>Standard Warranty Length</b> |
|-----------------------------------------|---------------------------------|
| <b>Omnicast</b>                         | <b>1 year</b>                   |
| <b>Omnicast (Upgrade)</b>               | <b>90 Days</b>                  |
| <b>Security Center</b>                  | <b>1 years</b>                  |
| <b>Security Center (Upgrade)</b>        | <b>90 days</b>                  |
| <b>Security Center Mobile</b>           | <b>1 years</b>                  |
| <b>Security Center Mobile (Upgrade)</b> | <b>90 days</b>                  |
| <b>Plan Manager</b>                     | <b>1 year</b>                   |
| <b>Plan Manager (Upgrade)</b>           | <b>90 days</b>                  |
| <b>SV-16</b>                            | <b>2 years</b>                  |
| <b>SV-16 (Upgrade)</b>                  | <b>90 Days</b>                  |
| <b>Custom Developed Software</b>        | <b>60 Days</b>                  |

## 10 Appendix B – Hardware Warranty Lengths

| Product Family | Standard Warranty Length | Maximum Extended Warranty Length (in addition to standard warranty) |
|----------------|--------------------------|---------------------------------------------------------------------|
| AutoVu Sharp   | 1 year                   | 4 years                                                             |
| SV-16          | 2 years                  | n/a                                                                 |
| HID VeriX      | 18 Months                | n/a                                                                 |
| HID Edge       | 18 Months                | n/a                                                                 |

**APPENDIX ~~G~~ H**

**EQUIPMENT ACCEPTANCE CERTIFICATE**

The undersigned purchaser hereby acknowledges receipt of the equipment order described below. After confirmation of order fulfillment, and on-site product testing, we are now accepting the equipment as satisfactory for all purposes in accordance with the Agreement.

| Quantity | Model Number | Equipment Description |
|----------|--------------|-----------------------|
|          |              |                       |

\_\_\_\_\_  
City of Berkeley Representative/Position

\_\_\_\_\_  
Date

END OF SECTION

**DEPARTMENT ORDER****ADMINISTRATIVE ORDER #001-2015****DATE ISSUED: 01/5/15****SUBJECT: AUTOMATED LICENSE PLATE READER USE****PURPOSE:**

This order establishes guidelines for the use of the Berkeley Police Department's Automated License Plate Reader (ALPR) technology and data. ALPR technology functions by automatically capturing an image of a vehicle's license plate, transforming that image into alphanumeric characters using optical character recognition software, and storing that information, along with relevant metadata (e.g. geo-location and temporal information, as well as data about the ALPR unit). ALPRs may be used by the Berkeley Police Department Parking Enforcement and Traffic Units for official law enforcement purposes. This Administrative Order shall remain in effect until January 6, 2016, or when superseded by the issuance of a General Order governing ALPR use.

**ADMINISTRATION OF ALPR DATA:**

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain through the Parking Enforcement Unit. The Investigations Division Captain will assign personnel under his/her command to administer the day-to-day operation of the ALPR equipment and data.

**ALPR OPERATION:**

Use of an ALPR is described below. Department personnel shall not use, or allow others to use the equipment or database records for any unauthorized purpose.

- a. An ALPR shall only be used for official and legitimate law enforcement business.
- b. Reasonable suspicion or probable cause is not required before using an ALPR.
- c. No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- d. No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.

**ALPR DATA COLLECTION AND RETENTION:**

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department, and because such data may contain confidential CLETS information, are not open to public review. ALPR information gathered and

retained by this department may be used and shared with prosecutors or others only as permitted by law.

The Parking Enforcement Manager is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by City Department of Information Technology personnel.

All ALPR data shall be stored and purged as described below in this order and thereafter shall be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data shall be downloaded from the server onto portable media and booked into evidence.

**ACCOUNTABILITY AND SAFEGUARDS:**

All saved data will be closely safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data:

- a. Non-law enforcement requests for access to stored ALPR data shall be referred to the Public Safety Business Manager and processed in accordance with applicable law.
- b. Non-law enforcement requests for information regarding a specific vehicle's license plate shall be honored when the requestor is the registered owner of the vehicle in question. The requestor in such cases must provide acceptable proof of their identity and of their ownership of the vehicle in question.
- c. ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time.
- d. Berkeley Police personnel approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action.
- e. ALPR data may be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes only in connection with specific criminal investigations.
- f. Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state, or federal agency or entity without the express written consent of the City Manager.
- g. For purposes of a City of Berkeley Parking Enforcement analysis effort, ALPR data may be provided a City of Berkeley consultant on an as-needed basis, upon the specific approval of the Chief of Police or his/her designee.
- h. ALPR system audits should be conducted by personnel assigned to the Professional Standards Bureau on a regular basis, at least biennially.

- i. ALPR "read" data retention periods may vary, depending on the system using the ALPR. Regardless of system use, all ALPR "read" data shall be retained for no longer than 365 days, after which point it shall be automatically purged from the server or storage device.

**CURRENT ALPR DEPLOYMENT-SCOFFLAW ENFORCEMENT:**

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for Scofflaw Enforcement. The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and checks scanned "reads" against a file of vehicles which have five or more outstanding citations. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car. This allows the city to recover outstanding citation fees and penalties.

ALPR equipment is installed in the Parking Enforcement Unit's Scofflaw Enforcement vehicle and a marked Traffic Enforcement vehicle, allowing for scofflaw enforcement using both vehicles.

The contracted vendor for the City's Scofflaw Enforcement program is Paylock. Paylock stores data on a secure server, and provides access to authorized personnel Paylock's "Bootview" secure website, as described below:

- a. All data captured by the ALPR is stored on the laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.

When a car is booted and/or towed, the read, hit, and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.



Michael K. Meehan  
Chief of Police

cc: All BPD Personnel





Finance Department  
General Services Division

City of Berkeley  
Abstract of Bid Worksheet

FOR: Equipment for Automated Parking  
Data Collection + Enforcement

Spec. # 14-10825-C

Bid Date: 8/21/14

|    | Bidders               | Base Bid | Nuc Free | Work Force Comp | Opp. States | Living Wage | EBO | Bid Bond | Addenda |
|----|-----------------------|----------|----------|-----------------|-------------|-------------|-----|----------|---------|
| 1  | PCS Mobile            |          |          |                 |             |             |     |          |         |
| 2  | Tannery Creek Systems |          | X        | X               | X           | X           | X   |          |         |
| 3  |                       |          |          |                 |             |             |     |          |         |
| 4  |                       |          |          |                 |             |             |     |          |         |
| 5  |                       |          |          |                 |             |             |     |          |         |
| 6  |                       |          |          |                 |             |             |     |          |         |
| 7  |                       |          |          |                 |             |             |     |          |         |
| 8  |                       |          |          |                 |             |             |     |          |         |
| 9  |                       |          |          |                 |             |             |     |          |         |
| 10 |                       |          |          |                 |             |             |     |          |         |

Bid Recorder: Shelley Goss 8/21

Bid Opener: STB 8/21/14

Project Manager: [Signature] 8/25/14

2180 McKia Street, Berkeley, CA 94704 Tel: 510.981.7320 TDD: 510.981.6903 Fax: 510.981.7390  
E-mail: [finance@ci.berkeley.ca.us](mailto:finance@ci.berkeley.ca.us)

**NON-DISCRIMINATION/WORKFORCE COMPOSITION**

FOR ALL CONTRACTS: 5 OR MORE EMPLOYEES

To assist the City of Berkeley in implementing its Non-Discrimination policy, you're requested to furnish information regarding your personnel, as indicated below, and return this form to the City Department handling your contract.

**ORGANIZATION** Portable Computer Systems, Inc dba PCS Mobile  
**ADDRESS** 1200 W. Mississippi Ave, Denver, CO 80223  
**BUSINESS LICENSE #** \_\_\_\_\_

You may complete this online & make entries in these cells, they will be automatically totaled at the bottom; or print the form & complete by hand/typewriter.

| Occupational Category<br>(see page 2 for definitions) | ALL EMPLOYEES |           | WHITE     |          | BLACK    |          | ASIAN    |          | HISPANIC |          | OTHER (specify)** |          |
|-------------------------------------------------------|---------------|-----------|-----------|----------|----------|----------|----------|----------|----------|----------|-------------------|----------|
|                                                       | Male          | Female    | Male      | Female   | Male     | Female   | Male     | Female   | Male     | Female   | Male              | Female   |
| Officials/Administrators                              | 1             | 1         | 1         | 1        |          |          |          |          |          |          |                   |          |
| Professionals                                         | 2             | 0         | 0         | 0        |          |          |          |          |          |          |                   |          |
| Technicians                                           | 15            | 0         | 6         | 0        | 1        |          | 2        | 0        | 6        | 0        | 0                 | 0        |
| Protective Service Workers                            | 0             | 0         |           |          |          |          |          |          |          |          |                   |          |
| Para-professionals                                    | 0             | 0         |           |          |          |          |          |          |          |          |                   |          |
| Office/Clerical                                       | 0             | 0         |           |          | 3        |          |          |          |          |          | 3                 |          |
| Skilled Craft Workers                                 | 0             | 0         |           |          |          |          |          |          |          |          |                   |          |
| Service/Maintenance                                   | 0             | 0         |           |          |          |          |          |          |          |          |                   |          |
| Other Occupation: Specify*                            | 8             | 3         | 7         | 3        |          |          |          |          | 1        |          |                   |          |
| <b>Totals</b>                                         | <b>24</b>     | <b>10</b> | <b>14</b> | <b>7</b> | <b>1</b> | <b>0</b> | <b>2</b> | <b>0</b> | <b>7</b> | <b>3</b> | <b>0</b>          | <b>0</b> |

\*Specify other occupation: FRST / MTS - CELL MGMT @ SALES WORKERS  
 \*\*Specify other ethnicity: \_\_\_\_\_

Is your business MBE/WBE/DBE certified?  YES  
 If Yes, by what agency? The Supplier Clearinghouse for the Utility Supplier Diversity Program  
 of the California Public Utilities Commission  
 Do you have a policy of non-discrimination?  YES  
 If Yes, please specify: WBE or ethnic identification: \_\_\_\_\_

Signature Steven McKay Date 4.2.15  
 Print/Type Name of Signer Steven McKay  
 Verified by \_\_\_\_\_ Date \_\_\_\_\_  
 City of Berkeley Contract Administrator

**CITY OF BERKELEY**  
**Nuclear Free Zone Disclosure Form**

I (we) certify that:

1. I am (we are) fully cognizant of any and all contracts held, products made or otherwise handled by this business entity, and of any such that are anticipated to be entered into, produced or handled for the duration of its contract(s) with the City of Berkeley. (To this end, more than one individual may sign this disclosure form, if a description of which type of contracts each individual is cognizant is attached.)
2. I (we) understand that Section 12.90.070 of the Nuclear Free Berkeley Act (Berkeley Municipal Code Ch. 12.90; Ordinance No. 5784-N.S.) prohibits the City of Berkeley from contracting with any person or business that knowingly engages in work for nuclear weapons.
3. I (we) understand the meaning of the following terms as set forth in Berkeley Municipal Code Section 12.90.130:  
  

"Work for nuclear weapons" is any work the purpose of which is the development, testing, production, maintenance or storage of nuclear weapons or the components of nuclear weapons; or any secret or classified research or evaluation of nuclear weapons; or any operation, management or administration of such work.

"Nuclear weapon" is any device, the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion or both. This definition of nuclear weapons includes the means of transporting, guiding, propelling or triggering the weapon if and only if such means is destroyed or rendered useless in the normal propelling, triggering, or detonation of the weapon.

"Component of a nuclear weapon" is any device, radioactive or non-radioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon (or be a part of a nuclear weapon).
4. Neither this business entity nor its parent nor any of its subsidiaries engages in work for nuclear weapons or anticipates entering into such work for the duration of its contract(s) with the City of Berkeley.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: Steven McKay Title: Treasurer

Signature: *Steven McKay* Date: 4.2.2015

Business Entity: Portable Computer Systems, Inc dba PCS Mobile

Contract Description/Specification No. License Plate Recognition System & Services  
Attachment C

**CITY OF BERKELEY**  
**Oppressive States Compliance Statement for Personal Services**

The undersigned, an authorized agent of Portable Computer Systems, Inc dba PCS Mobile (hereafter "Vendor"), has had an opportunity to review the requirements of Berkeley City Council Resolution No. 59,853-N.S. (hereafter "Resolution"). Vendor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with those Business Entities which maintain business relationships with morally repugnant regimes. Vendor understands the meaning of the following terms used in the Resolution:

"Business Entity" means "any individual, firm, partnership, corporation, association or any other commercial organization, including parent-entities and wholly-owned subsidiaries" (to the extent that their operations are related to the purpose of the contract with the City).

"Oppressive State" means: **Tibet Autonomous Region and the Provinces of Abo, Kham, and U-Tsang,**

"Personal Services" means "the performance of any work or labor and shall also include acting as an independent contractor or providing any consulting advice or assistance, or otherwise acting as an agent pursuant to a contractual relationship."

Contractor understands that it is not eligible to receive or retain a City contract if at the time the contract is executed, or at any time during the term of the contract it provides Personal Services to:

- a. The governing regime in any Oppressive State.
- b. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- c. Any person for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

Vendor further understands and agrees that Vendor's failure to comply with the Resolution shall constitute a default of the contract and the City Manager may terminate the contract and bar Vendor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

The undersigned is familiar with, or has made a reasonable effort to become familiar with, Vendor's business structure and the geographic extent of its operations. By executing the Statement, Vendor certifies that it complies with the requirements of the Resolution and that if any time during the term of the contract it ceases to comply, Vendor will promptly notify the City Manager in writing.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: Steven McKay Title: Treasurer

Signature: *Steven McKay* Date: 4-2-2015

Business Entity: Portable Computer Systems, Inc dba PCS Mobile

I am unable to execute this Statement; however, Vendor is exempt under Section VII of the Resolution. I have attached a separate statement explaining the reason(s) Vendor cannot comply and the basis for any requested exemption.

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

Contract Description/Specification No.: License Plate Recognition System & Services

Attachment D

**CITY OF BERKELEY**  
**Living Wage Certification for Providers of Personal Services**

**TO BE COMPLETED BY ALL PERSONS OR ENTITIES ENGAGING IN A CONTRACT FOR PERSONAL SERVICES WITH THE CITY OF BERKELEY.**

The Berkeley Municipal Code Chapter 13.27, Berkeley's Living Wage Ordinance (LWO), provides that contractors who engage in a specified amount of business with the City (except where specifically exempted) under contracts which furnish services to or for the City in any twelve (12) month period of time shall comply with all provisions of this Ordinance. The LWO requires a City contractor to provide City mandated minimum compensation to all eligible employees, as defined in the Ordinance. In order to determine whether this contract is subject to the terms of the LWO, please respond to the questions below. Please note that the LWO applies to those contracts where the contractor has achieved a cumulative dollar contracting amount with the City. Therefore, even if the LWO is inapplicable to this contract, subsequent contracts may be subject to compliance with the LWO. Furthermore, the contract may become subject to the LWO if the status of the Contractor's employees change (i.e. additional employees are hired) so that Contractor falls within the scope of the Ordinance.

**Section I.**

**1. IF YOU ARE A FOR-PROFIT BUSINESS, PLEASE ANSWER THE FOLLOWING QUESTIONS**

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid, or proposal, with the City of Berkeley for a cumulative amount of \$25,000.00 or more?

YES  NO

If no, this contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 1(b).

b. Do you have six (6) or more employees, including part-time and stipend workers?

YES  NO

If you have answered, "YES" to questions 1(a) and 1(b) this contract IS subject to the LWO. If you responded "NO" to 1(b) this contract IS NOT subject to the LWO. Please continue to Section II.

**2. IF YOU ARE A NON-PROFIT BUSINESS, AS DEFINED BY SECTION 501(C) OF THE INTERNAL REVENUE CODE OF 1954, PLEASE ANSWER THE FOLLOWING QUESTIONS.**

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid or proposal, with the City of Berkeley for a cumulative amount of \$100,000.00 or more?

YES  NO

If no, this Contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 2(b).

b. Do you have six (6) or more employees, including part-time and stipend workers?

YES  NO

If you have answered, "YES" to questions 2(a) and 2(b) this contract IS subject to the LWO. If you responded "NO" to 2(b) this contract IS NOT subject to the LWO. Please continue to Section II.

**Section II**

**Please read, complete, and sign the following:**

THIS CONTRACT IS SUBJECT TO THE LIVING WAGE ORDINANCE.

THIS CONTRACT IS NOT SUBJECT TO THE LIVING WAGE ORDINANCE.

The undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, hereby certifies that he or she is fully aware of Berkeley's Living Wage Ordinance, and the applicability of the Living Wage Ordinance, and the applicability of the subject contract, as determined herein. The undersigned further agrees to be bound by all of the terms of the Living Wage Ordinance, as mandated in the Berkeley Municipal Code, Chapter 13.27. If, at any time during the term of the contract, the answers to the questions posed herein change so that Contractor would be subject to the LWO, Contractor will promptly notify the City Manager in writing. Contractor further understands and agrees that the failure to comply with the LWO, this certification, or the terms of the Contract as it applies to the LWO, shall constitute a default of the Contract and the City Manager may terminate the contract and bar Contractor from future contracts with the City for five (5) years from the effective date of the Contract termination. If the contractor is a for-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 25% or more of their compensated time engaged in work directly related to the contract with the City. If the contractor is a non-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 50% or more of their compensated time engaged in work directly related to the contract with the City.

These statements are made under penalty of perjury under the laws of the state of California.

Printed Name: Steven McKay Title: Treasurer

Signature: [Handwritten Signature] Date: 4.2.15

Business Entity: Portable Computer Systems, Inc dba PCS Mobile

Contract Description/Specification No: License Plate Recognition System and Services

Section III

• \*\* FOR ADMINISTRATIVE USE ONLY -- PLEASE PRINT CLEARLY \*\* •

I have reviewed this Living Wage Certification form, in addition to verifying Contractor's total dollar amount contract commitments with the City in the past twelve (12) months, and determined that this Contract IS / IS NOT (circle one) subject to Berkeley's Living Wage Ordinance.

Department Name

Department Representative

To be completed by  
Contractor/Vendor

**Form EBO-1  
CITY OF BERKELEY**



**CERTIFICATION OF COMPLIANCE WITH EQUAL BENEFITS ORDINANCE**

If you are a **contractor**, return this form to the originating department/project manager. If you are a **vendor** (supplier of goods), return this form to the Purchasing Division of the Finance Dept.

**SECTION 1. CONTRACTOR/VENDOR INFORMATION**

Name: Portable Computer Systems, Inc dba PCS Mobile Vendor No.:  
Address: 1200 W. Mississippi Ave City: Denver State: CO ZIP: 80223  
Contact Person: Steve McKay Telephone: 303-346-2487  
E-mail Address: stevem@pcsmobile.com Fax No.: 303-346-4274

**SECTION 2. COMPLIANCE QUESTIONS**

- A. The EBO is inapplicable to this contract because the contractor/vendor has no employees.  
 Yes  No (If "Yes," proceed to Section 5; if "No," continue to the next question.)
- B. Does your company provide (or make available at the employees' expense) any employee benefits?  
 Yes  No  
If "Yes," continue to Question C.  
If "No," proceed to Section 5. (The EBO is not applicable to you.)
- C. Does your company provide (or make available at the employees' expense) any benefits to the spouse of an employee? .....  Yes  No
- D. Does your company provide (or make available at the employees' expense) any benefits to the domestic partner of an employee? .....  Yes  No  
If you answered "No" to both Questions C and D, proceed to Section 5. (The EBO is not applicable to this contract.)  
If you answered "Yes" to both Questions C and D, please continue to Question E.  
If you answered "Yes" to Question C and "No" to Question D, please continue to Section 3.
- E. Are the benefits that are available to the spouse of an employee identical to the benefits that are available to the domestic partner of the employee? .....  Yes  No  
If you answered "Yes," proceed to Section 4. (You are in compliance with the EBO.)  
If you answered "No," continue to Section 3.

**SECTION 3. PROVISIONAL COMPLIANCE**

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date:
  - By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor submits evidence of taking reasonable measures to comply with the EBO; or
  - At such time that administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor's infrastructure, not to exceed three months; or
  - Upon expiration of the contractor's current collective bargaining agreement(s).
- B. If you have taken all reasonable measures to comply with the EBO but are unable to do so, do you agree to provide employees with a cash equivalent? .....  Yes  No

\* The cash equivalent is the amount of money your company pays for spousal benefits that are unavailable for domestic partners.

**SECTION 4. REQUIRED DOCUMENTATION**

At time of issuance of purchase order or contract award, you may be required by the City to provide documentation (copy of employee handbook, eligibility statement from your plans, insurance provider statements, etc.) to verify that you do not discriminate in the provision of benefits.

**SECTION 5. CERTIFICATION**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am authorized to bind this entity contractually. By signing this certification, I further agree to comply with all additional obligations of the Equal Benefits Ordinance that are set forth in the Berkeley Municipal Code and in the terms of the contract or purchase order with the City.

Executed this 2nd day of April, in the year 2015, at Denver, CO  
(City) (State)

Steven McKay  
Name (please print)

Steven McKay  
Signature

Treasurer  
Title

  
Federal ID or Social Security Number

**FOR CITY OF BERKELEY USE ONLY**

- Non-Compliant (The City may not do business with this contractor/vendor)
- One-Person Contractor/Vendor       Full Compliance       Reasonable Measures
- Provisional Compliance Category, Full Compliance by Date: \_\_\_\_\_

Staff Name (Sign and Print): \_\_\_\_\_ Date: \_\_\_\_\_





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
6/9/2015

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

|                                                                                                                          |                                                                                                                               |                        |
|--------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <b>PRODUCER</b><br>Blue Sky Ins<br>9090 South Ridgeline Blvd.<br>#206<br>Highlands Ranch CO 80129                        | <b>CONTACT NAME:</b> Joel Walker<br><b>PHONE (A/C No. Ext.):</b> (303) 647-5477<br><b>E-MAIL ADDRESS:</b> jwalker@bskyins.com | <b>FAX (A/C. No.):</b> |
|                                                                                                                          | <b>INSURER(S) AFFORDING COVERAGE</b>                                                                                          |                        |
| <b>INSURED</b><br>PCS Mobile / Portable Computer Systems /<br>Western Sky, LLC<br>1200 W. Mississippi<br>Denver CO 80223 | <b>INSURER A:</b> Travelers Insurance Company                                                                                 |                        |
|                                                                                                                          | <b>INSURER B:</b>                                                                                                             |                        |
|                                                                                                                          | <b>INSURER C:</b>                                                                                                             |                        |
|                                                                                                                          | <b>INSURER D:</b>                                                                                                             |                        |
|                                                                                                                          | <b>INSURER E:</b>                                                                                                             |                        |
|                                                                                                                          | <b>INSURER F:</b>                                                                                                             |                        |

**COVERAGES** **CERTIFICATE NUMBER:** CL1552507311 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR                                                                                                                                        | TYPE OF INSURANCE                                                                    | ADDL SUBR INSR   WVD                                | POLICY NUMBER           | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                                                |                                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|-----------------------------------------------------|-------------------------|-------------------------|-------------------------|-----------------------------------------------------------------------|---------------------------------|
| A                                                                                                                                               | GENERAL LIABILITY                                                                    |                                                     | 630-0C067499-TCT-15     | 6/1/2015                | 6/1/2016                | EACH OCCURRENCE \$ 1,000,000                                          |                                 |
|                                                                                                                                                 | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY                     |                                                     |                         |                         |                         | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000                  |                                 |
|                                                                                                                                                 | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR       |                                                     |                         |                         |                         | MED EXP (Any one person) \$ 10,000                                    |                                 |
|                                                                                                                                                 | <input checked="" type="checkbox"/> Per Project Aggregate                            |                                                     |                         |                         |                         | PERSONAL & ADV INJURY \$ 1,000,000                                    |                                 |
| GEN'L AGGREGATE LIMIT APPLIES PER:<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC |                                                                                      |                                                     |                         |                         |                         | GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ 2,000,000 |                                 |
| A                                                                                                                                               | AUTOMOBILE LIABILITY                                                                 |                                                     | BA-0C067499-15-TEC      | 6/1/2015                | 6/1/2016                | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000                      |                                 |
|                                                                                                                                                 | <input checked="" type="checkbox"/> ANY AUTO                                         |                                                     |                         |                         |                         | BODILY INJURY (Per person) \$                                         |                                 |
|                                                                                                                                                 | <input type="checkbox"/> ALL OWNED AUTOS                                             | <input type="checkbox"/> SCHEDULED AUTOS            |                         |                         |                         | BODILY INJURY (Per accident) \$                                       |                                 |
|                                                                                                                                                 | <input checked="" type="checkbox"/> HIRED AUTOS                                      | <input checked="" type="checkbox"/> NON-OWNED AUTOS |                         |                         |                         | PROPERTY DAMAGE (Per accident) \$                                     |                                 |
|                                                                                                                                                 |                                                                                      |                                                     |                         |                         |                         | \$                                                                    |                                 |
| A                                                                                                                                               | <input checked="" type="checkbox"/> UMBRELLA LIAB                                    | <input type="checkbox"/> OCCUR                      | HSM-CUP-0C067499-TIL-15 | 6/1/2015                | 6/1/2016                | EACH OCCURRENCE \$ 5,000,000                                          |                                 |
|                                                                                                                                                 | <input type="checkbox"/> EXCESS LIAB                                                 | <input type="checkbox"/> CLAIMS-MADE                |                         |                         |                         | AGGREGATE \$ 5,000,000                                                |                                 |
|                                                                                                                                                 | <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000 |                                                     |                         |                         |                         | \$                                                                    |                                 |
| A                                                                                                                                               | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY                                        | Y/N                                                 | UB0C067499              | 06/01/2015              | 06/01/2016              | <input checked="" type="checkbox"/> WC STATUTORY LIMITS               |                                 |
|                                                                                                                                                 | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)          | <input type="checkbox"/>                            |                         |                         |                         | N/A                                                                   | E.L. EACH ACCIDENT \$ 1,000,000 |
|                                                                                                                                                 | If yes, describe under DESCRIPTION OF OPERATIONS below                               |                                                     |                         |                         |                         | E.L. DISEASE - EA EMPLOYEE \$ 1,000,000                               |                                 |
|                                                                                                                                                 |                                                                                      |                                                     |                         |                         |                         | E.L. DISEASE - POLICY LIMIT \$ 1,000,000                              |                                 |
| A                                                                                                                                               | Prof/E&O/incl Technology                                                             |                                                     | ZPL-14R69260-14-15      | 6/1/2015                | 6/1/2016                | \$1,000,000                                                           |                                 |
| A                                                                                                                                               | Crime                                                                                |                                                     | 106281355               | 04/13/2015              | 04/13/2016              | \$1,000,000                                                           |                                 |

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)**  
 City of Pasadena, its City Council, officers, officials, agents, employees, and volunteers are named as additional insured's with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished with such work or operations. A waiver of subrogation applies. Coverages are primary and non-contributory. 30 Days notice of cancellation applies (10 days for non-payment).

|                                                                                                                                    |                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CERTIFICATE HOLDER</b><br><br>City of Pasadena<br>Liability Division<br>100 North Garfield<br>PO Box 7115<br>Pasadena, CA 91109 | <b>CANCELLATION</b><br><br>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
|                                                                                                                                    | <b>AUTHORIZED REPRESENTATIVE</b><br><br>Joel Walker/ADMIN <i>[Signature]</i>                                                                                                              |



**WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY**

**ENDORSEMENT WC 00 03 13 (00)**

POLICY NUMBER: UB0CO67499

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

**SCHEDULE**

**DESIGNATED PERSON:**

**DESIGNATED ORGANIZATION:** City of Pasadena, its City Council, officers, officials, agents, employees, and volunteers.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **TECHNOLOGY XTEND ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>A. Reasonable Force Property Damage – Exception To Expected Or Intended Injury Exclusion</li> <li>B. Non-Owned Watercraft Less Than 75 Feet</li> <li>C. Aircraft Chartered With Pilot</li> <li>D. Damage To Premises Rented To You</li> <li>E. Increased Supplementary Payments</li> <li>F. Who Is An Insured – Employees And Volunteer Workers – First Aid</li> <li>G. Who Is An Insured – Employees – Supervisory Positions</li> <li>H. Who Is An Insured – Newly Acquired Or Formed Organizations</li> <li>I. Blanket Additional Insured – Owners, Managers Or Lessors Of Premises</li> </ul> | <ul style="list-style-type: none"> <li>J. Blanket Additional Insured – Lessors Of Leased Equipment</li> <li>K. Blanket Additional Insured – Persons Or Organizations For Your Ongoing Operations As Required By Written Contract Or Agreement</li> <li>L. Blanket Additional Insured – Broad Form Vendors</li> <li>M. Who Is An Insured – Unnamed Subsidiaries</li> <li>N. Who Is An Insured – Liability For Conduct Of Unnamed Partnerships Or Joint Ventures</li> <li>O. Contractual Liability – Railroads</li> <li>P. Knowledge And Notice Of Occurrence Or Offense</li> <li>Q. Unintentional Omission</li> <li>R. Blanket Waiver Of Subrogation</li> </ul> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### **PROVISIONS**

#### **A. REASONABLE FORCE PROPERTY DAMAGE – EXCEPTION TO EXPECTED OR INTENDED INJURY EXCLUSION**

The following replaces Exclusion a., **Expected Or Intended Injury**, in Paragraph 2., of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

##### **a. Expected Or Intended Injury Or Damage**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect any person or property.

#### **B. NON-OWNED WATERCRAFT LESS THAN 75 FEET**

The following replaces Paragraph (2) of Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2.

#### **of SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

##### **(2) A watercraft you do not own that is:**

- (a) Less than 75 feet long; and
- (b) Not being used to carry any person or property for a charge.

#### **C. AIRCRAFT CHARTERED WITH PILOT**

The following is added to Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

This exclusion does not apply to an aircraft that is:

- (a) Chartered with a pilot to any insured;
- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

## COMMERCIAL GENERAL LIABILITY

or volunteer doctor, in providing or failing to provide first aid or "Good Samaritan services" to a person.

2. The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED:**

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any of your "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following is added to Paragraph 5. of **SECTION III – LIMITS OF INSURANCE:**

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed by any of your "employees" or "volunteer workers" in providing or failing to provide first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following is added to the **DEFINITIONS** Section:

"Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

**G. WHO IS AN INSURED – EMPLOYEES – SUPERVISORY POSITIONS**

The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED:**

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" or "personal injury" to a co-"employee" in the course of the co-"employee's" employment by you arising out of work by any of your "employees" who hold a supervisory position.

**H. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED ORGANIZATIONS**

The following replaces Paragraph 4. of **SECTION II – WHO IS AN INSURED:**

4. Any organization you newly acquire or form, other than a partnership or joint venture, of which you are the sole owner

or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

- a. Coverage under this provision is afforded only:

(1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

(2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it, and we agree in writing that it will continue to be a Named Insured until the end of the policy period;

- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

**I. BLANKET ADDITIONAL INSURED – OWNERS, MANAGERS OR LESSORS OF PREMISES**

The following is added to **SECTION II – WHO IS AN INSURED:**

Any person or organization that is a premises owner, manager or lessor is an insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor does not apply to:

- a. Any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or

dient, part or container entering into, accompanying or containing such products; or

- b. Any vendor for which coverage as an additional insured specifically is scheduled by endorsement.

**M. WHO IS AN INSURED – UNNAMED SUBSIDIARIES**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period; and
- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

**N. WHO IS AN INSURED – LIABILITY FOR CONDUCT OF UNNAMED PARTNERSHIPS OR JOINT VENTURES**

The following replaces the last paragraph of **SECTION II – WHO IS AN INSURED**:

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership or joint venture that otherwise qualifies as an insured under Section II – Who Is An Insured.

**O. CONTRACTUAL LIABILITY – RAILROADS**

1. The following replaces Paragraph c. of the definition of "insured contract" in the **DEFINITIONS** Section:
  - c. Any easement or license agreement;
2. Paragraph f.(1) of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

**P. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE**

The following is added to Paragraph 2., **Duties In The Event of Occurrence, Offense, Claim or Suit**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- e. The following provisions apply to Paragraph a. above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph 1. or 2. of Section II – Who Is An Insured:

- (1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known to you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your trustees who is an individual (if you are a trust), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture, limited liability company or trust) or any "employee" authorized by you to give notice of an "occurrence" or offense.
- (2) If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:
  - (a) Any individual who is:
    - (i) A partner or member of any partnership or joint venture;
    - (ii) A manager of any limited liability company;
    - (iii) A trustee of any trust; or
    - (iv) An executive officer or director of any other organization;
 that is your partner, joint venture member, manager or trustee; or
  - (b) Any "employee" authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.

RESOLUTION NO. 66,917-N.S.

CONTRACT: PCS MOBILE FOR EQUIPMENT PROVIDER OF AUTOMATED DATA COLLECTION AND ENFORCEMENT SYSTEM

WHEREAS, Public Works determined that an equipment vendor would be needed to test an alternative method of parking data collection for the Automated Data Collection and Enforcement system to support the goBerkeley pilot program; and

WHEREAS, in July 2014, the City of Berkeley released a Request for Qualifications for Specification No. 14-10875-C for an equipment vendor for the Automated Data Collection and Enforcement System, and received two valid proposals by the posted deadline; and

WHEREAS, after a thorough review and scoring according to the RFQ's criteria, as well as an on-site test and evaluation, the submission from PCS Mobile received a high overall score; and

WHEREAS, funding for this contract is available in the FY 2015 budget in the Federal Highway Administration Value Pricing Pilot Program (VPPP) Grant Fund (Fund 674), goBerkeley/FHWA restricted revenue portion of the Parking Meter Fund (Fund 840), and the remaining contract balance will be recommended for appropriation through the AAO No. 2 in the goBerkeley/FHWA restricted revenue portion of the Parking Meter Fund (Fund 840); the contract has been entered in the contract management database with CMS No. XUHAL.

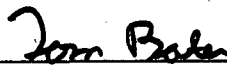
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with PCS Mobile to provide equipment for the Automated Data Collection and Enforcement pilot portion of the goBerkeley program, for an amount not to exceed \$450,000 for the period March 1, 2015 through March 30, 2020. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.

The foregoing Resolution was adopted by the Berkeley City Council on January 27, 2015 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Droste, Maio, Moore, Wengraf, Worthington and Bates.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Tom Bates, Mayor

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

**CONSULTANTS APPENDIX<sup>1</sup>**

**Designated Employees**

**Disclosure Categories**

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

1

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

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

**Category 1**

Designated consultants assigned to this category shall disclose:

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

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

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

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

**EXHIBIT C**

G:\CLERK\CONFLICT CODE\Code Updates\2014 Code\Report\Exhibit C\Consult.doc  
09/14

[View assistance for Search Results](#)

# Search Results

**Current Search Terms: personal\* computer\* systems\***

|                                                                                                                                                                                                                      |                                        |                               |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|-------------------------------|--|
| Your search for "Personal* Computer* Systems*" returned the following results...                                                                                                                                     |                                        |                               |  |
| <small>Notice: This printed document represents only the first page of your SAM search results. More results may be available. To print your complete search results, you can download the PDF and print it.</small> |                                        |                               |  |
| Entity                                                                                                                                                                                                               | <b>PERSONAL COMPUTER SYSTEMS, INC.</b> | Status: <b>Active</b>         |  |
| DUNS: 965216914                                                                                                                                                                                                      | CAGE Code: 1GHM3                       | <a href="#">View Details</a>  |  |
| Has Active Exclusion?: No                                                                                                                                                                                            | DoDAAC:                                |                               |  |
| Expiration Date: 12/09/2015                                                                                                                                                                                          | Delinquent Federal Debt? Yes           | <a href="#">What is this?</a> |  |
| Purpose of Registration: All Awards                                                                                                                                                                                  |                                        |                               |  |

### Glossary

#### Search Results

Entity

Exclusion

#### Search Filters

By Record Status

By Functional Area - Entity Management

By Functional Area - Performance Information

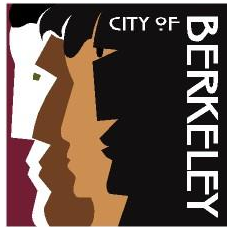
SAM | System for Award Management 1.0

IBM v1.P.27.20150327-1711

**Note to all Users:** This is a Federal Government computer system. Use of this system constitutes consent to monitoring at all times.







Office of the City Manager

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** November 12, 2019

**Item Number:** 30

**Item Description:** Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras

**Submitted by:** Dee Williams-Ridley, City Manager

Attached is the originally published staff report with updated attachments. The staff report that was published did not include the surveillance technology reports. The following has been incorporated into the attachments:

- Surveillance Technology Report for Body Worn Cameras incorporated into Attachment 2.
- Surveillance Technology Report for Global Positioning System Tracking Devices incorporated into Attachment 3.
- Surveillance Technology Report for Automated License Plate Readers incorporated into Attachment 4.



Office of the City Manager

ACTION CALENDAR

November 12, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Andrew Greenwood, Chief of Police  
David White, Deputy City Manager

Subject: Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras

RECOMMENDATION

Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with adopting the attached resolution.

CURRENT SITUATION AND ITS EFFECTS

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance (“Ordinance”). The purpose of the Ordinance is to provide transparency surrounding the use of surveillance technology, as defined by Section 2.99.020 in the Ordinance, and to ensure that decisions surrounding the acquisition and use of surveillance technology consider the impacts that such technology may have on civil rights and civil liberties. Further, the Ordinance requires that the City evaluate all costs associated with the acquisition of surveillance technology and regularly report on their use.

The Ordinance imposes various reporting requirements on the City Manager and staff. The purpose of this staff report and attached resolution is to satisfy annual reporting requirements as outlined in sections 2.99.050 and 2.99.070. The attached Surveillance Technology Reports, Surveillance Acquisition Reports and Surveillance Use Policies for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras are for technologies that were acquired by the City prior to the adoption of the Ordinance.

Section 2.99.050 of the Ordinance required the City Manager to submit a Surveillance Acquisition Report and Surveillance Use Policy for each surveillance technology that has been possessed or used prior to the effective date of the Ordinance. The requirements of this section were not satisfied due to a multitude of factors, and the Police Department opted to submit the attached acquisition reports and use policies to the Police Review Commission prior to their review by the City Council. The Police Review Commission underwent an extensive engagement process and the full Commission discussed the attached use policies and reports at scheduled meetings from May to October 2019. In all cases, the Police Review Commission approved the attached acquisition reports and use policies and conveyed any concerns or suggested modifications to the Police Chief. In addition to the technologies covered by the attached resolution, City staff continues to evaluate whether or not there is any other technology that is used or possessed that is subject to the Ordinance.

Finally, Section 2.99.040 of the Ordinance allows the City Manager to borrow, acquire, or temporarily use surveillance technology in exigent circumstances without having to obtain the approval of City Council. Since the adoption of the ordinance, the City is reporting two instances in which the City Manager has made use of Section 2.99.040. In preparation for the potentially violent August 5, 2018 demonstration in downtown Berkeley, the City borrowed remote accessible cameras from the Northern California Regional Intelligence Center (NCRIC) in order to have the ability to remotely monitor intersections in real time. The cameras did not have face recognition technology. Signage was posted in the areas of the cameras, informing people that the area may be under video surveillance. Using cameras to monitor intersections is at times preferable to physically placing officers in those locations. In addition, as a mutual aid resource, the Police Department requested the Alameda County Sheriff's Office Small Unmanned Aerial System (sUAS) team as a mutual aid resource. The purpose of the request was to support the identification and apprehension of any felony suspects, should a felony occur. Following the felony vandalism of over ten City of Berkeley vehicles, the sUAS team deployed a drone, but no suspects were apprehended.

## BACKGROUND

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance. The Ordinance contains various reporting requirements including the following:

- Section 2.99.050, which requires that the City Manager shall submit a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each technology governed by the Ordinance that had been possessed or used by the City prior to the effective date of the Ordinance; and

- Section 2.99.070 of the Ordinance, which requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November.

For each of the three technologies, the Surveillance Technology Report, Surveillance Acquisition Report and Surveillance Use Policies were prepared to satisfy the specific, section-by-section requirements of the Ordinance, and are attached to this report. It should be noted that substantial policies already existed for Body Worn Cameras and License Plate Readers. Those policies—also reviewed by the Police Review Commission for purposes of this report—are also attached. The existing policies will continue to remain in effect upon Council’s approval. Henceforth, all new Surveillance Use Policies and Surveillance Acquisition Reports will be listed in Chapter 13 of the Berkeley Police Department Policy Manual, which is being created to provide easy access to all policies relating to BMC 2.99. All BPD policies are available to the public on BPD’s website.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

City Council is being asked to adopt the attached resolution for the City to be in compliance with the Ordinance.

#### ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to adopt the resolution or could direct staff to revise the attached policies.

#### CONTACT PERSON

Andrew Greenwood, Chief of Police, (510) 981-7017  
David White, Deputy City Manager, (510) 981-7012

## ATTACHMENTS

### 1. Proposed Resolution

### 2. Body Worn Cameras

Surveillance Technology Report: Body Worn Cameras

Policy 1300 Body Worn Camera Use Policy

Policy 1300(a) Appendix: Body Worn Camera Acquisition Report

Policy 425 Body Worn Camera Policy (Existing Policy)

### 3. Global Positioning System Tracking Devices

Surveillance Technology Report

Policy 1301 Global Positioning System Tracking Devices Use Policy

Policy 1301(a) Appendix: Global Positioning System Tracking Devices Acquisition Report

### 4. Automated License Plate Readers

Surveillance Technology Report: Automated License Plate Readers

Policy 1302 Automated License Plate Reader Use Policy

Policy 1302(a) Appendix: Automated License Plate Reader Acquisition Report

Policy 422 Automated License Plate Reader (Latest version of existing Policy)

### 5. Police Review Commission Memorandum Regarding Automatic License Plate Readers

i:\surveillance ordinance\city council meeting -- 11-12-19\11-12-2019\_surveillance ordinance staff report and resolution (04).docx

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

A RESOLUTION ACCEPTING THE SURVEILLANCE TECHNOLOGY REPORT, SURVEILLANCE ACQUISITION REPORT, AND SURVEILLANCE USE POLICY FOR AUTOMATIC LICENSE PLATE READERS, GPS TRACKERS, AND BODY WORN CAMERAS

WHEREAS, on March 27, 2018, the City Council adopted Ordinance 7,592-N.S., which is known as the Surveillance Technology Use and Community Safety Ordinance (“Ordinance”); and

WHEREAS, Section 2.99.050 of the Ordinance requires that the City Manager shall submit a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each piece of technology governed by the Ordinance that had been possessed or used by the City prior to the effective date of the Ordinance; and

WHEREAS, Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November; and

WHEREAS, the Surveillance Acquisition Reports and Surveillance Use Policies for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras satisfy the requirements of the Ordinance.

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

Section 1. Pursuant to Section 2.99.060, as it pertains to the use of Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras, the City Council hereby finds and determines the following:

- a. The benefits of using the technologies outweigh the costs;
- b. The policies attached to this resolution safeguard civil liberties; and
- c. No feasible alternatives exist with similar utility that will have a lesser impact on civil rights or liberties.

Section 2. The City Council hereby accepts the Surveillance Technology Reports, Surveillance Acquisition Reports, and Surveillance Use Policies for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras.

**ATTACHMENT 2:  
BODY WORN CAMERAS**

**Surveillance Technology Report: Body Worn Cameras**

**March 1, 2018 – Sept. 30, 2019**

| <p><b>Description</b></p>           | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Body Worn Cameras are used to capture video recordings of contacts between department personnel and the public, to provide an objective record of these events. These recording are used in support of criminal prosecutions, to limit civil liability, increase transparency and enhance professionalism and accountability in the delivery of police services to the community.</p> <p>Body Worn Camera files are shared with the Alameda County District Attorney’s office in support of prosecution for crime, and may be shared with other law enforcement agencies to support criminal investigations.</p> <p style="text-align: center;">Summary of Body Worn Camera Videos Uploaded<br/>March 1, 2018 to Sept. 30, 2019</p> <table style="margin-left: auto; margin-right: auto;"> <tr> <td>Total Number of Videos</td> <td style="text-align: right;">42,677</td> </tr> <tr> <td>Total Hours of Videos</td> <td style="text-align: right;">10,681.93</td> </tr> <tr> <td>Total GB of Videos</td> <td style="text-align: right;">20,669.11</td> </tr> </table> <p style="text-align: center;">Summary of All Evidence Created<br/>March 1, 2018 to Sept. 30, 2019</p> <table style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th><u>Type</u></th> <th>Count of files</th> <th>Size (in Mb)</th> <th>GBs Storage</th> </tr> </thead> <tbody> <tr> <td>Audio</td> <td style="text-align: right;">2,315</td> <td style="text-align: right;">23,855.82</td> <td style="text-align: right;">23.86</td> </tr> <tr> <td>Document</td> <td style="text-align: right;">125</td> <td style="text-align: right;">17.56</td> <td style="text-align: right;">0.02</td> </tr> <tr> <td>Image</td> <td style="text-align: right;">64,931</td> <td style="text-align: right;">270,329.62</td> <td style="text-align: right;">270.33</td> </tr> <tr> <td>Other</td> <td style="text-align: right;">896</td> <td style="text-align: right;">118,080.19</td> <td style="text-align: right;">118.08</td> </tr> <tr> <td>Videos*</td> <td style="text-align: right;">70,670</td> <td style="text-align: right;">32,489,190.50</td> <td style="text-align: right;">32,489.19</td> </tr> <tr> <td><b>Grand Totals</b></td> <td style="text-align: right;"><b>138,937</b></td> <td style="text-align: right;"><b>32,901,473.69</b></td> <td style="text-align: right;"><b>32,901.47</b></td> </tr> </tbody> </table> <p>* Includes all uploaded BWC videos <i>and</i> all other videos booked into the evidence management system. Other videos include iPhone videos uploaded, security camera video, copies of BWC videos (for redaction, etc.), and any other videos.</p> | Total Number of Videos | 42,677           | Total Hours of Videos | 10,681.93 | Total GB of Videos | 20,669.11 | <u>Type</u> | Count of files | Size (in Mb) | GBs Storage | Audio | 2,315 | 23,855.82 | 23.86 | Document | 125 | 17.56 | 0.02 | Image | 64,931 | 270,329.62 | 270.33 | Other | 896 | 118,080.19 | 118.08 | Videos* | 70,670 | 32,489,190.50 | 32,489.19 | <b>Grand Totals</b> | <b>138,937</b> | <b>32,901,473.69</b> | <b>32,901.47</b> |
|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|------------------|-----------------------|-----------|--------------------|-----------|-------------|----------------|--------------|-------------|-------|-------|-----------|-------|----------|-----|-------|------|-------|--------|------------|--------|-------|-----|------------|--------|---------|--------|---------------|-----------|---------------------|----------------|----------------------|------------------|
| Total Number of Videos              | 42,677                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                        |                  |                       |           |                    |           |             |                |              |             |       |       |           |       |          |     |       |      |       |        |            |        |       |     |            |        |         |        |               |           |                     |                |                      |                  |
| Total Hours of Videos               | 10,681.93                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                        |                  |                       |           |                    |           |             |                |              |             |       |       |           |       |          |     |       |      |       |        |            |        |       |     |            |        |         |        |               |           |                     |                |                      |                  |
| Total GB of Videos                  | 20,669.11                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                        |                  |                       |           |                    |           |             |                |              |             |       |       |           |       |          |     |       |      |       |        |            |        |       |     |            |        |         |        |               |           |                     |                |                      |                  |
| <u>Type</u>                         | Count of files                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Size (in Mb)           | GBs Storage      |                       |           |                    |           |             |                |              |             |       |       |           |       |          |     |       |      |       |        |            |        |       |     |            |        |         |        |               |           |                     |                |                      |                  |
| Audio                               | 2,315                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 23,855.82              | 23.86            |                       |           |                    |           |             |                |              |             |       |       |           |       |          |     |       |      |       |        |            |        |       |     |            |        |         |        |               |           |                     |                |                      |                  |
| Document                            | 125                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 17.56                  | 0.02             |                       |           |                    |           |             |                |              |             |       |       |           |       |          |     |       |      |       |        |            |        |       |     |            |        |         |        |               |           |                     |                |                      |                  |
| Image                               | 64,931                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 270,329.62             | 270.33           |                       |           |                    |           |             |                |              |             |       |       |           |       |          |     |       |      |       |        |            |        |       |     |            |        |         |        |               |           |                     |                |                      |                  |
| Other                               | 896                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 118,080.19             | 118.08           |                       |           |                    |           |             |                |              |             |       |       |           |       |          |     |       |      |       |        |            |        |       |     |            |        |         |        |               |           |                     |                |                      |                  |
| Videos*                             | 70,670                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 32,489,190.50          | 32,489.19        |                       |           |                    |           |             |                |              |             |       |       |           |       |          |     |       |      |       |        |            |        |       |     |            |        |         |        |               |           |                     |                |                      |                  |
| <b>Grand Totals</b>                 | <b>138,937</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>32,901,473.69</b>   | <b>32,901.47</b> |                       |           |                    |           |             |                |              |             |       |       |           |       |          |     |       |      |       |        |            |        |       |     |            |        |         |        |               |           |                     |                |                      |                  |
| <p><b>Geographic Deployment</b></p> | <p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Body Worn Cameras are worn by all BPD uniformed officers city-wide at all times; BWCs are not deployed based on geographic considerations.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                        |                  |                       |           |                    |           |             |                |              |             |       |       |           |       |          |     |       |      |       |        |            |        |       |     |            |        |         |        |               |           |                     |                |                      |                  |
| <p><b>Complaints</b></p>            | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about the deployment and use of Body Worn Cameras.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                        |                  |                       |           |                    |           |             |                |              |             |       |       |           |       |          |     |       |      |       |        |            |        |       |     |            |        |         |        |               |           |                     |                |                      |                  |



|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Audits and Violations | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>File meta-data are routinely reviewed by our BWC manager, to ensure required meta-data fields are completed. There have been no complaints with regards to violations of the Surveillance Use Policy.</p>                                                                                                                                                                                    |
| Data Breaches         | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to BWC data.</p>                                                                                                                                                                                                                                      |
| Effectiveness         | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>Body Worn Cameras have proven effective in supporting criminal prosecutions, as video footage is available for all criminal prosecutions.</p> <p>Body Worn Cameras have been effective for training purposes, as footage can be reviewed in incident de-briefs.</p> <p>Body Worn Cameras have been extremely effective in support of Internal Affairs investigations and Use of Force Review.</p>                                  |
| Costs                 | <p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual cost for the Body Worn Cameras, including cameras, replacement cameras, software, and Axon's secure digital evidence management system is approx. \$204,000 per year over a five-year, \$1,218,000 contract. The systems cost for the 19 month period of this initial report was \$385,700.</p> <p>There is one full-time employee assigned to the BWC program, an Applications Programmer Analyst II, at a cost of \$168,940 per year, including benefits.</p> |

## Surveillance Use Policy - Body Worn Cameras

### 1300.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department Body Worn Camera Policy #425 and adds elements as required by BMC 2.99.

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel. (Ref. policy 425.2)

### 1300.2 AUTHORIZED USE

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

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At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation. (Ref. policy 425.7)

#### 1300.2.1 PROHIBITED USE

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule. (Ref. policy 425.13)

#### 1300.3 DATA COLLECTION

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. (Ref. policy 425.3)

#### 1300.4 DATA ACCESS

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 1300.4.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report. (Ref. policy 425.17)

##### 1300.4.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

- (a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed the video files.

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- It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.
- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
  - (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
  - (d) Prior to the conclusion of the criminal interview process, the involved member and/ or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
  - (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident." (Ref. policy 425.17.1)

#### 1300.4.2 SUPERVISORY REVIEW

With the exception of section 1300.4.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates. (Ref. policy 425.17.2)

#### 1300.4.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance. (Ref. policy 425.17.3)

- (a) Recorded files may also be reviewed:
  1. Upon approval by a supervisor, by any member of the Department who is participating

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- in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.
2. Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
  3. By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
  4. Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.
- (b) Investigators conducting criminal or internal investigations shall:
1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
  2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
  3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

#### 1300.4.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video. (Ref. policy 425.17.4)

#### 1300.4.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee. (Ref. policy 425.17.5)

### 1300.5 DATA PROTECTION

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. (Ref. policy 425.14)

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### **1300.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:**

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of BWC data. These policies will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

### **1300.7 DATA RETENTION**

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days. (Ref. policy 425.15)

### **1300.8 PUBLIC ACCESS**

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy. (Ref. policy 425.18)

### **1300.9 THIRD-PARTY DATA-SHARING**

#### **1300.9.1 CITY ATTORNEY**

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

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In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur. (Ref. policy 425.18)

#### **1300.9.2 POLICE REVIEW COMMISSION (PRC)**

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation. (Ref. policy 425.18.1)

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

#### **1300.10 TRAINING**

Training for the operation of BWC's shall be provided by BPD personnel. All BPD personnel who use BWC's shall be provided a copy of this Surveillance Use Policy.

#### **1300.11 AUDITING AND OVERSIGHT**

Division Captains for divisions utilizing BWC's shall ensure compliance with this Surveillance Use Policy.

#### **1300.12 MAINTENANCE**

The BWC system will be maintained by the Applications Programmer Analyst and assigned

Department of Information and Technology (IT) staff.

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18) (Ref policy 425.4):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.
- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.
- (h) All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.



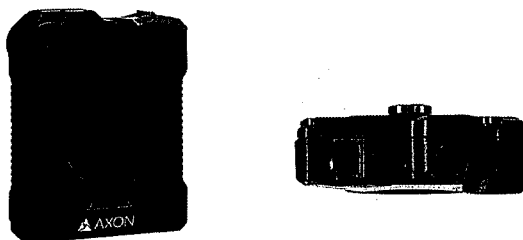
**1300 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS**

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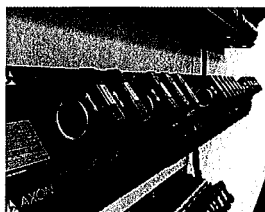
**BODY WORN CAMERAS (BWCs)****A. DESCRIPTION**

The BWC system consists of four main components: The camera, the docking station, and the Digital Information Management System (DIMS) and smartphone applications.

The first component, the Axon camera, is a system which incorporates an audio and video recording device. It is designed to record events in real time for secure storage, retrieval, and analysis. The camera is to be attached to an officer's uniform and is powered by an internal rechargeable battery. The camera features low-light performance, full-shift battery life, a capture rate of 30 frames per second with no dropped frames, HD video, pre-event buffering, multi-camera playback, and the ability to automatically categorize video using the police department's computer aided dispatch system. An officer can start and stop recording by pressing a button on the front of the camera. The camera does not contain a screen for footage review.



The second component of the system is the docking station. Once the Axon camera is placed in the docking station it recharges the camera's battery. The dock also triggers the uploading of data from the camera to a cloud based Digital Information Management System (DIMS) called Evidence.com. The dock does not directly provide functionality to view, modify or delete video data stored on Axon cameras.



The third component is the Digital Information Management System called Evidence.com. Evidence.com streamlines data management and sharing on one secure platform. The evidence management system is comprehensive, secure, and intuitive to use. The DIMS is located in a cloud-based data center for security, scalability, and ease of administration. Users can add

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metadata to existing videos such as associated case numbers, incident type, incident dispositions, etc. to make the videos easier to find. However, the videos themselves cannot be altered by the user.

The fourth component of the system to be utilized are two Axon mobile applications, which allow officers to collect and review evidence in the field and more effectively use their BWCs. The applications use secure Bluetooth and Wi-Fi technology to access the BWC systems and footage. These applications are compliant with US Department of Justice evidentiary standards, meaning that they are both secure and are set up in a way that prohibits the altering or destruction of evidence. The applications are called Axon View and Axon Capture. Axon View allows users to change their camera settings, view live video, and review and tag recorded videos while they are stored on the BWC. Recorded videos remain in the BWC's memory, and cannot be manipulated or deleted. Axon Capture allows officers to use their city-issued smartphone's camera and microphone to take photographs, and record audio and video, and to upload this data directly to Evidence.com. These applications do not allow users to alter, manipulate, or edit any of the footage recorded by the BWC. These applications use secure technology to add value and efficiency to the BWC program.

**B. PURPOSE**

The primary objective of the BWC system is to document officer contacts, arrests, and critical incidents. Video footage collected by the BWCs will be used as evidence in both criminal and administrative investigations. Video footage not relevant to any investigation will be discarded after a defined retention period.

In instances where the officer might be expected to take law enforcement action of any kind, the officer is expected to record the encounter for the benefit of both the officer and the member of the public.

1. The BWC shall be activated in any of the following situations:
  - i. All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
  - ii. Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
  - iii. Self-initiated field contacts in which a member would normally notify the Communications Center.
  - iv. Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.

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- v. Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- vi. Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is an officer expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the user can do so safely.

Officers should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Officers shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

2. Prohibited uses of the BWC system include:

- i. Officers shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.
- ii. Officers are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.
- iii. Officers are prohibited from retaining BWC recordings.
- iv. Officers shall not duplicate or distribute such recordings, except for department business purposes.

**C. LOCATION**

Officers may use BWCs anywhere where officers have jurisdiction to operate as sworn officers, in accordance with BPD policy #425.

**D. IMPACT**

With the introduction of BWCs, officers record all enforcement contacts with the public. To that end, an officer could find themselves engaged in their lawful duties in both public and private areas. Additionally, due to the nature of law enforcement work, an officer may be required to engage in sensitive conversations with individuals of all ages, including children.

The right to maintain someone's anonymity versus the need to gain information to maintain public safety is of paramount concern. The Department recognizes that all people have a right to privacy and is committed to protecting and safeguarding civil rights by adhering to the

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strictest requirements of both state and federal law concerning release of audio/video recordings.

**E. MITIGATION**

In order to minimize violations of privacy, BWC policy provides that:

1. Officers should record any incident they feel would be appropriate or valuable to document. The BWC policy shall require officers to activate the BWC under the criteria listed above.
2. Officers should not activate the BWC and/or use caution when entering a public locker room, changing room, restroom, doctor's or attorney's office, or other place where individuals unrelated to the investigation are present and would have a heightened expectation of privacy unless the officer is investigating criminal activity or responding to a call for service.
3. BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy.
4. BWC footage will be retained or released in accordance with applicable state and federal law. Criminal defendants will have access to relevant BWC footage via the court discovery process.
5. Officers are prohibited from retaining BWC recordings, Officers shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.
6. Officers are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Officers may request restriction and subsequent deletion of an accidental recording according to the BWC policy.
7. Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted by law and department policy. Department policy does not authorize release of investigative files or documents that would constitute an unwarranted invasions of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy"

**F. DATA TYPES AND SOURCES**

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigations, and other proceedings protected by confidentiality laws and department policy.

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The BWC collects video and audio recordings of events occurring in the user's presence. As each video is created, the system automatically stamps the video with the current date/time and the camera user's identity. The user has the option to add metadata manually to existing recordings after they are created. Such metadata may include but is not limited to:

1. Category of contact (from Department's defined list)
2. Disposition of contact (arrest, citation, etc.)
3. Associated case number

**G. DATA SECURITY**

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for transferring the data into the digital evidence management system. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings.

Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code Section 832.18) (Ref. policy 425.14):

1. Establishing a system for uploading, storing and security of recordings.
2. Designating persons responsible for uploading recorded data.
3. Establishing a maintenance system to ensure availability of BWCs.
4. Establishing a system for tagging and categorizing data according to the type of incident captured.
5. Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
6. Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
7. Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file,

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thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

**H. FISCAL COST**

In 2017, the Berkeley City Council approved a resolution authorizing a contract between BPD and Axon. Axon was chosen after a competitive Request for Proposal (RFP) process. The contract will not exceed \$1,218,103 and includes the cost of 200 body worn cameras, charging stations, accessories, software licenses, training and unlimited storage for five years. The purchase also includes replacement cameras and charging stations during the third and fifth year of the contract.

There will be an annual cost of approximately \$250,000 to the police department's budget for a staff person to administer the body worn camera program beginning in FY 2019.

**I. THIRD PARTY DEPENDENCE AND ACCESS**

All BWC data will be uploaded and stored on Axon Cloud Services, Evidence.com. Axon complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union and Switzerland to the United States (collectively, "Privacy Shield"). Axon has certified to the U.S. Department of Commerce that it adheres to the Privacy Shield Principles.

**J. ALTERNATIVES**

Officers rely primarily on traditional policing techniques to gather evidence related to criminal investigations such as speaking to witnesses and suspects, gathering information from observations, and using standard data aggregation systems. These methods will continue to be employed as primary investigative tools that will be supplemented by use of BWCs to document police activity.

BWC technology provides video and audio documentation of policing activity in addition to the oral and written statements of officers, victims, and witnesses. Alternatives to the use of BWCs would be vehicle-based cameras and/or not utilizing BWCs. However, BPD sees the use of BWCs as an integral strategy to strengthen police transparency, prevent and resolve complaints against the police by civilians, document police-public interaction, and promote the perceived legitimacy and sense of procedural justice that communities have about their departments. There is a broad consensus – among community leaders, the ACLU, the Department of Justice, the Berkeley Police Department, and elected officials – that body-worn cameras can be an important tool for improving the high-quality public service expected of police officers.

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**K. EXPERIENCE OF OTHER ENTITIES**

Numerous police agencies have adopted BWCs as a tool to help combat crime, to reduce citizen complaints and to reduce use of force situations. Many departments have developed their own usage policies which may include standards for required officer use, supervisory review, storage and data retention standards, and internal and public access.

A report for the U.S. Bureau of Justice Administration, [https://www.bja.gov/bwc/pdfs/14-005\\_Report\\_BODY\\_WORN\\_CAMERAS.pdf](https://www.bja.gov/bwc/pdfs/14-005_Report_BODY_WORN_CAMERAS.pdf) - pages 6-8, cites a 2013 Rialto, CA study that showed that the use of BWCs led to a 59 percent decrease in UOF and an 87.5 percent decrease in citizen complaints. Likewise, the Mesa, AZ report noted in "Impact" Section above also points to large decreases in UOF and citizen complaints.

The 2017 Police Body Worn Cameras: A Policy Scorecard, <https://www.bwccscorecard.org/>, provides an analysis of how scores of different police agencies have employed BWCs through a defined list of metrics.

## Body Worn Cameras

### 425.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable Body Worn Cameras (BWCs) by members of this department while in the performance of their duties.

This policy does not apply to non-BWC evidence, including other methods of audio or video recordings, interviews or interrogations conducted at any Berkeley Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

### 425.2 POLICY

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel.

While recordings obtained from BWCs provide an objective record of events, it is understood that video recordings do not necessarily capture all events, activities and information, or reflect the full experience of the individual member(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events as perceived and recalled by the involved member. Specifically, it is understood that the BWC will capture information that may not have been seen and/or heard by the involved member and that the involved member may see and hear information that may not have been captured by the BWC.

### 425.3 CONFIDENTIALITY AND PROPER USE OF RECORDINGS

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.

### 425.4 COORDINATOR

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.



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Law Enforcement Services Manual

### *Body Worn Cameras*

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- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

#### **425.5 MEMBER RESPONSIBILITIES**

Prior to going into service, each uniformed member who is assigned to wear a BWC will be responsible for making sure that he or she is equipped with a BWC issued by the Department, and that the BWC is in good working order. If the BWC is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor to permit the supervisor or other department employee to provide the member with a functioning BWC as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner as prescribed by the Department, to provide a generally unobstructed camera view of contacts between members of the public and department members.

Members lawfully engaged in their duties as a police officer are not required to obtain consent from, or give notice to, members of the public, prior to recording with their BWC.

Upon the approval of the Chief of Police, or his/her designee, non-uniformed members lawfully engaged in their duties as a police officer may use an approved BWC.

Members are required to document the existence of a recording in any report or other official record of the contact, such as a CAD entry, including any instance where the member is aware that the BWC malfunctioned or the member deactivated the recording. In the event activity outlined in section 425.7 is not captured in whole or in part the member shall document this and explain in their report their understanding, if any, of why the footage was not captured in the recording.

#### **425.6 SUPERVISOR RESPONSIBILITIES**

At such time as the scene is considered secure and safe, the on-scene supervisor shall take immediate physical custody of involved officer's/officers' BWC when the device may have captured an incident involving an officer-involved shooting or use of force resulting in death or great bodily injury, and shall ensure the data is uploaded in a timely manner as prescribed by BPD policy

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(Penal Code § 832.18). Supervisors may review relevant BWC video and audio files in the field in furtherance of their duties and responsibilities.

Supervisors shall also review relevant BWC recordings prior to submitting any administrative reports.

#### **425.7 ACTIVATION OF THE BODY WORN CAMERA**

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

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#### **425.8 VICTIMS AND WITNESSES OF CRIMES; INFORMANTS**

In the event that an officer has the opportunity to record interviews of victims and witnesses of crimes, they shall consider the following:

- (a) **Witnesses:** In the event a crime witness or a member of the community wishes to report or discuss criminal activity anonymously, officers have the discretion to not record. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the witness's recorded statement. In cases where a witness requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
- (b) **Victims:** Upon request by the victim, officers have the discretion to not record the interview. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the victim's recorded statement. In cases where a victim requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
  - 1. **Domestic Violence Victims:** Members should attempt to record interviews of domestic violence victims to facilitate future prosecution efforts and discourage later recanting of statements. Members should also record interviews with children who witness domestic violence, when the child is willing.
  - 2. **Child Abuse and Sexual Assault Victims:** Members shall have the discretion to record, absent any request to not record the interview by victims, witnesses, or non-suspect parents of victims, during child abuse and/or sexual assault investigations.
- (c) **Informants:** Members shall not activate their recorders when conducting an interview or engaging in a conversation with a confidential informant, unless needed as evidence.

Members have no obligation to advise a victim or witness that he or she is being recorded, but may do so at their discretion. When a victim or witness requests they not be recorded, members may consider their request (See Penal Code 632).

Members shall remain sensitive to the dignity of all individuals being recorded and exercise discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy concerns may outweigh any legitimate law enforcement interest in recording. Recording should resume when privacy concerns are no longer at issue unless the member determines that the circumstances no longer fit the criteria for recording.

Informal community interactions differ from "consensual encounters" in which members make an effort to develop reasonable suspicion to detain or probable cause to arrest. To strengthen relationships between police and citizens, members may use discretion regarding the recording of informal, non-enforcement related interactions with members of the community.

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#### **425.9 ACTIVATION IN CROWD CONTROL SITUATIONS**

During crowd control, protest or mass arrest incidents, members shall use their BWCs consistent with this policy, or when directed by the Incident Commander. The Incident Commander shall document his or her orders to activate in an appropriate report (e.g. Operations Plan or After Action Report).

The limitations outlined in the Intelligence Procedures for First Amendment Activities Policy governing intelligence-gathering procedures for First Amendment activities, apply to the use of BWCs and other recording devices.

Video recording of individuals who are picketing or engaged in peaceful protest will be avoided unless the officer believes a violation of criminal law is occurring, may occur, or if the officer interacts with a participant or third party to the event, or a participant or third party initiates contact with the member.

#### **425.10 SURREPTITIOUS USE OF THE BWC**

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.

Members are prohibited from using department-issued BWCs for non-work related personal activity. BWCs will not be activated in places where members have a reasonable expectation of privacy, such as workplace locker rooms, dressing rooms, members' private vehicles or restrooms.

#### **425.11 CESSATION OF RECORDING**

Once activated, the member may mute or deactivate their BWC at any time based on their discretion, in the following circumstances:

- (a) Discussion of tactical or confidential information with other law enforcement personnel.
- (b) Where members are on a perimeter or assigned to a static post where the member's direct participation in the incident is complete and they are not actively part of an investigation.
- (c) If it is necessary to discuss issues or concerns with an employee, supervisor, doctor, nurse, or paramedic in private.
- (d) In the member's judgment, a recording would interfere with his or her ability to conduct an investigation.

Decisions regarding the reason for muting or BWC deactivation shall be noted on the recording, or otherwise documented.

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Members shall cease audio/video recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation. This does not apply to conversations with paramedics or EMTs during their response at a scene, and during transport.

#### **425.12 EXPLOSIVE DEVICE**

Many portable recorders, including BWCs and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

Members believing that the use of a BWC may detonate an explosive device may deactivate their BWC in such cases.

#### **425.13 PROHIBITED USE OF BODY WORN CAMERAS**

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Members may not use personally owned recorders (e.g. personal cell phone) to document contacts unless exigent circumstances exist to warrant the use of personally owned recording devices. Regardless, if a member is using a department-issued BWC, and/or another recording device, members shall comply with the provisions of this policy, including retention and release requirements. In every event where members use any recording device aside from or in addition to their department-issued BWC, the member shall document and explain the use and the exigent circumstance in their police report (e.g. the BWC failed and evidence needed to be captured at that moment in time).

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

#### **425.14 PROCESSING AND HANDLING OF RECORDINGS**

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

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Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Members may request restriction and subsequent deletion of an accidental recording as described under section 425.16 below.

#### **425.15 RETENTION REQUIREMENTS**

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days.

#### **425.16 ACCIDENTAL RECORDING - REQUEST FOR RESTRICTION**

In the event of an accidental or sensitive personal recording of non-departmental business activity, where the resulting recording is of no investigative or evidentiary value, the recording employee may request that the file be restricted pending 60-day deletion by submitting an email request via their chain of command to the Professional Standards Division Captain. The Professional Standards Division Captain will approve or deny the restriction request. In cases where the request is denied, an appeal may be submitted to the Chief of Police, or his/her designee, for restriction authorization. In all cases of restriction requests, a determination should be made within seven calendar days.

#### **425.17 REVIEW OF RECORDINGS BY A MEMBER**

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 425.17.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report.

##### **425.17.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH**

- (a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed

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the video files. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officer(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident."

#### 425.17.2 SUPERVISORY REVIEW

With the exception of section 425.17.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates.

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#### 425.17.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.
- (b) Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
- (c) By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
- (d) Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.

Investigators conducting criminal or internal investigations shall:

1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

#### 425.17.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video.

#### 425.17.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee.

#### 425.18 RELEASE OF RECORDINGS

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).



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In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur.

#### 425.18.1 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation.

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

#### 425.18.2 PUBLIC RECORDS ACT (PRA) REQUEST

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

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#### 425.18.3 MEDIA

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy.

#### **425.19 COMPLIANCE WITH BMC 2.99 ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY**

This policy shall comply at all times with the requirement of BMC 2.99 Acquisition and Use of Surveillance Technology.

#### **425.20 TRAINING REQUIRED**

Officers who are assigned BWCs must complete department-approved training in the proper use and maintenance of the devices before deploying to the field.

As part of a continual improvement process, regular review should be conducted by BPD staff of the training on this policy and the related use of BWCs under this policy. Information resulting from the outcomes of this review shall be incorporated into the City Manager's annual "Surveillance Technology Report" as required under BMC 2.99 Acquisition and Use of Surveillance Technology.

The Department, Police Review Commission and other City Departments shall maintain the confidentiality of Department sworn employee personnel records as required by state and local law. Failure to maintain the confidentiality of Department sworn employee personnel records, whether or not intentional, may subject individuals to civil penalties and discipline, up to and including termination of employment.

**ATTACHMENT 3:**  
**Global Positioning System Tracking Devices**

## Surveillance Technology Report: Global Positioning System Tracking Devices

**March 1, 2018 – Sept. 30, 2019**

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Description           | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Global Positioning System Trackers are used to track the movements of vehicles, bicycles, other items, and/or individuals for the purpose of investigating criminal activity.</p> <p>Global Positioning System (GPS) “Electronic Stake Out” (ESO) devices were deployed on “bait” bicycles eighty-five (85) times during this reporting period, resulting in forty-nine (49) arrests.</p> <p>GPS “Slap-N-Track” (SNT) devices were used in two investigations during this reporting period: (1) a robbery and laptop snatch series involving multiple cases and suspects in Berkeley and in the region, with all suspects ultimately arrested; and (2) a currently-active case involving a series of auto burglaries in Berkeley and in the region.</p> <p>Data may be shared with the District Attorney’s Office for use as evidence to aid in prosecution, in accordance with laws governing evidence; other law enforcement personnel as a part of an active criminal investigations; and other third parties, pursuant to a court order.</p> |
| Geographic Deployment | <p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>GPS ESO-equipped bikes were deployed primarily in commercial districts across the city where bikes are frequently stolen.</p> <p>GPS SNT devices are deployed with judicial pre-approval, based on suspect location, rather than geographical consideration.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Complaints            | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There were no complaints made regarding GPS Trackers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Audits and Violations | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There were no audits and no known violations relating to GPS Trackers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Data Breaches         | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There were no known data breaches relating to GPS Trackers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

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|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Effectiveness</p> | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>GPS Trackers continue to be very effective in apprehending bicycle thieves, many of whom are repeat offenders who've committed not only bike thefts, but other crimes as well. SNT trackers are effective in that they provide invaluable information on suspect vehicle location during the investigation of complex cases where suspects may be moving around the Bay Area and beyond.</p> <p>GPS Trackers greatly reduce costs associated with surveillance operations. A bike may be left for days. Surveillance operations generally involve four or more officers for the entire duration of an operation. A moving surveillance is extremely resource-intensive, requiring multiple officers in multiple vehicles for extended periods of time. Using both types of GPS trackers eliminates the need for officers' immediate presence until officers are ready to apprehend the suspect(s).</p>       |
| <p>Costs</p>         | <p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual cost for the GPS Trackers' data service is \$1,920; the total cost for the 19 month period of this initial report was \$3,040. Further information regarding costs is contained in Policy 1301a, the Surveillance Acquisition Report.</p> <p>There are staff time costs associated with preparing and placing SNT trackers. The investigator must prepare a search warrant and obtain a judge's approval, and a small number of officers must place the tracker on the suspect's car. The total number of hours is a fraction of the time it would take to do a full surveillance operation involving numerous officers.</p> <p>There are staff time costs associated with preparing ESO trackers and placing ESO tracker-equipped bikes for bait bike operations. These are on the order of two-four hours per operation. The total number of hours is extremely small, given the large number of operations, and resulting arrests.</p> |

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## Surveillance Use Policy - GPS Tracking Devices

### 1301.1 PURPOSE

Global Positioning System (GPS) tracking devices track the movements of vehicles, bicycles, cargo, machinery, other items, and/or individuals. GPS trackers electronically relay their precise location in real time, and thereby assist BPD in the recovery of evidence and arrest of suspects.

### 1301.2 AUTHORIZED USE

GPS trackers shall only be used during active criminal investigations. GPS trackers shall only be used pursuant to a lawfully issued search warrant, or with consent of the owner of the object to which the GPS tracker is attached.

GPS trackers shall only be utilized for law enforcement purposes.

### 1301.3 DATA COLLECTION

Location data may be obtained through the use of a GPS Tracker.

### 1301.4 DATA ACCESS

Access to GPS tracker data shall be limited to Berkeley Police Department (BPD) personnel utilizing the GPS Tracker(s) for active criminal investigations. Information may be shared in accordance with 1301.9 below.

In support of active criminal investigations, BPD personnel may receive GPS tracker data from probation or parole agencies which utilize GPS trackers (e.g. ankle monitors) as a condition of probation or parole.

### 1301.5 DATA PROTECTION

The data from the GPS tracker is encrypted by the vendor. The data is only accessible through a secure website to BPD personnel who have been granted security access.

### 1301.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. Provisions of this policy, including 1301.4 Data Access, 1301.5 Data Protection, 1301.7 Data Retention, 1301.8 Public Access and 1301.9 Third Party Data Sharing serve to protect against any unauthorized use of GPS tracker data. These procedures ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

### 1301.7 DATA RETENTION

A GPS Tracker data record consists of date, time, latitude, longitude, map address, and tracker

identification label. This data is stored indefinitely by the vendor. The data does not contain any images, names of subjects, vehicle information, etc.

Tracker data received from the vendor shall be kept in accordance with applicable laws, BPD policies that do not conflict with applicable law or court order, and/or as specified in a search warrant.

**1301.8 PUBLIC ACCESS**

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law.

**1301.9 THIRD-PARTY DATA-SHARING**

Data collected from the GPS trackers may be shared with the following:

- (a) The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- (b) Other law enforcement personnel as part of an active criminal investigation;
- (c) Other third parties, pursuant to a Court Order.

**1301.10 TRAINING**

Training for the operation of the GPS trackers shall be provided by BPD personnel. All BPD personnel shall be provided with this Surveillance Use Policy.

**1301.11 AUDITING AND OVERSIGHT**

Division Captains or their designee shall ensure compliance with this Surveillance Use Policy.

**1301.12 MAINTENANCE**

GPS trackers shall only be obtained with the permission of the Investigations Division Captain or his/her designee. The Investigations Division Captain or his/her designee will ensure the trackers are returned when the mission/investigation is completed.

**1301 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES**

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**GPS TRACKING DEVICES****A. DESCRIPTION**

Global Positioning System (GPS) tracking devices track the movements of vehicles, bicycles, cargo, machinery, other items, and/or individuals.

The Berkeley Police Department currently uses two types of GPS Tracking Devices to track the movements of vehicles, bicycles, or other kinds of property. The manufacturer, 3SI Security Systems, describes them as follows:

1. The "Slap-n-Track" (SNT) tracker tracks vehicles, cargo, and other large assets for long deployments. Offers extended battery life, rugged and weatherproof housing, and optional magnets.
2. The "Electronic Stake Out" (ESO) tracker offers Law Enforcement miniaturized and covertly packaged GPS Tracking Solutions to target property crimes, especially pattern crimes, in their local jurisdictions.

**B. PURPOSE**

Global Positioning System (GPS) tracking devices provide precise, real-time location information during the conduct of active criminal investigations. GPS trackers are only used pursuant to a lawfully issued search warrant, or with consent of the owner of the object to which the GPS tracker is attached.

**C. LOCATION**

GPS tracking devices shall be deployed in locations consistent with the authority granted by consent or a lawfully issued search warrant or court order.

**D. IMPACT**

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. GPS Trackers are used in place of expensive, resource-intensive surveillance operations which typically involve multiple officers, often over long periods of time. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with GPS trackers help to ensure no unauthorized use of of GPS tracker data occurs. BPD Policy 1301 Surveillance Use Policy – GPS Tracking Devices ensure the use of GPS trackers and the resulting data are not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.



**1301 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES**

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**E. MITIGATION**

Data from a GPS tracker is encrypted from the vendor. Data shall be maintained in a secure, non-public location, such as locations requiring security access or badge access, thereby safeguarding the public from any impacts identified in subsection (D).

**F. DATA TYPES AND SOURCES**

A GPS tracker data record consists of date, time, latitude, longitude, map address (derived by using latitude, longitude and Google maps), and tracker identification label. The data does not contain any images, names of subjects, vehicle information, etc.

**G. DATA SECURITY**

Data from a GPS tracker is encrypted by the vendor on secure servers. The data is only accessible through a secure website to BPD personnel who have been granted security access. Captains whose Divisions utilize GPS trackers are responsible for ensuring compliance with the procedures for utilizing GPS Trackers.

**H. FISCAL COST**

The initial cost of the GPS trackers totaled \$4,335.

- Between 2015-present BPD purchased 5 GPS "ESO" trackers for \$2,250 (\$450 each).
- In 2017 BPD purchased 3 GPS "SNT" trackers for \$2,085 (\$695 each).

The annual cost for the GPS data service totals \$1,920.

- The annual data service for the five ESO trackers is \$1,020 (\$204 each).
- The annual data service for the three SNT trackers is \$900 (\$300 each).

Personnel costs are minimal in that the GPS trackers are used as a resource during normal working hours.

GPS trackers are funded through the Investigations Division's general budget.

**I. THIRD PARTY DEPENDENCE AND ACCESS**

Data collected from the GPS trackers may be shared with the following:

- a. The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- b. Other law enforcement offices as part of a criminal investigation;
- c. Other third parties, pursuant to a Court Order.

**1301 APPENDIX A**

**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES**

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**J. ALTERNATIVES**

An alternative to the use of GPS trackers is to conduct resource-intensive surveillance operations utilizing numerous personnel over extended periods of time.

**K. EXPERIENCE OF OTHER ENTITIES**

The use of GPS tracker technology is common amongst law enforcement agencies throughout the country.

**ATTACHMENT 4:  
Automated License Plate Readers**

**Surveillance Technology Report: Automated License Plate Readers**

**March 1, 2018 – Sept. 30, 2019**

|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Description</p> | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Automated License Plate Readers (ALPRs) are used by Parking Enforcement Bureau vehicles for time zone parking and scofflaw enforcement. The City’s Transportation Division uses anonymized information for purposes of supporting the City’s GoBerkeley parking management program. ALPR use replaced the practice of physically “chalking” tires.</p> <p style="text-align: center;"><b>Summary of ALPR Time Zone Enforcement Data</b></p> <p style="text-align: center;">Read Data</p> <p style="text-align: center;">There were an average of 9,075 “Reads” per working day<br/>(Based on one month’s data: 9/9/19-10/9/19)</p> <p style="text-align: center;">Hit Data</p> <p style="text-align: center;">There were 69,738 “Hits”</p> <p style="text-align: center;">18,410 “Enforced Hits” resulted in citation issuance.<br/>51,328 “Not Enforced” Hits resulted in no citation issuance.<br/>(Based on one year’s data: 10/9/18-10/9/19)</p> <p>Genetec is the vendor for the ALPR Time Zone enforcement system. A “read” indicates the ALPR system successfully read a license plate. A “hit” indicates the ALPR system detected a possible violation, which prompts the Parking Enforcement Officer to further assess the vehicle. In many cases, hits are “rejected” or “not enforced” because the Parking Enforcement Officer determines the vehicle has an appropriate placard or permit, or there is other information which precludes citation.</p> <p style="text-align: center;"><b>Summary of ALPR Booting Scofflaw Enforcement Data</b></p> <p style="text-align: center;">255 vehicles booted from 9/1/18-6/30/19</p> <p>Paylock is the vendor for the ALPR Booting Scofflaw Enforcement Program. A single parking enforcement vehicle is equipped with the Paylock system ALPR. The Paylock ALPR system provides the operator a “hit” when a plate is recognized as having five or more unpaid parking tickets. The operator then further assesses the vehicle, confirms the citation data, and, if confirmed, creates a boot entry in Paylock, and boots the car.</p> <p>Paylock uploads and retains information to their secure server solely on <i>confirmed</i> boots or tows. Hits and reads are not retained in the Paylock server. Booting Scofflaw enforcement has been temporarily suspended due to the transition to a different citation management vendor.</p> |
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|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                       | <p>All BPD ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes, or as otherwise permitted by law. All ALPR data is subject to the provisions of BPD Policy 415 - Immigration Law, and therefore may not be shared with federal immigration enforcement officials.</p>                                                                                                                                                                                                                                                                                                                                                             |
| Geographic Deployment | <p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Only Parking Enforcement Vehicles are equipped with ALPRs. ALPRs are deployed based on areas where there are parking time restrictions. ALPRs are not deployed based on geographic considerations not related to parking and scofflaw enforcement.</p>                                                                                                                                                                                                                                                                                               |
| Complaints            | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about the deployment and use of Automated License Plate Readers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Audits and Violations | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There have been no complaints of violations of the ALPR Surveillance Use Policy.</p>                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Data Breaches         | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to Automated License Plate Reader data.</p>                                                                                                                                                                                                                                                                                                                           |
| Effectiveness         | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>ALPRs have proven effective in parking enforcement for time zone enforcement.</p> <p>ALPRs have proven effective in supporting enforcement upon vehicles which have five or more unpaid citations. The ALPR's ability to read and check license plates while being driven greatly increases efficiency, allowing an operator to cover larger areas more quickly without having to stop except to confirm a hit.</p>                                                                                                                                |
| Costs                 | <p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual system maintenance cost for Genetec is \$47,000. This cost is borne by the Transportation Division, which also purchased the ALPR units used in Time Zone Enforcement.</p> <p>No Genetec LPR units were purchased during the period covered by this report.</p> <p>Genetec ALPR units are in use on 20 Parking Enforcement vehicles. Parking Enforcement personnel perform a variety of parking enforcement activities, and are not limited solely to time zone enforcement. Therefore, personnel costs specifically attributable to time zone enforcement are not tracked.</p> |

The cost of Paylock is \$140 per boot.

One Parking Enforcement Officer is assigned to scofflaw enforcement and abandoned auto enforcement on a full time basis. Assuming the Officer works approximately half their day on scofflaw enforcement, the annual personnel cost would be approximately one half a fulltime Parking Enforcement Officer's pay with benefits, or \$65,000.

## Surveillance Use Policy - ALPR

### 1302.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department ALPR Policy #422 and adds elements as required by BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review. (Ref. policy 422.2)

### 1302.2 AUTHORIZED AND PROHIBITED USES USE

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53). (Ref. policy 422.4)

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used to support a patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

### 1302.3 DATA COLLECTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law. (Ref. policy 422.5)

### 1302.4 DATA ACCESS

- (a) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (b) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.
- (c) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

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### **1302.5 DATA PROTECTION**

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref. policy 422.6):

- (a) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (b) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
- (c) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (d) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

### **1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:**

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

### **1302.7 DATA RETENTION**

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT) department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence. (Ref. policy 422.5)



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- (a) Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.

### **1302.8 PUBLIC ACCESS**

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. (Ref. policy 422.6 (a))
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question. (Ref. policy 422.6 (b))

### **1302.9 THIRD-PARTY DATA-SHARING**

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. ALPR data is subject to the provisions of BPD Policy 415, and hence may not be shared with federal immigration enforcement officials.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager. (Ref. policy 422.6 (e))

### **1302.10 TRAINING**

Training for the operation of ALPR Technology shall be provided by BPD personnel. All BPD employees who utilize ALPR Technology shall be provided a copy of this Surveillance Use Policy.

### **1302.11 AUDITING AND OVERSIGHT**

ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. (Ref. policy 422.6 (g))

### **1302.12 MAINTENANCE**

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data. (Ref. policy 422.3)

#### **1302.12.1 ALPR ADMINISTRATOR**

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref.

policy 422.3.1):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

**1302 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES**

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**AUTOMATED LICENSE PLATE READER (ALPR) DEVICES****A. DESCRIPTION**

Automated License Plate Readers (ALPRs) are high-speed, computer controlled camera systems that are typically mounted on Berkeley Police Department Parking Enforcement Vehicles.

ALPRs capture license plate numbers which come into view, along with the location, date and time. The data, which includes a photo of the front or the back of the car displaying the license plate, is then uploaded to a central server.

**B. PURPOSE**

The Berkeley Police Department's Parking Enforcement Unit utilizes vehicles equipped with ALPRs to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's also access information in the California Law Enforcement Telecommunications System's (CLETS) Stolen Vehicle System (SVS) database, which provides information on matches for stolen and wanted vehicles.

The Berkeley Police Department's Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding parking citation fees.

**C. LOCATION**

Parking Enforcement vehicles travel throughout the city; using the ALPRs as described above.

**D. IMPACT**

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with ALPR Units will help to ensure unauthorized use of its data. The procedures will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

**1302 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES**

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**E. MITIGATION**

All saved data will be safeguarded and protected by both procedural and technological means which are implemented to safeguard the public from any impacts identified in subsection (D). See subsection (G) for further.

**F. DATA TYPES AND SOURCES**

Photographs of license plates and location data may be obtained through the use of ALPR Units.

**G. DATA SECURITY**

The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

1. All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
2. Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
3. Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
4. Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

**H. FISCAL COST**

In 2015, Public Works brought an ALPR Contract to City Council. Council approved a contract for Public Works to buy five Genetec ALPR Units with PCS Mobile communication, for a pilot program for \$450,000.

In 2017, after success with the program, City Council approved an amendment to the contract, allowing Public Works to purchase 15 more ALPR Units for Parking Enforcement vehicles, and to continue its use of PCS Mobile, for 1,200,000. The money was allocated from the goBerkeley/Federal Highway Administration Parking Meter Fund.

Yearly service for the ALPR Units includes warranties, hosting services, cellular connection, mobile computing, and training which varies. The costs through fiscal year 2022 are currently estimated at \$1,175,000.

**1302 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES**

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Personnel costs are minimal in that the ALPR Units are used as a resource during normal working hours.

**I. THIRD PARTY DEPENDENCE AND ACCESS**

1. Vendor Access-Scofflaw Enforcement: The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:
  - a. All data captured by the ALPR is stored on the booting vehicle's laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.
  - b. When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.
2. Vendor Access-General Parking Enforcement and goBerkeley Program: The contracted vendor for the City's Parking Enforcement ALPR is currently Genetec. The city uses Genetec ALPRs to support efficient enforcement of posted time limit parking and Residential Preferential Parking permits.
  - a. In addition, Genetec periodically provides reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that the City's program can analyze data about parking demand. These reports do not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports consist of completely anonymized information, using identification numbers that are not associated with a particular license plate or registered owner.
  - b. The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and Residential Permit Pass (RPP) area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.
3. Department of Information Technology Access: Technical support and assistance for ALPR's is provided by the City of Berkeley's Department of Information Technology (IT) and associated ALPR system providers/vendors as identified herein. IT staff who

**1302 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES**

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do not have the proper clearance and training do not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT provides initial infrastructure set-up, and continued systems support as needed to ensure efficient and accurate performance of the ALPR hardware and software. Only IT staff members who have successfully undergone DOJ background checks and training are authorized by the Chief of Police to view specific ALPR records.

4. **Other Law Enforcement Agency Access:** ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55). Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
5. **Member Access:** No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training. No ALPR operator may access CLETS data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through CLETS before taking enforcement action that is based solely on an ALPR alert.
6. **Public Access:** Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

**J. ALTERNATIVES**

None.

**K. EXPERIENCE OF OTHER ENTITIES**

The use of ALPR technology is common amongst law enforcement agencies throughout the country, in support of parking enforcement, and law enforcement criminal investigations.

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## **Automated License Plate Readers (ALPRs)**

### **422.1 PURPOSE AND SCOPE**

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

### **422.2 POLICY**

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

### **422.3 ADMINISTRATION**

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

#### **422.3.1 ALPR ADMINISTRATOR**

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

### **422.4 USE OF THE ALPR**

An ALPR shall only be used for official law enforcement business.

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use,

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or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR may be used by Berkeley Police Department Parking Enforcement for parking and scofflaw enforcement.
- (b) An ALPR may be used to support criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped vehicles to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert

#### **422.5 .DATA COLLECTION AND RETENTION**

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review.

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT Department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

- (a) Collected images and metadata of reads showing violations will not be stored for more than 365 days.
- (b) Metadata of reads showing violations will be stored for up to 30 days. Images of reads not



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showing violations will not be transferred to the server.

#### **422.6 ACCOUNTABILITY**

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.
- (c) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (d) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action or parking enforcement.
- (e) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (f) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.
- (g) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually.

For security or data breaches, see the Records Release and Maintenance Policy.

#### **422.7 RELEASING ALPR DATA**

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
  - 1. The name of the agency.
  - 2. The name of the person requesting.
  - 3. The intended purpose of obtaining the information.

- 
4. The related case number.
  - (b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.
  - (c) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

#### **422.8 SCOFFLAW ENFORCEMENT**

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.

The Parking Enforcement Unit will utilize vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV's Stolen Vehicle System (SVS) database for wanted and stolen vehicles.

The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding citation fees.

The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website.

When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

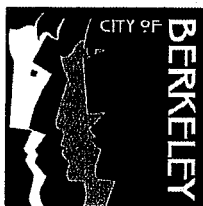
The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking

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enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.

**ATTACHMENT 5:**  
**Police Review Commission Communication**



Police Review Commission (PRC)

September 11, 2019

To: Honorable Mayor and Members of the City Council  
From: George Perezvelez, <sup>PRC 04/19</sup> Chairperson, Police Review Commission  
Re: Proposed Berkeley Police Department Policy 422, Automated License Plate Readers

Summary: This memo is to inform you of the Police Review Commission's qualified approval of the BPD's proposed policy for the use of Automated License Plate Readers (ALPRs).

Background: The BPD submitted the ALPR policy, Policy 422, to the PRC for review, along with the Surveillance Use Policy and the Surveillance Acquisition Report (Policy 1302 and Appendix A) for these devices. This process was undertaken in advance of BPD submitting these items to the City Council as required by the Surveillance Technology Use and Community Safety Ordinance (B.M.C. Ch. 2.99).

These policies were first considered by the full Commission, which then referred them to its Lexipol Policies Subcommittee. In response to feedback from the PRC and the Subcommittee, the BPD revised the proposed policy, which was reviewed by both bodies. At various stages, the PRC and the subcommittee had the opportunity to hear from and ask questions of Police Chief Greenwood and other members of the BPD, and Deputy City Attorney Chris Jensen. The PRC also heard input from representatives of Media Alliance and Oakland Privacy.

Final action: At its September 4, 2019 meeting, the PRC voted to approve for submission to the City Council for your review and discussion the version of Policy 422 that is attached here, with two caveats. First, there was concern among some commissioners that the ALPR was originally acquired for the purpose of parking enforcement and that this policy represents an expansion of that function. If this is not what the Council had in mind, then this policy should be modified accordingly. Second, Section 422.4(c) of the policy does not adequately define what constitutes a "crime scene."

Finally, the Commission wishes to remind the Council that they will see actual use of the ALPR technology under the reporting mechanism in place in the Surveillance Technology Use and Community Safety Ordinance.

Honorable Mayor and Members of the City Council  
Proposed Berkeley Police Department Policy 422, Automated License Plate Readers  
September 11, 2019  
p. 2

The above action was approved by the following vote: Moved/Seconded  
(Perezvelez/Mikiten) -- Ayes: Calavita, Chang, Leftwich, Mikiten, Perezvelez,  
Ramsey; Noes: Earnest, Mizell; Abstain: Allamby; Absent: None.

Attachment: Revised Policy 422

cc: Dee Williams-Ridley, City Manager  
Andrew Greenwood, Chief of Police  
David White, Deputy City Manager  
PRC Commissioners

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## Automated License Plate Readers (ALPRs)

### 422.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

### 422.2 POLICY

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

### 422.3 ADMINISTRATION

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

#### 422.3.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

### 422.4 USE OF THE ALPR

An ALPR shall only be used for official law enforcement business.

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use,

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or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR may be used by Berkeley Police Department Parking Enforcement for parking and scofflaw enforcement.
- (b) An ALPR may be used to support criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped vehicles to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

#### **422.5 DATA COLLECTION AND RETENTION**

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ~~ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law.~~

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT Department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

- (a) Collected images and metadata of reads showing violations will not be stored for more than 365 days.



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- (b) Metadata of reads showing violations will be stored for up to 30 days. Images of reads not showing violations will not be transferred to the server.

#### **422.6 ACCOUNTABILITY**

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.
- (c) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (d) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action or parking enforcement.
- (e) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (f) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.
- (g) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually.

For security or data breaches, see the Records Release and Maintenance Policy.

#### **422.7 RELEASING ALPR DATA**

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
  1. The name of the agency.

- 
2. The name of the person requesting.
  3. The intended purpose of obtaining the information.
  4. The related case number.
- (b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.
- (c) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

#### **422.8 SCOFFLAW ENFORCEMENT**

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.

The Parking Enforcement Unit will utilize vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV's Stolen Vehicle System (SVS) database for wanted and stolen vehicles.

The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding citation fees.

The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:

- (a) All data captured by the ALPR is stored on the laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.

When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated

with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.



Office of the City Manager

ACTION CALENDAR  
July 26, 2022  
(Continued from May 12, 2020)

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Andrew Greenwood, Chief of Police  
David White, Deputy City Manager  
Subject: Surveillance Technology Report, Surveillance Acquisition Report, and  
Surveillance Use Policy for Automatic License Plate Readers

RECOMMENDATION

Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with adopting the attached resolution.

CURRENT SITUATION AND ITS EFFECTS

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance (“Ordinance”). The purpose of the Ordinance is to provide transparency surrounding the use of surveillance technology, as defined by Section 2.99.020 in the Ordinance, and to ensure that decisions surrounding the acquisition and use of surveillance technology consider the impacts that such technology may have on civil rights and civil liberties. Further, the Ordinance requires that the City evaluate all costs associated with the acquisition of surveillance technology and regularly report on their use.

The Ordinance imposes various reporting requirements on the City Manager and staff. The purpose of this staff report and attached resolution is to satisfy annual reporting requirements as outlined in sections 2.99.050 and 2.99.070. The attached Surveillance Technology Reports, Surveillance Acquisition Reports and Surveillance Use Policies for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras are for technologies that were acquired by the City prior to the adoption of the Ordinance.

Section 2.99.050 of the Ordinance required the City Manager to submit a Surveillance Acquisition Report and Surveillance Use Policy for each surveillance technology that has been possessed or used prior to the effective date of the Ordinance. The requirements of this section were not satisfied due to a multitude of factors, and the Police Department opted to submit the attached acquisition reports and use policies to the Police Review Commission prior to their review by the City Council. The Police Review Commission underwent an extensive engagement process and the full Commission discussed the attached use policies and reports at scheduled meetings from May to October 2019. In all cases, the Police Review Commission approved the attached acquisition reports and use policies and conveyed any concerns or suggested modifications to the Police Chief. In addition to the technologies covered by the attached resolution, City staff continues to evaluate whether or not there is any other technology that is used or possessed that is subject to the Ordinance.

Finally, Section 2.99.040 of the Ordinance allows the City Manager to borrow, acquire, or temporarily use surveillance technology in exigent circumstances without having to obtain the approval of City Council. Since the adoption of the ordinance, the City is reporting two instances in which the City Manager has made use of Section 2.99.040. In preparation for the potentially violent August 5, 2018 demonstration in downtown Berkeley, the City borrowed remote accessible cameras from the Northern California Regional Intelligence Center (NCRIC) in order to have the ability to remotely monitor intersections in real time. The cameras did not have face recognition technology. Signage was posted in the areas of the cameras, informing people that the area may be under video surveillance. Using cameras to monitor intersections is at times preferable to physically placing officers in those locations. In addition, as a mutual aid resource, the Police Department requested the Alameda County Sheriff's Office Small Unmanned Aerial System (sUAS) team as a mutual aid resource. The purpose of the request was to support the identification and apprehension of any felony suspects, should a felony occur. Following the felony vandalism of over ten City of Berkeley vehicles, the sUAS team deployed a drone, but no suspects were apprehended.

## BACKGROUND

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance. The Ordinance contains various reporting requirements including the following:

- Section 2.99.050, which requires that the City Manager shall submit a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each technology governed by the Ordinance that had been possessed or used by the City prior to the effective date of the Ordinance; and

- Section 2.99.070 of the Ordinance, which requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November.

For each of the three technologies, the Surveillance Technology Report, Surveillance Acquisition Report and Surveillance Use Policies were prepared to satisfy the specific, section-by-section requirements of the Ordinance, and are attached to this report. It should be noted that substantial policies already existed for Body Worn Cameras and License Plate Readers. Those policies—also reviewed by the Police Review Commission for purposes of this report—are also attached. The existing policies will continue to remain in effect upon Council’s approval. Henceforth, all new Surveillance Use Policies and Surveillance Acquisition Reports will be listed in Chapter 13 of the Berkeley Police Department Policy Manual, which is being created to provide easy access to all policies relating to BMC 2.99. All BPD policies are available to the public on BPD’s website.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

City Council is being asked to adopt the attached resolution for the City to be in compliance with the Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to adopt the resolution or could direct staff to revise the attached policies.

CONTACT PERSON

Andrew Greenwood, Chief of Police, (510) 981-7017  
David White, Deputy City Manager, (510) 981-7012

ATTACHMENTS

1. Proposed Resolution

2. Body Worn Cameras

Surveillance Technology Report: Body Worn Cameras

Policy 1300 Body Worn Camera Use Policy

Policy 1300(a) Appendix: Body Worn Camera Acquisition Report

Policy 425 Body Worn Camera Policy (Existing Policy)

3. Global Positioning System Tracking Devices

Surveillance Technology Report

Policy 1301 Global Positioning System Tracking Devices Use Policy

Policy 1301(a) Appendix: Global Positioning System Tracking Devices Acquisition Report

4. Automated License Plate Readers

Surveillance Technology Report: Automated License Plate Readers

Policy 1302 Automated License Plate Reader Use Policy

Policy 1302(a) Appendix: Automated License Plate Reader Acquisition Report

Policy 422 Automated License Plate Reader (Latest version of existing Policy)

5. Police Review Commission Memorandum Regarding Automatic License Plate Readers

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

A RESOLUTION ACCEPTING THE SURVEILLANCE TECHNOLOGY REPORT, SURVEILLANCE ACQUISITION REPORT, AND SURVEILLANCE USE POLICY FOR AUTOMATIC LICENSE PLATE READERS

WHEREAS, on March 27, 2018, the City Council adopted Ordinance 7,592-N.S., which is known as the Surveillance Technology Use and Community Safety Ordinance (“Ordinance”); and

WHEREAS, Section 2.99.050 of the Ordinance requires that the City Manager shall submit a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each piece of technology governed by the Ordinance that had been possessed or used by the City prior to the effective date of the Ordinance; and

WHEREAS, Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November; and

WHEREAS, the Surveillance Acquisition Report and Surveillance Use Policy for Automatic License Plate Readers satisfies the requirements of the Ordinance.

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

Section 1. Pursuant to Section 2.99.060, as it pertains to the use of Automatic License Plater Readers, the City Council hereby finds and determines the following:

- a. The benefits of using the technology outweighs the costs;
- b. The policies attached to this resolution safeguard civil liberties; and
- c. No feasible alternatives exist with similar utility that will have a lesser impact on civil rights or liberties.

Section 2. The City Council hereby accepts the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers.



**ATTACHMENT 2:  
BODY WORN CAMERAS**

**Surveillance Technology Report Body Worn Cameras  
To be provided as part of supplemental communications**

## Surveillance Use Policy - Body Worn Cameras

### 1300.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department Body Worn Camera Policy #425 and adds elements as required by BMC 2.99.

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel. (Ref. policy 425.2)

### 1300.2 AUTHORIZED USE

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

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At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation. (Ref. policy 425.7)

#### 1300.2.1 PROHIBITED USE

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule. (Ref. policy 425.13)

#### 1300.3 DATA COLLECTION

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. (Ref. policy 425.3)

#### 1300.4 DATA ACCESS

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 1300.4.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report. (Ref. policy 425.17)

##### 1300.4.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

- (a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed the video files.

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- It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.
- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
  - (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
  - (d) Prior to the conclusion of the criminal interview process, the involved member and/ or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
  - (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident." (Ref. policy 425.17.1)

#### 1300.4.2 SUPERVISORY REVIEW

With the exception of section 1300.4.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates. (Ref. policy 425.17.2)

#### 1300.4.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance. (Ref. policy 425.17.3)

- (a) Recorded files may also be reviewed:
  1. Upon approval by a supervisor, by any member of the Department who is participating

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in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.

2. Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
  3. By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
  4. Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.
- (b) Investigators conducting criminal or internal investigations shall:
1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
  2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
  3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

#### 1300.4.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video. (Ref. policy 425.17.4)

#### 1300.4.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee. (Ref. policy 425.17.5)

### 1300.5 DATA PROTECTION

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. (Ref. policy 425.14)

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**1300.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:**

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of BWC data. These policies will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

**1300.7 DATA RETENTION**

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days. (Ref. policy 425.15)

**1300.8 PUBLIC ACCESS**

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy. (Ref. policy 425.18)

**1300.9 THIRD-PARTY DATA-SHARING****1300.9.1 CITY ATTORNEY**

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

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In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur. (Ref. policy 425.18)

#### 1300.9.2 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation. (Ref. policy 425.18.1)

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

#### 1300.10 TRAINING

Training for the operation of BWC's shall be provided by BPD personnel. All BPD personnel who use BWC's shall be provided a copy of this Surveillance Use Policy.

#### 1300.11 AUDITING AND OVERSIGHT

Division Captains for divisions utilizing BWC's shall ensure compliance with this Surveillance Use Policy.

#### 1300.12 MAINTENANCE

The BWC system will be maintained by the Applications Programmer Analyst and assigned



Department of Information and Technology (IT) staff.

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18) (Ref policy 425.4):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.
- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.
- (h) All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

**1300 APPENDIX A**

**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS**

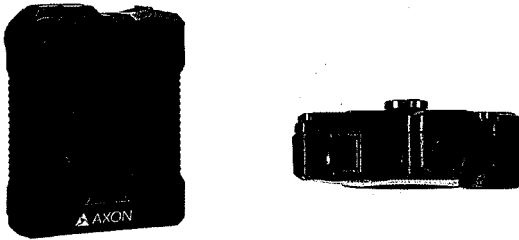
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**BODY WORN CAMERAS (BWCs)**

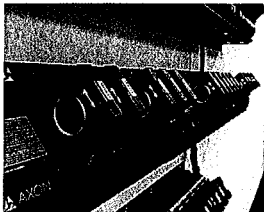
**A. DESCRIPTION**

The BWC system consists of four main components: The camera, the docking station, and the Digital Information Management System (DIMS) and smartphone applications.

The first component, the Axon camera, is a system which incorporates an audio and video recording device. It is designed to record events in real time for secure storage, retrieval, and analysis. The camera is to be attached to an officer's uniform and is powered by an internal rechargeable battery. The camera features low-light performance, full-shift battery life, a capture rate of 30 frames per second with no dropped frames, HD video, pre-event buffering, multi-camera playback, and the ability to automatically categorize video using the police department's computer aided dispatch system. An officer can start and stop recording by pressing a button on the front of the camera. The camera does not contain a screen for footage review.



The second component of the system is the docking station. Once the Axon camera is placed in the docking station it recharges the camera's battery. The dock also triggers the uploading of data from the camera to a cloud based Digital Information Management System (DIMS) called Evidence.com. The dock does not directly provide functionality to view, modify or delete video data stored on Axon cameras.



The third component is the Digital Information Management System called Evidence.com. Evidence.com streamlines data management and sharing on one secure platform. The evidence management system is comprehensive, secure, and intuitive to use. The DIMS is located in a cloud-based data center for security, scalability, and ease of administration. Users can add

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metadata to existing videos such as associated case numbers, incident type, incident dispositions, etc. to make the videos easier to find. However, the videos themselves cannot be altered by the user.

The fourth component of the system to be utilized are two Axon mobile applications, which allow officers to collect and review evidence in the field and more effectively use their BWCs. The applications use secure Bluetooth and Wi-Fi technology to access the BWC systems and footage. These applications are compliant with US Department of Justice evidentiary standards, meaning that they are both secure and are set up in a way that prohibits the altering or destruction of evidence. The applications are called Axon View and Axon Capture. Axon View allows users to change their camera settings, view live video, and review and tag recorded videos while they are stored on the BWC. Recorded videos remain in the BWC's memory, and cannot be manipulated or deleted. Axon Capture allows officers to use their city-issued smartphone's camera and microphone to take photographs, and record audio and video, and to upload this data directly to Evidence.com. These applications do not allow users to alter, manipulate, or edit any of the footage recorded by the BWC. These applications use secure technology to add value and efficiency to the BWC program.

**B. PURPOSE**

The primary objective of the BWC system is to document officer contacts, arrests, and critical incidents. Video footage collected by the BWCs will be used as evidence in both criminal and administrative investigations. Video footage not relevant to any investigation will be discarded after a defined retention period.

In instances where the officer might be expected to take law enforcement action of any kind, the officer is expected to record the encounter for the benefit of both the officer and the member of the public.

1. The BWC shall be activated in any of the following situations:
  - i. All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
  - ii. Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
  - iii. Self-initiated field contacts in which a member would normally notify the Communications Center.
  - iv. Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.

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- v. Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- vi. Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is an officer expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the user can do so safely.

Officers should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Officers shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

2. Prohibited uses of the BWC system include:

- i. Officers shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.
- ii. Officers are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.
- iii. Officers are prohibited from retaining BWC recordings.
- iv. Officers shall not duplicate or distribute such recordings, except for department business purposes.

**C. LOCATION**

Officers may use BWCs anywhere where officers have jurisdiction to operate as sworn officers, in accordance with BPD policy #425.

**D. IMPACT**

With the introduction of BWCs, officers record all enforcement contacts with the public. To that end, an officer could find themselves engaged in their lawful duties in both public and private areas. Additionally, due to the nature of law enforcement work, an officer may be required to engage in sensitive conversations with individuals of all ages, including children.

The right to maintain someone's anonymity versus the need to gain information to maintain public safety is of paramount concern. The Department recognizes that all people have a right to privacy and is committed to protecting and safeguarding civil rights by adhering to the

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strictest requirements of both state and federal law concerning release of audio/video recordings.

**E. MITIGATION**

In order to minimize violations of privacy, BWC policy provides that:

1. Officers should record any incident they feel would be appropriate or valuable to document. The BWC policy shall require officers to activate the BWC under the criteria listed above.
2. Officers should not activate the BWC and/or use caution when entering a public locker room, changing room, restroom, doctor's or attorney's office, or other place where individuals unrelated to the investigation are present and would have a heightened expectation of privacy unless the officer is investigating criminal activity or responding to a call for service.
3. BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy.
4. BWC footage will be retained or released in accordance with applicable state and federal law. Criminal defendants will have access to relevant BWC footage via the court discovery process.
5. Officers are prohibited from retaining BWC recordings, Officers shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.
6. Officers are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Officers may request restriction and subsequent deletion of an accidental recording according to the BWC policy.
7. Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted by law and department policy. Department policy does not authorize release of investigative files or documents that would constitute an unwarranted invasions of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy"

**F. DATA TYPES AND SOURCES**

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigations, and other proceedings protected by confidentiality laws and department policy.

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The BWC collects video and audio recordings of events occurring in the user's presence. As each video is created, the system automatically stamps the video with the current date/time and the camera user's identity. The user has the option to add metadata manually to existing recordings after they are created. Such metadata may include but is not limited to:

1. Category of contact (from Department's defined list)
2. Disposition of contact (arrest, citation, etc.)
3. Associated case number

**G. DATA SECURITY**

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for transferring the data into the digital evidence management system. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings.

Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code Section 832.18) (Ref. policy 425.14):

1. Establishing a system for uploading, storing and security of recordings.
2. Designating persons responsible for uploading recorded data.
3. Establishing a maintenance system to ensure availability of BWCs.
4. Establishing a system for tagging and categorizing data according to the type of incident captured.
5. Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
6. Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
7. Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file,

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thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

**H. FISCAL COST**

In 2017, the Berkeley City Council approved a resolution authorizing a contract between BPD and Axon. Axon was chosen after a competitive Request for Proposal (RFP) process. The contract will not exceed \$1,218,103 and includes the cost of 200 body worn cameras, charging stations, accessories, software licenses, training and unlimited storage for five years. The purchase also includes replacement cameras and charging stations during the third and fifth year of the contract.

There will be an annual cost of approximately \$250,000 to the police department's budget for a staff person to administer the body worn camera program beginning in FY 2019.

**I. THIRD PARTY DEPENDENCE AND ACCESS**

All BWC data will be uploaded and stored on Axon Cloud Services, Evidence.com. Axon complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union and Switzerland to the United States (collectively, "Privacy Shield"). Axon has certified to the U.S. Department of Commerce that it adheres to the Privacy Shield Principles.

**J. ALTERNATIVES**

Officers rely primarily on traditional policing techniques to gather evidence related to criminal investigations such as speaking to witnesses and suspects, gathering information from observations, and using standard data aggregation systems. These methods will continue to be employed as primary investigative tools that will be supplemented by use of BWCs to document police activity.

BWC technology provides video and audio documentation of policing activity in addition to the oral and written statements of officers, victims, and witnesses. Alternatives to the use of BWCs would be vehicle-based cameras and/or not utilizing BWCs. However, BPD sees the use of BWCs as an integral strategy to strengthen police transparency, prevent and resolve complaints against the police by civilians, document police-public interaction, and promote the perceived legitimacy and sense of procedural justice that communities have about their departments. There is a broad consensus – among community leaders, the ACLU, the Department of Justice, the Berkeley Police Department, and elected officials – that body-worn cameras can be an important tool for improving the high-quality public service expected of police officers.

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**K. EXPERIENCE OF OTHER ENTITIES**

Numerous police agencies have adopted BWCs as a tool to help combat crime, to reduce citizen complaints and to reduce use of force situations. Many departments have developed their own usage policies which may include standards for required officer use, supervisory review, storage and data retention standards, and internal and public access.

A report for the U.S. Bureau of Justice Administration, [https://www.bja.gov/bwc/pdfs/14-005\\_Report\\_BODY\\_WORN\\_CAMERAS.pdf](https://www.bja.gov/bwc/pdfs/14-005_Report_BODY_WORN_CAMERAS.pdf) - pages 6-8, cites a 2013 Rialto, CA study that showed that the use of BWCs led to a 59 percent decrease in UOF and an 87.5 percent decrease in citizen complaints. Likewise, the Mesa, AZ report noted in "Impact" Section above also points to large decreases in UOF and citizen complaints.

The 2017 Police Body Worn Cameras: A Policy Scorecard, <https://www.bwccscorecard.org/>, provides an analysis of how scores of different police agencies have employed BWCs through a defined list of metrics.



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## Body Worn Cameras

### 425.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable Body Worn Cameras (BWCs) by members of this department while in the performance of their duties.

This policy does not apply to non-BWC evidence, including other methods of audio or video recordings, interviews or interrogations conducted at any Berkeley Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

### 425.2 POLICY

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel.

While recordings obtained from BWCs provide an objective record of events, it is understood that video recordings do not necessarily capture all events, activities and information, or reflect the full experience of the individual member(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events as perceived and recalled by the involved member. Specifically, it is understood that the BWC will capture information that may not have been seen and/or heard by the involved member and that the involved member may see and hear information that may not have been captured by the BWC.

### 425.3 CONFIDENTIALITY AND PROPER USE OF RECORDINGS

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.

### 425.4 COORDINATOR

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.

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- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

#### **425.5 MEMBER RESPONSIBILITIES**

Prior to going into service, each uniformed member who is assigned to wear a BWC will be responsible for making sure that he or she is equipped with a BWC issued by the Department, and that the BWC is in good working order. If the BWC is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor to permit the supervisor or other department employee to provide the member with a functioning BWC as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner as prescribed by the Department, to provide a generally unobstructed camera view of contacts between members of the public and department members.

Members lawfully engaged in their duties as a police officer are not required to obtain consent from, or give notice to, members of the public, prior to recording with their BWC.

Upon the approval of the Chief of Police, or his/her designee, non-uniformed members lawfully engaged in their duties as a police officer may use an approved BWC.

Members are required to document the existence of a recording in any report or other official record of the contact, such as a CAD entry, including any instance where the member is aware that the BWC malfunctioned or the member deactivated the recording. In the event activity outlined in section 425.7 is not captured in whole or in part the member shall document this and explain in their report their understanding, if any, of why the footage was not captured in the recording.

#### **425.6 SUPERVISOR RESPONSIBILITIES**

At such time as the scene is considered secure and safe, the on-scene supervisor shall take immediate physical custody of involved officer's/officers' BWC when the device may have captured an incident involving an officer-involved shooting or use of force resulting in death or great bodily injury, and shall ensure the data is uploaded in a timely manner as prescribed by BPD policy

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#### *Body Worn Cameras*

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(Penal Code § 832.18). Supervisors may review relevant BWC video and audio files in the field in furtherance of their duties and responsibilities.

Supervisors shall also review relevant BWC recordings prior to submitting any administrative reports.

#### **425.7 ACTIVATION OF THE BODY WORN CAMERA**

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

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#### 425.8 VICTIMS AND WITNESSES OF CRIMES; INFORMANTS

In the event that an officer has the opportunity to record interviews of victims and witnesses of crimes, they shall consider the following:

- (a) **Witnesses:** In the event a crime witness or a member of the community wishes to report or discuss criminal activity anonymously, officers have the discretion to not record. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the witness's recorded statement. In cases where a witness requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
- (b) **Victims:** Upon request by the victim, officers have the discretion to not record the interview. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the victim's recorded statement. In cases where a victim requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
  1. **Domestic Violence Victims:** Members should attempt to record interviews of domestic violence victims to facilitate future prosecution efforts and discourage later recanting of statements. Members should also record interviews with children who witness domestic violence, when the child is willing.
  2. **Child Abuse and Sexual Assault Victims:** Members shall have the discretion to record, absent any request to not record the interview by victims, witnesses, or non-suspect parents of victims, during child abuse and/or sexual assault investigations.
- (c) **Informants:** Members shall not activate their recorders when conducting an interview or engaging in a conversation with a confidential informant, unless needed as evidence.

Members have no obligation to advise a victim or witness that he or she is being recorded, but may do so at their discretion. When a victim or witness requests they not be recorded, members may consider their request (See Penal Code 632).

Members shall remain sensitive to the dignity of all individuals being recorded and exercise discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy concerns may outweigh any legitimate law enforcement interest in recording. Recording should resume when privacy concerns are no longer at issue unless the member determines that the circumstances no longer fit the criteria for recording.

Informal community interactions differ from "consensual encounters" in which members make an effort to develop reasonable suspicion to detain or probable cause to arrest. To strengthen relationships between police and citizens, members may use discretion regarding the recording of informal, non-enforcement related interactions with members of the community.

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### Body Worn Cameras

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#### **425.9 ACTIVATION IN CROWD CONTROL SITUATIONS**

During crowd control, protest or mass arrest incidents, members shall use their BWCs consistent with this policy, or when directed by the Incident Commander. The Incident Commander shall document his or her orders to activate in an appropriate report (e.g. Operations Plan or After Action Report).

The limitations outlined in the Intelligence Procedures for First Amendment Activities Policy governing intelligence-gathering procedures for First Amendment activities, apply to the use of BWCs and other recording devices.

Video recording of individuals who are picketing or engaged in peaceful protest will be avoided unless the officer believes a violation of criminal law is occurring, may occur, or if the officer interacts with a participant or third party to the event, or a participant or third party initiates contact with the member.

#### **425.10 SURREPTITIOUS USE OF THE BWC**

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.

Members are prohibited from using department-issued BWCs for non-work related personal activity. BWCs will not be activated in places where members have a reasonable expectation of privacy, such as workplace locker rooms, dressing rooms, members' private vehicles or restrooms.

#### **425.11 CESSATION OF RECORDING**

Once activated, the member may mute or deactivate their BWC at any time based on their discretion, in the following circumstances:

- (a) Discussion of tactical or confidential information with other law enforcement personnel.
- (b) Where members are on a perimeter or assigned to a static post where the member's direct participation in the incident is complete and they are not actively part of an investigation.
- (c) If it is necessary to discuss issues or concerns with an employee, supervisor, doctor, nurse, or paramedic in private.
- (d) In the member's judgment, a recording would interfere with his or her ability to conduct an investigation.

Decisions regarding the reason for muting or BWC deactivation shall be noted on the recording, or otherwise documented.

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Members shall cease audio/video recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation. This does not apply to conversations with paramedics or EMTs during their response at a scene, and during transport.

#### **425.12 EXPLOSIVE DEVICE**

Many portable recorders, including BWCs and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

Members believing that the use of a BWC may detonate an explosive device may deactivate their BWC in such cases.

#### **425.13 PROHIBITED USE OF BODY WORN CAMERAS**

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Members may not use personally owned recorders (e.g. personal cell phone) to document contacts unless exigent circumstances exist to warrant the use of personally owned recording devices. Regardless, if a member is using a department-issued BWC, and/or another recording device, members shall comply with the provisions of this policy, including retention and release requirements. In every event where members use any recording device aside from or in addition to their department-issued BWC, the member shall document and explain the use and the exigent circumstance in their police report (e.g. the BWC failed and evidence needed to be captured at that moment in time).

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

#### **425.14 PROCESSING AND HANDLING OF RECORDINGS**

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

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Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Members may request restriction and subsequent deletion of an accidental recording as described under section 425.16 below.

#### **425.15 RETENTION REQUIREMENTS**

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days.

#### **425.16 ACCIDENTAL RECORDING - REQUEST FOR RESTRICTION**

In the event of an accidental or sensitive personal recording of non-departmental business activity, where the resulting recording is of no investigative or evidentiary value, the recording employee may request that the file be restricted pending 60-day deletion by submitting an email request via their chain of command to the Professional Standards Division Captain. The Professional Standards Division Captain will approve or deny the restriction request. In cases where the request is denied, an appeal may be submitted to the Chief of Police, or his/her designee, for restriction authorization. In all cases of restriction requests, a determination should be made within seven calendar days.

#### **425.17 REVIEW OF RECORDINGS BY A MEMBER**

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 425.17.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report.

##### **425.17.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH**

- (a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed

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the video files. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident."

#### 425.17.2 SUPERVISORY REVIEW

With the exception of section 425.17.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates.



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#### 425.17.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.
- (b) Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
- (c) By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
- (d) Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.

Investigators conducting criminal or internal investigations shall:

- 1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
- 2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
- 3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

#### 425.17.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video.

#### 425.17.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee.

#### 425.18 RELEASE OF RECORDINGS

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

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In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur.

#### 425.18.1 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation.

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

#### 425.18.2 PUBLIC RECORDS ACT (PRA) REQUEST

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

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#### 425.18.3 MEDIA

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy.

#### **425.19 COMPLIANCE WITH BMC 2.99 ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY**

This policy shall comply at all times with the requirement of BMC 2.99 Acquisition and Use of Surveillance Technology.

#### **425.20 TRAINING REQUIRED**

Officers who are assigned BWCs must complete department-approved training in the proper use and maintenance of the devices before deploying to the field.

As part of a continual improvement process, regular review should be conducted by BPD staff of the training on this policy and the related use of BWCs under this policy. Information resulting from the outcomes of this review shall be incorporated into the City Manager's annual "Surveillance Technology Report" as required under BMC 2.99 Acquisition and Use of Surveillance Technology.

The Department, Police Review Commission and other City Departments shall maintain the confidentiality of Department sworn employee personnel records as required by state and local law. Failure to maintain the confidentiality of Department sworn employee personnel records, whether or not intentional, may subject individuals to civil penalties and discipline, up to and including termination of employment.

**ATTACHMENT 3:  
Global Positioning System Tracking Devices**

Surveillance Technology Report GPS Tracker  
To be provided as part of supplemental communications

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## Surveillance Use Policy - GPS Tracking Devices

### 1301.1 PURPOSE

Global Positioning System (GPS) tracking devices track the movements of vehicles, bicycles, cargo, machinery, other items, and/or individuals. GPS trackers electronically relay their precise location in real time, and thereby assist BPD in the recovery of evidence and arrest of suspects.

### 1301.2 AUTHORIZED USE

GPS trackers shall only be used during active criminal investigations. GPS trackers shall only be used pursuant to a lawfully issued search warrant, or with consent of the owner of the object to which the GPS tracker is attached.

GPS trackers shall only be utilized for law enforcement purposes.

### 1301.3 DATA COLLECTION

Location data may be obtained through the use of a GPS Tracker.

### 1301.4 DATA ACCESS

Access to GPS tracker data shall be limited to Berkeley Police Department (BPD) personnel utilizing the GPS Tracker(s) for active criminal investigations. Information may be shared in accordance with 1301.9 below.

In support of active criminal investigations, BPD personnel may receive GPS tracker data from probation or parole agencies which utilize GPS trackers (e.g. ankle monitors) as a condition of probation or parole.

### 1301.5 DATA PROTECTION

The data from the GPS tracker is encrypted by the vendor. The data is only accessible through a secure website to BPD personnel who have been granted security access.

### 1301.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. Provisions of this policy, including 1301.4 Data Access, 1301.5 Data Protection, 1301.7 Data Retention, 1301.8 Public Access and 1301.9 Third Party Data Sharing serve to protect against any unauthorized use of GPS tracker data. These procedures ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

### 1301.7 DATA RETENTION

A GPS Tracker data record consists of date, time, latitude, longitude, map address, and tracker

identification label. This data is stored indefinitely by the vendor. The data does not contain any images, names of subjects, vehicle information, etc.

Tracker data received from the vendor shall be kept in accordance with applicable laws, BPD policies that do not conflict with applicable law or court order, and/or as specified in a search warrant.

#### **1301.8 PUBLIC ACCESS**

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law.

#### **1301.9 THIRD-PARTY DATA-SHARING**

Data collected from the GPS trackers may be shared with the following:

- (a) The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- (b) Other law enforcement personnel as part of an active criminal investigation;
- (c) Other third parties, pursuant to a Court Order.

#### **1301.10 TRAINING**

Training for the operation of the GPS trackers shall be provided by BPD personnel. All BPD personnel shall be provided with this Surveillance Use Policy.

#### **1301.11 AUDITING AND OVERSIGHT**

Division Captains or their designee shall ensure compliance with this Surveillance Use Policy.

#### **1301.12 MAINTENANCE**

GPS trackers shall only be obtained with the permission of the Investigations Division Captain or his/her designee. The Investigations Division Captain or his/her designee will ensure the trackers are returned when the mission/investigation is completed.

**1301 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES**

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**GPS TRACKING DEVICES****A. DESCRIPTION**

Global Positioning System (GPS) tracking devices track the movements of vehicles, bicycles, cargo, machinery, other items, and/or individuals.

The Berkeley Police Department currently uses two types of GPS Tracking Devices to track the movements of vehicles, bicycles, or other kinds of property. The manufacturer, 3SI Security Systems, describes them as follows:

1. The "Slap-n-Track" (SNT) tracker tracks vehicles, cargo, and other large assets for long deployments. Offers extended battery life, rugged and weatherproof housing, and optional magnets.
2. The "Electronic Stake Out" (ESO) tracker offers Law Enforcement miniaturized and covertly packaged GPS Tracking Solutions to target property crimes, especially pattern crimes, in their local jurisdictions.

**B. PURPOSE**

Global Positioning System (GPS) tracking devices provide precise, real-time location information during the conduct of active criminal investigations. GPS trackers are only used pursuant to a lawfully issued search warrant, or with consent of the owner of the object to which the GPS tracker is attached.

**C. LOCATION**

GPS tracking devices shall be deployed in locations consistent with the authority granted by consent or a lawfully issued search warrant or court order.

**D. IMPACT**

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. GPS Trackers are used in place of expensive, resource-intensive surveillance operations which typically involve multiple officers, often over long periods of time. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with GPS trackers help to ensure no unauthorized use of of GPS tracker data occurs. BPD Policy 1301 Surveillance Use Policy – GPS Tracking Devices ensure the use of GPS trackers and the resulting data are not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.



**1301 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES**

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**E. MITIGATION**

Data from a GPS tracker is encrypted from the vendor. Data shall be maintained in a secure, non-public location, such as locations requiring security access or badge access, thereby safeguarding the public from any impacts identified in subsection (D).

**F. DATA TYPES AND SOURCES**

A GPS tracker data record consists of date, time, latitude, longitude, map address (derived by using latitude, longitude and Google maps), and tracker identification label. The data does not contain any images, names of subjects, vehicle information, etc.

**G. DATA SECURITY**

Data from a GPS tracker is encrypted by the vendor on secure servers. The data is only accessible through a secure website to BPD personnel who have been granted security access. Captains whose Divisions utilize GPS trackers are responsible for ensuring compliance with the procedures for utilizing GPS Trackers.

**H. FISCAL COST**

The initial cost of the GPS trackers totaled \$4,335.

- Between 2015-present BPD purchased 5 GPS "ESO" trackers for \$2,250 (\$450 each).
- In 2017 BPD purchased 3 GPS "SNT" trackers for \$2,085 (\$695 each).

The annual cost for the GPS data service totals \$1,920.

- The annual data service for the five ESO trackers is \$1,020 (\$204 each).
- The annual data service for the three SNT trackers is \$900 (\$300 each).

Personnel costs are minimal in that the GPS trackers are used as a resource during normal working hours.

GPS trackers are funded through the Investigations Division's general budget.

**I. THIRD PARTY DEPENDENCE AND ACCESS**

Data collected from the GPS trackers may be shared with the following:

- a. The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- b. Other law enforcement offices as part of a criminal investigation;
- c. Other third parties, pursuant to a Court Order.

**1301 APPENDIX A**

**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES**

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**J. ALTERNATIVES**

An alternative to the use of GPS trackers is to conduct resource-intensive surveillance operations utilizing numerous personnel over extended periods of time.

**K. EXPERIENCE OF OTHER ENTITIES**

The use of GPS tracker technology is common amongst law enforcement agencies throughout the country.

**ATTACHMENT 4:**  
**Automated License Plate Readers**

Surveillance Technology Report Automated License Plate Reader  
To be provided as part of supplemental communications

## Surveillance Use Policy - ALPR

### 1302.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department ALPR Policy #422 and adds elements as required by BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review. (Ref. policy 422.2)

### 1302.2 AUTHORIZED AND PROHIBITED USES USE

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53). (Ref. policy 422.4)

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used to support a patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

### 1302.3 DATA COLLECTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law. (Ref. policy 422.5)

### 1302.4 DATA ACCESS

- (a) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (b) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.
- (c) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

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### **1302.5 DATA PROTECTION**

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref. policy 422.6):

- (a) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (b) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
- (c) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (d) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

### **1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:**

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

### **1302.7 DATA RETENTION**

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT) department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence. (Ref. policy 422.5)

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- (a) Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.

### **1302.8 PUBLIC ACCESS**

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. (Ref. policy 422.6 (a))
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question. (Ref. policy 422.6 (b))

### **1302.9 THIRD-PARTY DATA-SHARING**

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. ALPR data is subject to the provisions of BPD Policy 415, and hence may not be shared with federal immigration enforcement officials.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager. (Ref. policy 422.6 (e))

### **1302.10 TRAINING**

Training for the operation of ALPR Technology shall be provided by BPD personnel. All BPD employees who utilize ALPR Technology shall be provided a copy of this Surveillance Use Policy.

### **1302.11 AUDITING AND OVERSIGHT**

ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. (Ref. policy 422.6 (g))

### **1302.12 MAINTENANCE**

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data. (Ref. policy 422.3)

#### **1302.12.1 ALPR ADMINISTRATOR**

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref.

policy 422.3.1):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.



**1302 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES**

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**AUTOMATED LICENSE PLATE READER (ALPR) DEVICES****A. DESCRIPTION**

Automated License Plate Readers (ALPRs) are high-speed, computer controlled camera systems that are typically mounted on Berkeley Police Department Parking Enforcement Vehicles.

ALPRs capture license plate numbers which come into view, along with the location, date and time. The data, which includes a photo of the front or the back of the car displaying the license plate, is then uploaded to a central server.

**B. PURPOSE**

The Berkeley Police Department's Parking Enforcement Unit utilizes vehicles equipped with ALPRs to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's also access information in the California Law Enforcement Telecommunications System's (CLETS) Stolen Vehicle System (SVS) database, which provides information on matches for stolen and wanted vehicles.

The Berkeley Police Department's Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding parking citation fees.

**C. LOCATION**

Parking Enforcement vehicles travel throughout the city; using the ALPRs as described above.

**D. IMPACT**

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with ALPR Units will help to ensure unauthorized use of its data. The procedures will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

**1302 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES**

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**E. MITIGATION**

All saved data will be safeguarded and protected by both procedural and technological means which are implemented to safeguard the public from any impacts identified in subsection (D). See subsection (G) for further.

**F. DATA TYPES AND SOURCES**

Photographs of license plates and location data may be obtained through the use of ALPR Units.

**G. DATA SECURITY**

The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

1. All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
2. Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
3. Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
4. Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

**H. FISCAL COST**

In 2015, Public Works brought an ALPR Contract to City Council. Council approved a contract for Public Works to buy five Genetec ALPR Units with PCS Mobile communication, for a pilot program for \$450,000.

In 2017, after success with the program, City Council approved an amendment to the contract, allowing Public Works to purchase 15 more ALPR Units for Parking Enforcement vehicles, and to continue its use of PCS Mobile, for 1,200,000. The money was allocated from the goBerkeley/Federal Highway Administration Parking Meter Fund.

Yearly service for the ALPR Units includes warranties, hosting services, cellular connection, mobile computing, and training which varies. The costs through fiscal year 2022 are currently estimated at \$1,175,000.

**1302 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES**

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Personnel costs are minimal in that the ALPR Units are used as a resource during normal working hours.

**I. THIRD PARTY DEPENDENCE AND ACCESS**

1. Vendor Access-Scofflaw Enforcement: The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:
  - a. All data captured by the ALPR is stored on the booting vehicle's laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.
  - b. When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.
2. Vendor Access-General Parking Enforcement and goBerkeley Program: The contracted vendor for the City's Parking Enforcement ALPR is currently Genetec. The city uses Genetec ALPRs to support efficient enforcement of posted time limit parking and Residential Preferential Parking permits.
  - a. In addition, Genetec periodically provides reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that the City's program can analyze data about parking demand. These reports do not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports consist of completely anonymized information, using identification numbers that are not associated with a particular license plate or registered owner.
  - b. The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and Residential Permit Pass (RPP) area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.
3. Department of Information Technology Access: Technical support and assistance for ALPR's is provided by the City of Berkeley's Department of Information Technology (IT) and associated ALPR system providers/vendors as identified herein. IT staff who

**1302 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES**

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do not have the proper clearance and training do not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT provides initial infrastructure set-up, and continued systems support as needed to ensure efficient and accurate performance of the ALPR hardware and software. Only IT staff members who have successfully undergone DOJ background checks and training are authorized by the Chief of Police to view specific ALPR records.

4. Other Law Enforcement Agency Access: ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55). Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
5. Member Access: No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training. No ALPR operator may access CLETS data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through CLETS before taking enforcement action that is based solely on an ALPR alert.
6. Public Access: Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

**J. ALTERNATIVES**

None.

**K. EXPERIENCE OF OTHER ENTITIES**

The use of ALPR technology is common amongst law enforcement agencies throughout the country, in support of parking enforcement, and law enforcement criminal investigations.

## Automated License Plate Readers (ALPRs)

### 422.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

### 422.2 POLICY

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

### 422.3 ADMINISTRATION

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

#### 422.3.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

### 422.4 USE OF THE ALPR

An ALPR shall only be used for official law enforcement business.

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use,

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or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR may be used by Berkeley Police Department Parking Enforcement for parking and scofflaw enforcement.
- (b) An ALPR may be used to support criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped vehicles to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert

#### **422.5 .DATA COLLECTION AND RETENTION**

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review.

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT Department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

- (a) Collected images and metadata of reads showing violations will not be stored for more than 365 days.
- (b) Metadata of reads showing violations will be stored for up to 30 days. Images of reads not

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showing violations will not be transferred to the server.

#### **422.6 ACCOUNTABILITY**

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.
- (c) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (d) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action or parking enforcement.
- (e) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (f) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.
- (g) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually.

For security or data breaches, see the Records Release and Maintenance Policy.

#### **422.7 RELEASING ALPR DATA**

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
  - 1. The name of the agency.
  - 2. The name of the person requesting.
  - 3. The intended purpose of obtaining the information.

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4. The related case number.
  - (b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.
  - (c) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

#### **422.8 SCOFFLAW ENFORCEMENT**

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.

The Parking Enforcement Unit will utilize vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV's Stolen Vehicle System (SVS) database for wanted and stolen vehicles.

The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding citation fees.

The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website.

When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

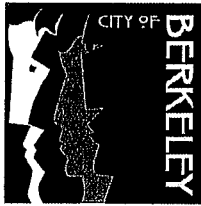
The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking



enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.

**ATTACHMENT 5:**  
**Police Review Commission Communication**



Police Review Commission (PRC)

September 11, 2019

To: Honorable Mayor and Members of the City Council  
From: George Perezvelez, Chairperson, Police Review Commission  
Re: Proposed Berkeley Police Department Policy 422, Automated License Plate Readers

Summary: This memo is to inform you of the Police Review Commission's qualified approval of the BPD's proposed policy for the use of Automated License Plate Readers (ALPRs).

Background: The BPD submitted the ALPR policy, Policy 422, to the PRC for review, along with the Surveillance Use Policy and the Surveillance Acquisition Report (Policy 1302 and Appendix A) for these devices. This process was undertaken in advance of BPD submitting these items to the City Council as required by the Surveillance Technology Use and Community Safety Ordinance (B.M.C. Ch. 2.99).

These policies were first considered by the full Commission, which then referred them to its Lexipol Policies Subcommittee. In response to feedback from the PRC and the Subcommittee, the BPD revised the proposed policy, which was reviewed by both bodies. At various stages, the PRC and the subcommittee had the opportunity to hear from and ask questions of Police Chief Greenwood and other members of the BPD, and Deputy City Attorney Chris Jensen. The PRC also heard input from representatives of Media Alliance and Oakland Privacy.

Final action: At its September 4, 2019 meeting, the PRC voted to approve for submission to the City Council for your review and discussion the version of Policy 422 that is attached here, with two caveats. First, there was concern among some commissioners that the ALPR was originally acquired for the purpose of parking enforcement and that this policy represents an expansion of that function. If this is not what the Council had in mind, then this policy should be modified accordingly. Second, Section 422.4(c) of the policy does not adequately define what constitutes a "crime scene."

Finally, the Commission wishes to remind the Council that they will see actual use of the ALPR technology under the reporting mechanism in place in the Surveillance Technology Use and Community Safety Ordinance.

Honorable Mayor and Members of the City Council  
Proposed Berkeley Police Department Policy 422, Automated License Plate Readers  
September 11, 2019  
p. 2

The above action was approved by the following vote: Moved/Seconded  
(Perezvelez/Mikiten) -- Ayes: Calavita, Chang, Leftwich, Mikiten, Perezvelez,  
Ramsey; Noes: Earnest, Mizell; Abstain: Allamby; Absent: None.

Attachment: Revised Policy 422

cc: Dee Williams-Ridley, City Manager  
Andrew Greenwood, Chief of Police  
David White, Deputy City Manager  
PRC Commissioners

## Automated License Plate Readers (ALPRs)

### 422.1 PURPOSE AND SCOPE

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### 422.3 ADMINISTRATION

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

#### 422.3.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

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#### **422.5 DATA COLLECTION AND RETENTION**

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The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT Department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

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with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.





Office of the City Manager

### SUPPLEMENTAL AGENDA MATERIAL

**Meeting Date:** July 26, 2022

**Item Description:** Police Equipment & Community Safety Ordinance Impact Statements and Policy 303 (Control Devices and Techniques)

**Submitted by:** Jennifer Louis, Interim Chief of Police  
Rico Roller, Captain Professional Standards Division

This supplemental communication provides the revised Impact Statements and Policy 303 (Control Devices and Techniques). The City Ordinance Impact Statements and Policy 303 were revised following the June 21<sup>st</sup> Special Meeting of the Berkeley City Council to reflect the approved Impact Statements and Policy 303 from the Supplemental Communications Packet #2 submitted by Vice Mayor Harrison and Councilmember Hahn. Both documents are attached to this supplemental agenda.



**Police Equipment and  
Community Safety Ordinance  
Impact Statements**

## ACKNOWLEDGEMENTS

Thank you to the subject matter experts for helping author this report.

Officer Corey Bold –  
*Patrol Officer and chemical agent instructor*

Officer Semir Muratovic –  
*Patrol Officer and Bomb Squad Technician*

Officer Derek Radey –  
*Patrol Officer and less lethal coordinator/instructor*

Lieutenant Kevin Reece –  
*Special Response Team Commander*

Officer Scott Salas –  
*Patrol officer and Special Response Team high ground team leader*

Lieutenant Jennifer Tate –  
*Traffic Lieutenant and defensive tactics instructor*

Officer Jason Tillberg –  
*Department trainer and Department Armorer*

Officer Sean Tinney –  
*Department trainer and Special Response Team member*

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## INTRODUCTION

On May 11, 2021 the Berkeley City Council passed Ordinance NO. 7,760-N.S., the Police Equipment and Community Safety Ordinance. Section 2.100.020 of the ordinance mandates an impact statement for certain equipment that the Berkeley Police Department possesses. An impact statement is defined in section 2.100.020 (C) and is a publicly released written document that includes the following details for each equipment:

- 1) Description
- 2) Purpose
- 3) Fiscal cost
- 4) Impact
- 5) Mitigation
- 6) Alternatives
- 7) Third Party Dependence

An impact statement for each of the following equipment has been authored by subject matter experts in their respective fields:

- M4 rifle/Patrol Rifle
- Penn Arms 40MM launcher
- Milkor LTL multi-launcher
- FN 303 Launcher & FN Pava rounds
- Oleoresin capsicum (OC spray)
- Chlorobenzylidene Malononitrile and Oleoresin capsicum (tear gas)
- Remington 700 Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/sound distraction device
- Long Range Acoustic Device (LRAD)
- 36" batons
- Mobile Command Vehicle
- Barret Model 99

Impact statements were compiled in this report in a prioritized ranking for the Police Accountability Board to consider in determining the order in which to perform its review per the Police Equipment and Community Safety Ordinance.

### **M4 Rifle and Associated Ammunition**

#### **(1) Description:**

##### **A. Background:**

The “M4” was developed and produced for the United States government by Colt Firearms and was based off of the original Armalite Rifle (AR) patent purchased by Colt in 1959. Although Colt owned the trademarked name of “M4”, a number of other manufacturers offer M4-like firearms under various model names. The M4 and its variants fire 5.56×45mm NATO (and .223 Remington) ammunition, and are a gas-operated, magazine-fed firearm with a barrel length ranging from 11.5” to 16”.

The current Berkeley Police Department (BPD) rifle ammunition used is the .223 Remington, a rimless, bottlenecked rifle cartridge. The round was developed in 1957 by Remington Arms and Fairchild Industries. The .223 Remington is considered one of the most popular cartridges and is currently used by a wide range of semi-automatic and manual-action rifles as well as handguns. While the military uses the similar 5.56x45 NATO cartridge, BPD uses the more common and often regarded civilian cartridge of .223 Remington for all training and duty uses.

Currently, BPD uses two different kinds of .223 Remington ammunition: 55 grain FMJ (full metal jacket) for training purposes and 62 grain soft point for duty purposes. This is done for several reasons.

1. FMJ ammunition is cheaper to purchase. While many agencies use the same ammunition for training and duty use, the department saves a significant amount of money by using FMJ ammunition for training.
2. The observed performance between the two rounds is negligible for training purposes. Officers can use the FMJ ammunition in a training course and see no difference in operation and performance versus using 62 grain soft point duty ammunition.
3. The 62-grain soft point ammunition has been shown to have less over penetration and over travel compared to FMJ ammunition.



This means that rounds fired are less likely to hit unintended targets.

**B. Quantity:**

The Berkeley Department currently owns and maintains 96 rifles.

Quantity of rifle ammunition fluctuates significantly depending on training attended, including the standard basic police academy, officer assignments, and yearly mandate training cycles. For example, most police academy recruits are required to bring approximately 1,000 rounds to the basic POST approved academy. Most academies have a 16-24-hour rifle training course. The training is required for all officers who are issued a rifle and mandates between 800 and 1,200 rounds. As such, the inventory at the Berkeley Police Department fluctuates significantly depending on how many officers are attending state mandated training and can range from 10,000 round (our current inventory) to less than 1,000 rounds (our anticipated inventory at the end of December after scheduled department training in November.)

**C. Capability:**

The M4 pattern rifle is used only in situations when a potential life-threatening situation exists. While a pistol is the common firearm used by police in these dangerous situations, the M4 patterned rifle has numerous advantages over it. The ability to shoulder the rifle, coupled with the rifle's lengthened barrel and ammunition, result in higher accuracy and lessens the chance of officers missing the intended target. Additionally, due to the design of the rifle's bullet, the round is less likely to over penetrate commercial and residential walls should the officer miss the intended target. The rifle is also easier to use compared to a pistol because of the bullet's low recoil. Finally, as the rifle can be adjusted and customized, it can be configured to accommodate officers of any stature (hand size, strength, etc.).

The .223 Remington cartridge, depending on the weight of the bullet, 55 grain or 62 grain, travel at approximately 3,000 feet per second and 2,700 feet per second respectively. The round is highly regarded as having a high degree of consistency and accuracy, which is why it is the most common rifle round used in Law Enforcement around the world.

**D. Lifespan:**

Due to the rifle's ability to be maintained by department armorers, these rifles have a relatively long-life span if properly maintained. However, the design has

changed little in the last 60 years and we can expect new variations and designs to become the new industry standard in the coming years.

Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

**E. Use:**

Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

**F. How it Works:**

The M4 patterned rifle works the same as a majority of all modern firearms. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. As the bullet travels down the barrel, gas from the ignited powder also escapes from the muzzle. Some of that gas is recycled back into the chamber of the firearm which causes the firearm to cycle its action and load another bullet. From there the process repeats with each pull of the trigger.

The .223 Remington cartridge is made up of several parts, primarily the primer, casing, gunpowder, and bullet. The bullet is seated into the front or opening of the casing. Gunpowder is placed between the bullet and the interior of the casing and a primer is seated in the rear part of the casing. When the trigger of a firearm is pulled, it releases the hammer, which strikes the firing pin, driving it forward. The firing pin collides with the rear of the cartridge, where the primer is seated, which ignites the primer. The spark from the primer ignites the gunpowder. Gas converted from the burning powder rapidly expands in the cartridge. The expanding gas forces the bullet out of the cartridge and down the barrel with great speed. The rifling in the barrel causes the bullet to spin as it travels out of the barrel. The bullet's speed and escaping gases produce a "bang."

After the bullet exits the barrel, the spent casing which housed the bullet, gunpowder, and primer are ejected from the firearm.

**(2) Purpose:**

The M4 patterned rifle and associated ammunition is intended as a means to safely stop a lethal threat. While a pistol is the firearm that all officers are minimally

equipped with, the rifle is an ancillary firearm for situations where increased distance and accuracy are needed to safely resolve the situation.

**(3) Fiscal Cost:**

**A. Initial Cost:**

Rifle prices, like other firearms, will range depending on current market demand and availability. While M4 rifles purchased several years ago cost between \$1,000 and \$1,200 a piece, current rifles cost between \$1,400 and \$1,600. It should be expected that these prices will fluctuate and likely increase over time.

Ammunition costs fluctuate with the costs of components (brass, primers, gunpowder, and bullets) and supply/demand. Current costs for .223 Remington range from \$0.50 to \$0.75 a round for training ammunition (55 grain) and \$1.25 to \$1.50 a round for duty ammunition (62 grain).

**B. Cost of Use:**

Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on whether the rifle is issued to a patrol officer, a firearms instructor, or a Special Response Team member as each assignment has different training requirements.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

See section B. above, these costs are determined based on the rifle's assignment.

**E. Training Costs:**

Every officer that is authorized to carry a rifle on duty must attend a 16-hour CA POST approved rifle instruction course before being authorized to carry the rifle on duty. This course may be administered by Berkeley Police Firearm Instructors or by other POST approved agencies. Tuition for the CA POST approved class is dependent on the hosting agency. If conducted in house the cost only includes the officer's hourly wage, range fee, and ammunition costs (all vary). Outside agencies charge between \$25 to \$500 depending on the range location and duration (some classes are 32-hours while POST only requires 16-hours.)

Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by POST certified BPD firearm instructors.

Typical round count for such classes range between 800 rounds and 1200 rounds per student. Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by a BPD firearm instructor which constitutes an additional 500 or so rounds per officer.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use over time. Traditionally, various springs and pins need to be replaced every five years and may cost between \$3 and \$30 per rifle. Other parts such as the barrel and bolt need replaced around ten years and range between \$150 and \$300 per rifle.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

**G. Upgrade Costs:**

Upgrade costs and Maintenance cost are synonymous due to the consistent design and lack of changes of the rifle over the last 60 years. Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing, those upgrade costs are unknown at this time.

**(4) Impact:**

The Berkeley Police Department is committed to preserving and protecting human life and welfare. The M4 patterned rifle, which fires the .223 Remington cartridge, is a superior firearm to stop a lethal threat compared to the issued pistols to police officers, in that officers equipped with this firearm shoot less rounds, fire more accurately, and are less likely to fire errant rounds. Highly volatile and violent incidents, such as a hostage situation, can be more safely and efficiently resolved with a rifle.

The M4 patterned rifle, and the accompanying .223 Remington cartridge it fires, is intended as a tool to increase the safety and welfare of citizens and officers alike. Potential negative impacts include larger entry and exit wounds than from handgun bullets, more body tissue destruction; emotional trauma to vulnerable and/or minor bystanders; and potential litigation costs.

**(5) Mitigations:**

Per Policy 300, “Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.

Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons.”

**(6) Alternatives:**

There are no suitable alternatives to the M4 rifle for the intended purpose. The M4 rifle is a law enforcement standard across the US and other countries due to its reliability, ease of use, ease of maintenance, and increased accuracy over other options.

There are no suitable alternatives to the .223 Remington cartridge, as the current BPD M4 rifle is designed for that particular cartridge. The .223 Remington cartridge is a law enforcement standard across the US and other countries due to its reliability, availability, and increased accuracy over other options.

**(7) Third Party Dependence:**

Berkeley Police Department armorers are trained and capable to handle any and all issues related to the maintenance or repair of the M4 rifles. Additionally, BPD firearm instructors are fully certified by state and private training institutes to fully educate and train BPD officers. No third party is required for maintenance, repair, or instruction.

All ammunition purchased by BPD, like all equipment, is dependent on Third Party vendors. Vendor stock and availability is outside BPD control or management. Once ammunition is purchased and in BPD custody there is no additional need for Third Party assistance.

### **Penn Arms 40mm Single Launcher**

**(1) Description:****A. Background:**

The 40mm impact projectile was developed as an alternative to the 12-gauge bean bag round and other more indiscriminate less lethal options. Early 12-gauge bean bag round designs had somewhat unpredictable flight patterns and could

cause significant unwanted injury. The 40mm foam baton round was developed as a direct fire projectile designed to minimize the risk of unintended injuries. Currently, the Berkeley Police Department utilizes the CTS 4557 foam baton projectile and the Penn Arms L-140 single shot launcher.

**B. Quantity:**

The Berkeley Police Department currently owns and maintains 20 Penn Arms less lethal launchers.

**C. Capability:**

The Penn Arms single launcher is capable of firing a single projectile out to a maximum manufacturer recommended range of 45 meters. The Penn Arms 40mm projectiles are direct fire with a pliable “sponge” tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

**D. Lifespan:**

The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

**E. Use:**

The Penn Arms 40mm single launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

Pursuant to Cal. Pen. Code § 13652, kinetic energy projectiles shall not be used to disperse any assembly, protest, or demonstration except as provided below.

Kinetic energy projectiles shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

(1) De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(10) Kinetic energy projectiles shall not be used by BPD solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

**F. How it works:**

The Penn Arms 40mm single launcher is a double action, break open less lethal launcher. The launcher is capable of firing a single 40mm projectile. When fired, the hammer strikes the munition primer which ignites gun powder in the primer insert. Expelled gases propel the projectile through the rifled barrel. The projectile has a rear plastic portion called the ogive which catches the barrel rifling and provides spin. The spin provides a greater degree of accuracy and eliminates any potential the projectile will tumble when exiting the barrel.

The projectiles utilized by the Berkeley Police Department are the CTS 4557 40mm sponge baton round. The CTS 4557 has a maximum effective range of 45 meters. The tip of the projectile is a pliable rubber material which molds to the body upon impact. The projectile travels at an estimated 240 feet per second which is slower than the FN 303 projectile. However, the larger mass, about 60 grams, creates more kinetic energy upon impact which is similar to that of a baseball thrown by a pitcher. The additional kinetic energy becomes important when the suspect has on thick or layered clothing or demonstrates a high pain tolerance.

The Penn Arms single launcher is a basic design making it easy to operate and maintain.

**(2) Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent or armed confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting



instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before certain weapons can be utilized. This fact may allow the Officer time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Additionally, it has been our experience that a 40mm projectile impact will almost always resolve a violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

**(3) Fiscal Cost:**

**A. Initial Cost:**

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$815.00 each.

**B. Cost of Use:**

Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

**C. Cost of Potential Adverse Effects:**

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death.

**D. Annual and Ongoing Costs:**

See section B above

**E. Training Costs:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use. Generally, various springs and pins need to be replaced every 5 years which can cost \$3 to \$30.

**G. Upgrade Costs:**

There are no foreseeable upgrade costs. The Penn Arms single launcher has few working parts and is of a simple design.

**(4) Impact:**

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but hopefully the minimal amount of force needed to safely resolve the incident.

The Penn Arms single launcher, with its high level of accuracy can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. This tool does not require officers to overcome a hostile crowd to stop a violent assault.

Potential adverse impacts, especially from close-range use or injuries to the head or neck, include permanent injury and death.<sup>1</sup>

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<sup>1</sup> 1 Haar RJ, Iacopino V, Ranadive N, et al, Death, injury and disability from kinetic impact projectiles in crowd control settings: a systematic review, *BMJ Open* 2017;7:e018154. doi: 10.1136/bmjopen-2017-018154

**(5) Mitigation:**

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders."

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer's ability to target approved impact areas.

**(6) Alternative:**

The Penn Arms single launcher is one of three less lethal options the Berkeley Police Department possess that allow officers to address a potentially violent confrontation from a distance. All three (Penn Arms single launcher, Milkor LTL multi-launcher, and FN303) are viable options that have different strengths and weaknesses. The Penn Arms single launcher and the Milkor LTL multi-launcher operate very similarly and use the same projectile. The Penn Arms single launcher is smaller and easier to carry; however, the Penn Arms single launcher is capable of holding only one projectile

while the Milkor LTL multi-launcher is capable of holding six projectiles. The projectiles used by the Penn Arms single launcher and Milkor LTL multi-launcher are larger which results in more kinetic energy transferred compared to the projectiles used in the FN303; however, the FN303 holds 15 projectiles and is capable of launching it at a faster rate.

An alternative that the Berkeley Police Department does not possess is the TASER. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject's clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

(7) **Third Party Dependence:**

The Berkeley Police Department armorers are trained and capable of handling all issues related to the repair or maintenance of the Penn Arms single launcher. Additionally, Berkeley Police Department Less Lethal Instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for maintenance, repair, or instruction.

### **Milkor LTL Multi-launcher**

(1) **Description:**

A. **Background:**

The 40mm impact projectile was developed as an alternative to the 12-gauge bean bag round and other more indiscriminate less lethal options. Early 12-gauge bean bag round designs had somewhat unpredictable flight patterns and could cause significant unwanted injury. The 40mm foam baton round was developed as a direct fire projectile designed to minimize the risk of unintended injuries. Currently, the Berkeley Police Department utilizes the CTS 4557 foam baton projectile and the Milkor LTL multi-shot launcher.

B. **Quantity:**

The Berkeley Police Department currently owns and maintains 2 Milkor LTL less lethal launchers. One Milkor launcher is assigned to the Berkeley Special Response Team.

**C. Capability:**

The Milkor LTL is capable of firing six 40mm projectiles before reloading is necessary. The Milkor LTL 40mm projectiles are direct fire with a pliable “sponge” tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

**D. Lifespan:**

The manufacturer expected lifespan is about 10 to 15 years depending on use and regular maintenance.

**E. Use:**

The Milkor LTL multi-shot launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

Pursuant to Cal. Pen. Code § 13652, kinetic energy projectiles shall not be used to disperse any assembly, protest, or demonstration except as provided below.

Kinetic energy projectiles shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

(1) De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(10) Kinetic energy projectiles shall not be used by BPD solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

**F. How it works:**

The Milkor LTL multi-shot launcher utilizes a spring actuated cylinder allowing it to fire 6 individual 40mm projectiles. When fired, the hammer strikes the munition primer which ignites gun powder in the primer insert. Expelled gases propel the projectile through the rifled barrel. The projectile has a rear plastic portion called the ogive which catches the barrel rifling and provides spin. The spin provides a greater degree of accuracy and eliminates any potential the

projectile will tumble when exiting the barrel. The spring assisted cylinder automatically turns and loads the next projectile.

The projectiles utilized by the Berkeley Police Department are the CTS 4557 40mm sponge baton round. The CTS 4557 has a maximum effective range of 45 meters. The tip of the projectile is a pliable rubber material which molds to the body upon impact. The projectile travels at an estimated 240 feet per second which is slower than FN 303 projectile. However, the larger mass, about 60 grams, creates more kinetic energy upon impact which is similar to that of a baseball thrown by a pitcher. The additional kinetic energy becomes important when the suspect has on thick or layered clothing or demonstrates a high pain tolerance.

The benefit to the Milkor LTL is its ability to provide a quick follow up less lethal application, if necessary. The Milkor holds 6 projectiles while the Penn Arms launcher only holds one. Reloading the Penn Arms single launcher can be time consuming and requires the officer to briefly change focus from the suspect to the reload procedure. The Milkor LTL on the other hand, allows the officer to maintain focus on the suspect and assess whether a follow up application is necessary. This ability is significant when the suspect is advancing, attempting to flee, or demonstrates a high pain compliance threshold.

(2) **Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

The “less lethal” projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Additionally, it has been our experience that a 40mm projectile impact will generally resolve the violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

(3) **Fiscal Cost:**

A. **Initial Cost:**

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$3950.00 each.

B. **Cost of Use:**

Cost for the Milkor LTL launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

C. **Cost of Potential Adverse Effects:**

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death.

D. **Annual and Ongoing Costs:**

See section B above



**E. Training Costs:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use.

**G. Upgrade Costs:**

There are no foreseeable upgrade costs.

**(4) Impact:**

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but also the minimal amount of force needed to safely resolve the incident.

The Milkor LTL launcher, with its high level of accuracy and 6 projectile capacity, can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. It also allows officers to prevent a more indiscriminate use of force, such as entering the group or crowd, to take a subject into custody.

Potential adverse impacts, especially from close-range use or injuries to the head or neck, include permanent injury and death.<sup>2</sup>

**(5) Mitigation:**

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require

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<sup>2</sup> Haar RJ, Iacopino V, Ranadive N, et al, Death, injury and disability from kinetic impact projectiles in crowd control settings: a systematic review, *BMJ Open* 2017;7:e018154. doi: 10.1136/bmjopen-2017-018154

documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders."

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer's ability to target approved impact areas.

**(6) Alternative:**

The Milkor LTL multi-launcher is one of three less lethal options the Berkeley Police Department possess that allow officers to address a potentially violent confrontation from a distance. All three (Penn Arms single launcher, Milkor LTL multi-launcher, and FN303) are viable options that have different strengths and weaknesses. The Penn Arms single launcher and the Milkor LTL multi-launcher operate very similarly and use the same projectile. The Penn Arms single launcher is smaller and easier to carry; however, the Penn Arms single launcher is capable of holding only one projectile while the Milkor LTL multi-launcher is capable of holding six projectiles. The projectiles used by the Penn Arms single launcher and Milkor LTL multi-launcher are larger which results in more kinetic energy transferred compared to the projectiles

used in the FN303; however, the FN303 holds 15 projectiles and is capable of launching it at a faster rate.

An alternative that the Berkeley Police Department does not possess is the TASER. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject's clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

**(7) Third Party Dependence:**

The Berkeley Police Department armorers are trained and capable of handling most issues related to the repair or maintenance of the Milkor LTL launcher. In the event of a catastrophic malfunction, the Milkor LTL will need to be sent to the manufacturer for repair. To date, there have been no significant repairs needed to the Milkor LTL. Additionally, Berkeley Police Department Less Lethal Instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for regular maintenance, repair, or instruction.

### **FN 303 and FN Pava Impact Projectile**

**(1) Description:**

**A. Background:**

The FN 303 was developed in 2003 by Fabrique Nationale de Herstal as a less lethal option. The FN 303 is based on a concept developed by Monterey Bay Corporation. The development team consisted of designers and researchers from two paintball related companies. The FN 303 uses compressed air to propel a .68 caliber projectile similar to that of most manufactured paintball guns.

**B. Quantity:**

The Berkeley Police Department currently owns and maintains 8 FN 303 less lethal launchers.

**C. Capability:**

The FN 303 is capable of firing 15 projectiles out to a maximum manufacturer recommended range of 50 meters. The FN 303 projectiles are direct fire and designed to fragment upon impact to prevent penetration injury. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large

muscle groups such as the upper legs or lower abdomen are approved target areas. This level of force is considered to be similar to that of a baton strike.

**D. Lifespan:**

The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

**E. Use:**

The FN 303 is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

Pursuant to Cal. Pen. Code § 13652, kinetic energy projectiles and chemical agents shall not be used by BPD to disperse any assembly, protest, or demonstration except as provided below.

Kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

- (1) De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.
- (2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.
- (3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.
- (4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(10) Kinetic energy projectiles or chemical agents shall not be used by BPD solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

**F. How it works:**

An air reservoir attaches to the FN 303 through an air hose coupler and provides pressure through compressed air. When fired, the compressed air drives a piston that pushes the .68 caliber projectile through the barrel at approximately 280 feet per second. For comparison, the FN projectile is the size of a paintball and the velocity is the same as a commercially manufactured paintball gun.

The projectiles are 8.5 grams in weight and utilize a polystyrene fin stabilized body with a non-toxic forward payload to aid in stability and accuracy. The projectile will deliver approximately 24-foot pounds of kinetic energy at the muzzle which is about double the kinetic energy of most paintball guns. Most paintballs have a mass of 3 grams while the FN 303 projectile has a mass of 8.5 grams which increases the kinetic energy produced.

Available projectiles are impact, impact + non-permanent marking, impact + permanent marking, and impact + PAVA (0.5% PAVA/Oleoresin Capsicum).

The impact + PAVA projectile is intended to be direct fired at an individual. In addition to delivering pain through kinetic energy upon impact, the PAVA projectile will deliver a secondary chemical irritant, which is the Oleoresin Capsicum (O.C.) payload. Oleoresin Capsicum generally causes irritation/burning at the application site, irritation to the eyes, and coughing. According to the National Institute of Health, the effects of O.C. power exposure tend to resolve on their own within 30 minutes.

Pain is highly subjective and other circumstances, such as heavy clothing, may render the impact ineffective. The application of a secondary chemical irritant may assist in gaining compliance and successfully resolving a potentially violent incident with the minimal amount of force necessary.

(2) **Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

The “less lethal” projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. Discriminate projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

(3) **Fiscal Cost:**

A. **Initial Cost:**

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent FN 303s purchased by the department cost \$800.00 each.

B. **Cost of Use:**

Cost for FN 303 use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

C. **Cost of Potential Adverse Effects:**

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death. Only trained officers are authorized to use the FN 303.

D. **Annual and Ongoing Costs:**

See section B above

E. **Training Costs:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer’s hourly wage, range fees, and projectile costs which all vary.

F. **Maintenance and Storage Costs:**

Maintenance costs vary depending on use. Generally, O-rings need to be replaced every 3000 rounds and cost \$30 per kit.

**G. Upgrade Costs:**

The overall design of the FN 303 has changed little since its initial release in the early 2000s thus anticipated upgrade costs will be minimal.

**(4) Impact:**

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but also the minimal amount of force needed to safely resolve the incident.

The FN 303, with its high level of accuracy can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. It also allows officers to prevent a more indiscriminate use of force, such as entering the group or crowd, to take a subject into custody.

Potential adverse impacts, especially from close-range use or injuries to the head or neck, include permanent injury and death.<sup>3</sup>

**(5) Mitigation:**

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons

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<sup>3</sup> Haar RJ, Iacopino V, Ranadive N, et al, Death, injury and disability from kinetic impact projectiles in crowd control settings: a systematic review, *BMJ Open* 2017;7:e018154. doi: 10.1136/bmjopen-2017-018154



and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.”

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer’s ability to target approved impact areas.

**(6) Alternative:**

The FN303 launcher is one of three less lethal options the Berkeley Police Department possess that allow officers to address a potentially violent confrontation from a distance. All three (Penn Arms single launcher, Milkor LTL multi-launcher, and FN303) are viable options that have different strengths and weaknesses. The Penn Arms single launcher and the Milkor LTL multi-launcher operate very similarly and use the same projectile. The Penn Arms single launcher is smaller and easier to carry; however, the Penn Arms single launcher is capable of holding only one projectile while the Milkor LTL multi-launcher is capable of holding six projectiles. The projectiles used by the Penn Arms single launcher and Milkor LTL multi-launcher are larger which results in more kinetic energy transferred compared to the projectiles used in the FN303; however, the FN303 holds 15 projectiles and is capable of launching it at a faster rate.

An alternative that the Berkeley Police Department does not possess is the TASER. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject’s clothing to be effective and if that is not accomplished the TASER will have

no effect. Additionally, the TASER is not an approved less lethal device for the department.

**(7) Third Party Dependence:**

The Berkeley Police Department armorers are trained and capable of handling regular maintenance and most repairs. In the event of a catastrophic failure, the device will be sent to the manufacturer for repair. To date there have been 2 devices that required manufacturer repair, both of which were under warranty.

Additionally, department firearm instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for maintenance, most repairs, or instruction.

### **OC (oleoresin capsicum) Spray**

**(1) Description:**

**A. Background:**

For the purposes of this portion of the Impact Statement, OC (Oleoresin capsicum) will be referred to in the spray form as opposed to the aerosol canister form. First Defense manufactures different sizes of OC sprays. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. Besides being effective on humans, OC based chemical agents usually work on animals as well. In a liquid form, OC can appear as a clear, amber, or heavy dark red solution depending on the manufacturer. It is mixed with several types of solutions which act as carriers.

**B. Quantity:**

Qty 23 – First Defense MK-9 OC spray (13- ounces)

Qty 178 – First Defense MK-3 OC spray (3 ounces)

Most of the MK-3 OC sprays are issued to and maintained by individual officers; however, a small amount of these sprays is stored in a secured equipment room as spares in case of damage or new personnel issue.

**C. Capability:**

The First Defense MK-3 OC sprays are standard issued to all police officers and are worn on the police officers' belt. It has an effective range of 10-12 feet. The

larger First Defense MK-9 OC sprays are 13 ounces and are used in violent crowd situations. It has an effect range of 18-20 feet.

The use of the First Defense OC spray can render a dangerous and violent situation safe without using a higher level of force.

**D. Lifespan:**

Aerosol products eventually lose pressure over time. The lifespan of both the MK-9 and MK-3 OC spray are dependent on how well the pressure in the can is maintained, but is recommended to be replaced after 5 years.

**E. Use:**

OC spray may be considered for use to bring under control an individual or groups of individuals who are engaging in or about to engage in violent behavior. OC spray should not, however, be used against individuals or group who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

As per City Council resolution (June 9, 2020), pepper spray or smoke for crowd control by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as the City Council removes the prohibition.

Pursuant to Cal. Pen. Code § 13652, chemical agents shall not be used to disperse any assembly, protest, or demonstration except as provided below.

Chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

- (1) De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.
- (2) Repeated, audible announcements are made announcing the intent to use chemical agents and the type to be used, when objectively reasonable to do

- so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.
- (3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.
- (4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and chemical agents are targeted toward those individuals engaged in violent acts.
- (5) Chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.
- (6) Officers shall minimize the possible incidental impact of their use of chemical agents on bystanders, medical personnel, journalists, or other unintended targets.
- (7) An objectively reasonable effort has been made to extract individuals in distress.
- (8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.
- (9) Chemical agents shall not be used by BPD solely due to any of the following:
- (A) A violation of an imposed curfew.
  - (B) A verbal threat.
  - (C) Noncompliance with a law enforcement directive.

**F. How it Works:**

A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, burning/stinging skin sensation, redness of the skin, irritation and burning of the nose, runny nose, salivation and burning sensation of the mouth, cough, gagging sensation, shortness of breath, temporary paralysis of the larynx (person unable to speak) and nausea (caused by shock, not the OC itself). A person may also feel disorientated, anxiety, and/or panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

(2) **Purpose:**

There are a variety of situations where officers may use OC spray such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control (except as limited by the June 9, 2020 Council policy), barricade or hostage situations and dealing with dangerous animals.

(3) **Fiscal Cost:**

A. **Initial Cost:**

The MK-3 OC spray cost approx. \$19 per unit and the MK-9 OC spray costs approx. \$60 per unit. The manufacturer is Defense Technology and the Berkeley Police Department purchase each unit from Galls Police Supply or LC Action Police Supply. Purchases for these tools are made when inventory gets low which is typically determined by how many new officers are sworn in, as well as if they are utilized in dangerous situations.

B. **Cost of Use:**

The cost of each usage is unpredictable due to the unknown nature of crime, timelines of dangerous situations, and number of applications.

C. **Cost of Potential Adverse Effects:**

Adverse effects of improper use of OC spray are not calculable. It could lead to serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

See below cost of training.

E. **Training Cost:**

Training is conducted in the police academy and in-house by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

F. **Maintenance and Storage Costs:**

The majority of the MK-3 OC sprays are either stored within the Police Department or with each sworn police officer while they conduct official duties. All MK-9 OC sprays are stored in the basement. There are no additional storage costs or associated costs to transporting, maintain, or upgrade.

G. **Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

The physical effects of being subjected to OC may significantly reduce an individual's aggressive behavior. Reports have shown that the use of OC can reduce the amount of officer and arrestee injuries due to its effectiveness. Chemists assigned to the FBI Forensic Science Research and Training Center report no long-term health risks associated with the use of OC. The use of the MK-3 or MK-9 OC spray can render a dangerous and violent situation safe without using a higher level of force.

Potential negative impacts include serious bodily injury and litigation costs associated with them.

**(5) Mitigations:**

Law Enforcement Officers attend a Police Officer Standard Training (POST) approved academy before they enter into a Field Training Program and continue their training. During this academy they are taught about OC, how to deploy it, its effects, and the decontamination process. They are also subjected to OC to physically feel the effects themselves. After the academy, each officer is issued a MK-3 OC spray which they are to keep on their person while on duty. If deployed and when practical, medical personnel should be summoned for the affected person(s) per policy 303.

All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

**(6) Alternatives:**

Alternatives to utilizing OC sprays are tools such as expandable batons, less lethal launchers, and/or physical body weapons. The rationale to use OC spray depends on the circumstances of each individual incident and the individual officer involved in the incident. As mentioned above, reports have shown that OC spray may significantly reduce an individual's aggressive behavior which can minimize the amount of force necessary to apprehend that subject. Per our Use of Force policy (Lexipol 300), we shall use the minimal amount of force possible during each incident, thus making OC spray a valuable option.

**(7) Third Party Dependence:**

There is no third-party dependence for the First Defense OC spray. Once they are purchased, they are secured in their designated locations within the Police Department or with sworn police officers while they conduct official duties.

## Chlorobenzylidene Malononitrile and Oleoresin Capsicum

### (1) **Description:**

#### A. **Background:**

Chlorobenzylidene malononitrile (CS):

Chlorobenzylidene malononitrile (CS) is one of the most commonly used “tear gases” in the world. It can be liquid, gaseous, or solid substance intended to produce temporary discomfort through being vaporized or otherwise dispersed in the air. Law enforcement (LE) agencies have found this agent invaluable when faced with combative suspects, for crowd/riot control, and for alleviating barricaded subject situations. LE use it to help control individuals or groups without the need for a higher level of force. There are four different deployment methods of chemical agents (Aerosol - most commonly used by police departments, Fogging, Pyrotechnics, and blast expulsion). All methods of deployment can be affected by certain environmental and physical conditions (wind, rain, temperature, distance, and proximity to others). At standard daily temperatures and pressures, CS forms a white crystal with a low vapor pressure and poor solubility in water.

Oleoresin capsicum (OC):

For this portion of the Impact Statement, Oleoresin capsicum (OC) will be referred to in the aerosol canister form. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. OC is mixed with several types of solutions which act as carriers.

#### B. **Quantity:**

Inventory for CS canisters:

Qty 6 – 5230 CS Canisters

Qty 24 – 6230 CS Canisters

Qty 20 – 5230B CS Baffled Canister (flameless)

Qty 17 – 5231 CS Tri-Phaser Canisters

Qty 21 – 4630 CS Muzzle Blast (used with 40 mm less lethal launcher)

Qty 4 – 4530 CS Impact Rounds (used with 40 mm less lethal launcher)

Qty 19 – 4330 CS Barricade Projectile Rounds (used with 40 mm less lethal launcher)

Inventory for OC canisters:

Qty 54 - 9440 OC Tear Ball

Qty 19 - 5440 OC Flameless

## Qty 20 - 6340 OC Vaper

**C. Capability:**

CS aerosols with microscopic particles which are potent sensory irritants becoming attached primarily to moist mucous membranes and moist skin. Common effects are: coughing, increased mucous secretion, difficulty breathing, skin reactions, and excessive salivation. The onset of symptoms typically occurs within 20 to 60 seconds, and if the exposed individual is placed in fresh air these effects generally cease in 10 to 30 minutes.

A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, stinging skin sensation, redness of the skin, irritation of the nose, runny nose, salivation, cough, gagging sensation, and shortness of breath. A person may also experience anxiety and panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

Both CS and OC canisters can render a dangerous and violent situation safe without using a higher level of force.

**D. Lifespan:**

CS and OC canisters expire in approximately 5 years.

**E. Use:**

As per City Council resolution (June 9, 2020), the use of tear gas by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited.

Pursuant to Cal. Pen. Code § 13652, kinetic energy projectiles and chemical agents shall not be used to disperse any assembly, protest, or demonstration except as provided below.

Kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:



(1) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and 37 | Page objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(10) Kinetic energy projectiles or chemical agents shall not be used by BPD solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

(11) If the chemical agent to be deployed is tear gas, only a commanding officer at the scene of the assembly, protest, or demonstration may authorize the use of tear gas.

(2) **Purpose:**

There are a variety of situations where peace officers may in the past have used chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals. Such uses of tear gas are now prohibited by Berkeley law.

(3) **Fiscal Cost:**

A. **Initial Cost:**

The cost for CS canisters ranges from \$20.00 to \$39.00 per unit. The cost for OC canisters ranges from \$36.00 to \$44.00 per unit. The Berkeley Police Department prefers the use of the Combined Tactical Systems (CTS) chemical agents and we purchase them from LC Action Police Supply.

B. **Cost of Use:**

The cost of each proposed use is unpredictable due to the demand, unknown nature and timelines of dangerous crowd/riots situations, dangerous barricade situations, and hostage situations.

C. **Cost of Potential Adverse Effects:**

Adverse effects of improper use of OC and CS are not calculable. It could lead to serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

See below cost of training.

E. **Training Cost:**

When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

**F. Maintenance and Storage Costs:**

The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

BPD is committed to preserving and protecting human life and welfare. These tools allow us to fulfill our commitment to our community.

Law Enforcement, under Penal Code 12403.1, is able to lawfully purchase, possess, or use chemical agents in the discharge of their duties. CS and/or OC canisters have been prominently used to resolve dangerous barricaded suspect situations and violent crowd control/riot situations.

Berkeley Police officers are trained to utilize time and distance to de-escalate dangerous barricaded situations in order to resolve each incident with minimal the use of force (per Use of Force Policy 300). In some circumstances when all other options are exhausted, CS and/or OC can be inserted into the structure in which the barricaded suspect is, denying access to certain areas inside. Unless exigent circumstances arise, all attempts to evacuate the structure are made prior to any deployment. When CS and/or OC are deployed into a structure the suspect may be forced outside allowing the situation to resolve safely with no further use of force.

CS and/or OC chemical agents can be utilized to create order in dangerous crowd control/riot situations that have demonstrated violence or destruction. During these incidents, typically a clear and direct warning has been given to the crowd to disperse before the chemical agents are deployed. The ability to disperse crowds from a distance limits injury to Police Officers as well as damage to critical structures.

Severe injuries occur not infrequently from the use of CS and PC chemical agents, including to multiple body systems, with the majority to the skin, eyes, and cardiopulmonary system and may result in significant psychological symptoms and long-term disability.<sup>4</sup>

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<sup>4</sup> Rohini J. Haar, MD, MPH, and Vincent Iacopino, MD, PhD, Lethal in Disguise: The Health Consequences of Crowd Control Weapons, Physicians for Social Responsibility, 2016, p. 44.

**(5) Mitigations:**

Regarding the already mentioned impacts, the decision to utilize chemical agents (unless there are exigent circumstances) flows through the chain of command and ultimately makes its way to the Chief of Police and the City Manager. If there are exigent circumstances, the Field Commander makes the decision and then advises the Chief of Police as soon as practical. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

With these procedures incorporated in BPD's policies, this mitigates many potential negative impacts. Per Policy 428 – First Amendment Assemblies - The Field Commander shall determine the type and quantity of chemical agents to be used. After use of chemical agents, the Field Commander shall re-evaluate the scene to determine if additional chemical agents are needed. Less-than-lethal munitions (40 mm CS impact rounds), chemical agents (including OC spray), and/or smoke shall only be deployed in crowd control situations as outlined in the Use of Force Policy. For planned events, inventories shall be conducted before and at the conclusion of the incident. Outside agency inventories shall also be tracked.

In addition to the mitigations in place, the Berkeley Police Special Response Team also receives annual training on the use of chemical agents, the effects, and the decontamination process. Per policy 303, when practical, medical personnel should be summoned for the affected person(s).

**(6) Alternatives:**

There are no direct alternatives for CS and OC. They are the industry's leading way to resolve barricaded suspects while reducing the likelihood of injury to the subject, community, and officers. Additionally, it is one of the only tools that allows officers to stop acts of violence or regain order during crowd control/riot situations. They are very distinct in nature and have direct purposes. The rationale to use CS or OC depends on the circumstances of each incident. The Berkeley Police Department shall use the minimal amount of force per our Use of Force Policy 300. The use of CS or OC allows the police personnel to maintain distance, giving officers more time to react and avoid a potential need for a higher level of force to safely resolve the situation.

**(7) Third Party Dependence:**

There is no third-party dependence for CS and OC chemical agents. Once they are purchased, they are secured in their designated areas and stay there until they are either used during incidents or training.

### **Remington 700 Rifle**

**(1) Description:****A. Background:**

The Remington 700 is a series of bolt-action rifles designed in 1962 by the Remington Arms Company. The “700” designator is the generic name for multiple models of rifles with various parts, barrel lengths, stocks, etc. The Remington 700 rifle has long been used by law enforcement agencies and continues to be an industry standard for issued equipment. The Berkeley Police Department utilizes a custom Remington 700 action, chambered in the common .308-caliber round, with a 20” barrel and an Accuracy International chassis/stock. The rifle also includes a Nightforce 3-15x magnified optic and bipod.

BPD utilizes Hornady .308-caliber ammunition. This particular ammunition is specially designed for law enforcement applications due to its increased and consistent accuracy and performance.

**B. Quantity:**

The Berkeley Police Department Special Response Team (SRT) currently possesses six Remington 700 rifles, all configured in the same manner.

Currently, BPD has approximately 1,800 Hornady .308-caliber rounds. That quantity of ammunition fluctuates depending on supply from distributors and training schedules of those trained officers.

**C. Capability:**

The Remington 700 rifle, with the appropriate ammunition, training, and practice, is capable of consistent and highly accurate shooting out to a distance of approximately 500-yards.

The Remington 700 is intended to be used in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation.

**D. Lifespan:**

The Remington 700 bolt-action rifles have an expected life span of 10-years if properly maintained.

**E. Use:**

Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

**F. How it Works:**

The Remington 700 is a manually operated rifle. It requires the officer to physically maneuver a handle to expel a spent cartridge and to load another unspent round of ammunition in order to fire a second round. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. The officer must then pull a handle attached to the bolt to the rear, ejecting the spent cartridge. The officer then pushes the bolt forward, which picks up another bullet from the magazine, and closes the chamber, making the rifle ready to fire again.

**(2) Purpose:**

This rifle is to be used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. This rifle provides police with the benefit of adding distance to a volatile situation which can increase the safety for community members and officers. This rifle is an ancillary firearm for situations where increased distance and accuracy is needed to safely resolve the situation.

**(3) Fiscal Cost:****A. Initial Cost:**

The initial cost to purchase this rifle with its associated components is approximately \$10,000 dollars each. Their average life span is 10-years at which time it will likely need to be replaced.

**B. Cost of Use:**

Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on training.

**C. Cost of Adverse Effects:**

Adverse effects and improper usage of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

If this rifle is not cared for or maintained well, then a potential financial adverse impact would be the premature purchasing of a replacement rifle or replacement parts. However, authorized and trained Berkeley Police armorers service and provide regular maintenance of the rifles. The cost of maintenance is staff time.

**E. Training Costs:**

The cost associated with training is the staff time, range fees, and cost of spent ammunition. SRT members train once a month and, on average, each member shoots approximately 50-rounds. Currently, there are only 4 members shooting at each training day. This equates to approximately 2,400 rounds of ammunition being fired per year. This does not include special training days or attendance to training schools/classes. A single box of 20-rounds costs approximately \$20-dollars or \$1 dollar per round.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use over time. Firing pins need to be replaced every 5 to 7 years. The maintenance cost associated with this rifle is minimal.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

**G. Upgrade Costs:**

Upgrade costs and maintenance cost are synonymous due to the consistent design. Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing; those upgrade costs are unknown at this time.

**(4) Impact:**

The primary purpose of this rifle is to further SRT's goal of adding time and distance when dealing with a violent and dangerous individual(s). The rifle may allow SRT additional time by increasing the distance between law enforcement and the specific individual, thereby increasing the likelihood of a more peaceful resolution. Like all tools, it has a time and place for its intended operational efficacy.

**(5) Mitigations:**

Mitigating impacts from this tool's primary purpose is done through regular training. The training includes accuracy, decision making, scenarios, and various other training points. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

**(6) Alternatives:**

The Remington 700 rifle is an industry standard tool used to deliver precision accuracy on an intended target. This tool can deliver accuracy and predictability through intermediate barriers like glass windows. It can be used at distances greater than any other tool currently possessed or authorized. No alternate tool or method would accomplish the same goal.

**(7) Third Party Dependence:**

These rifles are fairly simple in their design and operation. They do require regular maintenance which is commonly performed by each individual member. BPD Armorers are also capable of performing additional maintenance. If an issue arises which is beyond the scope of our Armorers we would seek professional assistance from the manufacturer. However, the need for this is very rare.

### **ReconRobotics Recon Scout XT**

**(1) Description:****A. Background:**

The Recon Scout XT is a throwable micro-robot manufactured by ReconRobotics for use in law enforcement applications. The Recon Scout XT enables officers to obtain instantaneous video footage and audio within indoor or outdoor environments. Designed to withstand repeated drops onto concrete, the Recon Scout XT robot can be thrown into hazardous situations (hostage rescue, barricaded subjects, natural disasters, etc.) in order to allow officers to quickly and safely make informed decisions when seconds count.

**B. Quantity:**

The Berkeley Police Department has two Recon Scout XT throwable robots, both purchased in 2010.



**C. Capability:**

The Recon Scout XT robot is designed to be able to crawl over a variety of terrain, clearing obstacles up to 2" (5 cm) tall. It could be thrown into hazardous situations, indoor and outdoor, and provide live audio and video feed back to the controller.

**D. Lifespan:**

Both Recon Scout XT robots are over 10 years old and ReconRobotics have developed and manufactured more advanced robots. ReconRobotics have stopped manufacturing certain parts for the Recon Scout XT, so the lifespan is dependent on what parts need to be replaced.

**E. Use:**

The Recon Scout XT robot may be deployed to help police officers safely view potentially dangerous environments before entering them.

**F. How it Works:**

The Recon Scout XT robot has a cylindrical body with a finned-wheel at either end of its body, and is stabilized by a rubber "tail". It measures approximately 6 ½" wide, and each wheel is about 5" in diameter (fin to fin) and weights just over one pound (1.2 lbs.). The Recon Scout XT robot sends digital video and audio back to an Operator Control Unit (OCU; controller with a screen and joystick), which allows the officer to control the robot, which provides a live feedback containing audio and visual feeds. The Recon Scout XT robot does not record audio or video footage; there is no data storage capability.

**(2) Purpose:**

The Recon Scout XT robot is intended to safely provide police officers valuable information during high-risk, rapid evolving situations via real-time audio and video footage. It can be driven a distance away from the OCU, creating space between the officer and potential danger, thus decreasing the likelihood of injury to those involved in the event, or even a violent encounter between police officers and a dangerous subject. This asset furthers our commitment to the sanctity of life by offering time and distance in critical incidents.

**(3) Fiscal Cost:****A. Initial cost:**

The initial cost for the Recon Scout XT robot was about \$12,500 per unit (2010 cost).

**B. Cost of Use:**

There is no “per use” cost of this equipment. The Recon Scout XT is powered by a rechargeable battery.

**C. Cost of Potential Adverse Impacts:**

The likelihood of adverse impacts due to the use of the Recon Scout XT robot is low – it is small, lightweight and is not likely to injure persons or damage personal property when deployed; however, there is a small chance that the Recon Scout XT robot might cause damage to personal property when deployed (thrown) into a structure. Due caution is used when it becomes necessary to throw, rather than place, the robot into a structure.

**D. Annual and Ongoing Cost:**

There are no ongoing or annual costs associated with the use of the Recon Scout XT robot. Being that it is battery operated, there is a nominal cost associated with charging the Recon Scout XT robot’s batteries, and the batteries of the OCU. The Recon Scout XT robot is fairly simple to operate, thus there is no cost associated with training officers in its use. There are no costs with transportation or storage of the Recon Scout XT robot. While there are newer models of this robot available, there does not appear to be any upgrades available for the Recon Scout XT. The Recon Scout XT robot has been damaged on occasion, and there are costs associated with repair. But generally, the Recon Scout XT robot is robust and does not need regular repair.

**E. Training Cost:**

The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel familiar with the operations and procedures of the Recon Scout XT robot. The cost of training is staff time.

**F. Maintenance and Storage Costs:**

There are no annual or storage costs.

**G. Upgrade Costs:**

There are no upgrades available at the time of this report.

**(4) Impact:**

The Recon Scout XT robot is used to safely gather information in situations where it may be dangerous to expose an officer, or officers, to gather the same information. Putting officers in such unknown, tense situations has the potential to create violent encounters, or otherwise place officers in unnecessary peril and danger that might

otherwise be avoided by the use of a tool like the Recon Scout XT robot. The Recon Scout XT robot is not likely to have a negative impact on the welfare or safety of the public as its role is to gather real-time information during high-risk incidents such as hostage or potentially life-threatening situations. The Recon Scout XT robot is likely to improve the welfare and increase the safety of the public through its ability to gather real-time information and feed it back to police officers. The Recon Scout XT robot does not have the capability to record or store data.

(5) **Mitigations:**

The use of the Recon Scout XT robot is limited to sworn police officers, and guided by field supervisors (Lieutenants and Sergeants). Procedurally, the Recon Scout XT robot is used when exigent circumstances exist (hostage situation, barricaded subject, natural disaster necessitating rescue, etc.) and real-time information is necessary to safely and effectively resolve the situation. The robot does not record or store data.

(6) **Alternatives:**

Unmanned aerial vehicles (UAV) are an alternative to robots such as the Recon Scout XT robot. However, the Berkeley City Council has prohibited the Berkeley Police Department from using UAVs. They are not constrained by obstacles on the ground and provide far superior perspective and situational awareness; at times, obstacles halt the Recon Scout XT robot's movement. There are several other robots on the market, however, the Recon Scout XT robot is compact, lightweight (weighing in at just over a pound), very maneuverable, and can easily be carried by an officer. It can also be introduced into structures by throwing it through any opening – an option not possible with other robot models.

(7) **Third Party Dependence:**

The Recon Scout XT robot does not currently rely on a third-party company or vendor for its use or maintenance. Should maintenance or parts be required beyond the scope of the members of the Berkeley Police Department, the robot would be sent to ReconRobotics for service.

### **Andros Remotec HD-1 Hazardous Duty Robot**

(1) **Description:**

A. **Background:**

The Andros Remotec HD-1 Hazardous Duty Robot, hereinafter referred to as Remotec HD-1 robot, was designed to support a wide range of missions in demanding environments. The Remotec HD-1 robot is capable of lifting up to 125

pounds, tracked articulators stair climbing, and has an integrated Talisman radio system for a stronger radio wave connection between the controller and the robot.

Remotec has served explosive ordinance disposal units, hazardous materials units, and other first responders as a provider of mobile robotic systems for application into a variety of undesirable, hazardous and potentially life-threatening environments. The Remotec HD-1 robot allows individuals to approach hazardous devices to examine and manipulate the device without putting people in harm's way.

**B. Quantity:**

The Berkeley Police Department Bomb Squad has one robot, the Remotec HD-1 robot.

**C. Capability:**

Remotec HD-1 robot is used in situations where a potential life-threatening situation exists and is too hazardous for a bomb technician to approach in person. The Remotec HD-1 robot is also used to survey an area prior to a bomb technician approaching a scene to check for trip wires and ascertain a good approach path. The Remotec HD-1 robot has three cameras and audio monitoring that stream live video and audio back to the control module; however, it is unable to record and does not have any data storage capabilities. It has several attachment mounting options as well. The Remotec HD-1 robot also has the ability to carry a variety of tools. Some of the tools are:

- 1) A spike to break glass and access vehicles or homes with potential explosive devices inside
- 2) An X-ray mount in order to remotely X-ray suspected explosive devices.
- 3) Percussion actuated non-electric disruptors which are smooth barrels that are filled with water and fired at high speed with a blank shotgun round to open backpacks, suitcases, and packages from a distance
- 4) A hook with cutting blades that are used to cut backpack straps, ropes, etc.
- 5) PAN rounds containing various fills, from sand to slugs, in order to open sturdier packages made from metal or other hard covers.
- 6) Electrical connections to connect explosives that can be detonated remotely and from a safe distance.

**D. Lifespan:**

The Remotec HD-1 robot has an expected life span of 10 years. It is currently 13 years old and has begun exhibiting issues. The Remotec HD-1 robot weighs just over 200 lbs. and has been near multiple explosions over the years and crossed a variety of off-road terrain

**E. Use:**

Used to examine and possible destroy hazardous materials such as an explosive device.

**F. How it Works:**

The Remotec HD-1 robot is piloted by a bomb technician into a hazardous area to locate, examine, and render suspicious packages and explosive devices safe by utilizing a variety of attachable tools.

**(2) Purpose:**

The Remotec HD-1 robot is used as a means to approach hazardous situations where a potentially lethal threat such as an explosive device exist. The Remotec HD-1 robot allows for the examination and manipulation of an object or potential explosive device without unnecessarily putting a bomb technician's life at risk.

**(3) Fiscal Cost:****A. Initial Cost:**

Procured in 2008 for \$214,496 including on-site training through a UASI Grant. (64,292-N.S.)

**B. Cost of Use:**

None. The robot is electric and operated through the City's electricity for charging.

**C. Cost of Potential Adverse Effects:**

The Remotec HD-1 robot interacts with inanimate objects. However, should it encounter a package that explodes, it could potentially destroy the robot and damage other property.

**D. Annual and Ongoing Costs:**

There is no annual cost. Maintenance of the Remotec HD-1 robot is conducted by Berkeley Police Bomb Technicians.

**E. Training Costs:**

Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. The cost of training is limited to staff time.

**F. Maintenance and Storage Costs:**

Remotec offers occasional maintenance and upkeep workshops free of charge.

**G. Upgrade Costs:**

There are no costs for upgrades as the company has stopped manufacturing the robot and any applicable upgrades.

**(4) Impact:**

The Remotec HD-1 robot is used by the Berkeley Police Department Bomb Squad as a means to examine a potentially explosive device in order to keep the community safe. Since April 2020, the Berkeley Police Department Bomb Squad has responded to 14 incidents. The impact of the Remotec HD-1 robot has been to reduce and minimize the danger posed by calls of possible explosive devices to the Berkeley Police Department's Bomb Technicians.

**(5) Mitigations:**

The Remotec HD-1 robot is used in situations where a hazardous device exists. In these situations, the area is always evacuated in order to ensure community safety.

**(6) Alternatives:**

The Remotec HD-1 robot is 13 years old and there has been significant development in technology. There are several alternatives that are far superior than our current Remotec HD-1; Mark V-A1 robot developed by Remotec Andros, Caliber Flex developed by ICOR Technology, Digital Vanguard-S developed by Med-Eng and T7 and T4 developed by L3Harris Technologies. These are alternatives that have newer and better technology and capabilities than the Remotec HD-1 robot.

**(7) Third Party Dependence:**

Remotec representatives are the only ones used to diagnose and maintain complex issues on the robot that cannot be done in-house. Since it is proprietary technology, Remotec may void warranties on any repairs made by outside vendors or by untrained personnel. Therefore, all complex issues with the Remotec HD-1 robot must be repaired by Remotec.

## Light/Sound Diversionary Device

### (1) **Description:**

#### A. **Background:**

Light/Sound Diversionary devices also known as distraction device, flashbang, light/sound and noise/flash devices have been available for approximately 40 years and are a safe and effective tool for Law Enforcement (LE) to use during challenging tactical incidents. The device will be referred to a diversionary device throughout this document.

#### B. **Quantity:**

Qty 50 - CTS 7290 Diversionary Device

#### C. **Capability:**

When a diversionary device is deployed they create a loud noise, heat and brilliant light and create an effective diversion. They can create psychological and physiological effects such as: hearing a loud noise beyond that of everyday living, seeing a short bright light, and feeling of a change in atmospheric pressure. These effects may disorient/confuse subjects for a short time giving tactical teams the ability to apprehend that subject without using a higher level of force.

#### D. **Lifespan:**

The lifespan of the CTS 7290 Diversionary Device is 5 years.

#### E. **Use:**

The use of a diversionary device is to create a diversion in order to facilitate entry and enable arrest. Circumstances justifying the use of a diversionary device may include, but not limited to barricaded subject or hostage situations and high-risk search warrants services.

#### F. **How it Works:**

The main charge of a modern diversionary device typically contains flash powder which is sometimes called photoflash powder. Upon initiation, this chemical compound causes the device to deflagrate (not detonate). The powder mixture is rapidly changed into gases that expand outward reaching upwards to 3,800 times the original volume of the charge itself. This process releases the desired effects of loud noise, bright light and the feeling of atmospheric pressure. Flash powder is typically made up of an oxidizer and some type of fuel. The oxidizer is needed to initiate and sustain the flash powder's rapid combustion. This is required since sufficient oxygen cannot be obtained from just the surrounding air.

**(2) Purpose:**

The purpose of a diversionary device is to create a reactionary gap of a person by temporarily disorienting them. This gap gives tactical teams an opportunity to apprehend a suspect while using the minimal amount of force possible. They can also be used to safely invoke a response or redirect the attention of subjects who are either feigning injury, ignoring police commands or are unresponsive while posing a threat to the public.

**(3) Fiscal Cost:****A. Initial Cost:**

Diversionary Devices cost approximately \$45 per unit and are purchased through LC Action Police Supply. Purchases for these tools are made when inventory becomes low, based upon critical incident usage and Special Response Team trainings that incorporate live devices.

**B. Cost of Use:**

The cost of each proposed use is unpredictable due to the unknown nature and timelines of dangerous barricade situations, critical incident, and hostage situations. The devices may be stored inside of the Police Department, in the Special Response Team Vehicle, or in the rescue vehicle. There are no additional storage costs. There are no associated costs for transporting, maintenance, training, or upgrades.

**C. Cost of Potential Advert Effects:**

Adverse effects of improper use of a diversionary device are not calculable. It could result in serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

See below training cost.

**E. Training Cost:**

Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices. The cost of training is staff time.



**F. Maintenance and Storage Costs:**

The majority of diversionary devices are stored inside of a room in the basement within the Police Department. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

The Berkeley Police Department is committed to preserving and protecting human life and welfare. These tools allow us to fulfill our commitment to our community.

Diversionary Devices may be utilized in many situations to include potentially dangerous barricaded subject situations, hostage situations, and critical incidents. Some criteria considered prior to a deployment is dependent upon whether the suspect is a dangerous felon, causes a life-threatening situation and/or other unique incidents where it appears to be a reasonable method in which to resolve the situation. When deployed appropriately these devices can assist in safely apprehending suspects and resolving high risk critical incidents with minimal or no injuries to suspects and/or officers.

**(5) Mitigations:**

Since Diversionary Devices are considered low explosives, there are several protocols in place to mitigate possible negative results (i.e. minor or major injuries).

Only trained and qualified personnel are permitted to deploy diversionary devices; typically, members of the Special Response Team who receive constant training regarding the deployment, effects, and post deployment protocols.

Pre-deployment concerns are typically gathered and evaluated, such as:

- The number of people at a location and the individual location of suspects within the structure.
- Evaluation if there are children or elderly people present
- An evaluation of the suspect's mental and physical conditioning
- Evaluation of the building/room layout

- Possible combustible/flammable substances present
- Lighting conditions

When a diversionary device is deployed, the officer shall utilize a helmet, hearing protection, eye protection, body armor, and nomex (fire resistive) gloves.

If a diversionary device is used, a supervisor shall be notified, medical treatment/screening is conducted, and a collection of the deflagrated device is completed. Documentation utilizing the device serial number is recorded.

Per Policy 351 - Except in extreme emergencies (i.e., life-threatening situations), flash/sound diversionary devices shall not be used without prior authorization of the incident commander/on-scene supervisor. Whenever diversionary devices are carried by personnel in an actual situation or incident, that fact shall be noted in the after-action report or police report. In the event devices are deployed, the circumstances surrounding their deployment shall be fully described. The Chief of Police or his or her designee shall be responsible for reviewing any deployment of diversionary devices to ensure that policy was followed. Diversionary devices are registered by serial number with the Bureau of Alcohol, Tobacco, and Firearms (ATF). Typically, the police department's purchase of new devices is reported directly (by case-lot serial numbers) to ATF by the device manufacturer via ATF Form 5. The National Firearms Act requires the police department to notify ATF upon the use/expenditure of diversionary devices. A Special Response Team member shall be responsible for submitting written notification to ATF when all devices listed on a single ATF form 5 have been used/expended.

**(6) Alternatives:**

A possible alternative to a diversionary device (flashbang) is the Tactical Electronic Distraction Device (T.E.D.D.) which emits 2600 lumen light and high pitched 120 decibel sound to disorientate subjects. This could be a good tool as it is not a low explosive however it has its negative aspects as well:

- There is no feeling of atmospheric pressure, limiting the desired momentary physiological effect.
- A suspect could pick up and throw the device at potential victims and at police officers. The currently used diversionary devices are too hot to attempt this.

- In certain circumstances, a suspect could potentially steal the device during an escape.
- The individual cost per unit is approx. \$200 which is much more than a diversionary device
- This device is significantly less effective in disorienting subjects compared to a diversionary device.

(7) **Third Party Dependence:**

There is no third-party dependence for Diversionary Devices with the exception of communication with ATF of the purchase. Once they are purchased, they are secured within their designated locations where they are stored until they are either used during incidents or training.

### **Long Range Acoustic Device (LRAD)**

(1) **Description:**

A. **Background:**

The Long-Range Acoustic Device (LRAD) is a high intensity directional acoustical array for long range, crystal clear notification system. The use of the LRAD is for communications.

B. **Quantity:**

The Berkeley Police Department possesses 2 Long Range Acoustic Devices (LRAD) speakers. One is an LRAD 450XL and the other is an LRAD 100X.

C. **Capability:**

Both of these speakers are able to focus sound in directional pattern allowing the user to make sound audible over distances much greater than conventional public address speakers. The LRAD 450XL is the larger of the two and designed to either be used in a fixed location or mounted on a vehicle to make it portable. It has a usable range of approximately 1 mile. The LRAD 100X is smaller and more portable. It can be carried or mounted to a person's chest for mobility or mounted to a vehicle. Its range is approximately 1/3 of a mile. Both of these systems allow for clear long-range communication, they are also able to play recorded messages.

**D. Lifespan:**

The lifespan for both LRADs is 25 years.

**E. Use:**

The LRADs are used to communicate with the community during natural disasters, crowd management and control situations, or when other forms of communications are ineffective or inoperable to unequivocally communicate messages from Police or Fire and safely resolve uncertain situations where communicating with the public is paramount.

**F. How it Works:**

The LRADs are essentially a long-range speaker or long-range megaphone and operates as such.

**(2) Purpose:**

The LRADs are designed for clear long-range communication. The LRAD's ability to communicate over a long distance is far superior to any megaphone or Public Address (PA) system mounted to a police vehicle. Additionally, LRAD's may be used to:

- Communicate lifesaving information to residents during disasters
- Communicate to large crowds during parades, festivals, concerts and sporting events
- Establish safety zones and perimeters
- Control traffic congestion
- Conduct Special Response Team operations
- Broadcast a dispersal order
- Communicate during hostage and barricaded subject situations
- Announce and serve high risk warrants
- Communicate to protesters
- Communicate to persons threatening suicide who are in an inaccessible location
- Conduct search and rescue operations

The ability to communicate with the public in a large area increases the safety of all members of the public and law enforcement. It allows everyone in a given area to know what is being communicated, gives more situational awareness to everyone in a given area and allows people to know where to go or not to go.

**(3) Fiscal Cost:****A. Initial Cost:**

The LRAD 450XL and the LRAD 100X were purchased in 2018. The total cost for both LRADs, rechargeable battery packs and accessories was \$49,999.

**B. Cost of Use:**

There is no cost associated with each use of the LRADs. The systems run on batteries or can plug into a vehicle.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of the LRADs are not calculable. It could lead to hearing loss. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

BPD has not incurred any additional cost to date for this equipment.

**E. Training Costs:**

Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD. The cost to train is staff time.

**F. Maintenance and Storage Costs:**

There are no maintenance or storage costs for this equipment.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

The Berkeley Police Department is committed to ensuring the safety of our community. Having the ability to communicate efficiently and effectively in different situations is crucial in providing potentially life-saving information to the public. The LRAD provides BPD personnel the ability to communicate long distances to people that are in a given area, inside structures, or barricaded inside a structure. The LRAD is very effective any situation involving communicating information to large crowds, or entire communities.

Over shorter distances, LRAD signals are loud enough to cause pain in the ears of people in their path. If used improperly they can cause permanent hearing damage,

including tinnitus or hyperacusis, to intended targets, bystanders, and police officers.<sup>5</sup> Improper use may also result in litigation costs.

(5) **Mitigations:**

LRAD are capable of producing a high pitched “deterrent tone” that is designed to disperse a potential threat. This “deterrent tone” does have the ability to cause hearing damage. BPD Policy 707 strictly prohibits any member of BPD from using the LRAD as a weapon. Additionally, the LRAD can only be deployed at the direction of a Watch Commander or Incident Commander and may only be used by personnel specifically trained in the use of the LRAD.

(6) **Alternatives:**

BPD is not aware of any other sound speakers that are able to clearly communicate over long distances of up to 1 mile.

(7) **Third Party Dependence:**

To date, BPD has not depended on any third party for the use or maintenance of this equipment.

### **36” Baton**

(1) **Description:**

A. **Background:**

The Berkeley Police Department issues a knurled grip, polycarbonate, fixed-length straight baton for crowd control purposes. The baton is 36” long and 1.25” in diameter and weighs about 1.64 pounds. Polycarbonate is a thermoplastic, which means it is durable, resistant to splintering and heat.

B. **Quantity:**

In 2017, BPD purchased 175 polycarbonate 36” batons to replace aging wood batons of the same purpose. Additional polycarbonate batons were purchased over the past four years to ensure all sworn police officers as well as trained reserve police officers are equipped with the 36” baton. BPD possesses approximately 195 - 36” polycarbonate batons. Most of these batons are issued to and maintained by individuals. However, a small amount of these batons is stored in a secure equipment room as spares in case of damage or new personnel issue.

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<sup>5</sup> Tyler Tracy, “Long Range Acoustic Devices (LRAD) and Public Safety,” Acentech, August 10, 2020, at <https://www.acentech.com/resources/2020/08/long-range-acoustic-devices-lrad-and-public-safety/>.

**C. Capabilities:**

The 36" baton is carried in a "baton ring" on an officer's belt just as any other baton. It is used as a safety tool and is a means for officers to defend themselves in certain crowd control or riot situations. Trained officers may employ particular applications of force with their 36" batons when directed by their chain of command. The 36" baton is the desirable baton in a crowd control situation as it is 7" longer than the standard 29" baton. The longer baton creates more distance between the officer and others, which is critical when dealing with violent or aggressive crowds.

**D. Lifespan:**

The manufacturer provides a lifetime repair or replacement guarantee.

**E. Use:**

The 36" baton is a less-lethal force tool and is intended to be used in crowd control situations in close quarters, where officers may defend an attack, or when engaging in physical contact with combative or aggressive crowd members. The 36" baton is only used for crowd situations.

**F. How it Works:**

There are a number of appropriate blocking or striking techniques an officer may use when force is justified and the decision is made to use the 36" baton to effectively gain control of a person or situation. The use of the baton requires the officer to continually monitor and assess effectiveness of any delivered strikes. The reason this type of force is administered is to stop a person's attack, threat or resistance, with the goal to place them under lawful arrest for their actions.

**(2) Purpose:**

The 36" baton is a less-lethal tool that may be used when a crowd becomes aggressive, hostile or violent. It is the most effective individual tool of choice when officers are in formation and engaged in crowd control duties.

When officers are deployed to maintain, disperse, or protect others from a violent crowd or civil disobedience, it is imperative that they have an adequate safety zone to protect themselves or others. The 36" baton provides officers additional distance from a potential threat than the standard issue 29" baton.

When the baton is used to strike a subject, kinetic energy transfer occurs. Kinetic energy is the energy of motion. The amount of translational kinetic energy which an object has depends upon two variables: the mass of the object and the speed of the

object. The desired effect is for the officer to apply a baton strike with the necessary energy to stop the threat as quickly and safely as possible. By targeting the large muscle areas of the arms or legs with sufficient kinetic energy, motor and sensory nerves can be affected. When the nerves are affected this will create momentary muscle dysfunction or pain, which will allow the officer the ability to gain control of the subject, while minimizing the possibility of long-term injury to the subject.

The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person as outlined in policy 303 and 300.

**(3) Fiscal Cost:**

**A. Initial Cost:**

The cost of the Monadnock MP36 2004 36" polycarbonate baton with knurled grip was \$53.00 per baton in September 2017. After tax, \$10,132.94 was spent for the purchase of 175 batons. The department placed an additional order for 20 batons in December 2019. It is anticipated that the cost of the baton will fluctuate a few dollars based on supply and demand over time.

**B. Cost of Use:**

The only cost associated with use that of ongoing departmental training to ensure officers are proficient in authorized baton techniques.

**C. Costs of Potential Adverse Impacts:**

Adverse effects from improper use of the 36" baton cannot be anticipated. Improper use could lead to serious bodily injury or death. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

There is no additional annual or ongoing cost associated with the 36" baton.

**E. Training costs:**

Training on the applications of the batons are conducted at the police academy. Police Office Standard Training (POST) requires "arrest and control" training every 2 years which includes portions of baton training. This training is conducted in-house by POST certified defensive tactics instructors.

**F. Maintenance and Storage Costs:**

There are no associated costs to transporting, maintenance, or upgrades.



**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

Per Policy 300, “The Berkeley Police Department’s highest priority is safeguarding the life, dignity, and liberty of all persons. The Department is committed to accomplishing this mission with respect and minimal reliance of the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force.”

At times, it may become necessary for police officers to use force in crowd control situations to move a crowd, stop violent behavior, overcome resistance or make a lawful arrest. Officers have been trained that they must do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public. When deemed necessary, use of the 36” baton may be used as a tool to strike a person, create a barrier or used in formation in order to move a crowd in a certain direction. The use of the baton may cause discomfort, pain, blunt trauma and has the potential to cause serious injury. Their use is subject to the totality of the circumstances, proper training, department policy, as well as federal and state law.

Officers who use the 36” baton are trained to continuously assess each situation where force is used and only use the force that is reasonably necessary and proportional to respond to the threat or resistance to effectively and safely resolve the incident.

**(5) Mitigations:**

Per Policy 300, “In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict.”

Per Policy 303, “Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device. Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices. When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets.”

Every officer who carries a 36" baton has been trained how to properly carry the equipment, it's intended use, target areas and non-target areas. Large muscle groups such as the upper legs or lower abdomen are approved target areas and areas to be avoided at the groin and head. When a baton strike is directed at an intended target area and the subject moves simultaneously, it is possible for the officer to unintentionally strike a non-target area. Officers are trained to consider the placement of baton strikes, and to immediately render medical aid to the subject as soon as it is safe to do so.

All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**

The alternatives to the 36" crowd control baton are the 29" standard issue baton and collapsible 26" Rapid Containment Baton (RCB). The standard issue baton and RCB are shorter in length and require officers to be closer to the person they are engaging, thereby increasing the risk of injury to the officer and the person. A longer baton provides an officer with more distance which creates a small safety zone and allows the officer time to react and assess the situation before making use of force decisions.

(7) **Third Party Dependence:**

There is no requirement for a third-party service provider to issue the 36" crowd control baton. Berkeley Police Department Defensive Tactics Instructors provide in-house training on the proper use of the baton.

### **Mobile Command Vehicle**

(1) **Description:**

**A. Background**

The Berkeley Police Department owns one Mobile Command Vehicle (MCV). Our MCV is a 2003 Freightliner MT55. This vehicle's most common use is as a commercial delivery vehicle. Our 2003 Freightliner MT55 was converted into a MCV by adding desktop work stations, additional police radios and emergency lighting. The MCV is 30' long and has a gross vehicle weight (GVW) of approximately 23,000 pounds.

**B. Quantity:**

The Berkeley Police Department owns 1 MCV.

**C. Capability:**

The MCV is a mobile office that provides shelter and may be used as a mobile command and communication center.

**D. Lifespan:**

This vehicle is approximately 20 years old and is at the tail end of its serviceable lifespan. All emergency vehicles need to be completely dependable and vehicles of this age start to lose dependability as old parts start to fail without warning. The modern versions of this type of vehicle are typically converted motorhomes.

**E. Use:**

This vehicle is used as a mobile command post for large scaled events.

**F. How it Works:**

This vehicle operates and drives like other vehicles.

**(2) Purpose:**

This vehicle may be used as a mobile command post for any larger scaled events or as a communications center in the event the communications center in the Public Safety Building is inoperable. Some examples of large-scale events include Solano Stroll, Juneteenth, 4<sup>th</sup> of July, critical incidents or natural disasters.

**(3) Fiscal Cost:****A. Initial cost:**

The initial cost of the MCV (2003 Freightliner MT55) was \$230,800.

**B. Cost of Use:**

The cost of use is the cost of fuel from the City Corporation Yard.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of the MCV are not calculable, but is the same as improper use of any vehicles. The improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

There is no annual or ongoing cost associated with this vehicle. Maintenance of the vehicle is conducted by the City's Corporation Yard.

**E. Training Costs:**

Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle. The training cost is staff time.

**F. Maintenance and Storage Costs:**

There are no storage costs and maintenance would be conducted by the City of Berkeley Corporation Yard.

**G. Upgrade Cost:**

The MCV is almost 20 years old and upgrades would involve replacing different parts of the vehicle. This work would be conducted by the City of Berkeley's Corporation Yard. The cost would be staff time plus the cost of any necessary parts.

**(4) Impact:**

The MCV is used as a command post for any large scaled event. It works as a mobile central location where resources can stage and be deployed from. It provides the police department with on-site command, supplying a control and communications hub that is needed for large community events, or critical incidents such as natural disasters in order to maintain public safety. The deployment or appearance of certain armored vehicles may escalate tension, provoke fear, prevent clear communication, or increase distrust.

**(5) Mitigations:**

The MCV shall only be operated by trained personnel that have demonstrated proficiency in the operations of this vehicle per Berkeley Police Department Policy 811.

**(6) Alternatives:**

The MCV is almost 20 years old. Current MCV from other agencies are large mobile homes converted into MCVs.

**(7) Third Party Dependence:**

All maintenance is completed through the Cities Corp Yard so there is no dependence on a third party.

## **Barrett Model 99 Rifle**

### **(1) Description:**

#### **A. Background:**

The Barrett Model 99 rifle is a single shot bolt-action 50-caliber rifle first introduced in 1999. It is intended to be used in emergency situations where there is a high potential for violence.

#### **B. Quantity:**

Berkeley Police Department Special Response Team (SRT) currently possess 1 (one) of these rifles and is not looking to purchase any others.

Currently BPD has approximately 100 Summit Ammunition .50-caliber BNG rounds.

#### **C. Capability:**

This rifle is used only in situations where a potential life-threatening situation exists. The length of the rifle's barrel coupled with the ammunition result in precision accuracy. This rifle is capable of disabling any vehicle engine block because of the large caliber round.

#### **D. Lifespan:**

This rifle has been in our possession for almost 15-years and we expect it to last for an additional 20 years or more considering how in-frequently it's used.

#### **E. Use:**

This rifle is used primarily in emergency situations where a life-threatening situation exists, necessitating a vehicle to be disabled.

#### **F. How it Works:**

This is a bolt-action rifle that fires one round at a time and needs to be reloaded by hand after each round. The Barrett Model 99 rifle works similar to all modern bolt-action rifles. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. The operator pulls the bolt back, ejecting the spent cartridge. The operator then loads another bullet into the breach, pushes the bolt forward, and closes the chamber, making the rifle ready to fired again.

**(2) Purpose:**

The Barrett rifle is a firearm that may be used to stop a vehicle which poses a lethal threat to the public, or to disable a vehicle which presents a threat to the safety of another person(s) by its continued use. There are vehicle disabling tools that may disable vehicles by slowly deflating the tires; however, even with tires deflated a vehicle has the ability to operate and remain a threat to the public. Furthermore, these tools must be hand deployed and, in most circumstances, require officers to expose themselves to deadly threats. The Barrett rifle creates the ability to effectively disable vehicles instantaneously from a distance away.

**(3) Fiscal Cost:****A. Initial Cost:**

The Barrett Model 99 50-caliber rifle has a retail cost of approximately \$12,500 dollars. The Department of Justice provided the Barrett rifle to the Berkeley Police Department on 04/04/2007. There was no initial cost related to BPD taking possession of it.

**B. Cost of Use:**

The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$6 dollars per bullet; \$60 for a box of 10 and \$600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

The annual cost of the equipment is minimal and includes ammunition expenditure, cleaning equipment, and possibly replacing the optics at some point in the future.

**E. Training Costs:**

The cost associated with training is the staff time, range fees, and cost of spent ammunition.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

**G. Upgrade Costs:**

Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing; those upgrade costs are unknown at this time.

**(4) Impact:**

The Berkeley Police Department is committed to preserving and protecting human life and welfare. The Barrett rifle is a firearm the department would primarily use to stop a vehicle which poses a lethal threat to the public or used to disable a vehicle that presents a threat to the safety of another person(s) by its continued use.

The Barrett rifle is intended as a tool to increase the safety and welfare of community members and officers alike.

The Barrett rifle has minimal or no impact on civil rights or civil liberties as it will only be deployed in very specific situations, by very select members of the SRT. This is not a piece of equipment that is carried by an officer on routine patrol, and is highly unlikely that any members of our community would ever see this equipment due to its very selective use in the most critical of instances.

**(5) Mitigations:**

Only four BPD members are authorized to utilize this rifle. Authorized members are trained in its use as well as the very specific and limited circumstances where this equipment would be utilized.

**(6) Alternatives:**

There is no other alternative tool or asset available that could accomplish the same goal of this rifle. An alternative rifle to the Barrett model 99 is a different rifle of equal capability, such as a Lapua .338 caliber rifle.

**(7) Third Party Dependence:**

These rifles are simple in their design and operation. They do require regular maintenance which is performed by an SRT Team Leader. If an issue arises which is

beyond the scope of our Armorers we would seek manufacturer assistance. However, the need for this is expected to be very rare.



## Appendix:

### Applicable Lexipol Policies Respective to Each Equipment

Policies are hyperlinked to the Berkeley Police Department Lexipol policy website.

#### M4 rifle/Patrol Rifle

- [Policy 300 \(Use of Force\)](#)
- [Policy 349 \(Tactical Rifle Operator Program\)](#)

#### Penn Arms 40MM launcher

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

#### Milkor LTL multi-launcher

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

#### FN 303 Launcher & FN Pava rounds

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

#### Chlorobenzylidene Malononitrile and Oleoresin Capsicum (canister and spray)

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)

#### Remington 700 Rifle

- [Policy 300 \(Use of Force\)](#)
- [Policy 354 \(Precision Rifle\)](#)

#### ReconRobotics Recon Scout XT Robots & Andros Remotec HD-1 Hazardous Duty Robot

- [Policy 708 \(Robot Cameras\)](#)

#### Light/Sound Diversionary Device

- [Policy 353 \(Diversionary Device\)](#)

Long Range Acoustic Device

- [Policy 707 \(Long Range Acoustical Device\)](#)

36" batons

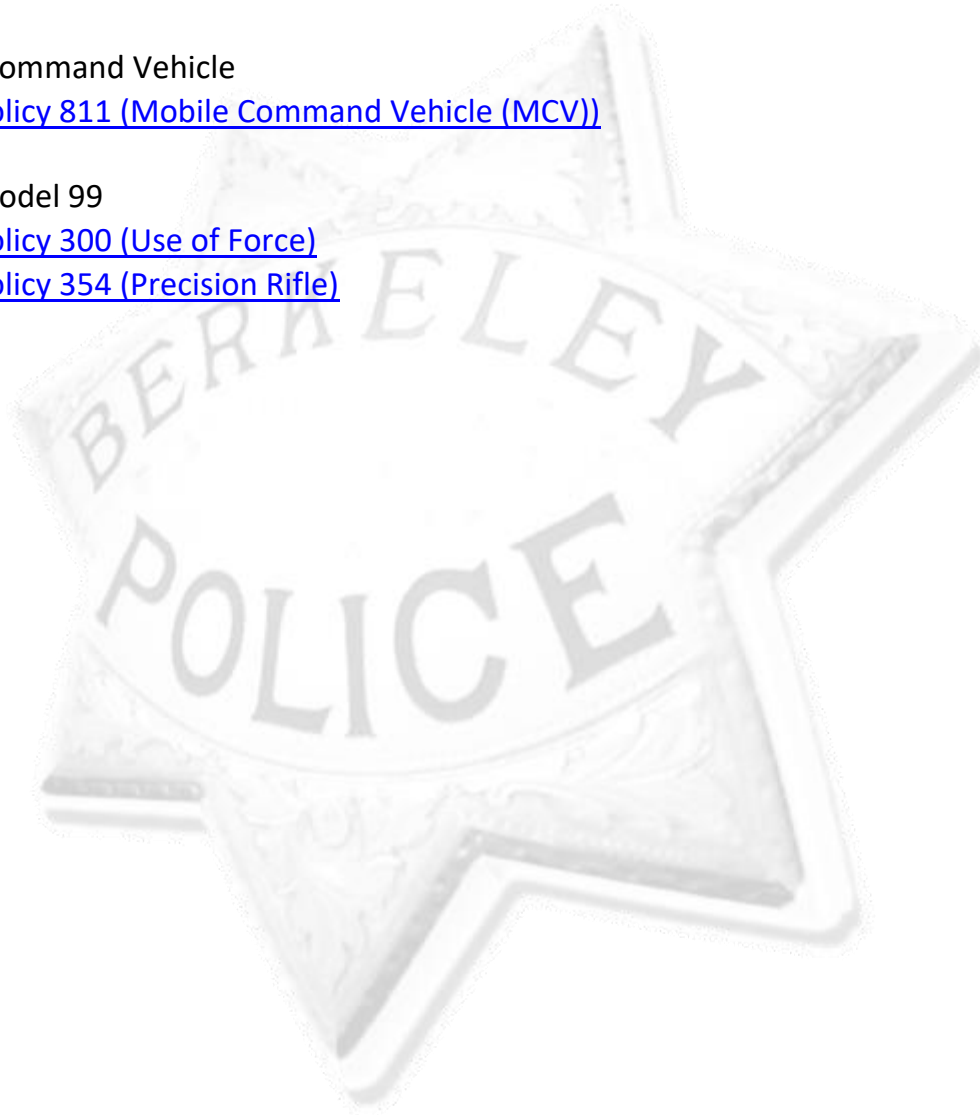
- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

Mobile Command Vehicle

- [Policy 811 \(Mobile Command Vehicle \(MCV\)\)](#)

Barret Model 99

- [Policy 300 \(Use of Force\)](#)
- [Policy 354 \(Precision Rifle\)](#)



## Control Devices and Techniques

### 303.1 PURPOSE AND SCOPE

This policy provides guidelines for the use and maintenance of control devices that are described herein.

### 303.2 POLICY

In order to control subjects who are violent or who demonstrate the intent to be violent, the Berkeley Police Department authorizes officers to use control devices and techniques in accordance with the guidelines in this policy and the Use of Force Policy.

### 303.3 ISSUING, CARRYING AND USING CONTROL DEVICES

Control devices described in this policy may be carried and used by members of this department only if the device has been issued by the Department or approved by the Chief of Police, or his/her designee.

Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device.

Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices.

When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets.

Except as otherwise provided in Section 303.9, kinetic energy projectiles and chemical agents shall not be used to disperse any assembly, protest, or demonstration (Penal Code 13652).

### 303.4 RESPONSIBILITIES

#### 303.4.1 WATCH COMMANDER RESPONSIBILITIES

The Watch Commander may authorize the use of a control device by selected personnel or members of specialized units who have successfully completed the required training.

#### 303.4.2 PERSONNEL AND TRAINING SERGEANT RESPONSIBILITIES

The Personnel and Training Sergeant, or designated instructor, shall control the inventory and issuance of all control devices and shall ensure that all damaged, inoperative, outdated or expended control devices or projectiles are properly disposed of, repaired or replaced.

Every control device will be periodically inspected by the Personnel and Training Sergeant or the designated instructor for a particular control device. The inspection shall be documented.

## *Control Devices and Techniques*

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### **303.4.3 USER RESPONSIBILITIES**

All normal maintenance, charging or cleaning shall remain the responsibility of personnel using the various devices.

Any damaged, inoperative, outdated or expended control devices or projectiles, along with documentation explaining the cause of the damage, shall be returned to the Personnel and Training Sergeant for disposition. Damage to City Property forms shall also be prepared and forwarded through the chain of command, when appropriate, explaining the cause of damage.

### **303.5 BATON AND COLLAPSIBLE BATON GUIDELINES**

The need to immediately control a suspect must be weighed against the risk of causing serious injury. The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

When carrying a baton, including a collapsible baton, uniformed personnel shall carry the baton in its authorized holder on the equipment belt. Plainclothes and non-field personnel may carry the baton as authorized and in accordance with the needs of their assignment or at the direction of their supervisor.

### **303.6 OLEORESIN CAPSICUM (OC) SPRAY GUIDELINES**

As with other control devices, OC spray (aka pepper spray) and pepper projectiles may be considered for use to bring under control an individual or groups of individuals who are engaging in, or are about to engage in violent behavior. Pepper projectiles and OC spray should not, however, be used against individuals or groups who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

#### **303.6.1 OC SPRAY**

Uniformed personnel carrying OC spray shall carry the device in its holster on the equipment belt or external vest carrier. Plainclothes and non-field personnel may carry OC spray as authorized, in accordance with the needs of their assignment or at the direction of their supervisor.

#### **303.6.2 PEPPER PROJECTILE SYSTEMS**

Pepper projectiles (aka "Pava" rounds) are plastic spheres that are filled with a derivative of OC powder. Because the compressed gas launcher (aka "less lethal" launcher) delivers the projectiles with enough force to burst the projectiles on impact and release the OC powder, the potential exists for the projectiles to inflict injury if they strike the head, neck, spine or groin. Therefore, personnel using a launcher should not intentionally target those areas, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

Officers encountering a situation that warrants the use of a launcher shall notify a supervisor as soon as practicable. A supervisor shall respond to all incidents where the suspect has been hit or

## *Control Devices and Techniques*

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exposed to the chemical agent. The supervisor shall ensure that all notifications and reports are completed as required by the Use of Force Policy.

### **303.6.3 TREATMENT FOR OC SPRAY EXPOSURE**

Persons who have been sprayed with or otherwise affected by the use of OC should be promptly provided with clean water to cleanse the affected areas. Those persons who complain of further severe effects shall be examined by appropriate medical personnel.

### **303.7 POST-APPLICATION NOTICE**

Whenever OC has been introduced into a residence, building interior, vehicle or other enclosed area, officers should provide the owners or available occupants with notice of the possible presence of residue that could result in irritation or injury if the area is not properly cleaned. Such notice should include advisement that clean up will be at the owner's expense. Information regarding the method of notice and the individuals notified should be included in related reports.

### **303.8 LESS LETHAL PROJECTILE GUIDELINES**

This department is committed to reducing the potential for violent confrontations. "Less lethal" projectiles, when used properly, are less likely to result in death or serious physical injury and can be used in an attempt to de-escalate a potentially deadly situation.

#### **303.8.1 DEPLOYMENT AND USE**

Only department-approved projectiles shall be carried and deployed. Approved projectiles may be used to compel an individual to cease his/her actions when such projectiles present a reasonable option.

Approved projectiles include:

- (a) "Less Lethal" rounds: impact projectiles
- (b) "Pava" rounds: impact projectiles containing OC/pepper spray
- (c) "Marking" rounds: impact projectiles containing paint

Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

Circumstances appropriate for deployment include, but are not limited to, situations in which:

- (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles.
- (b) The suspect has made credible threats to harm him/herself or others.
- (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers.
- (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.

## *Control Devices and Techniques*

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### **303.8.2 DEPLOYMENT CONSIDERATIONS**

Before discharging projectiles, the officer should consider such factors as:

- (a) Distance and angle to target.
- (b) Type of projectiles employed.
- (c) Type and thickness of subject's clothing.
- (d) The subject's proximity to others.
- (e) The location of the subject.
- (f) Whether the subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

A verbal warning of the intended use of the device should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to give the individual a reasonable opportunity to voluntarily comply and to warn other officers and individuals that the device is being deployed.

Officers should keep in mind the manufacturer's recommendations and their training regarding effective distances and target areas. However, officers are not restricted solely to use according to manufacturer recommendations. Each situation must be evaluated on the totality of circumstances at the time of deployment.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

### **303.8.3 SAFETY PROCEDURES**

Officers will inspect the launcher and projectiles at the beginning of each shift to ensure that the launcher is in proper working order and the projectiles are of the approved type and appear to be free from defects.

When it is not deployed, the launcher will be unloaded and properly and securely stored.

### **303.9 CROWD CONTROL REQUIREMENTS**

Pursuant to California Penal Code 13652, kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

- (a) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.
- (b) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively

## *Control Devices and Techniques*

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reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

- (c) Persons are given an objectively reasonable opportunity to disperse and leave the scene.
- (d) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.
- (e) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.
- (f) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.
- (g) An objectively reasonable effort has been made to extract individuals in distress.
- (h) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.
- (i) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.
- (j) Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:
  - 1. A violation of an imposed curfew.
  - 2. A verbal threat.
  - 3. Noncompliance with a law enforcement directive.

As per City Council resolution (June 9, 2020), pepper spray for crowd control by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as the City Council removes the prohibition.

### **303.10 TRAINING FOR CONTROL DEVICES**

The Personnel and Training Sergeant shall ensure that all personnel who are authorized to carry a control device have been properly trained and certified to carry the specific control device and are retrained or recertified as necessary.

- (a) Proficiency training shall be monitored and documented by a certified, control-device weapons or tactics instructor.
- (b) All training and proficiency for control devices will be documented in the officer's training file.
- (c) Officers who fail to demonstrate proficiency with the control device or knowledge of this agency's Use of Force Policy will be provided remedial training. If an officer cannot

## *Control Devices and Techniques*

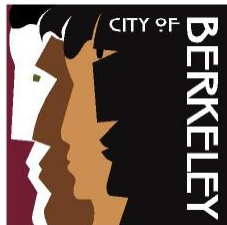
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demonstrate proficiency with a control device or knowledge of this agency's Use of Force Policy after remedial training, the officer will be restricted from carrying the control device and may be subject to discipline.

### **303.11 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES**

Any application of a control device or technique listed in this policy shall be documented in the related incident report and reported pursuant to California Penal Code 13652.1 and the Berkeley Use of Force Policy.





Kate Harrison  
Vice Mayor, District 4

## REVISED AGENDA MATERIAL for Supplemental Packet 2

**Meeting Date:** June 21, 2022

**Item #:** 2

**Item Description:** Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report

**Submitted by:** Vice Mayor Harrison and Councilmember Hahn

### **RECOMMENDATION**

1. Approve the revised Controlled Equipment Impact Statements and Policy 303 (Control Devices and Techniques) conforming to local and state law.
2. Refer Annual Equipment Use Report to PAB for review and recommendation within 60 days following Council approval of the Impact Statements and Policy 303.
3. Refer all other internal policies relevant to controlled equipment to the PAB and BPD to review and conform to the approved Controlled Equipment Impact Statements, and local/state laws for Council consideration by July 26.

### **BACKGROUND:**

The acquisition and use of some police equipment and weapons can pose threats to civil liberties and public health and safety that need to be balanced against the benefits of their use. Consequently, the Berkeley City Council passed the BMC 2.100 to Regulate Police Acquisition and Use of Controlled Equipment (Harrison, Robinson, Taplin) in 2021.

The Controlled Equipment Impact Statement as submitted by the BPD needs to be revised to conform to state and local law. It is also in the public interest to provide additional direction to the PAB and BPD to collaborate in order to revise Use Policy 303 and Policy 709.

The Council appreciates the extensive work of the BPD in preparing materials related to the ordinance. However, in the course of its review, the PAB determined that ahead of Council approval a few Impact Statements and a single use policy (Policy 303) require revisions to conform to local and state laws as follows:

- **Impact Statements**

- Impact statements related to kinetic energy projectiles and chemical agents should be updated to reflect Cal. Pen. Code § 13652 (AB 48), which substantially limits the use of such equipment during crowd situations.
- Statements related to chemical agents also do not conform with the Council’s unanimous June 9, 2022 policy banning tear gas and instituting a moratorium on pepper spray for crowd control during the COVID-19 pandemic.
- The impact statements require additional detail about potential negative impacts of using controlled equipment to conform to BMC 2.100.020(C) requirement that they “identify... any potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public.” The submitted Impact Statement draft includes limited consideration of the potential for injury, death, and legal liabilities, and little to no discussion of civil liberties impacts. The current language could benefit from additional detail and corresponding additions in the mitigation sections.

- **Use Policies**

- Policy 303 (Control Devices and Techniques) governing the use of non-lethal kinetic energy projectiles and chemical agents (e.g., tear gas, pepper spray) is out of date and needs to be updated to conform to the requirements of Cal. Pen. Code § 13652 and Council’s June 9 policy.<sup>1</sup>

This supplemental includes an updated version of the Impact Statement and Policy 303 (Control Devices and Techniques), revised to conform to local and state laws.

The City Attorney has advised that the Annual Equipment Use Report is not required until after Council approves the Impact Statements and Use Policies. Accordingly, this supplemental asks Council to postpone Council consideration to 60 days following Council approval of the Impact Statements and Use Policies.

The revisions contain suggested language expanding on potential impacts and conforming legal language for the PAB and BPD to consider in reviewing Use Policy 303. Policy 709 also needs to conform to the Impact Statement and Policy and to state and local law.

Voters overwhelmingly established the PAB in 2020 to assist Council and provide timely recommendations with regard to policing matters. It is a critical matter of policy and process for the Council to provide this Charter body with sufficient time to conduct its important work.

### **ATTACHEMNTS**

1. Revised Controlled Equipment Impact Statements
2. Revised Policy 303

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<sup>1</sup> Compare to Policy 300, which is consistent with Council’s June 9 policy, and Policy 428, which references Cal. Pen. Code § 13652.



# **Police Equipment and Community Safety Ordinance Impact Statements**

## ACKNOWLEDGEMENTS

Thank you to the subject matter experts for helping author this report.

Officer Corey Bold –  
*Patrol Officer and chemical agent instructor*

Officer Semir Muratovic –  
*Patrol Officer and Bomb Squad Technician*

Officer Derek Radey –  
*Patrol Officer and less lethal coordinator/instructor*

Lieutenant Kevin Reece –  
*Special Response Team Commander*

Officer Scott Salas –  
*Patrol officer and Special Response Team high ground team leader*

Lieutenant Jennifer Tate –  
*Traffic Lieutenant and defensive tactics instructor*

Officer Jason Tillberg –  
*Department trainer and Department Armorer*

Officer Sean Tinney –  
*Department trainer and Special Response Team member*

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## INTRODUCTION

On May 11, 2021 the Berkeley City Council passed Ordinance NO. 7,760-N.S., the Police Equipment and Community Safety Ordinance. Section 2.100.020 of the ordinance mandates an impact statement for certain equipment that the Berkeley Police Department possesses. An impact statement is defined in section 2.100.020 (C) and is a publicly released written document that includes the following details for each equipment:

- 1) Description
- 2) Purpose
- 3) Fiscal cost
- 4) Impact
- 5) Mitigation
- 6) Alternatives
- 7) Third Party Dependence

An impact statement for each of the following equipment has been authored by subject matter experts in their respective fields:

- M4 rifle/Patrol Rifle
- Penn Arms 40MM launcher
- Milkor LTL multi-launcher
- FN 303 Launcher & FN Pava rounds
- Oleoresin capsicum (OC spray)
- Chlorobenzylidene Malononitrile and Oleoresin capsicum (tear gas)
- Remington 700 Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/sound distraction device
- Long Range Acoustic Device (LRAD)
- 36" batons
- Mobile Command Vehicle
- Barret Model 99

Impact statements were compiled in this report in a prioritized ranking for the Police Accountability Board to consider in determining the order in which to perform its review per the Police Equipment and Community Safety Ordinance.

### **M4 Rifle and Associated Ammunition**

**(1) Description:**

**A. Background:**

The “M4” was developed and produced for the United States government by Colt Firearms and was based off of the original Armalite Rifle (AR) patent purchased by Colt in 1959. Although Colt owned the trademarked name of “M4”, a number of other manufacturers offer M4-like firearms under various model names. The M4 and its variants fire 5.56×45mm NATO (and .223 Remington) ammunition, and are a gas-operated, magazine-fed firearm with a barrel length ranging from 11.5” to 16”.

The current Berkeley Police Department (BPD) rifle ammunition used is the .223 Remington, a rimless, bottlenecked rifle cartridge. The round was developed in 1957 by Remington Arms and Fairchild Industries. The .223 Remington is considered one of the most popular cartridges and is currently used by a wide range of semi-automatic and manual-action rifles as well as handguns. While the military uses the similar 5.56x45 NATO cartridge, BPD uses the more common and often regarded civilian cartridge of .223 Remington for all training and duty uses.

Currently, BPD uses two different kinds of .223 Remington ammunition: 55 grain FMJ (full metal jacket) for training purposes and 62 grain soft point for duty purposes. This is done for several reasons.

1. FMJ ammunition is cheaper to purchase. While many agencies use the same ammunition for training and duty use, the department saves a significant amount of money by using FMJ ammunition for training.
2. The observed performance between the two rounds is negligible for training purposes. Officers can use the FMJ ammunition in a training course and see no difference in operation and performance versus using 62 grain soft point duty ammunition.
3. The 62-grain soft point ammunition has been shown to have less over penetration and over travel compared to FMJ ammunition.

This means that rounds fired are less likely to hit unintended targets.

**B. Quantity:**

The Berkeley Department currently owns and maintains 96 rifles.

Quantity of rifle ammunition fluctuates significantly depending on training attended, including the standard basic police academy, officer assignments, and yearly mandate training cycles. For example, most police academy recruits are required to bring approximately 1,000 rounds to the basic POST approved academy. Most academies have a 16-24-hour rifle training course. The training is required for all officers who are issued a rifle and mandates between 800 and 1,200 rounds. As such, the inventory at the Berkeley Police Department fluctuates significantly depending on how many officers are attending state mandated training and can range from 10,000 round (our current inventory) to less than 1,000 rounds (our anticipated inventory at the end of December after scheduled department training in November.)

**C. Capability:**

The M4 pattern rifle is used only in situations when a potential life-threatening situation exists. While a pistol is the common firearm used by police in these dangerous situations, the M4 patterned rifle has numerous advantages over it. The ability to shoulder the rifle, coupled with the rifle's lengthened barrel and ammunition, result in higher accuracy and lessens the chance of officers missing the intended target. Additionally, due to the design of the rifle's bullet, the round is less likely to over penetrate commercial and residential walls should the officer miss the intended target. The rifle is also easier to use compared to a pistol because of the bullet's low recoil. Finally, as the rifle can be adjusted and customized, it can be configured to accommodate officers of any stature (hand size, strength, etc.).

The .223 Remington cartridge, depending on the weight of the bullet, 55 grain or 62 grain, travel at approximately 3,000 feet per second and 2,700 feet per second respectively. The round is highly regarded as having a high degree of consistency and accuracy, which is why it is the most common rifle round used in Law Enforcement around the world.

**D. Lifespan:**

Due to the rifle's ability to be maintained by department armorers, these rifles have a relatively long-life span if properly maintained. However, the design has



changed little in the last 60 years and we can expect new variations and designs to become the new industry standard in the coming years.

Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

**E. Use:**

Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

**F. How it Works:**

The M4 patterned rifle works the same as a majority of all modern firearms. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. As the bullet travels down the barrel, gas from the ignited powder also escapes from the muzzle. Some of that gas is recycled back into the chamber of the firearm which causes the firearm to cycle its action and load another bullet. From there the process repeats with each pull of the trigger.

The .223 Remington cartridge is made up of several parts, primarily the primer, casing, gunpowder, and bullet. The bullet is seated into the front or opening of the casing. Gunpowder is placed between the bullet and the interior of the casing and a primer is seated in the rear part of the casing. When the trigger of a firearm is pulled, it releases the hammer, which strikes the firing pin, driving it forward. The firing pin collides with the rear of the cartridge, where the primer is seated, which ignites the primer. The spark from the primer ignites the gunpowder. Gas converted from the burning powder rapidly expands in the cartridge. The expanding gas forces the bullet out of the cartridge and down the barrel with great speed. The rifling in the barrel causes the bullet to spin as it travels out of the barrel. The bullet's speed and escaping gases produce a "bang."

After the bullet exits the barrel, the spent casing which housed the bullet, gunpowder, and primer are ejected from the firearm.

**(2) Purpose:**

The M4 patterned rifle and associated ammunition is intended as a means to safely stop a lethal threat. While a pistol is the firearm that all officers are minimally

equipped with, the rifle is an ancillary firearm for situations where increased distance and accuracy are needed to safely resolve the situation.

(3) **Fiscal Cost:**

A. **Initial Cost:**

Rifle prices, like other firearms, will range depending on current market demand and availability. While M4 rifles purchased several years ago cost between \$1,000 and \$1,200 a piece, current rifles cost between \$1,400 and \$1,600. It should be expected that these prices will fluctuate and likely increase over time.

Ammunition costs fluctuate with the costs of components (brass, primers, gunpowder, and bullets) and supply/demand. Current costs for .223 Remington range from \$0.50 to \$0.75 a round for training ammunition (55 grain) and \$1.25 to \$1.50 a round for duty ammunition (62 grain).

B. **Cost of Use:**

Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on whether the rifle is issued to a patrol officer, a firearms instructor, or a Special Response Team member as each assignment has different training requirements.

C. **Cost of Potential Adverse Effects:**

Adverse effects of improper use of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

See section B. above, these costs are determined based on the rifle's assignment.

E. **Training Costs:**

Every officer that is authorized to carry a rifle on duty must attend a 16-hour CA POST approved rifle instruction course before being authorized to carry the rifle on duty. This course may be administered by Berkeley Police Firearm Instructors or by other POST approved agencies. Tuition for the CA POST approved class is dependent on the hosting agency. If conducted in house the cost only includes the officer's hourly wage, range fee, and ammunition costs (all vary). Outside agencies charge between \$25 to \$500 depending on the range location and duration (some classes are 32-hours while POST only requires 16-hours.)

Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by POST certified BPD firearm instructors.

Typical round count for such classes range between 800 rounds and 1200 rounds per student. Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by a BPD firearm instructor which constitutes an additional 500 or so rounds per officer.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use over time. Traditionally, various springs and pins need to be replaced every five years and may cost between \$3 and \$30 per rifle. Other parts such as the barrel and bolt need replaced around ten years and range between \$150 and \$300 per rifle.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

**G. Upgrade Costs:**

Upgrade costs and Maintenance cost are synonymous due to the consistent design and lack of changes of the rifle over the last 60 years. Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing, those upgrade costs are unknown at this time.

**(4) Impact:**

The Berkeley Police Department is committed to preserving and protecting human life and welfare. The M4 patterned rifle, which fires the .223 Remington cartridge, is a superior firearm to stop a lethal threat compared to the issued pistols to police officers, in that officers equipped with this firearm shoot less rounds, fire more accurately, and are less likely to fire errant rounds. Highly volatile and violent incidents, such as a hostage situation, can be more safely and efficiently resolved with a rifle.

The M4 patterned rifle, and the accompanying .223 Remington cartridge it fires, is intended as a tool to increase the safety and welfare of citizens and officers alike. ~~The M4 patterned rifle and .223 Remington cartridge, both inanimate objects, have zero impact on things such as civil rights or civil liberties of the public.~~ Potential negative impacts include larger entry and exit wounds than from handgun bullets, and destroy more body tissue destruction; emotional trauma to vulnerable and/or minor bystanders; and potential litigation costs.

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(5) **Mitigations:**

Per Policy 300, “Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.

Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons.”

(6) **Alternatives:**

There are no suitable alternatives to the M4 rifle for the intended purpose. The M4 rifle is a law enforcement standard across the US and other countries due to its reliability, ease of use, ease of maintenance, and increased accuracy over other options.

There are no suitable alternatives to the .223 Remington cartridge, as the current BPD M4 rifle is designed for that particular cartridge. The .223 Remington cartridge is a law enforcement standard across the US and other countries due to its reliability, availability, and increased accuracy over other options.

(7) **Third Party Dependence:**

Berkeley Police Department armorers are trained and capable to handle any and all issues related to the maintenance or repair of the M4 rifles. Additionally, BPD firearm instructors are fully certified by state and private training institutes to fully educate and train BPD officers. No third party is required for maintenance, repair, or instruction.

All ammunition purchased by BPD, like all equipment, is dependent on Third Party vendors. Vendor stock and availability is outside BPD control or management. Once ammunition is purchased and in BPD custody there is no additional need for Third Party assistance.

### **Penn Arms 40mm Single Launcher**

(1) **Description:**

A. **Background:**

The 40mm impact projectile was developed as an alternative to the 12-gauge bean bag round and other more indiscriminate less lethal options. Early 12-gauge

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bean bag round designs had somewhat unpredictable flight patterns and could cause significant unwanted injury. The 40mm foam baton round was developed as a direct fire projectile designed to minimize the risk of unintended injuries. Currently, the Berkeley Police Department utilizes the CTS 4557 foam baton projectile and the Penn Arms L-140 single shot launcher.

**B. Quantity:**

The Berkeley Police Department currently owns and maintains 20 Penn Arms less lethal launchers.

**C. Capability:**

The Penn Arms single launcher is capable of firing a single projectile out to a maximum manufacturer recommended range of 45 meters. The Penn Arms 40mm projectiles are direct fire with a pliable “sponge” tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

**D. Lifespan:**

The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

**E. Use:**

The Penn Arms 40mm single launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

[Pursuant to Cal. Pen. Code § 13652, kinetic energy projectiles shall not be used to disperse any assembly, protest, or demonstration except as provided below.](#)

[Kinetic energy projectiles shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:](#)

- (1) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.
- (2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.
- (3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.
- (4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.
- (5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.
- (6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles on bystanders, medical personnel, journalists, or other unintended targets.
- (7) An objectively reasonable effort has been made to extract individuals in distress.
- (8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.
- (9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.
- (10) Kinetic energy projectiles shall not be used by BPD solely due to any of the following:

  - (A) A violation of an imposed curfew.
  - (B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

**F. How it works:**

The Penn Arms 40mm single launcher is a double action, break open less lethal launcher. The launcher is capable of firing a single 40mm projectile. When fired, the hammer strikes the munition primer which ignites gun powder in the primer insert. Expelled gases propel the projectile through the rifled barrel. The projectile has a rear plastic portion called the ogive which catches the barrel rifling and provides spin. The spin provides a greater degree of accuracy and eliminates any potential the projectile will tumble when exiting the barrel.

The projectiles utilized by the Berkeley Police Department are the CTS 4557 40mm sponge baton round. The CTS 4557 has a maximum effective range of 45 meters. The tip of the projectile is a pliable rubber material which molds to the body upon impact. The projectile travels at an estimated 240 feet per second which is slower than the FN 303 projectile. However, the larger mass, about 60 grams, creates more kinetic energy upon impact which is similar to that of a baseball thrown by a pitcher. The additional kinetic energy becomes important when the suspect has on thick or layered clothing or demonstrates a high pain tolerance.

The Penn Arms single launcher is a basic design making it easy to operate and maintain.

**(2) Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent or armed confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before certain weapons can be utilized. This fact may allow the Officer time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Additionally, it has been our experience that a 40mm projectile impact will almost always resolve a violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

(3) **Fiscal Cost:**

A. **Initial Cost:**

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$815.00 each.

B. **Cost of Use:**

Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

C. **Cost of Potential Adverse Effects:**

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death.

D. **Annual and Ongoing Costs:**

See section B above

E. **Training Costs:**

Every officer authorized to deploy a less lethal launcher must pass a certification



course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

#### Maintenance and Storage Costs:

Maintenance costs vary depending on use. Generally, various springs and pins need to be replaced every 5 years which can cost \$3 to \$30.

#### F. Upgrade Costs:

There are no foreseeable upgrade costs. The Penn Arms single launcher has few working parts and is of a simple design.

#### (4) **Impact:**

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but hopefully the minimal amount of force needed to safely resolve the incident.

The Penn Arms single launcher, with its high level of accuracy can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. This tool does not require officers to overcome a hostile crowd to stop a violent assault.

[Potential adverse impacts, especially from close-range use or injuries to the head or neck, include permanent injury and death.<sup>1</sup>](#)

#### (5) **Mitigation:**

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and

<sup>1</sup> Haar RJ, Iacopino V, Ranadive N, *et al*, Death, injury and disability from kinetic impact projectiles in crowd-control settings: a systematic review, *BMJ Open* 2017;7:e018154. doi: 10.1136/bmjopen-2017-018154

proportional to effectively and safely resolve a conflict.” All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

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Per Policy 303, “Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.”

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer’s ability to target approved impact areas.

(6) **Alternative:**

The Penn Arms single launcher is one of three less lethal options the Berkeley Police Department possess that allow officers to address a potentially violent confrontation from a distance. All three (Penn Arms single launcher, Milkor LTL multi-launcher, and FN303) are viable options that have different strengths and weaknesses. The Penn Arms single launcher and the Milkor LTL multi-launcher operate very similarly and use the same projectile. The Penn Arms single launcher is smaller and easier to carry; however, the Penn Arms single launcher is capable of holding only one projectile while the Milkor LTL multi-launcher is capable of holding six projectiles. The projectiles used by the Penn Arms single launcher and Milkor LTL multi-launcher are larger which results in more kinetic energy transferred compared to the projectiles used in the FN303; however, the FN303 holds 15 projectiles and is capable of

launching it at a faster rate.

An alternative that the Berkeley Police Department does not possess is the TASER. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject's clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

Third Party Dependence:

The Berkeley Police Department armorers are trained and capable of handling all issues related to the repair or maintenance of the Penn Arms single launcher. Additionally, Berkeley Police Department Less Lethal Instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for maintenance, repair, or instruction.

**Milkor LTL Multi-launcher**

(1) **Description:**

A. **Background:**

The 40mm impact projectile was developed as an alternative to the 12-gauge bean bag round and other more indiscriminate less lethal options. Early 12-gauge bean bag round designs had somewhat unpredictable flight patterns and could cause significant unwanted injury. The 40mm foam baton round was developed as a direct fire projectile designed to minimize the risk of unintended injuries. Currently, the Berkeley Police Department utilizes the CTS 4557 foam baton projectile and the Milkor LTL multi-shot launcher.

B. **Quantity:**

The Berkeley Police Department currently owns and maintains 2 Milkor LTL less lethal launchers. One Milkor launcher is assigned to the Berkeley Special Response Team.

C. **Capability:**

The Milkor LTL is capable of firing six 40mm projectiles before reloading is necessary. The Milkor LTL 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are

approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

**D. Lifespan:**

The manufacturer expected lifespan is about 10 to 15 years depending on use and regular maintenance.

**Use:**

The Milkor LTL multi-shot launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

Pursuant to Cal. Pen. Code § 13652, kinetic energy projectiles shall not be used by BPD to disperse any assembly, protest, or demonstration except as provided below.

Kinetic energy projectiles shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

(1) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(10) Kinetic energy projectiles shall not be used by BPD solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

**E. How it works:**

The Milkor LTL multi-shot launcher utilizes a spring actuated cylinder allowing it to fire 6 individual 40mm projectiles. When fired, the hammer strikes the munition primer which ignites gun powder in the primer insert. Expelled gases propel the projectile through the rifled barrel. The projectile has a rear plastic portion called the ogive which catches the barrel rifling and provides spin. The spin provides a greater degree of accuracy and eliminates any potential the projectile will tumble when exiting the barrel. The spring assisted cylinder automatically turns and loads the next projectile.

The projectiles utilized by the Berkeley Police Department are the CTS 4557 40mm sponge baton round. The CTS 4557 has a maximum effective range of 45 meters. The tip of the projectile is a pliable rubber material which molds to the

body upon impact. The projectile travels at an estimated 240 feet per second which is slower than FN 303 projectile. However, the larger mass, about 60 grams, creates more kinetic energy upon impact which is similar to that of a baseball thrown by a pitcher. The additional kinetic energy becomes important when the suspect has on thick or layered clothing or demonstrates a high pain tolerance.

The benefit to the Milkor LTL is its ability to provide a quick follow up less lethal application, if necessary. The Milkor holds 6 projectiles while the Penn Arms launcher only holds one. Reloading the Penn Arms single launcher can be time consuming and requires the officer to briefly change focus from the suspect to the reload procedure. The Milkor LTL on the other hand, allows the officer to maintain focus on the suspect and assess whether a follow up application is necessary. This ability is significant when the suspect is advancing, attempting to flee, or demonstrates a high pain compliance threshold.

(2) **Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less

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lethal” is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

The “less lethal” projectiles utilized by the Berkeley Police Department are generally

considered discriminate versus indiscriminate uses of force. The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Additionally, it has been our experience that a 40mm projectile impact will generally resolve the violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

(3) **Fiscal Cost:**

**A. Initial Cost:**

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$3950.00 each.

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**B. Cost of Use:**

Cost for the Milkor LTL launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

**C. Cost of Potential Adverse Effects:**

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death.

**D. Annual and Ongoing Costs:**

See section B above

**E. Training Costs:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use.

**G. Upgrade Costs:**

There are no foreseeable upgrade costs.

**(4) Impact:**

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but also the minimal amount of force needed to safely resolve the incident.

The Milkor LTL launcher, with its high level of accuracy and 6 projectile capacity, can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent

assault, overcome their resistance, and aid in the attempt to safely take them into custody. It also allows officers to prevent a more indiscriminate use of force, such as entering the group or crowd, to take a subject into custody.

[Potential adverse impacts, especially from close-range use or injuries to the head or neck, include permanent injury and death.<sup>2</sup>](#)

**(5) Mitigation:**

Per Policy 300, “In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict.” All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, “Officers are not required or compelled to use approved projectiles in

<sup>2</sup> Haar RJ, Iacopino V, Ranadive N, *et al*, Death, injury and disability from kinetic impact projectiles in crowd-control settings: a systematic review, *BMJ Open* 2017;**7**:e018154. doi: 10.1136/bmjopen-2017-018154



lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.”

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer’s ability to target approved impact areas.

(6) **Alternative:**

The Milkor LTL multi-launcher is one of three less lethal options the Berkeley Police Department possess that allow officers to address a potentially violent confrontation

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from a distance. All three (Penn Arms single launcher, Milkor LTL multi-launcher, and FN303) are viable options that have different strengths and weaknesses. The Penn Arms single launcher and the Milkor LTL multi-launcher operate very similarly and use the same projectile. The Penn Arms single launcher is smaller and easier to carry; however, the Penn Arms single launcher is capable of holding only one projectile while the Milkor LTL multi-launcher is capable of holding six projectiles. The projectiles used by the Penn Arms single launcher and Milkor LTL multi-launcher are larger which results in more kinetic energy transferred compared to the projectiles used in the FN303; however, the FN303 holds 15 projectiles and is capable of launching it at a faster rate.

An alternative that the Berkeley Police Department does not possess is the TASER. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject's clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

(7) **Third Party Dependence:**

The Berkeley Police Department armorers are trained and capable of handling most issues related to the repair or maintenance of the Milkor LTL launcher. In the event of a catastrophic malfunction, the Milkor LTL will need to be sent to the manufacturer for repair. To date, there have been no significant repairs needed to the Milkor LTL. Additionally, Berkeley Police Department Less Lethal Instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for regular maintenance, repair, or instruction.

### **FN 303 and FN Pava Impact Projectile**

(1) **Description:**

A. **Background:**

The FN 303 was developed in 2003 by Fabrique Nationale de Herstal as a less lethal option. The FN 303 is based on a concept developed by Monterey Bay Corporation. The development team consisted of designers and researchers from two paintball related companies. The FN 303 uses compressed air to propel a .68 caliber projectile similar to that of most manufactured paintball guns.

**B. Quantity:**

The Berkeley Police Department currently owns and maintains 8 FN 303 less lethal launchers.

**C. Capability:**

The FN 303 is capable of firing 15 projectiles out to a maximum manufacturer recommended range of 50 meters. The FN 303 projectiles are direct fire and designed to fragment upon impact to prevent penetration injury. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas. This level of force is considered to be similar to that of a baton strike.

**D. Lifespan:**

The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

**E. Use:**

The FN 303 is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

[Pursuant to Cal. Pen. Code § 13652, kinetic energy projectiles and chemical agents shall not be used by BPD to disperse any assembly, protest, or demonstration except as provided below.](#)

[Kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:](#)

[\(1\) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.](#)

[\(2\) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple](#)

languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(10) Kinetic energy projectiles or chemical agents shall not be used by BPD solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

**F. How it works:**

An air reservoir attaches to the FN 303 through an air hose coupler and provides

pressure through compressed air. When fired, the compressed air drives a piston that pushes the .68 caliber projectile through the barrel at approximately 280 feet per second. For comparison, the FN projectile is the size of a paintball and the velocity is the same as a commercially manufactured paintball gun.

The projectiles are 8.5 grams in weight and utilize a polystyrene fin stabilized body with a non-toxic forward payload to aid in stability and accuracy. The projectile will deliver approximately 24-foot pounds of kinetic energy at the muzzle which is about double the kinetic energy of most paintball guns. Most paintballs have a mass of 3 grams while the FN 303 projectile has a mass of 8.5 grams which increases the kinetic energy produced.

Available projectiles are impact, impact + non-permanent marking, impact + permanent marking, and impact + PAVA (0.5% PAVA/Oleoresin Capsicum).

The impact + PAVA projectile is intended to be direct fired at an individual. In addition to delivering pain through kinetic energy upon impact, the PAVA

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projectile will deliver a secondary chemical irritant, which is the Oleoresin Capsicum (O.C.) payload. Oleoresin Capsicum generally causes irritation/burning at the application site, irritation to the eyes, and coughing. According to the National Institute of Health, the effects of O.C. power exposure tend to resolve on their own within 30 minutes.

Pain is highly subjective and other circumstances, such as heavy clothing, may render the impact ineffective. The application of a secondary chemical irritant may assist in gaining compliance and successfully resolving a potentially violent incident with the minimal amount of force necessary.

(2) **Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close

proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

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The “less lethal” projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. Discriminate projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

**(3) Fiscal Cost:**

**A. Initial Cost:**

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent FN 303s purchased by the department cost \$800.00 each.

**B. Cost of Use:**

Cost for FN 303 use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

**C. Cost of Potential Adverse Effects:**

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death. Only trained officers are authorized to use the FN 303.

**D. Annual and Ongoing Costs:**

See section B above

**E. Training Costs:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use. Generally, O-rings need to be replaced every 3000 rounds and cost \$30 per kit.

**G. Upgrade Costs:**

The overall design of the FN 303 has changed little since its initial release in the early 2000s thus anticipated upgrade costs will be minimal.

**Impact:**

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but also the minimal amount of force needed to safely resolve the incident.

The FN 303, with its high level of accuracy can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. It also allows officers to prevent a more indiscriminate use of force, such as entering the group or crowd, to take a subject into custody.

[Potential adverse impacts, especially from close-range use or injuries to the head or neck, include permanent injury and death.](#)<sup>3</sup>

**(4) Mitigation:**

<sup>3</sup> Haar RJ, Iacopino V, Ranadive N, *et al*, Death, injury and disability from kinetic impact projectiles in crowd-control settings: a systematic review, *BMJ Open* 2017;7:e018154. doi: 10.1136/bmjopen-2017-018154

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders."

The Berkeley Police Department also trains a recommended range of 3 to 30 meters.

Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer's ability to target approved impact areas.

(5) **Alternative:**

The FN303 launcher is one of three less lethal options the Berkeley Police Department possess that allow officers to address a potentially violent confrontation from a distance. All three (Penn Arms single launcher, Milkor LTL multi-launcher, and FN303) are viable options that have different strengths and weaknesses. The Penn Arms single launcher and the Milkor LTL multi-launcher operate very similarly and use the same projectile. The Penn Arms single launcher is smaller and easier to carry; however, the Penn Arms single launcher is capable of holding only one projectile while the Milkor LTL multi-launcher is capable of holding six projectiles. The



projectiles used by the Penn Arms single launcher and Milkor LTL multi-launcher are larger which results in more kinetic energy transferred compared to the projectiles used in the FN303; however, the FN303 holds 15 projectiles and is capable of launching it at a faster rate.

An alternative that the Berkeley Police Department does not possess is the TASER. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject's clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

**(6) Third Party Dependence:**

The Berkeley Police Department armorers are trained and capable of handling regular maintenance and most repairs. In the event of a catastrophic failure, the device will be sent to the manufacturer for repair. To date there have been 2 devices that required manufacturer repair, both of which were under warranty.

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Additionally, department firearm instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for maintenance, most repairs, or instruction.

### **OC (oleoresin capsicum) Spray**

**(1) Description:**

**A. Background:**

For the purposes of this portion of the Impact Statement, OC (Oleoresin capsicum) will be referred to in the spray form as opposed to the aerosol canister form. First Defense manufactures different sizes of OC sprays. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. Besides being effective on humans, OC based chemical agents usually work on animals as well. In a liquid form, OC can appear as a clear, amber, or heavy dark red solution depending on the manufacturer. It is mixed with several types of solutions which act as carriers.

**B. Quantity:**

Qty 23 – First Defense MK-9 OC spray (13- ounces)

Qty 178 – First Defense MK-3 OC spray (3 ounces)

Most of the MK-3 OC sprays are issued to and maintained by individual officers; however, a small amount of these sprays is stored in a secured equipment room as spares in case of damage or new personnel issue.

**C. Capability:**

The First Defense MK-3 OC sprays are standard issued to all police officers and are worn on the police officers' belt. It has an effective range of 10-12 feet. The larger First Defense MK-9 OC sprays are 13 ounces and are used in violent crowd situations. It has an effect range of 18-20 feet.

The use of the First Defense OC spray can render a dangerous and violent situation safe without using a higher level of force.

**D. Lifespan:**

Aerosol products eventually lose pressure over time. The lifespan of both the MK-9 and MK-3 OC spray are dependent on how well the pressure in the can is maintained, but is recommended to be replaced after 5 years.

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**E. Use:**

OC spray may be considered for use to bring under control an individual or groups of individuals who are engaging in or about to engage in violent behavior. OC spray should not, however, be used against individuals or group who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

[As per City Council resolution \(June 9, 2020\), pepper spray or smoke for crowd control by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as the City Council removes the prohibition.](#)

[Pursuant to Cal. Pen. Code § 13652, chemical agents shall not be used to disperse any assembly, protest, or demonstration except as provided below.](#)

[Chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous](#)

and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

(1) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(2) Repeated, audible announcements are made announcing the intent to use chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and chemical agents are targeted toward those individuals engaged in violent acts.

(5) Chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of chemical agents on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Chemical agents shall not be used by BPD solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

**F. How it Works:**

A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, burning/stinging skin sensation, redness of the skin, irritation and burning of the nose, runny nose, salivation and burning sensation of the mouth, cough, gagging sensation, shortness of breath, temporary paralysis of the larynx (person unable to speak) and nausea (caused by shock, not the OC itself). A person may also feel disorientated, anxiety, and/or panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

**(2) Purpose:**

There are a variety of situations where officers may use OC spray such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control ([except as limited by the June 9, 2020 Council policy](#)), barricade or hostage situations and dealing with dangerous animals.

**(3) Fiscal Cost:****A. Initial Cost:**

The MK-3 OC spray cost approx. \$19 per unit and the MK-9 OC spray costs approx. \$60 per unit. The manufacturer is Defense Technology and the Berkeley Police Department purchase each unit from Galls Police Supply or LC Action Police Supply. Purchases for these tools are made when inventory gets low which is typically determined by how many new officers are sworn in, as well as if they are utilized in dangerous situations.

**B. Cost of Use:**

The cost of each usage is unpredictable due to the unknown nature of crime, timelines of dangerous situations, and number of applications.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of OC spray are not calculable. It could lead to serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

See below cost of training.

**E. Training Cost:**

Training is conducted in the police academy and in-house by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

**F. Maintenance and Storage Costs:**

The majority of the MK-3 OC sprays are either stored within the Police Department or with each sworn police officer while they conduct official duties. All MK-9 OC sprays are stored in the basement. There are no additional storage costs or associated costs to transporting, maintain, or upgrade.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

The physical effects of being subjected to OC may significantly reduce an individual's aggressive behavior. Reports have shown that the use of OC can reduce the amount of officer and arrestee injuries due to its effectiveness. Chemists assigned to the FBI Forensic Science Research and Training Center report no long-term health risks associated with the use of OC. The use of the MK-3 or MK-9 OC spray can render a dangerous and violent situation safe without using a higher level of force.

[Potential negative impacts include serious bodily injury and litigation costs associated with them.](#)

**(5) Mitigations:**

Law Enforcement Officers attend a Police Officer Standard Training (POST) approved academy before they enter into a Field Training Program and continue their training. During this academy they are taught about OC, how to deploy it, its effects, and the decontamination process. They are also subjected to OC to physically feel the effects themselves. After the academy, each officer is issued a MK-3 OC spray which they are to keep on their person while on duty. If deployed and when practical, medical personnel should be summoned for the affected person(s) per policy 303. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in

the ordinance.

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**Alternatives:**

Alternatives to utilizing OC sprays are tools such as expandable batons, less lethal launchers, and/or physical body weapons. The rationale to use OC spray depends on the circumstances of each individual incident and the individual officer involved in the incident. As mentioned above, reports have shown that OC spray may significantly reduce an individual's aggressive behavior which can minimize the amount of force necessary to apprehend that subject. Per our Use of Force policy (Lexipol 300), we shall use the minimal amount of force possible during each incident, thus making OC spray a valuable option.

**(6) Third Party Dependence:**

There is no third-party dependence for the First Defense OC spray. Once they are purchased, they are secured in their designated locations within the Police Department or with sworn police officers while they conduct official duties.

**Chlorobenzylidene Malononitrile and Oleoresin Capsicum**

**(1) Description:**

**A. Background:**

Chlorobenzylidene malononitrile (CS):

Chlorobenzylidene malononitrile (CS) is one of the most commonly used "tear gases" in the world. It can be liquid, gaseous, or solid substance intended to produce temporary discomfort through being vaporized or otherwise dispersed in the air. Law enforcement (LE) agencies have found this agent invaluable when faced with combative suspects, for crowd/riot control, and for alleviating barricaded subject situations. LE use it to help control individuals or groups without the need for a higher level of force. There are four different deployment methods of chemical agents (Aerosol - most commonly used by police departments, Fogging, Pyrotechnics, and blast expulsion). All methods of deployment can be affected by certain environmental and physical conditions (wind, rain, temperature, distance, and proximity to others). At standard daily temperatures and pressures, CS forms a white crystal with a low vapor pressure and poor solubility in water.

Oleoresin capsicum (OC):

For this portion of the Impact Statement, Oleoresin capsicum (OC) will be referred to in the aerosol canister form. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a

pungent and irritating pepper odor. It is classified as an inflammatory agent. OC is mixed with several types of solutions which act as carriers.

**B. Quantity:**

Inventory for CS canisters:

Qty 6 – 5230 CS Canisters

Qty 24 – 6230 CS Canisters

Qty 20 – 5230B CS Baffled Canister (flameless)

Qty 17 – 5231 CS Tri-Phaser Canisters

Qty 21 – 4630 CS Muzzle Blast (used with 40 mm less lethal launcher)

Qty 4 – 4530 CS Impact Rounds (used with 40 mm less lethal launcher)

Qty 19 – 4330 CS Barricade Projectile Rounds (used with 40 mm less lethal launcher)

Inventory for OC canisters:

Qty 54 - 9440 OC Tear Ball

Qty 19 - 5440 OC Flameless

Qty 20 - 6340 OC Vaper

**C. Capability:**

CS aerosols with microscopic particles which are potent sensory irritants becoming attached primarily to moist mucous membranes and moist skin. Common effects are: coughing, increased mucous secretion, difficulty breathing, skin reactions, and excessive salivation. The onset of symptoms typically occurs within 20 to 60 seconds, and if the exposed individual is placed in fresh air these effects generally cease in 10 to 30 minutes.

A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, stinging skin sensation, redness of the skin, irritation of the nose, runny nose, salivation, cough, gagging sensation, and shortness of breath. A person may also experience anxiety and panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

Both CS and OC canisters can render a dangerous and violent situation safe without using a higher level of force.

**D. Lifespan:**

CS and OC canisters expire in approximately 5 years.

**E. Use:**

As per City Council resolution (June 9, 2020), the use of tear gas by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited. Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

Pursuant to Cal. Pen. Code § 13652, kinetic energy projectiles and chemical agents shall not be used to disperse any assembly, protest, or demonstration except as provided below.

Kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

(1) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and



objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(10) Kinetic energy projectiles or chemical agents shall not be used by BPD solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

(11) If the chemical agent to be deployed is tear gas, only a commanding officer at the scene of the assembly, protest, or demonstration may authorize the use of tear gas.

**(2) Purpose:**

There are a variety of situations where peace officers may in the past have used chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals. Such uses of tear gas are now prohibited by Berkeley law.

**(3) Fiscal Cost:**

**A. Initial Cost:**

The cost for CS canisters ranges from \$20.00 to \$39.00 per unit. The cost for OC canisters ranges from \$36.00 to \$44.00 per unit. The Berkeley Police Department prefers the use of the Combined Tactical Systems (CTS) chemical agents and we

purchase them from LC Action Police Supply.

**B. Cost of Use:**

The cost of each proposed use is unpredictable due to the demand, unknown nature and timelines of dangerous crowd/riots situations, dangerous barricade situations, and hostage situations.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of OC and CS are not calculable. It could lead to serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

See below cost of training.

**E. Training Cost:**

When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance and Storage Costs:

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The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

**F. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

BPD is committed to preserving and protecting human life and welfare. These tools allow us to fulfill our commitment to our community.

Law Enforcement, under Penal Code 12403.1, is able to lawfully purchase, possess, or use chemical agents in the discharge of their duties. CS and/or OC canisters have been prominently used to resolve dangerous barricaded suspect situations and violent crowd control/riot situations.

Berkeley Police officers are trained to utilize time and distance to de-escalate

dangerous barricaded situations in order to resolve each incident with minimal the use of force (per Use of Force Policy 300). In some circumstances when all other options are exhausted, CS and/or OC can be inserted into the structure in which the barricaded suspect is, denying access to certain areas inside. Unless exigent circumstances arise, all attempts to evacuate the structure are made prior to any deployment. When CS and/or OC are deployed into a structure the suspect may be forced outside allowing the situation to resolve safely with no use further use of force.

CS and/or OC chemical agents can be utilized to create order in dangerous crowd control/riot situations that have demonstrated violence or destruction. During these incidents, typically a clear and direct warning has been given to the crowd to disperse before the chemical agents are deployed. The ability to disperse crowds from a distance limits injury to Police Officers as well as damage to critical structures.

[Severe injuries occur not infrequently from the use of CS and PC chemical agents, including to multiple body systems, with the majority to the skin, eyes, and cardiopulmonary system and may result in significant psychological symptoms and long-term disability.](#)<sup>4</sup>

(5) **Mitigations:**

Regarding the already mentioned impacts, the decision to utilize chemical agents (unless there are exigent circumstances) flows through the chain of command and ultimately makes its way to the Chief of Police and the City Manager. If there are exigent circumstances, the Field Commander makes the decision and then advises

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<sup>4</sup> [Rohini J. Haar, MD, MPH, and Vincent Iacopino, MD, PhD, \*Lethal in Disguise: The Health Consequences of Crowd Control Weapons\*, Physicians for Social Responsibility ,2016, p. 44.](#)

the Chief of Police as soon as practical. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

With these procedures incorporated in BPD's policies, this mitigates many potential negative impacts. Per Policy 428 – First Amendment Assemblies - The Field Commander shall determine the type and quantity of chemical agents to be used. After use of chemical agents, the Field Commander shall re-evaluate the scene to determine if additional chemical agents are needed. Less-than-lethal munitions (40 mm CS impact rounds), chemical agents (including OC spray), and/or smoke shall only be deployed in crowd control situations as outlined in the Use of Force Policy. For planned events, inventories shall be conducted before and at the conclusion of the incident. Outside agency inventories shall also be tracked.

In addition to the mitigations in place, the Berkeley Police Special Response Team also receives annual training on the use of chemical agents, the effects, and the decontamination process. Per policy 303, when practical, medical personnel should be summoned for the affected person(s).

(6) **Alternatives:**

There are no direct alternatives for CS and OC. They are the industry's leading way to resolve barricaded suspects while reducing the likelihood of injury to the subject, community, and officers. Additionally, it is one of the only tools that allows officers to stop acts of violence or regain order during crowd control/riot situations. They are very distinct in nature and have direct purposes. The rationale to use CS or OC depends on the circumstances of each incident. The Berkeley Police Department shall use the minimal amount of force per our Use of Force Policy 300. The use of CS or OC allows the police personnel to maintain distance, giving officers more time to react and avoid a potential need for a higher level of force to safely resolve the situation.

(7) **Third Party Dependence:**

There is no third-party dependence for CS and OC chemical agents. Once they are purchased, they are secured in their designated areas and stay there until they are either used during incidents or training.

## Remington 700 Rifle

### (1) Description:

#### A. **Background:**

The Remington 700 is a series of bolt-action rifles designed in 1962 by the Remington Arms Company. The “700” designator is the generic name for multiple models of rifles with various parts, barrel lengths, stocks, etc. The Remington 700 rifle has long been used by law enforcement agencies and continues to be an industry standard for issued equipment. The Berkeley Police Department utilizes a custom Remington 700 action, chambered in the common .308-caliber round, with a 20” barrel and an Accuracy International chassis/stock. The rifle also includes a Nightforce 3-15x magnified optic and bipod.

BPD utilizes Hornady .308-caliber ammunition. This particular ammunition is specially designed for law enforcement applications due to its increased and consistent accuracy and performance.

#### B. **Quantity:**

The Berkeley Police Department Special Response Team (SRT) currently possesses six Remington 700 rifles, all configured in the same manner.

Currently, BPD has approximately 1,800 Hornady .308-caliber rounds. That quantity of ammunition fluctuates depending on supply from distributors and training schedules of those trained officers.

#### C. **Capability:**

The Remington 700 rifle, with the appropriate ammunition, training, and practice, is capable of consistent and highly accurate shooting out to a distance of approximately 500-yards.

The Remington 700 is intended to be used in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation.

#### D. **Lifespan:**

The Remington 700 bolt-action rifles have an expected life span of 10-years if properly maintained.

**E. Use:**

Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

**F. How it Works:**

The Remington 700 is a manually operated rifle. It requires the officer to physically maneuver a handle to expel a spent cartridge and to load another unspent round of ammunition in order to fire a second round. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. The officer must then pull a handle attached to the bolt to the rear, ejecting the spent cartridge. The officer then pushes the bolt forward, which picks up another bullet from the magazine, and closes the chamber, making the rifle ready to fire again.

**(2) Purpose:**

This rifle is to be used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. This rifle provides police with the benefit of adding distance to a volatile situation which can increase the safety for community members and officers. This rifle is an ancillary firearm for situations where increased distance and accuracy is needed to safely resolve the situation.

**(3) Fiscal Cost:****A. Initial Cost:**

The initial cost to purchase this rifle with its associated components is approximately \$10,000 dollars each. Their average life span is 10-years at which time it will likely need to be replaced.

**B. Cost of Use:**

Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on training.

**C. Cost of Adverse Effects:**

Adverse effects and improper usage of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

If this rifle is not cared for or maintained well, then a potential financial adverse impact would be the premature purchasing of a replacement rifle or replacement

parts. However, authorized and trained Berkeley Police armorers service and provide regular maintenance of the rifles. The cost of maintenance is staff time.

**E. Training Costs:**

The cost associated with training is the staff time, range fees, and cost of spent ammunition. SRT members train once a month and, on average, each member shoots approximately 50-rounds. Currently, there are only 4 members shooting at each training day. This equates to approximately 2,400 rounds of ammunition being fired per year. This does not include special training days or attendance to training schools/classes. A single box of 20-rounds costs approximately \$20-dollars or \$1 dollar per round.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use over time. Firing pins need to be replaced every 5 to 7 years. The maintenance cost associated with this rifle is minimal.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

**G. Upgrade Costs:**

Upgrade costs and maintenance cost are synonymous due to the consistent design. Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing; those upgrade costs are unknown at this time.

**(4) Impact:**

The primary purpose of this rifle is to further SRT's goal of adding time and distance when dealing with a violent and dangerous individual(s). The rifle may allow SRT additional time by increasing the distance between law enforcement and the specific individual, thereby increasing the likelihood of a more peaceful resolution. Like all tools, it has a time and place for its intended operational efficacy.

**(5) Mitigations:**

Mitigating impacts from this tool's primary purpose is done through regular training. The training includes accuracy, decision making, scenarios, and various other training points. All uses of force require documentation that is completed by the supervisor

in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**

The Remington 700 rifle is an industry standard tool used to deliver precision accuracy on an intended target. This tool can deliver accuracy and predictability through intermediate barriers like glass windows. It can be used at distances greater than any other tool currently possessed or authorized. No alternate tool or method would accomplish the same goal.

(7) **Third Party Dependence:**

These rifles are fairly simple in their design and operation. They do require regular maintenance which is commonly performed by each individual member. BPD Armorers are also capable of performing additional maintenance. If an issue arises which is beyond the scope of our Armorers we would seek professional assistance from the manufacturer. However, the need for this is very rare.

### **ReconRobotics Recon Scout XT**

(1) **Description:**

A. **Background:**

The Recon Scout XT is a throwable micro-robot manufactured by ReconRobotics for use in law enforcement applications. The Recon Scout XT enables officers to obtain instantaneous video footage and audio within indoor or outdoor environments. Designed to withstand repeated drops onto concrete, the Recon Scout XT robot can be thrown into hazardous situations (hostage rescue, barricaded subjects, natural disasters, etc.) in order to allow officers to quickly and safely make informed decisions when seconds count.

B. **Quantity:**

The Berkeley Police Department has two Recon Scout XT throwable robots, both purchased in 2010.

C. **Capability:**

The Recon Scout XT robot is designed to be able to crawl over a variety of terrain, clearing obstacles up to 2" (5 cm) tall. It could be thrown into hazardous



situations, indoor and outdoor, and provide live audio and video feed back to the controller.

**D. Lifespan:**

Both Recon Scout XT robots are over 10 years old and ReconRobotics have developed and manufactured more advanced robots. ReconRobotics have stopped manufacturing certain parts for the Recon Scout XT, so the lifespan is dependent on what parts need to be replaced.

**E. Use:**

The Recon Scout XT robot may be deployed to help police officers safely view potentially dangerous environments before entering them.

**F. How it Works:**

The Recon Scout XT robot has a cylindrical body with a finned-wheel at either end of its body, and is stabilized by a rubber “tail”. It measures approximately 6 ½” wide, and each wheel is about 5” in diameter (fin to fin) and weights just over one pound (1.2 lbs.). The Recon Scout XT robot sends digital video and audio back to an Operator Control Unit (OCU; controller with a screen and joystick), which allows the officer to control the robot, which provides a live feedback containing audio and visual feeds. The Recon Scout XT robot does not record audio or video footage; there is no data storage capability.

**(2) Purpose:**

The Recon Scout XT robot is intended to safely provide police officers valuable information during high-risk, rapid evolving situations via real-time audio and video footage. It can be driven a distance away from the OCU, creating space between the officer and potential danger, thus decreasing the likelihood of injury to those involved in the event, or even a violent encounter between police officers and a dangerous subject. This asset furthers our commitment to the sanctity of life by offering time and distance in critical incidents.

**(3) Fiscal Cost:**

**A. Initial cost:**

The initial cost for the Recon Scout XT robot was about \$12,500 per unit (2010 cost).

**B. Cost of Use:**

There is no “per use” cost of this equipment. The Recon Scout XT is powered by a rechargeable battery.

**C. Cost of Potential Adverse Impacts:**

The likelihood of adverse impacts due to the use of the Recon Scout XT robot is low – it is small, lightweight and is not likely to injure persons or damage personal property when deployed; however, there is a small chance that the Recon Scout XT robot might cause damage to personal property when deployed (thrown) into a structure. Due caution is used when it becomes necessary to throw, rather than place, the robot into a structure.

**D. Annual and Ongoing Cost:**

There are no ongoing or annual costs associated with the use of the Recon Scout XT robot. Being that it is battery operated, there is a nominal cost associated with charging the Recon Scout XT robot's batteries, and the batteries of the OCU. The Recon Scout XT robot is fairly simple to operate, thus there is no cost associated with training officers in its use. There are no costs with transportation or storage of the Recon Scout XT robot. While there are newer models of this robot available, there does not appear to be any upgrades available for the Recon Scout XT. The Recon Scout XT robot has been damaged on occasion, and there are costs associated with repair. But generally, the Recon Scout XT robot is robust and does not need regular repair.

**E. Training Cost:**

The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel familiar with the operations and procedures of the Recon Scout XT robot. The cost of training is staff time.

**F. Maintenance and Storage Costs:**

There are no annual or storage costs.

**G. Upgrade Costs:**

There are no upgrades available at the time of this report.

**(4) Impact:**

The Recon Scout XT robot is used to safely gather information in situations where it may be dangerous to expose an officer, or officers, to gather the same information. Putting officers in such unknown, tense situations has the potential to create violent encounters, or otherwise place officers in unnecessary peril and danger that might otherwise be avoided by the use of a tool like the Recon Scout XT robot. The Recon Scout XT robot is not likely to have a negative impact on the welfare or safety of the public as its role is to gather real-time information during high-risk incidents such as

hostage or potentially life-threatening situations. The Recon Scout XT robot is likely to improve the welfare and increase the safety of the public through its ability to gather real-time information and feed it back to police officers. The Recon Scout XT robot does not have the capability to record or store data.

(5) **Mitigations:**

The use of the Recon Scout XT robot is limited to sworn police officers, and guided by field supervisors (Lieutenants and Sergeants). Procedurally, the Recon Scout XT robot is used when exigent circumstances exist (hostage situation, barricaded subject, natural disaster necessitating rescue, etc.) and real-time information is necessary to safely and effectively resolve the situation. The robot does not record or store data.

(6) **Alternatives:**

Unmanned aerial vehicles (UAV) are an alternative to robots such as the Recon Scout XT robot. However, the Berkeley City Council has prohibited the Berkeley Police Department from using UAVs. They are not constrained by obstacles on the ground and provide far superior perspective and situational awareness; at times, obstacles halt the Recon Scout XT robot's movement. There are several other robots on the market, however, the Recon Scout XT robot is compact, lightweight (weighing in at just over a pound), very maneuverable, and can easily be carried by an officer. It can also be introduced into structures by throwing it through any opening – an option not possible with other robot models.

(7) **Third Party Dependence:**

The Recon Scout XT robot does not currently rely on a third-party company or vendor for its use or maintenance. Should maintenance or parts be required beyond the scope of the members of the Berkeley Police Department, the robot would be sent to ReconRobotics for service.

### **Andros Remotec HD-1 Hazardous Duty Robot**

(1) **Description:**

A. **Background:**

The Andros Remotec HD-1 Hazardous Duty Robot, hereinafter referred to as Remotec HD-1 robot, was designed to support a wide range of missions in demanding environments. The Remotec HD-1 robot is capable of lifting up to 125 pounds, tracked articulators stair climbing, and has an integrated Talisman radio system for a stronger radio wave connection between the controller and the robot.

Remotec has served explosive ordinance disposal units, hazardous materials units, and other first responders as a provider of mobile robotic systems for application into a variety of undesirable, hazardous and potentially life-threatening environments. The Remotec HD-1 robot allows individuals to approach hazardous devices to examine and manipulate the device without putting people in harm's way.

**B. Quantity:**

The Berkeley Police Department Bomb Squad has one robot, the Remotec HD-1 robot.

**C. Capability:**

Remotec HD-1 robot is used in situations where a potential life-threatening situation exists and is too hazardous for a bomb technician to approach in person. The Remotec HD-1 robot is also used to survey an area prior to a bomb technician approaching a scene to check for trip wires and ascertain a good approach path. The Remotec HD-1 robot has three cameras and audio monitoring that stream live video and audio back to the control module; however, it is unable to record and does not have any data storage capabilities. It has several attachment mounting options as well. The Remotec HD-1 robot also has the ability to carry a variety of tools. Some of the tools are:

- 1) A spike to break glass and access vehicles or homes with potential explosive devices inside
- 2) An X-ray mount in order to remotely X-ray suspected explosive devices.
- 3) Percussion actuated non-electric disruptors which are smooth barrels that are filled with water and fired at high speed with a blank shotgun round to open backpacks, suitcases, and packages from a distance
- 4) A hook with cutting blades that are used to cut backpack straps, ropes, etc.
- 5) PAN rounds containing various fills, from sand to slugs, in order to open sturdier packages made from metal or other hard covers.
- 6) Electrical connections to connect explosives that can be detonated remotely and from a safe distance.

**D. Lifespan:**

The Remotec HD-1 robot has an expected life span of 10 years. It is currently 13 years old and has begun exhibiting issues. The Remotec HD-1 robot weighs just

over 200 lbs. and has been near multiple explosions over the years and crossed a variety of off-road terrain

**E. Use:**

Used to examine and possible destroy hazardous materials such as an explosive device.

**F. How it Works:**

The Remotec HD-1 robot is piloted by a bomb technician into a hazardous area to locate, examine, and render suspicious packages and explosive devices safe by utilizing a variety of attachable tools.

**(2) Purpose:**

The Remotec HD-1 robot is used as a means to approach hazardous situations where a potentially lethal threat such as an explosive device exist. The Remotec HD-1 robot allows for the examination and manipulation of an object or potential explosive device without unnecessarily putting a bomb technician's life at risk.

**(3) Fiscal Cost:**

**A. Initial Cost:**

Procured in 2008 for \$214,496 including on-site training through a UASI Grant. (64,292-N.S.)

**B. Cost of Use:**

None. The robot is electric and operated through the City's electricity for charging.

**C. Cost of Potential Adverse Effects:**

The Remotec HD-1 robot interacts with inanimate objects. However, should it encounter a package that explodes, it could potentially destroy the robot and damage other property.

**D. Annual and Ongoing Costs:**

There is no annual cost. Maintenance of the Remotec HD-1 robot is conducted by Berkeley Police Bomb Technicians.

**E. Training Costs:**

Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. The cost of training is limited to staff time.

**F. Maintenance and Storage Costs:**

Remotec offers occasional maintenance and upkeep workshops free of charge.

**G. Upgrade Costs:**

There are no costs for upgrades as the company has stopped manufacturing the robot and any applicable upgrades.

**(4) Impact:**

The Remotec HD-1 robot is used by the Berkeley Police Department Bomb Squad as a means to examine a potentially explosive device in order to keep the community safe. Since April 2020, the Berkeley Police Department Bomb Squad has responded to 14 incidents. The impact of the Remotec HD-1 robot has been to reduce and minimize the danger posed by calls of possible explosive devices to the Berkeley Police Department's Bomb Technicians.

**(5) Mitigations:**

The Remotec HD-1 robot is used in situations where a hazardous device exists. In these situations, the area is always evacuated in order to ensure community safety.

**(6) Alternatives:**

The Remotec HD-1 robot is 13 years old and there has been significant development in technology. There are several alternatives that are far superior than our current Remotec HD-1; Mark V-A1 robot developed by Remotec Andros, Caliber Flex developed by ICOR Technology, Digital Vanguard-S developed by Med-Eng and T7 and T4 developed by L3Harris Technologies. These are alternatives that have newer and better technology and capabilities than the Remotec HD-1 robot.

**(7) Third Party Dependence:**

Remotec representatives are the only ones used to diagnose and maintain complex issues on the robot that cannot be done in-house. Since it is proprietary technology, Remotec may void warranties on any repairs made by outside vendors or by untrained personnel. Therefore, all complex issues with the Remotec HD-1 robot must be repaired by Remotec.

## Light/Sound Diversionary Device

### (1) **Description:**

#### A. **Background:**

Light/Sound Diversionary devices also known as distraction device, flashbang, light/sound and noise/flash devices have been available for approximately 40 years and are a safe and effective tool for Law Enforcement (LE) to use during challenging tactical incidents. The device will be referred to a diversionary device throughout this document.

#### B. **Quantity:**

Qty 50 - CTS 7290 Diversionary Device

#### C. **Capability:**

When a diversionary device is deployed they create a loud noise, heat and brilliant light and create an effective diversion. They can create psychological and physiological effects such as: hearing a loud noise beyond that of everyday living, seeing a short bright light, and feeling of a change in atmospheric pressure. These effects may disorient/confuse subjects for a short time giving tactical teams the ability to apprehend that subject without using a higher level of force.

#### D. **Lifespan:**

The lifespan of the CTS 7290 Diversionary Device is 5 years.

#### E. **Use:**

The use of a diversionary device is to create a diversion in order to facilitate entry and enable arrest. Circumstances justifying the use of a diversionary device may include, but not limited to barricaded subject or hostage situations and high-risk search warrants services.

#### F. **How it Works:**

The main charge of a modern diversionary device typically contains flash powder which is sometimes called photoflash powder. Upon initiation, this chemical compound causes the device to deflagrate (not detonate). The powder mixture is rapidly changed into gases that expand outward reaching upwards to 3,800 times the original volume of the charge itself. This process releases the desired effects of loud noise, bright light and the feeling of atmospheric pressure. Flash powder is typically made up of an oxidizer and some type of fuel. The oxidizer is needed to initiate and sustain the flash powder's rapid combustion. This is required since sufficient oxygen cannot be obtained from just the surrounding air.

(2) **Purpose:**

The purpose of a diversionary device is to create a reactionary gap of a person by temporarily disorienting them. This gap gives tactical teams an opportunity to apprehend a suspect while using the minimal amount of force possible. They can also be used to safely invoke a response or redirect the attention of subjects who are either feigning injury, ignoring police commands or are unresponsive while posing a threat to the public.

(3) **Fiscal Cost:**

A. **Initial Cost:**

Diversionary Devices cost approximately \$45 per unit and are purchased through LC Action Police Supply. Purchases for these tools are made when inventory becomes low, based upon critical incident usage and Special Response Team trainings that incorporate live devices.

B. **Cost of Use:**

The cost of each proposed use is unpredictable due to the unknown nature and timelines of dangerous barricade situations, critical incident, and hostage situations. The devices may be stored inside of the Police Department, in the Special Response Team Vehicle, or in the rescue vehicle. There are no additional storage costs. There are no associated costs for transporting, maintenance, training, or upgrades.

C. **Cost of Potential Advert Effects:**

Adverse effects of improper use of a diversionary device are not calculable. It could result in serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

See below training cost.

E. **Training Cost:**

Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices. The cost of training is staff time.



**F. Maintenance and Storage Costs:**

The majority of diversionary devices are stored inside of a room in the basement within the Police Department. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

The Berkeley Police Department is committed to preserving and protecting human life and welfare. These tools allow us to fulfill our commitment to our community.

Diversionary Devices may be utilized in many situations to include potentially dangerous barricaded subject situations, hostage situations, and critical incidents. Some criteria considered prior to a deployment is dependent upon whether the suspect is a dangerous felon, causes a life-threatening situation and/or other unique incidents where it appears to be a reasonable method in which to resolve the situation. When deployed appropriately these devices can assist in safely apprehending suspects and resolving high risk critical incidents with minimal or no injuries to suspects and/or officers.

**(5) Mitigations:**

Since Diversionary Devices are considered low explosives, there are several protocols in place to mitigate possible negative results (i.e. minor or major injuries).

Only trained and qualified personnel are permitted to deploy diversionary devices; typically, members of the Special Response Team who receive constant training regarding the deployment, effects, and post deployment protocols.

Pre-deployment concerns are typically gathered and evaluated, such as:

- The number of people at a location and the individual location of suspects within the structure.
- Evaluation if there are children or elderly people present
- An evaluation of the suspect's mental and physical conditioning
- Evaluation of the building/room layout

- Possible combustible/flammable substances present
- Lighting conditions

When a diversionary device is deployed, the officer shall utilize a helmet, hearing protection, eye protection, body armor, and nomex (fire resistive) gloves.

If a diversionary device is used, a supervisor shall be notified, medical treatment/screening is conducted, and a collection of the deflagrated device is completed. Documentation utilizing the device serial number is recorded.

Per Policy 351 - Except in extreme emergencies (i.e., life-threatening situations), flash/sound diversionary devices shall not be used without prior authorization of the incident commander/on-scene supervisor. Whenever diversionary devices are carried by personnel in an actual situation or incident, that fact shall be noted in the after-action report or police report. In the event devices are deployed, the circumstances surrounding their deployment shall be fully described. The Chief of Police or his or her designee shall be responsible for reviewing any deployment of diversionary devices to ensure that policy was followed. Diversionary devices are registered by serial number with the Bureau of Alcohol, Tobacco, and Firearms (ATF). Typically, the police department's purchase of new devices is reported directly (by case-lot serial numbers) to ATF by the device manufacturer via ATF Form 5. The National Firearms Act requires the police department to notify ATF upon the use/expenditure of diversionary devices. A Special Response Team member shall be responsible for submitting written notification to ATF when all devices listed on a single ATF form 5 have been used/expended.

(6) **Alternatives:**

A possible alternative to a diversionary device (flashbang) is the Tactical Electronic Distraction Device (T.E.D.D.) which emits 2600 lumen light and high pitched 120 decibel sound to disorientate subjects. This could be a good tool as it is not a low explosive however it has its negative aspects as well:

- There is no feeling of atmospheric pressure, limiting the desired momentary physiological effect.
- A suspect could pick up and throw the device at potential victims and at police officers. The currently used diversionary devices are too hot to attempt this.

- In certain circumstances, a suspect could potentially steal the device during an escape.
- The individual cost per unit is approx. \$200 which is much more than a diversionary device
- This device is significantly less effective in disorienting subjects compared to a diversionary device.

(7) **Third Party Dependence:**

There is no third-party dependence for Diversionary Devices with the exception of communication with ATF of the purchase. Once they are purchased, they are secured within their designated locations where they are stored until they are either used during incidents or training.

### **Long Range Acoustic Device (LRAD)**

(1) **Description:**

A. **Background:**

The Long-Range Acoustic Device (LRAD) is a high intensity directional acoustical array for long range, crystal clear notification system. The use of the LRAD is for communications.

B. **Quantity:**

The Berkeley Police Department possesses 2 Long Range Acoustic Devices (LRAD) speakers. One is an LRAD 450XL and the other is an LRAD 100X.

C. **Capability:**

Both of these speakers are able to focus sound in directional pattern allowing the user to make sound audible over distances much greater than conventional public address speakers. The LRAD 450XL is the larger of the two and designed to either be used in a fixed location or mounted on a vehicle to make it portable. It has a usable range of approximately 1 mile. The LRAD 100X is smaller and more portable. It can be carried or mounted to a person's chest for mobility or mounted to a vehicle. Its range is approximately 1/3 of a mile. Both of these systems allow for clear long-range communication, they are also able to play recorded messages.

**D. Lifespan:**

The lifespan for both LRADs is 25 years.

**E. Use:**

The LRADs are used to communicate with the community during natural disasters, crowd management and control situations, or when other forms of communications are ineffective or inoperable to unequivocally communicate messages from Police or Fire and safely resolve uncertain situations where communicating with the public is paramount.

**F. How it Works:**

The LRADs are essentially a long-range speaker or long-range megaphone and operates as such.

**(2) Purpose:**

The LRADs are designed for clear long-range communication. The LRAD's ability to communicate over a long distance is far superior to any megaphone or Public Address (PA) system mounted to a police vehicle. Additionally, LRAD's may be used to:

- Communicate lifesaving information to residents during disasters
- Communicate to large crowds during parades, festivals, concerts and sporting events
- Establish safety zones and perimeters
- Control traffic congestion
- Conduct Special Response Team operations
- Broadcast a dispersal order
- Communicate during hostage and barricaded subject situations
- Announce and serve high risk warrants
- Communicate to protesters
- Communicate to persons threatening suicide who are in an inaccessible location
- Conduct search and rescue operations

The ability to communicate with the public in a large area increases the safety of all members of the public and law enforcement. It allows everyone in a given area to know what is being communicated, gives more situational awareness to everyone in a given area and allows people to know where to go or not to go.

**(3) Fiscal Cost:****A. Initial Cost:**

The LRAD 450XL and the LRAD 100X were purchased in 2018. The total cost for both LRADs, rechargeable battery packs and accessories was \$49,999.

**B. Cost of Use:**

There is no cost associated with each use of the LRADs. The systems run on batteries or can plug into a vehicle.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of the LRADs are not calculable. It could lead to hearing loss. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

BPD has not incurred any additional cost to date for this equipment.

**E. Training Costs:**

Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD. The cost to train is staff time.

**F. Maintenance and Storage Costs:**

There are no maintenance or storage costs for this equipment.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

The Berkeley Police Department is committed to ensuring the safety of our community. Having the ability to communicate efficiently and effectively in different situations is crucial in providing potentially life-saving information to the public. The LRAD provides BPD personnel the ability to communicate long distances to people that are in a given area, inside structures, or barricaded inside a structure. The LRAD is very effective any situation involving communicating information to large crowds, or entire communities.

[Over shorter distances, LRAD signals are loud enough to cause pain in the ears of people in their path. If used improperly they can cause permanent hearing damage, including tinnitus or hyperacusis, to intended targets, bystanders, and police officers.<sup>5</sup> Improper use may also result in litigation](#)

<sup>5</sup> Tyler Tracy, "Long Range Acoustic Devices (LRAD) and Public Safety," *Acentech*, August 10, 2020, at

costs.

(5) **Mitigations:**

~~The only potential negative impact of the LRAD's is that they~~ are capable of producing a high pitched “deterrent tone” that is designed to disperse a potential threat. This “deterrent tone” does have the ability to cause hearing damage. BPD Policy 707 strictly prohibits any member of BPD from using the LRAD as a weapon. Additionally, the LRAD can only be deployed at the direction of a Watch Commander or Incident Commander and may only be used by personnel specifically trained in the use of the LRAD.

(6) **Alternatives:**

BPD is not aware of any other sound speakers that are able to clearly communicate over long distances of up to 1 mile.

(7) **Third Party Dependence:**

To date, BPD has not depended on any third party for the use or maintenance of this equipment.

### **36” Baton**

(1) **Description:**

A. **Background:**

The Berkeley Police Department issues a knurled grip, polycarbonate, fixed-length straight baton for crowd control purposes. The baton is 36” long and 1.25” in diameter and weighs about 1.64 pounds. Polycarbonate is a thermoplastic, which means it is durable, resistant to splintering and heat.

B. **Quantity:**

In 2017, BPD purchased 175 polycarbonate 36” batons to replace aging wood batons of the same purpose. Additional polycarbonate batons were purchased over the past four years to ensure all sworn police officers as well as trained reserve police officers are equipped with the 36” baton. BPD possesses approximately 195 - 36” polycarbonate batons. Most of these batons are issued to and maintained by individuals. However, a small amount of these batons is stored in a secure equipment room as spares in case of damage or new personnel issue.

[https://www.acentech.com/resources/2020/08/long-range-acoustic-devices-lrad-and-public-safety/.](https://www.acentech.com/resources/2020/08/long-range-acoustic-devices-lrad-and-public-safety/)

**C. Capabilities:**

The 36" baton is carried in a "baton ring" on an officer's belt just as any other baton. It is used as a safety tool and is a means for officers to defend themselves in certain crowd control or riot situations. Trained officers may employ particular applications of force with their 36" batons when directed by their chain of command. The 36" baton is the desirable baton in a crowd control situation as it is 7" longer than the standard 29" baton. The longer baton creates more distance between the officer and others, which is critical when dealing with violent or aggressive crowds.

**D. Lifespan:**

The manufacturer provides a lifetime repair or replacement guarantee.

**E. Use:**

The 36" baton is a less-lethal force tool and is intended to be used in crowd control situations in close quarters, where officers may defend an attack, or when engaging in physical contact with combative or aggressive crowd members. The 36" baton is only used for crowd situations.

**F. How it Works:**

There are a number of appropriate blocking or striking techniques an officer may use when force is justified and the decision is made to use the 36" baton to effectively gain control of a person or situation. The use of the baton requires the officer to continually monitor and assess effectiveness of any delivered strikes. The reason this type of force is administered is to stop a person's attack, threat or resistance, with the goal to place them under lawful arrest for their actions.

**(2) Purpose:**

The 36" baton is a less-lethal tool that may be used when a crowd becomes aggressive, hostile or violent. It is the most effective individual tool of choice when officers are in formation and engaged in crowd control duties.

When officers are deployed to maintain, disperse, or protect others from a violent crowd or civil disobedience, it is imperative that they have an adequate safety zone to protect themselves or others. The 36" baton provides officers additional distance from a potential threat than the standard issue 29" baton.

When the baton is used to strike a subject, kinetic energy transfer occurs. Kinetic

energy is the energy of motion. The amount of translational kinetic energy which an object has depends upon two variables: the mass of the object and the speed of the object. The desired effect is for the officer to apply a baton strike with the necessary energy to stop the threat as quickly and safely as possible. By targeting the large muscle areas of the arms or legs with sufficient kinetic energy, motor and sensory nerves can be affected. When the nerves are affected this will create momentary muscle dysfunction or pain, which will allow the officer the ability to gain control of the subject, while minimizing the possibility of long-term injury to the subject.

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The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person as outlined in policy 303 and 300.

(3) **Fiscal Cost:**

A. **Initial Cost:**

The cost of the Monadnock MP36 2004 36" polycarbonate baton with knurled grip was \$53.00 per baton in September 2017. After tax, \$10,132.94 was spent for the purchase of 175 batons. The department placed an additional order for 20 batons in December 2019. It is anticipated that the cost of the baton will fluctuate a few dollars based on supply and demand over time.

B. **Cost of Use:**

The only cost associated with use that of ongoing departmental training to ensure officers are proficient in authorized baton techniques.

C. **Costs of Potential Adverse Impacts:**

Adverse effects from improper use of the 36" baton cannot be anticipated. Improper use could lead to serious bodily injury or death. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

There is no additional annual or ongoing cost associated with the 36" baton.

E. **Training costs:**

Training on the applications of the batons are conducted at the police academy. Police Office Standard Training (POST) requires "arrest and control" training every 2 years which includes portions of baton training. This training is conducted in-house by POST certified defensive tactics instructors.

F. **Maintenance and Storage Costs:**



There are no associated costs to transporting, maintenance, or upgrades.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

Per Policy 300, “The Berkeley Police Department’s highest priority is safeguarding the life, dignity, and liberty of all persons. The Department is committed to accomplishing this mission with respect and minimal reliance of the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force.”

At times, it may become necessary for police officers to use force in crowd control situations to move a crowd, stop violent behavior, overcome resistance or make a lawful arrest. Officers have been trained that they must do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public. When deemed necessary, use of the 36” baton may be used as a tool to strike a person, create a barrier or used in formation in order to move a crowd in a certain direction. The use of the baton may cause discomfort, pain, blunt trauma and has the potential to cause serious injury. Their use is subject to the totality of the circumstances, proper training, department policy, as well as federal and state law.

Officers who use the 36” baton are trained to continuously assess each situation where force is used and only use the force that is reasonably necessary and proportional to respond to the threat or resistance to effectively and safely resolve the incident.

**(5) Mitigations:**

Per Policy 300, “In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict.”

Per Policy 303, “Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device. Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices. When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets.”

Every officer who carries a 36" baton has been trained how to properly carry the equipment, it's intended use, target areas and non-target areas. Large muscle groups such as the upper legs or lower abdomen are approved target areas and areas to be avoided at the groin and head. When a baton strike is directed at an intended target area and the subject moves simultaneously, it is possible for the officer to unintentionally strike a non-target area. Officers are trained to consider the placement of baton strikes, and to immediately render medical aid to the subject as soon as it is safe to do so.

All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**

The alternatives to the 36" crowd control baton are the 29" standard issue baton and collapsible 26" Rapid Containment Baton (RCB). The standard issue baton and RCB are shorter in length and require officers to be closer to the person they are engaging, thereby increasing the risk of injury to the officer and the person. A longer baton provides an officer with more distance which creates a small safety zone and allows the officer time to react and access the situation before making use of force decisions.

(7) **Third Party Dependence:**

There is no requirement for a third-party service provider to issue the 36" crowd control baton. Berkeley Police Department Defensive Tactics Instructors provide in-house training on the proper use of the baton.

### **Mobile Command Vehicle**

(1) **Description:**

A. **Background**

The Berkeley Police Department owns one Mobile Command Vehicle (MCV). Our MCV is a 2003 Freightliner MT55. This vehicle's most common use is as a commercial delivery vehicle. Our 2003 Freightliner MT55 was converted into a MCV by adding desktop work stations, additional police radios and emergency lighting. The MCV is 30' long and has a gross vehicle weight (GVW) of approximately 23,000 pounds.

**B. Quantity:**

The Berkeley Police Department owns 1 MCV.

**C. Capability:**

The MCV is a mobile office that provides shelter and may be used as a mobile command and communication center.

**D. Lifespan:**

This vehicle is approximately 20 years old and is at the tail end of its serviceable lifespan. All emergency vehicles need to be completely dependable and vehicles of this age start to lose dependability as old parts start to fail without warning. The modern versions of this type of vehicle are typically converted motorhomes.

**E. Use:**

This vehicle is used as a mobile command post for large scaled events.

**F. How it Works:**

This vehicle operates and drives like other vehicles.

**(2) Purpose:**

This vehicle may be used as a mobile command post for any larger scaled events or as a communications center in the event the communications center in the Public Safety Building is inoperable. Some examples of large-scale events include Solano Stroll, Juneteenth, 4<sup>th</sup> of July, critical incidents or natural disasters.

**(3) Fiscal Cost:****A. Initial cost:**

The initial cost of the MCV (2003 Freightliner MT55) was \$230,800.

**B. Cost of Use:**

The cost of use is the cost of fuel from the City Corporation Yard.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of the MCV are not calculable, but is the same as improper use of any vehicles. The improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

There is no annual or ongoing cost associated with this vehicle. Maintenance of the vehicle is conducted by the City's Corporation Yard.

**E. Training Costs:**

Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle. The training cost is staff time.

Maintenance and Storage Costs:

There are no storage costs and maintenance would be conducted by the City of Berkeley Corporation Yard.

**F. Upgrade Cost:**

The MCV is almost 20 years old and upgrades would involve replacing different parts of the vehicle. This work would be conducted by the City of Berkeley's Corporation Yard. The cost would be staff time plus the cost of any necessary parts.

**(4) Impact:**

The MCV is used as a command post for any large scaled event. It works as a mobile central location where resources can stage and be deployed from. It provides the police department with on-site command, supplying a control and communications hub that is needed for large community events, or critical incidents such as natural disasters in order to maintain public safety. [The deployment or appearance of certain armored vehicles may escalate tension, provoke fear, prevent clear communication, or increase distrust.](#)

**(5) Mitigations:**

The MCV shall only be operated by trained personnel that have demonstrated proficiency in the operations of this vehicle per Berkeley Police Department Policy 811.

**(6) Alternatives:**

The MCV is almost 20 years old. Current MCV from other agencies are large mobile homes converted into MCVs.

**(7) Third Party Dependence:**

All maintenance is completed through the Cities Corp Yard so there is no dependence on a third party.

**Barrett Model 99 Rifle**

**(1) Description:**

**A. Background:**

The Barrett Model 99 rifle is a single shot bolt-action 50-caliber rifle first

introduced in 1999. It is intended to be used in emergency situations where there is a high potential for violence.

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**B. Quantity:**

Berkeley Police Department Special Response Team (SRT) currently possess 1 (one) of these rifles and is not looking to purchase any others.

Currently BPD has approximately 100 Summit Ammunition .50-caliber BNG rounds.

**C. Capability:**

This rifle is used only in situations where a potential life-threatening situation exists. The length of the rifle's barrel coupled with the ammunition result in precision accuracy. This rifle is capable of disabling any vehicle engine block because of the large caliber round.

**D. Lifespan:**

This rifle has been in our possession for almost 15-years and we expect it to last for an additional 20 years or more considering how in-frequently it's used.

**E. Use:**

This rifle is used primarily in emergency situations where a life-threatening situation exists, necessitating a vehicle to be disabled.

**F. How it Works:**

This is a bolt-action rifle that fires one round at a time and needs to be reloaded by hand after each round. The Barrett Model 99 rifle works similar to all modern bolt-action rifles. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. The operator pulls the bolt back, ejecting the spent cartridge. The operator then loads another bullet into the breach, pushes the bolt forward, and closes the chamber, making the rifle ready to fired again.

**(2) Purpose:**

The Barrett rifle is a firearm that may be used to stop a vehicle which poses a lethal threat to the public, or to disable a vehicle which presents a threat to the safety of another person(s) by its continued use. There are vehicle disabling tools that may disable vehicles by slowly deflating the tires; however, even with tires deflated a

vehicle has the ability to operate and remain a threat to the public. Furthermore, these tools must be hand deployed and, in most circumstances, require officers to expose themselves to deadly threats. The Barrett rifle creates the ability to effectively disable vehicles instantaneously from a distance away.

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(3) **Fiscal Cost:**

A. **Initial Cost:**

The Barrett Model 99 50-caliber rifle has a retail cost of approximately \$12,500 dollars. The Department of Justice provided the Barrett rifle to the Berkeley Police Department on 04/04/2007. There was no initial cost related to BPD taking possession of it.

B. **Cost of Use:**

The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$6 dollars per bullet; \$60 for a box of 10 and \$600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

C. **Cost of Potential Adverse Effects:**

Adverse effects of improper use of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

The annual cost of the equipment is minimal and includes ammunition expenditure, cleaning equipment, and possibly replacing the optics at some point in the future.

E. **Training Costs:**

The cost associated with training is the staff time, range fees, and cost of spent ammunition.

F. **Maintenance and Storage Costs:**

Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

G. **Upgrade Costs:**

Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing; those upgrade costs are unknown at this time.

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(4) **Impact:**

The Berkeley Police Department is committed to preserving and protecting human life and welfare. The Barrett rifle is a firearm the department would primarily use to stop a vehicle which poses a lethal threat to the public or used to disable a vehicle that presents a threat to the safety of another person(s) by its continued use.

The Barrett rifle is intended as a tool to increase the safety and welfare of community members and officers alike.

The Barrett rifle has minimal or no impact on civil rights or civil liberties as it will only be deployed in very specific situations, by very select members of the SRT. This is not a piece of equipment that is carried by an officer on routine patrol, and is highly unlikely that any members of our community would ever see this equipment due to its very selective use in the most critical of instances.

(5) **Mitigations:**

Only four BPD members are authorized to utilize this rifle. Authorized members are trained in its use as well as the very specific and limited circumstances where this equipment would be utilized.

(6) **Alternatives:**

There is no other alternative tool or asset available that could accomplish the same goal of this rifle. An alternative rifle to the Barrett model 99 is a different rifle of equal capability, such as a Lapua .338 caliber rifle.

(7) **Third Party Dependence:**

These rifles are simple in their design and operation. They do require regular maintenance which is performed by an SRT Team Leader. If an issue arises which is beyond the scope of our Armorers we would seek manufacturer assistance. However, the need for this is expected to be very rare.

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Appendix:

## Applicable Lexipol Policies Respective to Each Equipment

Policies are hyperlinked to the Berkeley Police Department Lexipol policy website.

### M4 rifle/Patrol Rifle

- [Policy 300 \(Use of Force\)](#)
- [Policy 349 \(Tactical Rifle Operator Program\)](#)

### Penn Arms 40MM launcher

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

### Milkor LTL multi-launcher

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

### FN 303 Launcher & FN Pava rounds

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

### Chlorobenzylidene Malononitrile and Oleoresin Capsicum (canister and spray)

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)

### Remington 700 Rifle

- [Policy 300 \(Use of Force\)](#)
- [Policy 354 \(Precision Rifle\)](#)

### ReconRobotics Recon Scout XT Robots & Andros Remotec HD-1 Hazardous Duty Robot

- [Policy 708 \(Robot Cameras\)](#)

### Light/Sound Diversionary Device

- [Policy 353 \(Diversionary Device\)](#)

### Long Range Acoustic Device

- [Policy 707 \(Long Range Acoustical Device\)](#)
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36" batons

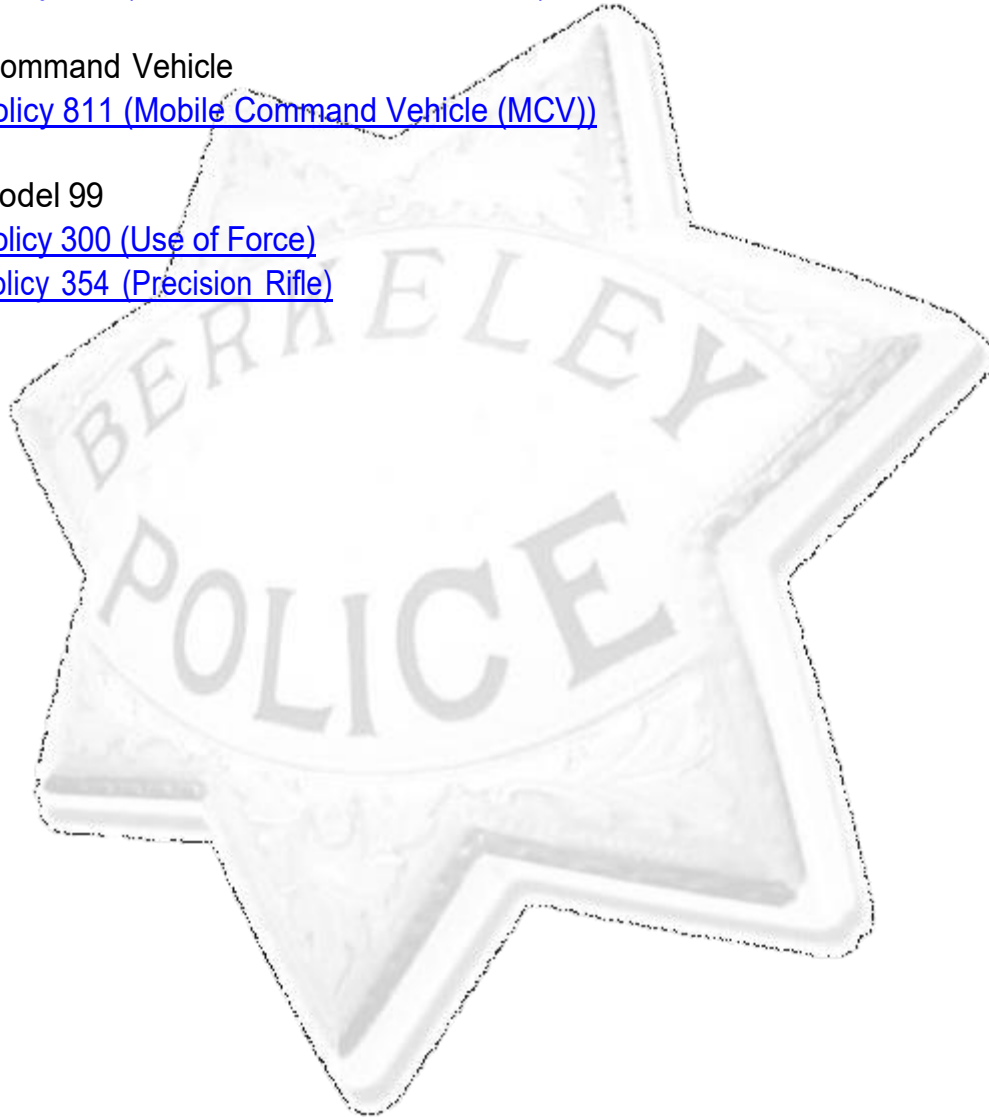
- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

Mobile Command Vehicle

- [Policy 811 \(Mobile Command Vehicle \(MCV\)\)](#)

Barret Model 99

- [Policy 300 \(Use of Force\)](#)
- [Policy 354 \(Precision Rifle\)](#)





## Control Devices and Techniques

### 303.1 PURPOSE AND SCOPE

This policy provides guidelines for the use and maintenance of control devices that are described herein.

### 303.2 POLICY

In order to control subjects who are violent or who demonstrate the intent to be violent, the Berkeley Police Department authorizes officers to use control devices and techniques in accordance with the guidelines in this policy and the Use of Force Policy.

### 303.3 ISSUING, CARRYING AND USING CONTROL DEVICES

Control devices described in this policy may be carried and used by members of this department only if the device has been issued by the Department or approved by the Chief of Police, or his/her designee.

Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device.

Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices.

When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets.

[Except as otherwise provided in Section 303.9, kinetic energy projectiles and chemical agents shall not be used to disperse any assembly, protest, or demonstration \(Penal Code 13652\).](#)

### 303.4 RESPONSIBILITIES

#### 303.4.1 WATCH COMMANDER RESPONSIBILITIES

The Watch Commander may authorize the use of a control device by selected personnel or members of specialized units who have successfully completed the required training.

#### 303.4.2 PERSONNEL AND TRAINING SERGEANT RESPONSIBILITIES

The Personnel and Training Sergeant, or designated instructor, shall control the inventory and issuance of all control devices and shall ensure that all damaged, inoperative, outdated or expended control devices or projectiles are properly disposed of, repaired or replaced.

Every control device will be periodically inspected by the Personnel and Training Sergeant or the designated instructor for a particular control device. The inspection shall be documented.

#### 303.4.3 USER RESPONSIBILITIES

All normal maintenance, charging or cleaning shall remain the responsibility of personnel using the various devices

## *Control Devices and Techniques*

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Any damaged, inoperative, outdated or expended control devices or projectiles, along with documentation explaining the cause of the damage, shall be returned to the Personnel and Training Sergeant for disposition. Damage to City Property forms shall also be prepared and forwarded through the chain of command, when appropriate, explaining the cause of damage.

### **303.5 BATON AND COLLAPSIBLE BATON GUIDELINES**

The need to immediately control a suspect must be weighed against the risk of causing serious injury. The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

When carrying a baton, including a collapsible baton, uniformed personnel shall carry the baton in its authorized holder on the equipment belt. Plainclothes and non-field personnel may carry the baton as authorized and in accordance with the needs of their assignment or at the direction of their supervisor.

#### ~~TEAR GAS GUIDELINES~~

~~Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.~~

- ~~(a) However, tear gas may used without the Chief's authorization when exigent circumstances prevent the request from being made and the delay would likely risk injury to citizens or police personnel (e.g., rocks, bottles, or other projectiles being thrown and immediate crowd dispersal is necessary). In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.~~

~~When practicable, fire personnel should be alerted or summoned to the scene prior to the deployment of tear gas to control any fires and to assist in providing medical aid or gas evacuation if needed.~~

### **~~303.7~~303.6 OLEORESIN CAPSICUM (OC) SPRAY GUIDELINES**

As with other control devices, OC spray (aka pepper spray) and pepper projectiles may be considered for use to bring under control an individual or groups of individuals who are engaging in, or are about to engage in violent behavior. Pepper projectiles and OC spray should not, however, be used against individuals or groups who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

#### ~~303.7.1~~303.6.1 OC SPRAY

Uniformed personnel carrying OC spray shall carry the device in its holster on the equipment belt or external vest carrier. Plainclothes and non-field personnel may carry OC spray as authorized, in accordance with the needs of their assignment or at the direction of their supervisor.

## *Control Devices and Techniques*

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### **303.7.2303.6.2** PEPPER PROJECTILE SYSTEMS

Pepper projectiles (aka "Pava" rounds) are plastic spheres that are filled with a derivative of OC powder. Because the compressed gas launcher (aka "less lethal" launcher) delivers the projectiles with enough force to burst the projectiles on impact and release the OC powder, the potential exists for the projectiles to inflict injury if they strike the head, neck, spine or groin. Therefore, personnel using a launcher should not intentionally target those areas, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

Officers encountering a situation that warrants the use of a launcher shall notify a supervisor as soon as practicable. A supervisor shall respond to all incidents where the suspect has been hit or exposed to the chemical agent. The supervisor shall ensure that all notifications and reports are completed as required by the Use of Force Policy.

### **303.7.3303.6.3** TREATMENT FOR OC SPRAY EXPOSURE

Persons who have been sprayed with or otherwise affected by the use of OC should be promptly provided with clean water to cleanse the affected areas. Those persons who complain of further severe effects shall be examined by appropriate medical personnel.

### **303.8303.7** POST-APPLICATION NOTICE

Whenever ~~tear gas or~~ OC has been introduced into a residence, building interior, vehicle or other enclosed area, officers should provide the owners or available occupants with notice of the possible presence of residue that could result in irritation or injury if the area is not properly cleaned. Such notice should include advisement that clean up will be at the owner's expense. Information regarding the method of notice and the individuals notified should be included in related reports.

### **303.9303.8** LESS LETHAL PROJECTILE GUIDELINES

This department is committed to reducing the potential for violent confrontations. "Less lethal" projectiles, when used properly, are less likely to result in death or serious physical injury and can be used in an attempt to de-escalate a potentially deadly situation.

### **303.9.1303.8.1** DEPLOYMENT AND USE

Only department-approved projectiles shall be carried and deployed. Approved projectiles may be used to compel an individual to cease his/her actions when such projectiles present a reasonable option.

Approved projectiles include:

- (a) "Less Lethal" rounds: impact projectiles
- (b) "Pava" rounds: impact projectiles containing OC/pepper spray
- (c) "Marking" rounds: impact projectiles containing paint

## *Control Devices and Techniques*

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Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

Circumstances appropriate for deployment include, but are not limited to, situations in which:

- (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles.
- (b) The suspect has made credible threats to harm him/herself or others.
- (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers.
- (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.

### 303.9.2303.8.2 DEPLOYMENT CONSIDERATIONS

Before discharging projectiles, the officer should consider such factors as:

- (a) Distance and angle to target.
- (b) Type of projectiles employed.
- (c) Type and thickness of subject's clothing.
- (d) The subject's proximity to others.
- (e) The location of the subject.
- (f) Whether the subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

A verbal warning of the intended use of the device should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to give the individual a reasonable opportunity to voluntarily comply and to warn other officers and individuals that the device is being deployed.

Officers should keep in mind the manufacturer's recommendations and their training regarding effective distances and target areas. However, officers are not restricted solely to use according to manufacturer recommendations. Each situation must be evaluated on the totality of circumstances at the time of deployment.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

## *Control Devices and Techniques*

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### 303.9.3303.8.3 SAFETY PROCEDURES

Officers will inspect the launcher and projectiles at the beginning of each shift to ensure that the launcher is in proper working order and the projectiles are of the approved type and appear to be free from defects.

When it is not deployed, the launcher will be unloaded and properly and securely stored.

### 303.10303.9 CROWD CONTROL REQUIREMENTS

Pursuant to California Penal Code 13652, kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

- (a) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.
- (b) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.
- (c) Persons are given an objectively reasonable opportunity to disperse and leave the scene.
- (d) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.
- (e) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.
- (f) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.
- (g) An objectively reasonable effort has been made to extract individuals in distress.
- (h) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.
- (i) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.
- (j) Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:
  - (1) A violation of an imposed curfew.
  - (2) A verbal threat.

## *Control Devices and Techniques*

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### (3) Noncompliance with a law enforcement directive.

As per City Council resolution (June 9, 2020), pepper spray for crowd control by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as the City Council removes the prohibition.

#### **303.14303.10 TRAINING FOR CONTROL DEVICES**

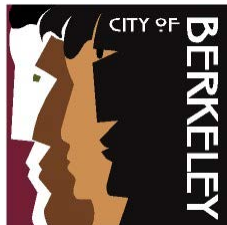
The Personnel and Training Sergeant shall ensure that all personnel who are authorized to carry a control device have been properly trained and certified to carry the specific control device and are retrained or recertified as necessary.

- (a) Proficiency training shall be monitored and documented by a certified, control-device weapons or tactics instructor.
- (b) All training and proficiency for control devices will be documented in the officer's training file
- (c) Officers who fail to demonstrate proficiency with the control device or knowledge of this agency's Use of Force Policy will be provided remedial training. If an officer cannot demonstrate proficiency with a control device or knowledge of this agency's Use of Force Policy after remedial training, the officer will be restricted from carrying the control device and may be subject to discipline.

#### **303.12303.11 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES**

Any application of a control device or technique listed in this policy shall be documented in the related incident report and reported pursuant to California Penal Code 13652.1 and the Berkeley Use of Force Policy.





Office of the Director  
of Police Accountability

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** June 14, 2022

**Item Number:** 32

**Item Description:** Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report

**Submitted by:** Michael Chang, Chairperson, Police Accountability Board  
Katherine J. Lee, Interim Director of Police Accountability

The attached report contains the recommendation of the Police Accountability Board regarding the Police Department's proposed Impact Statements and Use Policies submitted under the Police Equipment & Community Safety Ordinance. The proposed Policy 709, submitted in accordance with AB 481, and the Annual Use Report required under the Ordinance, are also addressed.



Office of the Director  
of Police Accountability

ACTION CALENDAR  
June 14, 2022

To: Honorable Mayor and Members of the City Council

From: Police Accountability Board and  
Office of the Director of Police Accountability

Submitted by: Michael Chang, Chairperson, Police Accountability Board  
Katherine J. Lee, Interim Director of Police Accountability

Subject: Police Equipment & Community Safety Ordinance Impact Statements,  
Associated Equipment Policies and Annual Equipment Use Report

RECOMMENDATIONS

1. In deciding whether to approve the Police Department's proposed Police Equipment & Community Safety Ordinance ("Ordinance") Impact Statements and Associated Equipment Policies, consider the shortcomings that the Police Accountability Board ("Board") has identified.
2. Postpone consideration of the Annual Equipment Use Report submitted under the Ordinance, as the statutory 60-day review period for the Board to review this report has not expired and the Board needs additional time to conduct its evaluation.
3. Regarding proposed Policy 709, Military Equipment, submitted to comply with Assembly Bill 481, postpone consideration of Policy 709 and refer this item to the Board for a review and recommendation to the Council.

FISCAL IMPACTS OF RECOMMENDATION

Unknown.

CURRENT SITUATION AND ITS EFFECTS

The Police Equipment & Community Safety Ordinance, codified in Berkeley Municipal Code Chapter 2.100, sets forth an approval process that the Police Department must follow before acquiring or using "controlled equipment," as defined in the Ordinance. The same approval process is required for previously acquired equipment. As part of this process, the Police Accountability Board is tasked with reviewing and making recommendations to the Council regarding Impact Statements and Equipment Policies (also referred to as Use Policies) prepared by the Police Department. The Ordinance also requires the Board to review and a make a recommendation to the Council regarding the Police Department's Annual Equipment Use Report.

Separately, the Police Department must comply with AB 481, with similar, but not identical, reporting requirements, and a longer timeline for compliance than that under the Ordinance. The Police Accountability Board has no formal role in reviewing the Military Equipment Policy (Policy 709) prepared under AB 481, but has discretionary authority to do so.<sup>1</sup> Because the reporting requirements of AB 481 and the Ordinance are so similar, much of the Board's work in reviewing the reports produced under the Ordinance can be applied to reviewing Policy 709.

## BACKGROUND

### **Impact Statements and Use Policies**

Under the Ordinance, the Board must recommend that the City Council adopt, modify, or reject the proposed Controlled Equipment Use Policy, and present its recommendations to the City Council. (B.M.C. section 2.100.040.(E).<sup>2</sup>)

The Police Department submitted the Impact Statements and Use Policies to the Board on February 24, 2022. The Board convened a special meeting on March 30, 2022 for the sole purpose of evaluating these documents. It noted several deficiencies, and communicated these to the Chief of Police in a memorandum dated April 6, 2022.<sup>3</sup> Although these comments were characterized as the Board's recommendations in the Department's May 10, 2022 report to the Council, the Board did not view them as such; as the City Attorney noted, the Board's April 6, 2022 memo did not contain explicit recommendations, nor were they presented to Council.

After Council's postponement of this item to June 14, the Board on May 11 established a Controlled Equipment Use & Reporting Subcommittee, composed of Vice-Chair Mizell and Board member Moore. The Subcommittee met three times, with Police Department representatives present at two of the meetings. Before its last meeting, the Police Department submitted revised Impact Statements, incorporating changes responding to some of the Board's April 6, 2022 comments.<sup>4</sup> Shortly thereafter, the Police Department modified some of the Use Policies. The Subcommittee's recommendations to the Board were transmitted in a memo from the Interim Director to the Board dated June 5, 2022 (Attachment 1).

At its June 8, 2022 meeting, the Board reviewed the Subcommittee's recommendations and had an extensive and vigorous discussion about what it should recommend to the Council. Ultimately, the Board was unable to agree on a recommendation to adopt,

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<sup>1</sup> Charter of the City of Berkeley, Article XVIII, Section 125(3)(a)(1).

<sup>2</sup> This section refers only to Use Policies, and not Impact Statements, which, in the context of the entire Ordinance, appears to be a drafting error.

<sup>3</sup> See p. 81 of the original May 10, 2022 agenda item.

<sup>4</sup> The revised Impact Statements and linked Use Policies are attached to the Police Department's submittal in the Supplemental 1 packet.

modify, or reject the Impact Statements and Use Policies, but found near unanimity on expressing the problems it found:

**Motion: Communicate to the Council that the Board agreed on a list of problems that exist regarding the Impact Statements and Use Policies. Two votes were taken, one to reject, and one to approve, the Impact Statements and Use Policies, but each motion failed on a 4-4-1-1 vote. The Board unanimously agreed, however, that it had significant concerns with the serious flaws it identified in the Impact Statements and Use Policies, in that the following omissions and inconsistencies need to be corrected:**

**1. The “Impact” sections for each type of equipment in the Impact Statements need to describe potential adverse impacts in accord with the Ordinance.<sup>5</sup>**

**2. The “Uses” sections of the Impact Statements for chemical agents and kinetic impact projectiles need to reflect and be made consistent with Berkeley policy and state law.<sup>6</sup>**

**3. The policies attached in the Appendix, such as Policy 303 on Control Devices and Techniques, must be updated to be conform to state law.**

**The Board struggled with the challenges posed by the complexity of the task and time pressures. There was a great deal of ambivalence because many Board members did not want to reject the Equipment Statements and Use Policies in light of the impending deadlines, while other Board members did not want to approve the documents because of the serious deficiencies.**

M/S/C (Calavita/Owens): Ayes – Calavita, Chang, Harris, Leftwich, Levine, Moore, Owens, Batista (alternate); Noes – None; Abstain – Mizell; Absent – Ramsey.

Essentially, the Board was divided on the message it wished to send. One group felt that the Board should approve the Impact Statements and Use Policies because it was highly unlikely that the Council would reject them and thus deprive the Police Department of many of its tools, including less-lethal options. The other group believed that the Board should stand by its assessment of the documents by rejecting them as failing to meet the requirements of the Ordinance. The Board was able to agree on communicating the shortcomings of the Impact Statements and Use Policies, however.

A note about Assembly Bill 48: This state law bans the use of less-lethal weapons and chemical agents for crowd control purposes, except by officers with specific training,

<sup>5</sup> B.M.C. section 2.100.040(C)(4).

<sup>6</sup> These sections are a subsection of the “Description” section. “Description: A description of each type of Controlled Equipment, the quantity sought, its capabilities, expected lifespan, **intended uses and effects**, and how it works, including product descriptions from the manufacturer of the Controlled Equipment.” (B.M.C. section 2.100.040(C)(1).) (Emphasis added.)

under certain conditions, and if specific requirements are met. The Board believes that the Impact Statements and Use Policies those documents should reflect the restrictions on use imposed by AB 48; this is the “state law” referred to in its motion.

### **Annual Equipment Use Report**

“Within 60 days of the Police Department submitting an annual report, the Police Accountability Board shall place the report as an agenda item for an open session of a regular meeting. The Police Accountability Board shall determine, based on the report, whether each piece of Controlled Equipment reported on has complied with the standards for approval set forth in Section 2.100.040.” B.M.C. Sec. 2.100.050(B)(1).

The Police Department submitted the Annual Report to the Board on April 26, 2022. Thus, the Board has until June 25, 2022 to complete its assessment under Ordinance. The Controlled Equipment Subcommittee recommended to the full Board that, if it did not act on the Annual Report at the Board’s June 8 meeting, it request that Council postpone acting on June 14, to allow the Board to consider the report at its June 22 meeting. (See Attachment 1, p. 4.) Due to the Board’s lengthy and spirited discussion about the Impact Statements and Use Policies, however, it overlooked acting on this recommendation. Thus, the Interim Director recommends that the Council postpone consideration of the Annual Report so that the Board may review it for purposes of making a recommendation to the Council. This is consistent with advice provided by the City Attorney.

### **Policy 709, Military Equipment**

The Police Accountability Board believes that its review Policy 709 on Military Equipment is appropriate, even though it is not required. The Board did not have time to undertake an evaluation of this policy, however. The Board’s Controlled Equipment Subcommittee recommended that the Board ask the Council postpone its consideration of this policy on June 14 (See Attachment 1, p. 4). However, this item, too, was overlooked by the Board in the wake of its intense discussion regarding the Impact Statements and Use Policies. Therefore, it is the recommendation of the Interim Director that the Council postpone consideration of Policy 709 and refer it to the Police Accountability Board for review and return with a recommendation. The Council must approve Policy 709 within 180 days from submittal which, according to the Police Department, was April 28, 2022.

### **ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

No environmental or climate impacts.

### **RATIONALE FOR RECOMMENDATIONS**

The rationale for each the recommendations from the Police Accountability Board and the Interim Director is explained above.

ALTERNATIVE ACTIONS CONSIDERED

The Board considered competing proposals regarding the Impact Statements and Use Policies, but could not agree on either.

CONTACT PERSON

Katherine J. Lee, Interim Director, Office of the Director of Police Accountability  
(510) 981-4950

Attachments:

- 1: June 5, 2022 Memorandum from Interim Director Lee to Police Accountability Board re: Controlled Equipment – Agenda item #10.b. on [PAB's] June 8, 2022 agenda.
- 2: Chart: Guide to Controlled Equipment Item
- 3: Excerpt of minutes (unapproved) from June 8, 2022 Police Accountability Board meeting.



OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

June 5, 2022

To: Police Accountability Board  
From: Katherine J. Lee, Interim Director of Police Accountability  
Re: Controlled Equipment – Agenda Item #10.b. on June 8, 2022 agenda

This memo provides background and guidance on the Controlled Equipment item, and elaborates on the Subcommittee’s recommendations. The table entitled “Guide to Controlled Equipment Item” on p. 13 of your agenda packet should help you sort out the voluminous amount of material comprising the Police Equipment and Community Safety Ordinance Impact Statements and related Use Policies, the Annual Use Report, and the Military Equipment Policy (Policy 709).

### Background

Police Equipment and Community Safety Ordinance Impact Statements and related Use Policies were first considered by you at the March 30, 2022 special meeting. At that time, the Police Department (BPD) stated that those materials were also intended to fulfill the requirements of AB 481. Your assessment of the Impact Statements and Use Policies was communicated to Chief Louis in an April 6, 2022 memo. On April 25, the BPD sent me the Annual Use Report and, on May 4, Capt. Rolleri sent a memo responding your April 6 memo. Among his responses, he noted that it was an “editing error” to state that the Impact Statements were to meet the mandates of AB 481.

The BPD submitted the Impact Statements and Use Policies, Annual Use Report, and Military Equipment Policy to the Council for its May 10, 2022 meeting<sup>1</sup> and the Council postponed consideration until its June 14 meeting. Since then, the Department has revised the Impact Statements, Policy 303 (Control Devices and Techniques), Policy 428 (First Amendment Assemblies) and the Military Equipment Policy. Some of the changes respond to issues the Board raised in its April 6 memo.

You formed the Controlled Equipment Reporting Subcommittee on May 11, 2022, and Chair Chang appointed Vice-Chair Mizell and Board member Moore to the Subcommittee. The Subcommittee met on May 17, 23, and 31, with BPD personnel present for most or all of every meeting. In addition to the specific recommendations noted below, Subcommittee members wish to convey to the Board that they do not believe they had enough time, capacity, or expertise to thoroughly review the materials to meet the level of scrutiny that the Ordinance suggests is required.

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<sup>1</sup> The complete Council item was included in your March 30, 2022 agenda packet.

## I. Impact Statements and Use Policies

*The critical task on June 8 is for you to make recommendations to the City Council on the Impact Statements and Use Policies.* There is some debate as to the actual deadline for Council to take action on these, but arguably they must do so by their June 28 meeting. Because, however, final decisions on the FY 23 & 24 budget must be made on that date, they asked that the item be returned on June 14.

### *PAB responsibility*

You are undertaking the “Review Process for Previously Acquired Equipment” in the Ordinance (Berkeley Municipal Code sec. 2.100.040 (G)). This entails the same consideration of Controlled Equipment Impact Reports and Use Policies as will be required when the BPD seeks to purchase or acquire by other means Controlled Equipment, or to use such equipment in a way not originally authorized. (BMC sec. 2.100.040(A).)

“**Controlled Equipment Impact Statement**” means a publicly released, written document that includes, at a minimum, all of the following:

- (1) Description: A description of each type of Controlled Equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the Controlled Equipment.
  - (2) Purpose: The specific purpose or purposes that each type of Controlled Equipment is intended to achieve.
  - (3) Fiscal Cost: The fiscal cost of each type of Controlled Equipment, including the initial costs of obtaining the equipment, the costs of each proposed use, the costs of potential adverse impacts, and the annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.
  - (4) Impact: An assessment specifically identifying any potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public.** [emphasis added]
  - (5) Mitigations: Specific, affirmative technical and procedural measures that will be implemented to safeguard the public from such impacts.
  - (6) Alternatives: Alternative method or methods by which the Police Department can accomplish the purposes for which the Controlled Equipment is proposed to be used, and rationale for selection over alternative methods.
  - (7) Third Party Dependence: Whether use or maintenance of the Controlled Equipment will require the engagement of third party service providers.
- (BMC sec. 2.100.020(C).)

And:

Controlled Equipment requires a publicly available **use policy** that identifies the purpose, any prohibited uses, training requirements, and any process required prior to use.

(BMC sec. 2.100.030)

You are to apply the “Criteria for Police Accountability Board Recommendations” in BMC sec. 2.100.040(C):

- (1) The Police Accountability Board shall recommend approval of a request to fund, acquire, or use Controlled Equipment pursuant to this chapter only if it determines all of the following:



- (a) The Controlled Equipment is needed and there is no practicably available alternative equipment which is not Controlled Equipment that is sufficient for the purposes.
  - (b) The proposed Controlled Equipment Use Policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
  - (c) The Controlled Equipment will not be used based on race, national origin, religion, sexual orientation, gender, gender identity, political viewpoint, or disability, or disproportionately impact any community or group.
- (2) If the submitted Controlled Equipment Impact Report identifies a risk of potential adverse effects on the public's welfare, safety, civil rights, or civil liberties, the Police Accountability Board's recommendation for approval for the funding, acquisition, or use of the Controlled Equipment shall not be deemed an acquiescence to those effects, but instead an acknowledgment of the risk of those effects and the need for the Police Department to take proactive steps to minimize those effects.

### *Subcommittee Recommendations*

1. The Controlled Equipment Subcommittee recommends that you reject the Impact Statements based on the descriptions in category (4), "Impact" [in bold above], because the language for many pieces of equipment fails to adequately describe the full impacts of the equipment's use. BMC Section 2.100.020 (C)(4) requires identification of potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public. While the Subcommittee does not take issue with much of the existing language, it believes more information is needed regarding potential negative effects.

For example, for the Impact of the M4 rifle (p. 7 of Impact Statements, p. 23 of packet), the BPD discusses how the rifle can stop a lethal threat from a greater distance and with more accuracy compared to a pistol, and is intended to increase the safety and welfare of citizens and officers; also, BPD states that abuses of authority or power would result from a violation of policies or law. Missing, however, is any consideration of how mere deployment of the rifle can have a potentially traumatic effect on bystanders.

2. The Subcommittee also recommends that the Impact Statements pertaining to chemical agents and kinetic impact projectiles fully delineate the City's policies on such weapons as well as the restrictions imposed by AB 48. This implicates the Impact Statements for the Penn Arms, Milkor, and FN 303 launchers; and Oleoresin Capsicum Spray (pepper spray), Chlorobenzylidene Malononitrile (CS gas, or tear gas) and OC in canister form.

AB 48 prohibits the use of chemical agents and impact projectiles for crowd control except in under certain conditions and only by peace officers with the requisite training. (Penal Code sec. 13652.) City of Berkeley policy bans the use of tear gas in all circumstances, and bans pepper spray or smoke for crowd control.

An issue that has not been resolved is to what extent the Impact Statements must incorporate the Use Policies, and whether the Use Policies sufficiently include the local and state limitations and prohibitions. BPD points out that applicable Use Policies are incorporated into the Impact Statements by reference in the Appendix. The Subcommittee noted that one of the required elements of the Impact Statements is "A description of each type of Controlled Equipment, the quantity sought, its capabilities, expected life span, **intended uses and effects**, and how it works . . ." (BMC sec. 2.100.020(C)(1) [Emphasis added].) An added complication is that there are policies for specific equipment (such as Policy 303, covering chemical weapons and less-lethal), while other policies such as Policy 300, Use of Force, provide general guidance on use of the equipment and Policy 428, First Amendment Assemblies, contains further guidelines for use in crowd control situations.

## II. Annual Use Report

Under BMC section 2.100.050, BPD must submit to the Board an annual report covering the immediately preceding calendar year. The elements are found in BMC section 2.100.050(A)(1). The Board must determine whether each piece of equipment meets the standards for approval in BMC section 2.100.040; essentially, the same standards as for initial approval of equipment. (BMC sec. 2.100.050(B)(1).)

The Subcommittee has no recommendation regarding the Annual Use Report, as it did not have time to review the report. The Subcommittee thought that the full Board might be able to conduct the review, as it is shorter and less complex than the Impact Statements.

The Council is being asked to approve the Annual Use Report on June 14. However, as the requisite 60 days for PAB's review will not expire until June 25, if you do not have time to review and approve this report on June 8, you should request that the Council postpone its consideration until after you have completed your assessment at the June 22 meeting. The City Attorney recommended that the Board be given its opportunity to review before Council considers the Annual Use Report.<sup>2</sup>

## III. Military Equipment Policy (Policy 709)

BPD prepared the Military Equipment Policy to meet the mandates of AB 481. The reporting requirements are similar, but not identical to, the Controlled Equipment Ordinance requirements, and the equipment subject to AB 481 is likewise very similar, but not identical, to that covered by the Ordinance.

There is no requirement that the Board review Policy 709. It seems logical for the Board to do so, however, as Policy 709 contains many of the same elements of the Impact Statements and Use Policies. That said, the Subcommittee did not have time to perform this review, and recommends that the Board refer Policy 709 to a subcommittee (possibly the Lexipol Subcommittee) with a request that it focus first on the rifle policies. Mr. John Lindsay-Poland suggested additions to Policy 349 (Tactical Rifle Operator Program) and Policy 354 (Precision Rifle) that would describe prohibited uses.

If the Board proceeds with a review of Policy 709, it should ask the Council to postpone its consideration on June 14. The Council has 180 days from submission of the proposed policy to approve it. (Gov't Code sec. 7071(a)(2).)

### Additional Recommendation

As a final recommendation, the Subcommittee voted to recommend that members of the Police Accountability Board, Berkeley Police Department, and City Attorney's Office meet to discuss the discrepancies in interpreting the requirements of the Ordinance, with the goal of streamlining the process going forward for future reviews.

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<sup>2</sup> May 13, 2022 email from City Attorney Farimah Brown to Vice-Mayor Kate Harrison and others (found in May 31, 2022 agenda packet, p. 39).

## Guide to Controlled Equipment Item

| DOCUMENT FOR REVIEW                                                      | APPLICABLE LAW                                                                                                                                                                                 | PAB ROLE                                                                                                                                   | TIMING                                                                                                                                              | RECOMMENDED ACTION                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Impact Statements and Use Policies</b>                                | Police Equipment and Community Safety Ordinance (BMC Ch. 2.100) (“Ordinance”).                                                                                                                 | Recommend that Council adopt, modify, or reject the proposed Impact Statements and Use Policies. May approve only if certain criteria met. | Subject to debate. Ordinance says within 90 days of BPD’s submission to PAB (sent Feb. 24), but BPD sent to Council before PAB sent recommendation. | <ul style="list-style-type: none"> <li>- Act on June 8 for submittal to Council for its June 14 meeting.</li> <li>- Reject Impact Statements, as language for many pieces of equipment fails to describe full impacts of the equipment's use. (More details in memo TBD.)</li> <li>- See * below.</li> </ul> |
| <b>Annual Use Report</b>                                                 | Ordinance.                                                                                                                                                                                     | Determine if each piece of equipment complies with the standards for initial approval.                                                     | PAB must agendize by June 25 (60 days from April 26 submission to PAB).                                                                             | <ul style="list-style-type: none"> <li>- Act at June 8 or June 22 meeting, and then submit to Council.</li> <li>- (If no action on June 8, ask Council to not act on June 14 and wait for PAB to submit its recommendation.)</li> <li>- Subcommittee proposed full PAB review.</li> </ul>                    |
| <b>Military Equipment Policy 709</b>                                     | AB 481 - adds Gov’t Code sections 7070 to 7075, requiring approval of “military equipment” by adopting a military equipment use policy.                                                        | No formal role, but given the similarity of the Ordinance and AB 481, makes sense for PAB to review.                                       | No deadline for PAB. BPD to commence governing body approval process by May 1, 2022, and Council must approve in 180 days.                          | - Refer Policy 709 to a subcommittee, possibly Lexipol, with request to review the rifle policies first.                                                                                                                                                                                                     |
| (Not for review, but restrictions should be reflected in policies above) | AB 48 - adds Penal Code section 13652, banning use of less-lethal weapons and chemical agents for crowd control <b>except</b> by officers with certain training and in specific circumstances. | No formal role. PAB should, however, ensure that BPD policies conform to state law.                                                        | Tied to above.                                                                                                                                      | - * Ensure that Impact Statements pertaining to less-lethals and chemical agents fully delineate the City’s policies and AB 48.                                                                                                                                                                              |

*Excerpt from draft minutes of Police Accountability Board meeting of June 8, 2022*

## 10. NEW BUSINESS (DISCUSSION AND ACTION)

- b. Proposed Equipment Impact Statements, Use Policies, Military Equipment Policy, and Annual Use Report: Review and affirm or revise Subcommittee's proposals on how to proceed, and on substantive recommendations to City Council.

**Main motion: The Board recommends provisional approval of the Impact Statements and Use Policies, only on the condition that within 90 days the Police Department makes the following critical modifications:**

- 1. The "Impact" sections for each type of equipment in the Impact Statements need to describe potential adverse impacts in accord with the Ordinance.**
- 2. The "Uses" sections of the Impact Statements for chemical agents and kinetic impact projectiles need to reflect and be made consistent with Berkeley policy and state law;**
- 3. The policies attached in the Appendix, such as Policy 303 on Control Devices and Techniques, must be updated to conform to State law.**

**The Board preferred to reject the Impact Statements and Use Policies, given the clear omissions and inconsistencies with law and policy. However, in light of the impending deadline, the Board offers this conditional approval.**

Moved/Second (Calavita/Leftwich) Motion Failed

Ayes: Calavita, Chang, Leftwich, Owens

Noes: Harris, Mizell, Moore, Batista

Abstain: Levine Absent: Ramsey

**Substitute motion: Recommend that the Council:**

- 1) reject the Impact Statements based on the descriptions in category (4), "Impact", because the language for many pieces of equipment fails to adequately describe the full impacts of the equipment's use. BMC Section 2.100.020 (C)(4) requires identification of potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public. While the Board does not take issue with much of the existing language, it believes more information is needed regarding potential negative effects;**
- 2) reject the Impact Statements pertaining to chemical agents and kinetic impact projectiles because they fail to fully delineate the City's policies on such weapons as well as the restrictions imposed by AB 48. This implicates the Impact Statements for the Penn Arms, Milkor, and FN 303 launchers; and Oleoresin Capsicum Spray (pepper spray), Chlorobenzylidene Malononitrile (CS gas, or tear gas) and OC in canister form; and**
- 3) recommend that members of the Police Accountability Board, Berkeley Police Department, and City Attorney's Office meet to discuss the discrepancies in interpreting the requirements of the Ordinance, with the goal of streamlining the process going forward for future reviews.**

Moved/Second (Mizell/Moore) Motion Failed

Ayes: Harris, Mizell, Moore, Batista

Noes: Calavita, Chang, Owens, Leftwich

Abstain: Levine Absent: Ramsey



Office of the City Manager

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 1**

**Meeting Date:** June 14<sup>th</sup>, 2022

**Item Number:** 32

**Item Description:** Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report

**Submitted by:** Jennifer Louis, Interim Chief of Police  
Rico Rolleri, Captain Professional Standards Division

This supplemental communication provides an update on the revised Impact Statements that fulfill the requirements set forth within the Police Equipment and Community Safety Ordinance. The City ordinance Impact Statements were revised to clarify portions of the document and correct editing errors after the Police Accountability Board provided feedback to the Berkeley Police Department on April 6, 2022. The following were some of the concerns the Police Accountability Board provided and the subsequent related changes:

- The introduction to the Impact Statements noted that the document also fulfills the obligations set forth in Assembly Bill 481. The Police Accountability Board asked if the Lexipol Policies were intended to serve as use policies for Assembly Bill 481.
  - o The mention of Assembly Bill 481 in the City ordinance Impact Statements was an editing error and has been removed. Assembly Bill 481 is a separate state law with different requirements that are addressed in Lexipol Policy 709. A brief summary of the requirements from Assembly Bill 481 is outlined at the end of this supplemental agenda.
- The Police Accountability Board expressed concerns regarding language from Assembly Bill 48 not being incorporated into the Impact Statements and policies. Assembly Bill 48 addresses less lethal equipment use during crowd control situations and is not directly related to Assembly Bill 481, nor is there a reporting element of AB 48 in association with AB 481.

Annual Reporting and Impact Statements:  
Police Equipment and Community  
Safety Ordinance

- Berkeley Police Department Policy 428 “First Amendment Assemblies” was in existence prior to the passing of the City Ordinance and Assembly Bill 48. However, Policy 428 was modified in early 2022 to ensure that intent and language of the policy aligned with language in Assembly Bill 48. Policy 428 was originally included as an associated policy to the 36” batons in the City ordinance Appendix. More recently, Policy 428 was added to the ordinance Appendix associated with the three defined less lethal launchers.
- The Police Accountability Board pointed out that the Impact Statements sections containing less lethal launchers were inconsistent and two of the less lethal launcher sections contained identical language.
  - There are three types of less lethal launchers that may be used in various situations to address a potentially violent confrontation or certain armed persons from a distance. Two of the three less lethal launchers utilize the same projectile and operate virtually the same. All three sections within the Impact Statements detailing less lethal launchers were modified with more details on the differences between them and more clarity on the alternatives.

This revised document was provided to the Police Accountability Board Director on May 23, 2022.

**ASSEMBLY BILL 481 REQUIREMENTS:**

Although the requirements set forth in the Police Equipment and Community Safety Ordinance and Assembly Bill 481 share some similarities, there are different definitions, mandates and reporting requirements of the two pieces of legislation. The Impact Statements, policies and use reports delivered to the PAB were submitted to address the City Ordinance. Berkeley Police Department Policy 709 was created, with support from the City Attorney’s Office, to meet the formatting, definitions and reporting requirements of existing equipment owned and operated by the Berkeley Police Department prior to January 1, 2022, as defined in Assembly Bill 481.

Assembly Bill 481 requires the Berkeley Police Department to, among other mandates, commence a “governing body approval process by May 1, 2022.” “Governing body” is defined as “the elected body that oversees a law enforcement agency”, the City Council. Another requirement is for the Berkeley Police Department to author a “military use policy.” The Berkeley Police Department authored and submitted Lexipol Policy 709 (military use policy) for approval by the City Council on April 28<sup>th</sup>, 2022 to be placed on the May 10, 2020 Council agenda. Per AB 481, the governing body must approve the military use policy (Policy 709) within 180 days of the submission of the policy (Policy

Annual Reporting and Impact Statements:  
Police Equipment and Community  
Safety Ordinance

709) or the Berkeley Police Department must cease its use of the military equipment until it receives the approval by the governing body.

**POLICE EQUIPMENT AND COMMUNITY SAFETY ORDINANCE:**

**2.100.040**

**(H) City Council Approval Process**

(1) After the Police Accountability Board review requirements have been met, the Police Department shall schedule for City Council consideration the proposed Controlled Equipment Impact Report and proposed Controlled Equipment Use Policy, and include Police Accountability Board recommendations, at least fifteen (15) days prior to a public Meeting.

(2) If the City Council does not approve such item within four (4) regular City Council meetings from when the item is first scheduled, the Police Department shall cease its use of the Controlled Equipment until such review and approval occurs.

The revised City ordinance Impact Statements and military use policy (Policy 709) have been submitted with this supplemental packet.



**Police Equipment and  
Community Safety Ordinance  
Impact Statements**



## **ACKNOWLEDGEMENTS**

Thank you to the subject matter experts for helping author this report.

Officer Corey Bold –  
*Patrol Officer and chemical agent instructor*

Officer Semir Muratovic –  
*Patrol Officer and Bomb Squad Technician*

Officer Derek Radey –  
*Patrol Officer and less lethal coordinator/instructor*

Lieutenant Kevin Reece –  
*Special Response Team Commander*

Officer Scott Salas –  
*Patrol officer and Special Response Team high ground team leader*

Lieutenant Jennifer Tate –  
*Traffic Lieutenant and defensive tactics instructor*

Officer Jason Tillberg –  
*Department trainer and Department Armorer*

Officer Sean Tinney –  
*Department trainer and Special Response Team member*

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## INTRODUCTION

On May 11, 2021 the Berkeley City Council passed Ordinance NO. 7,760-N.S., the Police Equipment and Community Safety Ordinance. Section 2.100.020 of the ordinance mandates an impact statement for certain equipment that the Berkeley Police Department possesses. An impact statement is defined in section 2.100.020 (C) and is a publicly released written document that includes the following details for each equipment:

- 1) Description
- 2) Purpose
- 3) Fiscal cost
- 4) Impact
- 5) Mitigation
- 6) Alternatives
- 7) Third Party Dependence

An impact statement for each of the following equipment has been authored by subject matter experts in their respective fields:

- M4 rifle/Patrol Rifle
- Penn Arms 40MM launcher
- Milkor LTL multi-launcher
- FN 303 Launcher & FN Pava rounds
- Oleoresin capsicum (OC spray)
- Chlorobenzylidene Malononitrile and Oleoresin capsicum (tear gas)
- Remington 700 Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/sound distraction device
- Long Range Acoustic Device (LRAD)
- 36" batons
- Mobile Command Vehicle
- Barret Model 99

Impact statements were compiled in this report in a prioritized ranking for the Police Accountability Board to consider in determining the order in which to perform its review per the Police Equipment and Community Safety Ordinance.

### **M4 Rifle and Associated Ammunition**

#### **(1) Description:**

##### **A. Background:**

The “M4” was developed and produced for the United States government by Colt Firearms and was based off of the original Armalite Rifle (AR) patent purchased by Colt in 1959. Although Colt owned the trademarked name of “M4”, a number of other manufacturers offer M4-like firearms under various model names. The M4 and its variants fire 5.56×45mm NATO (and .223 Remington) ammunition, and are a gas-operated, magazine-fed firearm with a barrel length ranging from 11.5” to 16”.

The current Berkeley Police Department (BPD) rifle ammunition used is the .223 Remington, a rimless, bottlenecked rifle cartridge. The round was developed in 1957 by Remington Arms and Fairchild Industries. The .223 Remington is considered one of the most popular cartridges and is currently used by a wide range of semi-automatic and manual-action rifles as well as handguns. While the military uses the similar 5.56x45 NATO cartridge, BPD uses the more common and often regarded civilian cartridge of .223 Remington for all training and duty uses.

Currently, BPD uses two different kinds of .223 Remington ammunition: 55 grain FMJ (full metal jacket) for training purposes and 62 grain soft point for duty purposes. This is done for several reasons.

1. FMJ ammunition is cheaper to purchase. While many agencies use the same ammunition for training and duty use, the department saves a significant amount of money by using FMJ ammunition for training.
2. The observed performance between the two rounds is negligible for training purposes. Officers can use the FMJ ammunition in a training course and see no difference in operation and performance versus using 62 grain soft point duty ammunition.
3. The 62-grain soft point ammunition has been shown to have less over penetration and over travel compared to FMJ ammunition.

This means that rounds fired are less likely to hit unintended targets.

**B. Quantity:**

The Berkeley Department currently owns and maintains 96 rifles.

Quantity of rifle ammunition fluctuates significantly depending on training attended, including the standard basic police academy, officer assignments, and yearly mandate training cycles. For example, most police academy recruits are required to bring approximately 1,000 rounds to the basic POST approved academy. Most academies have a 16-24-hour rifle training course. The training is required for all officers who are issued a rifle and mandates between 800 and 1,200 rounds. As such, the inventory at the Berkeley Police Department fluctuates significantly depending on how many officers are attending state mandated training and can range from 10,000 round (our current inventory) to less than 1,000 rounds (our anticipated inventory at the end of December after scheduled department training in November.)

**C. Capability:**

The M4 pattern rifle is used only in situations when a potential life-threatening situation exists. While a pistol is the common firearm used by police in these dangerous situations, the M4 patterned rifle has numerous advantages over it. The ability to shoulder the rifle, coupled with the rifle's lengthened barrel and ammunition, result in higher accuracy and lessens the chance of officers missing the intended target. Additionally, due to the design of the rifle's bullet, the round is less likely to over penetrate commercial and residential walls should the officer miss the intended target. The rifle is also easier to use compared to a pistol because of the bullet's low recoil. Finally, as the rifle can be adjusted and customized, it can be configured to accommodate officers of any stature (hand size, strength, etc.).

The .223 Remington cartridge, depending on the weight of the bullet, 55 grain or 62 grain, travel at approximately 3,000 feet per second and 2,700 feet per second respectively. The round is highly regarded as having a high degree of consistency and accuracy, which is why it is the most common rifle round used in Law Enforcement around the world.

**D. Lifespan:**

Due to the rifle's ability to be maintained by department armorers, these rifles have a relatively long-life span if properly maintained. However, the design has

changed little in the last 60 years and we can expect new variations and designs to become the new industry standard in the coming years.

Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

**E. Use:**

Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

**F. How it Works:**

The M4 patterned rifle works the same as a majority of all modern firearms. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. As the bullet travels down the barrel, gas from the ignited powder also escapes from the muzzle. Some of that gas is recycled back into the chamber of the firearm which causes the firearm to cycle its action and load another bullet. From there the process repeats with each pull of the trigger.

The .223 Remington cartridge is made up of several parts, primarily the primer, casing, gunpowder, and bullet. The bullet is seated into the front or opening of the casing. Gunpowder is placed between the bullet and the interior of the casing and a primer is seated in the rear part of the casing. When the trigger of a firearm is pulled, it releases the hammer, which strikes the firing pin, driving it forward. The firing pin collides with the rear of the cartridge, where the primer is seated, which ignites the primer. The spark from the primer ignites the gunpowder. Gas converted from the burning powder rapidly expands in the cartridge. The expanding gas forces the bullet out of the cartridge and down the barrel with great speed. The rifling in the barrel causes the bullet to spin as it travels out of the barrel. The bullet's speed and escaping gases produce a "bang."

After the bullet exits the barrel, the spent casing which housed the bullet, gunpowder, and primer are ejected from the firearm.

**(2) Purpose:**

The M4 patterned rifle and associated ammunition is intended as a means to safely stop a lethal threat. While a pistol is the firearm that all officers are minimally

equipped with, the rifle is an ancillary firearm for situations where increased distance and accuracy are needed to safely resolve the situation.

**(3) Fiscal Cost:**

**A. Initial Cost:**

Rifle prices, like other firearms, will range depending on current market demand and availability. While M4 rifles purchased several years ago cost between \$1,000 and \$1,200 a piece, current rifles cost between \$1,400 and \$1,600. It should be expected that these prices will fluctuate and likely increase over time.

Ammunition costs fluctuate with the costs of components (brass, primers, gunpowder, and bullets) and supply/demand. Current costs for .223 Remington range from \$0.50 to \$0.75 a round for training ammunition (55 grain) and \$1.25 to \$1.50 a round for duty ammunition (62 grain).

**B. Cost of Use:**

Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on whether the rifle is issued to a patrol officer, a firearms instructor, or a Special Response Team member as each assignment has different training requirements.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

See section B. above, these costs are determined based on the rifle's assignment.

**E. Training Costs:**

Every officer that is authorized to carry a rifle on duty must attend a 16-hour CA POST approved rifle instruction course before being authorized to carry the rifle on duty. This course may be administered by Berkeley Police Firearm Instructors or by other POST approved agencies. Tuition for the CA POST approved class is dependent on the hosting agency. If conducted in house the cost only includes the officer's hourly wage, range fee, and ammunition costs (all vary). Outside agencies charge between \$25 to \$500 depending on the range location and duration (some classes are 32-hours while POST only requires 16-hours.)

Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by POST certified BPD firearm instructors.

Typical round count for such classes range between 800 rounds and 1200 rounds per student. Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by a BPD firearm instructor which constitutes an additional 500 or so rounds per officer.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use over time. Traditionally, various springs and pins need to be replaced every five years and may cost between \$3 and \$30 per rifle. Other parts such as the barrel and bolt need replaced around ten years and range between \$150 and \$300 per rifle.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

**G. Upgrade Costs:**

Upgrade costs and Maintenance cost are synonymous due to the consistent design and lack of changes of the rifle over the last 60 years. Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing, those upgrade costs are unknown at this time.

**(4) Impact:**

The Berkeley Police Department is committed to preserving and protecting human life and welfare. The M4 patterned rifle, which fires the .223 Remington cartridge, is a superior firearm to stop a lethal threat compared to the issued pistols to police officers, in that officers equipped with this firearm shoot less rounds, fire more accurately, and are less likely to fire errant rounds. Highly volatile and violent incidents, such as a hostage situation, can be more safely and efficiently resolved with a rifle.

The M4 patterned rifle, and the accompanying .223 Remington cartridge it fires, is intended as a tool to increase the safety and welfare of citizens and officers alike. The M4 patterned rifle and .223 Remington cartridge, both inanimate objects, have zero impact on things such as civil rights or civil liberties of the public. Any abuses of authority or power would be the result of an individual who violates the Berkeley Police Department's policies, including state and federal laws.



**(5) Mitigations:**

Per Policy 300, “Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.

Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons.”

**(6) Alternatives:**

There are no suitable alternatives to the M4 rifle for the intended purpose. The M4 rifle is a law enforcement standard across the US and other countries due to its reliability, ease of use, ease of maintenance, and increased accuracy over other options.

There are no suitable alternatives to the .223 Remington cartridge, as the current BPD M4 rifle is designed for that particular cartridge. The .223 Remington cartridge is a law enforcement standard across the US and other countries due to its reliability, availability, and increased accuracy over other options.

**(7) Third Party Dependence:**

Berkeley Police Department armorers are trained and capable to handle any and all issues related to the maintenance or repair of the M4 rifles. Additionally, BPD firearm instructors are fully certified by state and private training institutes to fully educate and train BPD officers. No third party is required for maintenance, repair, or instruction.

All ammunition purchased by BPD, like all equipment, is dependent on Third Party vendors. Vendor stock and availability is outside BPD control or management. Once ammunition is purchased and in BPD custody there is no additional need for Third Party assistance.

### **Penn Arms 40mm Single Launcher**

**(1) Description:****A. Background:**

The 40mm impact projectile was developed as an alternative to the 12-gauge bean bag round and other more indiscriminate less lethal options. Early 12-gauge

bean bag round designs had somewhat unpredictable flight patterns and could cause significant unwanted injury. The 40mm foam baton round was developed as a direct fire projectile designed to minimize the risk of unintended injuries. Currently, the Berkeley Police Department utilizes the CTS 4557 foam baton projectile and the Penn Arms L-140 single shot launcher.

**B. Quantity:**

The Berkeley Police Department currently owns and maintains 20 Penn Arms less lethal launchers.

**C. Capability:**

The Penn Arms single launcher is capable of firing a single projectile out to a maximum manufacturer recommended range of 45 meters. The Penn Arms 40mm projectiles are direct fire with a pliable “sponge” tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

**D. Lifespan:**

The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

**E. Use:**

The Penn Arms 40mm single launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

**F. How it works:**

The Penn Arms 40mm single launcher is a double action, break open less lethal launcher. The launcher is capable of firing a single 40mm projectile. When fired, the hammer strikes the munition primer which ignites gun powder in the primer insert. Expelled gases propel the projectile through the rifled barrel. The projectile has a rear plastic portion called the ogive which catches the barrel rifling and provides spin. The spin provides a greater degree of accuracy and eliminates any potential the projectile will tumble when exiting the barrel.

The projectiles utilized by the Berkeley Police Department are the CTS 4557 40mm sponge baton round. The CTS 4557 has a maximum effective range of 45 meters. The tip of the projectile is a pliable rubber material which molds to the body upon impact. The projectile travels at an estimated 240 feet per second which is slower than the FN 303 projectile. However, the larger mass, about 60 grams, creates more kinetic energy upon impact which is similar to that of a baseball thrown by a pitcher. The additional kinetic energy becomes important when the suspect has on thick or layered clothing or demonstrates a high pain tolerance.

The Penn Arms single launcher is a basic design making it easy to operate and maintain.

(2) **Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent or armed confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before certain weapons can be utilized. This fact may allow the Officer time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the

potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Additionally, it has been our experience that a 40mm projectile impact will almost always resolve a violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

(3) **Fiscal Cost:**

A. **Initial Cost:**

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$815.00 each.

B. **Cost of Use:**

Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

C. **Cost of Potential Adverse Effects:**

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death.

D. **Annual and Ongoing Costs:**

See section B above

E. **Training Costs:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use. Generally, various springs and pins need to be replaced every 5 years which can cost \$3 to \$30.

**G. Upgrade Costs:**

There are no foreseeable upgrade costs. The Penn Arms single launcher has few working parts and is of a simple design.

**(4) Impact:**

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but hopefully the minimal amount of force needed to safely resolve the incident.

The Penn Arms single launcher, with its high level of accuracy can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. This tool does not require officers to overcome a hostile crowd to stop a violent assault.

**(5) Mitigation:**

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved

projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.”

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer’s ability to target approved impact areas.

**(6) Alternative:**

The Penn Arms single launcher is one of three less lethal options the Berkeley Police Department possess that allow officers to address a potentially violent confrontation from a distance. All three (Penn Arms single launcher, Milkor LTL multi-launcher, and FN303) are viable options that have different strengths and weaknesses. The Penn Arms single launcher and the Milkor LTL multi-launcher operate very similarly and use the same projectile. The Penn Arms single launcher is smaller and easier to carry; however, the Penn Arms single launcher is capable of holding only one projectile while the Milkor LTL multi-launcher is capable of holding six projectiles. The projectiles used by the Penn Arms single launcher and Milkor LTL multi-launcher are larger which results in more kinetic energy transferred compared to the projectiles used in the FN303; however, the FN303 holds 15 projectiles and is capable of launching it at a faster rate.

An alternative that the Berkeley Police Department does not possess is the TASER. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject’s clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

**(7) Third Party Dependence:**

The Berkeley Police Department armorers are trained and capable of handling all issues related to the repair or maintenance of the Penn Arms single launcher. Additionally, Berkeley Police Department Less Lethal Instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for maintenance, repair, or instruction.

**Milkor LTL Multi-launcher****(1) Description:****A. Background:**

The 40mm impact projectile was developed as an alternative to the 12-gauge bean bag round and other more indiscriminate less lethal options. Early 12-gauge bean bag round designs had somewhat unpredictable flight patterns and could cause significant unwanted injury. The 40mm foam baton round was developed as a direct fire projectile designed to minimize the risk of unintended injuries. Currently, the Berkeley Police Department utilizes the CTS 4557 foam baton projectile and the Milkor LTL multi-shot launcher.

**B. Quantity:**

The Berkeley Police Department currently owns and maintains 2 Milkor LTL less lethal launchers. One Milkor launcher is assigned to the Berkeley Special Response Team.

**C. Capability:**

The Milkor LTL is capable of firing six 40mm projectiles before reloading is necessary. The Milkor LTL 40mm projectiles are direct fire with a pliable “sponge” tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

**D. Lifespan:**

The manufacturer expected lifespan is about 10 to 15 years depending on use and regular maintenance.

**E. Use:**

The Milkor LTL multi-shot launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

**F. How it works:**

The Milkor LTL multi-shot launcher utilizes a spring actuated cylinder allowing it to fire 6 individual 40mm projectiles. When fired, the hammer strikes the munition primer which ignites gun powder in the primer insert. Expelled gases propel the projectile through the rifled barrel. The projectile has a rear plastic portion called the ogive which catches the barrel rifling and provides spin. The spin provides a greater degree of accuracy and eliminates any potential the projectile will tumble when exiting the barrel. The spring assisted cylinder automatically turns and loads the next projectile.

The projectiles utilized by the Berkeley Police Department are the CTS 4557 40mm sponge baton round. The CTS 4557 has a maximum effective range of 45 meters. The tip of the projectile is a pliable rubber material which molds to the body upon impact. The projectile travels at an estimated 240 feet per second which is slower than FN 303 projectile. However, the larger mass, about 60 grams, creates more kinetic energy upon impact which is similar to that of a baseball thrown by a pitcher. The additional kinetic energy becomes important when the suspect has on thick or layered clothing or demonstrates a high pain tolerance.

The benefit to the Milkor LTL is its ability to provide a quick follow up less lethal application, if necessary. The Milkor holds 6 projectiles while the Penn Arms launcher only holds one. Reloading the Penn Arms single launcher can be time consuming and requires the officer to briefly change focus from the suspect to the reload procedure. The Milkor LTL on the other hand, allows the officer to maintain focus on the suspect and assess whether a follow up application is necessary. This ability is significant when the suspect is advancing, attempting to flee, or demonstrates a high pain compliance threshold.

**(2) Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to



maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Additionally, it has been our experience that a 40mm projectile impact will generally resolve the violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

**(3) Fiscal Cost:**

**A. Initial Cost:**

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$3950.00 each.

**B. Cost of Use:**

Cost for the Milkor LTL launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

**C. Cost of Potential Adverse Effects:**

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death.

**D. Annual and Ongoing Costs:**

See section B above

**E. Training Costs:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use.

**G. Upgrade Costs:**

There are no foreseeable upgrade costs.

**(4) Impact:**

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but also the minimal amount of force needed to safely resolve the incident.

The Milkor LTL launcher, with its high level of accuracy and 6 projectile capacity, can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent

assault, overcome their resistance, and aid in the attempt to safely take them into custody. It also allows officers to prevent a more indiscriminate use of force, such as entering the group or crowd, to take a subject into custody.

**(5) Mitigation:**

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders."

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer's ability to target approved impact areas.

**(6) Alternative:**

The Milkor LTL multi-launcher is one of three less lethal options the Berkeley Police Department possess that allow officers to address a potentially violent confrontation

from a distance. All three (Penn Arms single launcher, Milkor LTL multi-launcher, and FN303) are viable options that have different strengths and weaknesses. The Penn Arms single launcher and the Milkor LTL multi-launcher operate very similarly and use the same projectile. The Penn Arms single launcher is smaller and easier to carry; however, the Penn Arms single launcher is capable of holding only one projectile while the Milkor LTL multi-launcher is capable of holding six projectiles. The projectiles used by the Penn Arms single launcher and Milkor LTL multi-launcher are larger which results in more kinetic energy transferred compared to the projectiles used in the FN303; however, the FN303 holds 15 projectiles and is capable of launching it at a faster rate.

An alternative that the Berkeley Police Department does not possess is the TASER. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject's clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

(7) **Third Party Dependence:**

The Berkeley Police Department armorers are trained and capable of handling most issues related to the repair or maintenance of the Milkor LTL launcher. In the event of a catastrophic malfunction, the Milkor LTL will need to be sent to the manufacturer for repair. To date, there have been no significant repairs needed to the Milkor LTL. Additionally, Berkeley Police Department Less Lethal Instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for regular maintenance, repair, or instruction.

### **FN 303 and FN Pava Impact Projectile**

(1) **Description:**

A. **Background:**

The FN 303 was developed in 2003 by Fabrique Nationale de Herstal as a less lethal option. The FN 303 is based on a concept developed by Monterey Bay Corporation. The development team consisted of designers and researchers from two paintball related companies. The FN 303 uses compressed air to propel a .68 caliber projectile similar to that of most manufactured paintball guns.

**B. Quantity:**

The Berkeley Police Department currently owns and maintains 8 FN 303 less lethal launchers.

**C. Capability:**

The FN 303 is capable of firing 15 projectiles out to a maximum manufacturer recommended range of 50 meters. The FN 303 projectiles are direct fire and designed to fragment upon impact to prevent penetration injury. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas. This level of force is considered to be similar to that of a baton strike.

**D. Lifespan:**

The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

**E. Use:**

The FN 303 is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

**F. How it works:**

An air reservoir attaches to the FN 303 through an air hose coupler and provides pressure through compressed air. When fired, the compressed air drives a piston that pushes the .68 caliber projectile through the barrel at approximately 280 feet per second. For comparison, the FN projectile is the size of a paintball and the velocity is the same as a commercially manufactured paintball gun.

The projectiles are 8.5 grams in weight and utilize a polystyrene fin stabilized body with a non-toxic forward payload to aid in stability and accuracy. The projectile will deliver approximately 24-foot pounds of kinetic energy at the muzzle which is about double the kinetic energy of most paintball guns. Most paintballs have a mass of 3 grams while the FN 303 projectile has a mass of 8.5 grams which increases the kinetic energy produced.

Available projectiles are impact, impact + non-permanent marking, impact + permanent marking, and impact + PAVA (0.5% PAVA/Oleoresin Capsicum).

The impact + PAVA projectile is intended to be direct fired at an individual. In addition to delivering pain through kinetic energy upon impact, the PAVA

projectile will deliver a secondary chemical irritant, which is the Oleoresin Capsicum (O.C.) payload. Oleoresin Capsicum generally causes irritation/burning at the application site, irritation to the eyes, and coughing. According to the National Institute of Health, the effects of O.C. power exposure tend to resolve on their own within 30 minutes.

Pain is highly subjective and other circumstances, such as heavy clothing, may render the impact ineffective. The application of a secondary chemical irritant may assist in gaining compliance and successfully resolving a potentially violent incident with the minimal amount of force necessary.

(2) **Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

The “less lethal” projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. Discriminate projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential

for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

**(3) Fiscal Cost:**

**A. Initial Cost:**

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent FN 303s purchased by the department cost \$800.00 each.

**B. Cost of Use:**

Cost for FN 303 use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

**C. Cost of Potential Adverse Effects:**

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death. Only trained officers are authorized to use the FN 303.

**D. Annual and Ongoing Costs:**

See section B above

**E. Training Costs:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use. Generally, O-rings need to be replaced every 3000 rounds and cost \$30 per kit.

**G. Upgrade Costs:**

The overall design of the FN 303 has changed little since its initial release in the early 2000s thus anticipated upgrade costs will be minimal.

**(4) Impact:**

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but also the minimal amount of force needed to safely resolve the incident.

The FN 303, with its high level of accuracy can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. It also allows officers to prevent a more indiscriminate use of force, such as entering the group or crowd, to take a subject into custody.

**(5) Mitigation:**

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders."



The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer's ability to target approved impact areas.

**(6) Alternative:**

The FN303 launcher is one of three less lethal options the Berkeley Police Department possess that allow officers to address a potentially violent confrontation from a distance. All three (Penn Arms single launcher, Milkor LTL multi-launcher, and FN303) are viable options that have different strengths and weaknesses. The Penn Arms single launcher and the Milkor LTL multi-launcher operate very similarly and use the same projectile. The Penn Arms single launcher is smaller and easier to carry; however, the Penn Arms single launcher is capable of holding only one projectile while the Milkor LTL multi-launcher is capable of holding six projectiles. The projectiles used by the Penn Arms single launcher and Milkor LTL multi-launcher are larger which results in more kinetic energy transferred compared to the projectiles used in the FN303; however, the FN303 holds 15 projectiles and is capable of launching it at a faster rate.

An alternative that the Berkeley Police Department does not possess is the TASER. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject's clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

**(7) Third Party Dependence:**

The Berkeley Police Department armorers are trained and capable of handling regular maintenance and most repairs. In the event of a catastrophic failure, the device will be sent to the manufacturer for repair. To date there have been 2 devices that required manufacturer repair, both of which were under warranty.

Additionally, department firearm instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for maintenance, most repairs, or instruction.

### **OC (oleoresin capsicum) Spray**

(1) **Description:**

**A. Background:**

For the purposes of this portion of the Impact Statement, OC (Oleoresin capsicum) will be referred to in the spray form as opposed to the aerosol canister form. First Defense manufactures different sizes of OC sprays. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. Besides being effective on humans, OC based chemical agents usually work on animals as well. In a liquid form, OC can appear as a clear, amber, or heavy dark red solution depending on the manufacturer. It is mixed with several types of solutions which act as carriers.

**B. Quantity:**

Qty 23 – First Defense MK-9 OC spray (13- ounces)

Qty 178 – First Defense MK-3 OC spray (3 ounces)

Most of the MK-3 OC sprays are issued to and maintained by individual officers; however, a small amount of these sprays is stored in a secured equipment room as spares in case of damage or new personnel issue.

**C. Capability:**

The First Defense MK-3 OC sprays are standard issued to all police officers and are worn on the police officers' belt. It has an effective range of 10-12 feet. The larger First Defense MK-9 OC sprays are 13 ounces and are used in violent crowd situations. It has an effect range of 18-20 feet.

The use of the First Defense OC spray can render a dangerous and violent situation safe without using a higher level of force.

**D. Lifespan:**

Aerosol products eventually lose pressure over time. The lifespan of both the MK-9 and MK-3 OC spray are dependent on how well the pressure in the can is maintained, but is recommended to be replaced after 5 years.

**E. Use:**

OC spray may be considered for use to bring under control an individual or groups of individuals who are engaging in or about to engage in violent behavior. OC spray should not, however, be used against individuals or group who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

**F. How it Works:**

A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, burning/stinging skin sensation, redness of the skin, irritation and burning of the nose, runny nose, salivation and burning sensation of the mouth, cough, gagging sensation, shortness of breath, temporary paralysis of the larynx (person unable to speak) and nausea (caused by shock, not the OC itself). A person may also feel disorientated, anxiety, and/or panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

**(2) Purpose:**

There are a variety of situations where officers may use OC spray such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

**(3) Fiscal Cost:****A. Initial Cost:**

The MK-3 OC spray cost approx. \$19 per unit and the MK-9 OC spray costs approx. \$60 per unit. The manufacturer is Defense Technology and the Berkeley Police Department purchase each unit from Galls Police Supply or LC Action Police Supply. Purchases for these tools are made when inventory gets low which is typically determined by how many new officers are sworn in, as well as if they are utilized in dangerous situations.

**B. Cost of Use:**

The cost of each usage is unpredictable due to the unknown nature of crime, timelines of dangerous situations, and number of applications.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of OC spray are not calculable. It could lead to serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

See below cost of training.

**E. Training Cost:**

Training is conducted in the police academy and in-house by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

**F. Maintenance and Storage Costs:**

The majority of the MK-3 OC sprays are either stored within the Police Department or with each sworn police officer while they conduct official duties. All MK-9 OC sprays are stored in the basement. There are no additional storage costs or associated costs to transporting, maintain, or upgrade.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

The physical effects of being subjected to OC may significantly reduce an individual's aggressive behavior. Reports have shown that the use of OC can reduce the amount of officer and arrestee injuries due to its effectiveness. Chemists assigned to the FBI Forensic Science Research and Training Center report no long-term health risks associated with the use of OC. The use of the MK-3 or MK-9 OC spray can render a dangerous and violent situation safe without using a higher level of force.

**(5) Mitigations:**

Law Enforcement Officers attend a Police Officer Standard Training (POST) approved academy before they enter into a Field Training Program and continue their training. During this academy they are taught about OC, how to deploy it, its effects, and the decontamination process. They are also subjected to OC to physically feel the effects themselves. After the academy, each officer is issued a MK-3 OC spray which they are to keep on their person while on duty. If deployed and when practical, medical personnel should be summoned for the affected person(s) per policy 303.

All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

**(6) Alternatives:**

Alternatives to utilizing OC sprays are tools such as expandable batons, less lethal launchers, and/or physical body weapons. The rationale to use OC spray depends on the circumstances of each individual incident and the individual officer involved in the incident. As mentioned above, reports have shown that OC spray may significantly reduce an individual's aggressive behavior which can minimize the amount of force necessary to apprehend that subject. Per our Use of Force policy (Lexipol 300), we shall use the minimal amount of force possible during each incident, thus making OC spray a valuable option.

**(7) Third Party Dependence:**

There is no third-party dependence for the First Defense OC spray. Once they are purchased, they are secured in their designated locations within the Police Department or with sworn police officers while they conduct official duties.

### **Chlorobenzylidene Malonitrile and Oleoresin Capsicum**

**(1) Description:****A. Background:**

Chlorobenzylidene malonitrile (CS):

Chlorobenzylidene malonitrile (CS) is one of the most commonly used "tear gases" in the world. It can be liquid, gaseous, or solid substance intended to produce temporary discomfort through being vaporized or otherwise dispersed in the air. Law enforcement (LE) agencies have found this agent invaluable when faced with combative suspects, for crowd/riot control, and for alleviating barricaded subject situations. LE use it to help control individuals or groups without the need for a higher level of force. There are four different deployment methods of chemical agents (Aerosol - most commonly used by police departments, Fogging, Pyrotechnics, and blast expulsion). All methods of deployment can be affected by certain environmental and physical conditions (wind, rain, temperature, distance, and proximity to others). At standard daily temperatures and pressures, CS forms a white crystal with a low vapor pressure and poor solubility in water.

Oleoresin capsicum (OC):

For this portion of the Impact Statement, Oleoresin capsicum (OC) will be referred to in the aerosol canister form. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a

pungent and irritating pepper odor. It is classified as an inflammatory agent. OC is mixed with several types of solutions which act as carriers.

**B. Quantity:**

Inventory for CS canisters:

Qty 6 – 5230 CS Canisters

Qty 24 – 6230 CS Canisters

Qty 20 – 5230B CS Baffled Canister (flameless)

Qty 17 – 5231 CS Tri-Phaser Canisters

Qty 21 – 4630 CS Muzzle Blast (used with 40 mm less lethal launcher)

Qty 4 – 4530 CS Impact Rounds (used with 40 mm less lethal launcher)

Qty 19 – 4330 CS Barricade Projectile Rounds (used with 40 mm less lethal launcher)

Inventory for OC canisters:

Qty 54 - 9440 OC Tear Ball

Qty 19 - 5440 OC Flameless

Qty 20 - 6340 OC Vaper

**C. Capability:**

CS aerosols with microscopic particles which are potent sensory irritants becoming attached primarily to moist mucous membranes and moist skin. Common effects are: coughing, increased mucous secretion, difficulty breathing, skin reactions, and excessive salivation. The onset of symptoms typically occurs within 20 to 60 seconds, and if the exposed individual is placed in fresh air these effects generally cease in 10 to 30 minutes.

A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, stinging skin sensation, redness of the skin, irritation of the nose, runny nose, salivation, cough, gagging sensation, and shortness of breath. A person may also experience anxiety and panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

Both CS and OC canisters can render a dangerous and violent situation safe without using a higher level of force.

**D. Lifespan:**

CS and OC canisters expire in approximately 5 years.

**E. Use:**

Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

**(2) Purpose:**

There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

**(3) Fiscal Cost:****A. Initial Cost:**

The cost for CS canisters ranges from \$20.00 to \$39.00 per unit. The cost for OC canisters ranges from \$36.00 to \$44.00 per unit. The Berkeley Police Department prefers the use of the Combined Tactical Systems (CTS) chemical agents and we purchase them from LC Action Police Supply.

**B. Cost of Use:**

The cost of each proposed use is unpredictable due to the demand, unknown nature and timelines of dangerous crowd/riots situations, dangerous barricade situations, and hostage situations.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of OC and CS are not calculable. It could lead to serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

See below cost of training.

**E. Training Cost:**

When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

**F. Maintenance and Storage Costs:**

The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

BPD is committed to preserving and protecting human life and welfare. These tools allow us to fulfill our commitment to our community.

Law Enforcement, under Penal Code 12403.1, is able to lawfully purchase, possess, or use chemical agents in the discharge of their duties. CS and/or OC canisters have been prominently used to resolve dangerous barricaded suspect situations and violent crowd control/riot situations.

Berkeley Police officers are trained to utilize time and distance to de-escalate dangerous barricaded situations in order to resolve each incident with minimal the use of force (per Use of Force Policy 300). In some circumstances when all other options are exhausted, CS and/or OC can be inserted into the structure in which the barricaded suspect is, denying access to certain areas inside. Unless exigent circumstances arise, all attempts to evacuate the structure are made prior to any deployment. When CS and/or OC are deployed into a structure the suspect may be forced outside allowing the situation to resolve safely with no use further use of force.

CS and/or OC chemical agents can be utilized to create order in dangerous crowd control/riot situations that have demonstrated violence or destruction. During these incidents, typically a clear and direct warning has been given to the crowd to disperse before the chemical agents are deployed. The ability to disperse crowds from a distance limits injury to Police Officers as well as damage to critical structures.

**(5) Mitigations:**

Regarding the already mentioned impacts, the decision to utilize chemical agents (unless there are exigent circumstances) flows through the chain of command and ultimately makes its way to the Chief of Police and the City Manager. If there are exigent circumstances, the Field Commander makes the decision and then advises



the Chief of Police as soon as practical. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

With these procedures incorporated in BPD's policies, this mitigates many potential negative impacts. Per Policy 428 – First Amendment Assemblies - The Field Commander shall determine the type and quantity of chemical agents to be used. After use of chemical agents, the Field Commander shall re-evaluate the scene to determine if additional chemical agents are needed. Less-than-lethal munitions (40 mm CS impact rounds), chemical agents (including OC spray), and/or smoke shall only be deployed in crowd control situations as outlined in the Use of Force Policy. For planned events, inventories shall be conducted before and at the conclusion of the incident. Outside agency inventories shall also be tracked.

In addition to the mitigations in place, the Berkeley Police Special Response Team also receives annual training on the use of chemical agents, the effects, and the decontamination process. Per policy 303, when practical, medical personnel should be summoned for the affected person(s).

**(6) Alternatives:**

There are no direct alternatives for CS and OC. They are the industry's leading way to resolve barricaded suspects while reducing the likelihood of injury to the subject, community, and officers. Additionally, it is one of the only tools that allows officers to stop acts of violence or regain order during crowd control/riot situations. They are very distinct in nature and have direct purposes. The rationale to use CS or OC depends on the circumstances of each incident. The Berkeley Police Department shall use the minimal amount of force per our Use of Force Policy 300. The use of CS or OC allows the police personnel to maintain distance, giving officers more time to react and avoid a potential need for a higher level of force to safely resolve the situation.

**(7) Third Party Dependence:**

There is no third-party dependence for CS and OC chemical agents. Once they are purchased, they are secured in their designated areas and stay there until they are either used during incidents or training.

## **Remington 700 Rifle**

### **(1) Description:**

#### **A. Background:**

The Remington 700 is a series of bolt-action rifles designed in 1962 by the Remington Arms Company. The “700” designator is the generic name for multiple models of rifles with various parts, barrel lengths, stocks, etc. The Remington 700 rifle has long been used by law enforcement agencies and continues to be an industry standard for issued equipment. The Berkeley Police Department utilizes a custom Remington 700 action, chambered in the common .308-caliber round, with a 20” barrel and an Accuracy International chassis/stock. The rifle also includes a Nightforce 3-15x magnified optic and bipod.

BPD utilizes Hornady .308-caliber ammunition. This particular ammunition is specially designed for law enforcement applications due to its increased and consistent accuracy and performance.

#### **B. Quantity:**

The Berkeley Police Department Special Response Team (SRT) currently possesses six Remington 700 rifles, all configured in the same manner.

Currently, BPD has approximately 1,800 Hornady .308-caliber rounds. That quantity of ammunition fluctuates depending on supply from distributors and training schedules of those trained officers.

#### **C. Capability:**

The Remington 700 rifle, with the appropriate ammunition, training, and practice, is capable of consistent and highly accurate shooting out to a distance of approximately 500-yards.

The Remington 700 is intended to be used in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation.

#### **D. Lifespan:**

The Remington 700 bolt-action rifles have an expected life span of 10-years if properly maintained.

**E. Use:**

Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

**F. How it Works:**

The Remington 700 is a manually operated rifle. It requires the officer to physically maneuver a handle to expel a spent cartridge and to load another unspent round of ammunition in order to fire a second round. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. The officer must then pull a handle attached to the bolt to the rear, ejecting the spent cartridge. The officer then pushes the bolt forward, which picks up another bullet from the magazine, and closes the chamber, making the rifle ready to fire again.

**(2) Purpose:**

This rifle is to be used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. This rifle provides police with the benefit of adding distance to a volatile situation which can increase the safety for community members and officers. This rifle is an ancillary firearm for situations where increased distance and accuracy is needed to safely resolve the situation.

**(3) Fiscal Cost:****A. Initial Cost:**

The initial cost to purchase this rifle with its associated components is approximately \$10,000 dollars each. Their average life span is 10-years at which time it will likely need to be replaced.

**B. Cost of Use:**

Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on training.

**C. Cost of Adverse Effects:**

Adverse effects and improper usage of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

If this rifle is not cared for or maintained well, then a potential financial adverse impact would be the premature purchasing of a replacement rifle or replacement

parts. However, authorized and trained Berkeley Police armorers service and provide regular maintenance of the rifles. The cost of maintenance is staff time.

**E. Training Costs:**

The cost associated with training is the staff time, range fees, and cost of spent ammunition. SRT members train once a month and, on average, each member shoots approximately 50-rounds. Currently, there are only 4 members shooting at each training day. This equates to approximately 2,400 rounds of ammunition being fired per year. This does not include special training days or attendance to training schools/classes. A single box of 20-rounds costs approximately \$20-dollars or \$1 dollar per round.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use over time. Firing pins need to be replaced every 5 to 7 years. The maintenance cost associated with this rifle is minimal.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

**G. Upgrade Costs:**

Upgrade costs and maintenance cost are synonymous due to the consistent design. Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing; those upgrade costs are unknown at this time.

**(4) Impact:**

The primary purpose of this rifle is to further SRT's goal of adding time and distance when dealing with a violent and dangerous individual(s). The rifle may allow SRT additional time by increasing the distance between law enforcement and the specific individual, thereby increasing the likelihood of a more peaceful resolution. Like all tools, it has a time and place for its intended operational efficacy.

**(5) Mitigations:**

Mitigating impacts from this tool's primary purpose is done through regular training. The training includes accuracy, decision making, scenarios, and various other training points. All uses of force require documentation that is completed by the supervisor

in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**

The Remington 700 rifle is an industry standard tool used to deliver precision accuracy on an intended target. This tool can deliver accuracy and predictability through intermediate barriers like glass windows. It can be used at distances greater than any other tool currently possessed or authorized. No alternate tool or method would accomplish the same goal.

(7) **Third Party Dependence:**

These rifles are fairly simple in their design and operation. They do require regular maintenance which is commonly performed by each individual member. BPD Armorers are also capable of performing additional maintenance. If an issue arises which is beyond the scope of our Armorers we would seek professional assistance from the manufacturer. However, the need for this is very rare.

### **ReconRobotics Recon Scout XT**

(1) **Description:**

A. **Background:**

The Recon Scout XT is a throwable micro-robot manufactured by ReconRobotics for use in law enforcement applications. The Recon Scout XT enables officers to obtain instantaneous video footage and audio within indoor or outdoor environments. Designed to withstand repeated drops onto concrete, the Recon Scout XT robot can be thrown into hazardous situations (hostage rescue, barricaded subjects, natural disasters, etc.) in order to allow officers to quickly and safely make informed decisions when seconds count.

B. **Quantity:**

The Berkeley Police Department has two Recon Scout XT throwable robots, both purchased in 2010.

C. **Capability:**

The Recon Scout XT robot is designed to be able to crawl over a variety of terrain, clearing obstacles up to 2" (5 cm) tall. It could be thrown into hazardous

situations, indoor and outdoor, and provide live audio and video feed back to the controller.

**D. Lifespan:**

Both Recon Scout XT robots are over 10 years old and ReconRobotics have developed and manufactured more advanced robots. ReconRobotics have stopped manufacturing certain parts for the Recon Scout XT, so the lifespan is dependent on what parts need to be replaced.

**E. Use:**

The Recon Scout XT robot may be deployed to help police officers safely view potentially dangerous environments before entering them.

**F. How it Works:**

The Recon Scout XT robot has a cylindrical body with a finned-wheel at either end of its body, and is stabilized by a rubber “tail”. It measures approximately 6 ½” wide, and each wheel is about 5” in diameter (fin to fin) and weights just over one pound (1.2 lbs.). The Recon Scout XT robot sends digital video and audio back to an Operator Control Unit (OCU; controller with a screen and joystick), which allows the officer to control the robot, which provides a live feedback containing audio and visual feeds. The Recon Scout XT robot does not record audio or video footage; there is no data storage capability.

**(2) Purpose:**

The Recon Scout XT robot is intended to safely provide police officers valuable information during high-risk, rapid evolving situations via real-time audio and video footage. It can be driven a distance away from the OCU, creating space between the officer and potential danger, thus decreasing the likelihood of injury to those involved in the event, or even a violent encounter between police officers and a dangerous subject. This asset furthers our commitment to the sanctity of life by offering time and distance in critical incidents.

**(3) Fiscal Cost:**

**A. Initial cost:**

The initial cost for the Recon Scout XT robot was about \$12,500 per unit (2010 cost).

**B. Cost of Use:**

There is no “per use” cost of this equipment. The Recon Scout XT is powered by a rechargeable battery.

**C. Cost of Potential Adverse Impacts:**

The likelihood of adverse impacts due to the use of the Recon Scout XT robot is low – it is small, lightweight and is not likely to injure persons or damage personal property when deployed; however, there is a small chance that the Recon Scout XT robot might cause damage to personal property when deployed (thrown) into a structure. Due caution is used when it becomes necessary to throw, rather than place, the robot into a structure.

**D. Annual and Ongoing Cost:**

There are no ongoing or annual costs associated with the use of the Recon Scout XT robot. Being that it is battery operated, there is a nominal cost associated with charging the Recon Scout XT robot's batteries, and the batteries of the OCU. The Recon Scout XT robot is fairly simple to operate, thus there is no cost associated with training officers in its use. There are no costs with transportation or storage of the Recon Scout XT robot. While there are newer models of this robot available, there does not appear to be any upgrades available for the Recon Scout XT. The Recon Scout XT robot has been damaged on occasion, and there are costs associated with repair. But generally, the Recon Scout XT robot is robust and does not need regular repair.

**E. Training Cost:**

The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel familiar with the operations and procedures of the Recon Scout XT robot. The cost of training is staff time.

**F. Maintenance and Storage Costs:**

There are no annual or storage costs.

**G. Upgrade Costs:**

There are no upgrades available at the time of this report.

**(4) Impact:**

The Recon Scout XT robot is used to safely gather information in situations where it may be dangerous to expose an officer, or officers, to gather the same information. Putting officers in such unknown, tense situations has the potential to create violent encounters, or otherwise place officers in unnecessary peril and danger that might otherwise be avoided by the use of a tool like the Recon Scout XT robot. The Recon Scout XT robot is not likely to have a negative impact on the welfare or safety of the public as its role is to gather real-time information during high-risk incidents such as

hostage or potentially life-threatening situations. The Recon Scout XT robot is likely to improve the welfare and increase the safety of the public through its ability to gather real-time information and feed it back to police officers. The Recon Scout XT robot does not have the capability to record or store data.

(5) **Mitigations:**

The use of the Recon Scout XT robot is limited to sworn police officers, and guided by field supervisors (Lieutenants and Sergeants). Procedurally, the Recon Scout XT robot is used when exigent circumstances exist (hostage situation, barricaded subject, natural disaster necessitating rescue, etc.) and real-time information is necessary to safely and effectively resolve the situation. The robot does not record or store data.

(6) **Alternatives:**

Unmanned aerial vehicles (UAV) are an alternative to robots such as the Recon Scout XT robot. However, the Berkeley City Council has prohibited the Berkeley Police Department from using UAVs. They are not constrained by obstacles on the ground and provide far superior perspective and situational awareness; at times, obstacles halt the Recon Scout XT robot's movement. There are several other robots on the market, however, the Recon Scout XT robot is compact, lightweight (weighing in at just over a pound), very maneuverable, and can easily be carried by an officer. It can also be introduced into structures by throwing it through any opening – an option not possible with other robot models.

(7) **Third Party Dependence:**

The Recon Scout XT robot does not currently rely on a third-party company or vendor for its use or maintenance. Should maintenance or parts be required beyond the scope of the members of the Berkeley Police Department, the robot would be sent to ReconRobotics for service.

### **Andros Remotec HD-1 Hazardous Duty Robot**

(1) **Description:**

A. **Background:**

The Andros Remotec HD-1 Hazardous Duty Robot, hereinafter referred to as Remotec HD-1 robot, was designed to support a wide range of missions in demanding environments. The Remotec HD-1 robot is capable of lifting up to 125 pounds, tracked articulators stair climbing, and has an integrated Talisman radio system for a stronger radio wave connection between the controller and the robot.



Remotec has served explosive ordinance disposal units, hazardous materials units, and other first responders as a provider of mobile robotic systems for application into a variety of undesirable, hazardous and potentially life-threatening environments. The Remotec HD-1 robot allows individuals to approach hazardous devices to examine and manipulate the device without putting people in harm's way.

**B. Quantity:**

The Berkeley Police Department Bomb Squad has one robot, the Remotec HD-1 robot.

**C. Capability:**

Remotec HD-1 robot is used in situations where a potential life-threatening situation exists and is too hazardous for a bomb technician to approach in person. The Remotec HD-1 robot is also used to survey an area prior to a bomb technician approaching a scene to check for trip wires and ascertain a good approach path. The Remotec HD-1 robot has three cameras and audio monitoring that stream live video and audio back to the control module; however, it is unable to record and does not have any data storage capabilities. It has several attachment mounting options as well. The Remotec HD-1 robot also has the ability to carry a variety of tools. Some of the tools are:

- 1) A spike to break glass and access vehicles or homes with potential explosive devices inside
- 2) An X-ray mount in order to remotely X-ray suspected explosive devices.
- 3) Percussion actuated non-electric disruptors which are smooth barrels that are filled with water and fired at high speed with a blank shotgun round to open backpacks, suitcases, and packages from a distance
- 4) A hook with cutting blades that are used to cut backpack straps, ropes, etc.
- 5) PAN rounds containing various fills, from sand to slugs, in order to open sturdier packages made from metal or other hard covers.
- 6) Electrical connections to connect explosives that can be detonated remotely and from a safe distance.

**D. Lifespan:**

The Remotec HD-1 robot has an expected life span of 10 years. It is currently 13 years old and has begun exhibiting issues. The Remotec HD-1 robot weighs just

over 200 lbs. and has been near multiple explosions over the years and crossed a variety of off-road terrain

**E. Use:**

Used to examine and possible destroy hazardous materials such as an explosive device.

**F. How it Works:**

The Remotec HD-1 robot is piloted by a bomb technician into a hazardous area to locate, examine, and render suspicious packages and explosive devices safe by utilizing a variety of attachable tools.

**(2) Purpose:**

The Remotec HD-1 robot is used as a means to approach hazardous situations where a potentially lethal threat such as an explosive device exist. The Remotec HD-1 robot allows for the examination and manipulation of an object or potential explosive device without unnecessarily putting a bomb technician's life at risk.

**(3) Fiscal Cost:**

**A. Initial Cost:**

Procured in 2008 for \$214,496 including on-site training through a UASI Grant. (64,292-N.S.)

**B. Cost of Use:**

None. The robot is electric and operated through the City's electricity for charging.

**C. Cost of Potential Adverse Effects:**

The Remotec HD-1 robot interacts with inanimate objects. However, should it encounter a package that explodes, it could potentially destroy the robot and damage other property.

**D. Annual and Ongoing Costs:**

There is no annual cost. Maintenance of the Remotec HD-1 robot is conducted by Berkeley Police Bomb Technicians.

**E. Training Costs:**

Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. The cost of training is limited to staff time.

**F. Maintenance and Storage Costs:**

Remotec offers occasional maintenance and upkeep workshops free of charge.

**G. Upgrade Costs:**

There are no costs for upgrades as the company has stopped manufacturing the robot and any applicable upgrades.

**(4) Impact:**

The Remotec HD-1 robot is used by the Berkeley Police Department Bomb Squad as a means to examine a potentially explosive device in order to keep the community safe. Since April 2020, the Berkeley Police Department Bomb Squad has responded to 14 incidents. The impact of the Remotec HD-1 robot has been to reduce and minimize the danger posed by calls of possible explosive devices to the Berkeley Police Department's Bomb Technicians.

**(5) Mitigations:**

The Remotec HD-1 robot is used in situations where a hazardous device exists. In these situations, the area is always evacuated in order to ensure community safety.

**(6) Alternatives:**

The Remotec HD-1 robot is 13 years old and there has been significant development in technology. There are several alternatives that are far superior than our current Remotec HD-1; Mark V-A1 robot developed by Remotec Andros, Caliber Flex developed by ICOR Technology, Digital Vanguard-S developed by Med-Eng and T7 and T4 developed by L3Harris Technologies. These are alternatives that have newer and better technology and capabilities than the Remotec HD-1 robot.

**(7) Third Party Dependence:**

Remotec representatives are the only ones used to diagnose and maintain complex issues on the robot that cannot be done in-house. Since it is proprietary technology, Remotec may void warranties on any repairs made by outside vendors or by untrained personnel. Therefore, all complex issues with the Remotec HD-1 robot must be repaired by Remotec.

## **Light/Sound Diversionary Device**

### **(1) Description:**

#### **A. Background:**

Light/Sound Diversionary devices also known as distraction device, flashbang, light/sound and noise/flash devices have been available for approximately 40 years and are a safe and effective tool for Law Enforcement (LE) to use during challenging tactical incidents. The device will be referred to a diversionary device throughout this document.

#### **B. Quantity:**

Qty 50 - CTS 7290 Diversionary Device

#### **C. Capability:**

When a diversionary device is deployed they create a loud noise, heat and brilliant light and create an effective diversion. They can create psychological and physiological effects such as: hearing a loud noise beyond that of everyday living, seeing a short bright light, and feeling of a change in atmospheric pressure. These effects may disorient/confuse subjects for a short time giving tactical teams the ability to apprehend that subject without using a higher level of force.

#### **D. Lifespan:**

The lifespan of the CTS 7290 Diversionary Device is 5 years.

#### **E. Use:**

The use of a diversionary device is to create a diversion in order to facilitate entry and enable arrest. Circumstances justifying the use of a diversionary device may include, but not limited to barricaded subject or hostage situations and high-risk search warrants services.

#### **F. How it Works:**

The main charge of a modern diversionary device typically contains flash powder which is sometimes called photoflash powder. Upon initiation, this chemical compound causes the device to deflagrate (not detonate). The powder mixture is rapidly changed into gases that expand outward reaching upwards to 3,800 times the original volume of the charge itself. This process releases the desired effects of loud noise, bright light and the feeling of atmospheric pressure. Flash powder is typically made up of an oxidizer and some type of fuel. The oxidizer is needed to initiate and sustain the flash powder's rapid combustion. This is required since sufficient oxygen cannot be obtained from just the surrounding air.

**(2) Purpose:**

The purpose of a diversionary device is to create a reactionary gap of a person by temporarily disorienting them. This gap gives tactical teams an opportunity to apprehend a suspect while using the minimal amount of force possible. They can also be used to safely invoke a response or redirect the attention of subjects who are either feigning injury, ignoring police commands or are unresponsive while posing a threat to the public.

**(3) Fiscal Cost:****A. Initial Cost:**

Diversionary Devices cost approximately \$45 per unit and are purchased through LC Action Police Supply. Purchases for these tools are made when inventory becomes low, based upon critical incident usage and Special Response Team trainings that incorporate live devices.

**B. Cost of Use:**

The cost of each proposed use is unpredictable due to the unknown nature and timelines of dangerous barricade situations, critical incident, and hostage situations. The devices may be stored inside of the Police Department, in the Special Response Team Vehicle, or in the rescue vehicle. There are no additional storage costs. There are no associated costs for transporting, maintenance, training, or upgrades.

**C. Cost of Potential Advert Effects:**

Adverse effects of improper use of a diversionary device are not calculable. It could result in serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

See below training cost.

**E. Training Cost:**

Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices. The cost of training is staff time.

**F. Maintenance and Storage Costs:**

The majority of diversionary devices are stored inside of a room in the basement within the Police Department. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

The Berkeley Police Department is committed to preserving and protecting human life and welfare. These tools allow us to fulfill our commitment to our community.

Diversionary Devices may be utilized in many situations to include potentially dangerous barricaded subject situations, hostage situations, and critical incidents. Some criteria considered prior to a deployment is dependent upon whether the suspect is a dangerous felon, causes a life-threatening situation and/or other unique incidents where it appears to be a reasonable method in which to resolve the situation. When deployed appropriately these devices can assist in safely apprehending suspects and resolving high risk critical incidents with minimal or no injuries to suspects and/or officers.

**(5) Mitigations:**

Since Diversionary Devices are considered low explosives, there are several protocols in place to mitigate possible negative results (i.e. minor or major injuries).

Only trained and qualified personnel are permitted to deploy diversionary devices; typically, members of the Special Response Team who receive constant training regarding the deployment, effects, and post deployment protocols.

Pre-deployment concerns are typically gathered and evaluated, such as:

- The number of people at a location and the individual location of suspects within the structure.
- Evaluation if there are children or elderly people present
- An evaluation of the suspect's mental and physical conditioning
- Evaluation of the building/room layout

- Possible combustible/flammable substances present
- Lighting conditions

When a diversionary device is deployed, the officer shall utilize a helmet, hearing protection, eye protection, body armor, and nomex (fire resistive) gloves.

If a diversionary device is used, a supervisor shall be notified, medical treatment/screening is conducted, and a collection of the deflagrated device is completed. Documentation utilizing the device serial number is recorded.

Per Policy 351 - Except in extreme emergencies (i.e., life-threatening situations), flash/sound diversionary devices shall not be used without prior authorization of the incident commander/on-scene supervisor. Whenever diversionary devices are carried by personnel in an actual situation or incident, that fact shall be noted in the after-action report or police report. In the event devices are deployed, the circumstances surrounding their deployment shall be fully described. The Chief of Police or his or her designee shall be responsible for reviewing any deployment of diversionary devices to ensure that policy was followed. Diversionary devices are registered by serial number with the Bureau of Alcohol, Tobacco, and Firearms (ATF). Typically, the police department's purchase of new devices is reported directly (by case-lot serial numbers) to ATF by the device manufacturer via ATF Form 5. The National Firearms Act requires the police department to notify ATF upon the use/expenditure of diversionary devices. A Special Response Team member shall be responsible for submitting written notification to ATF when all devices listed on a single ATF form 5 have been used/expended.

**(6) Alternatives:**

A possible alternative to a diversionary device (flashbang) is the Tactical Electronic Distraction Device (T.E.D.D.) which emits 2600 lumen light and high pitched 120 decibel sound to disorientate subjects. This could be a good tool as it is not a low explosive however it has its negative aspects as well:

- There is no feeling of atmospheric pressure, limiting the desired momentary physiological effect.
- A suspect could pick up and throw the device at potential victims and at police officers. The currently used diversionary devices are too hot to attempt this.

- In certain circumstances, a suspect could potentially steal the device during an escape.
- The individual cost per unit is approx. \$200 which is much more than a diversionary device
- This device is significantly less effective in disorienting subjects compared to a diversionary device.

(7) **Third Party Dependence:**

There is no third-party dependence for Diversionary Devices with the exception of communication with ATF of the purchase. Once they are purchased, they are secured within their designated locations where they are stored until they are either used during incidents or training.

### **Long Range Acoustic Device (LRAD)**

(1) **Description:**

A. **Background:**

The Long-Range Acoustic Device (LRAD) is a high intensity directional acoustical array for long range, crystal clear notification system. The use of the LRAD is for communications.

B. **Quantity:**

The Berkeley Police Department possesses 2 Long Range Acoustic Devices (LRAD) speakers. One is an LRAD 450XL and the other is an LRAD 100X.

C. **Capability:**

Both of these speakers are able to focus sound in directional pattern allowing the user to make sound audible over distances much greater than conventional public address speakers. The LRAD 450XL is the larger of the two and designed to either be used in a fixed location or mounted on a vehicle to make it portable. It has a usable range of approximately 1 mile. The LRAD 100X is smaller and more portable. It can be carried or mounted to a person's chest for mobility or mounted to a vehicle. Its range is approximately 1/3 of a mile. Both of these systems allow for clear long-range communication, they are also able to play recorded messages.



**D. Lifespan:**

The lifespan for both LRADs is 25 years.

**E. Use:**

The LRADs are used to communicate with the community during natural disasters, crowd management and control situations, or when other forms of communications are ineffective or inoperable to unequivocally communicate messages from Police or Fire and safely resolve uncertain situations where communicating with the public is paramount.

**F. How it Works:**

The LRADs are essentially a long-range speaker or long-range megaphone and operates as such.

**(2) Purpose:**

The LRADs are designed for clear long-range communication. The LRAD's ability to communicate over a long distance is far superior to any megaphone or Public Address (PA) system mounted to a police vehicle. Additionally, LRAD's may be used to:

- Communicate lifesaving information to residents during disasters
- Communicate to large crowds during parades, festivals, concerts and sporting events
- Establish safety zones and perimeters
- Control traffic congestion
- Conduct Special Response Team operations
- Broadcast a dispersal order
- Communicate during hostage and barricaded subject situations
- Announce and serve high risk warrants
- Communicate to protesters
- Communicate to persons threatening suicide who are in an inaccessible location
- Conduct search and rescue operations

The ability to communicate with the public in a large area increases the safety of all members of the public and law enforcement. It allows everyone in a given area to know what is being communicated, gives more situational awareness to everyone in a given area and allows people to know where to go or not to go.

**(3) Fiscal Cost:****A. Initial Cost:**

The LRAD 450XL and the LRAD 100X were purchased in 2018. The total cost for both LRADs, rechargeable battery packs and accessories was \$49,999.

**B. Cost of Use:**

There is no cost associated with each use of the LRADs. The systems run on batteries or can plug into a vehicle.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of the LRADs are not calculable. It could lead to hearing loss. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

BPD has not incurred any additional cost to date for this equipment.

**E. Training Costs:**

Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD. The cost to train is staff time.

**F. Maintenance and Storage Costs:**

There are no maintenance or storage costs for this equipment.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

The Berkeley Police Department is committed to ensuring the safety of our community. Having the ability to communicate efficiently and effectively in different situations is crucial in providing potentially life-saving information to the public. The LRAD provides BPD personnel the ability to communicate long distances to people that are in a given area, inside structures, or barricaded inside a structure. The LRAD is very effective any situation involving communicating information to large crowds, or entire communities.

**(5) Mitigations:**

The only potential negative impact of the LRAD's is that they are capable of producing a high pitched "deterrent tone" that is designed to disperse a potential threat. This "deterrent tone" does have the ability to cause hearing damage. BPD Policy 707 strictly prohibits any member of BPD from using the LRAD as a weapon.

Additionally, the LRAD can only be deployed at the direction of a Watch Commander or Incident Commander and may only be used by personnel specifically trained in the use of the LRAD.

(6) **Alternatives:**

BPD is not aware of any other sound speakers that are able to clearly communicate over long distances of up to 1 mile.

(7) **Third Party Dependence:**

To date, BPD has not depended on any third party for the use or maintenance of this equipment.

### **36" Baton**

(1) **Description:**

A. **Background:**

The Berkeley Police Department issues a knurled grip, polycarbonate, fixed-length straight baton for crowd control purposes. The baton is 36" long and 1.25" in diameter and weighs about 1.64 pounds. Polycarbonate is a thermoplastic, which means it is durable, resistant to splintering and heat.

B. **Quantity:**

In 2017, BPD purchased 175 polycarbonate 36" batons to replace aging wood batons of the same purpose. Additional polycarbonate batons were purchased over the past four years to ensure all sworn police officers as well as trained reserve police officers are equipped with the 36" baton. BPD possesses approximately 195 - 36" polycarbonate batons. Most of these batons are issued to and maintained by individuals. However, a small amount of these batons is stored in a secure equipment room as spares in case of damage or new personnel issue.

C. **Capabilities:**

The 36" baton is carried in a "baton ring" on an officer's belt just as any other baton. It is used as a safety tool and is a means for officers to defend themselves in certain crowd control or riot situations. Trained officers may employ particular applications of force with their 36" batons when directed by their chain of command. The 36" baton is the desirable baton in a crowd control situation as it is 7" longer than the standard 29" baton. The longer baton creates more distance

between the officer and others, which is critical when dealing with violent or aggressive crowds.

**D. Lifespan:**

The manufacturer provides a lifetime repair or replacement guarantee.

**E. Use:**

The 36" baton is a less-lethal force tool and is intended to be used in crowd control situations in close quarters, where officers may defend an attack, or when engaging in physical contact with combative or aggressive crowd members. The 36" baton is only used for crowd situations.

**F. How it Works:**

There are a number of appropriate blocking or striking techniques an officer may use when force is justified and the decision is made to use the 36" baton to effectively gain control of a person or situation. The use of the baton requires the officer to continually monitor and assess effectiveness of any delivered strikes. The reason this type of force is administered is to stop a person's attack, threat or resistance, with the goal to place them under lawful arrest for their actions.

**(2) Purpose:**

The 36" baton is a less-lethal tool that may be used when a crowd becomes aggressive, hostile or violent. It is the most effective individual tool of choice when officers are in formation and engaged in crowd control duties.

When officers are deployed to maintain, disperse, or protect others from a violent crowd or civil disobedience, it is imperative that they have an adequate safety zone to protect themselves or others. The 36" baton provides officers additional distance from a potential threat than the standard issue 29" baton.

When the baton is used to strike a subject, kinetic energy transfer occurs. Kinetic energy is the energy of motion. The amount of translational kinetic energy which an object has depends upon two variables: the mass of the object and the speed of the object. The desired effect is for the officer to apply a baton strike with the necessary energy to stop the threat as quickly and safely as possible. By targeting the large muscle areas of the arms or legs with sufficient kinetic energy, motor and sensory nerves can be affected. When the nerves are affected this will create momentary muscle dysfunction or pain, which will allow the officer the ability to gain control of the subject, while minimizing the possibility of long-term injury to the subject.

The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person as outlined in policy 303 and 300.

(3) **Fiscal Cost:**

A. **Initial Cost:**

The cost of the Monadnock MP36 2004 36" polycarbonate baton with knurled grip was \$53.00 per baton in September 2017. After tax, \$10,132.94 was spent for the purchase of 175 batons. The department placed an additional order for 20 batons in December 2019. It is anticipated that the cost of the baton will fluctuate a few dollars based on supply and demand over time.

B. **Cost of Use:**

The only cost associated with use that of ongoing departmental training to ensure officers are proficient in authorized baton techniques.

C. **Costs of Potential Adverse Impacts:**

Adverse effects from improper use of the 36" baton cannot be anticipated. Improper use could lead to serious bodily injury or death. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

There is no additional annual or ongoing cost associated with the 36" baton.

E. **Training costs:**

Training on the applications of the batons are conducted at the police academy. Police Office Standard Training (POST) requires "arrest and control" training every 2 years which includes portions of baton training. This training is conducted in-house by POST certified defensive tactics instructors.

F. **Maintenance and Storage Costs:**

There are no associated costs to transporting, maintenance, or upgrades.

G. **Upgrade Costs:**

No upgrades exist for this equipment as of this report.

(4) **Impact:**

Per Policy 300, "The Berkeley Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. The Department is committed to

accomplishing this mission with respect and minimal reliance of the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force.”

At times, it may become necessary for police officers to use force in crowd control situations to move a crowd, stop violent behavior, overcome resistance or make a lawful arrest. Officers have been trained that they must do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public. When deemed necessary, use of the 36” baton may be used as a tool to strike a person, create a barrier or used in formation in order to move a crowd in a certain direction. The use of the baton may cause discomfort, pain, blunt trauma and has the potential to cause serious injury. Their use is subject to the totality of the circumstances, proper training, department policy, as well as federal and state law.

Officers who use the 36” baton are trained to continuously assess each situation where force is used and only use the force that is reasonably necessary and proportional to respond to the threat or resistance to effectively and safely resolve the incident.

**(5) Mitigations:**

Per Policy 300, “In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict.”

Per Policy 303, “Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device. Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices. When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets.”

Every officer who carries a 36” baton has been trained how to properly carry the equipment, it’s intended use, target areas and non-target areas. Large muscle groups such as the upper legs or lower abdomen are approved target areas and areas to be avoided at the groin and head. When a baton strike is directed at an intended target area and the subject moves simultaneously, it is possible for the officer to unintentionally strike a non-target area. Officers are trained to consider the

placement of baton strikes, and to immediately render medical aid to the subject as soon as it is safe to do so.

All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**

The alternatives to the 36" crowd control baton are the 29" standard issue baton and collapsible 26" Rapid Containment Baton (RCB). The standard issue baton and RCB are shorter in length and require officers to be closer to the person they are engaging, thereby increasing the risk of injury to the officer and the person. A longer baton provides an officer with more distance which creates a small safety zone and allows the officer time to react and assess the situation before making use of force decisions.

(7) **Third Party Dependence:**

There is no requirement for a third-party service provider to issue the 36" crowd control baton. Berkeley Police Department Defensive Tactics Instructors provide in-house training on the proper use of the baton.

### **Mobile Command Vehicle**

(1) **Description:**

**A. Background**

The Berkeley Police Department owns one Mobile Command Vehicle (MCV). Our MCV is a 2003 Freightliner MT55. This vehicle's most common use is as a commercial delivery vehicle. Our 2003 Freightliner MT55 was converted into a MCV by adding desktop work stations, additional police radios and emergency lighting. The MCV is 30' long and has a gross vehicle weight (GVW) of approximately 23,000 pounds.

**B. Quantity:**

The Berkeley Police Department owns 1 MCV.

**C. Capability:**

The MCV is a mobile office that provides shelter and may be used as a mobile command and communication center.

**D. Lifespan:**

This vehicle is approximately 20 years old and is at the tail end of its serviceable lifespan. All emergency vehicles need to be completely dependable and vehicles of this age start to lose dependability as old parts start to fail without warning. The modern versions of this type of vehicle are typically converted motorhomes.

**E. Use:**

This vehicle is used as a mobile command post for large scaled events.

**F. How it Works:**

This vehicle operates and drives like other vehicles.

**(2) Purpose:**

This vehicle may be used as a mobile command post for any larger scaled events or as a communications center in the event the communications center in the Public Safety Building is inoperable. Some examples of large-scale events include Solano Stroll, Juneteenth, 4<sup>th</sup> of July, critical incidents or natural disasters.

**(3) Fiscal Cost:****A. Initial cost:**

The initial cost of the MCV (2003 Freightliner MT55) was \$230,800.

**B. Cost of Use:**

The cost of use is the cost of fuel from the City Corporation Yard.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of the MCV are not calculable, but is the same as improper use of any vehicles. The improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

There is no annual or ongoing cost associated with this vehicle. Maintenance of the vehicle is conducted by the City's Corporation Yard.

**E. Training Costs:**

Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle. The training cost is staff time.



**F. Maintenance and Storage Costs:**

There are no storage costs and maintenance would be conducted by the City of Berkeley Corporation Yard.

**G. Upgrade Cost:**

The MCV is almost 20 years old and upgrades would involve replacing different parts of the vehicle. This work would be conducted by the City of Berkeley's Corporation Yard. The cost would be staff time plus the cost of any necessary parts.

**(4) Impact:**

The MCV is used as a command post for any large scaled event. It works as a mobile central location where resources can stage and be deployed from. It provides the police department with on-site command, supplying a control and communications hub that is needed for large community events, or critical incidents such as natural disasters in order to maintain public safety.

**(5) Mitigations:**

The MCV shall only be operated by trained personnel that have demonstrated proficiency in the operations of this vehicle per Berkeley Police Department Policy 811.

**(6) Alternatives:**

The MCV is almost 20 years old. Current MCV from other agencies are large mobile homes converted into MCVs.

**(7) Third Party Dependence:**

All maintenance is completed through the Cities Corp Yard so there is no dependence on a third party.

### **Barrett Model 99 Rifle**

**(1) Description:****A. Background:**

The Barrett Model 99 rifle is a single shot bolt-action 50-caliber rifle first

introduced in 1999. It is intended to be used in emergency situations where there is a high potential for violence.

**B. Quantity:**

Berkeley Police Department Special Response Team (SRT) currently possess 1 (one) of these rifles and is not looking to purchase any others.

Currently BPD has approximately 100 Summit Ammunition .50-caliber BNG rounds.

**C. Capability:**

This rifle is used only in situations where a potential life-threatening situation exists. The length of the rifle's barrel coupled with the ammunition result in precision accuracy. This rifle is capable of disabling any vehicle engine block because of the large caliber round.

**D. Lifespan:**

This rifle has been in our possession for almost 15-years and we expect it to last for an additional 20 years or more considering how in-frequently it's used.

**E. Use:**

This rifle is used primarily in emergency situations where a life-threatening situation exists, necessitating a vehicle to be disabled.

**F. How it Works:**

This is a bolt-action rifle that fires one round at a time and needs to be reloaded by hand after each round. The Barrett Model 99 rifle works similar to all modern bolt-action rifles. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. The operator pulls the bolt back, ejecting the spent cartridge. The operator then loads another bullet into the breach, pushes the bolt forward, and closes the chamber, making the rifle ready to fired again.

**(2) Purpose:**

The Barrett rifle is a firearm that may be used to stop a vehicle which poses a lethal threat to the public, or to disable a vehicle which presents a threat to the safety of another person(s) by its continued use. There are vehicle disabling tools that may disable vehicles by slowly deflating the tires; however, even with tires deflated a vehicle has the ability to operate and remain a threat to the public. Furthermore, these tools must be hand deployed and, in most circumstances, require officers to expose themselves to deadly threats. The Barrett rifle creates the ability to effectively disable vehicles instantaneously from a distance away.

**(3) Fiscal Cost:****A. Initial Cost:**

The Barrett Model 99 50-caliber rifle has a retail cost of approximately \$12,500 dollars. The Department of Justice provided the Barrett rifle to the Berkeley Police Department on 04/04/2007. There was no initial cost related to BPD taking possession of it.

**B. Cost of Use:**

The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$6 dollars per bullet; \$60 for a box of 10 and \$600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

The annual cost of the equipment is minimal and includes ammunition expenditure, cleaning equipment, and possibly replacing the optics at some point in the future.

**E. Training Costs:**

The cost associated with training is the staff time, range fees, and cost of spent ammunition.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

**G. Upgrade Costs:**

Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing; those upgrade costs are unknown at this time.

(4) **Impact:**

The Berkeley Police Department is committed to preserving and protecting human life and welfare. The Barrett rifle is a firearm the department would primarily use to stop a vehicle which poses a lethal threat to the public or used to disable a vehicle that presents a threat to the safety of another person(s) by its continued use.

The Barrett rifle is intended as a tool to increase the safety and welfare of community members and officers alike.

The Barrett rifle has minimal or no impact on civil rights or civil liberties as it will only be deployed in very specific situations, by very select members of the SRT. This is not a piece of equipment that is carried by an officer on routine patrol, and is highly unlikely that any members of our community would ever see this equipment due to its very selective use in the most critical of instances.

(5) **Mitigations:**

Only four BPD members are authorized to utilize this rifle. Authorized members are trained in its use as well as the very specific and limited circumstances where this equipment would be utilized.

(6) **Alternatives:**

There is no other alternative tool or asset available that could accomplish the same goal of this rifle. An alternative rifle to the Barrett model 99 is a different rifle of equal capability, such as a Lapua .338 caliber rifle.

(7) **Third Party Dependence:**

These rifles are simple in their design and operation. They do require regular maintenance which is performed by an SRT Team Leader. If an issue arises which is beyond the scope of our Armorers we would seek manufacturer assistance. However, the need for this is expected to be very rare.

## Appendix:

### Applicable Lexipol Policies Respective to Each Equipment

Policies are hyperlinked to the Berkeley Police Department Lexipol policy website.

#### M4 rifle/Patrol Rifle

- [Policy 300 \(Use of Force\)](#)
- [Policy 349 \(Tactical Rifle Operator Program\)](#)

#### Penn Arms 40MM launcher

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

#### Milkor LTL multi-launcher

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

#### FN 303 Launcher & FN Pava rounds

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

#### Chlorobenzylidene Malononitrile and Oleoresin Capsicum (canister and spray)

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)

#### Remington 700 Rifle

- [Policy 300 \(Use of Force\)](#)
- [Policy 354 \(Precision Rifle\)](#)

#### ReconRobotics Recon Scout XT Robots & Andros Remotec HD-1 Hazardous Duty Robot

- [Policy 708 \(Robot Cameras\)](#)

#### Light/Sound Diversionary Device

- [Policy 353 \(Diversionary Device\)](#)

Long Range Acoustic Device

- [Policy 707 \(Long Range Acoustical Device\)](#)

36" batons

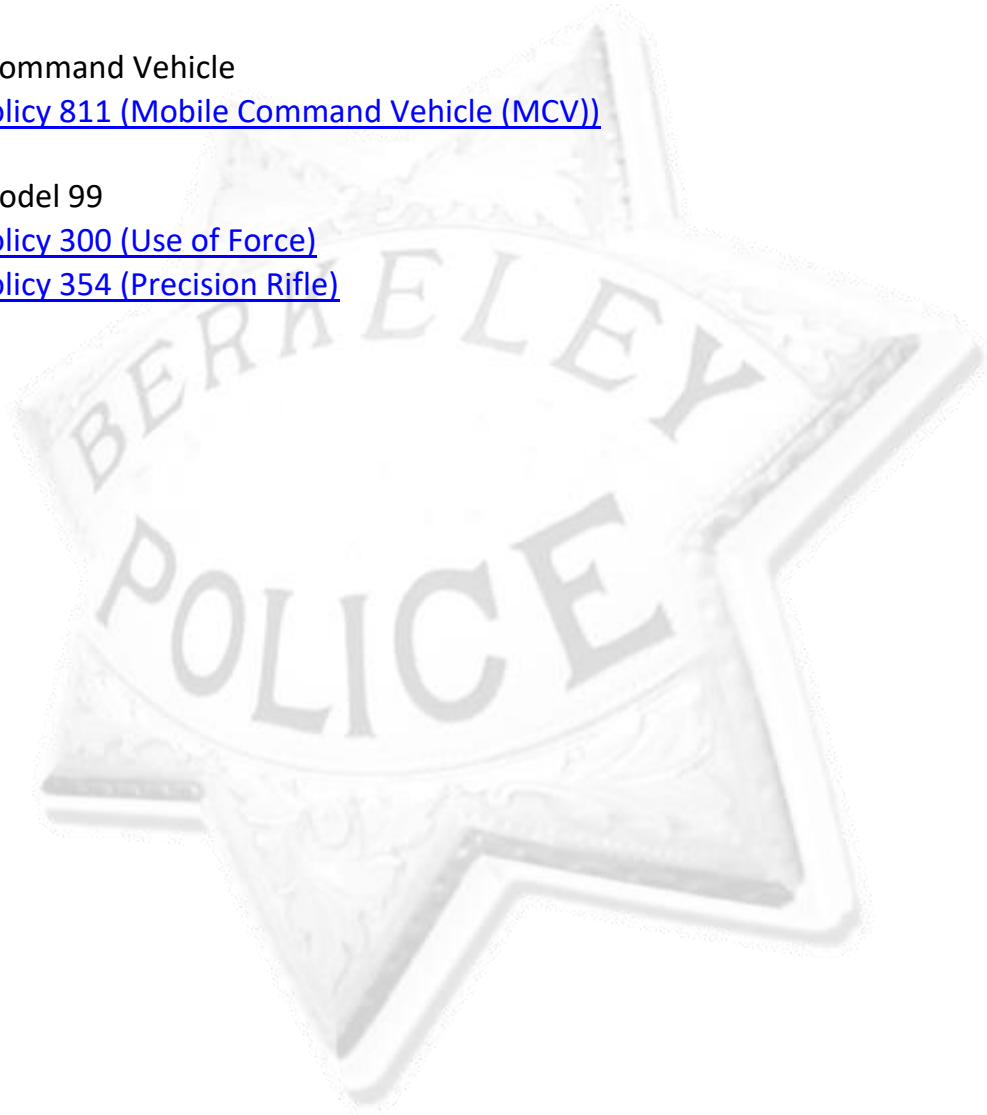
- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

Mobile Command Vehicle

- [Policy 811 \(Mobile Command Vehicle \(MCV\)\)](#)

Barret Model 99

- [Policy 300 \(Use of Force\)](#)
- [Policy 354 \(Precision Rifle\)](#)



## Military Equipment

### 709.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment ( Government Code § 7070; Government Code § 7071; Government Code § 7072).

#### 709.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

**Governing body** – The Berkeley City Council.

**Military equipment** – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

## *Military Equipment*

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### **709.2 POLICY**

It is the policy of the Berkeley Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment.

### **709.3 MILITARY EQUIPMENT COORDINATOR**

The Chief of Police should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Berkeley Police Department (Government Code § 7071).
- (e) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).

### **709.4 MILITARY EQUIPMENT INVENTORY**

The following constitutes a list of qualifying equipment for the Department:

- M4 rifle/Patrol Rifle
- Penn Arms 40MM Single Launcher
- Milkor LTL Multi-Launcher
- FN 303 Launcher & FN Pava Impact Projectile
- Oleoresin Capsicum Spray
- Chlorobenzylidene Malononitrile and Oleoresin capsicum
- Remington 700 Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/Sound Diversionary Device
- Long Range Acoustic Device
- Mobile Command Vehicle
- Barret Model 99



## *Military Equipment*

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### 709.4.1 BERKELEY POLICE DEPARTMENT'S INVENTORY

#### **Rifles and Associated Ammunitions**

##### **Rifle:**

##### **M4 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

##### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Colt M-4 patterned rifle, which fires the .223 Remington cartridge

**Quantity:** The Berkeley Department currently owns and maintains 96 rifles

**Capabilities:** The M4 pattern rifle is used only in situations when a potential life-threatening situation exists. While a pistol is the common firearm used by police in these dangerous situations, the M4 patterned rifle has numerous advantages over it. The ability to shoulder the rifle, coupled with the rifle's lengthened barrel and ammunition, result in higher accuracy and lessens the chance of officers missing the intended target. Additionally, due to the design of the rifle's bullet, the round is less likely to over penetrate commercial and residential walls should the officer miss the intended target. The rifle is also easier to use compared to a pistol because of the bullet's low recoil. Finally, as the rifle can be adjusted and customized, it can be configured to accommodate officers of any stature (hand size, strength, etc.).

**Lifespan:** Due to the rifle's ability to be maintained by department armorers, these rifles have a relatively long-life span if properly maintained. However, the design has changed little in the last 60 years and we can expect new variations and designs to become the new industry standard in the coming years.

**Manufacturer's Description:** This specially designed law enforcement weapon system features many of the combat proven advantages of the military Colt M4. With the 4-position buttstock fully retracted, the Colt Law Enforcement Carbine is less than 32inch length and weighs only 6.9 lb - ideal for tactical deployment and traditional patrol.

##### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The M4 patterned rifle and associated ammunition is intended as a means to safely stop a lethal threat. While a pistol is the firearm that all officers are minimally equipped with, the rifle is an ancillary firearm for situations where increased distance and accuracy are needed to safely resolve the situation.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

##### **FISCAL IMPACT:**

**Initial Cost:** Exact costs unknown. Rifle prices, like other firearms, will range depending on current market demand and availability. While M4 rifles purchased several years ago cost between \$1,000

## *Military Equipment*

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and \$1,200 a piece, current rifles cost between \$1,400 and \$1,600. It should be expected that these prices will fluctuate and likely increase over time.

**Annual cost:** Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on whether the rifle is issued to a patrol officer, a firearms instructor, or a Special Response Team member as each assignment has different training requirements.

**Training costs:** Every officer that is authorized to carry a rifle on duty must attend a 16-hour CA POST approved rifle instruction course before being authorized to carry the rifle on duty. This course may be administered by Berkeley Police Firearm Instructors or by other POST approved agencies. Tuition for the CA POST approved class is dependent on the hosting agency. If conducted in house the cost only includes the officer's hourly wage, range fee, and ammunition costs (all vary). Outside agencies charge between \$25 to \$500 depending on the range location and duration (some classes are 32-hours while POST only requires 16-hours.) Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by POST certified BPD firearm instructors.

**Maintenance costs:** Vary depending on use over time. Traditionally, various springs and pins need to be replaced every five years and may cost between \$3 and \$30 per rifle. Other parts such as the barrel and bolt need replaced around ten years and range between \$150 and \$300 per rifle.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 349 Tactical Rifle Operator Program. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### **Remington 700 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Remington 700 rifle, which fires the .308 caliber ammunition.

**Quantity:** The Berkeley Department currently owns and maintains 6 rifles

**Capabilities:** The Remington 700 rifle, with the appropriate ammunition, training, and practice, is capable of consistent and highly accurate shooting out to a distance of approximately 500-yards.

## *Military Equipment*

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The Remington 700 is intended to be used in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation.

**Lifespan:** The Remington 700 bolt-action rifles have an expected life span of 10-years if properly maintained.

**Manufacturer's Description:** The Model 700 SPS Tactical is a highly maneuverable member of the family. It's built for tack-driving accuracy with a 20" heavy-contour tactical-style barrel and dual-point pillar bedding in its black synthetic stock. Hogue® overmoldings on the stock facilitate sure handling, and it has a semi-beavertail fore-end for added stability off a rest.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** This rifle is to be used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. This rifle provides police with the benefit of adding distance to a volatile situation which can increase the safety for community members and officers. This rifle is an ancillary firearm for situations where increased distance and accuracy is needed to safely resolve the situation.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

### **FISCAL IMPACT:**

**Initial Cost:** The initial cost to purchase this rifle with its associated components is approximately \$10,000 dollars each. Their average life span is 10-years at which time it will likely need to be replaced.

**Annual cost:** If this rifle is not cared for or maintained well, then a potential financial adverse impact would be the premature purchasing of a replacement rifle or replacement parts. However, authorized and trained Berkeley Police armorers service and provide regular maintenance of the rifles. The cost of maintenance is staff time.

**Training costs:** The cost associated with training is the staff time, range fees, and cost of spent ammunition. SRT members train once a month and, on average, each member shoots approximately 50-rounds. Currently, there are only 4 members shooting at each training day. This equates to approximately 2,400 rounds of ammunition being fired per year. This does not include special training days or attendance to training schools/classes. A single box of 20-rounds costs approximately \$20-dollars or \$1 dollar per round.

**Maintenance costs:** Maintenance costs vary depending on use over time. Firing pins need to be replaced every 5 to 7 years. The maintenance cost associated with this rifle is minimal.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### **LEGAL AND PROCEDURAL RULES:**

## *Military Equipment*

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Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force, Policy 354-Precision Rifle. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### **Barret Model 99 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** The Barrett Model 99 rifle is a single shot bolt-action 50-caliber rifle

**Quantity:** The Berkeley Department currently owns and maintains 1 rifle.

**Capabilities:** This rifle is used only in situations where a potential life-threatening situation exists. The length of the rifle's barrel coupled with the ammunition result in precision accuracy. This rifle is capable of disabling any vehicle engine block because of the large caliber round.

**Lifespan:** This rifle has been in our possession for almost 15-years and we expect it to last for an additional 20 years or more considering how in-frequently it's used.

**Manufacturer's Description:** The Model 99 brings new levels of long-range precision shooting. Known as much for its dependability as its versatility, the Model 99 has unfailing accuracy you can rely on.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The Barrett rifle is a firearm that may be used to stop a vehicle which poses a lethal threat to the public, or to disable a vehicle which presents a threat to the safety of another person(s) by its continued use. There are vehicle disabling tools that may disable vehicles by slowly deflating the tires; however, even with tires deflated a vehicle has the ability to operate and remain a threat to the public. Furthermore, these tools must be hand deployed and, in most circumstances, require officers to expose themselves to deadly threats. The Barrett rifle creates the ability to effectively disable vehicles instantaneously from a distance away.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

### **FISCAL IMPACT:**

**Initial Cost:** The Barrett Model 99 50-caliber rifle has a retail cost of approximately \$12,500 dollars. The Department of Justice provided the Barrett rifle to the Berkeley Police Department on 04/04/2007. There was no initial cost related to BPD taking possession of it.

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**Annual cost:** The annual cost of the equipment is minimal and includes ammunition expenditure, cleaning equipment, and possibly replacing the optics at some point in the future.

**Training costs:** The cost associated with training is the staff time, range fees, and cost of spent ammunition.

The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$6 dollars per bullet; \$60 for a box of 10 and \$600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

**Maintenance costs:** Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### **RIFLE AMMUNITION:**

**.223 Remington ammunition: 55 grain FMJ (full metal jacket) for training purposes and 62 grain soft point for duty purposes. (Use in the Colt M4 Rifle)**

**(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

**Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** .223 Remington ammunition: 55 grain FMJ (full metal jacket)

.223 Remington ammunition 62 grain soft point for duty purposes

**Quantity:** Quantity of rifle ammunition fluctuates significantly depending on training attended, including the standard basic police academy, officer assignments, and yearly mandate training cycles. For example, most police academy recruits are required to bring approximately 1,000 rounds to the basic POST approved academy. Most academies have a 16-24-hour rifle training course. The training is required for all officers who are issued a rifle and mandates between 800 and 1,200 rounds. As such, the inventory at the Berkeley Police Department fluctuates significantly depending on how many officers are attending state mandated training and can range from 10,000

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round (our current inventory) to less than 1,000 rounds (our anticipated inventory at the end of December after scheduled department training in November.)

**Capabilities:** The .223 Remington cartridge, depending on the weight of the bullet, 55 grain or 62 grain, travel at approximately 3,000 feet per second and 2,700 feet per second respectively. The round is highly regarded as having a high degree of consistency and accuracy, which is why it is the most common rifle round used in Law Enforcement around the world.

**Lifespan:** Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

### **Product Description:**

.223 Remington ammunition: 55 grain FMJ (full metal jacket)

The full metal jacket ammunition features a 55 grain weight and includes 200 rounds. The caliber is .223 Rem, and the ammunition is made in the USA.

.223 Remington ammunition 62 grain soft point

Federal TRU 223 ammo is custom made ammunition for the Urban Law Enforcement Officer in mind. It features a lead core Hi Shock Soft Point bullet which offers great stopping power and excellent penetration, a non corrosive primer and brand new never fired brass casing and nickel plated brass primer. This LE Tactical ammo can be reloaded up to 5 times for those shooters that reload their 223 ammo. Federal LE 223 Remington has a muzzle velocity of 3050 feet per second and a muzzle energy of 1281 ft lbs. This 223 Federal ammo is new production packaged in 20 round boxes and 200 rounds per case. Federal TRU ammunition is engineered using Mil-Quality specifications. Each Federal TRU cartridge is made using select mil-quality low flash powders that do not disrupt an officer's night vision. The TRU case and web are built using thicker brass, adding the extra strength needed for the high powered rifle. TRU primers are crimped for added holding ability. This virtually eliminates backed out primers that can lock-up your weapon. With TRU ammunition, potentially disastrous situations are greatly reduced. TRU bullets are specifically engineered ranging from fragmenting designs for tactical entry to deeper penetrating bullets for patrol.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** This rifle ammunition is capable of incapacitating an individual from a distance and providing greater accuracy at a distance. This ammunition is used in the M4 rifle.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

### **FISCAL IMPACT:**

**Initial Cost:** Ammunition costs fluctuate with the costs of components (brass, primers, gunpowder, and bullets) and supply/demand. Current costs for .223 Remington range from \$0.50 to \$0.75 a round for training ammunition (55 grain) and \$1.25 to \$1.50 a round for duty ammunition (62 grain).

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**Annual cost:** The annual cost of the equipment is minimal, and is dependent on the amount of training.

**Training costs:** The cost associated with training is the staff time, range fees, and cost of spent ammunition.

**Maintenance costs:** Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 349 Tactical Rifle Operator Program. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### **Hornady.308-caliber ammunition (for the Remington 700 Rifle)**

**(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

**Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Hornady.308-caliber ammunition

**Quantity:** The Berkeley Department currently possess approximately 1800 rounds of this ammunition.

**Capabilities:** This rifle ammunition is capable of incapacitating an individual or disabling an object in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation. This ammunition is specifically designed for accuracy at distances of 500 yards.

**Lifespan:** Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

**Manufacturer's Description:** Millions of successful hunts have proven the accuracy and deadly effect of the famous Hornady<sup>®</sup> InterLock,<sup>®</sup> SST,<sup>®</sup> InterBond<sup>®</sup> and CX<sup>™</sup> bullets we load into Hornady<sup>®</sup> Custom<sup>™</sup> rifle ammunition.

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Every round of Hornady® Custom™ ammunition is hand inspected before packaging to ensure the highest levels of quality control. At Hornady,® we manufacture Custom™ ammunition to give shooters and hunters the advantage of handloaded accuracy in a factory load.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** \_ This rifle ammunition is capable of incapacitating an individual from a distance of 500 yards and providing greater accuracy at a distance. This ammunition is used in the Remington 700 rifle.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

### **FISCAL IMPACT:**

**Initial Cost:** The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$1 dollars per bullet; \$20 for a box of 20, plus shipping and handling. We currently possess 1800 rounds of BMG ammunition, \$1800.

**Annual cost:** The annual cost of the equipment is minimal, and is dependent on the amount of training.

**Training costs:** The cost associated with training is the staff time, range fees, and cost of spent ammunition.

**Maintenance costs:** Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### **Summit Ammunition.50-caliber BNG rounds of ammunition (for the Barrett Model 99)**

**(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

**Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Summit Ammunition.50-caliber BNG rounds of ammunition



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**Quantity:** The Berkeley Department currently possess approximately 100 rounds of this ammunition.

**Capabilities:** This rifle ammunition is capable of disabling any vehicle engine block because of the large caliber round.

**Lifespan:** Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

**Manufacturer's Description:** This is 50 Cal. BMG Summit Ammunition 700gr. M-2 Armor Piercing Ammo. Summit Ammunition has been manufacturing 50 Cal. BMG for over 10 years and they manufacture a premium quality product. They are a fully licensed and insured manufacturer. This ammo is loaded with NEW Winchester brass, New USGI powder and Pulled Lake City M-2 AP bullets.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** This rifle ammunition is capable of disabling any vehicle engine block because of the large caliber round.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

### **FISCAL IMPACT:**

**Initial Cost:** The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$6 per bullet; \$60 for a box of 10, and \$600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

**Annual cost:** The annual cost of the equipment is minimal.

**Training costs:** The cost associated with training is the staff time, range fees, and cost of spent ammunition.

**Maintenance costs:** Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

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Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### **ROBOTS:**

#### **ReconRobotics Recon Scout XT (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** ReconRobotics Recon Scout XT

**Quantity:** The Berkeley Police Department currently owns and maintains 2.

**Capabilities:** The Recon Scout XT robot is designed to be able to crawl over a variety of terrain, clearing obstacles up to 2" (5 cm) tall. It could be thrown into hazardous situations, indoor and outdoor, and provide live audio and video feed back to the controller.

**Lifespan:** Both Recon Scout XT robots are over 10 years old and ReconRobotics have developed and manufactured more advanced robots. ReconRobotics have stopped manufacturing certain parts for the Recon Scout XT, so the lifespan is dependent on what parts need to be replaced.

**Manufacturer's Description:** The Recon Scout XT is just eight inches long and weighs just 1.3 lbs., making it extremely easy to carry and throw. Moreover, deploying the Recon Scout XT takes just 5 seconds, and using it requires no special training. Simply pull the activation pin and throw the device through a doorway or over a wall, or drop it down a vertical shaft using a tether. Using a single joystick on the operator control unit (OCU), a tactical team leader or warfighter can then direct the device to move through the environment and send back real-time video. Equipped with an infrared optical system that automatically turns on when the ambient light is low, the Recon Scout XT can transmit video up to 100 feet indoors and 300 feet outdoors, day or night. The Recon Scout XT may also be specified in any of three transmitting frequencies, allowing police and military personnel to operate up to three robots in the same environment at the same time.

#### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The Recon Scout XT robot is intended to safely provide police officers valuable information during high-risk, rapid evolving situations via real-time audio and video footage. It can be driven a distance away from the OCU, creating space between the officer and potential danger, thus decreasing the likelihood of injury to those involved in the event, or even a violent encounter between police officers and a dangerous subject. This asset furthers our commitment to the sanctity of life by offering time and distance in critical incidents.

**Authorized Uses:** The Recon Scout XT robot may be deployed to help police officers safely view potentially dangerous environments before entering them.

#### **FISCAL IMPACT:**

**Initial Cost:** The initial cost for the Recon Scout XT robot was about \$12,500 per unit (2010 cost).

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**Annual cost:** There are no ongoing or annual costs associated with the use of the Recon Scout XT robot. Being that it is battery operated, there is a nominal cost associated with charging the Recon Scout XT robot's batteries, and the batteries of the OCU. The Recon Scout XT robot is fairly simple to operate, thus there is no cost associated with training officers in its use. There are no costs with transportation or storage of the Recon Scout XT robot. While there are newer models of this robot available, there does not appear to be any upgrades available for the Recon Scout XT. The Recon Scout XT robot has been damaged on occasion, and there are costs associated with repair. But generally, the Recon Scout XT robot is robust and does not need regular repair.

**Training costs:** The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel familiar with the operations and procedures of the Recon Scout XT robot. The cost of training is staff time.

**Maintenance costs:** There are no annual or storage costs.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 708 Robot Cameras.

### **TRAINING:**

The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel who have familiarized themselves with the product manual, operations, procedures, and demonstrated competency in the product through hands on training, these trainings are often referred to as a train-the trainer training. The cost of training is staff time.

### **Andros Remotec HD-1 Hazardous Duty Robot (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Andros Remotec HD-1 Hazardous Duty Robot

**Quantity:** The Berkeley Police Department Bomb Squad has one robot, the Remotec HD-1 robot.

**Capabilities:** Remotec HD-1 robot is used in situations where a potential life-threatening situation exists and is too hazardous for a bomb technician to approach in person. The Remotec HD-1 robot is also used to survey an area prior to a bomb technician approaching a scene to check for trip wires and ascertain a good approach path. The Remotec HD-1 robot has three cameras and audio monitoring that stream live video and audio back to the control module; however, it is unable to record and does not have any data storage capabilities. It has several attachment mounting options as well. The Remotec HD-1 robot also has the ability to carry a variety of tools. Some of the tools are:

- (a) A spike to break glass and access vehicles or homes with potential explosive devices inside
- (b) An X-ray mount in order to remotely X-ray suspected explosive devices.

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- (c) Percussion actuated non-electric disruptors which are smooth barrels that are filled with water and fired at high speed with a blank shotgun round to open backpacks, suitcases, and packages from a distance
- (d) A hook with cutting blades that are used to cut backpack straps, ropes, etc.
- (e) PAN rounds containing various fills, from sand to slugs, in order to open sturdier packages made from metal or other hard covers.
- (f) Electrical connections to connect explosives that can be detonated remotely and from a safe distance.

**Lifespan:** The Remotec HD-1 robot has an expected life span of 10 years. It is currently 13 years old and has begun exhibiting issues. The Remotec HD-1 robot weighs just over 200 lbs. and has been near multiple explosions over the years and crossed a variety of off-road terrain

**Manufacturer's Description:** The Remotec ANDROS fleet of hazardous duty unmanned vehicles is the preferred choice of first responders worldwide. The robust, mission-proven design of the ANDROS line keeps danger at a distance with:

- Simultaneous tool mounts for rapid response during dynamic missions (i.e. suits changing needs as the mission unfolds)
- A versatile array of two-way audio, video, advanced sensors, tools and controllers
- Easy maintainability for minimal downtime

Made in the USA and backed by world-class training and post-sale support, it's no wonder there are over 1,000 ANDROS robots deployed around the globe.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The Remotec HD-1 robot is used as a means to approach hazardous situations where a potentially lethal threat such as an explosive device exist. The Remotec HD-1 robot allows for the examination and manipulation of an object or potential explosive device without unnecessarily putting a bomb technician's life at risk.

**Authorized Uses:** Used to examine and possible destroy hazardous materials such as an explosive device.

### **FISCAL IMPACT:**

**Initial Cost:** Procured in 2008 for \$214,496 including on-site training through a UASI Grant. (64,292-N.S.)

**Annual cost:** There is no annual cost. Maintenance of the Remotec HD-1 robot is conducted by Berkeley Police Bomb Technicians.

**Training costs:** Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. The cost of training is limited to staff time.

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**Maintenance costs:** Remotec offers occasional maintenance and upkeep workshops free of charge.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 708 Robot Cameras.

### **TRAINING:**

Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. All Berkeley Police Bomb Technicians are required to attend a federally mandated training that lasts approximately six weeks.

### **Less Lethal Launchers:**

#### **Penn Arms 40mm Single Launcher (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Penn Arms 40mm Single Launcher

**Quantity:** The Berkeley Department currently owns and maintains 20.

**Capabilities:** The Penn Arms single launcher is capable of firing a single projectile out to a maximum manufacturer recommended range of 45 meters. The Penn Arms 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

**Lifespan:** The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

**Manufacturer's Description:** A 40mm compact single-shot break-open frame launcher with a rifled barrel and folding stock. Features include: Double-action trigger, trigger lock push button and hammer lock safeties.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent or armed confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly

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evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before certain weapons can be utilized. This fact may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

**Authorized Uses:** The Penn Arms 40mm single launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

### **FISCAL IMPACT:**

**Initial Cost:** Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$815.00 each.

**Annual cost:** Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

**Training costs:** Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

**Maintenance costs:** Maintenance costs vary depending on use. Generally, various springs and pins need to be replaced every 5 years which can cost \$3 to \$30.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### **TRAINING:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

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### **Milkor LTL Multi-launcher (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Milkor LTL Multi-launcher

**Quantity:** The Berkeley Police Department currently owns and maintains 2.

**Capabilities:** The Milkor LTL is capable of firing six 40mm projectiles before reloading is necessary. The Milkor LTL 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

**Lifespan:** The manufacturer expected lifespan is about 10 to 15 years depending on use and regular maintenance.

**Manufacturer's Description:** Developed with our partner company, Abrams Airborne Manufacturing, The 40mm Multi-Shot Less-Lethal Tactical Launcher (LTL) was manufactured with the needs of the modern tactical team at the forefront. The launcher is capable of firing a wide variety of 40mm LTL ammo.

#### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

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The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

**Authorized Uses:** The Milkor LTL multi-shot launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

### **FISCAL IMPACT:**

**Initial Cost:** Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$3950.00 each.

**Annual cost:** Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

**Training costs:** Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

**Maintenance costs:** Maintenance costs vary depending on use.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### **TRAINING:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

### **FN 303 and FN Pava Impact Projectile (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** FN 303 and FN Pava Impact Projectile

**Quantity:** The Berkeley Department currently owns and maintains 8 FN 303 less lethal launchers.

**Capabilities:** The FN 303 is capable of firing 15 projectiles out to a maximum manufacturer recommended range of 50 meters. The FN 303 projectiles are direct fire and designed to fragment upon impact to prevent penetration injury. Upon impact, the projectile transfers kinetic energy to



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the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas. This level of force is considered to be similar to that of a baton strike.

**Lifespan:** The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

**Manufacturer's Description:** The FN 303® Less Lethal Launcher is constructed from durable lightweight polymer with comfortable ergonomics and an easy to operate safety. The FN 303® Launcher is equipped with both flip-up iron sights and an integrated MIL-STD-1913 top mounting rail for optical or electronic sights or other accessories. The lightweight polymer magazine holds 15 projectiles and offers a clear rear cover to allow the operator to instantly verify both the payload type and the number of projectiles remaining.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. Discriminate projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

**Authorized Uses:** The FN 303 is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

### **FISCAL IMPACT:**

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**Initial Cost:** Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent FN 303s purchased by the department cost \$800.00 each.

**Annual cost:** Cost for FN 303 use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

**Training costs:** Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

**Maintenance costs:** Maintenance costs vary depending on use. Generally, O-rings need to be replaced every 3000 rounds and cost \$30 per kit.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### **TRAINING:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

### **Light/sound Diversionary Devices:**

#### **CTS 7290 Diversionary Device (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

##### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** CTS 7290 Diversionary Device

**Quantity:** The Berkeley Department currently owns and maintains 50.

**Capabilities:** When a diversionary device is deployed they create a loud noise, heat and brilliant light and create an effective diversion. They can create psychological and physiological effects such as: hearing a loud noise beyond that of everyday living, seeing a short bright light, and feeling of a change in atmospheric pressure. These effects may disorient/confuse subjects for a short time giving tactical teams the ability to apprehend that subject without using a higher level of force.

**Lifespan:** The lifespan of the CTS 7290 Diversionary Device is 5 years.

**Manufacturer's Description:** The CTS 7290 is the standard for diversionary flash-bang devices. The 7290 produces a 165-180 db and 6-8 million candela of light output. The patented design of the 7290, incorporates a porting system that eliminates movement of the body at detonation even

## *Military Equipment*

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if the top or bottom of the device should be in contact with a hard surface. In addition, internal adjustments have greatly reduced smoke output.

Flash Bangs are used by special tactical units during hostage rescue and high-risk warrants. It is an ATF-controlled Class-C explosive device that emits a bright light and thunderous noise to distract potentially dangerous individuals.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The purpose of a diversionary device is to create a reactionary gap of a person by temporarily disorienting them. This gap gives tactical teams an opportunity to apprehend a suspect while using the minimal amount of force possible. They can also be used to safely invoke a response or redirect the attention of subjects who are either feigning injury, ignoring police commands or are unresponsive while posing a threat to the public.

**Authorized Uses:** The use of a diversionary device is to create a diversion in order to facilitate entry and enable arrest. Circumstances justifying the use of a diversionary device may include, but not limited to barricaded subject or hostage situations and high-risk search warrants services.

### **FISCAL IMPACT:**

**Initial Cost:** Diversionary Devices cost approximately \$45 per unit and are purchased through LC Action Police Supply. Purchases for these tools are made when inventory becomes low, based upon critical incident usage and Special Response Team trainings that incorporate live devices.

**Annual cost:** See below training cost.

**Training costs:** Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices. The cost of training is staff time.

**Maintenance costs:** The majority of diversionary devices are stored inside of a room in the basement within the Police Department. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 353 Diversionary Devices.

### **TRAINING:**

Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices.

### **Long Range Acoustic Device**

**The Long-Range Acoustic Device (LRAD)(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

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### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** The Long Range Acoustic Device (LRAD)

**Quantity:** The Berkeley Department currently owns and maintains possesses 2 Long Range Acoustic Devices (LRAD) speakers. One is an LRAD 450XL and the other is an LRAD 100X.

**Capabilities:** Both of these speakers are able to focus sound in directional pattern allowing the user to make sound audible over distances much greater than conventional public address speakers. The LRAD 450XL is the larger of the two and designed to either be used in a fixed location or mounted on a vehicle to make it portable. It has a usable range of approximately 1 mile. The LRAD 100X is smaller and more portable. It can be carried or mounted to a person's chest for mobility or mounted to a vehicle. Its range is approximately 1/3 of a mile. Both of these systems allow for clear long-range communication, they are also able to play recorded messages.

**Lifespan:** The lifespan for both LRADs is 25 years.

**Manufacturer's Description:** LRAD 100x In addition to being 20 – 30 decibels louder than bullhorns and vehicle-based P.A. systems, the LRAD 100X is also up to 6X louder and much more intelligible than other hailing devices of comparable size and weight. Live or recorded broadcasts from the portable LRAD 100X easily overcome engines, sirens and noisy crowds to ensure every message is heard and understood. The LRAD warning tone safely alerts attention to the voice messages that follow, establishes large standoff zones, and is the safer crowd control alternative to non-lethal and kinetic measures.

LRAD 450XL- The LRAD 450XL utilizes technology developed and patented\* by Genasys Inc. to provide the audio output of larger acoustic hailers almost twice its size and weight, while delivering the same outstanding vocal clarity inherent in all LRAD systems. The LRAD 450XL broadcasts powerful warning tones to command attention to the highly intelligible voice messages that follow, enabling operators to change behavior and enhance response capabilities with safe, scalable escalation of force. Lightweight and designed for use on tripods or mounted on vessels, vehicles, and Remote Weapon Stations (RWS), the LRAD 450XL is a highly effective, long range communication system in use around the world for public safety, law enforcement, maritime and defense applications.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The LRADs are designed for clear long-range communication. The LRAD's ability to communicate over a long distance is far superior to any megaphone or Public Address (PA) system mounted to a police vehicle. Additionally, LRAD's may be used to:

- Communicate lifesaving information to residents during disasters
- Communicate to large crowds during parades, festivals, concerts and sporting events
- Establish safety zones and perimeters
- Control traffic congestion

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- Conduct Special Response Team operations
- Broadcast a dispersal order
- Communicate during hostage and barricaded subject situations
- Announce and serve high risk warrants
- Communicate to protesters
- Communicate to persons threatening suicide who are in an inaccessible location
- Conduct search and rescue operations

The ability to communicate with the public in a large area increases the safety of all members of the public and law enforcement. It allows everyone in a given area to know what is being communicated, gives more situational awareness to everyone in a given area and allows people to know where to go or not to go.

**Authorized Uses:** The LRADs are used to communicate with the community during natural disasters, crowd management and control situations, or when other forms of communications are ineffective or inoperable to unequivocally communicate messages from Police or Fire and safely resolve uncertain situations where communicating with the public is paramount.

### **FISCAL IMPACT:**

**Initial Cost:** The LRAD 450XL and the LRAD 100X were purchased in 2018. The total cost for both LRADs, rechargeable battery packs and accessories was \$49,999.

**Annual cost:** BPD has not incurred any additional cost to date for this equipment.

**Training costs:** Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD. The cost to train is staff time.

**Maintenance costs:** There are no maintenance or storage costs for this equipment.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 707 Long Range Acoustic Device.

### **TRAINING:**

Training is conducted by members of the Berkeley Police Department who have extensively reviewed the product manual, become knowledgeable and familiar in the operations and procedures of the LRAD. All trainers have proven demonstrated proficiency and competency in the product through hands on training, these trainings are often referred to as a train-the trainer training.

### **Mobile Command Vehicle**

**Mobile Command Vehicle (MCV)(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

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### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** MCV is a 2003 Freightliner MT55

**Quantity:** The Berkeley Department currently owns and maintains 1 MCV, a 2003 Freightliner MT 55.

**Capabilities:** The MCV is a mobile office that provides shelter and may be used as a mobile command and communication center.

**Lifespan:** This vehicle is approximately 20 years old and is at the tail end of its serviceable lifespan. All emergency vehicles need to be completely dependable and vehicles of this age start to lose dependability as old parts start to fail without warning. The modern versions of this type of vehicle are typically converted motorhomes.

**Manufacturer's Description:** The 22' Freightliner MT55 P1200 is the biggest stepvan option for your delivery fleet, offering maximum capacity, accessibility and maneuverability. Built with a powerful Cummins 6.7L 200HP Diesel Motor, this route truck has folding lower shelves to optimize your cargo space and rear sonar for safety.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** This vehicle may be used as a mobile command post for any larger scaled events or as a communications center in the event the communications center in the Public Safety Building is inoperable. Some examples of large-scale events include Solano Stroll, Juneteenth, 4<sup>th</sup> of July, critical incidents or natural disasters.

**Authorized Uses:** This vehicle is used as a mobile command post for large scaled events.

### **FISCAL IMPACT:**

**Initial Cost:** The initial cost of the MCV (2003 Freightliner MT55) was \$230,800.

**Annual cost:** There is no annual or ongoing cost associated with this vehicle. Maintenance of the vehicle is conducted by the City's Corporation Yard.

**Training costs:** Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle. The training cost is staff time.

**Maintenance costs:** There are no storage costs and maintenance would be conducted by the City of Berkeley Corporation Yard.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 811 Mobile Command Vehicle.

**TRAINING:** Training is conducted by members of the Berkeley Police Department who have extensively reviewed the product manual, become knowledgeable and familiar in the operations of the 2003 Freightliner MT 55. All trainers have proven demonstrated proficiency and competency

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in the product through hands on training, these trainings are often referred to as a train-the trainer training. All operators have had behind the wheel practical training, wherein the operator drives various routes through the City of Berkeley with a trainer during training.

### **Chlorobenzylidene Malononitrile and Oleoresin Capsicum**

#### **Chlorobenzylidene Malononitrile (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Chlorobenzylidene malononitrile (CS)

**Quantity:** The Berkeley Department currently owns and maintains Inventory for CS canisters:

Qty 6 – 5230 CS Canisters

Qty 24 – 6230 CS Canisters

Qty 20 – 5230B CS Baffled Canister (flameless)

Qty 17 – 5231 CS Tri-Phaser Canisters

Qty 21 – 4630 CS Muzzle Blast (used with 40 mm less lethal launcher)

Qty 4 – 4530 CS Impact Rounds (used with 40 mm less lethal launcher)

Qty 19 – 4330 CS Barricade Projectile Rounds (used with 40 mm less lethal launcher)

**Capabilities:** CS aerosols with microscopic particles which are potent sensory irritants becoming attached primarily to moist mucous membranes and moist skin. Common effects are: coughing, increased mucous secretion, difficulty breathing, skin reactions, and excessive salivation. The onset of symptoms typically occurs within 20 to 60 seconds, and if the exposed individual is placed in fresh air these effects generally cease in 10 to 30 minutes.

**Lifespan:** CS and OC canisters expire in approximately 5 years.

**Manufacturer's Description:** Unable to locate from the manufacturer, provided by the subject matter experts. Chlorobenzylidene malononitrile (CS) is one of the most commonly used "tear gases" in the world. It can be liquid, gaseous, or solid substance intended to produce temporary discomfort through being vaporized or otherwise dispersed in the air. Law enforcement (LE) agencies have found this agent invaluable when faced with combative suspects, for crowd/riot control, and for alleviating barricaded subject situations. LE use it to help control individuals or groups without the need for a higher level of force. There are four different deployment methods of chemical agents (Aerosol - most commonly used by police departments, Fogging, Pyrotechnics, and blast expulsion). All methods of deployment can be affected by certain environmental and physical conditions (wind, rain, temperature, distance, and proximity to others). At standard daily temperatures and pressures, CS forms a white crystal with a low vapor pressure and poor solubility in water.

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### **PURPOSE and AUTHORIZED USE:**

**Purpose:** There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

**Authorized Uses:** Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

### **FISCAL IMPACT:**

**Initial Cost:** The cost for CS canisters ranges from \$20.00 to \$39.00 per unit.

**Annual cost:** See below cost of training.

**Training costs:** When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

**Maintenance costs:** The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### **TRAINING:**

Training is conducted by selected members of the Berkeley Police Department who have completed a Peace Officer Standards and Training (POST) certified course in chemical agent training.

### **Oleoresin Capsicum (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Oleoresin capsicum (OC)

**Quantity:** The Berkeley Department currently owns and maintains Inventory for OC canisters:

Inventory for OC canisters:



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Qty 54 - 9440 OC Tear Ball

Qty 19 - 5440 OC Flameless

Qty 20 - 6340 OC Vaper

**Capabilities:** A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, stinging skin sensation, redness of the skin, irritation of the nose, runny nose, salivation, cough, gagging sensation, and shortness of breath. A person may also experience anxiety and panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

Both CS and OC canisters can render a dangerous and violent situation safe without using a higher level of force.

**Lifespan:** CS and OC canisters expire in approximately 5 years.

**Manufacturer's Description:** Unable to locate from the manufacturer, provided by BPD subject matter experts. Oleoresin capsicum (OC) will be referred to in the aerosol canister form. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. OC is mixed with several types of solutions which act as carriers.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

**Authorized Uses:** Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

### **FISCAL IMPACT:**

**Initial Cost:** The cost for OC canisters ranges from \$36.00 to \$44.00 per unit.

**Annual cost:** See below cost of training.

**Training costs:** When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

**Maintenance costs:** The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle.

## *Military Equipment*

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There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### **TRAINING:**

Training is conducted by selected members of the Berkeley Police Department who have completed a Peace Officer Standards and Training (POST) certified course in chemical agent training.

### **Oleoresin Capsicum Spray (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Oleoresin capsicum (OC) spray

**Quantity:** The Berkeley Department currently owns and maintains Inventory for OC canisters:

Qty 23- First Defense MK-9 OC spray (13 ounces)

**Capabilities:** The larger First Defense MK-9 OC sprays are 13 ounces and are used in violent crowd situations. It has an effect range of 18-20 feet.

The use of the First Defense OC spray can render a dangerous and violent situation safe without using a higher level of force.

**Lifespan:** Aerosol products eventually lose pressure over time. The lifespan the MK-9 OC spray are dependent on how well the pressure in the can is maintained, but is recommended to be replaced after 5 years.

**Manufacturer's Description:** The MK-4 is an ideal size for patrol officers to wear on a duty belt and will deliver 11-12 short bursts of OC at an effective range of 10-12 feet(18-20 for the MK9). This 1.3/% MC OC aerosol product features a 360-degree stream deliver method which allows the aerosol projector to disperse OC from any angle while providing a target specific, strong concentrated stream for greater standoff.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** There are a variety of situations where officers may use OC spray such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

**Authorized Uses:** OC spray may be considered for use to bring under control an individual or groups of individuals who are engaging in or about to engage in violent behavior. OC spray should

## *Military Equipment*

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not, however, be used against individuals or group who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

### **FISCAL IMPACT:**

**Initial Cost:** The MK-9 OC spray costs approx. \$60 per unit. The manufacturer is Defense Technology and the Berkeley Police Department purchase each unit from Galls Police Supply or LC Action Police Supply. Purchases for these tools are made when inventory gets low which is typically determined by how many new officers are sworn in, as well as if they are utilized in dangerous situations.

**Annual cost:** See below cost of training.

**Training costs:** Training is conducted in the police academy and in-house by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

**Maintenance costs:** All MK-9 OC sprays are stored in the basement. There are no additional storage costs or associated costs to transporting, maintain, or upgrade.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### **TRAINING:**

Training is conducted by selected members of the Berkeley Police Department who have completed a Peace Officer Standards and Training (POST) certified course in chemical agent training.

### **709.5 APPROVAL**

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.

## *Military Equipment*

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- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

### **709.6 COORDINATION WITH OTHER JURISDICTIONS**

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

#### **709.6.1 TEMPORARY USE IN EXIGENT CIRCUMSTANCES**

The Berkeley Police Department may borrow and/or temporarily use Controlled Equipment in Exigent Circumstances without following the requirements in BMC 2.100.040, however the Department must take the following actions:

- (a) Provide written notice of the acquisitions or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged under local, state, or federal law
- (b) If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Controlled Equipment Impact Report and Controlled Equipment Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and received approval, as applicable from the City Council pursuant to BMC 2.100.040
- (c) Include the Controlled Equipment in the Department's next annual Controlled Equipment Report.

### **709.7 ANNUAL REPORT**

Upon approval of a military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

### **709.8 COMMUNITY ENGAGEMENT**

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.

## *Military Equipment*

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### **709.9 MILITARY EQUIPMENT QUESTIONS**

Any member of the public may direct their questions regarding this policy and ordinance to a Sergeant in the Professional Standards Bureau at 510-981-5734 or 510-981-5974. Concerns may also be directed to [police@cityofberkeley.info](mailto:police@cityofberkeley.info). Questions will be answered in a timely manner by a member of the Berkeley Police Department.

#### **709.9.1 MILITARY EQUIPMENT CONCERNS**

Any member of the public may direct their concerns regarding this policy and any of the military equipment to Internal Affairs Bureau at 510-981-5706.

### **709.10 ASSOCIATED EQUIPMENT USE POLICIES**

The below links will direct to the respective use policies:

[300-Use of Force](#)

[303-Control Devices and Techniques](#)

[349-Tactical Rifle Operator Program](#)

[353-Flash/Sound Diversionary Devices](#)

[354-Precision Rifle Operator Program](#)

[428-First Amendment Assemblies](#)

[707-Long Range Acoustical Device \(LRAD\)](#)

[708-Robot Cameras](#)

[811-Mobile Communications Vehicle \(MCV\)](#)

### **709.11 COMPLIANCE**

The Department's Audit and Inspection Sergeant will ensure that the Department members comply with this policy. The Audit and Inspection Sergeant will conduct an annual audit with the assistance from members of the Professional Standards Bureau. Any violations will be referred to the Internal Affairs Bureau and handled in accordance with General Order P-26 (Personnel Compliant Procedures). All instances of non-compliance will be reported to the City Council via the annual military equipment report.



Office of the City Manager

ACTION CALENDAR

July 26, 2022

*(Continued from June 21, 2022)*

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Jennifer Louis, Interim Chief of Police  
Subject: Police Equipment & Community Safety Ordinance Impact Statements,  
Associated Equipment Policies and Annual Equipment Use Report

RECOMMENDATION

Adopt a Resolution approving the Controlled Equipment Impact Statements, Associated Equipment Use Policies and equipment.

FISCAL IMPACTS OF RECOMMENDATION

The fiscal impacts are minimal as the Berkeley Police Department has possessed the equipment outlined in the impact statements for many years. The majority of the fiscal impacts are limited to staff time for reporting and continuous training.

CURRENT SITUATION AND ITS EFFECTS

The Police Equipment and Community Safety Ordinance and Assembly Bill No.481 require the Police Department to submit documents outlining details of specific equipment defined as “military equipment.” The definition of “military equipment” differs between the city ordinance and state law. The Berkeley Police Department impact statements and their associated policies are comprehensive and address equipment from both the ordinance and state law. All equipment outlined within the impact statements was previously acquired to the passage of this legislation and has been in the possession of the Berkeley Police Department and utilized for many years.

BACKGROUND

On May 11<sup>th</sup>, 2021 the city of Berkeley adopted the Police Equipment and Community Safety Ordinance, Ordinance NO. 7,760-N.S. This ordinance addresses military equipment funding, acquisition, and use. This ordinance requires the Berkeley Police Department to submit impact statements and associated equipment policies on certain equipment that the Berkeley Police Department already possesses to the Police Accountability Board and City Council for approval. An annual report is also mandated by the city ordinance for the usage of specified equipment.

On January 1<sup>st</sup>, 2022 Assembly Bill No.481 took effect. Similar to the city ordinance, this assembly bill also addresses military equipment funding, acquisition, and use. The assembly bill and the Police Equipment and Community Safety Ordinance address similar equipment and have similar requirements. However, Assembly Bill No.481 addresses additional equipment that the city ordinance does not and requires additional impact statements and additional equipment policies.

The city ordinance provides the Police Accountability Board 90-days to review Impact Statements and their associated use policies before making recommendations and before City Council's consideration of approval. After reconciling the city ordinance and new state law mandates, the required documents were provided to the Police Accountability Board on February 24<sup>th</sup>, 2022. On April 6<sup>th</sup>, 2022 the Police Accountability Board provided the Berkeley Police Department with their recommendations on the Impact Statements and their associated use policies. The Police Accountability Board's recommendations are submitted as an attachment to this council item pursuant to section 2.100.040 (H)(1), which requires the Berkeley Police Department provide City Council with the Police Accountability Board's recommendations 15 days prior to a public meeting.

It should be noted that Section 2.100.040 (H)(2) states "If the City Council does not approve such item within four (4) regular City Council meetings from when the item is first scheduled, the Police Department shall cease its use of the Controlled Equipment until such review and approval occurs."

The Impact Statements and their associated use policies and Annual Report have been submitted as attachments to this council item. The attached Impact Statements and their associated use policies were also posted onto the Berkeley Police Department's website thirty days prior to the May 10, 2022 Council Meeting, in line with the requirements of Assembly Bill No.481.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

#### RATIONALE FOR RECOMMENDATION

The Police Equipment and Community Safety Ordinance and Assembly Bill No.481 require the approval of "military equipment" by a "governing body."

#### ALTERNATIVE ACTIONS CONSIDERED

If the equipment outlined in the Impact Statements and their associated policies are not approved, the Berkeley Police Department is required to cease its use, per the city ordinance. Public safety and the safety of Berkeley Police Officers will be detrimentally impacted if the continued use of this equipment by the Berkeley Police Department is

Annual Reporting and Impact Statements:  
Police Equipment and Community  
Safety Ordinance

ACTION CALENDAR  
July 26, 2022

not approved. This equipment has been relied on for many years, assisting in keeping the Berkeley community safe.

CONTACT PERSON

Jennifer Louis, Interim Chief of Police, (510) 981-5700

Attachments:

1. Resolution
2. Impact Statements and their associated use policies
3. 2021 Annual Equipment Use Report
4. Police Accountability Board Recommendation
5. Military Equipment Policy



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

ANNUAL REPORTING AND IMPACT STATEMENTS: POLICE EQUIPMENT AND  
COMMUNITY SAFETY ORDINANCE

WHEREAS, the Berkeley City Council adopted Ordinance NO. 7,760-N.S., the Police Equipment and Community Safety Ordinance on May 11, 2021; and

WHEREAS, Section 2.100.020 of the city ordinance mandates Impact Statements and their associated equipment policies for certain equipment that the Berkeley Police Department possesses; and

WHEREAS, Section 2.100.050 of the ordinance mandates an annual report for the deployment of certain equipment that the Berkeley Police Department possesses; and

WHEREAS, per city ordinance, the Impact Statements, associated equipment policies, and the first annual report shall be submitted within one year of approval; and

WHEREAS, Assembly Bill No.481 was passed September 30, 2021; and mandates similar requirements to the city ordinance including “use policies” and “annual use report;” and

WHEREAS, the equipment outlined between Assembly Bill No.481 and the Police Equipment and Community Safety Ordinance are similar.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it accepts the Berkeley Police Department Impact Statements, associated equipment policies, and Annual Report, and approve the equipment outlined in the Impact Statements.



**Police Equipment and  
Community Safety Ordinance  
Impact Statements**

## **ACKNOWLEDGEMENTS**

Thank you to the subject matter experts for helping author this report.

Officer Corey Bold –  
*Patrol Officer and chemical agent instructor*

Officer Semir Muratovic –  
*Patrol Officer and Bomb Squad Technician*

Officer Derek Radey –  
*Patrol Officer and less lethal coordinator/instructor*

Lieutenant Kevin Reece –  
*Special Response Team Commander*

Officer Scott Salas –  
*Patrol officer and Special Response Team high ground team leader*

Lieutenant Jennifer Tate –  
*Traffic Lieutenant and defensive tactics instructor*

Officer Jason Tillberg –  
*Department trainer and Department Armorer*

Officer Sean Tinney –  
*Department trainer and Special Response Team member*

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## INTRODUCTION

On May 11, 2021 the Berkeley City Council passed Ordinance NO. 7,760-N.S., the Police Equipment and Community Safety Ordinance. Section 2.100.020 of the ordinance mandates an impact statement for certain equipment that the Berkeley Police Department possesses. An impact statement is defined in section 2.100.020 (C) and is a publicly released written document that includes the following details for each equipment:

- 1) Description
- 2) Purpose
- 3) Fiscal cost
- 4) Impact
- 5) Mitigation
- 6) Alternatives
- 7) Third Party Dependence

An impact statement for each of the following equipment has been authored by subject matter experts in their respective fields:

- M4 rifle/Patrol Rifle
- Penn Arms 40MM launcher
- Milkor LTL multi-launcher
- FN 303 Launcher & FN Pava rounds
- Oleoresin capsicum (OC spray)
- Chlorobenzylidene Malonitrile and Oleoresin capsicum (tear gas)
- Remington 700 Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/sound distraction device
- Long Range Acoustic Device (LRAD)
- 36" batons
- Mobile Command Vehicle
- Barret Model 99

The impact statements required by the City ordinance also fulfill the obligations set forth in Assembly Bill 481. Impact statements were compiled in this report in a

prioritized ranking for the Police Accountability Board to consider in determining the order in which to perform its review per the Police Equipment and Community Safety Ordinance.

### **M4 Rifle and Associated Ammunition**

#### **(1) Description:**

##### **A. Background:**

The “M4” was developed and produced for the United States government by Colt Firearms and was based off of the original Armalite Rifle (AR) patent purchased by Colt in 1959. Although Colt owned the trademarked name of “M4”, a number of other manufacturers offer M4-like firearms under various model names. The M4 and its variants fire 5.56×45mm NATO (and .223 Remington) ammunition, and are a gas-operated, magazine-fed firearm with a barrel length ranging from 11.5” to 16”.

The current Berkeley Police Department (BPD) rifle ammunition used is the .223 Remington, a rimless, bottlenecked rifle cartridge. The round was developed in 1957 by Remington Arms and Fairchild Industries. The .223 Remington is considered one of the most popular cartridges and is currently used by a wide range of semi-automatic and manual-action rifles as well as handguns. While the military uses the similar 5.56x45 NATO cartridge, BPD uses the more common and often regarded civilian cartridge of .223 Remington for all training and duty uses.

Currently, BPD uses two different kinds of .223 Remington ammunition: 55 grain FMJ (full metal jacket) for training purposes and 62 grain soft point for duty purposes. This is done for several reasons.

1. FMJ ammunition is cheaper to purchase. While many agencies use the same ammunition for training and duty use, the department saves a significant amount of money by using FMJ ammunition for training.
2. The observed performance between the two rounds is negligible for training purposes. Officers can use the FMJ ammunition in a training course and see no difference in operation and performance versus using 62 grain soft point duty ammunition.
3. The 62-grain soft point ammunition has been shown to have less over penetration and over travel compared to FMJ ammunition.

This means that rounds fired are less likely to hit unintended targets.

**B. Quantity:**

The Berkeley Department currently owns and maintains 96 rifles.

Quantity of rifle ammunition fluctuates significantly depending on training attended, including the standard basic police academy, officer assignments, and yearly mandate training cycles. For example, most police academy recruits are required to bring approximately 1,000 rounds to the basic POST approved academy. Most academies have a 16-24-hour rifle training course. The training is required for all officers who are issued a rifle and mandates between 800 and 1,200 rounds. As such, the inventory at the Berkeley Police Department fluctuates significantly depending on how many officers are attending state mandated training and can range from 10,000 round (our current inventory) to less than 1,000 rounds (our anticipated inventory at the end of December after scheduled department training in November.)

**C. Capability:**

The M4 pattern rifle is used only in situations when a potential life-threatening situation exists. While a pistol is the common firearm used by police in these dangerous situations, the M4 patterned rifle has numerous advantages over it. The ability to shoulder the rifle, coupled with the rifle's lengthened barrel and ammunition, result in higher accuracy and lessens the chance of officers missing the intended target. Additionally, due to the design of the rifle's bullet, the round is less likely to over penetrate commercial and residential walls should the officer miss the intended target. The rifle is also easier to use compared to a pistol because of the bullet's low recoil. Finally, as the rifle can be adjusted and customized, it can be configured to accommodate officers of any stature (hand size, strength, etc.).

The .223 Remington cartridge, depending on the weight of the bullet, 55 grain or 62 grain, travel at approximately 3,000 feet per second and 2,700 feet per second respectively. The round is highly regarded as having a high degree of consistency and accuracy, which is why it is the most common rifle round used in Law Enforcement around the world.

**D. Lifespan:**

Due to the rifle's ability to be maintained by department armorers, these rifles have a relatively long-life span if properly maintained. However, the design has

changed little in the last 60 years and we can expect new variations and designs to become the new industry standard in the coming years.

Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

**E. Use:**

Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

**F. How it Works:**

The M4 patterned rifle works the same as a majority of all modern firearms. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. As the bullet travels down the barrel, gas from the ignited powder also escapes from the muzzle. Some of that gas is recycled back into the chamber of the firearm which causes the firearm to cycle its action and load another bullet. From there the process repeats with each pull of the trigger.

The .223 Remington cartridge is made up of several parts, primarily the primer, casing, gunpowder, and bullet. The bullet is seated into the front or opening of the casing. Gunpowder is placed between the bullet and the interior of the casing and a primer is seated in the rear part of the casing. When the trigger of a firearm is pulled, it releases the hammer, which strikes the firing pin, driving it forward. The firing pin collides with the rear of the cartridge, where the primer is seated, which ignites the primer. The spark from the primer ignites the gunpowder. Gas converted from the burning powder rapidly expands in the cartridge. The expanding gas forces the bullet out of the cartridge and down the barrel with great speed. The rifling in the barrel causes the bullet to spin as it travels out of the barrel. The bullet's speed and escaping gases produce a "bang."

After the bullet exits the barrel, the spent casing which housed the bullet, gunpowder, and primer are ejected from the firearm.

**(2) Purpose:**

The M4 patterned rifle and associated ammunition is intended as a means to safely stop a lethal threat. While a pistol is the firearm that all officers are minimally



equipped with, the rifle is an ancillary firearm for situations where increased distance and accuracy are needed to safely resolve the situation.

**(3) Fiscal Cost:**

**A. Initial Cost:**

Rifle prices, like other firearms, will range depending on current market demand and availability. While M4 rifles purchased several years ago cost between \$1,000 and \$1,200 a piece, current rifles cost between \$1,400 and \$1,600. It should be expected that these prices will fluctuate and likely increase over time.

Ammunition costs fluctuate with the costs of components (brass, primers, gunpowder, and bullets) and supply/demand. Current costs for .223 Remington range from \$0.50 to \$0.75 a round for training ammunition (55 grain) and \$1.25 to \$1.50 a round for duty ammunition (62 grain).

**B. Cost of Use:**

Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on whether the rifle is issued to a patrol officer, a firearms instructor, or a Special Response Team member as each assignment has different training requirements.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

See section B. above, these costs are determined based on the rifle's assignment.

**E. Training Costs:**

Every officer that is authorized to carry a rifle on duty must attend a 16-hour CA POST approved rifle instruction course before being authorized to carry the rifle on duty. This course may be administered by Berkeley Police Firearm Instructors or by other POST approved agencies. Tuition for the CA POST approved class is dependent on the hosting agency. If conducted in house the cost only includes the officer's hourly wage, range fee, and ammunition costs (all vary). Outside agencies charge between \$25 to \$500 depending on the range location and duration (some classes are 32-hours while POST only requires 16-hours.)

Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by POST certified BPD firearm instructors.

Typical round count for such classes range between 800 rounds and 1200 rounds per student. Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by a BPD firearm instructor which constitutes an additional 500 or so rounds per officer.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use over time. Traditionally, various springs and pins need to be replaced every five years and may cost between \$3 and \$30 per rifle. Other parts such as the barrel and bolt need replaced around ten years and range between \$150 and \$300 per rifle.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

**G. Upgrade Costs:**

Upgrade costs and Maintenance cost are synonymous due to the consistent design and lack of changes of the rifle over the last 60 years. Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing, those upgrade costs are unknown at this time.

**(4) Impact:**

The Berkeley Police Department is committed to preserving and protecting human life and welfare. The M4 patterned rifle, which fires the .223 Remington cartridge, is a superior firearm to stop a lethal threat compared to the issued pistols to police officers, in that officers equipped with this firearm shoot less rounds, fire more accurately, and are less likely to fire errant rounds. Highly volatile and violent incidents, such as a hostage situation, can be more safely and efficiently resolved with a rifle.

The M4 patterned rifle, and the accompanying .223 Remington cartridge it fires, is intended as a tool to increase the safety and welfare of citizens and officers alike. The M4 patterned rifle and .223 Remington cartridge, both inanimate objects, have zero impact on things such as civil rights or civil liberties of the public. Any abuses of authority or power would be the result of an individual who violates the Berkeley Police Department's policies, including state and federal laws.

**(5) Mitigations:**

Per Policy 300, “Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.

Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons.”

**(6) Alternatives:**

There are no suitable alternatives to the M4 rifle for the intended purpose. The M4 rifle is a law enforcement standard across the US and other countries due to its reliability, ease of use, ease of maintenance, and increased accuracy over other options.

There are no suitable alternatives to the .223 Remington cartridge, as the current BPD M4 rifle is designed for that particular cartridge. The .223 Remington cartridge is a law enforcement standard across the US and other countries due to its reliability, availability, and increased accuracy over other options.

**(7) Third Party Dependence:**

Berkeley Police Department armorers are trained and capable to handle any and all issues related to the maintenance or repair of the M4 rifles. Additionally, BPD firearm instructors are fully certified by state and private training institutes to fully educate and train BPD officers. No third party is required for maintenance, repair, or instruction.

All ammunition purchased by BPD, like all equipment, is dependent on Third Party vendors. Vendor stock and availability is outside BPD control or management. Once ammunition is purchased and in BPD custody there is no additional need for Third Party assistance.

### **Penn Arms 40mm Single Launcher**

**(1) Description:****A. Background:**

The 40mm impact projectile was developed as an alternative to the 12-gauge bean bag round and other more indiscriminate less lethal options. Early 12-gauge

bean bag round designs had somewhat unpredictable flight patterns and could cause significant unwanted injury. The 40mm foam baton round was developed as a direct fire projectile designed to minimize the risk of unintended injuries. Currently, the Berkeley Police Department utilizes the CTS 4557 foam baton projectile and the Penn Arms L-140 single shot launcher.

**B. Quantity:**

The Berkeley Police Department currently owns and maintains 20 Penn Arms less lethal launchers.

**C. Capability:**

The Penn Arms single launcher is capable of firing a single projectile out to a maximum manufacturer recommended range of 45 meters. The Penn Arms 40mm projectiles are direct fire with a pliable “sponge” tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

**D. Lifespan:**

The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

**E. Use:**

The Penn Arms 40mm single launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

**F. How it works:**

The Penn Arms 40mm single launcher is a double action, break open less lethal launcher. The launcher is capable of firing a single 40mm projectile. When fired, the hammer strikes the munition primer which ignites gun powder in the primer insert. Expelled gases propel the projectile through the rifled barrel. The projectile has a rear plastic portion called the ogive which catches the barrel rifling and provides spin. The spin provides a greater degree of accuracy and eliminates any potential the projectile will tumble when exiting the barrel.

The projectiles utilized by the Berkeley Police Department are the CTS 4557 40mm sponge baton round. The CTS 4557 has a maximum effective range of 45 meters. The tip of the projectile is a pliable rubber material which molds to the body upon impact. The projectile travels at an estimated 240 feet per second which is slower than the FN 303 projectile. However, the larger mass, about 60 grams, creates more kinetic energy upon impact which is similar to that of a baseball thrown by a pitcher. The additional kinetic energy becomes important when the suspect has on thick or layered clothing or demonstrates a high pain tolerance.

The Penn Arms single launcher is a basic design making it easy to operate and maintain.

(2) **Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent or armed confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before certain weapons can be utilized. This fact may allow the Officer time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the

potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Additionally, it has been our experience that a 40mm projectile impact will almost always resolve a violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

(3) **Fiscal Cost:**

A. **Initial Cost:**

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$815.00 each.

B. **Cost of Use:**

Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

C. **Cost of Potential Adverse Effects:**

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death.

D. **Annual and Ongoing Costs:**

See section B above

E. **Training Costs:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use. Generally, various springs and pins need to be replaced every 5 years which can cost \$3 to \$30.

**G. Upgrade Costs:**

There are no foreseeable upgrade costs. The Penn Arms single launcher has few working parts and is of a simple design.

**(4) Impact:**

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but hopefully the minimal amount of force needed to safely resolve the incident.

The Penn Arms single launcher, with its high level of accuracy can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. This tool does not require officers to overcome a hostile crowd to stop a violent assault.

**(5) Mitigation:**

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved

projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.”

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer’s ability to target approved impact areas.

**(6) Alternative:**

This is the only piece of less lethal equipment (other than the FN 303) that allows officers to address a potentially deadly threat from a distance. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject’s clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

**(7) Third Party Dependence:**

The Berkeley Police Department armorers are trained and capable of handling all issues related to the repair or maintenance of the Penn Arms single launcher. Additionally, Berkeley Police Department Less Lethal Instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for maintenance, repair, or instruction.

### **Milkor LTL Multi-launcher**

**(1) Description:**

**A. Background:**

The 40mm impact projectile was developed as an alternative to the 12-gauge bean bag round and other more indiscriminate less lethal options. Early 12-gauge



bean bag round designs had somewhat unpredictable flight patterns and could cause significant unwanted injury. The 40mm foam baton round was developed as a direct fire projectile designed to minimize the risk of unintended injuries. Currently, the Berkeley Police Department utilizes the CTS 4557 foam baton projectile and the Milkor LTL multi-shot launcher.

**B. Quantity:**

The Berkeley Police Department currently owns and maintains 2 Milkor LTL less lethal launchers. One Milkor launcher is assigned to the Berkeley Special Response Team.

**C. Capability:**

The Milkor LTL is capable of firing six 40mm projectiles before reloading is necessary. The Milkor LTL 40mm projectiles are direct fire with a pliable “sponge” tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

**D. Lifespan:**

The manufacturer expected lifespan is about 10 to 15 years depending on use and regular maintenance.

**E. Use:**

The Milkor LTL multi-shot launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

**F. How it works:**

The Milkor LTL multi-shot launcher utilizes a spring actuated cylinder allowing it to fire 6 individual 40mm projectiles. When fired, the hammer strikes the munition primer which ignites gun powder in the primer insert. Expelled gases propel the projectile through the rifled barrel. The projectile has a rear plastic portion called the ogive which catches the barrel rifling and provides spin. The spin provides a greater degree of accuracy and eliminates any potential the projectile will tumble when exiting the barrel. The spring assisted cylinder automatically turns and loads the next projectile.

The projectiles utilized by the Berkeley Police Department are the CTS 4557 40mm sponge baton round. The CTS 4557 has a maximum effective range of 45 meters. The tip of the projectile is a pliable rubber material which molds to the body upon impact. The projectile travels at an estimated 240 feet per second which is slower than FN 303 projectile. However, the larger mass, about 60 grams, creates more kinetic energy upon impact which is similar to that of a baseball thrown by a pitcher. The additional kinetic energy becomes important when the suspect has on thick or layered clothing or demonstrates a high pain tolerance.

The benefit to the Milkor LTL is its ability to provide a quick follow up less lethal application, if necessary. The Milkor holds 6 projectiles while the Penn Arms launcher only holds one. Reloading the Penn Arms single launcher can be time consuming and requires the officer to briefly change focus from the suspect to the reload procedure. The Milkor LTL on the other hand, allows the officer to maintain focus on the suspect and assess whether a follow up application is necessary. This ability is significant when the suspect is advancing, attempting to flee, or demonstrates a high pain compliance threshold.

(2) **Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer

time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

The “less lethal” projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Additionally, it has been our experience that a 40mm projectile impact will generally resolve the violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

(3) **Fiscal Cost:**

A. **Initial Cost:**

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$3950.00 each.

B. **Cost of Use:**

Cost for the Milkor LTL launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

C. **Cost of Potential Adverse Effects:**

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death.

D. **Annual and Ongoing Costs:**

See section B above

E. **Training Costs:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification

class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use.

**G. Upgrade Costs:**

There are no foreseeable upgrade costs.

**(4) Impact:**

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but also the minimal amount of force needed to safely resolve the incident.

The Milkor LTL launcher, with its high level of accuracy and 6 projectile capacity, can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. It also allows officers to prevent a more indiscriminate use of force, such as entering the group or crowd, to take a subject into custody.

**(5) Mitigation:**

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons

and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.”

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer’s ability to target approved impact areas.

**(6) Alternative:**

This is the only piece of less lethal equipment (other than the FN 303) that allows officers to address a potentially deadly threat from a distance. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject’s clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

**(7) Third Party Dependence:**

The Berkeley Police Department armorers are trained and capable of handling most issues related to the repair or maintenance of the Milkor LTL launcher. In the event of a catastrophic malfunction, the Milkor LTL will need to be sent to the manufacturer for repair. To date, there have been no significant repairs needed to the Milkor LTL. Additionally, Berkeley Police Department Less Lethal Instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for regular maintenance, repair, or instruction.

## **FN 303 and FN Pava Impact Projectile**

### **(1) Description:**

#### **A. Background:**

The FN 303 was developed in 2003 by Fabrique Nationale de Herstal as a less lethal option. The FN 303 is based on a concept developed by Monterey Bay Corporation. The development team consisted of designers and researchers from two paintball related companies. The FN 303 uses compressed air to propel a .68 caliber projectile similar to that of most manufactured paintball guns.

#### **B. Quantity:**

The Berkeley Police Department currently owns and maintains 8 FN 303 less lethal launchers.

#### **C. Capability:**

The FN 303 is capable of firing 15 projectiles out to a maximum manufacturer recommended range of 50 meters. The FN 303 projectiles are direct fire and designed to fragment upon impact to prevent penetration injury. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas. This level of force is considered to be similar to that of a baton strike.

#### **D. Lifespan:**

The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

#### **E. Use:**

The FN 303 is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

#### **F. How it works:**

An air reservoir attaches to the FN 303 through an air hose coupler and provides pressure through compressed air. When fired, the compressed air drives a piston that pushes the .68 caliber projectile through the barrel at approximately 280 feet per second. For comparison, the FN projectile is the size of a paintball and the velocity is the same as a commercially manufactured paintball gun.

The projectiles are 8.5 grams in weight and utilize a polystyrene fin stabilized body with a non-toxic forward payload to aid in stability and accuracy. The

projectile will deliver approximately 24-foot pounds of kinetic energy at the muzzle which is about double the kinetic energy of most paintball guns. Most paintballs have a mass of 3 grams while the FN 303 projectile has a mass of 8.5 grams which increases the kinetic energy produced.

Available projectiles are impact, impact + non-permanent marking, impact + permanent marking, and impact + PAVA (0.5% PAVA/Oleoresin Capsicum).

The impact + PAVA projectile is intended to be direct fired at an individual. In addition to delivering pain through kinetic energy upon impact, the PAVA projectile will deliver a secondary chemical irritant, which is the Oleoresin Capsicum (O.C.) payload. Oleoresin Capsicum generally causes irritation/burning at the application site, irritation to the eyes, and coughing. According to the National Institute of Health, the effects of O.C. power exposure tend to resolve on their own within 30 minutes.

Pain is highly subjective and other circumstances, such as heavy clothing, may render the impact ineffective. The application of a secondary chemical irritant may assist in gaining compliance and successfully resolving a potentially violent incident with the minimal amount of force necessary.

(2) **Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

The “less lethal” projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. Discriminate projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

**(3) Fiscal Cost:**

**A. Initial Cost:**

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent FN 303s purchased by the department cost \$800.00 each.

**B. Cost of Use:**

Cost for FN 303 use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

**C. Cost of Potential Adverse Effects:**

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death. Only trained officers are authorized to use the FN 303.

**D. Annual and Ongoing Costs:**

See section B above

**E. Training Costs:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the



venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use. Generally, O-rings need to be replaced every 3000 rounds and cost \$30 per kit.

**G. Upgrade Costs:**

The overall design of the FN 303 has changed little since its initial release in the early 2000s thus anticipated upgrade costs will be minimal.

**(4) Impact:**

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but also the minimal amount of force needed to safely resolve the incident.

The FN 303, with its high level of accuracy can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. It also allows officers to prevent a more indiscriminate use of force, such as entering the group or crowd, to take a subject into custody.

**(5) Mitigation:**

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of

these projectiles cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.”

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer’s ability to target approved impact areas.

**(6) Alternative:**

This is the only piece of equipment that allows officers to address a potentially deadly threat from a distance. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject’s clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the Berkeley Police Department.

Unlike the Penn Arms 40mm single shot and the Milkor LTL multi-shot launcher, the FN 303 is capable of propelling 15 projectiles before a reload is required. The 15 round magazine allows for a quick follow-up application should the situation warrant with an effective range of over 160 feet; compared to the Penn Arms 40mm single shot and the Milkor LTL multi-shot launcher’s 100 feet. The FN303’s smaller and faster projectiles also generally allow for a higher level of accuracy compared to the 40mm foam baton rounds. The FN 303 rounds is also capable of carrying payloads such as paint or PAVA (Oleoresin capsicum).

**(7) Third Party Dependence:**

The Berkeley Police Department armorers are trained and capable of handling regular maintenance and most repairs. In the event of a catastrophic failure, the device will be sent to the manufacturer for repair. To date there have been 2 devices that required manufacturer repair, both of which were under warranty.

Additionally, department firearm instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for maintenance, most repairs, or instruction.

### **OC (oleoresin capsicum) Spray**

**(1) Description:****A. Background:**

For the purposes of this portion of the Impact Statement, OC (Oleoresin capsicum) will be referred to in the spray form as opposed to the aerosol canister form. First Defense manufactures different sizes of OC sprays. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. Besides being effective on humans, OC based chemical agents usually work on animals as well. In a liquid form, OC can appear as a clear, amber, or heavy dark red solution depending on the manufacturer. It is mixed with several types of solutions which act as carriers.

**B. Quantity:**

Qty 23 – First Defense MK-9 OC spray (13- ounces)

Qty 178 – First Defense MK-3 OC spray (3 ounces)

Most of the MK-3 OC sprays are issued to and maintained by individual officers; however, a small amount of these sprays is stored in a secured equipment room as spares in case of damage or new personnel issue.

**C. Capability:**

The First Defense MK-3 OC sprays are standard issued to all police officers and are worn on the police officers' belt. It has an effective range of 10-12 feet. The larger First Defense MK-9 OC sprays are 13 ounces and are used in violent crowd situations. It has an effect range of 18-20 feet.

The use of the First Defense OC spray can render a dangerous and violent situation safe without using a higher level of force.

**D. Lifespan:**

Aerosol products eventually lose pressure over time. The lifespan of both the MK-9 and MK-3 OC spray are dependent on how well the pressure in the can is maintained, but is recommended to be replaced after 5 years.

**E. Use:**

OC spray may be considered for use to bring under control an individual or groups of individuals who are engaging in or about to engage in violent behavior. OC spray should not, however, be used against individuals or group who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

**F. How it Works:**

A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, burning/stinging skin sensation, redness of the skin, irritation and burning of the nose, runny nose, salivation and burning sensation of the mouth, cough, gagging sensation, shortness of breath, temporary paralysis of the larynx (person unable to speak) and nausea (caused by shock, not the OC itself). A person may also feel disorientated, anxiety, and/or panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

**(2) Purpose:**

There are a variety of situations where officers may use OC spray such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

**(3) Fiscal Cost:**

**A. Initial Cost:**

The MK-3 OC spray cost approx. \$19 per unit and the MK-9 OC spray costs approx. \$60 per unit. The manufacturer is Defense Technology and the Berkeley Police Department purchase each unit from Galls Police Supply or LC Action Police Supply. Purchases for these tools are made when inventory gets low which is typically determined by how many new officers are sworn in, as well as if they are utilized in dangerous situations.

**B. Cost of Use:**

The cost of each usage is unpredictable due to the unknown nature of crime, timelines of dangerous situations, and number of applications.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of OC spray are not calculable. It could lead to serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

See below cost of training.

**E. Training Cost:**

Training is conducted in the police academy and in-house by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

**F. Maintenance and Storage Costs:**

The majority of the MK-3 OC sprays are either stored within the Police Department or with each sworn police officer while they conduct official duties. All MK-9 OC sprays are stored in the basement. There are no additional storage costs or associated costs to transporting, maintain, or upgrade.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

The physical effects of being subjected to OC may significantly reduce an individual's aggressive behavior. Reports have shown that the use of OC can reduce the amount of officer and arrestee injuries due to its effectiveness. Chemists assigned to the FBI Forensic Science Research and Training Center report no long-term health risks associated with the use of OC. The use of the MK-3 or MK-9 OC spray can render a dangerous and violent situation safe without using a higher level of force.

**(5) Mitigations:**

Law Enforcement Officers attend a Police Officer Standard Training (POST) approved academy before they enter into a Field Training Program and continue their training. During this academy they are taught about OC, how to deploy it, its effects, and the decontamination process. They are also subjected to OC to physically feel the effects themselves. After the academy, each officer is issued a MK-3 OC spray which they

are to keep on their person while on duty. If deployed and when practical, medical personnel should be summoned for the affected person(s) per policy 303. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**

Alternatives to utilizing OC sprays are tools such as expandable batons, less lethal launchers, and/or physical body weapons. The rationale to use OC spray depends on the circumstances of each individual incident and the individual officer involved in the incident. As mentioned above, reports have shown that OC spray may significantly reduce an individual's aggressive behavior which can minimize the amount of force necessary to apprehend that subject. Per our Use of Force policy (Lexipol 300), we shall use the minimal amount of force possible during each incident, thus making OC spray a valuable option.

(7) **Third Party Dependence:**

There is no third-party dependence for the First Defense OC spray. Once they are purchased, they are secured in their designated locations within the Police Department or with sworn police officers while they conduct official duties.

### **Chlorobenzylidene Malonitrile and Oleoresin Capsicum**

(1) **Description:**

A. **Background:**

Chlorobenzylidene malonitrile (CS):

Chlorobenzylidene malonitrile (CS) is one of the most commonly used "tear gases" in the world. It can be liquid, gaseous, or solid substance intended to produce temporary discomfort through being vaporized or otherwise dispersed in the air. Law enforcement (LE) agencies have found this agent invaluable when faced with combative suspects, for crowd/riot control, and for alleviating barricaded subject situations. LE use it to help control individuals or groups without the need for a higher level of force. There are four different deployment methods of chemical agents (Aerosol - most commonly used by police departments, Fogging, Pyrotechnics, and blast expulsion). All methods of deployment can be affected by certain environmental and physical conditions (wind, rain, temperature, distance, and proximity to others). At standard daily

temperatures and pressures, CS forms a white crystal with a low vapor pressure and poor solubility in water.

Oleoresin capsicum (OC):

For this portion of the Impact Statement, Oleoresin capsicum (OC) will be referred to in the aerosol canister form. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. OC is mixed with several types of solutions which act as carriers.

**B. Quantity:**

Inventory for CS canisters:

Qty 6 – 5230 CS Canisters

Qty 24 – 6230 CS Canisters

Qty 20 – 5230B CS Baffled Canister (flameless)

Qty 17 – 5231 CS Tri-Phaser Canisters

Qty 21 – 4630 CS Muzzle Blast (used with 40 mm less lethal launcher)

Qty 4 – 4530 CS Impact Rounds (used with 40 mm less lethal launcher)

Qty 19 – 4330 CS Barricade Projectile Rounds (used with 40 mm less lethal launcher)

Inventory for OC canisters:

Qty 54 - 9440 OC Tear Ball

Qty 19 - 5440 OC Flameless

Qty 20 - 6340 OC Vaper

**C. Capability:**

CS aerosols with microscopic particles which are potent sensory irritants becoming attached primarily to moist mucous membranes and moist skin. Common effects are: coughing, increased mucous secretion, difficulty breathing, skin reactions, and excessive salivation. The onset of symptoms typically occurs within 20 to 60 seconds, and if the exposed individual is placed in fresh air these effects generally cease in 10 to 30 minutes.

A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, stinging skin sensation, redness of the skin, irritation of the nose, runny nose, salivation, cough, gagging sensation, and shortness of breath. A person may also experience anxiety and panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

Both CS and OC canisters can render a dangerous and violent situation safe without using a higher level of force.

**D. Lifespan:**

CS and OC canisters expire in approximately 5 years.

**E. Use:**

Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

**(2) Purpose:**

There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

**(3) Fiscal Cost:**

**A. Initial Cost:**

The cost for CS canisters ranges from \$20.00 to \$39.00 per unit. The cost for OC canisters ranges from \$36.00 to \$44.00 per unit. The Berkeley Police Department prefers the use of the Combined Tactical Systems (CTS) chemical agents and we purchase them from LC Action Police Supply.

**B. Cost of Use:**

The cost of each proposed use is unpredictable due to the demand, unknown nature and timelines of dangerous crowd/riots situations, dangerous barricade situations, and hostage situations.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of OC and CS are not calculable. It could lead to serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

See below cost of training.

**E. Training Cost:**

When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor



the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

**F. Maintenance and Storage Costs:**

The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

BPD is committed to preserving and protecting human life and welfare. These tools allow us to fulfill our commitment to our community.

Law Enforcement, under Penal Code 12403.1, is able to lawfully purchase, possess, or use chemical agents in the discharge of their duties. CS and/or OC canisters have been prominently used to resolve dangerous barricaded suspect situations and violent crowd control/riot situations.

Berkeley Police officers are trained to utilize time and distance to de-escalate dangerous barricaded situations in order to resolve each incident with minimal the use of force (per Use of Force Policy 300). In some circumstances when all other options are exhausted, CS and/or OC can be inserted into the structure in which the barricaded suspect is, denying access to certain areas inside. Unless exigent circumstances arise, all attempts to evacuate the structure are made prior to any deployment. When CS and/or OC are deployed into a structure the suspect may be forced outside allowing the situation to resolve safely with no use further use of force.

CS and/or OC chemical agents can be utilized to create order in dangerous crowd control/riot situations that have demonstrated violence or destruction. During these incidents, typically a clear and direct warning has been given to the crowd to disperse before the chemical agents are deployed. The ability to disperse crowds from a distance limits injury to Police Officers as well as damage to critical structures.

**(5) Mitigations:**

Regarding the already mentioned impacts, the decision to utilize chemical agents (unless there are exigent circumstances) flows through the chain of command and ultimately makes its way to the Chief of Police and the City Manager. If there are exigent circumstances, the Field Commander makes the decision and then advises the Chief of Police as soon as practical. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

With these procedures incorporated in BPD's policies, this mitigates many potential negative impacts. Per Policy 428 – First Amendment Assemblies - The Field Commander shall determine the type and quantity of chemical agents to be used. After use of chemical agents, the Field Commander shall re-evaluate the scene to determine if additional chemical agents are needed. Less-than-lethal munitions (40 mm CS impact rounds), chemical agents (including OC spray), and/or smoke shall only be deployed in crowd control situations as outlined in the Use of Force Policy. For planned events, inventories shall be conducted before and at the conclusion of the incident. Outside agency inventories shall also be tracked.

In addition to the mitigations in place, the Berkeley Police Special Response Team also receives annual training on the use of chemical agents, the effects, and the decontamination process. Per policy 303, when practical, medical personnel should be summoned for the affected person(s).

**(6) Alternatives:**

There are no direct alternatives for CS and OC. They are the industry's leading way to resolve barricaded suspects while reducing the likelihood of injury to the subject, community, and officers. Additionally, it is one of the only tools that allows officers to stop acts of violence or regain order during crowd control/riot situations. They are very distinct in nature and have direct purposes. The rationale to use CS or OC depends on the circumstances of each incident. The Berkeley Police Department shall use the minimal amount of force per our Use of Force Policy 300. The use of CS or OC allows the police personnel to maintain distance, giving officers more time to react and avoid a potential need for a higher level of force to safely resolve the situation.

(7) **Third Party Dependence:**

There is no third-party dependence for CS and OC chemical agents. Once they are purchased, they are secured in their designated areas and stay there until they are either used during incidents or training.

### **Remington 700 Rifle**

(1) **Description:**

A. **Background:**

The Remington 700 is a series of bolt-action rifles designed in 1962 by the Remington Arms Company. The “700” designator is the generic name for multiple models of rifles with various parts, barrel lengths, stocks, etc. The Remington 700 rifle has long been used by law enforcement agencies and continues to be an industry standard for issued equipment. The Berkeley Police Department utilizes a custom Remington 700 action, chambered in the common .308-caliber round, with a 20” barrel and an Accuracy International chassis/stock. The rifle also includes a Nightforce 3-15x magnified optic and bipod.

BPD utilizes Hornady .308-caliber ammunition. This particular ammunition is specially designed for law enforcement applications due to its increased and consistent accuracy and performance.

B. **Quantity:**

The Berkeley Police Department Special Response Team (SRT) currently possesses six Remington 700 rifles, all configured in the same manner.

Currently, BPD has approximately 1,800 Hornady .308-caliber rounds. That quantity of ammunition fluctuates depending on supply from distributors and training schedules of those trained officers.

C. **Capability:**

The Remington 700 rifle, with the appropriate ammunition, training, and practice, is capable of consistent and highly accurate shooting out to a distance of approximately 500-yards.

The Remington 700 is intended to be used in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation.

**D. Lifespan:**

The Remington 700 bolt-action rifles have an expected life span of 10-years if properly maintained.

**E. Use:**

Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

**F. How it Works:**

The Remington 700 is a manually operated rifle. It requires the officer to physically maneuver a handle to expel a spent cartridge and to load another unspent round of ammunition in order to fire a second round. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. The officer must then pull a handle attached to the bolt to the rear, ejecting the spent cartridge. The officer then pushes the bolt forward, which picks up another bullet from the magazine, and closes the chamber, making the rifle ready to fire again.

**(2) Purpose:**

This rifle is to be used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. This rifle provides police with the benefit of adding distance to a volatile situation which can increase the safety for community members and officers. This rifle is an ancillary firearm for situations where increased distance and accuracy is needed to safely resolve the situation.

**(3) Fiscal Cost:****A. Initial Cost:**

The initial cost to purchase this rifle with its associated components is approximately \$10,000 dollars each. Their average life span is 10-years at which time it will likely need to be replaced.

**B. Cost of Use:**

Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on training.

**C. Cost of Adverse Effects:**

Adverse effects and improper usage of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

If this rifle is not cared for or maintained well, then a potential financial adverse impact would be the premature purchasing of a replacement rifle or replacement parts. However, authorized and trained Berkeley Police armorers service and provide regular maintenance of the rifles. The cost of maintenance is staff time.

**E. Training Costs:**

The cost associated with training is the staff time, range fees, and cost of spent ammunition. SRT members train once a month and, on average, each member shoots approximately 50-rounds. Currently, there are only 4 members shooting at each training day. This equates to approximately 2,400 rounds of ammunition being fired per year. This does not include special training days or attendance to training schools/classes. A single box of 20-rounds costs approximately \$20-dollars or \$1 dollar per round.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use over time. Firing pins need to be replaced every 5 to 7 years. The maintenance cost associated with this rifle is minimal.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

**G. Upgrade Costs:**

Upgrade costs and maintenance cost are synonymous due to the consistent design. Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing; those upgrade costs are unknown at this time.

**(4) Impact:**

The primary purpose of this rifle is to further SRT's goal of adding time and distance when dealing with a violent and dangerous individual(s). The rifle may allow SRT additional time by increasing the distance between law enforcement and the specific individual, thereby increasing the likelihood of a more peaceful resolution. Like all tools, it has a time and place for its intended operational efficacy.

(5) **Mitigations:**

Mitigating impacts from this tool's primary purpose is done through regular training. The training includes accuracy, decision making, scenarios, and various other training points. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**

The Remington 700 rifle is an industry standard tool used to deliver precision accuracy on an intended target. This tool can deliver accuracy and predictability through intermediate barriers like glass windows. It can be used at distances greater than any other tool currently possessed or authorized. No alternate tool or method would accomplish the same goal.

(7) **Third Party Dependence:**

These rifles are fairly simple in their design and operation. They do require regular maintenance which is commonly performed by each individual member. BPD Armorers are also capable of performing additional maintenance. If an issue arises which is beyond the scope of our Armorers we would seek professional assistance from the manufacturer. However, the need for this is very rare.

### **ReconRobotics Recon Scout XT**

(1) **Description:**

A. **Background:**

The Recon Scout XT is a throwable micro-robot manufactured by ReconRobotics for use in law enforcement applications. The Recon Scout XT enables officers to obtain instantaneous video footage and audio within indoor or outdoor environments. Designed to withstand repeated drops onto concrete, the Recon Scout XT robot can be thrown into hazardous situations (hostage rescue, barricaded subjects, natural disasters, etc.) in order to allow officers to quickly and safely make informed decisions when seconds count.

B. **Quantity:**

The Berkeley Police Department has two Recon Scout XT throwable robots, both purchased in 2010.

**C. Capability:**

The Recon Scout XT robot is designed to be able to crawl over a variety of terrain, clearing obstacles up to 2" (5 cm) tall. It could be thrown into hazardous situations, indoor and outdoor, and provide live audio and video feed back to the controller.

**D. Lifespan:**

Both Recon Scout XT robots are over 10 years old and ReconRobotics have developed and manufactured more advanced robots. ReconRobotics have stopped manufacturing certain parts for the Recon Scout XT, so the lifespan is dependent on what parts need to be replaced.

**E. Use:**

The Recon Scout XT robot may be deployed to help police officers safely view potentially dangerous environments before entering them.

**F. How it Works:**

The Recon Scout XT robot has a cylindrical body with a finned-wheel at either end of its body, and is stabilized by a rubber "tail". It measures approximately 6 ½" wide, and each wheel is about 5" in diameter (fin to fin) and weights just over one pound (1.2 lbs.). The Recon Scout XT robot sends digital video and audio back to an Operator Control Unit (OCU; controller with a screen and joystick), which allows the officer to control the robot, which provides a live feedback containing audio and visual feeds. The Recon Scout XT robot does not record audio or video footage; there is no data storage capability.

**(2) Purpose:**

The Recon Scout XT robot is intended to safely provide police officers valuable information during high-risk, rapid evolving situations via real-time audio and video footage. It can be driven a distance away from the OCU, creating space between the officer and potential danger, thus decreasing the likelihood of injury to those involved in the event, or even a violent encounter between police officers and a dangerous subject. This asset furthers our commitment to the sanctity of life by offering time and distance in critical incidents.

**(3) Fiscal Cost:****A. Initial cost:**

The initial cost for the Recon Scout XT robot was about \$12,500 per unit (2010 cost).

**B. Cost of Use:**

There is no "per use" cost of this equipment. The Recon Scout XT is powered by a rechargeable battery.

**C. Cost of Potential Adverse Impacts:**

The likelihood of adverse impacts due to the use of the Recon Scout XT robot is low – it is small, lightweight and is not likely to injure persons or damage personal property when deployed; however, there is a small chance that the Recon Scout XT robot might cause damage to personal property when deployed (thrown) into a structure. Due caution is used when it becomes necessary to throw, rather than place, the robot into a structure.

**D. Annual and Ongoing Cost:**

There are no ongoing or annual costs associated with the use of the Recon Scout XT robot. Being that it is battery operated, there is a nominal cost associated with charging the Recon Scout XT robot's batteries, and the batteries of the OCU. The Recon Scout XT robot is fairly simple to operate, thus there is no cost associated with training officers in its use. There are no costs with transportation or storage of the Recon Scout XT robot. While there are newer models of this robot available, there does not appear to be any upgrades available for the Recon Scout XT. The Recon Scout XT robot has been damaged on occasion, and there are costs associated with repair. But generally, the Recon Scout XT robot is robust and does not need regular repair.

**E. Training Cost:**

The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel familiar with the operations and procedures of the Recon Scout XT robot. The cost of training is staff time.

**F. Maintenance and Storage Costs:**

There are no annual or storage costs.

**G. Upgrade Costs:**

There are no upgrades available at the time of this report.

**(4) Impact:**

The Recon Scout XT robot is used to safely gather information in situations where it may be dangerous to expose an officer, or officers, to gather the same information. Putting officers in such unknown, tense situations has the potential to create violent encounters, or otherwise place officers in unnecessary peril and danger that might otherwise be avoided by the use of a tool like the Recon Scout XT robot. The Recon Scout XT robot is not likely to have a negative impact on the welfare or safety of the public as its role is to gather real-time information during high-risk incidents such as hostage or potentially life-threatening situations. The Recon Scout XT robot is likely to improve the welfare and increase the safety of the public through its ability to gather real-time information and feed it back to police officers. The Recon Scout XT robot does not have the capability to record or store data.

**(5) Mitigations:**

The use of the Recon Scout XT robot is limited to sworn police officers, and guided by field supervisors (Lieutenants and Sergeants). Procedurally, the Recon Scout XT robot is used when exigent circumstances exist (hostage situation, barricaded subject, natural disaster



necessitating rescue, etc.) and real-time information is necessary to safely and effectively resolve the situation. The robot does not record or store data.

(6) **Alternatives:**

Unmanned aerial vehicles (UAV) are an alternative to robots such as the Recon Scout XT robot. However, the Berkeley City Council has prohibited the Berkeley Police Department from using UAVs. They are not constrained by obstacles on the ground and provide far superior perspective and situational awareness; at times, obstacles halt the Recon Scout XT robot's movement. There are several other robots on the market, however, the Recon Scout XT robot is compact, lightweight (weighing in at just over a pound), very maneuverable, and can easily be carried by an officer. It can also be introduced into structures by throwing it through any opening – an option not possible with other robot models.

(7) **Third Party Dependence:**

The Recon Scout XT robot does not currently rely on a third-party company or vendor for its use or maintenance. Should maintenance or parts be required beyond the scope of the members of the Berkeley Police Department, the robot would be sent to ReconRobotics for service.

### **Andros Remotec HD-1 Hazardous Duty Robot**

(1) **Description:**

A. **Background:**

The Andros Remotec HD-1 Hazardous Duty Robot, hereinafter referred to as Remotec HD-1 robot, was designed to support a wide range of missions in demanding environments. The Remotec HD-1 robot is capable of lifting up to 125 pounds, tracked articulators stair climbing, and has an integrated Talisman radio system for a stronger radio wave connection between the controller and the robot.

Remotec has served explosive ordinance disposal units, hazardous materials units, and other first responders as a provider of mobile robotic systems for application into a variety of undesirable, hazardous and potentially life-threatening environments. The Remotec HD-1 robot allows individuals to approach hazardous devices to examine and manipulate the device without putting people in harm's way.

B. **Quantity:**

The Berkeley Police Department Bomb Squad has one robot, the Remotec HD-1 robot.

C. **Capability:**

Remotec HD-1 robot is used in situations where a potential life-threatening situation exists and is too hazardous for a bomb technician to approach in person. The Remotec HD-1 robot is also used to survey an area prior to a bomb technician approaching a

scene to check for trip wires and ascertain a good approach path. The Remotec HD-1 robot has three cameras and audio monitoring that stream live video and audio back to the control module; however, it is unable to record and does not have any data storage capabilities. It has several attachment mounting options as well. The Remotec HD-1 robot also has the ability to carry a variety of tools. Some of the tools are:

- 1) A spike to break glass and access vehicles or homes with potential explosive devices inside
- 2) An X-ray mount in order to remotely X-ray suspected explosive devices.
- 3) Percussion actuated non-electric disruptors which are smooth barrels that are filled with water and fired at high speed with a blank shotgun round to open backpacks, suitcases, and packages from a distance
- 4) A hook with cutting blades that are used to cut backpack straps, ropes, etc.
- 5) PAN rounds containing various fills, from sand to slugs, in order to open sturdier packages made from metal or other hard covers.
- 6) Electrical connections to connect explosives that can be detonated remotely and from a safe distance.

**D. Lifespan:**

The Remotec HD-1 robot has an expected life span of 10 years. It is currently 13 years old and has begun exhibiting issues. The Remotec HD-1 robot weighs just over 200 lbs. and has been near multiple explosions over the years and crossed a variety of off-road terrain

**E. Use:**

Used to examine and possible destroy hazardous materials such as an explosive device.

**F. How it Works:**

The Remotec HD-1 robot is piloted by a bomb technician into a hazardous area to locate, examine, and render suspicious packages and explosive devices safe by utilizing a variety of attachable tools.

**(2) Purpose:**

The Remotec HD-1 robot is used as a means to approach hazardous situations where a potentially lethal threat such as an explosive device exist. The Remotec HD-1 robot allows for the examination and manipulation of an object or potential explosive device without unnecessarily putting a bomb technician's life at risk.

**(3) Fiscal Cost:**

**A. Initial Cost:**

Procured in 2008 for \$214,496 including on-site training through a UASI Grant. (64,292-N.S.)

**B. Cost of Use:**

None. The robot is electric and operated through the City's electricity for charging.

**C. Cost of Potential Adverse Effects:**

The Remotec HD-1 robot interacts with inanimate objects. However, should it encounter a package that explodes, it could potentially destroy the robot and damage other property.

**D. Annual and Ongoing Costs:**

There is no annual cost. Maintenance of the Remotec HD-1 robot is conducted by Berkeley Police Bomb Technicians.

**E. Training Costs:**

Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. The cost of training is limited to staff time.

**F. Maintenance and Storage Costs:**

Remotec offers occasional maintenance and upkeep workshops free of charge.

**G. Upgrade Costs:**

There are no costs for upgrades as the company has stopped manufacturing the robot and any applicable upgrades.

**(4) Impact:**

The Remotec HD-1 robot is used by the Berkeley Police Department Bomb Squad as a means to examine a potentially explosive device in order to keep the community safe. Since April 2020, the Berkeley Police Department Bomb Squad has responded to 14 incidents. The impact of the Remotec HD-1 robot has been to reduce and minimize the danger posed by calls of possible explosive devices to the Berkeley Police Department's Bomb Technicians.

**(5) Mitigations:**

The Remotec HD-1 robot is used in situations where a hazardous device exists. In these situations, the area is always evacuated in order to ensure community safety.

**(6) Alternatives:**

The Remotec HD-1 robot is 13 years old and there has been significant development in technology. There are several alternatives that are far superior than our current Remotec HD-1; Mark V-A1 robot developed by Remotec Andros, Caliber Flex developed by ICOR Technology, Digital Vanguard-S developed by Med-Eng and T7 and T4 developed by L3Harris Technologies. These are alternatives that have newer and better technology and capabilities than the Remotec HD-1 robot.

(7) **Third Party Dependence:**

Remotec representatives are the only ones used to diagnose and maintain complex issues on the robot that cannot be done in-house. Since it is proprietary technology, Remotec may void warranties on any repairs made by outside vendors or by untrained personnel. Therefore, all complex issues with the Remotec HD-1 robot must be repaired by Remotec.

### **Light/Sound Diversionary Device**

(1) **Description:**

A. **Background:**

Light/Sound Diversionary devices also known as distraction device, flashbang, light/sound and noise/flash devices have been available for approximately 40 years and are a safe and effective tool for Law Enforcement (LE) to use during challenging tactical incidents. The device will be referred to a diversionary device throughout this document.

B. **Quantity:**

Qty 50 - CTS 7290 Diversionary Device

C. **Capability:**

When a diversionary device is deployed they create a loud noise, heat and brilliant light and create an effective diversion. They can create psychological and physiological effects such as: hearing a loud noise beyond that of everyday living, seeing a short bright light, and feeling of a change in atmospheric pressure. These effects may disorient/confuse subjects for a short time giving tactical teams the ability to apprehend that subject without using a higher level of force.

D. **Lifespan:**

The lifespan of the CTS 7290 Diversionary Device is 5 years.

E. **Use:**

The use of a diversionary device is to create a diversion in order to facilitate entry and enable arrest. Circumstances justifying the use of a diversionary device may include, but not limited to barricaded subject or hostage situations and high-risk search warrants services.

F. **How it Works:**

The main charge of a modern diversionary device typically contains flash powder which is sometimes called photoflash powder. Upon initiation, this chemical compound causes the device to deflagrate (not detonate). The powder mixture is

rapidly changed into gases that expand outward reaching upwards to 3,800 times the original volume of the charge itself. This process releases the desired effects of loud noise, bright light and the feeling of atmospheric pressure. Flash powder is typically made up of an oxidizer and some type of fuel. The oxidizer is needed to initiate and sustain the flash powder's rapid combustion. This is required since sufficient oxygen cannot be obtained from just the surrounding air.

(2) **Purpose:**

The purpose of a diversionary device is to create a reactionary gap of a person by temporarily disorienting them. This gap gives tactical teams an opportunity to apprehend a suspect while using the minimal amount of force possible. They can also be used to safely invoke a response or redirect the attention of subjects who are either feigning injury, ignoring police commands or are unresponsive while posing a threat to the public.

(3) **Fiscal Cost:**

A. **Initial Cost:**

Diversionary Devices cost approximately \$45 per unit and are purchased through LC Action Police Supply. Purchases for these tools are made when inventory becomes low, based upon critical incident usage and Special Response Team trainings that incorporate live devices.

B. **Cost of Use:**

The cost of each proposed use is unpredictable due to the unknown nature and timelines of dangerous barricade situations, critical incident, and hostage situations. The devices may be stored inside of the Police Department, in the Special Response Team Vehicle, or in the rescue vehicle. There are no additional storage costs. There are no associated costs for transporting, maintenance, training, or upgrades.

C. **Cost of Potential Advert Effects:**

Adverse effects of improper use of a diversionary device are not calculable. It could result in serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

See below training cost.

**E. Training Cost:**

Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices. The cost of training is staff time.

**F. Maintenance and Storage Costs:**

The majority of diversionary devices are stored inside of a room in the basement within the Police Department. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

The Berkeley Police Department is committed to preserving and protecting human life and welfare. These tools allow us to fulfill our commitment to our community.

Diversionsary Devices may be utilized in many situations to include potentially dangerous barricaded subject situations, hostage situations, and critical incidents. Some criteria considered prior to a deployment is dependent upon whether the suspect is a dangerous felon, causes a life-threatening situation and/or other unique incidents where it appears to be a reasonable method in which to resolve the situation. When deployed appropriately these devices can assist in safely apprehending suspects and resolving high risk critical incidents with minimal or no injuries to suspects and/or officers.

**(5) Mitigations:**

Since Diversionsary Devices are considered low explosives, there are several protocols in place to mitigate possible negative results (i.e. minor or major injuries).

Only trained and qualified personnel are permitted to deploy diversionary devices; typically, members of the Special Response Team who receive constant training regarding the deployment, effects, and post deployment protocols.

Pre-deployment concerns are typically gathered and evaluated, such as:

- The number of people at a location and the individual location of suspects within the structure.

- Evaluation if there are children or elderly people present
- An evaluation of the suspect's mental and physical conditioning
- Evaluation of the building/room layout
- Possible combustible/flammable substances present
- Lighting conditions

When a diversionary device is deployed, the officer shall utilize a helmet, hearing protection, eye protection, body armor, and nomex (fire resistive) gloves.

If a diversionary device is used, a supervisor shall be notified, medical treatment/screening is conducted, and a collection of the deflagrated device is completed. Documentation utilizing the device serial number is recorded.

Per Policy 351 - Except in extreme emergencies (i.e., life-threatening situations), flash/sound diversionary devices shall not be used without prior authorization of the incident commander/on-scene supervisor. Whenever diversionary devices are carried by personnel in an actual situation or incident, that fact shall be noted in the after-action report or police report. In the event devices are deployed, the circumstances surrounding their deployment shall be fully described. The Chief of Police or his or her designee shall be responsible for reviewing any deployment of diversionary devices to ensure that policy was followed. Diversionary devices are registered by serial number with the Bureau of Alcohol, Tobacco, and Firearms (ATF). Typically, the police department's purchase of new devices is reported directly (by case-lot serial numbers) to ATF by the device manufacturer via ATF Form 5. The National Firearms Act requires the police department to notify ATF upon the use/expenditure of diversionary devices. A Special Response Team member shall be responsible for submitting written notification to ATF when all devices listed on a single ATF form 5 have been used/expended.

**(6) Alternatives:**

A possible alternative to a diversionary device (flashbang) is the Tactical Electronic Distraction Device (T.E.D.D.) which emits 2600 lumen light and high pitched 120 decibel sound to disorientate subjects. This could be a good tool as it is not a low explosive however it has its negative aspects as well:

- There is no feeling of atmospheric pressure, limiting the desired momentary physiological effect.
- A suspect could pick up and throw the device at potential victims and at police officers. The currently used diversionary devices are too hot to attempt this.
- In certain circumstances, a suspect could potentially steal the device during an escape.
- The individual cost per unit is approx. \$200 which is much more than a diversionary device
- This device is significantly less effective in disorienting subjects compared to a diversionary device.

(7) **Third Party Dependence:**

There is no third-party dependence for Diversionary Devices with the exception of communication with ATF of the purchase. Once they are purchased, they are secured within their designated locations where they are stored until they are either used during incidents or training.

### **Long Range Acoustic Device (LRAD)**

(1) **Description:**

A. **Background:**

The Long-Range Acoustic Device (LRAD) is a high intensity directional acoustical array for long range, crystal clear notification system. The use of the LRAD is for communications.

B. **Quantity:**

The Berkeley Police Department possesses 2 Long Range Acoustic Devices (LRAD) speakers. One is an LRAD 450XL and the other is an LRAD 100X.

C. **Capability:**

Both of these speakers are able to focus sound in directional pattern allowing the user to make sound audible over distances much greater than conventional public address speakers. The LRAD 450XL is the larger of the two and designed to either be used in a fixed location or mounted on a vehicle to make it portable. It



has a usable range of approximately 1 mile. The LRAD 100X is smaller and more portable. It can be carried or mounted to a person's chest for mobility or mounted to a vehicle. Its range is approximately 1/3 of a mile. Both of these systems allow for clear long-range communication, they are also able to play recorded messages.

**D. Lifespan:**

The lifespan for both LRADs is 25 years.

**E. Use:**

The LRADs are used to communicate with the community during natural disasters, crowd management and control situations, or when other forms of communications are ineffective or inoperable to unequivocally communicate messages from Police or Fire and safely resolve uncertain situations where communicating with the public is paramount.

**F. How it Works:**

The LRADs are essentially a long-range speaker or long-range megaphone and operates as such.

**(2) Purpose:**

The LRADs are designed for clear long-range communication. The LRAD's ability to communicate over a long distance is far superior to any megaphone or Public Address (PA) system mounted to a police vehicle. Additionally, LRAD's may be used to:

- Communicate lifesaving information to residents during disasters
- Communicate to large crowds during parades, festivals, concerts and sporting events
- Establish safety zones and perimeters
- Control traffic congestion
- Conduct Special Response Team operations
- Broadcast a dispersal order
- Communicate during hostage and barricaded subject situations
- Announce and serve high risk warrants
- Communicate to protesters
- Communicate to persons threatening suicide who are in an inaccessible location
- Conduct search and rescue operations

The ability to communicate with the public in a large area increases the safety of all members of the public and law enforcement. It allows everyone in a given area to know what is being communicated, gives more situational awareness to everyone in a given area and allows people to know where to go or not to go.

(3) **Fiscal Cost:**

A. **Initial Cost:**

The LRAD 450XL and the LRAD 100X were purchased in 2018. The total cost for both LRADs, rechargeable battery packs and accessories was \$49,999.

B. **Cost of Use:**

There is no cost associated with each use of the LRADs. The systems run on batteries or can plug into a vehicle.

C. **Cost of Potential Adverse Effects:**

Adverse effects of improper use of the LRADs are not calculable. It could lead to hearing loss. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

BPD has not incurred any additional cost to date for this equipment.

E. **Training Costs:**

Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD. The cost to train is staff time.

F. **Maintenance and Storage Costs:**

There are no maintenance or storage costs for this equipment.

G. **Upgrade Costs:**

No upgrades exist for this equipment as of this report.

(4) **Impact:**

The Berkeley Police Department is committed to ensuring the safety of our community. Having the ability to communicate efficiently and effectively in different situations is crucial in providing potentially life-saving information to the public. The LRAD provides BPD personnel the ability to communicate long distances to people that are in a given area, inside structures, or barricaded inside a structure. The LRAD is very effective any situation involving communicating information to large crowds, or entire communities.

(5) **Mitigations:**

The only potential negative impact of the LRAD's is that they are capable of producing a high pitched "deterrent tone" that is designed to disperse a potential threat. This "deterrent tone" does have the ability to cause hearing damage. BPD Policy 707 strictly prohibits any member of BPD from using the LRAD as a weapon. Additionally, the LRAD can only be deployed at the direction of a Watch Commander or Incident Commander and may only be used by personnel specifically trained in the use of the LRAD.

(6) **Alternatives:**

BPD is not aware of any other sound speakers that are able to clearly communicate over long distances of up to 1 mile.

(7) **Third Party Dependence:**

To date, BPD has not depended on any third party for the use or maintenance of this equipment.

### **36" Baton**

(1) **Description:**

A. **Background:**

The Berkeley Police Department issues a knurled grip, polycarbonate, fixed-length straight baton for crowd control purposes. The baton is 36" long and 1.25" in diameter and weighs about 1.64 pounds. Polycarbonate is a thermoplastic, which means it is durable, resistant to splintering and heat.

B. **Quantity:**

In 2017, BPD purchased 175 polycarbonate 36" batons to replace aging wood batons of the same purpose. Additional polycarbonate batons were purchased over the past four years to ensure all sworn police officers as well as trained reserve police officers are equipped with the 36" baton. BPD possesses approximately 195 - 36" polycarbonate batons. Most of these batons are issued to and maintained by individuals. However, a small amount of these batons is stored in a secure equipment room as spares in case of damage or new personnel issue.

**C. Capabilities:**

The 36" baton is carried in a "baton ring" on an officer's belt just as any other baton. It is used as a safety tool and is a means for officers to defend themselves in certain crowd control or riot situations. Trained officers may employ particular applications of force with their 36" batons when directed by their chain of command. The 36" baton is the desirable baton in a crowd control situation as it is 7" longer than the standard 29" baton. The longer baton creates more distance between the officer and others, which is critical when dealing with violent or aggressive crowds.

**D. Lifespan:**

The manufacturer provides a lifetime repair or replacement guarantee.

**E. Use:**

The 36" baton is a less-lethal force tool and is intended to be used in crowd control situations in close quarters, where officers may defend an attack, or when engaging in physical contact with combative or aggressive crowd members. The 36" baton is only used for crowd situations.

**F. How it Works:**

There are a number of appropriate blocking or striking techniques an officer may use when force is justified and the decision is made to use the 36" baton to effectively gain control of a person or situation. The use of the baton requires the officer to continually monitor and assess effectiveness of any delivered strikes. The reason this type of force is administered is to stop a person's attack, threat or resistance, with the goal to place them under lawful arrest for their actions.

**(2) Purpose:**

The 36" baton is a less-lethal tool that may be used when a crowd becomes aggressive, hostile or violent. It is the most effective individual tool of choice when officers are in formation and engaged in crowd control duties.

When officers are deployed to maintain, disperse, or protect others from a violent crowd or civil disobedience, it is imperative that they have an adequate safety zone to protect themselves or others. The 36" baton provides officers additional distance from a potential threat than the standard issue 29" baton.

When the baton is used to strike a subject, kinetic energy transfer occurs. Kinetic energy is the energy of motion. The amount of translational kinetic energy which an object has depends upon two variables: the mass of the object and the speed of the

object. The desired effect is for the officer to apply a baton strike with the necessary energy to stop the threat as quickly and safely as possible. By targeting the large muscle areas of the arms or legs with sufficient kinetic energy, motor and sensory nerves can be affected. When the nerves are affected this will create momentary muscle dysfunction or pain, which will allow the officer the ability to gain control of the subject, while minimizing the possibility of long-term injury to the subject.

The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person as outlined in policy 303 and 300.

**(3) Fiscal Cost:**

**A. Initial Cost:**

The cost of the Monadnock MP36 2004 36" polycarbonate baton with knurled grip was \$53.00 per baton in September 2017. After tax, \$10,132.94 was spent for the purchase of 175 batons. The department placed an additional order for 20 batons in December 2019. It is anticipated that the cost of the baton will fluctuate a few dollars based on supply and demand over time.

**B. Cost of Use:**

The only cost associated with use that of ongoing departmental training to ensure officers are proficient in authorized baton techniques.

**C. Costs of Potential Adverse Impacts:**

Adverse effects from improper use of the 36" baton cannot be anticipated. Improper use could lead to serious bodily injury or death. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

There is no additional annual or ongoing cost associated with the 36" baton.

**E. Training costs:**

Training on the applications of the batons are conducted at the police academy. Police Office Standard Training (POST) requires "arrest and control" training every 2 years which includes portions of baton training. This training is conducted in-house by POST certified defensive tactics instructors.

**F. Maintenance and Storage Costs:**

There are no associated costs to transporting, maintenance, or upgrades.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

Per Policy 300, "The Berkeley Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. The Department is committed to accomplishing this mission with respect and minimal reliance of the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force."

At times, it may become necessary for police officers to use force in crowd control situations to move a crowd, stop violent behavior, overcome resistance or make a lawful arrest. Officers have been trained that they must do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public. When deemed necessary, use of the 36" baton may be used as a tool to strike a person, create a barrier or used in formation in order to move a crowd in a certain direction. The use of the baton may cause discomfort, pain, blunt trauma and has the potential to cause serious injury. Their use is subject to the totality of the circumstances, proper training, department policy, as well as federal and state law.

Officers who use the 36" baton are trained to continuously assess each situation where force is used and only use the force that is reasonably necessary and proportional to respond to the threat or resistance to effectively and safely resolve the incident.

**(5) Mitigations:**

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict."

Per Policy 303, "Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device. Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices. When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets."

Every officer who carries a 36" baton has been trained how to properly carry the equipment, its intended use, target areas and non-target areas. Large muscle groups such as the upper legs or lower abdomen are approved target areas and areas to be avoided at the groin and head. When a baton strike is directed at an intended target area and the subject moves simultaneously, it is possible for the officer to unintentionally strike a non-target area. Officers are trained to consider the placement of baton strikes, and to immediately render medical aid to the subject as soon as it is safe to do so.

All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**

The alternatives to the 36" crowd control baton are the 29" standard issue baton and collapsible 26" Rapid Containment Baton (RCB). The standard issue baton and RCB are shorter in length and require officers to be closer to the person they are engaging, thereby increasing the risk of injury to the officer and the person. A longer baton provides an officer with more distance which creates a small safety zone and allows the officer time to react and assess the situation before making use of force decisions.

(7) **Third Party Dependence:**

There is no requirement for a third-party service provider to issue the 36" crowd control baton. Berkeley Police Department Defensive Tactics Instructors provide in-house training on the proper use of the baton.

### **Mobile Command Vehicle**

(1) **Description:**

**A. Background**

The Berkeley Police Department owns one Mobile Command Vehicle (MCV). Our MCV is a 2003 Freightliner MT55. This vehicle's most common use is as a commercial delivery vehicle. Our 2003 Freightliner MT55 was converted into a MCV by adding desktop work stations, additional police radios and emergency lighting. The MCV is 30' long and has a gross vehicle weight (GVW) of approximately 23,000 pounds.

**B. Quantity:**

The Berkeley Police Department owns 1 MCV.

**C. Capability:**

The MCV is a mobile office that provides shelter and may be used as a mobile command and communication center.

**D. Lifespan:**

This vehicle is approximately 20 years old and is at the tail end of its serviceable lifespan. All emergency vehicles need to be completely dependable and vehicles of this age start to lose dependability as old parts start to fail without warning. The modern versions of this type of vehicle are typically converted motorhomes.

**E. Use:**

This vehicle is used as a mobile command post for large scaled events.

**F. How it Works:**

This vehicle operates and drives like other vehicles.

**(2) Purpose:**

This vehicle may be used as a mobile command post for any larger scaled events or as a communications center in the event the communications center in the Public Safety Building is inoperable. Some examples of large-scale events include Solano Stroll, Juneteenth, 4<sup>th</sup> of July, critical incidents or natural disasters.

**(3) Fiscal Cost:****A. Initial cost:**

The initial cost of the MCV (2003 Freightliner MT55) was \$230,800.

**B. Cost of Use:**

The cost of use is the cost of fuel from the City Corporation Yard.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of the MCV are not calculable, but is the same as improper use of any vehicles. The improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

There is no annual or ongoing cost associated with this vehicle. Maintenance of the vehicle is conducted by the City's Corporation Yard.



**E. Training Costs:**

Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle. The training cost is staff time.

**F. Maintenance and Storage Costs:**

There are no storage costs and maintenance would be conducted by the City of Berkeley Corporation Yard.

**G. Upgrade Cost:**

The MCV is almost 20 years old and upgrades would involve replacing different parts of the vehicle. This work would be conducted by the City of Berkeley's Corporation Yard. The cost would be staff time plus the cost of any necessary parts.

**(4) Impact:**

The MCV is used as a command post for any large scaled event. It works as a mobile central location where resources can stage and be deployed from. It provides the police department with on-site command, supplying a control and communications hub that is needed for large community events, or critical incidents such as natural disasters in order to maintain public safety.

**(5) Mitigations:**

The MCV shall only be operated by trained personnel that have demonstrated proficiency in the operations of this vehicle per Berkeley Police Department Policy 811.

**(6) Alternatives:**

The MCV is almost 20 years old. Current MCV from other agencies are large mobile homes converted into MCVs.

**(7) Third Party Dependence:**

All maintenance is completed through the Cities Corp Yard so there is no dependence on a third party.

### **Barrett Model 99 Rifle**

**(1) Description:****A. Background:**

The Barrett Model 99 rifle is a single shot bolt-action 50-caliber rifle first

introduced in 1999. It is intended to be used in emergency situations where there is a high potential for violence.

**B. Quantity:**

Berkeley Police Department Special Response Team (SRT) currently possess 1 (one) of these rifles and is not looking to purchase any others.

Currently BPD has approximately 100 Summit Ammunition .50-caliber BNG rounds.

**C. Capability:**

This rifle is used only in situations where a potential life-threatening situation exists. The length of the rifle's barrel coupled with the ammunition result in precision accuracy. This rifle is capable of disabling any vehicle engine block because of the large caliber round.

**D. Lifespan:**

This rifle has been in our possession for almost 15-years and we expect it to last for an additional 20 years or more considering how in-frequently it's used.

**E. Use:**

This rifle is used primarily in emergency situations where a life-threatening situation exists, necessitating a vehicle to be disabled.

**F. How it Works:**

This is a bolt-action rifle that fires one round at a time and needs to be reloaded by hand after each round. The Barrett Model 99 rifle works similar to all modern bolt-action rifles. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. The operator pulls the bolt back, ejecting the spent cartridge. The operator then loads another bullet into the breach, pushes the bolt forward, and closes the chamber, making the rifle ready to fired again.

**(2) Purpose:**

The Barrett rifle is a firearm that may be used to stop a vehicle which poses a lethal threat to the public, or to disable a vehicle which presents a threat to the safety of another person(s) by its continued use. There are vehicle disabling tools that may disable vehicles by slowly deflating the tires; however, even with tires deflated a vehicle has the ability to operate and remain a threat to the public. Furthermore,

these tools must be hand deployed and, in most circumstances, require officers to expose themselves to deadly threats. The Barrett rifle creates the ability to effectively disable vehicles instantaneously from a distance away.

(3) **Fiscal Cost:**

A. **Initial Cost:**

The Barrett Model 99 50-caliber rifle has a retail cost of approximately \$12,500 dollars. The Department of Justice provided the Barrett rifle to the Berkeley Police Department on 04/04/2007. There was no initial cost related to BPD taking possession of it.

B. **Cost of Use:**

The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$6 dollars per bullet; \$60 for a box of 10 and \$600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

C. **Cost of Potential Adverse Effects:**

Adverse effects of improper use of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

The annual cost of the equipment is minimal and includes ammunition expenditure, cleaning equipment, and possibly replacing the optics at some point in the future.

E. **Training Costs:**

The cost associated with training is the staff time, range fees, and cost of spent ammunition.

F. **Maintenance and Storage Costs:**

Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

G. **Upgrade Costs:**

Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing; those upgrade costs are unknown at this time.

(4) **Impact:**

The Berkeley Police Department is committed to preserving and protecting human life and welfare. The Barrett rifle is a firearm the department would primarily use to stop a vehicle which poses a lethal threat to the public or used to disable a vehicle that presents a threat to the safety of another person(s) by its continued use.

The Barrett rifle is intended as a tool to increase the safety and welfare of community members and officers alike.

The Barrett rifle has minimal or no impact on civil rights or civil liberties as it will only be deployed in very specific situations, by very select members of the SRT. This is not a piece of equipment that is carried by an officer on routine patrol, and is highly unlikely that any members of our community would ever see this equipment due to its very selective use in the most critical of instances.

(5) **Mitigations:**

Only four BPD members are authorized to utilize this rifle. Authorized members are trained in its use as well as the very specific and limited circumstances where this equipment would be utilized.

(6) **Alternatives:**

There is no other alternative tool or asset available that could accomplish the same goal of this rifle. An alternative rifle to the Barrett model 99 is a different rifle of equal capability, such as a Lapua .338 caliber rifle.

(7) **Third Party Dependence:**

These rifles are simple in their design and operation. They do require regular maintenance which is performed by an SRT Team Leader. If an issue arises which is beyond the scope of our Armorers we would seek manufacturer assistance. However, the need for this is expected to be very rare.

## Appendix:

### Applicable Lexipol Policies Respective to Each Equipment

Policies are hyperlinked to its respective webpage.

#### M4 rifle/Patrol Rifle

- [Policy 300 \(Use of Force\)](#)
- [Policy 349 \(Tactical Rifle Operator Program\)](#)

#### Penn Arms 40MM launcher

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)

#### Milkor LTL multi-launcher

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)

#### FN 303 Launcher & FN Pava rounds

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)

#### Chlorobenzylidene Malononitrile and Oleoresin Capsicum (canister and spray)

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)

#### Remington 700 Rifle

- [Policy 300 \(Use of Force\)](#)
- [Policy 354 \(Precision Rifle\)](#)

#### ReconRobotics Recon Scout XT Robots & Andros Remotec HD-1 Hazardous Duty Robot

- [Policy 708 \(Robot Cameras\)](#)

#### Light/Sound Diversionary Device

- [Policy 353 \(Diversionary Device\)](#)

#### Long Range Acoustic Device

- [Policy 707 \(Long Range Acoustical Device\)](#)

36" batons

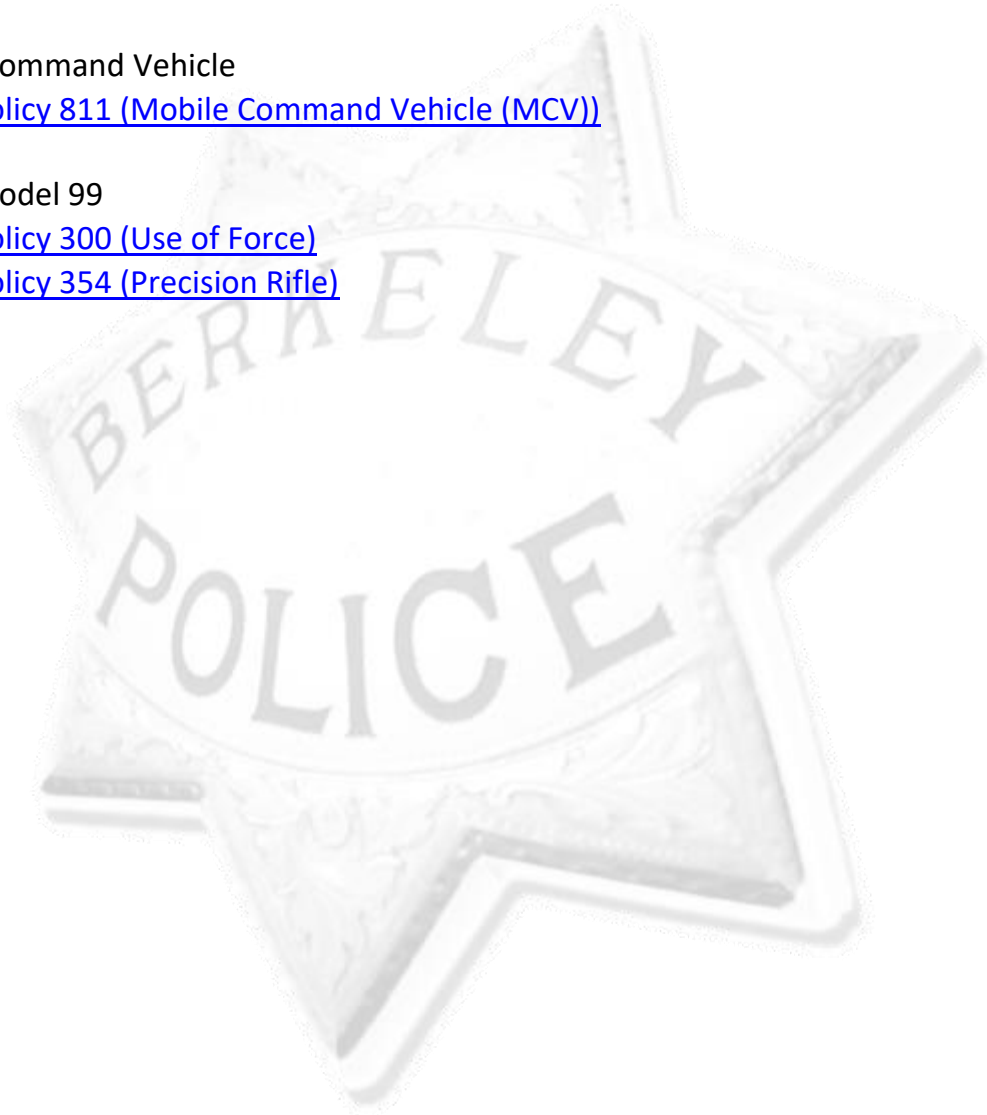
- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

Mobile Command Vehicle

- [Policy 811 \(Mobile Command Vehicle \(MCV\)\)](#)

Barret Model 99

- [Policy 300 \(Use of Force\)](#)
- [Policy 354 \(Precision Rifle\)](#)



# **Police Equipment and Community Safety Ordinance 2021 Annual Report**



## INTRODUCTION

On May 11, 2021 the Berkeley City Council passed Ordinance NO. 7,760-N.S., the Police Equipment and Community Safety Ordinance. Section 2.100.050 of the ordinance mandates an annual report for the deployment of specific equipment the Berkeley Police Department possesses. This annual report also fulfills the obligations set forth in Assembly Bill No.481. Below is a list of the reportable equipment under the city ordinance and Assembly Bill No.481:

- Patrol Rifle
- Less Lethal single 40MM launcher
- Less Lethal Milkor LTL 40 MM multi-launcher
- Less Lethal FN 303 Launcher
- FN Pava rounds
- Oleoresin capsicum (OC spray)
- Chlorobenzylidene Malononitrile and Oleoresin capsicum (tear gas)
- Remington 700 Precision Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/sound distraction device
- Long Range Acoustic Device (LRAD)
- 36" batons
- Mobile Command Vehicle
- Barret Model 99 Precision Rifle

The annual report on the controlled equipment shall contain the following information per Ordinance NO. 7,760N.S.:

- (a) Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession.
- (b) A summary of how Controlled Equipment was used. For the purposes of annual reports, "use" of equipment shall refer to equipment that is Deployed, not to transfers of location or placement of equipment inside Department vehicles.



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- (c) If applicable, a breakdown of where Controlled Equipment was used geographically by individual police area. For each police area, the Police Department shall report the number of days or instances in which Controlled Equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.
- (d) A summary of any complaints or concerns received concerning Controlled Equipment.
- (e) The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.

There have been no internal audits (other than those conducted to gather and confirm data for this report), identified violations of equipment use, or any complaints concerning the above listed equipment. For inventory numbers and description of each equipment refer to the Impact Statements.

Section 2.100.020 (D) defines deployment as “to utilize or employ Controlled Equipment for a deliberate purpose in the presence of members of the public during management or control of crowds, during any Special Response Team deployment or to affect some response from members of the public during any other operation or critical response. “Deployed” shall not mean an officer merely wearing a piece of Controlled Equipment on their belt or elsewhere on their person.” Deployment means the display of the equipment to affect some response from members of the public. The equipment does not have to be used; simply having it and in view of a person to specifically affect a response would be considered a deployment. Deployments are to be reported per the ordinance and the table on page 5 of this report reflects both deployments and uses of equipment.

On the date of passage of the Police Equipment and Community Safety Ordinance on May 11, 2021 the Police Department’s Blue Team system was already being utilized to capture the deployment of patrol rifles as well as all uses of force, including the use of less-lethal systems. However, although the use of the above listed equipment was thoroughly documented in police incident or crime reports, no system existed where the deployment of each defined equipment could be

extracted. In response to this, the Professional Standards Bureau and the Police Technology Unit collaborated to develop a new system that was capable of fulfilling the obligations set forth by the ordinance.

The development of the new system began immediately after the ordinance was adopted and the new Equipment Ordinance System was created. Every sworn member of the Berkeley Police Department was trained on this new Equipment Ordinance System, hereinafter referred to as EO System. The EO System was fully implemented in October 2021.

It should be noted that the data on equipment deployments in 2021 does not capture deployments for the entire year. The ordinance was passed in May of 2021. The development and implementation of the EO System and the training of all sworn personnel was completed in October 2021.

The Police Department responded to over 42,500 calls from the community in 2021 and 11,262 were calls which occurred following the development of the new EO System that captured equipment deployments mandated by the ordinance. Of the 11,262 calls received, 29 of them resulted in the deployment of either a patrol rifle or a less-lethal system capable of launching a rubber projectile or a projectile similar to that of a paintball. For details on these systems refer to the Impact Statements located on the Berkeley Police Department website.

The Blue Team system was fully implemented in March of 2021. The system documents all uses of force which includes patrol rifle deployments and uses of less-lethal systems. This system is maintained by the Internal Affairs Bureau. In 2021 there were five incidents where less-lethal systems were used and 14 incidents where a patrol rifle was deployed. These incidents were recorded prior to the EO System going live. Three of the five less-lethal system uses were also entries into the EO System because they occurred after the launch of the EO System.

The table on page 5 details each of the 47-equipment deployment/use incidents extracted from the Blue Team and EO systems as well as 2 deployments of the Hazardous Duty Robot by the Berkeley Police Bomb Squad. Each row within the table represents an incident where a specified equipment was deployed/used. The number of specified equipment deployed per incident is not represented. The

table includes the service of 14 search warrants; 6 of which were served by the Special Response Team in cases involving a violent suspect. Equipment that is not outlined in the table was not used in 2021.

It should be noted that all other equipment deployments that are not related to the service of a search warrant were incidents where officers responded to a call for service by community members. Incident #6 & #17 are the only exceptions. #6 is an incident where an officer witnessed a stabbing and had to take immediate action to save the victim and apprehend the suspect and #17 is an incident where a stolen car and suspect were tracked down by officers. The 5 incidents where less-lethal systems were actually utilized are marked with asterisks next to the incident number. The incidents are listed in chronological order.

| #  | Equipment                                | Summary of Deployment and Use                                                                                                                                                                                                                                                                                                                | Beat |
|----|------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| 1* | 40MM Launcher                            | Victim called and reported being victim of a robbery. Suspect located still armed and refused many orders to drop the weapon. Attempts to deescalate not effective. Less-lethal and lethal force used.                                                                                                                                       | 6    |
| 2  | Patrol Rifle                             | The victims reported that they were robbed via gun. A search warrant was conducted at the suspect's residence in another Bay Area city. Arrest made and evidence seized.                                                                                                                                                                     | X    |
| 3  | Andros Remotec HD-1 Hazardous Duty Robot | Suspicious package left in front of Bank of America with Hong Kong postage. Robot used for initial approach to ensure package is safe.                                                                                                                                                                                                       | 6    |
| 4  | Patrol Rifle                             | Victim called and reported someone brandished him with a gun during an argument. Suspect located, but no gun found. Victim later advised that he never saw a gun. Suspect released on scene.                                                                                                                                                 | 14   |
| 5  | Patrol Rifle                             | Victim reported that his brother brandished him with a gun. The suspect was located in a vehicle nearby. Victim requested suspect be arrested.                                                                                                                                                                                               | 4    |
| 6* | 40MM Launcher                            | Officer witnessed a stabbing. Victim stabbed in neck. Suspect ran from officers still armed with the knife. 40MM used to stop suspect. She stopped, but held onto knife. Attempts to deescalate failed. Still non-compliant and with knife in hand, a sergeant snuck up behind the suspect and grabbed her hand and knife. Suspect arrested. | 6    |

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|----|-------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 7  | Patrol Rifle,<br>Remington 700 Rifle,<br>LRAD, Diversionary<br>Device, FN303, 40mm<br>launcher, Recon Scout<br>XT | Special Response Team, search warrant on a shooting<br>suspect. Suspect arrested and evidence seized.                                                                                                                                                                                                                                | 9  |
| 8  | Patrol Rifle,<br>Remington 700 Rifle,<br>LRAD, Diversionary<br>Device, FN303, 40mm<br>launcher, Recon Scout<br>XT | Special Response Team, search warrant assist to outside<br>agency. Suspect known to carry and sell firearms. Suspect<br>later located by outside agency.                                                                                                                                                                             | 12 |
| 9  | Patrol Rifle                                                                                                      | Caller reported that someone was armed with a gun inside a<br>store. The caller provided details on the gun and the<br>suspect. Suspect was located inside of the store and was<br>identified as the same person by the caller. No gun was<br>located. No arrest.                                                                    | 15 |
| 10 | Patrol Rifle                                                                                                      | Victim reported that her vehicle was stolen. Investigations<br>lead to the service of a search warrant by investigators at<br>the location the suspects were residing. Suspects located<br>and arrested                                                                                                                              | 8  |
| 11 | atrol Rifle                                                                                                       | Victim reported that the suspect forcibly entered her RV<br>armed with a handgun and attempted to rape her. Search<br>warrant served for suspect in another Bay Area city. Suspect<br>arrested                                                                                                                                       | X  |
| 12 | Patrol Rifle,<br>Remington 700 Rifle,<br>LRAD, Diversionary<br>Device, FN303, 40mm<br>launcher, Recon Scout<br>XT | Special Response Team, search warrant conducted in<br>another Bay Area city on a Berkeley shooting suspect.<br>Suspect attempted to flee, but was stopped and arrested. A<br>loaded-fully-automatic pistol was located.                                                                                                              | X  |
| 13 | Patrol Rifle                                                                                                      | Multiple witnesses reported a drive-by shooting into a<br>vehicle near a park. The victim later reported that the<br>suspect fired multiple rounds at their vehicle for no<br>apparent reason. A search warrant was conducted at the<br>suspect's residence by investigators. Suspect located and<br>three guns seized for evidence. | 11 |
| 14 | Patrol Rifle,<br>Remington 700 Rifle,<br>LRAD, Diversionary<br>Device, FN303, 40mm<br>launcher, Recon Scout<br>XT | Special Response Team, search warrant assist to an outside<br>agency on murder suspect. Suspect not located but evidence<br>collected.                                                                                                                                                                                               | 9  |

|    |                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                          |    |
|----|----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 15 | Andros Remotec HD-1 Hazardous Duty Robot                                                           | Employees at a business reported a disturbance. The employee pointed the suspect out to the officer. Officer contacted suspect and his friend in a stolen car. One of them had an improvised explosive device in his pocket. Both arrested. Bomb squad relocated the device to a safe location and utilized robot for "render safe procedure."                           | 15 |
| 16 | Patrol Rifle, Remington 700 Rifle, LRAD, Diversionary Device, FN303, 40mm launcher, Recon Scout XT | Special Response Team, search warrant on a shooting suspect. Suspect arrested and evidence located.                                                                                                                                                                                                                                                                      | 14 |
| 17 | Patrol Rifle                                                                                       | Officers recognized a vehicle that was involved in a carjacking via gun and several other armed robberies in Berkeley. The car failed to stop for the police. The vehicle was eventually stopped after a lengthy pursuit. Patrol rifles deployed. Suspects arrested.                                                                                                     | 14 |
| 18 | Patrol Rifle                                                                                       | Victim employee reported that someone brandished a firearm at him after an argument inside of a liquor store. The suspect was located down the street. Patrol rifle deployed. Suspect was detained. He was identified by the employee as the suspect. Surveillance video showed the suspect pointed the gun at the employee. Gun was later located and suspect arrested. | 8  |
| 19 | Patrol Rifle, Remington 700 Rifle, LRAD, Diversionary Device, FN303, 40mm launcher, Recon Scout XT | Special Response Team, search warrants on suspects residences who were involved in a daytime gun battle. Suspects arrested. Assault rifles located.                                                                                                                                                                                                                      | 14 |
| 20 | 40MM Launcher                                                                                      | Community member reported a man having a "psychotic episode" and broke into an office. The man was naked and has prior history of smashing windows to use to harm himself. 40mm deployed. Subject safely detained. Property manager of office did not want to prosecute man. Mental Health professionals requested by PD and placed subject on psychiatric hold.         | 13 |
| 21 | 40MM Launcher                                                                                      | Burglary in progress, community member locked the suspect inside a workshop full of tools. Subject is a known to resist and fight the police. Subject was detained without incident. He was arrested and meth was located in his pockets. He later made suicidal statements and was placed on a psychiatric hold.                                                        | 3  |

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|-----|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 22* | FN303 Launcher                   | BART PD requested emergency assistance. Mental Health crisis, subject possession of knife refusing to drop. Verbal de-escalation attempts failed. Subject ran with knife still in hand. FN303 deployed and used, but had no effect. BART PD used taser which disarmed her. BARD PD placed subject on a psychiatric hold.                                                                                                                                                                     | 9  |
| 23  | 40MM Launcher                    | Officers responded to a residence after the caller reported a suspicious person prowling outside his house. As officers were at this house, they heard a female screaming from the house next door. A female came out of that house and screamed, "Help! Someone call the police!" She reported that a man broke into her house with no pants on. Officers entered the house. 40mm deployed. The subject was located and arrested.                                                           | 11 |
| 24  | Patrol Rifle,<br>40MM Launcher   | Search warrant on sexual assault suspect who victimized a child. Suspect arrested and evidence seized.                                                                                                                                                                                                                                                                                                                                                                                       | 1  |
| 25  | Patrol Rifle,<br>40MM Launcher   | Caller reported that a neighbor fired a gun while yelling threats to shoot. The subject cooperated with officers and exited his house and was detained. Further investigations showed no other neighbors heard gunshots. No firearms were located. No arrest made.                                                                                                                                                                                                                           | 9  |
| 26  | 40MM Launcher,<br>FN303 launcher | A caller reported a suspect pulling off a window to make entry inside. Officers arrived and the suspect locked himself inside of a room and did not comply with call out commands. Unknown if armed with a weapon. Less-lethal deployed but not used. Subject detained and arrested without incident.                                                                                                                                                                                        | 3  |
| 27  | 40MM Launcher                    | Multiple community members called the police about a person who instructed her dog to bite the victim. Victim transported to hospital via ambulance from multiple bites/puncture wounds. Victim pointed suspect out to officers. Suspect refused to stop for the police and yelled at the officers causing the dog to lunge and try to bite officers. 40MM deployed. Mental health professionals were requested. Suspect placed on psychiatric hold by MH. Out of custody charges requested. | 6  |
| 28  | Patrol Rifle                     | Officers responded to reports of an armed robbery (gun) and located a vehicle fleeing the area that matched the description of a get-away car for other armed robberies in Berkeley. A high-risk stop was conducted where one of the 3 suspects fled. Patrol rifle was deployed during the block search. Two suspects were arrested. Stolen items recovered.                                                                                                                                 | 8  |

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|-----|----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 29  | 40MM Launcher,<br>Patrol Rifle   | <p>Caller reported multiple subjects inside a construction site after hours. Officers arrive and heard sawing items inside. Burglary subjects failed to comply with commands, barricaded, and hid during the search. Less-lethal was deployed but not used. Burglary tools located, two arrested. One suspect has extensive arrest history and a warrant for his arrest.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 14 |
| 30  | 40MM Launcher                    | <p>Responded for a medical call of a person badly cut (needed stitches) following a dispute. Officers had reasons to believe it was possibly an assault with a deadly weapon. Requested the 40mm on scene while contact was made with the involved party inside of residence where the assault may have occurred. Further investigation showed no domestic violence. No crime, no arrest made.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                         | 4  |
| 31  | FN303 launcher,<br>40MM Launcher | <p>Officers responded to victim's call for help after being assaulted by her husband. Officers arrived on scene and deployed a 40mm and FN303 due to the suspect's continued violent behavior. He was still breaking things in the house and yelling. Contact made with husband, husband arrested for domestic violence.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 1  |
| 32* | 40MM Launcher                    | <p>Caller requested help with roommate who was "high on drugs" yelling and causing a disturbance. Officers arrived and located the front door unlocked, blood in the living room, broken window, and incoherent speech coming from a bedroom. Occupants including caller was evacuated for their safety while officers attempted to negotiate with subject to exit his room. Subject was naked, covered in blood and threatened to kill officers. Negotiations failed. Subject did not comply with commands and was ultimately hit with 2 rounds from the 40 mm launcher. Officers were able to detain the subject and provide him with medical attention. He was transported to the hospital by the fire department and placed on a psychiatric hold. Illegal drugs were located in subject's room. Out of custody charges requested.</p> | 6  |
| 33  | FN303 launcher                   | <p>Caller is social worker who requested a welfare check of her health client, a subject with a history of violence and history of fighting police. FN was deployed. Subject refused to speak to officers and grabbed several bricks and smashed them while screaming; there were children nearby that had to be escorted out of harm's way. Negotiations not effective. Subject tackled by own father. Subject detained, but continued to fight. Mental Health professions responded and placed a psychiatric hold on subject.</p>                                                                                                                                                                                                                                                                                                        | 11 |



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|-----|---------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 34  | 40MM Launcher                                     | Caller reported ex-boyfriend had a knife and brandished it at him. While on phone with Dispatch caller yelled, "He's got a knife!" All parties located and detained. No knife located and further investigation shows no criminal threats were made. 40MM was deployed during detention. No arrest.                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 13 |
| 35  | Patrol Rifle,<br>FN303 launcher,<br>40MM Launcher | Highland Hospital reported a stabbing victim. Contact made with victim at hospital and she reported being stabbed at a specific location. Search warrant conducted at this location and less-lethal and patrol rifle deployed for service of search warrant. Suspect located and arrested for stabbing victim and puncturing victim's lung.                                                                                                                                                                                                                                                                                                                                                                                                                  | 10 |
| 36  | Patrol Rifle,<br>FN303 launcher                   | Stolen vehicle was tracked by Officers. Stolen vehicle located abandoned by officer and suspect fled on foot into an apartment. Rifle and less-lethal deployment during service of search warrant. Suspect arrested                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 16 |
| 37  | Patrol Rifle                                      | Caller reported a suspect armed with a gun threatened to kill him. Officers located the suspect and patrol rifle was deployed. Suspect detained and identified by victim as the same person who threatened him. No gun located, but witnesses corroborated victim's account of events and how the suspect had a gun. Suspect had an alter state of mind. Psychiatric hold was placed on subject. Out of custody charges requested.                                                                                                                                                                                                                                                                                                                           | 15 |
| 38  | Patrol Rifle                                      | Caller reported armed subject in a vehicle waving a firearm around. Car and subject description provided by caller. Car and driver that matched description were located by an officer. Patrol rifle deployed. Driver ordered out of car. Caller identified the driver as the same person he saw with a gun. A realistic black Beretta BB gun located in the car. Driver said he was shooting fish. Driver relinquished ownership of BB gun. No arrest made.                                                                                                                                                                                                                                                                                                 | 12 |
| 39* | Patrol Rifle,<br>40MM Launcher,<br>FN303 launcher | Caller reported that a subject had hit his mother over the head with a saw-off shotgun. Victim sustained injuries to her head that required stiches. The suspect was reported as being agitated and was heard yelling on the phone by dispatch. Officers arrived on scene and could still hear the suspect yelling. Victim/mother was contacted outside of residence. Subject still had access to the shotgun. Many attempts to deescalate and negotiate for the suspects surrender failed. Subject was on the porch and refused to comply with orders. Patrol rifles and less-lethal deployed. 40mm and FN303 were utilized and caused suspect drop fall onto the ground. Subject immediately taken into custody. Medical attention provided to all parties | 16 |
| 40  | Patrol Rifle,<br>40MM Launcher                    | Search warrant service on rape suspect. One officer wore rifle slung on body. One officer wore 40MM slung on body. Suspect located and arrested                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 12 |



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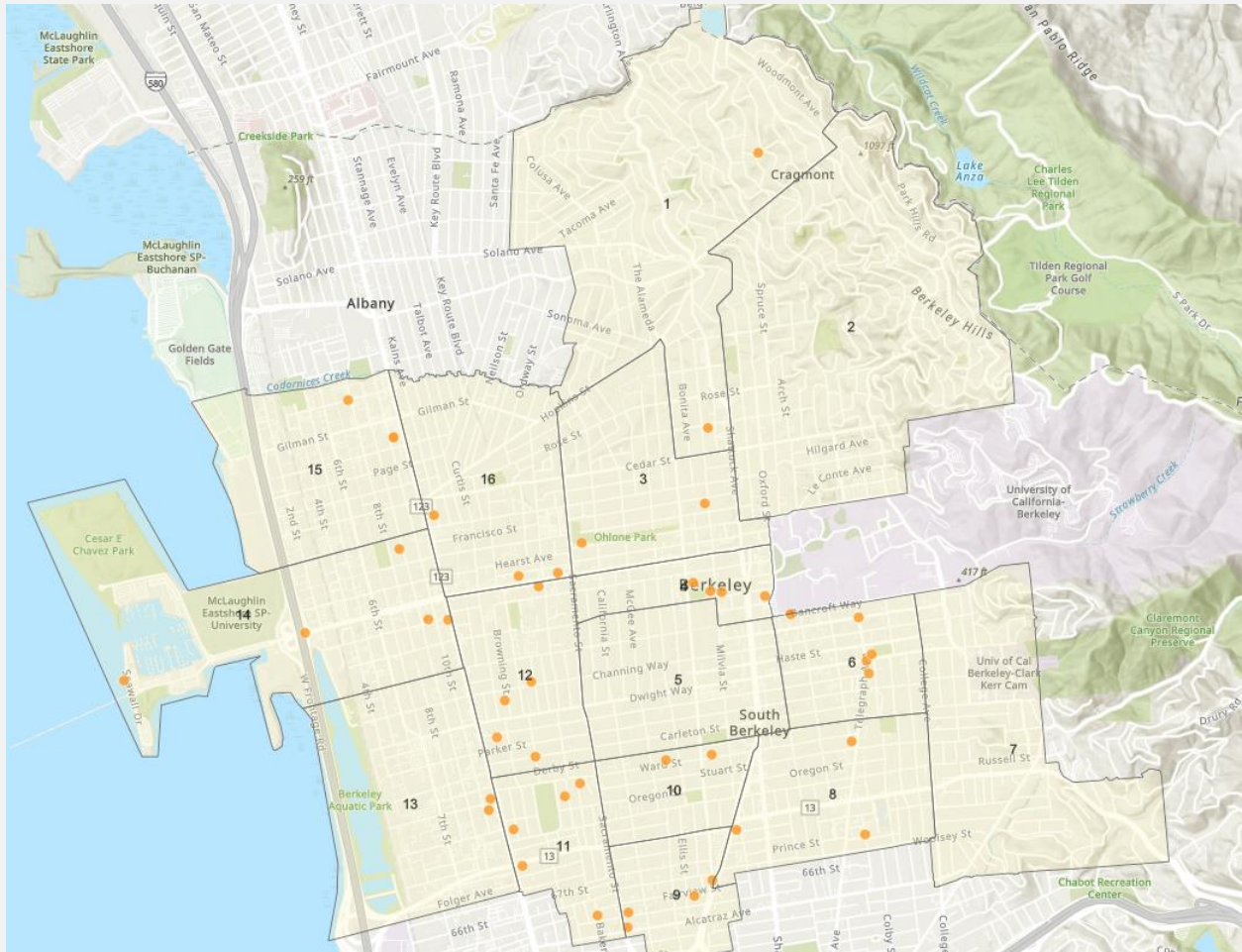
|    |                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |    |
|----|---------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 41 | 40MM Launcher                                     | Victim called and reported that a neighbor and brandished a knife at him. Victim wanted to press charges. Officers arrived. Subject came out of his apartment and yelled at officers then went back in. 40mm deployed. Subject refused to come outside. Out of custody charges requested.                                                                                                                                                                                                                                                                                                                                                     | 11 |
| 42 | FN303 launcher                                    | Caretakers called and reported a subject with a butcher knife chased caregivers who were attempting to bathe him. Caretakers ran out of the house to call the police. Officers responded with FN303. Subject's son was called to help speak to subject who suffers from dementia. The son agreed to stay to help care for subject and help caretakers. No prosecution requested by caretakers. No injuries sustained by caretakers.                                                                                                                                                                                                           | 10 |
| 43 | Patrol Rifle,<br>40MM Launcher,<br>FN303 launcher | Caller (ex-girlfriend) reported subject (ex-boyfriend) is suicidal and requested welfare check. Officers attempted a welfare check on a suicidal subject inside of his home. The subject told officers he was armed and told officers to leave. Subject hands were not visible to officers. Threat was deemed credible. Less-lethal systems and a Patrol rifle were deployed. Negotiator attempted to negotiate for the subject to exit his residence, but failed. Subject said officers are going to force a confrontation with him. Subject not a threat to others and refused officer's help. No crimes committed. Officers left the area. | 11 |
| 44 | Patrol Rifle,<br>FN303 launcher                   | Officers responded to a call of a possible burglary. A patrol rifle and less-lethal were deployed to clear the building. Suspect located and arrested burglary.                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 4  |
| 45 | 40MM Launcher                                     | Caller is security and reported a subject was verbally threatening staff and residents and assaulted security. Staff wanted him to leave. Subject is a known burglar and have fought officers in the past. Less-lethal deployed. Request subject to leave and he complied. No prosecution requested.                                                                                                                                                                                                                                                                                                                                          | 16 |
| 46 | 40MM Launcher                                     | Caller (wife) reported subject (husband) had a knife and was threatening to kill himself. Caller was contacted outside of house while subject was still inside. 40MM deployed as officers contacted subject. Subject located safely and placed on a psychiatric hold.                                                                                                                                                                                                                                                                                                                                                                         | 12 |
| 47 | 40MM Launcher                                     | Caller (mother) reported subject (son) having a mental health crisis. Caller reported the subject was armed with a knife and standing outside the house. 40mm deployed, subject safely located and placed on 5150 hold.                                                                                                                                                                                                                                                                                                                                                                                                                       | 12 |

1

Below is a table that shows the total number of incidents a specified equipment was deployed in 2021. It should be noted that different types of equipment may be deployed in one incident and the same equipment may be deployed by multiple officers within a single incident.

| EQUIPMENT                                              | Number of Incidents |
|--------------------------------------------------------|---------------------|
| Patrol Rifle                                           | 27                  |
| 40MM Single Launcher                                   | 27                  |
| 40MM LTL Multi-Launcher                                | 0                   |
| FN 303 Launcher                                        | 16                  |
| FN Pava Impact Projectile                              | 0                   |
| Oleoresin Capsicum Spray                               | 0                   |
| Chlorobenzylidene Malononitrile and Oleoresin capsicum | 0                   |
| Remington 700 Rifle                                    | 6                   |
| ReconRobotics Recon Scout XT Robots                    | 6                   |
| Andros Remotec HD-1 Hazardous Duty Robot               | 2                   |
| Light/Sound Diversionary Device                        | 6                   |
| Long Range Acoustic Device                             | 6                   |
| 36" Batons                                             | 0                   |
| Mobile Command Vehicle                                 | 0                   |
| Barret Model 99                                        | 0                   |

Below is a map showing where each of the above 44 equipment deployments occurred in Berkeley. 3 occurred in other Bay Area cities.



## Appendix:

### Applicable Lexipol Policies Respective to Each Equipment

#### Patrol Rifle

- Policy 300 (Use of Force)
- Policy 349 (Tactical Rifle Operator Program)

#### 40MM single launcher

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

#### 40MM LTL multi-launcher

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

#### FN 303 Launcher & FN Pava rounds

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

#### Chlorobenzylidene Malononitrile and Oleoresin Capsicum (canister and spray)

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

#### Remington 700 Rifle

- Policy 300 (Use of Force)
- Policy 354 (Precision Rifle)

#### ReconRobotics Recon Scout XT Robots & Andros Remotec HD-1 Hazardous Duty Robot

- Policy 708 (Robot Cameras)

#### Light/Sound Diversionary Device

- Policy 353 (Diversionary Device)

#### Long Range Acoustic Device

- Policy 707 (Long Range Acoustical Device)

36" batons

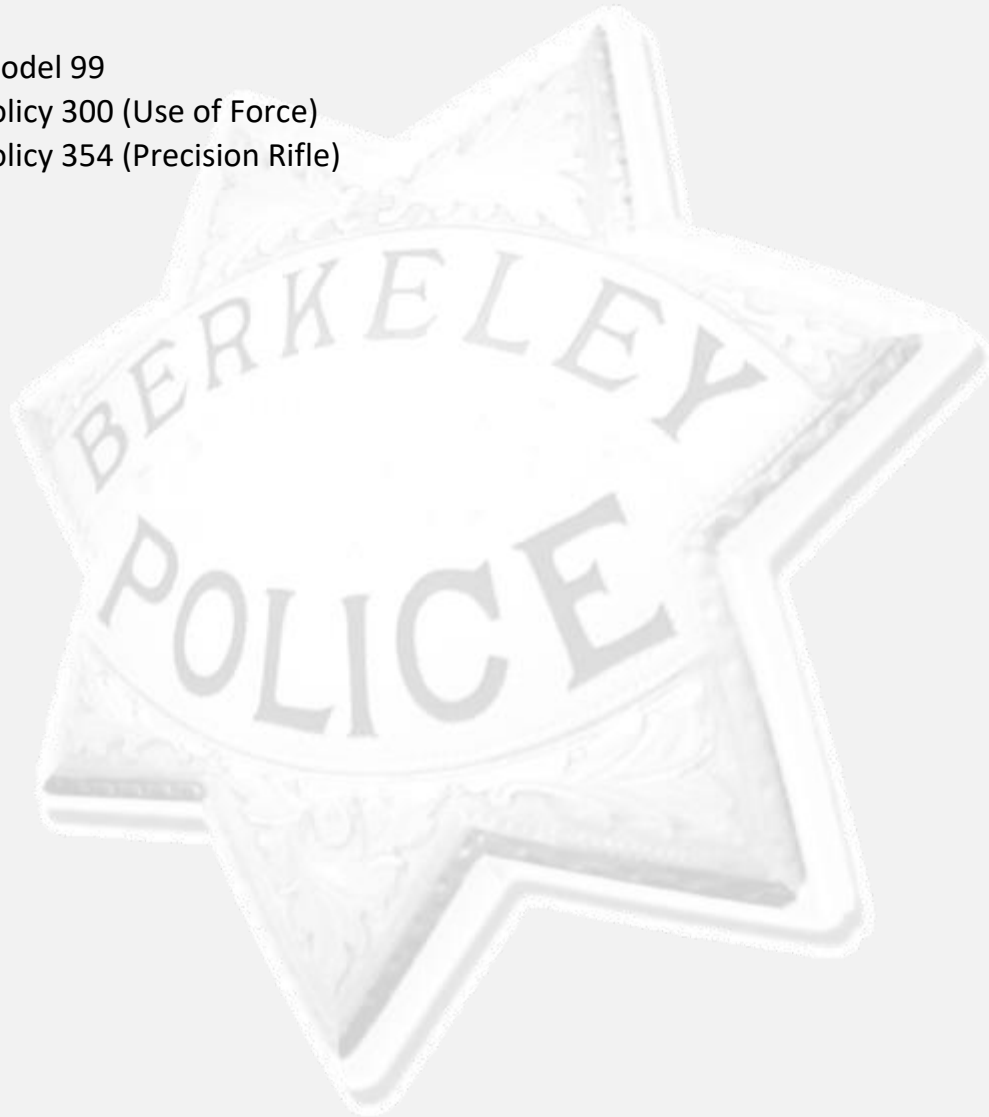
- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)
- Policy 428 (First Amendment Assemblies)

Mobile Command Vehicle

- Policy 811 (Mobile Command Vehicle (MCV))

Barret Model 99

- Policy 300 (Use of Force)
- Policy 354 (Precision Rifle)







OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

April 6, 2022

To: Interim Police Chief Jennifer Louis  
From: Michael Chang, *Michael Chang* Chairperson, Police Accountability Board  
Re: Police Equipment and Community Safety Ordinance Impact Statements

The Police Accountability Board (PAB) held a special meeting on March 30, 2022, for the purpose of reviewing the Impact Statements that the Police Department prepared and submitted to the PAB in order to meet the Department's obligations under the Police Equipment and Community Safety Ordinance ("Ordinance")<sup>1</sup>; specifically under B.M.C. Section 2.100.040 (G), Review Process for Previously-Acquired Equipment.

Preliminarily, we note that the Appendix to the Impact Statements contains "Applicable Lexipol Policies Respective to Each Equipment." Thus, we presume that those Lexipol Policies are intended to serve as the Use Policies that also must be submitted under B.M.C. Section 2.100.040 (G). The introduction to the Impact Statements notes that they also fulfill the obligations set forth in Assembly Bill 481.<sup>2</sup>

However, the PAB identified several ways in which the Impact Statements fall short of meeting the requirements of the Ordinance and of AB 481. Furthermore, the PAB took notice of AB 48,<sup>3</sup> which prohibits law enforcement agencies from using kinetic energy projectiles or chemical agents to disperse an assembly, protest, or demonstration, except in limited circumstances. The limitations in AB 48 do not appear to be incorporated either in the Impact Statements or the Lexipol Policies. Accordingly, the PAB requests that the Police Department revise the Impact Statements and Lexipol Policies so that they are fully compliant with the local Ordinance, state law, and any applicable federal law. The PAB further suggests consultation with the City Attorney's Office to ensure all the City's legal obligations are met.

1. Following are some examples of how the Impact Statements or Use Policies are lacking:

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<sup>1</sup> Ordinance No. 7760-N.S., codified in Berkeley Municipal Code Chapter 2.100.

<sup>2</sup> Adding Sections 7070 through 7075 to the Government Code.

<sup>3</sup> Adding Section 13652 to the Penal Code, and other provisions not relevant here.

- FN 303 and FN Pava Impact Projectile:

The Impact Statement for this launcher states in Section E., Use (p. 19), that the FN 303 is designed to reduce the potential for a violent confrontation; is less likely to result in serious bodily injury or death, and can be used to de-escalate a potentially deadly situation. Missing, however, is a reference to the prohibition on the use of kinetic energy projectiles to disperse any assembly, protest, or demonstration, except by a trained peace officer, if the use is objectively reasonable to defend against a threat to life or serious bodily injury, or to bring a dangerous and unlawful situation under control; and, in either case, by following certain guidelines. (AB 48; Penal Code Sec. 13652(b).) This Impact Statement thus fails to meet the conditions of the Ordinance because an Impact Statement must include “intended uses and effects” of each type of controlled equipment (B.M.C. Sec. 2.100.020 (C)).

Moreover, the applicable Lexipol Policies (300 – Use of Force, and 303 – Control Devices and Techniques), do not comply with AB 481, which requires that a “military equipment use policy” address “[t]he purposes and authorized uses for which the law enforcement agency . . . proposes to use each type of military equipment.” (Gov. Code sec. 7070(d)(2).) In omitting the limitations placed on kinetic energy projectiles by Penal Code Section 13652(b), Policies 300 and 303 do not accurately describe the authorized uses of the FN 303 launcher.

These same issues arise for the Impact Statements and Policies 300 and 303 with respect to the Penn Arms and Milkor launchers.

- OC Spray (Pepper Spray):

The Impact Statement for OC Spray is lacking in a way similar to that for the FN 303 launcher. The description of its Use (Section E, p. 25) states that OC spray may be considered for use to bring individuals or groups about to become violent under control; but should not be used against those who merely fail to disperse or do not appear to present a risk to the safety of others. It omits any reference to the stricter limitations on using this chemical agent under AB 48 (the same limitations as for kinetic energy projectiles cited above, under Penal Code Sec. 13652(b)), and thus falls short of compliance with the Ordinance.

Additionally, Lexipol Policy 303 does not reference the current ban on OC spray for crowd control during the COVID-19 pandemic, so it is not compliant with AB 481, requiring a listing of authorized uses. While that ban is included in Policy 300 on Use of Force (in Sec. 300.3.7), the lack of an up-front reference in the Impact Statement is confusing and possibly misleading.

- CS Gas (Tear Gas):

Currently, using tear gas is prohibited under any circumstances, so it is questionable whether an Impact Statement for this chemical agent should be

Interim Police Chief Jennifer Louis  
Police Equipment and Community Safety Ordinance Impact Statements  
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included. If it is included because the Department is reporting its possession of this equipment, the ban must be noted, to comply with local and state law.<sup>4</sup>

2. Another problem with the Impact Statements is internal inconsistency of the less-lethal launcher descriptions. For the Penn Arms launcher, Section 6, Alternative (p. 13), states, "This is the only piece of less lethal equipment (other than the FN 303) that allows officers to address a potentially deadly threat from a distance." But identical language is used in describing an Alternative for the Milkor launcher (p. 18), so two pieces of less lethal equipment have been identified as an alternative to the FN 303. Finally, the FN 303 itself is described as "the **only** piece of equipment that allows officers to address a potentially deadly threat from a distance" (p. 23; emphasis added), which contradicts the descriptions of the Penn Arms and Milkor launchers as alternatives to the FN 303.

3. The PAB also discussed a suggestion for the Department to employ best practices in developing its use policies, while acknowledging it did not have time at this point to suggest best practices for all relevant policies within the approval timeframe mandated by the Ordinance.

4. With respect to mutual aid, the PAB points out a pertinent provision of AB 481: A law enforcement agency must obtain the governing body's approval, by adopting a military equipment use policy, before engaging in a number of enumerated activities. (Gov. Code Sec. 7071(a)(1).) One of them is "(D) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the territorial jurisdiction of the governing body." This means that, before any outside law enforcement agency uses military equipment within the City of Berkeley, an approved use policy for that equipment must be in place. As this language has no counterpart in the local Ordinance, it is important that your Department is mindful of this provision.

5. Finally, the PAB requests that when you submit your item seeking approval of the Impact Statements and Use Policies into City Council agenda process, that you also send a copy to the Interim Director of Police Accountability

The PAB approved communicating to you the points made in this memorandum by a unanimous vote at its March 30, 2022 special meeting: Moved/seconded – Owens/Ramsey; Ayes – Calavita, Chang, Harris, Levine, Mizell, Moore, Owens, Ramsey; Noes – none; Abstentions – none; Absent – Leftwich.

cc: Farimah Brown, City Attorney  
Police Accountability Board Members

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<sup>4</sup> Interim Director Lee advised me that, during your April 5 phone conversation, you reminded her that in September 2020 the Police Review Commission supported the BPD's request for an exception to the tear gas ban for use during certain Special Response Team operations. This was not presented to the City Council but may be in the future.



## Military Equipment

### 709.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment ( Government Code § 7070; Government Code § 7071; Government Code § 7072).

#### 709.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

**Governing body** – The Berkeley City Council.

**Military equipment** – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

## *Military Equipment*

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### **709.2 POLICY**

It is the policy of the Berkeley Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment.

### **709.3 MILITARY EQUIPMENT COORDINATOR**

The Chief of Police should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Berkeley Police Department (Government Code § 7071).
- (e) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).

### **709.4 MILITARY EQUIPMENT INVENTORY**

The following constitutes a list of qualifying equipment for the Department:

- M4 rifle/Patrol Rifle
- Penn Arms 40MM Single Launcher
- Milkor LTL Multi-Launcher
- FN 303 Launcher & FN Pava Impact Projectile
- Oleoresin Capsicum Spray
- Chlorobenzylidene Malononitrile and Oleoresin capsicum
- Remington 700 Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/Sound Diversionary Device
- Long Range Acoustic Device
- Mobile Command Vehicle
- Barret Model 99

## *Military Equipment*

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### 709.4.1 BERKELEY POLICE DEPARTMENT'S INVENTORY

#### **Rifles and Associated Ammunitions**

##### **Rifle:**

##### **M4 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

##### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Colt M-4 patterned rifle, which fires the .223 Remington cartridge

**Quantity:** The Berkeley Department currently owns and maintains 96 rifles

**Capabilities:** The M4 pattern rifle is used only in situations when a potential life-threatening situation exists. While a pistol is the common firearm used by police in these dangerous situations, the M4 patterned rifle has numerous advantages over it. The ability to shoulder the rifle, coupled with the rifle's lengthened barrel and ammunition, result in higher accuracy and lessens the chance of officers missing the intended target. Additionally, due to the design of the rifle's bullet, the round is less likely to over penetrate commercial and residential walls should the officer miss the intended target. The rifle is also easier to use compared to a pistol because of the bullet's low recoil. Finally, as the rifle can be adjusted and customized, it can be configured to accommodate officers of any stature (hand size, strength, etc.).

**Lifespan:** Due to the rifle's ability to be maintained by department armorers, these rifles have a relatively long-life span if properly maintained. However, the design has changed little in the last 60 years and we can expect new variations and designs to become the new industry standard in the coming years.

**Manufacturer's Description:** This specially designed law enforcement weapon system features many of the combat proven advantages of the military Colt M4. With the 4-position buttstock fully retracted, the Colt Law Enforcement Carbine is less than 32in length and weighs only 6.9 lb - ideal for tactical deployment and traditional patrol.

##### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The M4 patterned rifle and associated ammunition is intended as a means to safely stop a lethal threat. While a pistol is the firearm that all officers are minimally equipped with, the rifle is an ancillary firearm for situations where increased distance and accuracy are needed to safely resolve the situation.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

##### **FISCAL IMPACT:**

**Initial Cost:** Exact costs unknown. Rifle prices, like other firearms, will range depending on current market demand and availability. While M4 rifles purchased several years ago cost between \$1,000

## *Military Equipment*

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and \$1,200 a piece, current rifles cost between \$1,400 and \$1,600. It should be expected that these prices will fluctuate and likely increase over time.

**Annual cost:** Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on whether the rifle is issued to a patrol officer, a firearms instructor, or a Special Response Team member as each assignment has different training requirements.

**Training costs:** Every officer that is authorized to carry a rifle on duty must attend a 16-hour CA POST approved rifle instruction course before being authorized to carry the rifle on duty. This course may be administered by Berkeley Police Firearm Instructors or by other POST approved agencies. Tuition for the CA POST approved class is dependent on the hosting agency. If conducted in house the cost only includes the officer's hourly wage, range fee, and ammunition costs (all vary). Outside agencies charge between \$25 to \$500 depending on the range location and duration (some classes are 32-hours while POST only requires 16-hours.) Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by POST certified BPD firearm instructors.

**Maintenance costs:** Vary depending on use over time. Traditionally, various springs and pins need to be replaced every five years and may cost between \$3 and \$30 per rifle. Other parts such as the barrel and bolt need replaced around ten years and range between \$150 and \$300 per rifle.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 349 Tactical Rifle Operator Program. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### **Remington 700 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Remington 700 rifle, which fires the .308 caliber ammunition.

**Quantity:** The Berkeley Department currently owns and maintains 6 rifles

**Capabilities:** The Remington 700 rifle, with the appropriate ammunition, training, and practice, is capable of consistent and highly accurate shooting out to a distance of approximately 500-yards.

## *Military Equipment*

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The Remington 700 is intended to be used in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation.

**Lifespan:** The Remington 700 bolt-action rifles have an expected life span of 10-years if properly maintained.

**Manufacturer's Description:** The Model 700 SPS Tactical is a highly maneuverable member of the family. It's built for tack-driving accuracy with a 20" heavy-contour tactical-style barrel and dual-point pillar bedding in its black synthetic stock. Hogue® overmoldings on the stock facilitate sure handling, and it has a semi-beavertail fore-end for added stability off a rest.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** This rifle is to be used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. This rifle provides police with the benefit of adding distance to a volatile situation which can increase the safety for community members and officers. This rifle is an ancillary firearm for situations where increased distance and accuracy is needed to safely resolve the situation.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

### **FISCAL IMPACT:**

**Initial Cost:** The initial cost to purchase this rifle with its associated components is approximately \$10,000 dollars each. Their average life span is 10-years at which time it will likely need to be replaced.

**Annual cost:** If this rifle is not cared for or maintained well, then a potential financial adverse impact would be the premature purchasing of a replacement rifle or replacement parts. However, authorized and trained Berkeley Police armorers service and provide regular maintenance of the rifles. The cost of maintenance is staff time.

**Training costs:** The cost associated with training is the staff time, range fees, and cost of spent ammunition. SRT members train once a month and, on average, each member shoots approximately 50-rounds. Currently, there are only 4 members shooting at each training day. This equates to approximately 2,400 rounds of ammunition being fired per year. This does not include special training days or attendance to training schools/classes. A single box of 20-rounds costs approximately \$20-dollars or \$1 dollar per round.

**Maintenance costs:** Maintenance costs vary depending on use over time. Firing pins need to be replaced every 5 to 7 years. The maintenance cost associated with this rifle is minimal.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### **LEGAL AND PROCEDURAL RULES:**

## *Military Equipment*

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Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force, Policy 354-Precision Rifle. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### **Barret Model 99 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** The Barrett Model 99 rifle is a single shot bolt-action 50-caliber rifle

**Quantity:** The Berkeley Department currently owns and maintains 1 rifle.

**Capabilities:** This rifle is used only in situations where a potential life-threatening situation exists. The length of the rifle's barrel coupled with the ammunition result in precision accuracy. This rifle is capable of disabling any vehicle engine block because of the large caliber round.

**Lifespan** This rifle has been in our possession for almost 15-years and we expect it to last for an additional 20 years or more considering how in-frequently it's used.

**Manufacturer's Description:** The Model 99 brings new levels of long-range precision shooting. Known as much for its dependability as its versatility, the Model 99 has unfailing accuracy you can rely on.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The Barrett rifle is a firearm that may be used to stop a vehicle which poses a lethal threat to the public, or to disable a vehicle which presents a threat to the safety of another person(s) by its continued use. There are vehicle disabling tools that may disable vehicles by slowly deflating the tires; however, even with tires deflated a vehicle has the ability to operate and remain a threat to the public. Furthermore, these tools must be hand deployed and, in most circumstances, require officers to expose themselves to deadly threats. The Barrett rifle creates the ability to effectively disable vehicles instantaneously from a distance away.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

### **FISCAL IMPACT:**

**Initial Cost:** The Barrett Model 99 50-caliber rifle has a retail cost of approximately \$12,500 dollars. The Department of Justice provided the Barrett rifle to the Berkeley Police Department on 04/04/2007. There was no initial cost related to BPD taking possession of it.

## *Military Equipment*

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**Annual cost:** The annual cost of the equipment is minimal and includes ammunition expenditure, cleaning equipment, and possibly replacing the optics at some point in the future.

**Training costs:** The cost associated with training is the staff time, range fees, and cost of spent ammunition.

The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$6 dollars per bullet; \$60 for a box of 10 and \$600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

**Maintenance costs:** Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### **RIFLE AMMUNITION:**

.223 Remington ammunition: 55 grain FMJ (full metal jacket) for training purposes and 62 grain soft point for duty purposes. (Use in the Colt M4 Rifle)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: .223 Remington ammunition: 55 grain FMJ (full metal jacket)

.223 Remington ammunition 62 grain soft point for duty purposes

Quantity: Quantity of rifle ammunition fluctuates significantly depending on training attended, including the standard basic police academy, officer assignments, and yearly mandate training cycles. For example, most police academy recruits are required to bring approximately 1,000 rounds to the basic POST approved academy. Most academies have a 16-24-hour rifle training course. The training is required for all officers who are issued a rifle and mandates between 800 and 1,200 rounds. As such, the inventory at the Berkeley Police Department fluctuates significantly depending on how many officers are attending state mandated training and can range from 10,000

## *Military Equipment*

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round (our current inventory) to less than 1,000 rounds (our anticipated inventory at the end of December after scheduled department training in November.)

**Capabilities:** The .223 Remington cartridge, depending on the weight of the bullet, 55 grain or 62 grain, travel at approximately 3,000 feet per second and 2,700 feet per second respectively. The round is highly regarded as having a high degree of consistency and accuracy, which is why it is the most common rifle round used in Law Enforcement around the world.

**Lifespan** Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

### **Product Description:**

.223 Remington ammunition: 55 grain FMJ (full metal jacket)

Make sure you hit your target with the Winchester USA .223 Rem 55-Grain Full Metal Jacket Ammunition. The full metal jacket ammunition features a 55 grain weight and includes 200 rounds. The caliber is .223 Rem, and the ammunition is made in the USA.

.223 Remington ammunition 62 grain soft point

Federal TRU 223 ammo is custom made ammunition for the Urban Law Enforcement Officer in mind. It features a lead core Hi Shock Soft Point bullet which offers great stopping power and excellent penetration, a non corrosive primer and brand new never fired brass casing and nickel plated brass primer. This LE Tactical ammo can be reloaded up to 5 times for those shooters that reload their 223 ammo. Federal LE 223 Remington has a muzzle velocity of 3050 feet per second and a muzzle energy of 1281 ft lbs. This 223 Federal ammo is new production packaged in 20 round boxes and 200 rounds per case. Federal TRU ammunition is engineered using Mil-Quality specifications. Each Federal TRU cartridge is made using select mil-quality low flash powders that do not disrupt an officer's night vision. The TRU case and web are built using thicker brass, adding the extra strength needed for the high powered rifle. TRU primers are crimped for added holding ability. This virtually eliminates backed out primers that can lock-up your weapon. With TRU ammunition, potentially disastrous situations are greatly reduced. TRU bullets are specifically engineered ranging from fragmenting designs for tactical entry to deeper penetrating bullets for patrol.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** This rifle ammunition is capable of incapacitating an individual from a distance and providing greater accuracy at a distance. This ammunition is used in the M4 rifle.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

### **FISCAL IMPACT:**



## *Military Equipment*

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**Initial Cost:** Ammunition costs fluctuate with the costs of components (brass, primers, gunpowder, and bullets) and supply/demand. Current costs for .223 Remington range from \$0.50 to \$0.75 a round for training ammunition (55 grain) and \$1.25 to \$1.50 a round for duty ammunition (62 grain).

**Annual cost:** The annual cost of the equipment is minimal, and is dependent on the amount of training.

**Training costs:** The cost associated with training is the staff time, range fees, and cost of spent ammunition.

**Maintenance costs:** Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 349 Tactical Rifle Operator Program. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Hornady .308-caliber ammunition (for the Remington 700 Rifle)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Hornady .308-caliber ammunition

Quantity: The Berkeley Department currently possess approximately 1800 rounds of this ammunition.

Capabilities: This rifle ammunition is capable of incapacitating an individual or disabling an object in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation. This ammunition is specifically designed for accuracy at distances of 500 yards.

Lifespan Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

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Manufacturer's Description: Millions of successful hunts have proven the accuracy and deadly effect of the famous Hornady® InterLock®, SST®, InterBond® and CX™ bullets we load into Hornady® Custom™ rifle ammunition.

Every round of Hornady® Custom™ ammunition is hand inspected before packaging to ensure the highest levels of quality control. At Hornady®, we manufacture Custom™ ammunition to give shooters and hunters the advantage of handloaded accuracy in a factory load.

### PURPOSE and AUTHORIZED USE:

Purpose: This rifle ammunition is capable of incapacitating an individual from a distance of 500 yards and providing greater accuracy at a distance. This ammunition is used in the Remington 700 rifle.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

### FISCAL IMPACT:

Initial Cost: The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$1 dollars per bullet; \$20 for a box of 20, plus shipping and handling. We currently possess 1800 rounds of BMG ammunition, \$1800.

Annual cost: The annual cost of the equipment is minimal, and is dependent on the amount of training.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Summit Ammunition.50-caliber BNG rounds of ammunition (for the Barrett Model 99)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

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Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Summit Ammunition.50-caliber BNG rounds of ammunition

Quantity: The Berkeley Department currently possess approximately 100 rounds of this ammunition.

Capabilities: This rifle ammunition is capable of disabling any vehicle engine block because of the large caliber round.

Lifespan Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

Manufacturer's Description: This is 50 Cal. BMG Summit Ammunition 700gr. M-2 Armor Piercing Ammo. Summit Ammunition has been manufacturing 50 Cal. BMG for over 10 years and they manufacture a premium quality product. They are a fully licensed and insured manufacturer. This ammo is loaded with NEW Winchester brass, New USGI powder and Pulled Lake City M-2 AP bullets.

### PURPOSE and AUTHORIZED USE:

Purpose: This rifle ammunition is capable of disabling any vehicle engine block because of the large caliber round.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

### FISCAL IMPACT:

Initial Cost:

Annual cost: The annual cost of the equipment is minimal.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### TRAINING:

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Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### Robots:

ReconRobotics Recon Scout XT (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: ReconRobotics Recon Scout XT

Quantity: The Berkeley Department currently owns and maintains 2.

Capabilities The Recon Scout XT robot is designed to be able to crawl over a variety of terrain, clearing obstacles up to 2" (5 cm) tall. It could be thrown into hazardous situations, indoor and outdoor, and provide live audio and video feed back to the controller.

Lifespan: Both Recon Scout XT robots are over 10 years old and ReconRobotics have developed and manufactured more advanced robots. ReconRobotics have stopped manufacturing certain parts for the Recon Scout XT, so the lifespan is dependent on what parts need to be replaced.

Manufacturer's Description: The Recon Scout XT is just eight inches long and weighs just 1.3 lbs., making it extremely easy to carry and throw. Moreover, deploying the Recon Scout XT takes just 5 seconds, and using it requires no special training. Simply pull the activation pin and throw the device through a doorway or over a wall, or drop it down a vertical shaft using a tether. Using a single joystick on the operator control unit (OCU), a tactical team leader or warfighter can then direct the device to move through the environment and send back real-time video. Equipped with an infrared optical system that automatically turns on when the ambient light is low, the Recon Scout XT can transmit video up to 100 feet indoors and 300 feet outdoors, day or night. The Recon Scout XT may also be specified in any of three transmitting frequencies, allowing police and military personnel to operate up to three robots in the same environment at the same time.

### PURPOSE and AUTHORIZED USE:

Purpose: The Recon Scout XT robot is intended to safely provide police officers valuable information during high-risk, rapid evolving situations via real-time audio and video footage. It can be driven a distance away from the OCU, creating space between the officer and potential danger, thus decreasing the likelihood of injury to those involved in the event, or even a violent encounter between police officers and a dangerous subject. This asset furthers our commitment to the sanctity of life by offering time and distance in critical incidents.

Authorized Uses: The Recon Scout XT robot may be deployed to help police officers safely view potentially dangerous environments before entering them.

### FISCAL IMPACT:

Initial Cost: The initial cost for the Recon Scout XT robot was about \$12,500 per unit (2010 cost).

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Annual cost: There are no ongoing or annual costs associated with the use of the Recon Scout XT robot. Being that it is battery operated, there is a nominal cost associated with charging the Recon Scout XT robot's batteries, and the batteries of the OCU. The Recon Scout XT robot is fairly simple to operate, thus there is no cost associated with training officers in its use. There are no costs with transportation or storage of the Recon Scout XT robot. While there are newer models of this robot available, there does not appear to be any upgrades available for the Recon Scout XT. The Recon Scout XT robot has been damaged on occasion, and there are costs associated with repair. But generally, the Recon Scout XT robot is robust and does not need regular repair.

Training costs: The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel familiar with the operations and procedures of the Recon Scout XT robot. The cost of training is staff time.

Maintenance costs: There are no annual or storage costs.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 708 Robot Cameras.

### TRAINING:

Andros Remotec HD-1 Hazardous Duty Robot (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Andros Remotec HD-1 Hazardous Duty Robot

Quantity: The Berkeley Police Department Bomb Squad has one robot, the Remotec HD-1 robot.

Capabilities Remotec HD-1 robot is used in situations where a potential life-threatening situation exists and is too hazardous for a bomb technician to approach in person. The Remotec HD-1 robot is also used to survey an area prior to a bomb technician approaching a scene to check for trip wires and ascertain a good approach path. The Remotec HD-1 robot has three cameras and audio monitoring that stream live video and audio back to the control module; however, it is unable to record and does not have any data storage capabilities. It has several attachment mounting options as well. The Remotec HD-1 robot also has the ability to carry a variety of tools. Some of the tools are:

- (a) A spike to break glass and access vehicles or homes with potential explosive devices inside
- (b) An X-ray mount in order to remotely X-ray suspected explosive devices.
- (c) Percussion actuated non-electric disruptors which are smooth barrels that are filled with water and fired at high speed with a blank shotgun round to open backpacks, suitcases, and packages from a distance
- (d) A hook with cutting blades that are used to cut backpack straps, ropes, etc.

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- (e) PAN rounds containing various fills, from sand to slugs, in order to open sturdier packages made from metal or other hard covers.
- (f) Electrical connections to connect explosives that can be detonated remotely and from a safe distance.

Lifespan: The Remotec HD-1 robot has an expected life span of 10 years. It is currently 13 years old and has begun exhibiting issues. The Remotec HD-1 robot weighs just over 200 lbs. and has been near multiple explosions over the years and crossed a variety of off-road terrain

Manufacturer's Description: The Remotec ANDROS fleet of hazardous duty unmanned vehicles is the preferred choice of first responders worldwide. The robust, mission-proven design of the ANDROS line keeps danger at a distance with:

- Simultaneous tool mounts for rapid response during dynamic missions (i.e. suits changing needs as the mission unfolds)
- A versatile array of two-way audio, video, advanced sensors, tools and controllers
- Easy maintainability for minimal downtime

Made in the USA and backed by world-class training and post-sale support, it's no wonder there are over 1,000 ANDROS robots deployed around the globe.

### PURPOSE and AUTHORIZED USE:

Purpose: The Remotec HD-1 robot is used as a means to approach hazardous situations where a potentially lethal threat such as an explosive device exist. The Remotec HD-1 robot allows for the examination and manipulation of an object or potential explosive device without unnecessarily putting a bomb technician's life at risk.

Authorized Uses: Used to examine and possible destroy hazardous materials such as an explosive device.

### FISCAL IMPACT:

Initial Cost: Procured in 2008 for \$214,496 including on-site training through a UASI Grant. (64,292-N.S.)

Annual cost: There is no annual cost. Maintenance of the Remotec HD-1 robot is conducted by Berkeley Police Bomb Technicians.

Training costs: Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. The cost of training is limited to staff time.

Maintenance costs: Remotec offers occasional maintenance and upkeep workshops free of charge.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 708 Robot Cameras.

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### TRAINING:

#### Less Lethal Launchers:

Penn Arms 40mm Single Launcher (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Penn Arms 40mm Single Launcher

Quantity: The Berkeley Department currently owns and maintains 20.

Capabilities: The Penn Arms single launcher is capable of firing a single projectile out to a maximum manufacturer recommended range of 45 meters. The Penn Arms 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

Lifespan The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

Manufacturer's Description: A 40mm compact single-shot break-open frame launcher with a rifled barrel and folding stock. Features include: Double-action trigger, trigger lock push button and hammer lock safeties.

### PURPOSE and AUTHORIZED USE:

Purpose: The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent or armed confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before

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certain weapons can be utilized. This fact may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

**Authorized Uses:** The Penn Arms 40mm single launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

### **FISCAL IMPACT:**

**Initial Cost:** Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$815.00 each.

**Annual cost:** Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

**Training costs** Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

**Maintenance costs:** Maintenance costs vary depending on use. Generally, various springs and pins need to be replaced every 5 years which can cost \$3 to \$30.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### **TRAINING:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

Milkor LTL Multi-launcher (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Milkor LTL Multi-launcher

Quantity: The Berkeley Department currently owns and maintains 2.



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**Capabilities:** The Milkor LTL is capable of firing six 40mm projectiles before reloading is necessary. The Milkor LTL 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

**Lifespan** The manufacturer expected lifespan is about 10 to 15 years depending on use and regular maintenance.

**Manufacturer's Description:** Developed with our partner company, Abrams Airborne Manufacturing, The 40mm Multi-Shot Less-Lethal Tactical Launcher (LTL) was manufactured with the needs of the modern tactical team at the forefront. The launcher is capable of firing a wide variety of 40mm LTL ammo.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

**Authorized Uses:** The Milkor LTL multi-shot launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

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### FISCAL IMPACT:

Initial Cost: Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$3950.00 each.

Annual cost: Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

Training costs Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

Maintenance costs: Maintenance costs vary depending on use.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### TRAINING:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

FN 303 and FN Pava Impact Projectile (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: FN 303 and FN Pava Impact Projectile

Quantity: The Berkeley Department currently owns and maintains 8 FN 303 less lethal launchers.

Capabilities: The FN 303 is capable of firing 15 projectiles out to a maximum manufacturer recommended range of 50 meters. The FN 303 projectiles are direct fire and designed to fragment upon impact to prevent penetration injury. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas. This level of force is considered to be similar to that of a baton strike.

Lifespan The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

Manufacturer's Description: The FN 303® Less Lethal Launcher is constructed from durable lightweight polymer with comfortable ergonomics and an easy to operate safety. The FN 303® Launcher is equipped with both flip-up iron sights and an integrated MIL-STD-1913 top mounting rail for optical or electronic sights or other accessories. The lightweight polymer

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magazine holds 15 projectiles and offers a clear rear cover to allow the operator to instantly verify both the payload type and the number of projectiles remaining.

### PURPOSE and AUTHORIZED USE:

Purpose: The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. Discriminate projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Authorized Uses: The FN 303 is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

### FISCAL IMPACT:

Initial Cost: Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent FN 303s purchased by the department cost \$800.00 each.

Annual cost: Cost for FN 303 use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

Training costs Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely

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handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

Maintenance costs: Maintenance costs vary depending on use. Generally, O-rings need to be replaced every 3000 rounds and cost \$30 per kit.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### TRAINING:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

### Light/sound Diversionary Devices:

CTS 7290 Diversionary Device (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: CTS 7290 Diversionary Device

Quantity: The Berkeley Department currently owns and maintains 50.

Capabilities: When a diversionary device is deployed they create a loud noise, heat and brilliant light and create an effective diversion. They can create psychological and physiological effects such as: hearing a loud noise beyond that of everyday living, seeing a short bright light, and feeling of a change in atmospheric pressure. These effects may disorient/confuse subjects for a short time giving tactical teams the ability to apprehend that subject without using a higher level of force.

Lifespan The lifespan of the CTS 7290 Diversionary Device is 5 years.

Manufacturer's Description: The CTS 7290 is the standard for diversionary flash-bang devices. The 7290 produces a 165-180 db and 6-8 million candela of light output. The patented design of the 7290, incorporates a porting system that eliminates movement of the body at detonation even if the top or bottom of the device should be in contact with a hard surface. In addition, internal adjustments have greatly reduced smoke output.

Flash Bangs are used by special tactical units during hostage rescue and high-risk warrants. It is an ATF-controlled Class-C explosive device that emits a bright light and thunderous noise to distract potentially dangerous individuals.

### PURPOSE and AUTHORIZED USE:

Purpose: The purpose of a diversionary device is to create a reactionary gap of a person by temporarily disorienting them. This gap gives tactical teams an opportunity to apprehend a suspect

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while using the minimal amount of force possible. They can also be used to safely invoke a response or redirect the attention of subjects who are either feigning injury, ignoring police commands or are unresponsive while posing a threat to the public.

**Authorized Uses:** The use of a diversionary device is to create a diversion in order to facilitate entry and enable arrest. Circumstances justifying the use of a diversionary device may include, but not limited to barricaded subject or hostage situations and high-risk search warrants services.

### **FISCAL IMPACT:**

**Initial Cost:** Diversionary Devices cost approximately \$45 per unit and are purchased through LC Action Police Supply. Purchases for these tools are made when inventory becomes low, based upon critical incident usage and Special Response Team trainings that incorporate live devices.

**Annual cost:** See below training cost.

**Training costs** Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices. The cost of training is staff time.

**Maintenance costs:** The majority of diversionary devices are stored inside of a room in the basement within the Police Department. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 353 Diversionary Devices.

### **TRAINING:**

Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices.

### Long Range Acoustic Device

The Long-Range Acoustic Device (LRAD)(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: The Long Range Acoustic Device (LRAD)

Quantity: The Berkeley Department currently owns and maintains possesses 2 Long Range Acoustic Devices (LRAD) speakers. One is an LRAD 450XL and the other is an LRAD 100X.

Capabilities: Both of these speakers are able to focus sound in directional pattern allowing the user to make sound audible over distances much greater than conventional public address speakers.

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The LRAD 450XL is the larger of the two and designed to either be used in a fixed location or mounted on a vehicle to make it portable. It has a usable range of approximately 1 mile. The LRAD 100X is smaller and more portable. It can be carried or mounted to a person's chest for mobility or mounted to a vehicle. Its range is approximately 1/3 of a mile. Both of these systems allow for clear long-range communication, they are also able to play recorded messages.

Lifespan The lifespan for both LRADs is 25 years.

### Manufacturer's Description

LRAD 100x In addition to being 20 – 30 decibels louder than bullhorns and vehicle-based P.A. systems, the LRAD 100X is also up to 6X louder and much more intelligible than other hailing devices of comparable size and weight. Live or recorded broadcasts from the portable LRAD 100X easily overcome engines, sirens and noisy crowds to ensure every message is heard and understood. The LRAD warning tone safely alerts attention to the voice messages that follow, establishes large standoff zones, and is the safer crowd control alternative to non-lethal and kinetic measures.

LRAD 450XL- The LRAD 450XL utilizes technology developed and patented\* by Genasys Inc. to provide the audio output of larger acoustic hailers almost twice its size and weight, while delivering the same outstanding vocal clarity inherent in all LRAD systems. The LRAD 450XL broadcasts powerful warning tones to command attention to the highly intelligible voice messages that follow, enabling operators to change behavior and enhance response capabilities with safe, scalable escalation of force. Lightweight and designed for use on tripods or mounted on vessels, vehicles, and Remote Weapon Stations (RWS), the LRAD 450XL is a highly effective, long range communication system in use around the world for public safety, law enforcement, maritime and defense applications.

### PURPOSE and AUTHORIZED USE:

Purpose: The LRADs are designed for clear long-range communication. The LRAD's ability to communicate over a long distance is far superior to any megaphone or Public Address (PA) system mounted to a police vehicle. Additionally, LRAD's may be used to:

- Communicate lifesaving information to residents during disasters
- Communicate to large crowds during parades, festivals, concerts and sporting events
- Establish safety zones and perimeters
- Control traffic congestion
- Conduct Special Response Team operations
- Broadcast a dispersal order
- Communicate during hostage and barricaded subject situations
- Announce and serve high risk warrants
- Communicate to protesters

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- Communicate to persons threatening suicide who are in an inaccessible location
- Conduct search and rescue operations

The ability to communicate with the public in a large area increases the safety of all members of the public and law enforcement. It allows everyone in a given area to know what is being communicated, gives more situational awareness to everyone in a given area and allows people to know where to go or not to go.

Authorized Uses: The LRADs are used to communicate with the community during natural disasters, crowd management and control situations, or when other forms of communications are ineffective or inoperable to unequivocally communicate messages from Police or Fire and safely resolve uncertain situations where communicating with the public is paramount.

### FISCAL IMPACT:

Initial Cost: The LRAD 450XL and the LRAD 100X were purchased in 2018. The total cost for both LRADs, rechargeable battery packs and accessories was \$49,999.

Annual cost: BPD has not incurred any additional cost to date for this equipment.

Training costs Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD. The cost to train is staff time.

Maintenance costs:costs for this equipment.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 707 Long Range Acoustic Device.

### TRAINING:

Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD.

### Mobile Command Vehicle

Mobile Command Vehicle (MCV)(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: MCV is a 2003 Freightliner MT55

Quantity: The Berkeley Department currently owns and maintains 1.

Capabilities: The MCV is a mobile office that provides shelter and may be used as a mobile command and communication center.

Lifespan This vehicle is approximately 20 years old and is at the tail end of its serviceable lifespan. All emergency vehicles need to be completely dependable and vehicles of this age start to lose

## *Military Equipment*

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dependability as old parts start to fail without warning. The modern versions of this type of vehicle are typically converted motorhomes.

### Manufacturer's Description

The 22' Freightliner MT55 P1200 is the biggest stepvan option for your delivery fleet, offering maximum capacity, accessibility and maneuverability. Built with a powerful Cummins 6.7L 200HP Diesel Motor, this route truck has folding lower shelves to optimize your cargo space and rear sonar for safety.

### PURPOSE and AUTHORIZED USE:

**Purpose:** This vehicle may be used as a mobile command post for any larger scaled events or as a communications center in the event the communications center in the Public Safety Building is inoperable. Some examples of large-scale events include Solano Stroll, Juneteenth, 4<sup>th</sup> of July, critical incidents or natural disasters.

**Authorized Uses:** This vehicle is used as a mobile command post for large scaled events.

### FISCAL IMPACT:

**Initial Cost:** The initial cost of the MCV (2003 Freightliner MT55) was \$230,800.

**Annual cost:** There is no annual or ongoing cost associated with this vehicle. Maintenance of the vehicle is conducted by the City's Corporation Yard.

**Training costs** Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle. The training cost is staff time.

**Maintenance costs:** There are no storage costs and maintenance would be conducted by the City of Berkeley Corporation Yard.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 811 Mobile Command Vehicle.

### TRAINING:

Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle.

### Chlorobenzylidene Malononitrile and Oleoresin Capsicum

Chlorobenzylidene Malononitrile (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Chlorobenzylidene malononitrile (CS)

Quantity: The Berkeley Department currently owns and maintains Inventory for CS canisters:



## *Military Equipment*

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Qty 6 – 5230 CS Canisters

Qty 24 – 6230 CS Canisters

Qty 20 – 5230B CS Baffled Canister (flameless)

Qty 17 – 5231 CS Tri-Phaser Canisters

Qty 21 – 4630 CS Muzzle Blast (used with 40 mm less lethal launcher)

Qty 4 – 4530 CS Impact Rounds (used with 40 mm less lethal launcher)

Qty 19 – 4330 CS Barricade Projectile Rounds (used with 40 mm less lethal launcher)

Capabilities: CS aerosols with microscopic particles which are potent sensory irritants becoming attached primarily to moist mucous membranes and moist skin. Common effects are: coughing, increased mucous secretion, difficulty breathing, skin reactions, and excessive salivation. The onset of symptoms typically occurs within 20 to 60 seconds, and if the exposed individual is placed in fresh air these effects generally cease in 10 to 30 minutes.

Lifespan CS and OC canisters expire in approximately 5 years.

### Manufacturer's Description

Unable to locate. Chlorobenzylidene malononitrile (CS) is one of the most commonly used "tear gases" in the world. It can be liquid, gaseous, or solid substance intended to produce temporary discomfort through being vaporized or otherwise dispersed in the air. Law enforcement (LE) agencies have found this agent invaluable when faced with combative suspects, for crowd/riot control, and for alleviating barricaded subject situations. LE use it to help control individuals or groups without the need for a higher level of force. There are four different deployment methods of chemical agents (Aerosol - most commonly used by police departments, Fogging, Pyrotechnics, and blast expulsion). All methods of deployment can be affected by certain environmental and physical conditions (wind, rain, temperature, distance, and proximity to others). At standard daily temperatures and pressures, CS forms a white crystal with a low vapor pressure and poor solubility in water.

### PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

### FISCAL IMPACT:

Initial Cost The cost for CS canisters ranges from \$20.00 to \$39.00 per unit.

## *Military Equipment*

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Annual cost: See below cost of training.

Training costs When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### TRAINING:

Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer.

Oleoresin Capsicum (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Oleoresin capsicum (OC)

Quantity: The Berkeley Department currently owns and maintains Inventory for OC canisters:

Inventory for OC canisters:

Qty 54 - 9440 OC Tear Ball

Qty 19 - 5440 OC Flameless

Qty 20 - 6340 OC Vaper

Capabilities: A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, stinging skin sensation, redness of the skin, irritation of the nose, runny nose, salivation, cough, gagging sensation, and shortness of breath. A person may also experience anxiety and panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

Both CS and OC canisters ca

Lifespan CS and OC canisters expire in approximately 5 years.

Manufacturer's Description

## *Military Equipment*

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Unable to locate. For this portion of the Impact Statement, Oleoresin capsicum (OC) will be referred to in the aerosol canister form. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. OC is mixed with several types of solutions which act as carriers.

### PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

### FISCAL IMPACT:

Initial Cost The cost for OC canisters ranges from \$36.00 to \$44.00 per unit.

Annual cost: See below cost of training.

Training costs When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### TRAINING:

Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer.

Oleoresin Capsicum Spray (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

## *Military Equipment*

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Type: Oleoresin capsicum (OC) spray

Quantity: The Berkeley Department currently owns and maintains Inventory for OC canisters:

Qty 178 – First Defense MK-3 OC spray (3 ounces)

Most of the MK-3 OC sprays are issued to and maintained by individual officers; however, a small amount of these sprays is stored in a secured equipment room as spares in case of damage or new personnel issue.

Capabilities: The First Defense MK-3 OC sprays are standard issued to all police officers and are worn on the police officers' belt. It has an effective range of 10-12 feet. The larger First Defense MK-9 OC sprays are 13 ounces and are used in violent crowd situations. It has an effect range of 18-20 feet.

The use of the First Defense OC spray can render a dangerous and violent situation safe without using a higher level of force.

Lifespan Aerosol products eventually lose pressure over time. The lifespan of both the MK-9 and MK-3 OC spray are dependent on how well the pressure in the can is maintained, but is recommended to be replaced after 5 years.

### Manufacturer's Description

The MK-4 is an ideal size for patrol officers to wear on a duty belt and will deliver 11-12 short bursts of OC at an effective range of 10-12 feet(18-20 for the MK9). This 1.3% MC OC aerosol product features a 360-degree stream deliver method which allows the aerosol projector to disperse OC from any angle while providing a target specific, strong concentrated stream for greater standoff.

### PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where officers may use OC spray such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: OC spray may be considered for use to bring under control an individual or groups of individuals who are engaging in or about to engage in violent behavior. OC spray should not, however, be used against individuals or group who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

### FISCAL IMPACT:

Initial Cost The MK-3 OC spray cost approx. \$19 per unit and the MK-9 OC spray costs approx. \$60 per unit. The manufacturer is Defense Technology and the Berkeley Police Department purchase each unit from Galls Police Supply or LC Action Police Supply. Purchases for these tools are made when inventory gets low which is typically determined by how many new officers are sworn in, as well as if they are utilized in dangerous situations.

Annual cost: See below cost of training.

## *Military Equipment*

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Training costs Training is conducted in the police academy and in-house by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: The majority of the MK-3 OC sprays are either stored within the Police Department or with each sworn police officer while they conduct official duties. All MK-9 OC sprays are stored in the basement. There are no additional storage costs or associated costs to transporting, maintain, or upgrade.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### TRAINING:

Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer.

### **709.5 APPROVAL**

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

## *Military Equipment*

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### **709.6 COORDINATION WITH OTHER JURISDICTIONS**

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

#### **709.6.1 TEMPORARY USE IN EXIGENT CIRCUMSTANCES**

The Berkeley Police Department may borrow and/or temporarily use Controlled Equipment in Exigent Circumstances without following the requirements in BMC 2.100.040, however the Department must take the following actions:

- (a) Provide written notice of the acquisitions or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged under local, state, or federal law
- (b) If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Controlled Equipment Impact Report and Controlled Equipment Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and received approval, as applicable from the City Council pursuant to BMC 2.100.040
- (c) Include the Controlled Equipment in the Department's next annual Controlled Equipment Report.

### **709.7 ANNUAL REPORT**

Upon approval of a military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

### **709.8 COMMUNITY ENGAGEMENT**

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.

### **709.9 MILITARY EQUIPMENT QUESTIONS**

Any member of the public may direct their questions regarding this policy and ordinance to a Sergeant in the Professional Standards Bureau at 510-981-5734 or 510-981-5974. Concerns may also be directed to [police@cityofberkeley.info](mailto:police@cityofberkeley.info). Questions will be answered in a timely manner by a member of the Berkeley Police Department.

## *Military Equipment*

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### 709.9.1 MILITARY EQUIPMENT CONCERNS

Any member of the public may direct their concerns regarding this policy and any of the military equipment to Internal Affairs Bureau at 510-981-5706.

### **709.10 ASSOCIATED EQUIPMENT USE POLICIES**

The below links will direct to the respective use policies:

[300-Use of Force](#)

[303-Control Devices and Techniques](#)

[349-Tactical Rifle Operator Program](#)

[353-Flash/Sound Diversionary Devices](#)

[354-Precision Rifle Operator Program](#)

[428-First Amendment Assemblies](#)

[707-Long Range Acoustical Device \(LRAD\)](#)

[708-Robot Cameras](#)

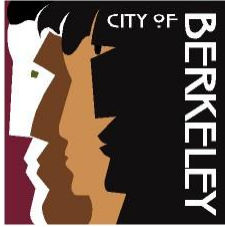
[811-Mobile Communications Vehicle \(MCV\)](#)

### **709.11 COMPLIANCE**

The Department's Audit and Inspection Sergeant will ensure that the Department members comply with this policy. The Audit and Inspection Sergeant will conduct an annual audit with the assistance from members of the Professional Standards Bureau. Any violations will be referred to the Internal Affairs Bureau and handled in accordance with General Order P-26 (Personnel Compliant Procedures). All instances of non-compliance will be reported to the City Council via the annual military equipment report.







Office of the City Manager

## **REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** July 12, 2022

**Item Number:** 20

**Item Description:** Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)

**Submitted by:** Office of the City Attorney and Matt Brown, General Counsel  
Rent Board

Amendments to resolution placing measure on the November 8, 2022 ballot: changes to ballot question language and non-substantive changes to title and other sections of resolution.

Amendments to ballot measure language: adding two additional exemptions to Section 13.76.050, subsections F and N for accessory dwelling units and certain owner-occupied properties; non-substantive changes to title and other sections.

Attachment 1

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

~~SUBMITTING TO THE BERKELEY ELECTORATE A MEASURE TO AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.76 OF THE BERKELEY MUNICIPAL CODE TO ALLOW RENT CONTROL TO APPLY, TO THE EXTENT THAT STATE OR LOCAL LAW PERMITS, FOR THE REGULATION OF NEWLY CONSTRUCTED UNITS, WHERE STATE AND LOCAL LAW DO NOT PROHIBIT RENT CONTROL, AND SPECIFICALLY INCLUDING BUT NOT LIMITED TO UNITS, BUILT AS THE RESULT OF DEMOLITION OF PREVIOUSLY RENT-CONTROLLED UNITS CREATED PURSUANT TO SENATE BILL 330 (HOUSING CRISIS ACT OF 2019); ALLOW INCREASED OCCUPANCY OF RENTAL UNITS WITHOUT THREAT OF EVICTION; ELIMINATE PROVISION ALLOWING CITY COUNCIL TO EXEMPT UNITS FROM RENT CONTROL IF CITY'S VACANCY RATE EXCEEDS 5% OVER A SIX-MONTH PERIOD; AND INCREASE EVICTION PROTECTIONS FOR CERTAIN LANDLORD-OCCUPIED PROPERTIES. TO ADD EVICTION PROTECTIONS FOR RENTAL UNITS IN A RESIDENTIAL PROPERTY CONSISTING OF TWO UNITS WHERE ONE OF THE UNITS IS OCCUPIED BY A LANDLORD AS THEIR PRINCIPAL PLACE OF RESIDENCE AND WHERE ONE OF THE TWO UNITS WAS OWNER OCCUPIED AS OF DECEMBER 31, 1979 AND EVICTION PROTECTIONS TO TENANTS IN RENTAL UNITS CONTAINING A SINGLE FAMILY DWELLING AND ONE LAWFULLY ESTABLISHED ACCESSORY DWELLING UNIT WHERE THE LANDLORD OCCUPIES A UNIT IN THE SAME PROPERTY; TO PROHIBIT EVICTIONS BASED ON THE ADDITION OF OCCUPANTS IF THE LANDLORD HAS UNREASONABLY REFUSED THE TENANT'S REQUEST; AND TO ELIMINATE SECTION 13.76.060 (DECONTROL).~~

WHEREAS, the purposes of the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance are to regulate residential rent increases in the City of Berkeley and to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, in order to help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. This legislation is designed to address the City of Berkeley's housing crisis, preserve the public peace, health and safety, and advance the housing policies of the city with regard to low and fixed income persons, minorities, students, handicapped, and the aged; and

WHEREAS, the Berkeley Rent Stabilization Board will be able to provide greater protections to tenants in newly constructed units; and

WHEREAS, the Berkeley Rent Stabilization Board will be able to provide greater eviction protections for tenants in units that previously did not have such protections; and

WHEREAS, eviction protections will be increased for tenant households that add additional occupants if a landlord has unreasonably refused a tenant's written request; and

WHEREAS, Section 13.76.060 (Decontrol) is to be eliminated; and

WHEREAS, these enumerated amendments to the Rent Stabilization and Eviction for Good Cause Ordinance will prevent displacement of tenants by extending additional protections and services to tenants who do not enjoy such protections under existing law; and

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 8, 2022 General Municipal Election, a measure amending Chapter 13.76 of the Berkeley Municipal Code to allow rent control to apply to new construction built as the result of demolition of previously rent-controlled units, allow increased occupancy of rental units, eliminate a provision allowing the City Council to exempt units from rent control if the citywide vacancy rate exceeds 5%, and increase eviction protections for certain landlord-occupied properties; to amend Berkeley Municipal Code Chapter 13.76 to allow for the regulation of newly constructed units if permissible under state or local law; to provide eviction protections under the Ordinance for tenants in properties consisting of two units where one unit is a landlord's principal place of residence and one unit was a landlord's principal place of residence as of December 31, 1979 and eviction protections to tenants residing on a property containing a single family dwelling and a lawfully established Accessory Dwelling Unit where the landlord occupies a unit at the property; to provide eviction protections for tenants that add additional occupants to their household after the landlord has unreasonably refused a written request to do so; and to eliminate Section 13.76.060 (Decontrol) from the Ordinance; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 8, 2022; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that the City will reimburse the Registrar of Voters for the costs associated with placing the measure on the ballot.

BE IT FURTHER RESOLVED that said proposed Ordinance measure shall appear and be printed upon the ballots to be used at said election as follows:

| CITY OF BERKELEY ORDINANCE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| <u>Shall the measure amending the Rent Stabilization and Eviction for Good Cause Ordinance to allow rent control to apply to new construction built as a result of demolition of rent-controlled units, where not prohibited by state law; allow a greater number of occupants per rental unit; eliminate a provision allowing the City Council to exempt units from rent control if the citywide vacancy rate exceeds 5% over six months; and limit evictions for certain landlord-occupied properties be adopted?</u> | YES |
| <del>Shall the measure amending the Rent Stabilization and Eviction for Good Cause Ordinance to: allow, to the extent that state or local permits, for the regulation of newly-constructed units;</del>                                                                                                                                                                                                                                                                                                                 | NO  |

|                                                                                                                                                                                                                                                                                                                                  |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <del>to provide eviction protections to tenants in certain two-unit properties where such eviction protections previously did not apply; to provide eviction protections to tenants who add additional occupants after the landlord has unreasonably denied such a request; and to eliminate Section 13.76.060 be adopted?</del> |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

BE IT FURTHER RESOLVED that the text of the measure be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Measure

Exhibit A

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

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING CHAPTER 13.76 OF THE BERKELEY MUNICIPAL CODE TO ALLOW RENT CONTROL TO APPLY TO NEWLY CONSTRUCTED UNITS WHERE STATE AND LOCAL LAW DO NOT PROHIBIT RENT CONTROL AND SPECIFICALLY TO UNITS BUILT AS THE RESULT OF DEMOLITION OF PREVIOUSLY RENT-CONTROLLED UNITS; ALLOW INCREASED OCCUPANCY OF RENTAL UNITS; ELIMINATE PROVISION ALLOWING CITY COUNCIL TO EXEMPT UNITS FROM RENT CONTROL IF CITY'S VACANCY RATE EXCEEDS 5% OVER A SIX-MONTH PERIOD; AND INCREASE EVICTION PROTECTIONS FOR CERTAIN LANDLORD-OCCUPIED PROPERTIES.

~~AN ORDINANCE OF THE CITY OF BERKELEY AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO ALLOW, TO THE EXTENT THAT STATE OR LOCAL LAW PERMITS, FOR THE REGULATION OF NEWLY CONSTRUCTED UNITS, INCLUDING BUT NOT LIMITED TO, UNITS CREATED PURSUANT TO SENATE BILL 330 (HOUSING CRISIS ACT OF 2019); TO ADD EVICTION PROTECTIONS FOR RENTAL UNITS IN A RESIDENTIAL PROPERTY CONSISTING OF TWO UNITS WHERE ONE OF THE UNITS IS OCCUPIED BY A LANDLORD AS THEIR PRINCIPAL PLACE OF RESIDENCE AND WHERE ONE OF THE TWO UNITS WAS OWNER OCCUPIED AS OF DECEMBER 31, 1979 AND EVICTION PROTECTIONS TO TENANTS IN RENTAL UNITS CONTAINING A SINGLE FAMILY DWELLING AND ONE LAWFULLY ESTABLISHED ACCESSORY DWELLING UNIT WHERE THE LANDLORD OCCUPIES A UNIT IN THE SAME PROPERTY; TO PROHIBIT EVICTIONS BASED ON THE ADDITION OF OCCUPANTS IF THE LANDLORD HAS UNREASONABLY REFUSED THE TENANT'S REQUEST; AND TO ELIMINATE SECTION 13.76.060 (DECONTROL)~~

BE IT ORDAINED by ~~t~~The People of the City of Berkeley ~~do ordain~~ as follows:

Section 1. Section 13.76.040 of the Berkeley Municipal Code is amended to read as follows:

**13.76.040 Definitions.**

- A. "Board" refers to the elected Rent Stabilization Board established by this chapter and Article XVII of the Charter of the City of Berkeley.
- B. "Commissioners" means the members of the board who are denominated commissioners.
- C. "Housing services" include but are not limited to repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishing, telephone, parking and any other benefit, privilege or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.
- D. "Landlord" means an owner of record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.
- E. "Rent" means the consideration, including any deposit, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.
- F. "Rental agreement" means an agreement, oral, written or implied, between a landlord and a tenant for use or occupancy of a rental unit and for housing services.
- G. "Rental unit" means any unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy (including units covered by the Berkeley Live/Work Ordinance No. 5217-NS), located in the City of Berkeley, together with all housing services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the tenant.
- H. "Property" means a parcel of real property which is assessed and taxed as an undivided whole.

I. "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

J. "Skilled nursing facility" means a health facility or a distinct part of a hospital which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24-hour inpatient care and, as a minimum, includes medical, nursing, dietary, pharmaceutical services and an activity program. The facility shall have effective arrangements, confirmed in writing, through which services required by the patients, but not regularly provided within the facility, can be obtained promptly when needed.

K. "Health facility" means any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24-hour stay or longer.

L. "Recognized tenant organization" means any group of tenants, residing in rental units in the same building or in different buildings operated by the same management company, agent or landlord, which requests to be so designated.

M. "Rent ceiling" means the maximum allowable rent which a landlord may charge on any rental unit covered by this chapter.

N. "Base rent ceiling" means the maximum allowable rent established under Section 13.76.100 of this chapter.

O. "Fees" means for the purpose of this chapter, a charge fixed by law for services of public officers or for use of a privilege under control of government.

P. "Nonprofit, accredited institution of higher education" means a post secondary educational institution whose legal status under the California Education Code is verified by an annual validation receipt from the California State Department of



Education, and which is accredited by the Western Association of Schools and Colleges or the Association of Theological Schools and which is exempt from taxation under Section 501 (c)(3) of the United States Internal Revenue Code and under Section 23701(d) of the Revenue and Taxation Code, and which, if otherwise required by law to do so, has obtained a valid unrevoked letter or ruling from the United States Internal Revenue Service or from the Franchise Tax Board which states that the organization so qualifies for exemption from taxation.

Q. "Newly Constructed" means a rental unit created after June 30, 1980. For purposes of this definition, the date a unit was created is based upon the date of the first certificate of occupancy issued for the subject unit. However, in the event of the repeal or amendment of Civil Code Section 1954.52, such that "certificate of occupancy" is no longer the operative standard set forth under state law, the date a unit was created shall be determined by the final inspection approval by the City.

R. Notwithstanding any other provision in this ordinance, and to the extent that state or local law does not prohibit a local jurisdiction from regulating the rent on a residential rental unit, such units shall not be exempt as "newly constructed units" and, unless otherwise exempt, shall be covered by all provisions of this chapter. This includes, but is not limited to, any residential rental units created as a result of demolition or replacement where such demolition or replacement is affected via the creation of a "housing development project" as defined in the Housing Crisis Act of 2019 (Senate Bill 330).

Section 2: Section 13.76.050 of the Berkeley Municipal Code is amended to read as follows:

### **13.76.050 Applicability**

This chapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following:

A. Rental units which are owned by any government agency. However, the exemption of units owned by the Berkeley Housing Authority from the terms of this chapter shall be limited to their exemption from the terms of Section 13.76.080, Rent Registration;

Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

B. Rental units which are rented primarily to transient guests for use or occupancy less than fourteen consecutive days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses. However, the payment of rent every fourteen days or less shall not by itself exempt any unit from coverage by this chapter.

C. Rental units in nonprofit cooperatives owned and controlled by a majority of the residents.

D. Rental units leased to tenants assisted under the Section 8 program (42 U.S.C. Section 1437f) or the Shelter Plus Care Program (42 U.S.C. 11403 et. seq.) or similar federally funded rent subsidy program. Except as may be preempted by state or federal law, the exemption of such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. However, the exemption from Sections 13.76.080, 13.76.110 and 13.76.120 shall apply only for so long as the rent demanded does not exceed the authorized Payment Standard, which, for purposes of this subsection, is the maximum monthly rental assistance potentially available to an assisted household before deducting the household share of income paid for rent and utilities as established by the Berkeley Housing Authority or successor agency. For units where the rent demanded exceeds the Payment Standard, the Payment Standard or an initial rent above the Payment Standard if approved by the Berkeley Housing Authority, as reported to the board by the Berkeley Housing Authority or successor agency, shall become the unit's base rent ceiling and the reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120.

E. Rental units in any hospital, skilled nursing facility, health facility, asylum, or non-profit home for the aged.

F. Rental units in a residential property which is divided into a maximum of four units where one of such units is occupied by the landlord as his/her principal residence. Any exemption of rental units established under this subsection (13.76.050 F.) shall be limited to rental units that would have been exempt under the provisions of this chapter had this chapter been in effect on December 31, 1979. After July 1, 1982, this exemption shall no longer apply to rental units in a residential property which is divided into three or four units. It shall continue to apply to rental units in a residential property which is divided into two units, and which meet all the other requirements of this subsection (13.76.050F). However, the exemption of such rental units shall be limited to their exemption from the terms of Section 13.76.070, Security Deposits; Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. Rental units which become non-exempt under this provision shall have the provisions of Subsections 13.76.080I and 13.76.100C. applied to them.

G. A rental unit in a residential property where the landlord shares kitchen or bath facilities with the tenant(s) of such rental unit and where the landlord also occupies a unit in the same property as his/her principal residence.

H. For the purposes of Subsections 13.76.050 F. and G., the term landlord shall be defined only as the owner of record holding at least 50% interest in the property.

I. Newly constructed rental units, as defined in Section 13.76.040Q. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. To the extent that state law permits, the exemption of such newly constructed units shall be limited to the first 20 years after completion of construction.

J. A rental unit which is rented by a nonprofit, accredited institution of higher education to a tenant or tenants who are student(s), faculty, or staff of the institution or of a member school of the Graduate Theological Union, provided, however, that the institution owned the unit as of January 1, 1988.

K. A rental unit in a residential property owned by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that is rented to a low income tenant and subject to a regulatory agreement with a governmental agency that controls the unit's rent levels. However, the exemption for such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings of this chapter and shall apply only for so long as the regulatory agreement is in effect. This exemption shall not apply to rental units at the property that are not subject to a regulatory agreement with a governmental agency or that are rented by a tenant who occupied the unit prior to the property's acquisition by the tax-exempt organization.

L. Rental units in a facility owned or leased by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that has the primary purpose of operating a treatment, recovery, therapy, sanctuary or shelter program for qualified clients, where such rental units are provided incident to the client's participation in the primary program and where the client has been informed in writing of the temporary or transitional nature of the housing at the inception of his or her participation in the program. However, except as may be preempted by the Transitional Housing Participant Misconduct Act (California Health and Safety Code Sections 50580 et. seq.) or other state or federal law, such rental units shall not be exempted from the terms of Section 13.76.130, Good Cause Required for Eviction. For purposes of Section 13.76.130.A.2, the client's continued eligibility for participation in the treatment, recovery, therapy, sanctuary or shelter program shall be deemed a material term of the client's rental agreement with the program's operator.

M. A rental unit or room which is rented by an active member of a fraternity or sorority recognized by the University of California Berkeley, or a rental unit or room which is rented by an active member of a fraternity or sorority identified by Rent Board Resolution. To qualify for the exemption, the rental unit must be owned by the fraternity or sorority or by an entity whose sole purpose is the maintenance and operation of the fraternity or sorority's rental units for the benefit of the members in order to provide housing to said members at cost.

N. A rental unit in a residential property containing only a Single Family Dwelling (as defined in Subtitle 23F.04 of the Zoning Ordinance) and one lawfully established and fully permitted Accessory Dwelling Unit where the landlord also occupies a unit in the same property as his/her principal residence. This subsection (13.76.050N) shall only apply to properties containing a single Accessory Dwelling Unit, shall only apply to units compliant with all applicable requirements of Chapter 23C.24 ("Accessory Dwelling Units"), and shall only apply to tenancies created after November 7, 2018. However, the exemption of such rental units shall be limited to their exemption from the terms of Section 13.76.070, Security Deposits; Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

O. A dwelling or a unit alienable separate from the title to any other dwelling unit unless the tenancy commenced before January 1, 1996. However, the exemption of such units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. A property owner who owns only one residential unit in the City of Berkeley, and occupied that residential unit for 365 consecutive days as their principal residence immediately prior to renting the unit, and is absent from the unit for a period not to exceed 24 months, and such period is specified in the lease, shall also be exempt from the terms of Section 13.76.080, Rent Registration, of this Chapter. The exemptions provided in this Section shall apply only as long as the pertinent provisions of California Civil Code Section 1954.50 et. seq. ("Costa-Hawkins") remain in effect and require such an exemption.

Section 3: Section 13.76.060 of the Berkeley Municipal Code is amended to read as follows:

### **13.76.060 Rent Stabilization Board**

A. Composition. There shall be in the city of Berkeley an elected rent stabilization board; the board shall consist of nine commissioners. The board shall elect annually as chairperson one of its members to serve in that capacity.

B. Eligibility. Residents who are duly qualified electors of the city of Berkeley are eligible to serve as commissioners on the board.

C. Full disclosure of holdings. Candidates for the position of commissioner shall fulfill the requirements as set forth in the City Charter in Article III, Section 6 1/2.

In addition, when filing nomination papers, candidates shall submit a verified statement of their interests and dealings in real property, including but not limited to its ownership, sale or management and investment in and association with partnerships, corporations, joint ventures and syndicates engaged in its ownership, sale or management during the previous three years.

D. Election of commissioners. Commissioners shall be elected at the statewide general election held in November of even numbered years.

E. Terms of office. Commissioners' terms of office shall be as set forth in Article XVII of the Berkeley City Charter.

F. Powers and duties. The elected rent stabilization board shall have the power to determine, to arbitrate and to set rent levels, whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance, and to administer any Berkeley program which regulates rents and evictions. The board shall have the following powers and duties:

1. Set the rent ceilings for all rental units.
2. Require registration of all rental units under Section 13.76.080.
3. Publicize the manner in which the base rent ceiling is established under Section 13.76.100.
4. To make adjustments in the rent ceiling in accordance with Sections 13.76.110 and 13.76.120.

5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this chapter.
6. To issue orders, rules and regulations, conduct hearings and charge fees as set below.
7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.
8. Report annually to the city council of the city of Berkeley on the status of rental housing units covered by this chapter.
9. Request the City Council to remove rent controls under Section 13.76.060Q.
10. Administer oaths and affirmations and subpoena witnesses and relevant documents.
11. Establish rules and regulations for settling civil claims under Section 13.76.150.
12. Seek injunctive relief under Section 13.76.150.
13. Pursue civil remedies in courts of appropriate jurisdiction.
14. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this chapter.
15. Hold public hearings.
16. Charge and collect registration fees, including penalties for late payments.
17. Other powers necessary to carry out the purposes of this chapter which are not inconsistent with the terms of this chapter.

18. Except as provided in Section 13.76.060N of this chapter, the board shall finance its reasonable and necessary expenses for its operation without the use of general fund monies of the city of Berkeley.

G. Rules and Regulations: The board shall issue and follow such rules and regulations, including those which are contained in this Chapter, as will further the purposes of this Chapter. The board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the city of Berkeley.

All rules and regulations and relevant documents explaining the decisions, orders, and policies of the board shall be kept in the board's office and shall be available to the public for inspection and copying.

The board shall publicize this Chapter so that all residents of Berkeley will have the opportunity to become informed about their legal rights and duties under this Chapter. The board shall prepare a brochure which fully describes the legal rights and duties of landlords and tenants under this Chapter. The brochure shall be made available to the public.

H. Meetings: The board shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the commissioners of the board. The board shall hold its initial meeting no later than July 15, 1980.

I. Quorum: Five commissioners shall constitute a quorum for the board.

J. Voting: The affirmative vote of five commissioners of the board is required for a decision, including all motions, rules, regulations, and orders of the board.

K. Compensation: The rent stabilization board shall be a working board. Commissioners shall be paid compensation and benefits in an amount set by the board in order to compensate commissioners for their time and work performed as required by this chapter and the city charter.

L. Dockets: The board shall maintain and keep in its office all hearing dockets, which shall be available for public inspection.



M. Vacancies: If a vacancy shall occur on the board, a qualified person to fill such vacancy shall be selected in accordance with the procedures set forth in Article V of the City Charter.

N. Financing: The board shall finance its reasonable and necessary expenses by charging landlords annual registration fees in amounts deemed reasonable by the board. The registration fee for partially-exempt units shall reasonably approximate the cost of registration and counseling services for such units, and shall not include the cost of services from which such units are exempt. Such registration fees shall not be passed on to tenants in the form of rent increases except with the express prior approval of the board. The board is also empowered to request and receive funding, when and if necessary, from the city of Berkeley and/or any other available source for its reasonable and necessary expenses, including expenses incurred at the request of the City.

O. Staff: The board shall be a working board and shall employ such staff as may be necessary to perform its functions efficiently and as provided by Berkeley Ordinance.

P. Registration: The board shall require the registration of all rental units covered by this chapter as provided for in Section 13.76.080. The board may also require landlords to provide current information supplementing their registration statements.

~~Q.—Decontrol: If the annual average vacancy rate for all rental units in the city of Berkeley exceeds five percent over a six month period, the city council is empowered, upon request by the board, at its discretion and in order to achieve the purposes of this chapter, to exempt rental units covered by this chapter from Sections 13.76.080, 13.76.100, 13.76.110 and 13.76.120 of this chapter. In determining the vacancy rate for the city of Berkeley the board and the city council shall consider all available data and may conduct their own survey. If units are exempted pursuant to this Subsection Q coverage shall be reimposed if the city council finds that the average annual vacancy rate has thereafter fallen below five percent. Prior to any decision to exempt or renew coverage for rental units under this Subsection Q the board shall hold at least two public hearings.~~

~~R. Q.~~ Conflict of Interest: Commissioners shall be subject to the requirements of the California Political Reform Act and other applicable state and local conflict of interest codes. Commissioners shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a landlord or tenant. However, a commissioner shall be disqualified from ruling on a petition for an individual adjustment of a rent ceiling under Section 13.76.120, where the commissioner is either the landlord of the property or a tenant residing in the property that is involved in the petition.

Section 4: Section 13.76.130 of the Berkeley Municipal Code is amended to read as follows

**13.76.130 Good cause required for eviction**

A. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this chapter unless said landlord shows the existence of one of the following grounds:

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days. Rent that is lawfully withheld pursuant to emergency legislation that authorizes rent withholding during the effective period of a state of emergency applicable in Berkeley shall not constitute grounds for recovery of possession except as expressly provided in the applicable emergency legislation. Emergency legislation adopted during the emergency may prohibit recovery of possession for lawfully withheld rent even after the expiration of a state or local emergency.

2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement. Notwithstanding any contrary provision in this chapter or in the rental agreement, a landlord is not entitled to recover possession of a rental unit under this subsection where a tenant permits his or her rental unit to be occupied by a subtenant, provided:

- a. The landlord has unreasonably withheld consent to the subtenancy; and
- b. The tenant remains an actual occupant of the rental unit; and
- c. The number of tenants and subtenants actually occupying the rental unit does not exceed ~~the number of occupants originally allowed by the rental agreement or the board's regulations, whichever is greater~~ the maximum number of occupants legally allowed under Section 503.2.503(b)(2) of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922, except where prohibited by law.
- d. Withholding of consent by the landlord shall be deemed to be unreasonable where:
  - (i) ~~The tenant's written request for consent was given at least two weeks prior to commencement of the subtenancy; tenant has made a written request to the landlord to either sublet the unit and/or add additional occupants, and the landlord has failed to respond in writing within fourteen (14) days of the tenant's request; or~~
  - (ii) The proposed new subtenant has, upon the landlord's written request, completed the landlord's standard form application or

provided sufficient information to allow the landlord to conduct a standard background check, including references and credit, income and other reasonable background information, and the proposed new subtenant or additional occupant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and or

~~-(iii) The proposed new subtenant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and~~

~~(iii iv)~~ The landlord has not articulated in writing a well-founded reason for refusing consent. A landlord's reasonable denial may not be based on the proposed occupant's lack of credit worthiness or income if that occupant will not be legally obligated to pay some or all of the rent to the landlord.

e. Where a landlord can establish that the proposed additional occupant presents a direct threat to the health, safety, or security of other residents of the property, the landlord shall have the right to deny the proposed tenant's occupancy.

f. Before initiating an action to recover possession based on the violation of a lawful obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation that provides the tenant with a minimum of fourteen (14) days to cure the violation. The notice must also inform the tenant(s) of their right to add subtenants and/or add additional occupants pursuant to this section.

3. The tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.

4. The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.
5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises or the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161.
6. The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.
7.
  - a. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building or where necessary under an outstanding notice of code violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises.
  - b. Where such repairs can be completed in a period of 60 or fewer days, and the tenant, within 30 days after the service of a notice of termination of his or her tenancy, agrees in writing to vacate the premises during the period required to complete the repairs at no charge to the landlord, other than abatement of the obligation to pay rent for the premises during the period required to complete the repairs, the landlord may not recover possession pursuant to this subsection (13.76.130A.7.) unless the tenant shall fail or refuse to vacate the premises in accordance with such agreement.
  - c. Where the landlord owns any other residential rental units in the City of Berkeley, and any such unit is vacant and available at the time of premises or the entry of a judgment by a court of competent

jurisdiction awarding possession of the premises to the landlord, the landlord shall, as a condition of obtaining possession pursuant to this subsection (13.76.130A.7.), notify tenant in writing of the existence and address of each such vacant rental unit and offer tenant the right, at the tenant's option:

(i) To enter into a rental agreement (to be designated as a "temporary rental agreement") on any available rental unit which the tenant may choose, at a rent not to exceed the lesser of the lawful rent which may be charged for such available rental unit or the lawful rent in effect, at the time of the notice of termination of tenancy, on the unit being vacated, said rental agreement to be for a term of the lesser of ninety days or until completion of repairs on the rental unit being vacated by tenant; or

(ii) To enter into a new rental agreement or lease for such available rental unit at a rent not to exceed the lawful rent which may be charged for such available rental unit.

d. Where the landlord recovers possession under this subsection (13.76.130A.7.), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. In the event the landlord files an application for an individual rent adjustment within six months following the completion of the work, the tenant shall be a party to such proceeding the same as if he or she were still in possession, unless the landlord shall submit, with such application, a written waiver by the tenant of his or her right to re-occupy the premises pursuant to this subsection.

8. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition.

9. Owner Move-in Evictions.

- a. The landlord seeks in good faith with honest intent and without ulterior motive to recover possession for his/her own use and occupancy as his/her principal residence for a period of at least 36 consecutive months; or
- b. For the use and occupancy as the principal residence by the landlord's spouse or by the landlord's child, or parent for a period of at least 36 consecutive months.
- c. For the purposes of this subsection (13.76.130A.9.), the term landlord shall be defined as the owner of record, as of the time of giving of a notice terminating tenancy, and at all times thereafter to and including the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord, holding at least a 50% interest in the property and shall not include a lessor, sublessor, or agent of the owner of record.
- d. All notices terminating tenancy pursuant to subsection 13.76.130.A.9 shall include the following: the existence and potential availability of relocation assistance under subsection 13.76.130A.9.g; the existence of tenant protections for families with minor children as defined in subsection 13.76.130A.9.k; the name and relationship of any qualified relative for purposes of subsection 13.76.130A.9b; and the landlord's ownership interest in any residential properties in the City of Berkeley where such interest, in any form whatsoever, is ten percent (10%) or greater. The landlord shall, within ten days of giving notice, file a copy of the notice terminating tenancy with the Rent Board.
- e. The landlord may not recover possession under this subsection (13.76.130A.9.) if a comparable unit, owned by the landlord in the City of Berkeley, was, at the time of the landlord's decision to seek to recover possession of the rental unit, already vacant and available, or if a comparable unit, owned by the landlord in the City of Berkeley,

thereafter becomes vacant at any time until the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord. In an action by or against the tenant, evidence that a comparable unit was vacant and available within ninety days prior to the date of a notice terminating the tenant's tenancy shall create a presumption that such unit was vacant and available at the time of the landlord's decision to seek to recover possession of the premises. "Presumption" means that the court must find the existence of the presumed fact unless and until the contrary is proven by a preponderance of the evidence.

f. The landlord shall offer any non-comparable unit owned by the landlord to the tenant if a non-comparable unit becomes available before the recovery of possession of the tenant's unit at a rate based on the rent the tenant is paying with an upward or downward adjustment based on the condition, size, and other amenities of the replacement unit. Disputes concerning the initial rent for the replacement unit shall be determined by the Rent Board.

g. Where a landlord recovers possession of a unit under subsection 13.76.130A.9, the landlord is required to provide standard relocation assistance to tenant households where at least one occupant has resided in the unit for one year or more in the amount of \$15,000. The landlord is required to provide an additional \$5,000 relocation assistance to tenant households that qualify as low-income; or include disabled or elderly tenants; minor children; or tenancies which began prior to January 1, 1999. The relocation fees set forth above shall be increased in accordance with the rules set forth in subsection 13.76.130A.9.h below. The procedures for payment of this relocation assistance are set forth below in subsection 13.76.130A.9.p.(i) through (iv). The following definitions apply for any tenant households evicted for owner move-in under subsection 13.76.130A.9:



(i) "Low-income tenants" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, or as otherwise defined in Health and Safety Code Section 50079.5.

(ii) A person is "disabled" if he/she has a physical or mental impairment that limits one or more of a person's major life activities within the meaning of the California Fair Housing and Employment Act (Government Code § 12926).

(iii) "Elderly" is defined as sixty (60) years of age or older.

(iv) "Minor child" means a person who is under 18 years of age.

(v) "Tenancy began prior to January 1, 1999" is a tenancy where an "original occupant" (as defined by Berkeley Rent Board Regulation) still permanently resides in the rental unit.

h. Effective January 1 of each year beginning in 2018, the fees set forth above in subsection 13.76.130A.9.g., may be increased in an amount based on the Consumer Price Index - All Urban Consumers in the San Francisco-Oakland-San Jose Region averaged for the 12-month period ending June 30, of each year, as determined and published by United States Department of Labor. Any increase shall be published by the Board on or before October 31st of each year.

i. It shall be evidence that the landlord has acted in bad faith if the landlord or the landlord's qualified relative for whom the tenant was evicted does not move into the rental unit within three months from the date of the tenant's surrender of possession of the premises or occupy said unit as his/her principal residence for a period of at least 36 consecutive months.

j. Once a landlord has successfully recovered possession of a rental unit pursuant to subsection 13.76.130A.9.a., then no other current or

future landlords may recover possession of any other rental unit on the property pursuant to subsection 13.76.130A.9.a. It is the intention of this subsection that only one specific unit per property may be used for such occupancy under subsection 13.76.130A.9.a and that once a unit is used for such occupancy, all future occupancies under subsection 13.76.130A.9.a must be of that same unit.

k. A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit has a custodial or family relationship with a minor child who is residing in the unit, the tenant with the custodial or family relationship has resided in the unit for 12 months or more, and the effective date of the notice of termination of tenancy falls during the school year. The term "school year" as used in this subsection means the first day of instruction for the Fall Semester through the first day of the month following the last day of instruction for the Spring Semester, as posted on the Berkeley Unified School District website for each year.

(i) For purposes of subsection 13.76.130A.9.k, the term "custodial relationship" means that the person is a legal guardian of the child, or has a caregiver's authorization affidavit for the child as defined by Section 6550 of the California Family Code, or that the person has provided full-time custodial care of the child pursuant to an agreement with the child's legal guardian or court-recognized caregiver and has been providing that care for at least one year or half of the child's lifetime, whichever is less. The term "family relationship" means that the person is the biological or adoptive parent, grandparent, brother, sister, aunt or uncle of the child, or the spouse or domestic partner of such relations.

l. A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit:

(i) Is 60 years of age or older and has been residing on the property for five years or more; or

(ii) Is disabled and has been residing on the property for five years or more; or

(iii) Has resided on the property for five years or more and the landlord has a ten percent (10%) or greater ownership interest, in any form whatsoever, in five or more residential rental units in the City of Berkeley.

m. A tenant who claims to be a member of one of the classes protected by subsection 13.76.130A.9.I must submit a statement, with supporting evidence, to the landlord. A tenant's failure to submit a statement at any point prior to the trial date of an unlawful detainer action for possession of the tenant's unit shall be deemed an admission that the tenant is not protected by subsection 13.76.130A.9.I. A landlord may challenge a tenant's claim of protected status by raising it as an issue at trial in an unlawful detainer action for possession of the tenant's unit.

n. The provisions of subsection 13.76.130A.9.I shall not apply to the following situations:

(i) Where a person is the owner of three or fewer residential units in the City of Berkeley and has no greater than a nine percent (9%) ownership interest in any other residential unit in the City of Berkeley; or

(ii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I and the landlord's qualified relative who is seeking possession of a unit subject to subsection 13.76.130A.9.b is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.I.(ii) above; or

(iii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater

is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I, the landlord has owned the unit for which possession is being sought subject to subsection 13.76.130A.9.a for five years or more and is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.I.(ii).

o. Where a landlord recovers possession under Subsection 13.76.130A.9, the tenant must be given the right of first refusal to re-occupy the unit upon its next vacancy.

p. When a landlord is required to provide a relocation assistance payment subject to subsection 13.76.130A.9.g, the payment shall be divided among the tenants occupying the rental unit at the time of service of the notice to terminate tenancy.

(i) Within ten days of service of a notice terminating tenancy under subsection 13.76.130A.9, the landlord shall deposit the standard relocation assistance (for households where an occupant has resided one year or more) with the City or its designated agent to be held in escrow. Within ten days after the funds are deposited into escrow, the City shall release the standard relocation assistance to the tenant household, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant's eligibility to receive such assistance.

(ii) In order to claim entitlement to additional relocation assistance under subsection 13.76.130A.9.g, a tenant must notify the landlord and the Rent Stabilization Program in writing that he/she is claiming low-income, disabled, elderly, tenant with minor child status, or a claim that the tenancy began prior to January 1, 1999 (hereinafter "entitlement to additional relocation assistance") per subsection 13.76.130A.9.g within 30 days of filing of notice of termination of tenancy with the Rent Stabilization Program. The landlord shall deposit the additional relocation payment with the Rent Stabilization Program or its designated agent to be held in escrow for any tenant

household who claims entitlement to additional relocation assistance within ten days after such notice claiming entitlement to additional relocation assistance is mailed. Within ten days after the funds are deposited into escrow, the Rent Stabilization Program shall authorize release of the relocation assistance to the tenant household that claims entitlement to additional relocation assistance, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant's eligibility to receive such assistance.

(iii) When a tenant household's eligibility to receive standard or additional relocation assistance as described in subsection 13.76.130A.9.g is disputed, either party may file a Rent Board petition requesting a determination of eligibility or file a claim in a court of competent jurisdiction. The Rent Stabilization Program shall release disputed relocation assistance funds to either the tenant or the landlord upon receipt of either a written agreement by both the landlord and the affected tenant, an order of a court of competent jurisdiction, or an order of a City or Rent Board hearing examiner issued pursuant to a petition process conducted in accordance with applicable Rent Board Regulations.

(iv) The landlord may rescind the notice of termination of tenancy prior to any release of relocation payment to the tenants by serving written notice stating such rescission on the tenants. In such instance, the relocation payment shall be released to the landlord. Subsequent to the release of any relocation payment to the tenants, the landlord may rescind the notice of termination of tenancy only upon the written agreement of the tenants to remain in possession of the rental unit. If the tenants remain in possession of the rental units after service of a landlord's written notice of rescission of the eviction, the tenants shall provide an accounting to the landlord of the amount of the relocation payment expended for moving costs, return to the landlord that portion of the relocation

payment not expended for moving costs, and assign to the landlord all rights to recover the amount of relocation payment paid to third parties. If a rescission occurs under this subsection, the tenant(s) shall continue the tenancy on the same terms as before the notice was served.

(v) Where a landlord has served a notice of termination of tenancy on a tenant prior to the date that this amendment takes effect and the notice of termination of tenancy has not expired, the landlord shall deposit the full relocation payment with the City or its designated agent to be held in escrow for the tenants if the tenants have not vacated the rental unit as of the effective date of this amendment, and the landlord shall pay the full relocation payment to the tenants if the tenants have vacated the rental unit as of the effective date of this amendment. Said deposit in escrow or payment to the tenants shall be made within ten days of the effective date of this amendment.

(vi) Failure of the landlord to make any payment specified herein shall be a defense to any action to recover possession of a rental unit based upon the landlord's termination of tenancy notice pursuant to this subsection (13.76.130A.9). In addition, if the tenants of a rental unit have vacated the unit as a result of a notice of termination of tenancy pursuant to this subsection (13.76.130.A.9), and the landlord fails to make any payment specified herein, the landlord shall be liable to the tenants for three times the amount of the payment as well as reasonable attorney fees.

q. A tenant who prevails in an action brought under this subsection (13.76.130A.9), in addition to any damages and/or costs awarded by the court, shall be entitled to recover all reasonable attorney's fees incurred in bringing or defending the action.

r. At least twice annually, Rent Board staff shall report to the Rent Board regarding the occupancy status of units possession of which has been recovered pursuant to this subsection (13.76.130A.9) within the prior 36 months.

s. If any provision or clause of this subsection (13.76.130A.9) or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses, and to this end the provisions and applications of this subsection are severable.

10. A landlord or lessor seeks in good faith to recover possession of the rental unit for his/her occupancy as a principal residence, where the landlord or lessor has previously occupied the rental unit as his/her principal residence and has the right to recover possession of the unit for his/her occupancy as a principal residence under an existing rental agreement with the current tenants.

11. The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of subsection 13.76.130A.7.c., following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by tenant (if the term of the rental agreement has expired by reason of the completion of repairs on the old rental unit), or of written notice to quit (if the term of the rental agreement has expired by reason of the expiration of a period of 90 days).

B. A landlord's failure to specify good cause as listed above in subsections 1. through 11. of Section 13.76.130A. in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this chapter.

C. In any action to recover possession of a rental unit covered by the terms of this chapter, except an action to recover possession under subsection

13.76.130A.7., 13.76.130.A.8, or 13.76.130.A.11., a landlord shall allege, as to each rental unit on the property, substantial compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with the implied warranty of habitability and compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with Sections 13.76.100 (Rent Ceiling) and 13.76.080 (Rent Registration) of this chapter.

D. The landlord shall file with the board a copy of any notice of termination, notice to quit, and summons and complaint, within ten days after the tenant has been served with such notice or summons and complaint.

Section 5. Severability. If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.



Attachment 1

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

SUBMITTING TO THE BERKELEY ELECTORATE A MEASURE AMENDING CHAPTER 13.76 OF THE BERKELEY MUNICIPAL CODE TO ALLOW RENT CONTROL TO APPLY TO NEWLY CONSTRUCTED UNITS WHERE STATE AND LOCAL LAW DO NOT PROHIBIT RENT CONTROL, AND SPECIFICALLY TO UNITS BUILT AS THE RESULT OF DEMOLITION OF PREVIOUSLY RENT-CONTROLLED UNITS; ALLOW INCREASED OCCUPANCY OF RENTAL UNITS WITHOUT THREAT OF EVICTION; ELIMINATE PROVISION ALLOWING CITY COUNCIL TO EXEMPT UNITS FROM RENT CONTROL IF CITY'S VACANCY RATE EXCEEDS 5% OVER A SIX-MONTH PERIOD; AND INCREASE EVICTION PROTECTIONS FOR CERTAIN LANDLORD-OCCUPIED PROPERTIES.

WHEREAS, the purposes of the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance are to regulate residential rent increases in the City of Berkeley and to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, in order to help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. This legislation is designed to address the City of Berkeley's housing crisis, preserve the public peace, health and safety, and advance the housing policies of the city with regard to low and fixed income persons, minorities, students, handicapped, and the aged; and

WHEREAS, the Berkeley Rent Stabilization Board will be able to provide greater protections to tenants in newly constructed units; and

WHEREAS, the Berkeley Rent Stabilization Board will be able to provide greater eviction protections for tenants in units that previously did not have such protections; and

WHEREAS, eviction protections will be increased for tenant households that add additional occupants if a landlord has unreasonably refused a tenant's written request; and

WHEREAS, Section 13.76.060 (Decontrol) is to be eliminated; and

WHEREAS, these enumerated amendments to the Rent Stabilization and Eviction for Good Cause Ordinance will prevent displacement of tenants by extending additional protections and services to tenants who do not enjoy such protections under existing law; and

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 8, 2022 General Municipal Election, a measure amending Chapter 13.76 of

the Berkeley Municipal Code to allow rent control to apply to new construction built as the result of demolition of previously rent-controlled units, allow increased occupancy of rental units, eliminate a provision allowing the City Council to exempt units from rent control if the citywide vacancy rate exceeds 5%, and increase eviction protections for certain landlord-occupied properties; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 8, 2022; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the

statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that the City will reimburse the Registrar of Voters for the costs associated with placing the measure on the ballot.

BE IT FURTHER RESOLVED that said proposed Ordinance measure shall appear and be printed upon the ballots to be used at said election as follows:

| CITY OF BERKELEY ORDINANCE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Shall the measure amending the Rent Stabilization and Eviction for Good Cause Ordinance to allow rent control to apply to new construction built as a result of demolition of rent-controlled units, where not prohibited by state law; allow a greater number of occupants per rental unit; eliminate a provision allowing the City Council to exempt units from rent control if the citywide vacancy rate exceeds 5% over six months; and limit evictions for certain landlord-occupied properties be adopted? | YES |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | NO  |

BE IT FURTHER RESOLVED that the text of the measure be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Measure

Exhibit A

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

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING CHAPTER 13.76 OF THE BERKELEY MUNICIPAL CODE TO ALLOW RENT CONTROL TO APPLY TO NEWLY CONSTRUCTED UNITS WHERE STATE AND LOCAL LAW DO NOT PROHIBIT RENT CONTROL AND SPECIFICALLY TO UNITS BUILT AS THE RESULT OF DEMOLITION OF PREVIOUSLY RENT-CONTROLLED UNITS; ALLOW INCREASED OCCUPANCY OF RENTAL UNITS; ELIMINATE PROVISION ALLOWING CITY COUNCIL TO EXEMPT UNITS FROM RENT CONTROL IF CITY'S VACANCY RATE EXCEEDS 5% OVER A SIX-MONTH PERIOD; AND INCREASE EVICTION PROTECTIONS FOR CERTAIN LANDLORD-OCCUPIED PROPERTIES.

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

Section 1. Section 13.76.040 of the Berkeley Municipal Code is amended to read as follows:

**13.76.040 Definitions.**

- A. "Board" refers to the elected Rent Stabilization Board established by this chapter and Article XVII of the Charter of the City of Berkeley.
- B. "Commissioners" means the members of the board who are denominated commissioners.
- C. "Housing services" include but are not limited to repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishing, telephone, parking and any other benefit, privilege or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.

D. "Landlord" means an owner of record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.

E. "Rent" means the consideration, including any deposit, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.

F. "Rental agreement" means an agreement, oral, written or implied, between a landlord and a tenant for use or occupancy of a rental unit and for housing services.

G. "Rental unit" means any unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy (including units covered by the Berkeley Live/Work Ordinance No. 5217-NS), located in the City of Berkeley, together with all housing services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the tenant.

H. "Property" means a parcel of real property which is assessed and taxed as an undivided whole.

I. "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

J. "Skilled nursing facility" means a health facility or a distinct part of a hospital which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24-hour inpatient care and, as a minimum, includes medical, nursing, dietary, pharmaceutical services and an activity program. The facility shall have effective arrangements, confirmed in writing, through which services required by the patients, but not regularly provided within the facility, can be obtained promptly when needed.

K. "Health facility" means any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24-hour stay or longer.

L. "Recognized tenant organization" means any group of tenants, residing in rental units in the same building or in different buildings operated by the same management company, agent or landlord, which requests to be so designated.

M. "Rent ceiling" means the maximum allowable rent which a landlord may charge on any rental unit covered by this chapter.

N. "Base rent ceiling" means the maximum allowable rent established under Section 13.76.100 of this chapter.

O. "Fees" means for the purpose of this chapter, a charge fixed by law for services of public officers or for use of a privilege under control of government.

P. "Nonprofit, accredited institution of higher education" means a post secondary educational institution whose legal status under the California Education Code is verified by an annual validation receipt from the California State Department of Education, and which is accredited by the Western Association of Schools and Colleges or the Association of Theological Schools and which is exempt from taxation under Section 501 (c)(3) of the United States Internal Revenue Code and under Section 23701(d) of the Revenue and Taxation Code, and which, if otherwise required by law to do so, has obtained a valid unrevoked letter or ruling from the United States Internal Revenue Service or from the Franchise Tax Board which states that the organization so qualifies for exemption from taxation.

Q. "Newly Constructed" means a rental unit created after June 30, 1980. For purposes of this definition, the date a unit was created is based upon the date of the first certificate of occupancy issued for the subject unit. However, in the event of the repeal or amendment of Civil Code Section 1954.52, such that "certificate of occupancy" is no longer the operative standard set forth under state law, the date a unit was created shall be determined by the final inspection approval by the City.

R. Notwithstanding any other provision in this ordinance, and to the extent that state or local law does not prohibit a local jurisdiction from regulating the rent on a residential rental unit, such units shall not be exempt as “newly constructed units” and, unless otherwise exempt, shall be covered by all provisions of this chapter. This includes, but is not limited to, any residential rental units created as a result of demolition or replacement where such demolition or replacement is affected via the creation of a “housing development project” as defined in the Housing Crisis Act of 2019 (Senate Bill 330).

Section 2: Section 13.76.050 of the Berkeley Municipal Code is amended to read as follows:

### **13.76.050 Applicability**

This chapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following:

- A. Rental units which are owned by any government agency. However, the exemption of units owned by the Berkeley Housing Authority from the terms of this chapter shall be limited to their exemption from the terms of Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.
- B. Rental units which are rented primarily to transient guests for use or occupancy less than fourteen consecutive days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses. However, the payment of rent every fourteen days or less shall not by itself exempt any unit from coverage by this chapter.
- C. Rental units in nonprofit cooperatives owned and controlled by a majority of the residents.
- D. Rental units leased to tenants assisted under the Section 8 program (42 U.S.C. Section 1437f) or the Shelter Plus Care Program (42 U.S.C. 11403 et. seq.) or similar federally funded rent subsidy program. Except as may be preempted by state or federal

law, the exemption of such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. However, the exemption from Sections 13.76.080, 13.76.110 and 13.76.120 shall apply only for so long as the rent demanded does not exceed the authorized Payment Standard, which, for purposes of this subsection, is the maximum monthly rental assistance potentially available to an assisted household before deducting the household share of income paid for rent and utilities as established by the Berkeley Housing Authority or successor agency. For units where the rent demanded exceeds the Payment Standard, the Payment Standard or an initial rent above the Payment Standard if approved by the Berkeley Housing Authority, as reported to the board by the Berkeley Housing Authority or successor agency, shall become the unit's base rent ceiling and the reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120.

E. Rental units in any hospital, skilled nursing facility, health facility, asylum, or non-profit home for the aged.

F. Rental units in a residential property which is divided into a maximum of four units where one of such units is occupied by the landlord as his/her principal residence. Any exemption of rental units established under this subsection (13.76.050 F.) shall be limited to rental units that would have been exempt under the provisions of this chapter had this chapter been in effect on December 31, 1979. After July 1, 1982, this exemption shall no longer apply to rental units in a residential property which is divided into three or four units. It shall continue to apply to rental units in a residential property which is divided into two units, and which meet all the other requirements of this subsection (13.76.050F). However, the exemption of such rental units shall be limited to their exemption from the terms of Section 13.76.070, Security Deposits; Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. Rental units which become non-exempt under this provision shall have the provisions of Subsections 13.76.080I and 13.76.100C. applied to them.



G. A rental unit in a residential property where the landlord shares kitchen or bath facilities with the tenant(s) of such rental unit and where the landlord also occupies a unit in the same property as his/her principal residence.

H. For the purposes of Subsections 13.76.050 F. and G., the term landlord shall be defined only as the owner of record holding at least 50% interest in the property.

I. Newly constructed rental units, as defined in Section 13.76.040 Q. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. To the extent that state law permits, the exemption of such newly constructed units shall be limited to the first 20 years after completion of construction.

J. A rental unit which is rented by a nonprofit, accredited institution of higher education to a tenant or tenants who are student(s), faculty, or staff of the institution or of a member school of the Graduate Theological Union, provided, however, that the institution owned the unit as of January 1, 1988.

K. A rental unit in a residential property owned by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that is rented to a low income tenant and subject to a regulatory agreement with a governmental agency that controls the unit's rent levels. However, the exemption for such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings of this chapter and shall apply only for so long as the regulatory agreement is in effect. This exemption shall not apply to rental units at the property that are not subject to a regulatory agreement with a governmental agency or that are rented by a tenant who occupied the unit prior to the property's acquisition by the tax-exempt organization.

L. Rental units in a facility owned or leased by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that has the

primary purpose of operating a treatment, recovery, therapy, sanctuary or shelter program for qualified clients, where such rental units are provided incident to the client's participation in the primary program and where the client has been informed in writing of the temporary or transitional nature of the housing at the inception of his or her participation in the program. However, except as may be preempted by the Transitional Housing Participant Misconduct Act (California Health and Safety Code Sections 50580 et. seq.) or other state or federal law, such rental units shall not be exempted from the terms of Section 13.76.130, Good Cause Required for Eviction. For purposes of Section 13.76.130.A.2, the client's continued eligibility for participation in the treatment, recovery, therapy, sanctuary or shelter program shall be deemed a material term of the client's rental agreement with the program's operator.

M. A rental unit or room which is rented by an active member of a fraternity or sorority recognized by the University of California Berkeley, or a rental unit or room which is rented by an active member of a fraternity or sorority identified by Rent Board Resolution. To qualify for the exemption, the rental unit must be owned by the fraternity or sorority or by an entity whose sole purpose is the maintenance and operation of the fraternity or sorority's rental units for the benefit of the members in order to provide housing to said members at cost.

N. A rental unit in a residential property containing only a Single Family Dwelling (as defined in Subtitle 23F.04 of the Zoning Ordinance) and one lawfully established and fully permitted Accessory Dwelling Unit where the landlord also occupies a unit in the same property as his/her principal residence. This subsection (13.76.050N) shall only apply to properties containing a single Accessory Dwelling Unit, shall only apply to units compliant with all applicable requirements of Chapter 23C.24 ("Accessory Dwelling Units"), and shall only apply to tenancies created after November 7, 2018. However, the exemption of such rental units shall be limited to their exemption from the terms of Section 13.76.070, Security Deposits; Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

O. A dwelling or a unit alienable separate from the title to any other dwelling unit unless the tenancy commenced before January 1, 1996. However, the exemption of such units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. A property owner who owns only one residential unit in the City of Berkeley, and occupied that residential unit for 365 consecutive days as their principal residence immediately prior to renting the unit, and is absent from the unit for a period not to exceed 24 months, and such period is specified in the lease, shall also be exempt from the terms of Section 13.76.080, Rent Registration, of this Chapter. The exemptions provided in this Section shall apply only as long as the pertinent provisions of California Civil Code Section 1954.50 et. seq. ("Costa-Hawkins") remain in effect and require such an exemption.

Section 3: Section 13.76.060 of the Berkeley Municipal Code is amended to read as follows:

**13.76.060 Rent Stabilization Board**

A. Composition. There shall be in the city of Berkeley an elected rent stabilization board; the board shall consist of nine commissioners. The board shall elect annually as chairperson one of its members to serve in that capacity.

B. Eligibility. Residents who are duly qualified electors of the city of Berkeley are eligible to serve as commissioners on the board.

C. Full disclosure of holdings. Candidates for the position of commissioner shall fulfill the requirements as set forth in the City Charter in Article III, Section 6 1/2.

In addition, when filing nomination papers, candidates shall submit a verified statement of their interests and dealings in real property, including but not limited to its ownership, sale or management and investment in and association with partnerships, corporations, joint ventures and syndicates engaged in its ownership, sale or management during the previous three years.

D. Election of commissioners. Commissioners shall be elected at the statewide general election held in November of even numbered years.

E. Terms of office. Commissioners' terms of office shall be as set forth in Article XVII of the Berkeley City Charter.

F. Powers and duties. The elected rent stabilization board shall have the power to determine, to arbitrate and to set rent levels, whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance, and to administer any Berkeley program which regulates rents and evictions. The board shall have the following powers and duties:

1. Set the rent ceilings for all rental units.
2. Require registration of all rental units under Section 13.76.080.
3. Publicize the manner in which the base rent ceiling is established under Section 13.76.100.
4. To make adjustments in the rent ceiling in accordance with Sections 13.76.110 and 13.76.120.
5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this chapter.
6. To issue orders, rules and regulations, conduct hearings and charge fees as set below.
7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.
8. Report annually to the city council of the city of Berkeley on the status of rental housing units covered by this chapter.
9. Request the City Council to remove rent controls under Section 13.76.060Q.

10. Administer oaths and affirmations and subpoena witnesses and relevant documents.
11. Establish rules and regulations for settling civil claims under Section 13.76.150.
12. Seek injunctive relief under Section 13.76.150.
13. Pursue civil remedies in courts of appropriate jurisdiction.
14. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this chapter.
15. Hold public hearings.
16. Charge and collect registration fees, including penalties for late payments.
17. Other powers necessary to carry out the purposes of this chapter which are not inconsistent with the terms of this chapter.
18. Except as provided in Section 13.76.060N of this chapter, the board shall finance its reasonable and necessary expenses for its operation without the use of general fund monies of the city of Berkeley.

G. Rules and Regulations: The board shall issue and follow such rules and regulations, including those which are contained in this Chapter, as will further the purposes of this Chapter. The board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the city of Berkeley.

All rules and regulations and relevant documents explaining the decisions, orders, and policies of the board shall be kept in the board's office and shall be available to the public for inspection and copying.

The board shall publicize this Chapter so that all residents of Berkeley will have the opportunity to become informed about their legal rights and duties under this Chapter.

The board shall prepare a brochure which fully describes the legal rights and duties of landlords and tenants under this Chapter. The brochure shall be made available to the public.

H. Meetings: The board shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the commissioners of the board. The board shall hold its initial meeting no later than July 15, 1980.

I. Quorum: Five commissioners shall constitute a quorum for the board.

J. Voting: The affirmative vote of five commissioners of the board is required for a decision, including all motions, rules, regulations, and orders of the board.

K. Compensation: The rent stabilization board shall be a working board. Commissioners shall be paid compensation and benefits in an amount set by the board in order to compensate commissioners for their time and work performed as required by this chapter and the city charter.

L. Dockets: The board shall maintain and keep in its office all hearing dockets, which shall be available for public inspection.

M. Vacancies: If a vacancy shall occur on the board, a qualified person to fill such vacancy shall be selected in accordance with the procedures set forth in Article V of the City Charter.

N. Financing: The board shall finance its reasonable and necessary expenses by charging landlords annual registration fees in amounts deemed reasonable by the board. The registration fee for partially-exempt units shall reasonably approximate the cost of registration and counseling services for such units, and shall not include the cost of services from which such units are exempt. Such registration fees shall not be passed on to tenants in the form of rent increases except with the express prior approval of the board. The board is also empowered to request and receive funding, when and if necessary, from the city of Berkeley and/or any other available source for its reasonable and necessary expenses, including expenses incurred at the request of the City.

O. Staff: The board shall be a working board and shall employ such staff as may be necessary to perform its functions efficiently and as provided by Berkeley Ordinance.

P. Registration: The board shall require the registration of all rental units covered by this chapter as provided for in Section 13.76.080. The board may also require landlords to provide current information supplementing their registration statements.

~~Q.— Decontrol: If the annual average vacancy rate for all rental units in the city of Berkeley exceeds five percent over a six month period, the city council is empowered, upon request by the board, at its discretion and in order to achieve the purposes of this chapter, to exempt rental units covered by this chapter from Sections 13.76.080, 13.76.100, 13.76.110 and 13.76.120 of this chapter. In determining the vacancy rate for the city of Berkeley the board and the city council shall consider all available data and may conduct their own survey. If units are exempted pursuant to this Subsection Q coverage shall be reimposed if the city council finds that the average annual vacancy rate has thereafter fallen below five percent. Prior to any decision to exempt or renew coverage for rental units under this Subsection Q the board shall hold at least two public hearings.~~

~~R.~~ Q. Conflict of Interest: Commissioners shall be subject to the requirements of the California Political Reform Act and other applicable state and local conflict of interest codes. Commissioners shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a landlord or tenant. However, a commissioner shall be disqualified from ruling on a petition for an individual adjustment of a rent ceiling under Section 13.76.120, where the commissioner is either the landlord of the property or a tenant residing in the property that is involved in the petition.

Section 4: Section 13.76.130 of the Berkeley Municipal Code is amended to read as follows

**13.76.130 Good cause required for eviction**

A. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this chapter unless said landlord shows the existence of one of the following grounds:

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days. Rent that is lawfully withheld pursuant to emergency legislation that authorizes rent withholding during the effective period of a state of emergency applicable in Berkeley shall not constitute grounds for recovery of possession except as expressly provided in the applicable emergency legislation. Emergency legislation adopted during the emergency may prohibit recovery of possession for lawfully withheld rent even after the expiration of a state or local emergency.

2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement. Notwithstanding any contrary provision in this chapter or in the rental agreement, a landlord is not entitled to recover possession of a rental unit under this subsection where a tenant permits his or her rental unit to be occupied by a subtenant, provided:

a. The landlord has unreasonably withheld consent to the subtenancy; and



- b. The tenant remains an actual occupant of the rental unit; and
- c. The number of tenants and subtenants actually occupying the rental unit does not exceed ~~the number of occupants originally allowed by the rental agreement or the board's regulations, whichever is greater~~ the maximum number of occupants legally allowed under Section 503.2 of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922, except where prohibited by law.
- d. Withholding of consent by the landlord shall be deemed to be unreasonable where:
  - (i) ~~The tenant's written request for consent was given at least two weeks prior to commencement of the subtenancy; tenant has made a written request to the landlord to either sublet the unit and/or add additional occupants, and the landlord has failed to respond in writing within fourteen (14) days of the tenant's request; or~~
  - (ii) The proposed new subtenant has, upon the landlord's written request, completed the landlord's standard form application or provided sufficient information to allow the landlord to conduct a standard background check, including references and credit, income and other reasonable background information, and the proposed new subtenant or additional occupant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and or
  - ~~(iii) The proposed new subtenant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and~~
  - ~~(iii iv)~~ (iii iv) The landlord has not articulated in writing a well-founded reason for refusing consent. A landlord's reasonable denial may not be based on the proposed occupant's lack of credit worthiness or income if that occupant will not be legally obligated to pay some or all of the rent to the landlord.

e. Where a landlord can establish that the proposed additional occupant presents a direct threat to the health, safety, or security of other residents of the property, the landlord shall have the right to deny the proposed tenant's occupancy.

f. Before initiating an action to recover possession based on the violation of a lawful obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation that provides the tenant with a minimum of fourteen (14) days to cure the violation. The notice must also inform the tenant(s) of their right to add subtenants and/or add additional occupants pursuant to this section.

3. The tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.
4. The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.
5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises or the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161.
6. The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.
7. a. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building or where necessary under an outstanding notice of code

violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises.

b. Where such repairs can be completed in a period of 60 or fewer days, and the tenant, within 30 days after the service of a notice of termination of his or her tenancy, agrees in writing to vacate the premises during the period required to complete the repairs at no charge to the landlord, other than abatement of the obligation to pay rent for the premises during the period required to complete the repairs, the landlord may not recover possession pursuant to this subsection (13.76.130A.7.) unless the tenant shall fail or refuse to vacate the premises in accordance with such agreement.

c. Where the landlord owns any other residential rental units in the City of Berkeley, and any such unit is vacant and available at the time of premises or the entry of a judgment by a court of competent jurisdiction awarding possession of the premises to the landlord, the landlord shall, as a condition of obtaining possession pursuant to this subsection (13.76.130A.7.), notify tenant in writing of the existence and address of each such vacant rental unit and offer tenant the right, at the tenant's option:

(i) To enter into a rental agreement (to be designated as a "temporary rental agreement") on any available rental unit which the tenant may choose, at a rent not to exceed the lesser of the lawful rent which may be charged for such available rental unit or the lawful rent in effect, at the time of the notice of termination of tenancy, on the unit being vacated, said rental agreement to be for a term of the lesser of ninety days or until completion of repairs on the rental unit being vacated by tenant; or

(ii) To enter into a new rental agreement or lease for such available rental unit at a rent not to exceed the lawful rent which may be charged for such available rental unit.

d. Where the landlord recovers possession under this subsection (13.76.130A.7.), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. In the event the landlord files an application for an individual rent adjustment within six months following the completion of the work, the tenant shall be a party to such proceeding the same as if he or she were still in possession, unless the landlord shall submit, with such application, a written waiver by the tenant of his or her right to re-occupy the premises pursuant to this subsection.

8. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition.

9. Owner Move-in Evictions.

a. The landlord seeks in good faith with honest intent and without ulterior motive to recover possession for his/her own use and occupancy as his/her principal residence for a period of at least 36 consecutive months; or

b. For the use and occupancy as the principal residence by the landlord's spouse or by the landlord's child, or parent for a period of at least 36 consecutive months.

c. For the purposes of this subsection (13.76.130A.9.), the term landlord shall be defined as the owner of record, as of the time of giving of a notice terminating tenancy, and at all times thereafter to and including the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord, holding at least a 50% interest in the property and shall not include a lessor, sublessor, or agent of the owner of record.

d. All notices terminating tenancy pursuant to subsection 13.76.130.A.9 shall include the following: the existence and

potential availability of relocation assistance under subsection 13.76.130A.9.g; the existence of tenant protections for families with minor children as defined in subsection 13.76.130A.9.k; the name and relationship of any qualified relative for purposes of subsection 13.76.130A.9.b; and the landlord's ownership interest in any residential properties in the City of Berkeley where such interest, in any form whatsoever, is ten percent (10%) or greater. The landlord shall, within ten days of giving notice, file a copy of the notice terminating tenancy with the Rent Board.

e. The landlord may not recover possession under this subsection (13.76.130A.9.) if a comparable unit, owned by the landlord in the City of Berkeley, was, at the time of the landlord's decision to seek to recover possession of the rental unit, already vacant and available, or if a comparable unit, owned by the landlord in the City of Berkeley, thereafter becomes vacant at any time until the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord. In an action by or against the tenant, evidence that a comparable unit was vacant and available within ninety days prior to the date of a notice terminating the tenant's tenancy shall create a presumption that such unit was vacant and available at the time of the landlord's decision to seek to recover possession of the premises. "Presumption" means that the court must find the existence of the presumed fact unless and until the contrary is proven by a preponderance of the evidence.

f. The landlord shall offer any non-comparable unit owned by the landlord to the tenant if a non-comparable unit becomes available before the recovery of possession of the tenant's unit at a rate based on the rent the tenant is paying with an upward or downward adjustment based on the condition, size, and other amenities of the replacement unit. Disputes concerning the initial rent for the replacement unit shall be determined by the Rent Board.

g. Where a landlord recovers possession of a unit under subsection 13.76.130A.9, the landlord is required to provide standard relocation assistance to tenant households where at least one occupant has resided in the unit for one year or more in the amount of \$15,000. The landlord is required to provide an additional \$5,000 relocation assistance to tenant households that qualify as low-income; or include disabled or elderly tenants; minor children; or tenancies which began prior to January 1, 1999. The relocation fees set forth above shall be increased in accordance with the rules set forth in subsection 13.76.130A.9.h below. The procedures for payment of this relocation assistance are set forth below in subsection 13.76.130A.9.p.(i) through (iv). The following definitions apply for any tenant households evicted for owner move-in under subsection 13.76.130A.9:

(i) "Low-income tenants" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, or as otherwise defined in Health and Safety Code Section 50079.5.

(ii) A person is "disabled" if he/she has a physical or mental impairment that limits one or more of a person's major life activities within the meaning of the California Fair Housing and Employment Act (Government Code § 12926).

(iii) "Elderly" is defined as sixty (60) years of age or older.

(iv) "Minor child" means a person who is under 18 years of age.

(v) "Tenancy began prior to January 1, 1999" is a tenancy where an "original occupant" (as defined by Berkeley Rent Board Regulation) still permanently resides in the rental unit.

h. Effective January 1 of each year beginning in 2018, the fees set forth above in subsection 13.76.130A.9.g., may be increased in an amount based on the Consumer Price Index - All Urban Consumers in

the San Francisco-Oakland-San Jose Region averaged for the 12-month period ending June 30, of each year, as determined and published by United States Department of Labor. Any increase shall be published by the Board on or before October 31st of each year.

i. It shall be evidence that the landlord has acted in bad faith if the landlord or the landlord's qualified relative for whom the tenant was evicted does not move into the rental unit within three months from the date of the tenant's surrender of possession of the premises or occupy said unit as his/her principal residence for a period of at least 36 consecutive months.

j. Once a landlord has successfully recovered possession of a rental unit pursuant to subsection 13.76.130A.9.a., then no other current or future landlords may recover possession of any other rental unit on the property pursuant to subsection 13.76.130A.9.a. It is the intention of this subsection that only one specific unit per property may be used for such occupancy under subsection 13.76.130A.9.a and that once a unit is used for such occupancy, all future occupancies under subsection 13.76.130A.9.a must be of that same unit.

k. A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit has a custodial or family relationship with a minor child who is residing in the unit, the tenant with the custodial or family relationship has resided in the unit for 12 months or more, and the effective date of the notice of termination of tenancy falls during the school year. The term "school year" as used in this subsection means the first day of instruction for the Fall Semester through the first day of the month following the last day of instruction for the Spring Semester, as posted on the Berkeley Unified School District website for each year.

(i) For purposes of subsection 13.76.130A.9.k, the term "custodial relationship" means that the person is a legal guardian of the child, or has a caregiver's authorization affidavit for the child as defined

by Section 6550 of the California Family Code, or that the person has provided full-time custodial care of the child pursuant to an agreement with the child's legal guardian or court-recognized caregiver and has been providing that care for at least one year or half of the child's lifetime, whichever is less. The term "family relationship" means that the person is the biological or adoptive parent, grandparent, brother, sister, aunt or uncle of the child, or the spouse or domestic partner of such relations.

I. A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit:

(i) Is 60 years of age or older and has been residing on the property for five years or more; or

(ii) Is disabled and has been residing on the property for five years or more; or

(iii) Has resided on the property for five years or more and the landlord has a ten percent (10%) or greater ownership interest, in any form whatsoever, in five or more residential rental units in the City of Berkeley.

m. A tenant who claims to be a member of one of the classes protected by subsection 13.76.130A.9.I must submit a statement, with supporting evidence, to the landlord. A tenant's failure to submit a statement at any point prior to the trial date of an unlawful detainer action for possession of the tenant's unit shall be deemed an admission that the tenant is not protected by subsection 13.76.130A.9.I. A landlord may challenge a tenant's claim of protected status by raising it as an issue at trial in an unlawful detainer action for possession of the tenant's unit.

n. The provisions of subsection 13.76.130A.9.I shall not apply to the following situations:



- (i) Where a person is the owner of three or fewer residential units in the City of Berkeley and has no greater than a nine percent (9%) ownership interest in any other residential unit in the City of Berkeley; or
  - (ii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I and the landlord's qualified relative who is seeking possession of a unit subject to subsection 13.76.130A.9.b is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.I.(ii) above; or
  - (iii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I, the landlord has owned the unit for which possession is being sought subject to subsection 13.76.130A.9.a for five years or more and is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.I.(ii).
- o. Where a landlord recovers possession under Subsection 13.76.130A.9, the tenant must be given the right of first refusal to re-occupy the unit upon its next vacancy.
- p. When a landlord is required to provide a relocation assistance payment subject to subsection 13.76.130A.9.g, the payment shall be divided among the tenants occupying the rental unit at the time of service of the notice to terminate tenancy.
- (i) Within ten days of service of a notice terminating tenancy under subsection 13.76.130A.9, the landlord shall deposit the standard relocation assistance (for households where an occupant has resided one year or more) with the City or its designated agent to be held in escrow. Within ten days after the funds are deposited

into escrow, the City shall release the standard relocation assistance to the tenant household, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant's eligibility to receive such assistance.

(ii) In order to claim entitlement to additional relocation assistance under subsection 13.76.130A.9.g, a tenant must notify the landlord and the Rent Stabilization Program in writing that he/she is claiming low-income, disabled, elderly, tenant with minor child status, or a claim that the tenancy began prior to January 1, 1999 (hereinafter "entitlement to additional relocation assistance") per subsection 13.76.130A.9.g within 30 days of filing of notice of termination of tenancy with the Rent Stabilization Program. The landlord shall deposit the additional relocation payment with the Rent Stabilization Program or its designated agent to be held in escrow for any tenant household who claims entitlement to additional relocation assistance within ten days after such notice claiming entitlement to additional relocation assistance is mailed. Within ten days after the funds are deposited into escrow, the Rent Stabilization Program shall authorize release of the relocation assistance to the tenant household that claims entitlement to additional relocation assistance, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant's eligibility to receive such assistance.

(iii) When a tenant household's eligibility to receive standard or additional relocation assistance as described in subsection 13.76.130A.9.g is disputed, either party may file a Rent Board petition requesting a determination of eligibility or file a claim in a court of competent jurisdiction. The Rent Stabilization Program shall release disputed relocation assistance funds to either the tenant or the landlord upon receipt of either a written agreement by both the landlord and the affected tenant, an order of a court of competent jurisdiction, or an order of a City or Rent Board hearing

examiner issued pursuant to a petition process conducted in accordance with applicable Rent Board Regulations.

(iv) The landlord may rescind the notice of termination of tenancy prior to any release of relocation payment to the tenants by serving written notice stating such rescission on the tenants. In such instance, the relocation payment shall be released to the landlord. Subsequent to the release of any relocation payment to the tenants, the landlord may rescind the notice of termination of tenancy only upon the written agreement of the tenants to remain in possession of the rental unit. If the tenants remain in possession of the rental units after service of a landlord's written notice of rescission of the eviction, the tenants shall provide an accounting to the landlord of the amount of the relocation payment expended for moving costs, return to the landlord that portion of the relocation payment not expended for moving costs, and assign to the landlord all rights to recover the amount of relocation payment paid to third parties. If a rescission occurs under this subsection, the tenant(s) shall continue the tenancy on the same terms as before the notice was served.

(v) Where a landlord has served a notice of termination of tenancy on a tenant prior to the date that this amendment takes effect and the notice of termination of tenancy has not expired, the landlord shall deposit the full relocation payment with the City or its designated agent to be held in escrow for the tenants if the tenants have not vacated the rental unit as of the effective date of this amendment, and the landlord shall pay the full relocation payment to the tenants if the tenants have vacated the rental unit as of the effective date of this amendment. Said deposit in escrow or payment to the tenants shall be made within ten days of the effective date of this amendment.

(vi) Failure of the landlord to make any payment specified herein shall be a defense to any action to recover possession of a rental unit based upon the landlord's termination of tenancy notice pursuant to this subsection (13.76.130A.9). In addition, if the tenants of a rental unit have vacated the unit as a result of a notice of termination of tenancy pursuant to this subsection (13.76.130.A.9), and the landlord fails to make any payment specified herein, the landlord shall be liable to the tenants for three times the amount of the payment as well as reasonable attorney fees.

q. A tenant who prevails in an action brought under this subsection (13.76.130A.9), in addition to any damages and/or costs awarded by the court, shall be entitled to recover all reasonable attorney's fees incurred in bringing or defending the action.

r. At least twice annually, Rent Board staff shall report to the Rent Board regarding the occupancy status of units possession of which has been recovered pursuant to this subsection (13.76.130A.9) within the prior 36 months.

s. If any provision or clause of this subsection (13.76.130A.9) or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses, and to this end the provisions and applications of this subsection are severable.

10. A landlord or lessor seeks in good faith to recover possession of the rental unit for his/her occupancy as a principal residence, where the landlord or lessor has previously occupied the rental unit as his/her principal residence and has the right to recover possession of the unit for his/her occupancy as a principal residence under an existing rental agreement with the current tenants.

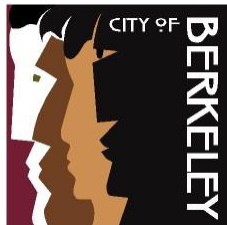
11. The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of subsection 13.76.130A.7.c., following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by tenant (if the term of the rental agreement has expired by reason of the completion of repairs on the old rental unit), or of written notice to quit (if the term of the rental agreement has expired by reason of the expiration of a period of 90 days).

B. A landlord's failure to specify good cause as listed above in subsections 1. through 11. of Section 13.76.130A. in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this chapter.

C. In any action to recover possession of a rental unit covered by the terms of this chapter, except an action to recover possession under subsection 13.76.130A.7., 13.76.130.A.8, or 13.76.130.A.11., a landlord shall allege, as to each rental unit on the property, substantial compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with the implied warranty of habitability and compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with Sections 13.76.100 (Rent Ceiling) and 13.76.080 (Rent Registration) of this chapter.

D. The landlord shall file with the board a copy of any notice of termination, notice to quit, and summons and complaint, within ten days after the tenant has been served with such notice or summons and complaint.

Section 5. Severability. If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.



Office of the City Manager

## **REVISED AGENDA MATERIAL for Supplemental Packet 1**

**Meeting Date:** July 12, 2022

**Item Number:** 20

**Item Description:** Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)

**Submitted by:** Office of the City Attorney and Matt Brown, General Counsel  
Rent Board

Amendments to resolution placing measure on the November 8, 2022 ballot: changes to ballot question language and non-substantive changes to title and other sections of resolution.

Amendments to ballot measure language: non-substantive changes to title and other sections.

Attachment 1

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

~~SUBMITTING TO THE BERKELEY ELECTORATE A MEASURE TO AMENDING-  
 BERKELEY MUNICIPAL CODE CHAPTER 13.76 OF THE BERKELEY MUNICIPAL  
 CODE TO ALLOW RENT CONTROL TO APPLY, TO THE EXTENT THAT STATE OR  
 LOCAL LAW PERMITS, FOR THE REGULATION OF NEWLY CONSTRUCTED UNITS  
 WHERE STATE AND LOCAL LAW DO NOT PROHIBIT RENT CONTROL, AND  
 SPECIFICALLY INCLUDING BUT NOT LIMITED TO UNITS, BUILT AS THE RESULT  
 OF DEMOLITION OF PREVIOUSLY RENT-CONTROLLED UNITS CREATED  
 PURSUANT TO SENATE BILL 330 (HOUSING CRISIS ACT OF 2019); ALLOW  
 INCREASED OCCUPANCY OF RENTAL UNITS WITHOUT THREAT OF EVICTION;  
 ELIMINATE PROVISION ALLOWING CITY COUNCIL TO EXEMPT UNITS FROM  
 RENT CONTROL IF CITY'S VACANCY RATE EXCEEDS 5% OVER A SIX-MONTH  
 PERIOD; AND INCREASE EVICTION PROTECTIONS FOR CERTAIN LANDLORD-  
 OCCUPIED PROPERTIES. TO ADD EVICTION PROTECTIONS FOR RENTAL UNITS  
 IN A RESIDENTIAL PROPERTY CONSISTING OF TWO UNITS WHERE ONE OF  
 THE UNITS IS OCCUPIED BY A LANDLORD AS THEIR PRINCIPAL PLACE OF  
 RESIDENCE AND WHERE ONE OF THE TWO UNITS WAS OWNER OCCUPIED AS  
 OF DECEMBER 31, 1979 AND EVICTION PROTECTIONS TO TENANTS IN RENTAL  
 UNITS CONTAINING A SINGLE FAMILY DWELLING AND ONE LAWFULLY  
 ESTABLISHED ACCESSORY DWELLING UNIT WHERE THE LANDLORD OCCUPIES  
 A UNIT IN THE SAME PROPERTY; TO PROHIBIT EVICTIONS BASED ON THE  
 ADDITION OF OCCUPANTS IF THE LANDLORD HAS UNREASONABLY REFUSED  
 THE TENANT'S REQUEST; AND TO ELIMINATE SECTION 13.76.060  
 (DECONTROL).~~

WHEREAS, the purposes of the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance are to regulate residential rent increases in the City of Berkeley and to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, in order to help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. This legislation is designed to address the City of Berkeley's housing crisis, preserve the public peace, health and safety, and advance the housing policies of the city with regard to low and fixed income persons, minorities, students, handicapped, and the aged; and

WHEREAS, the Berkeley Rent Stabilization Board will be able to provide greater protections to tenants in newly constructed units; and

WHEREAS, the Berkeley Rent Stabilization Board will be able to provide greater eviction protections for tenants in units that previously did not have such protections; and

WHEREAS, eviction protections will be increased for tenant households that add additional occupants if a landlord has unreasonably refused a tenant's written request; and

WHEREAS, Section 13.76.060 (Decontrol) is to be eliminated; and

WHEREAS, these enumerated amendments to the Rent Stabilization and Eviction for Good Cause Ordinance will prevent displacement of tenants by extending additional protections and services to tenants who do not enjoy such protections under existing law; and

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 8, 2022 General Municipal Election, a measure amending Chapter 13.76 of the Berkeley Municipal Code to allow rent control to apply to new construction built as the result of demolition of previously rent-controlled units, allow increased occupancy of rental units, eliminate a provision allowing the City Council to exempt units from rent control if the citywide vacancy rate exceeds 5%, and increase eviction protections for certain landlord-occupied properties; to amend Berkeley Municipal Code Chapter 13.76 to allow for the regulation of newly constructed units if permissible under state or local law; to provide eviction protections under the Ordinance for tenants in properties consisting of two units where one unit is a landlord's principal place of residence and one unit was a landlord's principal place of residence as of December 31, 1979 and eviction protections to tenants residing on a property containing a single family dwelling and a lawfully established Accessory Dwelling Unit where the landlord occupies a unit at the property; to provide eviction protections for tenants that add additional occupants to their household after the landlord has unreasonably refused a written request to do so; and to eliminate Section 13.76.060 (Decontrol) from the Ordinance; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 8, 2022; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.



NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that the City will reimburse the Registrar of Voters for the costs associated with placing the measure on the ballot.

BE IT FURTHER RESOLVED that said proposed Ordinance measure shall appear and be printed upon the ballots to be used at said election as follows:

| CITY OF BERKELEY ORDINANCE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| <u>Shall the measure amending the Rent Stabilization and Eviction for Good Cause Ordinance to allow rent control to apply to new construction built as a result of demolition of rent-controlled units, where not prohibited by state law; allow a greater number of occupants per rental unit; eliminate a provision allowing the City Council to exempt units from rent control if the citywide vacancy rate exceeds 5% over six months; and limit evictions for certain landlord-occupied properties be adopted?</u> | YES |
| <del>Shall the measure amending the Rent Stabilization and Eviction for Good Cause Ordinance to: allow, to the extent that state or local permits, for the regulation of newly-constructed units;</del>                                                                                                                                                                                                                                                                                                                 | NO  |

|                                                                                                                                                                                                                                                                                                                                  |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <del>to provide eviction protections to tenants in certain two-unit properties where such eviction protections previously did not apply; to provide eviction protections to tenants who add additional occupants after the landlord has unreasonably denied such a request; and to eliminate Section 13.76.060 be adopted?</del> |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

BE IT FURTHER RESOLVED that the text of the measure be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Measure

Exhibit A

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

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING CHAPTER 13.76 OF THE BERKELEY MUNICIPAL CODE TO ALLOW RENT CONTROL TO APPLY TO NEWLY CONSTRUCTED UNITS WHERE STATE AND LOCAL LAW DO NOT PROHIBIT RENT CONTROL AND SPECIFICALLY TO UNITS BUILT AS THE RESULT OF DEMOLITION OF PREVIOUSLY RENT-CONTROLLED UNITS; ALLOW INCREASED OCCUPANCY OF RENTAL UNITS; ELIMINATE PROVISION ALLOWING CITY COUNCIL TO EXEMPT UNITS FROM RENT CONTROL IF CITY'S VACANCY RATE EXCEEDS 5% OVER A SIX-MONTH PERIOD; AND INCREASE EVICTION PROTECTIONS FOR CERTAIN LANDLORD-OCCUPIED PROPERTIES.

~~AN ORDINANCE OF THE CITY OF BERKELEY AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO ALLOW, TO THE EXTENT THAT STATE OR LOCAL LAW PERMITS, FOR THE REGULATION OF NEWLY CONSTRUCTED UNITS, INCLUDING BUT NOT LIMITED TO, UNITS CREATED PURSUANT TO SENATE BILL 330 (HOUSING CRISIS ACT OF 2019); TO ADD EVICTION PROTECTIONS FOR RENTAL UNITS IN A RESIDENTIAL PROPERTY CONSISTING OF TWO UNITS WHERE ONE OF THE UNITS IS OCCUPIED BY A LANDLORD AS THEIR PRINCIPAL PLACE OF RESIDENCE AND WHERE ONE OF THE TWO UNITS WAS OWNER OCCUPIED AS OF DECEMBER 31, 1979 AND EVICTION PROTECTIONS TO TENANTS IN RENTAL UNITS CONTAINING A SINGLE FAMILY DWELLING AND ONE LAWFULLY ESTABLISHED ACCESSORY DWELLING UNIT WHERE THE LANDLORD OCCUPIES A UNIT IN THE SAME PROPERTY; TO PROHIBIT EVICTIONS BASED ON THE ADDITION OF OCCUPANTS IF THE LANDLORD HAS UNREASONABLY REFUSED THE TENANT'S REQUEST; AND TO ELIMINATE SECTION 13.76.060 (DECONTROL)~~

BE IT ORDAINED by ~~t~~The People of the City of Berkeley ~~do ordain~~ as follows:

Section 1. Section 13.76.040 of the Berkeley Municipal Code is amended to read as follows:

**13.76.040 Definitions.**

- A. "Board" refers to the elected Rent Stabilization Board established by this chapter and Article XVII of the Charter of the City of Berkeley.
- B. "Commissioners" means the members of the board who are denominated commissioners.
- C. "Housing services" include but are not limited to repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishing, telephone, parking and any other benefit, privilege or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.
- D. "Landlord" means an owner of record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.
- E. "Rent" means the consideration, including any deposit, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.
- F. "Rental agreement" means an agreement, oral, written or implied, between a landlord and a tenant for use or occupancy of a rental unit and for housing services.
- G. "Rental unit" means any unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy (including units covered by the Berkeley Live/Work Ordinance No. 5217-NS), located in the City of Berkeley, together with all housing services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the tenant.
- H. "Property" means a parcel of real property which is assessed and taxed as an undivided whole.

I. "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

J. "Skilled nursing facility" means a health facility or a distinct part of a hospital which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24-hour inpatient care and, as a minimum, includes medical, nursing, dietary, pharmaceutical services and an activity program. The facility shall have effective arrangements, confirmed in writing, through which services required by the patients, but not regularly provided within the facility, can be obtained promptly when needed.

K. "Health facility" means any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24-hour stay or longer.

L. "Recognized tenant organization" means any group of tenants, residing in rental units in the same building or in different buildings operated by the same management company, agent or landlord, which requests to be so designated.

M. "Rent ceiling" means the maximum allowable rent which a landlord may charge on any rental unit covered by this chapter.

N. "Base rent ceiling" means the maximum allowable rent established under Section 13.76.100 of this chapter.

O. "Fees" means for the purpose of this chapter, a charge fixed by law for services of public officers or for use of a privilege under control of government.

P. "Nonprofit, accredited institution of higher education" means a post secondary educational institution whose legal status under the California Education Code is verified by an annual validation receipt from the California State Department of

Education, and which is accredited by the Western Association of Schools and Colleges or the Association of Theological Schools and which is exempt from taxation under Section 501 (c)(3) of the United States Internal Revenue Code and under Section 23701(d) of the Revenue and Taxation Code, and which, if otherwise required by law to do so, has obtained a valid unrevoked letter or ruling from the United States Internal Revenue Service or from the Franchise Tax Board which states that the organization so qualifies for exemption from taxation.

Q. "Newly Constructed" means a rental unit created after June 30, 1980. For purposes of this definition, the date a unit was created is based upon the date of the first certificate of occupancy issued for the subject unit. However, in the event of the repeal or amendment of Civil Code Section 1954.52, such that "certificate of occupancy" is no longer the operative standard set forth under state law, the date a unit was created shall be determined by the final inspection approval by the City.

R. Notwithstanding any other provision in this ordinance, and to the extent that state or local law does not prohibit a local jurisdiction from regulating the rent on a residential rental unit, such units shall not be exempt as "newly constructed units" and, unless otherwise exempt, shall be covered by all provisions of this chapter. This includes, but is not limited to, any residential rental units created as a result of demolition or replacement where such demolition or replacement is affected via the creation of a "housing development project" as defined in the Housing Crisis Act of 2019 (Senate Bill 330).

Section 2: Section 13.76.050 of the Berkeley Municipal Code is amended to read as follows:

### **13.76.050 Applicability**

This chapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following:

A. Rental units which are owned by any government agency. However, the exemption of units owned by the Berkeley Housing Authority from the terms of this chapter shall be limited to their exemption from the terms of Section 13.76.080, Rent Registration;

Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

B. Rental units which are rented primarily to transient guests for use or occupancy less than fourteen consecutive days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses. However, the payment of rent every fourteen days or less shall not by itself exempt any unit from coverage by this chapter.

C. Rental units in nonprofit cooperatives owned and controlled by a majority of the residents.

D. Rental units leased to tenants assisted under the Section 8 program (42 U.S.C. Section 1437f) or the Shelter Plus Care Program (42 U.S.C. 11403 et. seq.) or similar federally funded rent subsidy program. Except as may be preempted by state or federal law, the exemption of such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. However, the exemption from Sections 13.76.080, 13.76.110 and 13.76.120 shall apply only for so long as the rent demanded does not exceed the authorized Payment Standard, which, for purposes of this subsection, is the maximum monthly rental assistance potentially available to an assisted household before deducting the household share of income paid for rent and utilities as established by the Berkeley Housing Authority or successor agency. For units where the rent demanded exceeds the Payment Standard, the Payment Standard or an initial rent above the Payment Standard if approved by the Berkeley Housing Authority, as reported to the board by the Berkeley Housing Authority or successor agency, shall become the unit's base rent ceiling and the reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120.

E. Rental units in any hospital, skilled nursing facility, health facility, asylum, or non-profit home for the aged.

F. Rental units in a residential property which is divided into a maximum of four units where one of such units is occupied by the landlord as his/her principal residence. Any exemption of rental units established under this subsection (13.76.050 F.) shall be limited to rental units that would have been exempt under the provisions of this chapter had this chapter been in effect on December 31, 1979. After July 1, 1982, this exemption shall no longer apply to rental units in a residential property which is divided into three or four units. It shall continue to apply to rental units in a residential property which is divided into two units, and which meet all the other requirements of this subsection (13.76.050F). However, the exemption of such rental units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. Rental units which become non-exempt under this provision shall have the provisions of Subsections 13.76.080I and 13.76.100C. applied to them.

G. A rental unit in a residential property where the landlord shares kitchen or bath facilities with the tenant(s) of such rental unit and where the landlord also occupies a unit in the same property as his/her principal residence.

H. For the purposes of Subsections 13.76.050 F. and G., the term landlord shall be defined only as the owner of record holding at least 50% interest in the property.

I. Newly constructed rental units, as defined in Section 13.76.040Q. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. To the extent that state law permits, the exemption of such newly constructed units shall be limited to the first 20 years after completion of construction.

J. A rental unit which is rented by a nonprofit, accredited institution of higher education to a tenant or tenants who are student(s), faculty, or staff of the institution or of a member school of the Graduate Theological Union, provided, however, that the institution owned the unit as of January 1, 1988.



K. A rental unit in a residential property owned by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that is rented to a low income tenant and subject to a regulatory agreement with a governmental agency that controls the unit's rent levels. However, the exemption for such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings of this chapter and shall apply only for so long as the regulatory agreement is in effect. This exemption shall not apply to rental units at the property that are not subject to a regulatory agreement with a governmental agency or that are rented by a tenant who occupied the unit prior to the property's acquisition by the tax-exempt organization.

L. Rental units in a facility owned or leased by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that has the primary purpose of operating a treatment, recovery, therapy, sanctuary or shelter program for qualified clients, where such rental units are provided incident to the client's participation in the primary program and where the client has been informed in writing of the temporary or transitional nature of the housing at the inception of his or her participation in the program. However, except as may be preempted by the Transitional Housing Participant Misconduct Act (California Health and Safety Code Sections 50580 et. seq.) or other state or federal law, such rental units shall not be exempted from the terms of Section 13.76.130, Good Cause Required for Eviction. For purposes of Section 13.76.130.A.2, the client's continued eligibility for participation in the treatment, recovery, therapy, sanctuary or shelter program shall be deemed a material term of the client's rental agreement with the program's operator.

M. A rental unit or room which is rented by an active member of a fraternity or sorority recognized by the University of California Berkeley, or a rental unit or room which is rented by an active member of a fraternity or sorority identified by Rent Board Resolution. To qualify for the exemption, the rental unit must be owned by the fraternity or sorority or by an entity whose sole purpose is the maintenance and operation of the fraternity or sorority's rental units for the benefit of the members in order to provide housing to said members at cost.

N. A rental unit in a residential property containing only a Single Family Dwelling (as defined in Subtitle 23F.04 of the Zoning Ordinance) and one lawfully established and fully permitted Accessory Dwelling Unit where the landlord also occupies a unit in the same property as his/her principal residence. This subsection (13.76.050N) shall only apply to properties containing a single Accessory Dwelling Unit, shall only apply to units compliant with all applicable requirements of Chapter 23C.24 ("Accessory Dwelling Units"), and shall only apply to tenancies created after November 7, 2018. However, the exemption of such rental units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

O. A dwelling or a unit alienable separate from the title to any other dwelling unit unless the tenancy commenced before January 1, 1996. However, the exemption of such units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. A property owner who owns only one residential unit in the City of Berkeley, and occupied that residential unit for 365 consecutive days as their principal residence immediately prior to renting the unit, and is absent from the unit for a period not to exceed 24 months, and such period is specified in the lease, shall also be exempt from the terms of Section 13.76.080, Rent Registration, of this Chapter. The exemptions provided in this Section shall apply only as long as the pertinent provisions of California Civil Code Section 1954.50 et. seq. ("Costa-Hawkins") remain in effect and require such an exemption.

Section 3: Section 13.76.060 of the Berkeley Municipal Code is amended to read as follows:

### **13.76.060 Rent Stabilization Board**

A. Composition. There shall be in the city of Berkeley an elected rent stabilization board; the board shall consist of nine commissioners. The board shall elect annually as chairperson one of its members to serve in that capacity.

B. Eligibility. Residents who are duly qualified electors of the city of Berkeley are eligible to serve as commissioners on the board.

C. Full disclosure of holdings. Candidates for the position of commissioner shall fulfill the requirements as set forth in the City Charter in Article III, Section 6 1/2.

In addition, when filing nomination papers, candidates shall submit a verified statement of their interests and dealings in real property, including but not limited to its ownership, sale or management and investment in and association with partnerships, corporations, joint ventures and syndicates engaged in its ownership, sale or management during the previous three years.

D. Election of commissioners. Commissioners shall be elected at the statewide general election held in November of even numbered years.

E. Terms of office. Commissioners' terms of office shall be as set forth in Article XVII of the Berkeley City Charter.

F. Powers and duties. The elected rent stabilization board shall have the power to determine, to arbitrate and to set rent levels, whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance, and to administer any Berkeley program which regulates rents and evictions. The board shall have the following powers and duties:

1. Set the rent ceilings for all rental units.
2. Require registration of all rental units under Section 13.76.080.
3. Publicize the manner in which the base rent ceiling is established under Section 13.76.100.
4. To make adjustments in the rent ceiling in accordance with Sections 13.76.110 and 13.76.120.

5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this chapter.
6. To issue orders, rules and regulations, conduct hearings and charge fees as set below.
7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.
8. Report annually to the city council of the city of Berkeley on the status of rental housing units covered by this chapter.
9. Request the City Council to remove rent controls under Section 13.76.060Q.
10. Administer oaths and affirmations and subpoena witnesses and relevant documents.
11. Establish rules and regulations for settling civil claims under Section 13.76.150.
12. Seek injunctive relief under Section 13.76.150.
13. Pursue civil remedies in courts of appropriate jurisdiction.
14. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this chapter.
15. Hold public hearings.
16. Charge and collect registration fees, including penalties for late payments.
17. Other powers necessary to carry out the purposes of this chapter which are not inconsistent with the terms of this chapter.

18. Except as provided in Section 13.76.060N of this chapter, the board shall finance its reasonable and necessary expenses for its operation without the use of general fund monies of the city of Berkeley.

G. Rules and Regulations: The board shall issue and follow such rules and regulations, including those which are contained in this Chapter, as will further the purposes of this Chapter. The board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the city of Berkeley.

All rules and regulations and relevant documents explaining the decisions, orders, and policies of the board shall be kept in the board's office and shall be available to the public for inspection and copying.

The board shall publicize this Chapter so that all residents of Berkeley will have the opportunity to become informed about their legal rights and duties under this Chapter. The board shall prepare a brochure which fully describes the legal rights and duties of landlords and tenants under this Chapter. The brochure shall be made available to the public.

H. Meetings: The board shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the commissioners of the board. The board shall hold its initial meeting no later than July 15, 1980.

I. Quorum: Five commissioners shall constitute a quorum for the board.

J. Voting: The affirmative vote of five commissioners of the board is required for a decision, including all motions, rules, regulations, and orders of the board.

K. Compensation: The rent stabilization board shall be a working board. Commissioners shall be paid compensation and benefits in an amount set by the board in order to compensate commissioners for their time and work performed as required by this chapter and the city charter.

L. Dockets: The board shall maintain and keep in its office all hearing dockets, which shall be available for public inspection.

M. Vacancies: If a vacancy shall occur on the board, a qualified person to fill such vacancy shall be selected in accordance with the procedures set forth in Article V of the City Charter.

N. Financing: The board shall finance its reasonable and necessary expenses by charging landlords annual registration fees in amounts deemed reasonable by the board. The registration fee for partially-exempt units shall reasonably approximate the cost of registration and counseling services for such units, and shall not include the cost of services from which such units are exempt. Such registration fees shall not be passed on to tenants in the form of rent increases except with the express prior approval of the board. The board is also empowered to request and receive funding, when and if necessary, from the city of Berkeley and/or any other available source for its reasonable and necessary expenses, including expenses incurred at the request of the City.

O. Staff: The board shall be a working board and shall employ such staff as may be necessary to perform its functions efficiently and as provided by Berkeley Ordinance.

P. Registration: The board shall require the registration of all rental units covered by this chapter as provided for in Section 13.76.080. The board may also require landlords to provide current information supplementing their registration statements.

~~Q.—Decontrol: If the annual average vacancy rate for all rental units in the city of Berkeley exceeds five percent over a six month period, the city council is empowered, upon request by the board, at its discretion and in order to achieve the purposes of this chapter, to exempt rental units covered by this chapter from Sections 13.76.080, 13.76.100, 13.76.110 and 13.76.120 of this chapter. In determining the vacancy rate for the city of Berkeley the board and the city council shall consider all available data and may conduct their own survey. If units are exempted pursuant to this Subsection Q coverage shall be reimposed if the city council finds that the average annual vacancy rate has thereafter fallen below five percent. Prior to any decision to exempt or renew coverage for rental units under this Subsection Q the board shall hold at least two public hearings.~~

~~R. Q.~~ Conflict of Interest: Commissioners shall be subject to the requirements of the California Political Reform Act and other applicable state and local conflict of interest codes. Commissioners shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a landlord or tenant. However, a commissioner shall be disqualified from ruling on a petition for an individual adjustment of a rent ceiling under Section 13.76.120, where the commissioner is either the landlord of the property or a tenant residing in the property that is involved in the petition.

Section 4: Section 13.76.130 of the Berkeley Municipal Code is amended to read as follows

**13.76.130 Good cause required for eviction**

A. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this chapter unless said landlord shows the existence of one of the following grounds:

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days. Rent that is lawfully withheld pursuant to emergency legislation that authorizes rent withholding during the effective period of a state of emergency applicable in Berkeley shall not constitute grounds for recovery of possession except as expressly provided in the applicable emergency legislation. Emergency legislation adopted during the emergency may prohibit recovery of possession for lawfully withheld rent even after the expiration of a state or local emergency.

2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement. Notwithstanding any contrary provision in this chapter or in the rental agreement, a landlord is not entitled to recover possession of a rental unit under this subsection where a tenant permits his or her rental unit to be occupied by a subtenant, provided:

- a. The landlord has unreasonably withheld consent to the subtenancy; and
- b. The tenant remains an actual occupant of the rental unit; and
- c. The number of tenants and subtenants actually occupying the rental unit does not exceed ~~the number of occupants originally allowed by the rental agreement or the board's regulations, whichever is greater~~ the maximum number of occupants legally allowed under Section 503.2.503(b)(2) of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922, except where prohibited by law.
- d. Withholding of consent by the landlord shall be deemed to be unreasonable where:
  - (i) ~~The tenant's written request for consent was given at least two weeks prior to commencement of the subtenancy; tenant has made a written request to the landlord to either sublet the unit and/or add additional occupants, and the landlord has failed to respond in writing within fourteen (14) days of the tenant's request; or~~
  - (ii) The proposed new subtenant has, upon the landlord's written request, completed the landlord's standard form application or



provided sufficient information to allow the landlord to conduct a standard background check, including references and credit, income and other reasonable background information, and the proposed new subtenant or additional occupant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and or

~~-(iii)—The proposed new subtenant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and~~

~~(iii iv)~~ The landlord has not articulated in writing a well-founded reason for refusing consent. A landlord's reasonable denial may not be based on the proposed occupant's lack of credit worthiness or income if that occupant will not be legally obligated to pay some or all of the rent to the landlord.

e. Where a landlord can establish that the proposed additional occupant presents a direct threat to the health, safety, or security of other residents of the property, the landlord shall have the right to deny the proposed tenant's occupancy.

f. Before initiating an action to recover possession based on the violation of a lawful obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation that provides the tenant with a minimum of fourteen (14) days to cure the violation. The notice must also inform the tenant(s) of their right to add subtenants and/or add additional occupants pursuant to this section.

3. The tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.

4. The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.
5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises or the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161.
6. The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.
7.
  - a. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building or where necessary under an outstanding notice of code violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises.
  - b. Where such repairs can be completed in a period of 60 or fewer days, and the tenant, within 30 days after the service of a notice of termination of his or her tenancy, agrees in writing to vacate the premises during the period required to complete the repairs at no charge to the landlord, other than abatement of the obligation to pay rent for the premises during the period required to complete the repairs, the landlord may not recover possession pursuant to this subsection (13.76.130A.7.) unless the tenant shall fail or refuse to vacate the premises in accordance with such agreement.
  - c. Where the landlord owns any other residential rental units in the City of Berkeley, and any such unit is vacant and available at the time of premises or the entry of a judgment by a court of competent

jurisdiction awarding possession of the premises to the landlord, the landlord shall, as a condition of obtaining possession pursuant to this subsection (13.76.130A.7.), notify tenant in writing of the existence and address of each such vacant rental unit and offer tenant the right, at the tenant's option:

(i) To enter into a rental agreement (to be designated as a "temporary rental agreement") on any available rental unit which the tenant may choose, at a rent not to exceed the lesser of the lawful rent which may be charged for such available rental unit or the lawful rent in effect, at the time of the notice of termination of tenancy, on the unit being vacated, said rental agreement to be for a term of the lesser of ninety days or until completion of repairs on the rental unit being vacated by tenant; or

(ii) To enter into a new rental agreement or lease for such available rental unit at a rent not to exceed the lawful rent which may be charged for such available rental unit.

d. Where the landlord recovers possession under this subsection (13.76.130A.7.), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. In the event the landlord files an application for an individual rent adjustment within six months following the completion of the work, the tenant shall be a party to such proceeding the same as if he or she were still in possession, unless the landlord shall submit, with such application, a written waiver by the tenant of his or her right to re-occupy the premises pursuant to this subsection.

8. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition.

9. Owner Move-in Evictions.

- a. The landlord seeks in good faith with honest intent and without ulterior motive to recover possession for his/her own use and occupancy as his/her principal residence for a period of at least 36 consecutive months; or
- b. For the use and occupancy as the principal residence by the landlord's spouse or by the landlord's child, or parent for a period of at least 36 consecutive months.
- c. For the purposes of this subsection (13.76.130A.9.), the term landlord shall be defined as the owner of record, as of the time of giving of a notice terminating tenancy, and at all times thereafter to and including the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord, holding at least a 50% interest in the property and shall not include a lessor, sublessor, or agent of the owner of record.
- d. All notices terminating tenancy pursuant to subsection 13.76.130.A.9 shall include the following: the existence and potential availability of relocation assistance under subsection 13.76.130A.9.g; the existence of tenant protections for families with minor children as defined in subsection 13.76.130A.9.k; the name and relationship of any qualified relative for purposes of subsection 13.76.130A.9b; and the landlord's ownership interest in any residential properties in the City of Berkeley where such interest, in any form whatsoever, is ten percent (10%) or greater. The landlord shall, within ten days of giving notice, file a copy of the notice terminating tenancy with the Rent Board.
- e. The landlord may not recover possession under this subsection (13.76.130A.9.) if a comparable unit, owned by the landlord in the City of Berkeley, was, at the time of the landlord's decision to seek to recover possession of the rental unit, already vacant and available, or if a comparable unit, owned by the landlord in the City of Berkeley,

thereafter becomes vacant at any time until the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord. In an action by or against the tenant, evidence that a comparable unit was vacant and available within ninety days prior to the date of a notice terminating the tenant's tenancy shall create a presumption that such unit was vacant and available at the time of the landlord's decision to seek to recover possession of the premises. "Presumption" means that the court must find the existence of the presumed fact unless and until the contrary is proven by a preponderance of the evidence.

f. The landlord shall offer any non-comparable unit owned by the landlord to the tenant if a non-comparable unit becomes available before the recovery of possession of the tenant's unit at a rate based on the rent the tenant is paying with an upward or downward adjustment based on the condition, size, and other amenities of the replacement unit. Disputes concerning the initial rent for the replacement unit shall be determined by the Rent Board.

g. Where a landlord recovers possession of a unit under subsection 13.76.130A.9, the landlord is required to provide standard relocation assistance to tenant households where at least one occupant has resided in the unit for one year or more in the amount of \$15,000. The landlord is required to provide an additional \$5,000 relocation assistance to tenant households that qualify as low-income; or include disabled or elderly tenants; minor children; or tenancies which began prior to January 1, 1999. The relocation fees set forth above shall be increased in accordance with the rules set forth in subsection 13.76.130A.9.h below. The procedures for payment of this relocation assistance are set forth below in subsection 13.76.130A.9.p.(i) through (iv). The following definitions apply for any tenant households evicted for owner move-in under subsection 13.76.130A.9:

(i) "Low-income tenants" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, or as otherwise defined in Health and Safety Code Section 50079.5.

(ii) A person is "disabled" if he/she has a physical or mental impairment that limits one or more of a person's major life activities within the meaning of the California Fair Housing and Employment Act (Government Code § 12926).

(iii) "Elderly" is defined as sixty (60) years of age or older.

(iv) "Minor child" means a person who is under 18 years of age.

(v) "Tenancy began prior to January 1, 1999" is a tenancy where an "original occupant" (as defined by Berkeley Rent Board Regulation) still permanently resides in the rental unit.

h. Effective January 1 of each year beginning in 2018, the fees set forth above in subsection 13.76.130A.9.g., may be increased in an amount based on the Consumer Price Index - All Urban Consumers in the San Francisco-Oakland-San Jose Region averaged for the 12-month period ending June 30, of each year, as determined and published by United States Department of Labor. Any increase shall be published by the Board on or before October 31st of each year.

i. It shall be evidence that the landlord has acted in bad faith if the landlord or the landlord's qualified relative for whom the tenant was evicted does not move into the rental unit within three months from the date of the tenant's surrender of possession of the premises or occupy said unit as his/her principal residence for a period of at least 36 consecutive months.

j. Once a landlord has successfully recovered possession of a rental unit pursuant to subsection 13.76.130A.9.a., then no other current or

future landlords may recover possession of any other rental unit on the property pursuant to subsection 13.76.130A.9.a. It is the intention of this subsection that only one specific unit per property may be used for such occupancy under subsection 13.76.130A.9.a and that once a unit is used for such occupancy, all future occupancies under subsection 13.76.130A.9.a must be of that same unit.

k. A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit has a custodial or family relationship with a minor child who is residing in the unit, the tenant with the custodial or family relationship has resided in the unit for 12 months or more, and the effective date of the notice of termination of tenancy falls during the school year. The term "school year" as used in this subsection means the first day of instruction for the Fall Semester through the first day of the month following the last day of instruction for the Spring Semester, as posted on the Berkeley Unified School District website for each year.

(i) For purposes of subsection 13.76.130A.9.k, the term "custodial relationship" means that the person is a legal guardian of the child, or has a caregiver's authorization affidavit for the child as defined by Section 6550 of the California Family Code, or that the person has provided full-time custodial care of the child pursuant to an agreement with the child's legal guardian or court-recognized caregiver and has been providing that care for at least one year or half of the child's lifetime, whichever is less. The term "family relationship" means that the person is the biological or adoptive parent, grandparent, brother, sister, aunt or uncle of the child, or the spouse or domestic partner of such relations.

l. A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit:

(i) Is 60 years of age or older and has been residing on the property for five years or more; or

(ii) Is disabled and has been residing on the property for five years or more; or

(iii) Has resided on the property for five years or more and the landlord has a ten percent (10%) or greater ownership interest, in any form whatsoever, in five or more residential rental units in the City of Berkeley.

m. A tenant who claims to be a member of one of the classes protected by subsection 13.76.130A.9.I must submit a statement, with supporting evidence, to the landlord. A tenant's failure to submit a statement at any point prior to the trial date of an unlawful detainer action for possession of the tenant's unit shall be deemed an admission that the tenant is not protected by subsection 13.76.130A.9.I. A landlord may challenge a tenant's claim of protected status by raising it as an issue at trial in an unlawful detainer action for possession of the tenant's unit.

n. The provisions of subsection 13.76.130A.9.I shall not apply to the following situations:

(i) Where a person is the owner of three or fewer residential units in the City of Berkeley and has no greater than a nine percent (9%) ownership interest in any other residential unit in the City of Berkeley; or

(ii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I and the landlord's qualified relative who is seeking possession of a unit subject to subsection 13.76.130A.9.b is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.I.(ii) above; or

(iii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater



is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I, the landlord has owned the unit for which possession is being sought subject to subsection 13.76.130A.9.a for five years or more and is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.I.(ii).

o. Where a landlord recovers possession under Subsection 13.76.130A.9, the tenant must be given the right of first refusal to re-occupy the unit upon its next vacancy.

p. When a landlord is required to provide a relocation assistance payment subject to subsection 13.76.130A.9.g, the payment shall be divided among the tenants occupying the rental unit at the time of service of the notice to terminate tenancy.

(i) Within ten days of service of a notice terminating tenancy under subsection 13.76.130A.9, the landlord shall deposit the standard relocation assistance (for households where an occupant has resided one year or more) with the City or its designated agent to be held in escrow. Within ten days after the funds are deposited into escrow, the City shall release the standard relocation assistance to the tenant household, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant's eligibility to receive such assistance.

(ii) In order to claim entitlement to additional relocation assistance under subsection 13.76.130A.9.g, a tenant must notify the landlord and the Rent Stabilization Program in writing that he/she is claiming low-income, disabled, elderly, tenant with minor child status, or a claim that the tenancy began prior to January 1, 1999 (hereinafter "entitlement to additional relocation assistance") per subsection 13.76.130A.9.g within 30 days of filing of notice of termination of tenancy with the Rent Stabilization Program. The landlord shall deposit the additional relocation payment with the Rent Stabilization Program or its designated agent to be held in escrow for any tenant

household who claims entitlement to additional relocation assistance within ten days after such notice claiming entitlement to additional relocation assistance is mailed. Within ten days after the funds are deposited into escrow, the Rent Stabilization Program shall authorize release of the relocation assistance to the tenant household that claims entitlement to additional relocation assistance, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant's eligibility to receive such assistance.

(iii) When a tenant household's eligibility to receive standard or additional relocation assistance as described in subsection 13.76.130A.9.g is disputed, either party may file a Rent Board petition requesting a determination of eligibility or file a claim in a court of competent jurisdiction. The Rent Stabilization Program shall release disputed relocation assistance funds to either the tenant or the landlord upon receipt of either a written agreement by both the landlord and the affected tenant, an order of a court of competent jurisdiction, or an order of a City or Rent Board hearing examiner issued pursuant to a petition process conducted in accordance with applicable Rent Board Regulations.

(iv) The landlord may rescind the notice of termination of tenancy prior to any release of relocation payment to the tenants by serving written notice stating such rescission on the tenants. In such instance, the relocation payment shall be released to the landlord. Subsequent to the release of any relocation payment to the tenants, the landlord may rescind the notice of termination of tenancy only upon the written agreement of the tenants to remain in possession of the rental unit. If the tenants remain in possession of the rental units after service of a landlord's written notice of rescission of the eviction, the tenants shall provide an accounting to the landlord of the amount of the relocation payment expended for moving costs, return to the landlord that portion of the relocation

payment not expended for moving costs, and assign to the landlord all rights to recover the amount of relocation payment paid to third parties. If a rescission occurs under this subsection, the tenant(s) shall continue the tenancy on the same terms as before the notice was served.

(v) Where a landlord has served a notice of termination of tenancy on a tenant prior to the date that this amendment takes effect and the notice of termination of tenancy has not expired, the landlord shall deposit the full relocation payment with the City or its designated agent to be held in escrow for the tenants if the tenants have not vacated the rental unit as of the effective date of this amendment, and the landlord shall pay the full relocation payment to the tenants if the tenants have vacated the rental unit as of the effective date of this amendment. Said deposit in escrow or payment to the tenants shall be made within ten days of the effective date of this amendment.

(vi) Failure of the landlord to make any payment specified herein shall be a defense to any action to recover possession of a rental unit based upon the landlord's termination of tenancy notice pursuant to this subsection (13.76.130A.9). In addition, if the tenants of a rental unit have vacated the unit as a result of a notice of termination of tenancy pursuant to this subsection (13.76.130.A.9), and the landlord fails to make any payment specified herein, the landlord shall be liable to the tenants for three times the amount of the payment as well as reasonable attorney fees.

q. A tenant who prevails in an action brought under this subsection (13.76.130A.9), in addition to any damages and/or costs awarded by the court, shall be entitled to recover all reasonable attorney's fees incurred in bringing or defending the action.

r. At least twice annually, Rent Board staff shall report to the Rent Board regarding the occupancy status of units possession of which has been recovered pursuant to this subsection (13.76.130A.9) within the prior 36 months.

s. If any provision or clause of this subsection (13.76.130A.9) or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses, and to this end the provisions and applications of this subsection are severable.

10. A landlord or lessor seeks in good faith to recover possession of the rental unit for his/her occupancy as a principal residence, where the landlord or lessor has previously occupied the rental unit as his/her principal residence and has the right to recover possession of the unit for his/her occupancy as a principal residence under an existing rental agreement with the current tenants.

11. The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of subsection 13.76.130A.7.c., following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by tenant (if the term of the rental agreement has expired by reason of the completion of repairs on the old rental unit), or of written notice to quit (if the term of the rental agreement has expired by reason of the expiration of a period of 90 days).

B. A landlord's failure to specify good cause as listed above in subsections 1. through 11. of Section 13.76.130A. in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this chapter.

C. In any action to recover possession of a rental unit covered by the terms of this chapter, except an action to recover possession under subsection

13.76.130A.7., 13.76.130.A.8, or 13.76.130.A.11., a landlord shall allege, as to each rental unit on the property, substantial compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with the implied warranty of habitability and compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with Sections 13.76.100 (Rent Ceiling) and 13.76.080 (Rent Registration) of this chapter.

D. The landlord shall file with the board a copy of any notice of termination, notice to quit, and summons and complaint, within ten days after the tenant has been served with such notice or summons and complaint.

Section 5. Severability. If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Attachment 1

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

SUBMITTING TO THE BERKELEY ELECTORATE A MEASURE AMENDING CHAPTER 13.76 OF THE BERKELEY MUNICIPAL CODE TO ALLOW RENT CONTROL TO APPLY TO NEWLY CONSTRUCTED UNITS WHERE STATE AND LOCAL LAW DO NOT PROHIBIT RENT CONTROL, AND SPECIFICALLY TO UNITS BUILT AS THE RESULT OF DEMOLITION OF PREVIOUSLY RENT-CONTROLLED UNITS; ALLOW INCREASED OCCUPANCY OF RENTAL UNITS WITHOUT THREAT OF EVICTION; ELIMINATE PROVISION ALLOWING CITY COUNCIL TO EXEMPT UNITS FROM RENT CONTROL IF CITY'S VACANCY RATE EXCEEDS 5% OVER A SIX-MONTH PERIOD; AND INCREASE EVICTION PROTECTIONS FOR CERTAIN LANDLORD-OCCUPIED PROPERTIES.

WHEREAS, the purposes of the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance are to regulate residential rent increases in the City of Berkeley and to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, in order to help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. This legislation is designed to address the City of Berkeley's housing crisis, preserve the public peace, health and safety, and advance the housing policies of the city with regard to low and fixed income persons, minorities, students, handicapped, and the aged; and

WHEREAS, the Berkeley Rent Stabilization Board will be able to provide greater protections to tenants in newly constructed units; and

WHEREAS, the Berkeley Rent Stabilization Board will be able to provide greater eviction protections for tenants in units that previously did not have such protections; and

WHEREAS, eviction protections will be increased for tenant households that add additional occupants if a landlord has unreasonably refused a tenant's written request; and

WHEREAS, Section 13.76.060 (Decontrol) is to be eliminated; and

WHEREAS, these enumerated amendments to the Rent Stabilization and Eviction for Good Cause Ordinance will prevent displacement of tenants by extending additional protections and services to tenants who do not enjoy such protections under existing law; and

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 8, 2022 General Municipal Election, a measure amending Chapter 13.76 of

the Berkeley Municipal Code to allow rent control to apply to new construction built as the result of demolition of previously rent-controlled units, allow increased occupancy of rental units, eliminate a provision allowing the City Council to exempt units from rent control if the citywide vacancy rate exceeds 5%, and increase eviction protections for certain landlord-occupied properties; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 8, 2022; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the

statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that the City will reimburse the Registrar of Voters for the costs associated with placing the measure on the ballot.

BE IT FURTHER RESOLVED that said proposed Ordinance measure shall appear and be printed upon the ballots to be used at said election as follows:

| CITY OF BERKELEY ORDINANCE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Shall the measure amending the Rent Stabilization and Eviction for Good Cause Ordinance to allow rent control to apply to new construction built as a result of demolition of rent-controlled units, where not prohibited by state law; allow a greater number of occupants per rental unit; eliminate a provision allowing the City Council to exempt units from rent control if the citywide vacancy rate exceeds 5% over six months; and limit evictions for certain landlord-occupied properties be adopted? | YES |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | NO  |

BE IT FURTHER RESOLVED that the text of the measure be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Measure



Exhibit A

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

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING CHAPTER 13.76 OF THE BERKELEY MUNICIPAL CODE TO ALLOW RENT CONTROL TO APPLY TO NEWLY CONSTRUCTED UNITS WHERE STATE AND LOCAL LAW DO NOT PROHIBIT RENT CONTROL AND SPECIFICALLY TO UNITS BUILT AS THE RESULT OF DEMOLITION OF PREVIOUSLY RENT-CONTROLLED UNITS; ALLOW INCREASED OCCUPANCY OF RENTAL UNITS; ELIMINATE PROVISION ALLOWING CITY COUNCIL TO EXEMPT UNITS FROM RENT CONTROL IF CITY'S VACANCY RATE EXCEEDS 5% OVER A SIX-MONTH PERIOD; AND INCREASE EVICTION PROTECTIONS FOR CERTAIN LANDLORD-OCCUPIED PROPERTIES.

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

Section 1. Section 13.76.040 of the Berkeley Municipal Code is amended to read as follows:

**13.76.040 Definitions.**

- A. "Board" refers to the elected Rent Stabilization Board established by this chapter and Article XVII of the Charter of the City of Berkeley.
- B. "Commissioners" means the members of the board who are denominated commissioners.
- C. "Housing services" include but are not limited to repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishing, telephone, parking and any other benefit, privilege or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.

D. "Landlord" means an owner of record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.

E. "Rent" means the consideration, including any deposit, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.

F. "Rental agreement" means an agreement, oral, written or implied, between a landlord and a tenant for use or occupancy of a rental unit and for housing services.

G. "Rental unit" means any unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy (including units covered by the Berkeley Live/Work Ordinance No. 5217-NS), located in the City of Berkeley, together with all housing services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the tenant.

H. "Property" means a parcel of real property which is assessed and taxed as an undivided whole.

I. "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

J. "Skilled nursing facility" means a health facility or a distinct part of a hospital which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24-hour inpatient care and, as a minimum, includes medical, nursing, dietary, pharmaceutical services and an activity program. The facility shall have effective arrangements, confirmed in writing, through which services required by the patients, but not regularly provided within the facility, can be obtained promptly when needed.

K. "Health facility" means any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24-hour stay or longer.

L. "Recognized tenant organization" means any group of tenants, residing in rental units in the same building or in different buildings operated by the same management company, agent or landlord, which requests to be so designated.

M. "Rent ceiling" means the maximum allowable rent which a landlord may charge on any rental unit covered by this chapter.

N. "Base rent ceiling" means the maximum allowable rent established under Section 13.76.100 of this chapter.

O. "Fees" means for the purpose of this chapter, a charge fixed by law for services of public officers or for use of a privilege under control of government.

P. "Nonprofit, accredited institution of higher education" means a post secondary educational institution whose legal status under the California Education Code is verified by an annual validation receipt from the California State Department of Education, and which is accredited by the Western Association of Schools and Colleges or the Association of Theological Schools and which is exempt from taxation under Section 501 (c)(3) of the United States Internal Revenue Code and under Section 23701(d) of the Revenue and Taxation Code, and which, if otherwise required by law to do so, has obtained a valid unrevoked letter or ruling from the United States Internal Revenue Service or from the Franchise Tax Board which states that the organization so qualifies for exemption from taxation.

Q. "Newly Constructed" means a rental unit created after June 30, 1980. For purposes of this definition, the date a unit was created is based upon the date of the first certificate of occupancy issued for the subject unit. However, in the event of the repeal or amendment of Civil Code Section 1954.52, such that "certificate of occupancy" is no longer the operative standard set forth under state law, the date a unit was created shall be determined by the final inspection approval by the City.

R. Notwithstanding any other provision in this ordinance, and to the extent that state or local law does not prohibit a local jurisdiction from regulating the rent on a residential rental unit, such units shall not be exempt as “newly constructed units” and, unless otherwise exempt, shall be covered by all provisions of this chapter. This includes, but is not limited to, any residential rental units created as a result of demolition or replacement where such demolition or replacement is affected via the creation of a “housing development project” as defined in the Housing Crisis Act of 2019 (Senate Bill 330).

Section 2: Section 13.76.050 of the Berkeley Municipal Code is amended to read as follows:

### **13.76.050 Applicability**

This chapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following:

- A. Rental units which are owned by any government agency. However, the exemption of units owned by the Berkeley Housing Authority from the terms of this chapter shall be limited to their exemption from the terms of Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.
- B. Rental units which are rented primarily to transient guests for use or occupancy less than fourteen consecutive days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses. However, the payment of rent every fourteen days or less shall not by itself exempt any unit from coverage by this chapter.
- C. Rental units in nonprofit cooperatives owned and controlled by a majority of the residents.
- D. Rental units leased to tenants assisted under the Section 8 program (42 U.S.C. Section 1437f) or the Shelter Plus Care Program (42 U.S.C. 11403 et. seq.) or similar federally funded rent subsidy program. Except as may be preempted by state or federal

law, the exemption of such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. However, the exemption from Sections 13.76.080, 13.76.110 and 13.76.120 shall apply only for so long as the rent demanded does not exceed the authorized Payment Standard, which, for purposes of this subsection, is the maximum monthly rental assistance potentially available to an assisted household before deducting the household share of income paid for rent and utilities as established by the Berkeley Housing Authority or successor agency. For units where the rent demanded exceeds the Payment Standard, the Payment Standard or an initial rent above the Payment Standard if approved by the Berkeley Housing Authority, as reported to the board by the Berkeley Housing Authority or successor agency, shall become the unit's base rent ceiling and the reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120.

E. Rental units in any hospital, skilled nursing facility, health facility, asylum, or non-profit home for the aged.

F. Rental units in a residential property which is divided into a maximum of four units where one of such units is occupied by the landlord as his/her principal residence. Any exemption of rental units established under this subsection (13.76.050 F.) shall be limited to rental units that would have been exempt under the provisions of this chapter had this chapter been in effect on December 31, 1979. After July 1, 1982, this exemption shall no longer apply to rental units in a residential property which is divided into three or four units. It shall continue to apply to rental units in a residential property which is divided into two units, and which meet all the other requirements of this subsection (13.76.050F). However, the exemption of such rental units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. Rental units which become non-exempt under this provision shall have the provisions of Subsections 13.76.080I and 13.76.100C. applied to them.

G. A rental unit in a residential property where the landlord shares kitchen or bath facilities with the tenant(s) of such rental unit and where the landlord also occupies a unit in the same property as his/her principal residence.

H. For the purposes of Subsections 13.76.050 F. and G., the term landlord shall be defined only as the owner of record holding at least 50% interest in the property.

I. Newly constructed rental units, as defined in Section 13.76.040 Q. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. To the extent that state law permits, the exemption of such newly constructed units shall be limited to the first 20 years after completion of construction.

J. A rental unit which is rented by a nonprofit, accredited institution of higher education to a tenant or tenants who are student(s), faculty, or staff of the institution or of a member school of the Graduate Theological Union, provided, however, that the institution owned the unit as of January 1, 1988.

K. A rental unit in a residential property owned by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that is rented to a low income tenant and subject to a regulatory agreement with a governmental agency that controls the unit's rent levels. However, the exemption for such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings of this chapter and shall apply only for so long as the regulatory agreement is in effect. This exemption shall not apply to rental units at the property that are not subject to a regulatory agreement with a governmental agency or that are rented by a tenant who occupied the unit prior to the property's acquisition by the tax-exempt organization.

L. Rental units in a facility owned or leased by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that has the

primary purpose of operating a treatment, recovery, therapy, sanctuary or shelter program for qualified clients, where such rental units are provided incident to the client's participation in the primary program and where the client has been informed in writing of the temporary or transitional nature of the housing at the inception of his or her participation in the program. However, except as may be preempted by the Transitional Housing Participant Misconduct Act (California Health and Safety Code Sections 50580 et. seq.) or other state or federal law, such rental units shall not be exempted from the terms of Section 13.76.130, Good Cause Required for Eviction. For purposes of Section 13.76.130.A.2, the client's continued eligibility for participation in the treatment, recovery, therapy, sanctuary or shelter program shall be deemed a material term of the client's rental agreement with the program's operator.

M. A rental unit or room which is rented by an active member of a fraternity or sorority recognized by the University of California Berkeley, or a rental unit or room which is rented by an active member of a fraternity or sorority identified by Rent Board Resolution. To qualify for the exemption, the rental unit must be owned by the fraternity or sorority or by an entity whose sole purpose is the maintenance and operation of the fraternity or sorority's rental units for the benefit of the members in order to provide housing to said members at cost.

N. A rental unit in a residential property containing only a Single Family Dwelling (as defined in Subtitle 23F.04 of the Zoning Ordinance) and one lawfully established and fully permitted Accessory Dwelling Unit where the landlord also occupies a unit in the same property as his/her principal residence. This subsection (13.76.050N) shall only apply to properties containing a single Accessory Dwelling Unit, shall only apply to units compliant with all applicable requirements of Chapter 23C.24 ("Accessory Dwelling Units"), and shall only apply to tenancies created after November 7, 2018. However, the exemption of such rental units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

O. A dwelling or a unit alienable separate from the title to any other dwelling unit unless the tenancy commenced before January 1, 1996. However, the exemption of

such units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. A property owner who owns only one residential unit in the City of Berkeley, and occupied that residential unit for 365 consecutive days as their principal residence immediately prior to renting the unit, and is absent from the unit for a period not to exceed 24 months, and such period is specified in the lease, shall also be exempt from the terms of Section 13.76.080, Rent Registration, of this Chapter. The exemptions provided in this Section shall apply only as long as the pertinent provisions of California Civil Code Section 1954.50 et. seq. ("Costa-Hawkins") remain in effect and require such an exemption.

Section 3: Section 13.76.060 of the Berkeley Municipal Code is amended to read as follows:

### **13.76.060 Rent Stabilization Board**

- A. Composition. There shall be in the city of Berkeley an elected rent stabilization board; the board shall consist of nine commissioners. The board shall elect annually as chairperson one of its members to serve in that capacity.
- B. Eligibility. Residents who are duly qualified electors of the city of Berkeley are eligible to serve as commissioners on the board.
- C. Full disclosure of holdings. Candidates for the position of commissioner shall fulfill the requirements as set forth in the City Charter in Article III, Section 6 1/2.

In addition, when filing nomination papers, candidates shall submit a verified statement of their interests and dealings in real property, including but not limited to its ownership, sale or management and investment in and association with partnerships, corporations, joint ventures and syndicates engaged in its ownership, sale or management during the previous three years.



D. Election of commissioners. Commissioners shall be elected at the statewide general election held in November of even numbered years.

E. Terms of office. Commissioners' terms of office shall be as set forth in Article XVII of the Berkeley City Charter.

F. Powers and duties. The elected rent stabilization board shall have the power to determine, to arbitrate and to set rent levels, whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance, and to administer any Berkeley program which regulates rents and evictions. The board shall have the following powers and duties:

1. Set the rent ceilings for all rental units.
2. Require registration of all rental units under Section 13.76.080.
3. Publicize the manner in which the base rent ceiling is established under Section 13.76.100.
4. To make adjustments in the rent ceiling in accordance with Sections 13.76.110 and 13.76.120.
5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this chapter.
6. To issue orders, rules and regulations, conduct hearings and charge fees as set below.
7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.
8. Report annually to the city council of the city of Berkeley on the status of rental housing units covered by this chapter.
9. Request the City Council to remove rent controls under Section 13.76.060Q.

10. Administer oaths and affirmations and subpoena witnesses and relevant documents.
11. Establish rules and regulations for settling civil claims under Section 13.76.150.
12. Seek injunctive relief under Section 13.76.150.
13. Pursue civil remedies in courts of appropriate jurisdiction.
14. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this chapter.
15. Hold public hearings.
16. Charge and collect registration fees, including penalties for late payments.
17. Other powers necessary to carry out the purposes of this chapter which are not inconsistent with the terms of this chapter.
18. Except as provided in Section 13.76.060N of this chapter, the board shall finance its reasonable and necessary expenses for its operation without the use of general fund monies of the city of Berkeley.

G. Rules and Regulations: The board shall issue and follow such rules and regulations, including those which are contained in this Chapter, as will further the purposes of this Chapter. The board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the city of Berkeley.

All rules and regulations and relevant documents explaining the decisions, orders, and policies of the board shall be kept in the board's office and shall be available to the public for inspection and copying.

The board shall publicize this Chapter so that all residents of Berkeley will have the opportunity to become informed about their legal rights and duties under this Chapter.

The board shall prepare a brochure which fully describes the legal rights and duties of landlords and tenants under this Chapter. The brochure shall be made available to the public.

H. Meetings: The board shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the commissioners of the board. The board shall hold its initial meeting no later than July 15, 1980.

I. Quorum: Five commissioners shall constitute a quorum for the board.

J. Voting: The affirmative vote of five commissioners of the board is required for a decision, including all motions, rules, regulations, and orders of the board.

K. Compensation: The rent stabilization board shall be a working board. Commissioners shall be paid compensation and benefits in an amount set by the board in order to compensate commissioners for their time and work performed as required by this chapter and the city charter.

L. Dockets: The board shall maintain and keep in its office all hearing dockets, which shall be available for public inspection.

M. Vacancies: If a vacancy shall occur on the board, a qualified person to fill such vacancy shall be selected in accordance with the procedures set forth in Article V of the City Charter.

N. Financing: The board shall finance its reasonable and necessary expenses by charging landlords annual registration fees in amounts deemed reasonable by the board. The registration fee for partially-exempt units shall reasonably approximate the cost of registration and counseling services for such units, and shall not include the cost of services from which such units are exempt. Such registration fees shall not be passed on to tenants in the form of rent increases except with the express prior approval of the board. The board is also empowered to request and receive funding, when and if necessary, from the city of Berkeley and/or any other available source for its reasonable and necessary expenses, including expenses incurred at the request of the City.

O. Staff: The board shall be a working board and shall employ such staff as may be necessary to perform its functions efficiently and as provided by Berkeley Ordinance.

P. Registration: The board shall require the registration of all rental units covered by this chapter as provided for in Section 13.76.080. The board may also require landlords to provide current information supplementing their registration statements.

~~Q.— Decontrol: If the annual average vacancy rate for all rental units in the city of Berkeley exceeds five percent over a six month period, the city council is empowered, upon request by the board, at its discretion and in order to achieve the purposes of this chapter, to exempt rental units covered by this chapter from Sections 13.76.080, 13.76.100, 13.76.110 and 13.76.120 of this chapter. In determining the vacancy rate for the city of Berkeley the board and the city council shall consider all available data and may conduct their own survey. If units are exempted pursuant to this Subsection Q coverage shall be reimposed if the city council finds that the average annual vacancy rate has thereafter fallen below five percent. Prior to any decision to exempt or renew coverage for rental units under this Subsection Q the board shall hold at least two public hearings.~~

~~R.~~ Q. Conflict of Interest: Commissioners shall be subject to the requirements of the California Political Reform Act and other applicable state and local conflict of interest codes. Commissioners shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a landlord or tenant. However, a commissioner shall be disqualified from ruling on a petition for an individual adjustment of a rent ceiling under Section 13.76.120, where the commissioner is either the landlord of the property or a tenant residing in the property that is involved in the petition.

Section 4: Section 13.76.130 of the Berkeley Municipal Code is amended to read as follows

**13.76.130 Good cause required for eviction**

A. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this chapter unless said landlord shows the existence of one of the following grounds:

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days. Rent that is lawfully withheld pursuant to emergency legislation that authorizes rent withholding during the effective period of a state of emergency applicable in Berkeley shall not constitute grounds for recovery of possession except as expressly provided in the applicable emergency legislation. Emergency legislation adopted during the emergency may prohibit recovery of possession for lawfully withheld rent even after the expiration of a state or local emergency.

2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement. Notwithstanding any contrary provision in this chapter or in the rental agreement, a landlord is not entitled to recover possession of a rental unit under this subsection where a tenant permits his or her rental unit to be occupied by a subtenant, provided:

a. The landlord has unreasonably withheld consent to the subtenancy; and

- b. The tenant remains an actual occupant of the rental unit; and
- c. The number of tenants and subtenants actually occupying the rental unit does not exceed ~~the number of occupants originally allowed by the rental agreement or the board's regulations, whichever is greater~~ the maximum number of occupants legally allowed under Section 503.2 of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922, except where prohibited by law.
- d. Withholding of consent by the landlord shall be deemed to be unreasonable where:
  - (i) ~~The tenant's written request for consent was given at least two weeks prior to commencement of the subtenancy; tenant has made a written request to the landlord to either sublet the unit and/or add additional occupants, and the landlord has failed to respond in writing within fourteen (14) days of the tenant's request; or~~
  - (ii) The proposed new subtenant has, upon the landlord's written request, completed the landlord's standard form application or provided sufficient information to allow the landlord to conduct a standard background check, including references and credit, income and other reasonable background information, and the proposed new subtenant or additional occupant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and or
  - ~~(iii) The proposed new subtenant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and~~
  - ~~(iii iv)~~ (iii iv) The landlord has not articulated in writing a well-founded reason for refusing consent. A landlord's reasonable denial may not be based on the proposed occupant's lack of credit worthiness or income if that occupant will not be legally obligated to pay some or all of the rent to the landlord.

e. Where a landlord can establish that the proposed additional occupant presents a direct threat to the health, safety, or security of other residents of the property, the landlord shall have the right to deny the proposed tenant's occupancy.

f. Before initiating an action to recover possession based on the violation of a lawful obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation that provides the tenant with a minimum of fourteen (14) days to cure the violation. The notice must also inform the tenant(s) of their right to add subtenants and/or add additional occupants pursuant to this section.

3. The tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.
4. The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.
5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises or the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161.
6. The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.
7. a. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building or where necessary under an outstanding notice of code

violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises.

b. Where such repairs can be completed in a period of 60 or fewer days, and the tenant, within 30 days after the service of a notice of termination of his or her tenancy, agrees in writing to vacate the premises during the period required to complete the repairs at no charge to the landlord, other than abatement of the obligation to pay rent for the premises during the period required to complete the repairs, the landlord may not recover possession pursuant to this subsection (13.76.130A.7.) unless the tenant shall fail or refuse to vacate the premises in accordance with such agreement.

c. Where the landlord owns any other residential rental units in the City of Berkeley, and any such unit is vacant and available at the time of premises or the entry of a judgment by a court of competent jurisdiction awarding possession of the premises to the landlord, the landlord shall, as a condition of obtaining possession pursuant to this subsection (13.76.130A.7.), notify tenant in writing of the existence and address of each such vacant rental unit and offer tenant the right, at the tenant's option:

(i) To enter into a rental agreement (to be designated as a "temporary rental agreement") on any available rental unit which the tenant may choose, at a rent not to exceed the lesser of the lawful rent which may be charged for such available rental unit or the lawful rent in effect, at the time of the notice of termination of tenancy, on the unit being vacated, said rental agreement to be for a term of the lesser of ninety days or until completion of repairs on the rental unit being vacated by tenant; or

(ii) To enter into a new rental agreement or lease for such available rental unit at a rent not to exceed the lawful rent which may be charged for such available rental unit.



d. Where the landlord recovers possession under this subsection (13.76.130A.7.), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. In the event the landlord files an application for an individual rent adjustment within six months following the completion of the work, the tenant shall be a party to such proceeding the same as if he or she were still in possession, unless the landlord shall submit, with such application, a written waiver by the tenant of his or her right to re-occupy the premises pursuant to this subsection.

8. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition.

9. Owner Move-in Evictions.

a. The landlord seeks in good faith with honest intent and without ulterior motive to recover possession for his/her own use and occupancy as his/her principal residence for a period of at least 36 consecutive months; or

b. For the use and occupancy as the principal residence by the landlord's spouse or by the landlord's child, or parent for a period of at least 36 consecutive months.

c. For the purposes of this subsection (13.76.130A.9.), the term landlord shall be defined as the owner of record, as of the time of giving of a notice terminating tenancy, and at all times thereafter to and including the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord, holding at least a 50% interest in the property and shall not include a lessor, sublessor, or agent of the owner of record.

d. All notices terminating tenancy pursuant to subsection 13.76.130.A.9 shall include the following: the existence and

potential availability of relocation assistance under subsection 13.76.130A.9.g; the existence of tenant protections for families with minor children as defined in subsection 13.76.130A.9.k; the name and relationship of any qualified relative for purposes of subsection 13.76.130A.9.b; and the landlord's ownership interest in any residential properties in the City of Berkeley where such interest, in any form whatsoever, is ten percent (10%) or greater. The landlord shall, within ten days of giving notice, file a copy of the notice terminating tenancy with the Rent Board.

e. The landlord may not recover possession under this subsection (13.76.130A.9.) if a comparable unit, owned by the landlord in the City of Berkeley, was, at the time of the landlord's decision to seek to recover possession of the rental unit, already vacant and available, or if a comparable unit, owned by the landlord in the City of Berkeley, thereafter becomes vacant at any time until the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord. In an action by or against the tenant, evidence that a comparable unit was vacant and available within ninety days prior to the date of a notice terminating the tenant's tenancy shall create a presumption that such unit was vacant and available at the time of the landlord's decision to seek to recover possession of the premises. "Presumption" means that the court must find the existence of the presumed fact unless and until the contrary is proven by a preponderance of the evidence.

f. The landlord shall offer any non-comparable unit owned by the landlord to the tenant if a non-comparable unit becomes available before the recovery of possession of the tenant's unit at a rate based on the rent the tenant is paying with an upward or downward adjustment based on the condition, size, and other amenities of the replacement unit. Disputes concerning the initial rent for the replacement unit shall be determined by the Rent Board.

g. Where a landlord recovers possession of a unit under subsection 13.76.130A.9, the landlord is required to provide standard relocation assistance to tenant households where at least one occupant has resided in the unit for one year or more in the amount of \$15,000. The landlord is required to provide an additional \$5,000 relocation assistance to tenant households that qualify as low-income; or include disabled or elderly tenants; minor children; or tenancies which began prior to January 1, 1999. The relocation fees set forth above shall be increased in accordance with the rules set forth in subsection 13.76.130A.9.h below. The procedures for payment of this relocation assistance are set forth below in subsection 13.76.130A.9.p.(i) through (iv). The following definitions apply for any tenant households evicted for owner move-in under subsection 13.76.130A.9:

(i) "Low-income tenants" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, or as otherwise defined in Health and Safety Code Section 50079.5.

(ii) A person is "disabled" if he/she has a physical or mental impairment that limits one or more of a person's major life activities within the meaning of the California Fair Housing and Employment Act (Government Code § 12926).

(iii) "Elderly" is defined as sixty (60) years of age or older.

(iv) "Minor child" means a person who is under 18 years of age.

(v) "Tenancy began prior to January 1, 1999" is a tenancy where an "original occupant" (as defined by Berkeley Rent Board Regulation) still permanently resides in the rental unit.

h. Effective January 1 of each year beginning in 2018, the fees set forth above in subsection 13.76.130A.9.g., may be increased in an amount based on the Consumer Price Index - All Urban Consumers in

the San Francisco-Oakland-San Jose Region averaged for the 12-month period ending June 30, of each year, as determined and published by United States Department of Labor. Any increase shall be published by the Board on or before October 31st of each year.

i. It shall be evidence that the landlord has acted in bad faith if the landlord or the landlord's qualified relative for whom the tenant was evicted does not move into the rental unit within three months from the date of the tenant's surrender of possession of the premises or occupy said unit as his/her principal residence for a period of at least 36 consecutive months.

j. Once a landlord has successfully recovered possession of a rental unit pursuant to subsection 13.76.130A.9.a., then no other current or future landlords may recover possession of any other rental unit on the property pursuant to subsection 13.76.130A.9.a. It is the intention of this subsection that only one specific unit per property may be used for such occupancy under subsection 13.76.130A.9.a and that once a unit is used for such occupancy, all future occupancies under subsection 13.76.130A.9.a must be of that same unit.

k. A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit has a custodial or family relationship with a minor child who is residing in the unit, the tenant with the custodial or family relationship has resided in the unit for 12 months or more, and the effective date of the notice of termination of tenancy falls during the school year. The term "school year" as used in this subsection means the first day of instruction for the Fall Semester through the first day of the month following the last day of instruction for the Spring Semester, as posted on the Berkeley Unified School District website for each year.

(i) For purposes of subsection 13.76.130A.9.k, the term "custodial relationship" means that the person is a legal guardian of the child, or has a caregiver's authorization affidavit for the child as defined

by Section 6550 of the California Family Code, or that the person has provided full-time custodial care of the child pursuant to an agreement with the child's legal guardian or court-recognized caregiver and has been providing that care for at least one year or half of the child's lifetime, whichever is less. The term "family relationship" means that the person is the biological or adoptive parent, grandparent, brother, sister, aunt or uncle of the child, or the spouse or domestic partner of such relations.

I. A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit:

(i) Is 60 years of age or older and has been residing on the property for five years or more; or

(ii) Is disabled and has been residing on the property for five years or more; or

(iii) Has resided on the property for five years or more and the landlord has a ten percent (10%) or greater ownership interest, in any form whatsoever, in five or more residential rental units in the City of Berkeley.

m. A tenant who claims to be a member of one of the classes protected by subsection 13.76.130A.9.I must submit a statement, with supporting evidence, to the landlord. A tenant's failure to submit a statement at any point prior to the trial date of an unlawful detainer action for possession of the tenant's unit shall be deemed an admission that the tenant is not protected by subsection 13.76.130A.9.I. A landlord may challenge a tenant's claim of protected status by raising it as an issue at trial in an unlawful detainer action for possession of the tenant's unit.

n. The provisions of subsection 13.76.130A.9.I shall not apply to the following situations:

- (i) Where a person is the owner of three or fewer residential units in the City of Berkeley and has no greater than a nine percent (9%) ownership interest in any other residential unit in the City of Berkeley; or
  - (ii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I and the landlord's qualified relative who is seeking possession of a unit subject to subsection 13.76.130A.9.b is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.I.(ii) above; or
  - (iii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I, the landlord has owned the unit for which possession is being sought subject to subsection 13.76.130A.9.a for five years or more and is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.I.(ii).
- o. Where a landlord recovers possession under Subsection 13.76.130A.9, the tenant must be given the right of first refusal to re-occupy the unit upon its next vacancy.
- p. When a landlord is required to provide a relocation assistance payment subject to subsection 13.76.130A.9.g, the payment shall be divided among the tenants occupying the rental unit at the time of service of the notice to terminate tenancy.
- (i) Within ten days of service of a notice terminating tenancy under subsection 13.76.130A.9, the landlord shall deposit the standard relocation assistance (for households where an occupant has resided one year or more) with the City or its designated agent to be held in escrow. Within ten days after the funds are deposited

into escrow, the City shall release the standard relocation assistance to the tenant household, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant's eligibility to receive such assistance.

(ii) In order to claim entitlement to additional relocation assistance under subsection 13.76.130A.9.g, a tenant must notify the landlord and the Rent Stabilization Program in writing that he/she is claiming low-income, disabled, elderly, tenant with minor child status, or a claim that the tenancy began prior to January 1, 1999 (hereinafter "entitlement to additional relocation assistance") per subsection 13.76.130A.9.g within 30 days of filing of notice of termination of tenancy with the Rent Stabilization Program. The landlord shall deposit the additional relocation payment with the Rent Stabilization Program or its designated agent to be held in escrow for any tenant household who claims entitlement to additional relocation assistance within ten days after such notice claiming entitlement to additional relocation assistance is mailed. Within ten days after the funds are deposited into escrow, the Rent Stabilization Program shall authorize release of the relocation assistance to the tenant household that claims entitlement to additional relocation assistance, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant's eligibility to receive such assistance.

(iii) When a tenant household's eligibility to receive standard or additional relocation assistance as described in subsection 13.76.130A.9.g is disputed, either party may file a Rent Board petition requesting a determination of eligibility or file a claim in a court of competent jurisdiction. The Rent Stabilization Program shall release disputed relocation assistance funds to either the tenant or the landlord upon receipt of either a written agreement by both the landlord and the affected tenant, an order of a court of competent jurisdiction, or an order of a City or Rent Board hearing

examiner issued pursuant to a petition process conducted in accordance with applicable Rent Board Regulations.

(iv) The landlord may rescind the notice of termination of tenancy prior to any release of relocation payment to the tenants by serving written notice stating such rescission on the tenants. In such instance, the relocation payment shall be released to the landlord. Subsequent to the release of any relocation payment to the tenants, the landlord may rescind the notice of termination of tenancy only upon the written agreement of the tenants to remain in possession of the rental unit. If the tenants remain in possession of the rental units after service of a landlord's written notice of rescission of the eviction, the tenants shall provide an accounting to the landlord of the amount of the relocation payment expended for moving costs, return to the landlord that portion of the relocation payment not expended for moving costs, and assign to the landlord all rights to recover the amount of relocation payment paid to third parties. If a rescission occurs under this subsection, the tenant(s) shall continue the tenancy on the same terms as before the notice was served.

(v) Where a landlord has served a notice of termination of tenancy on a tenant prior to the date that this amendment takes effect and the notice of termination of tenancy has not expired, the landlord shall deposit the full relocation payment with the City or its designated agent to be held in escrow for the tenants if the tenants have not vacated the rental unit as of the effective date of this amendment, and the landlord shall pay the full relocation payment to the tenants if the tenants have vacated the rental unit as of the effective date of this amendment. Said deposit in escrow or payment to the tenants shall be made within ten days of the effective date of this amendment.



(vi) Failure of the landlord to make any payment specified herein shall be a defense to any action to recover possession of a rental unit based upon the landlord's termination of tenancy notice pursuant to this subsection (13.76.130A.9). In addition, if the tenants of a rental unit have vacated the unit as a result of a notice of termination of tenancy pursuant to this subsection (13.76.130.A.9), and the landlord fails to make any payment specified herein, the landlord shall be liable to the tenants for three times the amount of the payment as well as reasonable attorney fees.

q. A tenant who prevails in an action brought under this subsection (13.76.130A.9), in addition to any damages and/or costs awarded by the court, shall be entitled to recover all reasonable attorney's fees incurred in bringing or defending the action.

r. At least twice annually, Rent Board staff shall report to the Rent Board regarding the occupancy status of units possession of which has been recovered pursuant to this subsection (13.76.130A.9) within the prior 36 months.

s. If any provision or clause of this subsection (13.76.130A.9) or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses, and to this end the provisions and applications of this subsection are severable.

10. A landlord or lessor seeks in good faith to recover possession of the rental unit for his/her occupancy as a principal residence, where the landlord or lessor has previously occupied the rental unit as his/her principal residence and has the right to recover possession of the unit for his/her occupancy as a principal residence under an existing rental agreement with the current tenants.

11. The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of subsection 13.76.130A.7.c., following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by tenant (if the term of the rental agreement has expired by reason of the completion of repairs on the old rental unit), or of written notice to quit (if the term of the rental agreement has expired by reason of the expiration of a period of 90 days).

B. A landlord's failure to specify good cause as listed above in subsections 1. through 11. of Section 13.76.130A. in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this chapter.

C. In any action to recover possession of a rental unit covered by the terms of this chapter, except an action to recover possession under subsection 13.76.130A.7., 13.76.130.A.8, or 13.76.130.A.11., a landlord shall allege, as to each rental unit on the property, substantial compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with the implied warranty of habitability and compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with Sections 13.76.100 (Rent Ceiling) and 13.76.080 (Rent Registration) of this chapter.

D. The landlord shall file with the board a copy of any notice of termination, notice to quit, and summons and complaint, within ten days after the tenant has been served with such notice or summons and complaint.

Section 5. Severability. If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.



**Rent Stabilization Board  
Office of the Executive Director**

**ACTION CALENDAR**

July 26, 2022

*(Continued from July 12, 2022)*

TO: Honorable Mayor and Members of the City Council

FROM: 4 x 4 Joint Committee on Housing City Council/Rent Board

SUBMITTED BY: Matt Brown, General Counsel, Rent Stabilization Board

SUBJECT: Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)

**RECOMMENDATION**

1. Adopt a Resolution placing the proposed amendments to the Rent Stabilization and Eviction for Good Cause Ordinance on the ballot of the November 8, 2022 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

**SUMMARY**

The Rent Stabilization Board and 4 x 4 Committee on Housing City Council/Rent Board has recommended a set of amendments to the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. Chapter 13.76). These amendments set forth the following changes:

1. Amend the Rent Stabilization and Eviction for Good Cause Ordinance to allow for rent control to attach to all residential rental units where state law does not prohibit it, and specifically allow Council to designate new units as rent-controlled when they are created pursuant to demolition projects as allowed by Senate Bill 330;
2. Eliminate the good cause for Eviction that allows landlords to evict tenants who have

exceeded previously established occupancy limits unless the number of occupants currently in the rental unit exceeds the maximum number of occupants legally allowed under Section 503(b)(2) of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922;

3. Eliminate B.M.C. Section 13.76.060Q, which allows Council, upon request by the Board, to decontrol rental units in the event the annual average vacancy rate for all rental units in the City of Berkeley exceeds five percent over a six-month period;
4. Add eviction protections for certain units that do not currently have them.

### FISCAL IMPACTS OF RECOMMENDATION

There will be a financial cost to the City limited to the costs associated with placing the measure on the ballot. Each additional measure added to the ballot increases the costs to the city.

If more rental units are fully covered by the Ordinance, Registration fees currently mandated by B.M.C. 13.76.080 for fully covered rental units may decrease as a result of economies of scale to provide services to all fully-covered units.

### CURRENT SITUATION AND ITS EFFECTS

Berkeley voters passed Measure D in June 1980, establishing the current Berkeley Rent Stabilization and Eviction for Good Cause Ordinance as codified in Berkeley Municipal Code Chapter 13.76. Berkeley City Council has, periodically, placed measures on the general ballot for the voters to decide when the Board recommends amendments.

1. Expansion of Rent Control to Cover Units Created as the Result of Demolition Pursuant to SB 330 and make clear that Rent Control Applies to all Units unless Specifically Prohibited by State Law

The Rent Ordinance currently defines “new construction” as a rental unit that was created after June 30, 1980. The date a unit was created is based upon the date of issuance of the first certificate of occupancy. While newly constructed units are partially covered by the Rent Ordinance (Registration, Security Deposit Interest, and Good Cause Eviction Protections), they are not covered by rent control.

2. Allow for Increased Occupancy of Rental Units Without Threat of Eviction

The Ordinance specifically provides a ground for eviction when any subletting by the tenant household results in an increase above the base occupancy level. A tenant household may also be evicted from their rental unit if they substantially violate a material term of the rental agreement,

and a landlord may argue that households that exceed the base occupancy level may be evicted for this reason.

3. Eliminate “Decontrol” Clause from the Ordinance

The elected Board may request that Council decontrol rental units if the annual average vacancy rate for all rental units in the city of Berkeley exceeds five percent over a six-month period.

4. Add Eviction Protections to Rental Units that do not Currently Receive Them

The Rent Ordinance fully exempts a subset of owner-occupied duplexes from the Rent Ordinance. These “golden duplexes” are ones that are currently owner-occupied as a principal residence and were owner-occupied (not necessarily by the same owner) on December 31, 1979.

The Rent Ordinance also fully exempts rental units on properties with a permitted Accessory Dwelling Unit where one unit on the property is owner-occupied as a principal residence and the tenancy was created after November 7, 2018.

Tenant occupied units on these properties do not have eviction protections articulated in the Rent Ordinance when the property owner occupies a unit on the property as their principal residence.

BACKGROUND

1. Expansion of Rent Control to Cover Units Created as the Result of Demolition Pursuant to SB 330 and make clear that Rent Control Applies to all Units unless Specifically Prohibited by State Law

SB 330 allows cities to impose rent control protections on units that are built as the result of demolition of previously-controlled units. The Housing Crisis Act of 2019 requires all housing projects that demolish existing residential units to create as least as many residential units as are being demolished. Projects that contain "protected units," which include residential units that have been subject to a local rent control program within the previous five years, are required to provide replacement units at an affordable rent (or sales price) with the same number of bedrooms as the demolished unit. The affordability level of a replacement unit is based on the income level of the last household occupying the demolished unit and must be rented (or sold) at a rate that is affordable to occupants of the same income category or lower. If a "protected unit" was last occupied by persons or families above the low-income category, the affected city has the option to require that the housing project provide: 1) a replacement unit affordable to low-income households for a period of at least 55 years, or 2) a replacement unit that complies with the jurisdiction's rent or price control ordinance.

Currently, the Rent Control Ordinance expressly exempts newly constructed units from Chapters 10 (Establishment of Base Rent Ceiling and Posting), 11 (Annual General Adjustment of Rent Ceilings) and 12 (Individual Adjustments of Rent Ceilings) of Ordinance. These residential units are subject to the registration requirements of Measure MM, are covered by good cause for eviction, and are entitled to annual security deposit interest, but they are not subject to local rent controls. SB 330 would allow for these new units created as the result of demolition to be fully covered by the rent control provisions of the ordinance should the City choose that option when approving new construction that was the result of demolition of existing qualifying units.

The 4 x 4 Committee also directed staff to draft language that would amend the Rent Ordinance to make clear that all newly constructed units are fully rent-controlled unless otherwise prohibited by state law.

The Board voted unanimously to support this proposal on March 17, 2022, and the 4 x 4 Committee voted on May 3, 2022, to support this proposal. The approved language is set forth in Attachment A, in subsections 13.76.040 and 13.76.050.

## 2. Allow for Increased Occupancy of Rental Units Without Threat of Eviction

The 4 x 4 Committee also recommended that the Ordinance be amended to prohibit evictions based on the addition of occupants if the landlord has unreasonably refused the tenant's written request, including a refusal based on the number of occupants allowed by the rental agreement or lease.

Tenants' ability to add additional occupants to their household can be a precarious proposition given that a good cause for eviction lies when a tenant household substantially violates a material term of the rental agreement. While tenants are currently protected from eviction when there is one-for-one replacement of tenants, the Ordinance specifically provides a ground for eviction when any subletting by the tenant household results in an increase above the base occupancy level (B.M.C. 13.76.130A.2.(c)).

While the Board has express authority to regulate the manner and grounds for which rents may be increased or decreased,<sup>1</sup> the grounds for eviction are hard-coded in the Ordinance (B.M.C. 13.76.130.). One such basis for eviction is when the "...tenant has continued...to substantially violate any of the material terms of the rental agreement..."(B.M.C. 13.76.130A.2.). Thus, while Board Regulation 1270 can be amended to allow for an increase in the base occupancy level of a unit without a corresponding rent increase, the regulation cannot override the good cause for eviction based on a lease violation, such as when a household has more occupants than those allowed pursuant to the initial agreement between the landlord and tenant.

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<sup>1</sup> See B.M.C. Section 13.76.120C.

The current proposal would allow tenants to exceed the base occupancy limits without risk of eviction unless the number of occupants exceeds the maximum number of occupants legally allowed under 503(b)(2) of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922. Landlords would still have the ability to deny occupancy to a tenant if the proposed subtenant does not meet the landlord's customary occupancy qualifications or if the proposed subtenant presents a direct threat to the health, safety, or security of other residents of the property.

The Board voted unanimously to support this proposal on March 17, 2022, and the 4 x 4 Committee voted on May 3, 2022, to support this proposal. The approved language is set forth in Attachment A, in subsection 13.76.130.

### 3. Eliminate "Decontrol" Clause from the Ordinance

The Rent Ordinance has a section that allows the Berkeley City Council (upon request by the Board) to exempt units from rent control should vacancy rates reach 5% over a six-month period.<sup>2</sup> While Council has the discretion to eliminate rent controls for units (it is not mandatory), this clause is inconsistent with the Charter and most all of the Rent Ordinance which establishes the Board's separate authority to regulate rents and administer the law independent of any other elected or appointed body.

Moreover, given that both the Charter and Rent Ordinance are voter-adopted initiatives, it follows that the issue of decontrol would be put before the voters in the event that the community decides to eliminate local rent control. Council has no other authority to interfere either substantively or procedurally in the Board's administration, so removing this clause will be consistent with the overall operation of the rent program and the law the Board and staff administer.

The proposal would be to simply eliminate this paragraph from the Rent Ordinance.

The Board voted unanimously to support this proposal on March 17, 2022, and the 4 x 4 Committee voted on May 3, 2022, to support this proposal. The approved language is set forth in Attachment A, in subsection 13.76.060.

### 4. Add Eviction Protections to Rental Units that do not Currently Receive Them

The 4 x 4 Committee voted on a proposal that would protect more tenants from eviction. The Committee particularly expressed concern regarding vulnerable tenants who may lose their homes following the expiration of the eviction moratorium associated with the COVID-19

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<sup>2</sup> BMC Section 13.76.060Q.

Pandemic (B.M.C. Section 13.110).

The Committee requested that good cause for eviction protections articulated in B.M.C. Section 13.76.130 be extended to tenants in properties that are currently fully exempt from the Ordinance; namely the Accessory Dwelling Unit exemption as defined in B.M.C. Section 13.76.050N. and the “golden duplex” exemption as defined in B.M.C. Sections 13.76.050F. and 13.76.050H. Both of these properties are fully exempt when the property owner principally resides in a unit on the property. The proposal would only add good cause eviction protections pursuant to B.M.C. Section 13.76.130; it would not remove any other exemptions from the Ordinance for these properties.

The 4 x 4 Committee voted on May 3, 2022, to support this proposal. The approved language is set forth in Attachment A, in subsection 13.76.050.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

### RATIONALE FOR RECOMMENDATION

This report and its recommendations are the result of direction from the 4 x 4 Committee, which voted on May 3, 2022 to recommend to the City Council to place the proposed amendments on the ballot for November 8, 2022. The Rent Stabilization Board also voted on March 17, 2020, to support the first three proposals.

### ALTERNATIVE ACTIONS CONSIDERED

There was some discussion at both the Board and the 4 x 4 Committee of including a clause that makes explicit that California Civil Code Section 1954.52(b) allows Council to attach rent control to units that would otherwise qualify as new construction in the event that projects allowed for certain density bonuses, but this ultimately did not gain sufficient traction and is not a part of the proposed amendments. The Committee discussed at some length that they thought this was already allowed by the current amendments included in B.M.C. 13.76.040R. which make explicit that all new construction is fully covered by the Ordinance in the event that state law does not specifically prohibit it. In any event, the City will need to make more sweeping changes to the Planning/Zoning Ordinances in order to implement these changes should Council wish to do so in the future.

### CONTACT PERSON

Matt Brown, General Counsel, Rent Stabilization Board, (510) 981-4905



Attachments:

1. Resolution

Exhibit A: Ordinance as Amended

2. May 3, 2022 Staff Report to 4 x 4 Committee

Attachment 1

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

SUBMITTING TO THE BERKELEY ELECTORATE A MEASURE TO AMEND BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO ALLOW, TO THE EXTENT THAT STATE OR LOCAL LAW PERMITS, FOR THE REGULATION OF NEWLY CONSTRUCTED UNITS, INCLUDING BUT NOT LIMITED TO, UNITS CREATED PURSUANT TO SENATE BILL 330 (HOUSING CRISIS ACT OF 2019); TO ADD EVICTION PROTECTIONS FOR RENTAL UNITS IN A RESIDENTIAL PROPERTY CONSISTING OF TWO UNITS WHERE ONE OF THE UNITS IS OCCUPIED BY A LANDLORD AS THEIR PRINCIPAL PLACE OF RESIDENCE AND WHERE ONE OF THE TWO UNITS WAS OWNER-OCCUPIED AS OF DECEMBER 31, 1979 AND EVICTION PROTECTIONS TO TENANTS IN RENTAL UNITS CONTAINING A SINGLE FAMILY DWELLING AND ONE LAWFULLY ESTABLISHED ACCESSORY DWELLING UNIT WHERE THE LANDLORD OCCUPIES A UNIT IN THE SAME PROPERTY; TO PROHIBIT EVICTIONS BASED ON THE ADDITION OF OCCUPANTS IF THE LANDLORD HAS UNREASONABLY REFUSED THE TENANT'S REQUEST; AND TO ELIMINATE SECTION 13.76.060 (DECONTROL).

WHEREAS, the purposes of the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance are to regulate residential rent increases in the City of Berkeley and to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, in order to help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. This legislation is designed to address the City of Berkeley's housing crisis, preserve the public peace, health and safety, and advance the housing policies of the city with regard to low and fixed income persons, minorities, students, handicapped, and the aged; and

WHEREAS, the Berkeley Rent Stabilization Board will be able to provide greater protections to tenants in newly constructed units; and

WHEREAS, the Berkeley Rent Stabilization Board will be able to provide greater eviction protections for tenants in units that previously did not have such protections; and

WHEREAS, eviction protections will be increased for tenant households that add additional occupants if a landlord has unreasonably refused a tenant's written request; and

WHEREAS, Section 13.76.060 (Decontrol) is to be eliminated; and

WHEREAS, these enumerated amendments to the Rent Stabilization and Eviction for Good Cause Ordinance will prevent displacement of tenants by extending additional

protections and services to tenants who do not enjoy such protections under existing law; and

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 8, 2022 General Municipal Election, a measure to amend Berkeley Municipal Code Chapter 13.76 to allow for the regulation of newly constructed units if permissible under state or local law; to provide eviction protections under the Ordinance for tenants in properties consisting of two units where one unit is a landlord's principal place of residence and one unit was a landlord's principal place of residence as of December 31, 1979 and eviction protections to tenants residing on a property containing a single family dwelling and a lawfully established Accessory Dwelling Unit where the landlord occupies a unit at the property; to provide eviction protections for tenants that add additional occupants to their household after the landlord has unreasonably refused a written request to do so; and to eliminate Section 13.76.060 (Decontrol) from the Ordinance; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 8, 2022; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that the City will reimburse the Registrar of Voters for the costs associated with placing the measure on the ballot.

BE IT FURTHER RESOLVED that said proposed Ordinance measure shall appear and be printed upon the ballots to be used at said election as follows:

| CITY OF BERKELEY ORDINANCE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Shall the measure amending the Rent Stabilization and Eviction for Good Cause Ordinance to: allow, to the extent that state or local permits, for the regulation of newly-constructed units; to provide eviction protections to tenants in certain two-unit properties where such eviction protections previously did not apply; to provide eviction protections to tenants who add additional occupants after the landlord has unreasonably denied such a request; and to eliminate Section 13.76.060 be adopted? | YES |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | NO  |

BE IT FURTHER RESOLVED that the text of the measure be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Measure

Exhibit A

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

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO ALLOW, TO THE EXTENT THAT STATE OR LOCAL LAW PERMITS, FOR THE REGULATION OF NEWLY CONSTRUCTED UNITS, INCLUDING BUT NOT LIMITED TO, UNITS CREATED PURSUANT TO SENATE BILL 330 (HOUSING CRISIS ACT OF 2019); TO ADD EVICTION PROTECTIONS FOR RENTAL UNITS IN A RESIDENTIAL PROPERTY CONSISTING OF TWO UNITS WHERE ONE OF THE UNITS IS OCCUPIED BY A LANDLORD AS THEIR PRINCIPAL PLACE OF RESIDENCE AND WHERE ONE OF THE TWO UNITS WAS OWNER-OCCUPIED AS OF DECEMBER 31, 1979 AND EVICTION PROTECTIONS TO TENANTS IN RENTAL UNITS CONTAINING A SINGLE FAMILY DWELLING AND ONE LAWFULLY ESTABLISHED ACCESSORY DWELLING UNIT WHERE THE LANDLORD OCCUPIES A UNIT IN THE SAME PROPERTY; TO PROHIBIT EVICTIONS BASED ON THE ADDITION OF OCCUPANTS IF THE LANDLORD HAS UNREASONABLY REFUSED THE TENANT'S REQUEST; AND TO ELIMINATE SECTION 13.76.060 (DECONTROL)

The People of the City of Berkeley do ordain as follows:

Section 1. Section 13.76.040 of the Berkeley Municipal Code is amended to read as follows:

**13.76.040 Definitions.**

- A. "Board" refers to the elected Rent Stabilization Board established by this chapter and Article XVII of the Charter of the City of Berkeley.
- B. "Commissioners" means the members of the board who are denominated commissioners.
- C. "Housing services" include but are not limited to repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishing, telephone, parking and any other benefit, privilege or facility

connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.

D. "Landlord" means an owner of record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.

E. "Rent" means the consideration, including any deposit, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.

F. "Rental agreement" means an agreement, oral, written or implied, between a landlord and a tenant for use or occupancy of a rental unit and for housing services.

G. "Rental unit" means any unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy (including units covered by the Berkeley Live/Work Ordinance No. 5217-NS), located in the City of Berkeley, together with all housing services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the tenant.

H. "Property" means a parcel of real property which is assessed and taxed as an undivided whole.

I. "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

J. "Skilled nursing facility" means a health facility or a distinct part of a hospital which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24-hour inpatient care and, as a minimum, includes medical, nursing,

dietary, pharmaceutical services and an activity program. The facility shall have effective arrangements, confirmed in writing, through which services required by the patients, but not regularly provided within the facility, can be obtained promptly when needed.

K. "Health facility" means any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24-hour stay or longer.

L. "Recognized tenant organization" means any group of tenants, residing in rental units in the same building or in different buildings operated by the same management company, agent or landlord, which requests to be so designated.

M. "Rent ceiling" means the maximum allowable rent which a landlord may charge on any rental unit covered by this chapter.

N. "Base rent ceiling" means the maximum allowable rent established under Section 13.76.100 of this chapter.

O. "Fees" means for the purpose of this chapter, a charge fixed by law for services of public officers or for use of a privilege under control of government.

P. "Nonprofit, accredited institution of higher education" means a post secondary educational institution whose legal status under the California Education Code is verified by an annual validation receipt from the California State Department of Education, and which is accredited by the Western Association of Schools and Colleges or the Association of Theological Schools and which is exempt from taxation under Section 501 (c)(3) of the United States Internal Revenue Code and under Section 23701(d) of the Revenue and Taxation Code, and which, if otherwise required by law to do so, has obtained a valid unrevoked letter or ruling from the United States Internal Revenue Service or from the Franchise Tax Board which states that the organization so qualifies for exemption from taxation.

Q. "Newly Constructed" means a rental unit created after June 30, 1980. For purposes of this definition, the date a unit was created is based upon the date of the first certificate of occupancy issued for the subject unit. However, in the event of the repeal or amendment of Civil Code Section 1954.52, such that "certificate of occupancy" is no longer the operative standard set forth under state law, the date a unit was created shall be determined by the final inspection approval by the City.

R. Notwithstanding any other provision in this ordinance, and to the extent that state or local law does not prohibit a local jurisdiction from regulating the rent on a residential rental unit, such units shall not be exempt as "newly constructed units" and, unless otherwise exempt, shall be covered by all provisions of this chapter. This includes, but is not limited to, any residential rental units created as a result of demolition or replacement where such demolition or replacement is affected via the creation of a "housing development project" as defined in the Housing Crisis Act of 2019 (Senate Bill 330).

Section 2: Section 13.76.050 of the Berkeley Municipal Code is amended to read as follows:

### **13.76.050 Applicability**

This chapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following:

A. Rental units which are owned by any government agency. However, the exemption of units owned by the Berkeley Housing Authority from the terms of this chapter shall be limited to their exemption from the terms of Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

B. Rental units which are rented primarily to transient guests for use or occupancy less than fourteen consecutive days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses. However, the payment of rent every fourteen days or less shall not by itself exempt any unit from coverage by this chapter.



C. Rental units in nonprofit cooperatives owned and controlled by a majority of the residents.

D. Rental units leased to tenants assisted under the Section 8 program (42 U.S.C. Section 1437f) or the Shelter Plus Care Program (42 U.S.C. 11403 et. seq.) or similar federally funded rent subsidy program. Except as may be preempted by state or federal law, the exemption of such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. However, the exemption from Sections 13.76.080, 13.76.110 and 13.76.120 shall apply only for so long as the rent demanded does not exceed the authorized Payment Standard, which, for purposes of this subsection, is the maximum monthly rental assistance potentially available to an assisted household before deducting the household share of income paid for rent and utilities as established by the Berkeley Housing Authority or successor agency. For units where the rent demanded exceeds the Payment Standard, the Payment Standard or an initial rent above the Payment Standard if approved by the Berkeley Housing Authority, as reported to the board by the Berkeley Housing Authority or successor agency, shall become the unit's base rent ceiling and the reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120.

E. Rental units in any hospital, skilled nursing facility, health facility, asylum, or non-profit home for the aged.

F. Rental units in a residential property which is divided into a maximum of four units where one of such units is occupied by the landlord as his/her principal residence. Any exemption of rental units established under this subsection (13.76.050 F.) shall be limited to rental units that would have been exempt under the provisions of this chapter had this chapter been in effect on December 31, 1979. After July 1, 1982, this exemption shall no longer apply to rental units in a residential property which is divided into three or four units. It shall continue to apply to rental units in a residential property which is divided into two units, and which meet all the other requirements of this subsection (13.76.050F). However, the exemption of such rental units shall be limited to

their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. Rental units which become non-exempt under this provision shall have the provisions of Subsections 13.76.080I and 13.76.100C. applied to them.

G. A rental unit in a residential property where the landlord shares kitchen or bath facilities with the tenant(s) of such rental unit and where the landlord also occupies a unit in the same property as his/her principal residence.

H. For the purposes of Subsections 13.76.050 F. and G., the term landlord shall be defined only as the owner of record holding at least 50% interest in the property.

I. Newly constructed rental units, as defined in Section 13.76.040Q. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. To the extent that state law permits, the exemption of such newly constructed units shall be limited to the first 20 years after completion of construction.

J. A rental unit which is rented by a nonprofit, accredited institution of higher education to a tenant or tenants who are student(s), faculty, or staff of the institution or of a member school of the Graduate Theological Union, provided, however, that the institution owned the unit as of January 1, 1988.

K. A rental unit in a residential property owned by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that is rented to a low income tenant and subject to a regulatory agreement with a governmental agency that controls the unit's rent levels. However, the exemption for such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings of this chapter and shall apply only for so long as the regulatory agreement is in effect. This exemption shall not apply to rental units at the

property that are not subject to a regulatory agreement with a governmental agency or that are rented by a tenant who occupied the unit prior to the property's acquisition by the tax-exempt organization.

L. Rental units in a facility owned or leased by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that has the primary purpose of operating a treatment, recovery, therapy, sanctuary or shelter program for qualified clients, where such rental units are provided incident to the client's participation in the primary program and where the client has been informed in writing of the temporary or transitional nature of the housing at the inception of his or her participation in the program. However, except as may be preempted by the Transitional Housing Participant Misconduct Act (California Health and Safety Code Sections 50580 et. seq.) or other state or federal law, such rental units shall not be exempted from the terms of Section 13.76.130, Good Cause Required for Eviction. For purposes of Section 13.76.130.A.2, the client's continued eligibility for participation in the treatment, recovery, therapy, sanctuary or shelter program shall be deemed a material term of the client's rental agreement with the program's operator.

M. A rental unit or room which is rented by an active member of a fraternity or sorority recognized by the University of California Berkeley, or a rental unit or room which is rented by an active member of a fraternity or sorority identified by Rent Board Resolution. To qualify for the exemption, the rental unit must be owned by the fraternity or sorority or by an entity whose sole purpose is the maintenance and operation of the fraternity or sorority's rental units for the benefit of the members in order to provide housing to said members at cost.

N. A rental unit in a residential property containing only a Single Family Dwelling (as defined in Subtitle 23F.04 of the Zoning Ordinance) and one lawfully established and fully permitted Accessory Dwelling Unit where the landlord also occupies a unit in the same property as his/her principal residence. This subsection (13.76.050N) shall only apply to properties containing a single Accessory Dwelling Unit, shall only apply to units compliant with all applicable requirements of Chapter 23C.24 ("Accessory Dwelling Units"), and shall only apply to tenancies created after November 7, 2018. However, the exemption of such rental units shall be limited to their exemption from the terms of

Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

O. A dwelling or a unit alienable separate from the title to any other dwelling unit unless the tenancy commenced before January 1, 1996. However, the exemption of such units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. A property owner who owns only one residential unit in the City of Berkeley, and occupied that residential unit for 365 consecutive days as their principal residence immediately prior to renting the unit, and is absent from the unit for a period not to exceed 24 months, and such period is specified in the lease, shall also be exempt from the terms of Section 13.76.080, Rent Registration, of this Chapter. The exemptions provided in this Section shall apply only as long as the pertinent provisions of California Civil Code Section 1954.50 et. seq. ("Costa-Hawkins") remain in effect and require such an exemption.

Section 3: Section 13.76.060 of the Berkeley Municipal Code is amended to read as follows:

**13.76.060 Rent Stabilization Board**

A. Composition. There shall be in the city of Berkeley an elected rent stabilization board; the board shall consist of nine commissioners. The board shall elect annually as chairperson one of its members to serve in that capacity.

B. Eligibility. Residents who are duly qualified electors of the city of Berkeley are eligible to serve as commissioners on the board.

C. Full disclosure of holdings. Candidates for the position of commissioner shall fulfill the requirements as set forth in the City Charter in Article III, Section 6 1/2.

In addition, when filing nomination papers, candidates shall submit a verified statement of their interests and dealings in real property, including but not limited to its ownership, sale or management and investment in and association with partnerships, corporations, joint ventures and syndicates engaged in its ownership, sale or management during the previous three years.

D. Election of commissioners. Commissioners shall be elected at the statewide general election held in November of even numbered years.

E. Terms of office. Commissioners' terms of office shall be as set forth in Article XVII of the Berkeley City Charter.

F. Powers and duties. The elected rent stabilization board shall have the power to determine, to arbitrate and to set rent levels, whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance, and to administer any Berkeley program which regulates rents and evictions. The board shall have the following powers and duties:

1. Set the rent ceilings for all rental units.
2. Require registration of all rental units under Section 13.76.080.
3. Publicize the manner in which the base rent ceiling is established under Section 13.76.100.
4. To make adjustments in the rent ceiling in accordance with Sections 13.76.110 and 13.76.120.
5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this chapter.
6. To issue orders, rules and regulations, conduct hearings and charge fees as set below.
7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.

8. Report annually to the city council of the city of Berkeley on the status of rental housing units covered by this chapter.
9. Request the City Council to remove rent controls under Section 13.76.060Q.
10. Administer oaths and affirmations and subpoena witnesses and relevant documents.
11. Establish rules and regulations for settling civil claims under Section 13.76.150.
12. Seek injunctive relief under Section 13.76.150.
13. Pursue civil remedies in courts of appropriate jurisdiction.
14. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this chapter.
15. Hold public hearings.
16. Charge and collect registration fees, including penalties for late payments.
17. Other powers necessary to carry out the purposes of this chapter which are not inconsistent with the terms of this chapter.
18. Except as provided in Section 13.76.060N of this chapter, the board shall finance its reasonable and necessary expenses for its operation without the use of general fund monies of the city of Berkeley.

G. Rules and Regulations: The board shall issue and follow such rules and regulations, including those which are contained in this Chapter, as will further the purposes of this Chapter. The board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the city of Berkeley.

All rules and regulations and relevant documents explaining the decisions, orders, and policies of the board shall be kept in the board's office and shall be available to the public for inspection and copying.

The board shall publicize this Chapter so that all residents of Berkeley will have the opportunity to become informed about their legal rights and duties under this Chapter. The board shall prepare a brochure which fully describes the legal rights and duties of landlords and tenants under this Chapter. The brochure shall be made available to the public.

H. Meetings: The board shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the commissioners of the board. The board shall hold its initial meeting no later than July 15, 1980.

I. Quorum: Five commissioners shall constitute a quorum for the board.

J. Voting: The affirmative vote of five commissioners of the board is required for a decision, including all motions, rules, regulations, and orders of the board.

K. Compensation: The rent stabilization board shall be a working board. Commissioners shall be paid compensation and benefits in an amount set by the board in order to compensate commissioners for their time and work performed as required by this chapter and the city charter.

L. Dockets: The board shall maintain and keep in its office all hearing dockets, which shall be available for public inspection.

M. Vacancies: If a vacancy shall occur on the board, a qualified person to fill such vacancy shall be selected in accordance with the procedures set forth in Article V of the City Charter.

N. Financing: The board shall finance its reasonable and necessary expenses by charging landlords annual registration fees in amounts deemed reasonable by the board. The registration fee for partially-exempt units shall reasonably approximate the cost of registration and counseling services for such units, and shall not include the cost of services from which such units are exempt. Such registration fees shall not be

passed on to tenants in the form of rent increases except with the express prior approval of the board. The board is also empowered to request and receive funding, when and if necessary, from the city of Berkeley and/or any other available source for its reasonable and necessary expenses, including expenses incurred at the request of the City.

O. Staff: The board shall be a working board and shall employ such staff as may be necessary to perform its functions efficiently and as provided by Berkeley Ordinance.

P. Registration: The board shall require the registration of all rental units covered by this chapter as provided for in Section 13.76.080. The board may also require landlords to provide current information supplementing their registration statements.

~~Q.— Decontrol: If the annual average vacancy rate for all rental units in the city of Berkeley exceeds five percent over a six month period, the city council is empowered, upon request by the board, at its discretion and in order to achieve the purposes of this chapter, to exempt rental units covered by this chapter from Sections 13.76.080, 13.76.100, 13.76.110 and 13.76.120 of this chapter. In determining the vacancy rate for the city of Berkeley the board and the city council shall consider all available data and may conduct their own survey. If units are exempted pursuant to this Subsection Q coverage shall be reimposed if the city council finds that the average annual vacancy rate has thereafter fallen below five percent. Prior to any decision to exempt or renew coverage for rental units under this Subsection Q the board shall hold at least two public hearings.~~

~~R.~~ Q. Conflict of Interest: Commissioners shall be subject to the requirements of the California Political Reform Act and other applicable state and local conflict of interest codes. Commissioners shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a landlord or tenant. However, a commissioner shall be disqualified from ruling on a petition for an individual adjustment of a rent ceiling under Section 13.76.120, where the commissioner is either the landlord of the property or a tenant residing in the property that is involved in the petition.



Section 4: Section 13.76.130 of the Berkeley Municipal Code is amended to read as follows

**13.76.130 Good cause required for eviction**

A. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this chapter unless said landlord shows the existence of one of the following grounds:

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days. Rent that is lawfully withheld pursuant to emergency legislation that authorizes rent withholding during the effective period of a state of emergency applicable in Berkeley shall not constitute grounds for recovery of possession except as expressly provided in the applicable emergency legislation. Emergency legislation adopted during the emergency may prohibit recovery of possession for lawfully withheld rent even after the expiration of a state or local emergency.

2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement. Notwithstanding any contrary provision in this chapter or in the rental agreement, a landlord is not entitled to recover possession of a

rental unit under this subsection where a tenant permits his or her rental unit to be occupied by a subtenant, provided:

- a. The landlord has unreasonably withheld consent to the subtenancy; and
- b. The tenant remains an actual occupant of the rental unit; and
- c. The number of tenants and subtenants actually occupying the rental unit does not exceed ~~the number of occupants originally allowed by the rental agreement or the board's regulations, whichever is greater~~ the maximum number of occupants legally allowed under Section 503(b)(2) of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922, except where prohibited by law.
- d. Withholding of consent by the landlord shall be deemed to be unreasonable where:
  - (i) ~~The tenant's written request for consent was given at least two weeks prior to commencement of the subtenancy; tenant has made a written request to the landlord to either sublet the unit and/or add additional occupants, and the landlord has failed to respond in writing within fourteen (14) days of the tenant's request; or~~
  - (ii) The proposed new subtenant has, upon the landlord's written request, completed the landlord's standard form application or provided sufficient information to allow the landlord to conduct a standard background check, including references and credit, income and other reasonable background information, and the proposed new subtenant or additional occupant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and or
  - ~~(iii) The proposed new subtenant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and~~

(iii iv) The landlord has not articulated in writing a well-founded reason for refusing consent. A landlord's reasonable denial may not be based on the proposed occupant's lack of credit worthiness or income if that occupant will not be legally obligated to pay some or all of the rent to the landlord.

e. Where a landlord can establish that the proposed additional occupant presents a direct threat to the health, safety, or security of other residents of the property, the landlord shall have the right to deny the proposed tenant's occupancy.

f. Before initiating an action to recover possession based on the violation of a lawful obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation that provides the tenant with a minimum of fourteen (14) days to cure the violation. The notice must also inform the tenant(s) of their right to add subtenants and/or add additional occupants pursuant to this section.

3. The tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.
4. The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.
5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises or the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161.
6. The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.

7. a. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building or where necessary under an outstanding notice of code violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises.

b. Where such repairs can be completed in a period of 60 or fewer days, and the tenant, within 30 days after the service of a notice of termination of his or her tenancy, agrees in writing to vacate the premises during the period required to complete the repairs at no charge to the landlord, other than abatement of the obligation to pay rent for the premises during the period required to complete the repairs, the landlord may not recover possession pursuant to this subsection (13.76.130A.7.) unless the tenant shall fail or refuse to vacate the premises in accordance with such agreement.

c. Where the landlord owns any other residential rental units in the City of Berkeley, and any such unit is vacant and available at the time of premises or the entry of a judgment by a court of competent jurisdiction awarding possession of the premises to the landlord, the landlord shall, as a condition of obtaining possession pursuant to this subsection (13.76.130A.7.), notify tenant in writing of the existence and address of each such vacant rental unit and offer tenant the right, at the tenant's option:

(i) To enter into a rental agreement (to be designated as a "temporary rental agreement") on any available rental unit which the tenant may choose, at a rent not to exceed the lesser of the lawful rent which may be charged for such available rental unit or the lawful rent in effect, at the time of the notice of termination of tenancy, on the unit being vacated, said rental agreement to be for a term of the lesser of ninety days or until completion of repairs on the rental unit being vacated by tenant; or

(ii) To enter into a new rental agreement or lease for such available rental unit at a rent not to exceed the lawful rent which may be charged for such available rental unit.

d. Where the landlord recovers possession under this subsection (13.76.130A.7.), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. In the event the landlord files an application for an individual rent adjustment within six months following the completion of the work, the tenant shall be a party to such proceeding the same as if he or she were still in possession, unless the landlord shall submit, with such application, a written waiver by the tenant of his or her right to re-occupy the premises pursuant to this subsection.

8. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition.

9. Owner Move-in Evictions.

a. The landlord seeks in good faith with honest intent and without ulterior motive to recover possession for his/her own use and occupancy as his/her principal residence for a period of at least 36 consecutive months; or

b. For the use and occupancy as the principal residence by the landlord's spouse or by the landlord's child, or parent for a period of at least 36 consecutive months.

c. For the purposes of this subsection (13.76.130A.9.), the term landlord shall be defined as the owner of record, as of the time of giving of a notice terminating tenancy, and at all times thereafter to and including the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord, holding at least a

50% interest in the property and shall not include a lessor, sublessor, or agent of the owner of record.

d. All notices terminating tenancy pursuant to subsection 13.76.130.A.9 shall include the following: the existence and potential availability of relocation assistance under subsection 13.76.130A.9.g; the existence of tenant protections for families with minor children as defined in subsection 13.76.130A.9.k; the name and relationship of any qualified relative for purposes of subsection 13.76.130A.9b; and the landlord's ownership interest in any residential properties in the City of Berkeley where such interest, in any form whatsoever, is ten percent (10%) or greater. The landlord shall, within ten days of giving notice, file a copy of the notice terminating tenancy with the Rent Board.

e. The landlord may not recover possession under this subsection (13.76.130A.9.) if a comparable unit, owned by the landlord in the City of Berkeley, was, at the time of the landlord's decision to seek to recover possession of the rental unit, already vacant and available, or if a comparable unit, owned by the landlord in the City of Berkeley, thereafter becomes vacant at any time until the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord. In an action by or against the tenant, evidence that a comparable unit was vacant and available within ninety days prior to the date of a notice terminating the tenant's tenancy shall create a presumption that such unit was vacant and available at the time of the landlord's decision to seek to recover possession of the premises. "Presumption" means that the court must find the existence of the presumed fact unless and until the contrary is proven by a preponderance of the evidence.

f. The landlord shall offer any non-comparable unit owned by the landlord to the tenant if a non-comparable unit becomes available

before the recovery of possession of the tenant's unit at a rate based on the rent the tenant is paying with an upward or downward adjustment based on the condition, size, and other amenities of the replacement unit. Disputes concerning the initial rent for the replacement unit shall be determined by the Rent Board.

g. Where a landlord recovers possession of a unit under subsection 13.76.130A.9, the landlord is required to provide standard relocation assistance to tenant households where at least one occupant has resided in the unit for one year or more in the amount of \$15,000. The landlord is required to provide an additional \$5,000 relocation assistance to tenant households that qualify as low-income; or include disabled or elderly tenants; minor children; or tenancies which began prior to January 1, 1999. The relocation fees set forth above shall be increased in accordance with the rules set forth in subsection 13.76.130A.9.h below. The procedures for payment of this relocation assistance are set forth below in subsection 13.76.130A.9.p.(i) through (iv). The following definitions apply for any tenant households evicted for owner move-in under subsection 13.76.130A.9:

(i) "Low-income tenants" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, or as otherwise defined in Health and Safety Code Section 50079.5.

(ii) A person is "disabled" if he/she has a physical or mental impairment that limits one or more of a person's major life activities within the meaning of the California Fair Housing and Employment Act (Government Code § 12926).

(iii) "Elderly" is defined as sixty (60) years of age or older.

(iv) "Minor child" means a person who is under 18 years of age.

(v) "Tenancy began prior to January 1, 1999" is a tenancy where an "original occupant" (as defined by Berkeley Rent Board Regulation) still permanently resides in the rental unit.

h. Effective January 1 of each year beginning in 2018, the fees set forth above in subsection 13.76.130A.9.g., may be increased in an amount based on the Consumer Price Index - All Urban Consumers in the San Francisco-Oakland-San Jose Region averaged for the 12-month period ending June 30, of each year, as determined and published by United States Department of Labor. Any increase shall be published by the Board on or before October 31st of each year.

i. It shall be evidence that the landlord has acted in bad faith if the landlord or the landlord's qualified relative for whom the tenant was evicted does not move into the rental unit within three months from the date of the tenant's surrender of possession of the premises or occupy said unit as his/her principal residence for a period of at least 36 consecutive months.

j. Once a landlord has successfully recovered possession of a rental unit pursuant to subsection 13.76.130A.9.a., then no other current or future landlords may recover possession of any other rental unit on the property pursuant to subsection 13.76.130A.9.a. It is the intention of this subsection that only one specific unit per property may be used for such occupancy under subsection 13.76.130A.9.a and that once a unit is used for such occupancy, all future occupancies under subsection 13.76.130A.9.a must be of that same unit.

k. A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit has a custodial or family relationship with a minor child who is residing in the unit, the tenant with the custodial or family relationship has resided in the unit for 12 months or more, and the effective date of the notice of termination of tenancy falls during the school year. The term "school year" as used in this subsection means the first day of instruction for



the Fall Semester through the first day of the month following the last day of instruction for the Spring Semester, as posted on the Berkeley Unified School District website for each year.

(i) For purposes of subsection 13.76.130A.9.k, the term "custodial relationship" means that the person is a legal guardian of the child, or has a caregiver's authorization affidavit for the child as defined by Section 6550 of the California Family Code, or that the person has provided full-time custodial care of the child pursuant to an agreement with the child's legal guardian or court-recognized caregiver and has been providing that care for at least one year or half of the child's lifetime, whichever is less. The term "family relationship" means that the person is the biological or adoptive parent, grandparent, brother, sister, aunt or uncle of the child, or the spouse or domestic partner of such relations.

I. A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit:

(i) Is 60 years of age or older and has been residing on the property for five years or more; or

(ii) Is disabled and has been residing on the property for five years or more; or

(iii) Has resided on the property for five years or more and the landlord has a ten percent (10%) or greater ownership interest, in any form whatsoever, in five or more residential rental units in the City of Berkeley.

m. A tenant who claims to be a member of one of the classes protected by subsection 13.76.130A.9.I must submit a statement, with supporting evidence, to the landlord. A tenant's failure to submit a statement at any point prior to the trial date of an unlawful detainer action for possession of the tenant's unit shall be deemed an admission that the tenant is not protected by subsection 13.76.130A.9.I. A landlord may challenge a tenant's claim of protected status by raising it as an

issue at trial in an unlawful detainer action for possession of the tenant's unit.

n. The provisions of subsection 13.76.130A.9.I shall not apply to the following situations:

(i) Where a person is the owner of three or fewer residential units in the City of Berkeley and has no greater than a nine percent (9%) ownership interest in any other residential unit in the City of Berkeley; or

(ii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I and the landlord's qualified relative who is seeking possession of a unit subject to subsection 13.76.130A.9.b is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.I.(ii) above; or

(iii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I, the landlord has owned the unit for which possession is being sought subject to subsection 13.76.130A.9.a for five years or more and is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.I.(ii).

o. Where a landlord recovers possession under Subsection 13.76.130A.9, the tenant must be given the right of first refusal to re-occupy the unit upon its next vacancy.

p. When a landlord is required to provide a relocation assistance payment subject to subsection 13.76.130A.9.g, the payment shall be divided among the tenants occupying the rental unit at the time of service of the notice to terminate tenancy.

(i) Within ten days of service of a notice terminating tenancy under subsection 13.76.130A.9, the landlord shall deposit the standard relocation assistance (for households where an occupant has resided one year or

more) with the City or its designated agent to be held in escrow. Within ten days after the funds are deposited into escrow, the City shall release the standard relocation assistance to the tenant household, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant's eligibility to receive such assistance.

(ii) In order to claim entitlement to additional relocation assistance under subsection 13.76.130A.9.g, a tenant must notify the landlord and the Rent Stabilization Program in writing that he/she is claiming low-income, disabled, elderly, tenant with minor child status, or a claim that the tenancy began prior to January 1, 1999 (hereinafter "entitlement to additional relocation assistance") per subsection 13.76.130A.9.g within 30 days of filing of notice of termination of tenancy with the Rent Stabilization Program. The landlord shall deposit the additional relocation payment with the Rent Stabilization Program or its designated agent to be held in escrow for any tenant household who claims entitlement to additional relocation assistance within ten days after such notice claiming entitlement to additional relocation assistance is mailed. Within ten days after the funds are deposited into escrow, the Rent Stabilization Program shall authorize release of the relocation assistance to the tenant household that claims entitlement to additional relocation assistance, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant's eligibility to receive such assistance.

(iii) When a tenant household's eligibility to receive standard or additional relocation assistance as described in subsection 13.76.130A.9.g is disputed, either party may file a Rent Board petition requesting a determination of eligibility or file a claim in a court of competent jurisdiction. The Rent Stabilization Program shall release disputed relocation assistance funds to either the tenant or the landlord upon receipt of either a written agreement by both the landlord and the affected tenant, an order of a court of competent jurisdiction, or an order of a City or Rent Board hearing examiner issued pursuant to a petition process conducted in accordance with applicable Rent Board Regulations.

(iv) The landlord may rescind the notice of termination of tenancy prior to any release of relocation payment to the tenants by serving written notice stating such rescission on the tenants. In such instance, the relocation payment shall be released to the landlord. Subsequent to the release of any relocation payment to the tenants, the landlord may rescind the notice of termination of tenancy only upon the written agreement of the tenants to remain in possession of the rental unit. If the tenants remain in possession of the rental units after service of a landlord's written notice of rescission of the eviction, the tenants shall provide an accounting to the landlord of the amount of the relocation payment expended for moving costs, return to the landlord that portion of the relocation payment not expended for moving costs, and assign to the landlord all rights to recover the amount of relocation payment paid to third parties. If a rescission occurs under this subsection, the tenant(s) shall continue the tenancy on the same terms as before the notice was served.

(v) Where a landlord has served a notice of termination of tenancy on a tenant prior to the date that this amendment takes effect and the notice of termination of tenancy has not expired, the landlord shall deposit the full relocation payment with the City or its designated agent to be held in escrow for the tenants if the tenants have not vacated the rental unit as of the effective date of this amendment, and the landlord shall pay the full relocation payment to the tenants if the tenants have vacated the rental unit as of the effective date of this amendment. Said deposit in escrow or payment to the tenants shall be made within ten days of the effective date of this amendment.

(vi) Failure of the landlord to make any payment specified herein shall be a defense to any action to recover possession of a rental unit based upon the landlord's termination of tenancy notice pursuant to this subsection (13.76.130A.9). In addition, if the tenants of a rental unit have vacated the unit as a result of a notice of termination of tenancy pursuant to this subsection (13.76.130.A.9), and the landlord fails to make any payment

specified herein, the landlord shall be liable to the tenants for three times the amount of the payment as well as reasonable attorney fees.

q. A tenant who prevails in an action brought under this subsection (13.76.130A.9), in addition to any damages and/or costs awarded by the court, shall be entitled to recover all reasonable attorney's fees incurred in bringing or defending the action.

r. At least twice annually, Rent Board staff shall report to the Rent Board regarding the occupancy status of units possession of which has been recovered pursuant to this subsection (13.76.130A.9) within the prior 36 months.

s. If any provision or clause of this subsection (13.76.130A.9) or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses, and to this end the provisions and applications of this subsection are severable.

10. A landlord or lessor seeks in good faith to recover possession of the rental unit for his/her occupancy as a principal residence, where the landlord or lessor has previously occupied the rental unit as his/her principal residence and has the right to recover possession of the unit for his/her occupancy as a principal residence under an existing rental agreement with the current tenants.

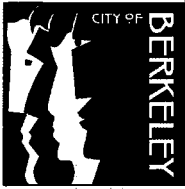
11. The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of subsection 13.76.130A.7.c., following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by tenant (if the term of the rental agreement has expired by reason of the completion of repairs on the old rental unit), or of written notice to quit (if the term of the rental agreement has expired by reason of the expiration of a period of 90 days).

B. A landlord's failure to specify good cause as listed above in subsections 1. through 11. of Section 13.76.130A. in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this chapter.

C. In any action to recover possession of a rental unit covered by the terms of this chapter, except an action to recover possession under subsection 13.76.130A.7., 13.76.130.A.8, or 13.76.130.A.11., a landlord shall allege, as to each rental unit on the property, substantial compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with the implied warranty of habitability and compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with Sections 13.76.100 (Rent Ceiling) and 13.76.080 (Rent Registration) of this chapter.

D. The landlord shall file with the board a copy of any notice of termination, notice to quit, and summons and complaint, within ten days after the tenant has been served with such notice or summons and complaint.

Section 5. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.



Rent Stabilization Board  
Legal Unit

## MEMORANDUM

**DATE:** May 3, 2022

**TO:** Honorable Members of the 4 x 4 Joint Committee on Housing

**FROM:** Honorable Members of the Berkeley Rent Stabilization Board  
By: Matt Brown, General Counsel  
Matthew Siegel, Staff Attorney

**SUBJECT:** Proposed Amendments to Rent Stabilization and Eviction for Good Cause Ordinance to be Placed on November 2022 Ballot

### Summary

The Legislation, IRA/AGA & Registration Committee has discussed potential amendments to the Rent Stabilization and Eviction for Good Cause Ordinance to propose to the full Board at each meeting since October 13, 2020. At its March 9, 2022 meeting, the Committee recommended the amendments articulated in this memorandum. The amendments are designed to ensure that the Ordinance better serves its purpose; namely the prevention of arbitrary, discriminatory or retaliatory evictions, in order to maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. In light of both the ongoing housing crisis and the continuing threat to housing stability posed by the COVID-19 pandemic, these proposed amendments enhance the ability of the Board and City Council to preserve the public peace, health and safety, and the availability of housing for low and fixed income households, people of color, students, people with disabilities, and older residents.

At its March 17, 2022 meeting the Board voted to support these amendments and requested that staff forward them to the 4 x 4 Committee for review prior to Council considering these changes. Should they support these proposed amendments, Council will have to place these items on the ballot for the November general election.

The proposed amendments include an amendment to allow for rent control protections to attach to new units that were built as the result of demolition of pre-existing residential structures now allowed by Senate Bill 330 (SB 330); an amendment to expand eviction protections for tenant

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households that exceed the number of occupants allowed at the inception of the tenancy; and an elimination of City Council's ability to exempt rent control from units when the vacancy rate reaches a certain level. Each proposed amendment is discussed separately below.

**1. Allowance for rent control protections on new units covered by SB 330**

**Background and Need for Rent Stabilization Board Action:**

SB 330 specifically allows cities to impose rent control protections on units that are built as the result of demolition of previously-controlled units. The Housing Crisis Act of 2019 requires all housing projects that demolish existing residential units to create as least as many residential units as are being demolished. Projects that contain "protected units," which include residential units that have been subject to a local rent control program within the previous five years, are required to provide replacement units at an affordable rent (or sales price) with the same number of bedrooms as the demolished unit. The affordability level of a replacement unit is based on the income level of the last household occupying the demolished unit and must be rented (or sold) at a rate that is affordable to occupants of the same income category or lower. If a "protected unit" was last occupied by persons or families above the low-income category, the affected city has the option to require that the housing project provide: 1) a replacement unit affordable to low-income households for a period of at least 55 years, or 2) a replacement unit that complies with the jurisdiction's rent or price control ordinance.

Currently, the law expressly exempts newly constructed units from Chapters 10 (Establishment of Base Rent Ceiling and Posting), 11 (Annual General Adjustment of Rent Ceilings) and 12 (Individual Adjustments of Rent Ceilings) of the Rent Ordinance. These residential units are subject to the registration requirements of Measure MM, are covered by good cause for eviction, and are entitled to annual security deposit interest, but they are not subject to local rent controls. SB 330 would allow for these new units created as the result of demolished units to be fully covered by the rent control provisions of the ordinance should the City choose that option when approving new construction that was the result of demolition of existing qualifying units.

The Legislation, IRA/AGA & Registration Committee has directed staff to draft language that would amend the Rent Ordinance to allow these units to be fully rent-controlled. To that end, we have added a section to Chapter 4 of the ordinance that distinguishes this type of new construction to that described in BMC Section 13.76.040Q. We also proposed specific reference to paragraph Q in Chapter 5 of the ordinance to distinguish it from newly constructed units that remain exempt from local rent controls.

**Proposed Language:**

Chapter 13.76 is amended as follows:

Section 13.76.040

**DEFINITIONS**

R. Notwithstanding any other provision in this ordinance and to the extent that state or local law permits, any residential rental units created as a result of demolition or replacement where such demolition or replacement is affected via the creation of a "housing development project" as



defined in the Housing Crisis Act of 2019 (Senate Bill 330), shall not be exempt as “newly constructed units” and, unless otherwise exempt, shall be covered by all provisions of this chapter.

Section 13.76.050

## APPLICABILITY

I. Newly constructed rental units, as defined in Section 13.76.040Q. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. To the extent that state law permits, the exemption of such newly constructed units shall be limited to the first 20 years after completion of construction.

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### 2. Allow for increased occupancy of rental units without threat of eviction

#### **Background and Need for Rent Stabilization Board Action:**

The Board also recommended that the Ordinance be amended to prohibit evictions based on the addition of occupants if the landlord has unreasonably refused the tenant’s written request, including a refusal based on the number of occupants allowed by the rental agreement or lease. The Legislation, IRA/AGA & Registration Committee also expressed strong interest in adopting changes to Regulation 1270 to be more permissive in allowing an increase in the number of tenants occupying a unit without a corresponding rent increase should such amendments to the eviction protections be adopted by the voters.

Tenants’ ability to add additional occupants to their household can be a precarious proposition given that a good cause for eviction lies when a tenant household substantially violates a material term of the rental agreement. While tenants are currently protected from eviction when there is one-for-one replacement of tenants, the Ordinance specifically provides a ground for eviction when any subletting by the tenant household results in an increase above the base occupancy level (B.M.C. 13.76.130A.2.(c)). For this reason, the Board recommended amendments be made to the Ordinance prior to the adoption or amendment of any regulations that intend to expand a tenant’s right to increase the size of their household.

The Board already has express authority to regulate the manner and grounds for which rents may be increased or decreased,<sup>1</sup> but the grounds for eviction are hard-coded in the Ordinance (B.M.C. 13.76.130.). One such basis for eviction is when the “...tenant has continued...to substantially violate any of the material terms of the rental agreement...”(B.M.C. 13.76.130A.2.). Thus, while Board Regulation 1270 can be amended to allow for an increase in the base occupancy level of a unit without a corresponding rent increase, the regulation cannot override the good cause for eviction based on a lease violation, such as when a household has more occupants than those

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<sup>1</sup> See B.M.C. Section 13.76.120C.

allowed pursuant to the initial agreement between the landlord and tenant.

The Board elected to put the proposed changes to the good cause for eviction section of the ordinance before the voters to protect tenants from displacement prior to adopting amendments to the ordinance that would disallow rent increases for increases in occupancy.

**Proposed Language:**

Section 13.76.130

**GOOD CAUSE REQUIRED FOR EVICTION**

2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement. Notwithstanding any contrary provision in this chapter or in the rental agreement, a landlord is not entitled to recover possession of a rental unit under this subsection where a tenant permits his or her rental unit to be occupied by a subtenant, provided:

- a. The landlord has unreasonably withheld consent to the subtenancy; and
- b. The tenant remains an actual occupant of the rental unit; and
- c. The number of tenants and subtenants actually occupying the rental unit does not exceed ~~the number of occupants originally allowed by the rental agreement or the board's regulations, whichever is greater~~ the maximum number of occupants legally allowed under Section 503(b)(2) of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922, except where prohibited by law.
- d. Withholding of consent by the landlord shall be deemed to be unreasonable where:
  - (i) ~~The tenant's written request for consent was given at least two weeks prior to commencement of the subtenancy~~ tenant has made a written request to the landlord to either sublet the unit and/or add additional occupants, and the landlord has failed to respond in writing within fourteen (14) days of the tenant's request;  
or

(ii) The proposed new subtenant has, upon the landlord's written request, completed the landlord's standard form application or provided sufficient information to allow the landlord to conduct a standard background check, including references and credit, income and other reasonable background information, and the proposed new subtenant or additional occupant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and or

~~(iii) The proposed new subtenant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and~~

(iv) The landlord has not articulated in writing a well-founded reason for refusing consent. A landlord's reasonable denial may not be based on the proposed occupant's lack of credit worthiness or income if that occupant will not be legally obligated to pay some or all of the rent to the landlord.

e. Where a landlord can establish that the proposed additional occupant presents a direct threat to the health, safety, or security of other residents of the property, the landlord shall have the right to deny the proposed tenant's occupancy.

f. Before initiating an action to recover possession based on the violation of a lawful obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation that provides the tenant with a minimum of fourteen (14) days to cure the violation. The notice must also inform the tenant(s) of their right to add subtenants and/or add additional occupants pursuant to this section.

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### **3. Eliminating "Decontrol" clause from ordinance**

#### **Background and Need for Rent Stabilization Action:**

The Rent Ordinance has a section that allows the Berkeley City Council to exempt units from rent control should vacancy rates reach 5% over a six-month period.<sup>2</sup> While Council has the discretion to eliminate rent controls for units (it is not mandatory), this clause is inconsistent with

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<sup>2</sup> BMC Section 13.76.060Q.

the Charter and most all of the Rent Ordinance which establishes the Board's independent authority to regulate rents and administer the law independent of any other elected or appointed body. Moreover, given that both the Charter and Rent Ordinance are voter-adopted initiatives, it certainly makes more sense to put the issue of decontrol before the voters in the event that the community decides to eliminate local rent control. Council has no other authority to interfere either substantively or procedurally in the Board's administration, so removing this clause will be consistent with the overall operation of the rent program and the law the Board and staff administer.

The proposal would be to simply eliminate this section of the Rent Ordinance.

**Proposed Language:**

Section 13.76.060

**RENT STABILIZATION BOARD**

~~Q. Decontrol: If the annual average vacancy rate for all rental units in the city of Berkeley exceeds five percent over a six month period, the city council is empowered, upon request by the board, at its discretion and in order to achieve the purposes of this chapter, to exempt rental units covered by this chapter from Sections 13.76.080, 13.76.100, 13.76.110 and 13.76.120 of this chapter. In determining the vacancy rate for the city of Berkeley the board and the city council shall consider all available data and may conduct their own survey. If units are exempted pursuant to this Subsection Q coverage shall be reimposed if the city council finds that the average annual vacancy rate has thereafter fallen below five percent. Prior to any decision to exempt or renew coverage for rental units under this Subsection Q the board shall hold at least two public hearings.~~

**CONCLUSION**

The Board unanimously proposed that the 4 x 4 Committee review these amendments and request that they be forwarded to Council for further consideration at a later date. After the 4 x 4 Committee discusses them and decides what it wishes to propose, the City Council will have to vote to place the matters it supports on the ballot for the November general election.

These are the initial matters the Board has discussed, but this memo is not meant to be an exhaustive list of items the Board wishes to have Council consider placing on the November ballot. The Legislation, IRA/AGA & Registration Committee has informed legal staff that there may be other items they will request that the Board and Council support. Time is of the essence as Council will have to place these matters on an agenda soon in order to meet any ballot measure deadlines. Staff awaits this Committee's instruction on how it wishes to proceed.



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

**ACTION CALENDAR**  
 July 26, 2022  
*(Continued from July 12, 2022)*

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

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

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

**RECOMMENDATION**

Direct the City Manager to:

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

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

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

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

### BACKGROUND

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

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

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

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

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

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

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

#### FINANCIAL IMPLICATIONS

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

#### CURRENT SITUATION AND ITS EFFECTS

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

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

N/A

CONTACT PERSON

Councilmember Sophie Hahn      Council District 5      510-981-7150





Office of the City Manager

INFORMATION CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance  
 Subject: Sanctuary City Contracting Compliance Report for FY 2021

INTRODUCTION

City Council adopted ordinance 7,650-N.S., which is referred to as the Sanctuary City Contracting Ordinance (SCCO), in 2019. The SCCO states that the City shall not enter into a new, amended, or extended contract or agreement with any entity that provides United States Immigration and Customs Enforcement with data broker or extreme vetting services.

Section 13.105.040 requires the City Manager to report annually regarding compliance with section 13.105.030 for the prior year. Section 13.105.030 of the Berkeley Municipal Code details the prohibition on the use of City resources.

CURRENT SITUATION AND ITS EFFECTS

The Sanctuary City Contracting Ordinance establishes the City as a leader in social responsibility. The SCCO is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity.

## Report Requirements

*(1) detail with specificity the steps taken to ensure compliance with Section 13.105.030:*

City solicitations include invitations for bids (IFB), requests for proposals (RFP), and requests for qualifications (RFQ). IFB, RFP, and RFQ public postings each contain the SCCO language. Signed compliance certificates are submitted with proposals and bid responses.

New and amended contracts and agreements include the Compliance Certificate attesting review of and compliance with the SCCO. Signed certificates are required as part of the City's contract documents.

*(2) disclose any issues with compliance, including any violations or potential violations of this Ordinance:*

Previously reported: City Council issued a waiver of ordinance 7,650-N.S. related to Berkeley Tuolumne Camp Projects. The waiver was issued on 12/10/2019 in order to ensure compliance with FEMA contracting provisions as required for the City to receive a federal reimbursement grant for the construction project.

New: City Council approved a waiver of the SCCO for contracting with Westlaw, a Thomson Reuters Company, on 6/1/2021, as no reasonable alternative exists.

A contract was entered into with AG Witt, LLC, for an initial amount of \$50,000. The City's social responsibility provisions in the contract form were left intentionally blank so that the contract did not violate federal contracting requirements. The contract scope is for disaster cost recovery and is partially reimbursable by FEMA. The contract was later amended to \$150,000 with approval from City Council (Resolution 69,566-N.S.), and then amended to \$250,000 with approval from City Council (Resolution 69,759-N.S.)

The City anticipates this contract to be valid for several more years as cost recovery efforts for Covid-19 expenses continue.

*(3) detail actions taken to cure any deficiencies with compliance:*

No deficiencies have been identified.

### BACKGROUND

This report is for FY 2021. This report was intended to be included in the report submitted on September 24, 2021, representing FY 2020 and 2021 SCCO reporting to City Council. The information in this report for FY 2021 was inadvertently left off of that Council item.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

### POSSIBLE FUTURE ACTION

This report will be submitted annually.

### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

### CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

Attachments:

1. Resolution 69,907-N.S. Westlaw (Thomson Reuters)
2. Resolution 69,566-N.S. AG Witt, LLC
3. Resolution 69,756-N.S. AG Witt, LLC

RESOLUTION NO. 69,907-N.S.

ADOPT A RESOLUTION WAIVING THE CONTRACT REQUIREMENTS OF THE SANCTUARY CITY CONTRACTING ORDINANCE PURSUANT TO CHAPTER 13.105 OF THE BERKELEY MUNICIPAL CODE, IN ORDER TO ENTER INTO A CONTRACT WITH WESTLAW, A THOMSON REUTERS COMPANY

WHEREAS, Pursuant to Ordinance No. 7650-N.S. and Chapter 13.105, the Sanctuary City Contracting Ordinance, in order to enter into a contract with Westlaw, a Thomson Reuters Company, the City Council must determine that no reasonable alternative exists based on consideration of three factors; and

WHEREAS, the three factors: the intent and purpose of the act, the availability of alternative service providers and quantifiable additional costs resulting from the use of alternative providers have all been considered; and

WHEREAS, the use of services provided by Westlaw is indispensable to the practice of law; and

WHEREAS, contracting with Westlaw will not violate the intent of the Ordinance as its services will be used to promote the interest of the immigrant community in conformance with the intent and purpose of the Ordinance; and

WHEREAS, no other contractors are available who can provide the services required by this contract; and

WHEREAS, no additional costs are quantifiable as there are no available alternatives; and

WHEREAS, failing to provide this waiver would result in additional costs to use Westlaw on an ala carte basis.

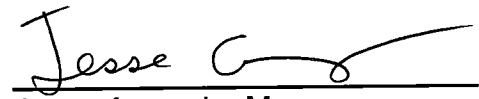
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a waiver to the "no-contract" provision of the B.M.C. Section 13.105 is approved because no reasonable alternative exists to the services that will be provided under contract with Westlaw, a Thomsen Reuters Company.

The foregoing Resolution was adopted by the Berkeley City Council on June 1, 2021 by the following vote:

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

Noes: None.

Absent: Droste.

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

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

RESOLUTION NO. 69,566-N.S.

CONTRACT NO. 32000282 – AG WITT, LLC FOR COVID-19 DISASTER COST RECOVERY CONSULTING SERVICES

WHEREAS, in May 2020 the City underwent a Request for Proposal process for a consultant firm to provide disaster cost recovery services; and

WHEREAS, the City determined after evaluating the proposals received that AG Witt, LLC. was the best qualified firm meeting the City’s needs to provide COVID-19 disaster cost recovery consulting services; and

WHEREAS, the City contract costs with AG Witt, LLC will now exceed the City Manager authorization spending amount of \$50,000; and

WHEREAS, the FY 2021 Adopted Budget had funds up to \$150,000 for disaster cost recovery consulting services allocated as part of an approved General Fund allocation of \$1.0 million for the City’s COVID-19 response.

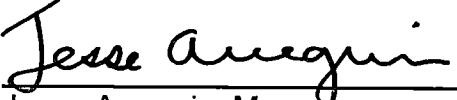
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32000282 with AG Witt, LLC to increase the contract amount by \$100,000 to a not to exceed amount of \$150,000. A record signature copy of said contract amendment to be on file in the Office of the City Clerk.

The foregoing Resolution was adopted by the Berkeley City Council on September 22, 2020 by the following vote:

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

Noes: None.

Absent: None.

  
Jesse Arreguin, Mayor

Attest:   
Mark Numainville, City Clerk

RESOLUTION NO. 69,756-N.S.

CONTRACT NO. 32000282 - AG WITT, LLC FOR COVID-19 DISASTER COST RECOVERY CONSULTING SERVICES

WHEREAS, in May 2020 the City underwent a Request for Proposal process for a consultant firm to provide disaster cost recovery services; and

WHEREAS, the City determined after evaluating the proposals received that AG Witt, LLC. was the best qualified firm meeting the City's needs to provide COVID-19 disaster cost recovery consulting services; and

WHEREAS, on May 26, 2020, the City Manager entered into Contract No. 32000282 with AG Witt, LLC for COVID-19 Emergency Operations Cost Recovery Consulting, for a total not to exceed amount of \$50,000; and

WHEREAS, on September 22, 2020 the City Council adopted Resolution No. 69,566-N.S. authorizing the City Manager to execute an amendment to this contract, increasing the amount by \$100,000 for a total not to exceed amount of \$150,000; and

WHEREAS, the City contract costs with AG Witt, LLC will now exceed the Council authorization spending amount of \$150,000; and

WHEREAS, the FY 2021 Adopted Budget had funds up to \$250,000 for disaster cost recovery consulting services allocated as part of an approved General Fund allocation of \$1.0 million for the City's COVID-19 response; and

WHEREAS, staff expects that this engagement with AG Witt will last for multiple years, due to the extended duration of the FEMA cost recovery process and ongoing nature of the COVID-19 pandemic; and

WHEREAS, staff and AG Witt expect that AG Witt's contract costs will be partially reimbursable through the FEMA PA Program.

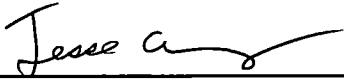
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32000282 with AG Witt, LLC to increase the contract amount by \$100,000 to a not to exceed amount of \$250,000. A record signature copy of said contract amendment to be on file in the Office of the City Clerk.

The foregoing Resolution was adopted by the Berkeley City Council on March 23, 2021 by the following vote:

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

Noes: None.

Absent: Kesarwani.

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

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





Office of the City Manager

INFORMATION CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Director, Planning and Development Department  
 Subject: LPO NOD: 2733 Buena Vista Way/#LMSAP2022-0004

INTRODUCTION

The attached Landmarks Preservation Commission Notice of Decision (NOD) is presented to the Mayor and City Council pursuant to Berkeley Municipal Code/Landmarks Preservation Ordinance (BMC/LPO) Section 3.24.240.A, which requires that “a copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.”

CURRENT SITUATION AND ITS EFFECTS

The Landmark Preservation Commission (LPC/Commission) has approved a Structural Alteration Permit (SAP) for the subject City Landmark property. This action is subject to a 15-day appeal period, which began on July 11, 2022.

BACKGROUND

BMC/LPO Section 3.24.300 allows City Council to review any action of the Landmarks Preservation Commission in granting or denying a Structural Alteration Permit. For Council to review the decision on its merits, Council must appeal the Notice of Decision. To do so, a Council member must move this Information Item to Action and then move to set the matter for hearing on its own. Such action must be taken within 15 days of the mailing of the Notice of Decision, or by July 26, 2022. Such certification to Council shall stay all proceedings in the same manner as the filing of an appeal.

If the Council chooses to appeal the action of the Commission, then a public hearing will be set. The Council must then rule on the designation within 30 days of closing the hearing, otherwise the decision of the Commission is automatically deemed affirmed.

Unless the Council wishes to review the determination of the Commission and make its own decision, the attached NOD is deemed received and filed.

ENVIRONMENTAL SUSTAINABILITY & CLIMATE IMPACTS

Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The Council may choose to appeal the decision, in which case it would conduct a public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no known fiscal impacts associated with this action.

CONTACT PERSON

Fatema Crane, Senior Planner, Planning and Development Department, 510-981-7410

Attachments:

1: Notice of Decision – #LMSAP2022-0004 for 2733 Buena Vista Way



L A N D M A R K S  
P R E S E R V A T I O N  
C O M M I S S I O N

---

N O T I C E O F D E C I S I O N

**DATE OF BOARD DECISION: June 2, 2022**  
**DATE NOTICE MAILED: July 11, 2022**  
**APPEAL PERIOD EXPIRATION: July 26, 2022**  
**EFFECTIVE DATE OF PERMIT (Barring Appeal): July 27, 2022<sup>1</sup>**

## 2733 Buena Vista Way

**Structural Alteration Permit (#LMSAP2022-0004) change the roof materials on the City Landmark Tuft's House #3, located in the Hillside neighborhood.**

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the following permit:

**PERMITS REQUIRED:**

- Structural Alteration Permit

**APPLICANT:** Shane Wakerling, General Roofing Co., 3309 Elmwood Ave., Oakland, CA

**ZONING DISTRICT:** Single Family Residential, Hillside Overlay (R-1/H)

**ENVIRONMENTAL REVIEW STATUS:** Categorically exempt pursuant to Section 15331 of the CEQA Guidelines (Historical Resource Restoration and Rehabilitation).

**The Application materials for this project are available online at:**

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

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**FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE**

<sup>1</sup> Pursuant to BMC Section 1.04.070, if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day. Pursuant to BMC Section 3.24.190, the City Council may "certify" any decision of the LPC for review, within fifteen days from the mailing of the NOD. Such certification shall stay all proceedings in the same manner as the filing of a notice of appeal.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMSAP2022-0004  
2733 Buena Vista Way  
July 11, 2022  
Page 2 of 5

**COMMISSION VOTE: 6-0-1-2**

**YES:** ADAMS, ENCHILL, LINVILL, MONTGOMERY, SCHWARTZ, TWU

**NO:** [NONE]

**ABSTAIN:** FINACOM

**ABSENT:** CRANDALL, LEUSCHNER

**TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code)**

An appeal may be taken to the City Council by the City Council on its own motion, by motion of the Planning Commission, by motion of the Civic Art Commission, by the verified application of the owners of the property or their authorized agents, or by the verified application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of this chapter.

Such appeal shall be taken by filing a written notice of appeal with the City Clerk within fifteen days after the mailing of the notice of the decision of the commission. The notice of appeal shall clearly and concisely set forth the grounds upon which the appeal is based. If the appeal is taken by an owner of the property affected, or an authorized agent, the notice of appeal shall be filed in duplicate and the City Clerk shall immediately forward one copy to the secretary of the commission. If the appeal is taken by someone other than an owner of affected property or an authorized agent, the notice of appeal shall be filed in triplicate and the City Clerk shall immediately forward one copy to the owner or authorized agent of the affected property and one copy to the secretary of the commission. Within ten days after the filing of a notice of appeal, the secretary of the commission shall transmit to the City Council a copy of the application, a copy of the notice of appeal and a written statement setting forth the reasons for the commission's decision, and shall make available to the council, at the time the matter is considered by the council, all other papers constituting the record upon which the action appealed from was taken.

The City Clerk is located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley. The City Clerk's facsimile number is (510) 981-6901. The City Clerk's telephone number is (510) 981-6900.

An appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

The required fee is as follows (checks and money orders must be payable to "City of Berkeley"):

- a. The basic fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMSAP2022-0004  
2733 Buena Vista Way  
July 11, 2022  
Page 3 of 5

of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.

- b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
- c. The fee for all appeals by Applicants is \$2,500.

### **STRUCTURAL ALTERATION PERMIT ISSUANCE:**

If no appeal is received, the Structural Alteration Permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time. Information about the Building Permit process can be found at the following link:  
<http://www.ci.berkeley.ca.us/permitservicecenter/>.

### **NOTICE CONCERNING YOUR LEGAL RIGHTS:**

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If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised in a public hearing and/or written correspondence during the proceedings related to this permit.
2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must including the following information:
  - A. That this belief is a basis of your appeal.
  - B. Why you believe that the decision or condition constitutes a "taking" of property as set

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMSAP2022-0004  
2733 Buena Vista Way  
July 11, 2022  
Page 4 of 5

forth above.

C. All evidence and argument in support of your belief that the decision or condition constitutes a “taking” as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

**PUBLIC COMMENT:**

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

**FURTHER INFORMATION:**

Questions about the project should be directed to the project planner, Fatema Crane, at (510) 981-7413 or [fcrane@cityofberkeley.info](mailto:fcrane@cityofberkeley.info). All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, between 8 a.m. and 4 p.m., Monday through Thursday.

**ATTACHMENTS:**

- 1. Findings and Conditions

**ATTEST:**   
Fatema Crane, Senior Planner  
Secretary to the Landmarks Preservation Commission

cc: City Clerk  
Applicant: Shane Wakerling, General Roofing  
3309 Elmwood Ave, Oakland, CA  
Property Owner: John & Jane Edginton  
2733 Buena Vista Way, Berkeley, CA  
Interested Party: Pamela Valois  
2751 Buena Vista Way, Berkeley, CA

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMSAP2022-0004  
2733 Buena Vista Way  
July 11, 2022  
Page 5 of 5

# ATTACHMENT 1, PART 2

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## FINDINGS AND CONDITIONS

### 2733 Buena Vista Way – Tuft’s House #3

#### **Structural Alteration Permit #LMSAP2022-0004**

**Structural Alteration Permit #LMSAP2022-0004 to change the roof materials on a City Landmark building in the Hillside neighborhood.**

#### **FINDINGS REQUIRED UNDER CEQA**

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15331 of the CEQA Guidelines (“Historic Resource Restoration/Rehabilitation”). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, and (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5.

#### **FINDINGS RELATED TO THE SECRETARY OF THE INTERIOR’S STANDARDS**

Regarding the Secretary of the Interior’s Standards for Rehabilitation, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

1. The property will continue its historic use as a residence.
2. The historic character of Tuft’s House #3 design may be preserved through retention of its character-defining and careful replacement of elements, such as the wood roof shingles with matching materials or other materials that resemble the details, textures and colors.
3. The synthetic roof tiles attempt to replicate the appearance of the historic materials and to blend with architectural features and design of Tuft’s House #3; by blending rather introducing conjectural elements, the proposal would not create a sense of false historicism.
4. No changes to this property that have acquired significance in their own right are present or would be affected by the subject proposal.
5. This proposal includes the removal of a distinctive architectural feature and an example of craftsmanship. To lessen the potential impact of this change, the project has been conditioned to require the selection of materials that more closely match the tone and texture of the original hand-sawn wood shingles.



6. The deteriorated wood roof shingles have been removed and the applicant is encouraged to replace them in-kind. Alternatively, the project is permitted to replace the wood material with synthetic tiles that simulate the texture, color and design of the original shakes.
7. The applicant does not propose chemical or physical treatments. However, standard conditions of Structural Alteration Permit approval would require that any chemical or physical treatments be undertaken using the gentlest means possible.
8. This proposal does not require grading or ground disturbance and, therefore, is not likely to affect significant archaeological resources.
9. The project has been conditioned to ensure that the new materials are compatible with the architectural features of the subject building and to resemble the natural historical wood shingles.
10. If the proposed synthetic tiles were removed in the future, they would not permanently impair the integrity or essential form of the Maybeck design.

#### **FINDINGS REQUIRED UNDER LANDMARK PRESERVATION ORDINANCE**

10. As required by Section 3.24.260 of the Landmarks Preservation Ordinance, the Commission finds that the proposed work is an alternative to in-kind replacement under the circumstances. Specifically:
  - A. The applicant is encouraged to replace the cedar roof shingles in-kind or, alternatively, shall match the appearance of the natural wood materials as closely as possible.
  - B. If in-kind replacement is not undertaken, then replacement with roof tiles that most closely resemble the texture and tone of the original cedar shakes would better preserve the character and aesthetic value of the subject Maybeck residence.

#### **STANDARD CONDITIONS**

The following conditions, as well as all other applicable provisions of the Landmarks Preservation Ordinance, apply to this Permit:

##### **1. Conditions Shall be Printed on Plans**

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Permit, under the title 'Structural Alteration Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

**2. Plans and Representations Become Conditions**

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

**3. Subject to All Applicable Laws and Regulations**

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Zoning Adjustments Board or Zoning Officer, Building and Safety Division, Public Works Department and other affected City divisions and departments.

**4. Exercise and Lapse of Permits (Section 23.404.060.C)**

- A. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- B. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

**5. Indemnification Agreement**

The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

**ADDITIONAL CONDITIONS**

The following additional conditions are attached to this Permit:

- 10. The proposed project is approved as shown on the drawings dated "received May 18, 2022" subject to the conditions herein.
- 11. No changes can be made to these approved plans without prior approval.
- 12. Repair and replacement of character-defining features. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old or historic feature in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

13. Chemical or physical treatments, if appropriate, shall be called out in the scope or work for any building permit for this project and shall be undertaken using the gentlest means possible. Treatments causing damage to historic materials shall not be used.
14. Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit color and materials information for review and approval by Landmarks staff, in coordination with the LPC Chair as needed. Exterior roof materials shall consist of wood cedar shakes matching the historic shingles or, alternatively, synthetic wood shakes featuring varied widths and matching the tone and texture of the authentic cedar shakes to the greatest extent possible.
15. The applicant shall be responsible for identifying and securing all applicable permits from the Building and Safety Division and all other affected City divisions/departments prior to the start of work.
16. The applicant is responsible for complying with all the above conditions. Failure to comply with any condition could result in construction work being stopped, issuance of citations, as well as further review by the Landmarks staff, which may modify or impose additional conditions, or revoke approval.
17. All building permit drawings and subsequent construction shall substantially conform to the approved plans as outlined in Condition #1. Any modifications must be reviewed by the Landmarks plan checker to determine whether the modification requires approval.
18. The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.





Office of the City Manager

INFORMATION CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Director, Planning and Development Department  
 Subject: LPO NOD: 2200-block of Piedmont Avenue/#LMSAP2019-0009

INTRODUCTION

The attached Landmarks Preservation Commission Notice of Decision (NOD) is presented to the Mayor and City Council pursuant to Berkeley Municipal Code/Landmarks Preservation Ordinance (BMC/LPO) Section 3.24.240.A, which requires that “a copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.”

CURRENT SITUATION AND ITS EFFECTS

The Landmark Preservation Commission (LPC/Commission) has approved a Structural Alteration Permit (SAP) for the subject City Landmark property. This action is subject to a 15-day appeal period, which began on July 11, 2022.

BACKGROUND

BMC/LPO Section 3.24.300 allows City Council to review any action of the Landmarks Preservation Commission in granting or denying a Structural Alteration Permit. For Council to review the decision on its merits, Council must appeal the Notice of Decision. To do so, a Council member must move this Information Item to Action and then move to set the matter for hearing on its own. Such action must be taken within 15 days of the mailing of the Notice of Decision, or by July 26, 2022. Such certification to Council shall stay all proceedings in the same manner as the filing of an appeal.

If the Council chooses to appeal the action of the Commission, then a public hearing will be set. The Council must then rule on the designation within 30 days of closing the hearing, otherwise the decision of the Commission is automatically deemed affirmed.

Unless the Council wishes to review the determination of the Commission and make its own decision, the attached NOD is deemed received and filed.

ENVIRONMENTAL SUSTAINABILITY & CLIMATE IMPACTS

Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The Council may choose to appeal the decision, in which case it would conduct a public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no known fiscal impacts associated with this action.

CONTACT PERSON

Fatema Crane, Senior Planner, Planning and Development Department, 510-981-7410

Attachments:

1: Notice of Decision – #LMSAP2019-0009 for 2200-block of Piedmont Avenue



L A N D M A R K S  
P R E S E R V A T I O N  
C O M M I S S I O N

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N O T I C E O F D E C I S I O N

**DATE OF BOARD DECISION: June 2, 2022**  
**DATE NOTICE MAILED: July 11, 2022**  
**APPEAL PERIOD EXPIRATION: July 26, 2022**  
**EFFECTIVE DATE OF PERMIT (Barring Appeal): July 27, 2022<sup>1</sup>**

## 2200-block of Piedmont Avenue

**Structural Alteration Permit (#LMSAP2019-0009) to complete ADA improvements within the public right-of-way at the intersection of Piedmont Avenue and Bancroft Way, an Olmsted-design landscape.**

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the following permit:

**PERMITS REQUIRED:**

- Structural Alteration Permit

**APPLICANT:** Matthew Gaber, Landscape Architect, NCE Engineering & Environmental Services, 501 Canal Blvd. Suite I, Richmond, CA

**ZONING DISTRICT:** not applicable to the public right-of-way

**ENVIRONMENTAL REVIEW STATUS:** Categorically exempt pursuant to Section 15331 of the CEQA Guidelines (Historical Resource Restoration and Rehabilitation).

**The Application materials for this project are available online at:**

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

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<sup>1</sup> Pursuant to BMC Section 1.04.070, if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day. Pursuant to BMC Section 3.24.190, the City Council may “certify” any decision of the LPC for review, within fifteen days from the mailing of the NOD. Such certification shall stay all proceedings in the same manner as the filing of a notice of appeal.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMSAP2019-0009  
2200-block of Piedmont Avenue  
July 11, 2022  
Page 2 of 5

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**FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE**

**COMMISSION VOTE: 7-0-0-2**

**YES:** ADAMS, ENCHILL, FINACOM, LINVILL, MONTGOMERY, SCHWARTZ, TWU

**NO:** [NONE]

**ABSTAIN:** [NONE]

**ABSENT:** CRANDALL, LEUSCHNER

**TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code)**

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An appeal may be taken to the City Council by the City Council on its own motion, by motion of the Planning Commission, by motion of the Civic Art Commission, by the verified application of the owners of the property or their authorized agents, or by the verified application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of this chapter.

Such appeal shall be taken by filing a written notice of appeal with the City Clerk within fifteen days after the mailing of the notice of the decision of the commission. The notice of appeal shall clearly and concisely set forth the grounds upon which the appeal is based. If the appeal is taken by an owner of the property affected, or an authorized agent, the notice of appeal shall be filed in duplicate and the City Clerk shall immediately forward one copy to the secretary of the commission. If the appeal is taken by someone other than an owner of affected property or an authorized agent, the notice of appeal shall be filed in triplicate and the City Clerk shall immediately forward one copy to the owner or authorized agent of the affected property and one copy to the secretary of the commission. Within ten days after the filing of a notice of appeal, the secretary of the commission shall transmit to the City Council a copy of the application, a copy of the notice of appeal and a written statement setting forth the reasons for the commission's decision, and shall make available to the council, at the time the matter is considered by the council, all other papers constituting the record upon which the action appealed from was taken.

The City Clerk is located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley. The City Clerk's facsimile number is (510) 981-6901. The City Clerk's telephone number is (510) 981-6900.

An appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

The required fee is as follows (checks and money orders must be payable to "City of Berkeley"):



LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMSAP2019-0009  
2200-block of Piedmont Avenue  
July 11, 2022  
Page 3 of 5

- a. The basic fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
- b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
- c. The fee for all appeals by Applicants is \$2,500.

**STRUCTURAL ALTERATION PERMIT ISSUANCE:**

If no appeal is received, the Structural Alteration Permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time. Information about the Building Permit process can be found at the following link:  
<http://www.ci.berkeley.ca.us/permitservicecenter/>.

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised in a public hearing and/or written correspondence during the proceedings related to this permit.
2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a “taking” of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must including the following information:
  - A. That this belief is a basis of your appeal.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMSAP2019-0009  
2200-block of Piedmont Avenue  
July 11, 2022  
Page 4 of 5

- B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
- C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

**PUBLIC COMMENT:**

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

**FURTHER INFORMATION:**

Questions about the project should be directed to the project planner, Fatema Crane, at (510) 981-7413 or fcrane@cityofberkeley.info. All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, between 8 a.m. and 4 p.m., Monday through Thursday.

**ATTACHMENTS:**

- 1. Findings and Conditions

**ATTEST:**   
 Fatema Crane, Senior Planner  
 Secretary to the Landmarks Preservation Commission

cc: City Clerk  
 Applicant: Matthew Gaber, Landscape Architect  
 NCE Engineering & Environmental Services  
 501 Canal Blvd. Suite I  
 Richmond, CA  
 Property Owner: City of Berkeley, Dept. of Public Works

LANDMARKS PRESERVATION COMMISSION  
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# FINDINGS AND CONDITIONS

## 2200-block Piedmont Avenue

### Structural Alteration Permit #LMSAP2019-0009

**Structural Alteration Permit #LMSAP2019-0009 to complete ADA access improvements in the public right-of-way at the intersection of Piedmont Avenue and Bancroft Way.**

### FINDINGS REQUIRED UNDER CEQA

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15331 of the CEQA Guidelines (“Historic Resource Restoration/Rehabilitation”). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, and (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5.

### FINDINGS RELATED TO THE SECRETARY OF THE INTERIOR’S STANDARDS

Regarding the Secretary of the Interior’s Standards for Rehabilitation, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

1. The property will continue its historic use as a public right-of-way.
2. The historic character of the Olmstead-design landscape, as characterized by the broad width of its curvilinear form, central planting median and auto and pedestrian pathways. The proposal retains, preserves and does not eliminate these features.
3. The proposal does not include proposed alterations that would create a false sense of historical development. The proposed lamp posts are emblematic of period-style lighting but are contemporary and not conjectural.
4. The overall plan of 1864 landscape design appears to be largely intact with few significant changes. No changes that have acquired significance in their own right are present or would be affected by the subject proposal.
5. With respect to techniques and materials, no distinctive features, finishes or construction methods would be affected by the subject proposal.

6. As conditioned herein, the applicant shall be required to consider repair rather than the replacement of deteriorated historic features of this site; when the severity of deterioration requires replacement, then the applicant shall match the old in design, color, texture, materials and, where possible, quality. With respect to features of this historic landscape design, the applicant will be asked to consider retaining or providing comparable areas of planted landscaping between the curb and edge of sidewalk.
7. The applicant does not propose chemical or physical treatments. However, standard conditions of Structural Alteration Permit approval would require that any chemical or physical treatments be undertaken using the gentlest means possible.
8. This proposal includes grading within the project area and is subject to the City's standard conditions of approval that require prompt and appropriate action to address the discovery of subsurface cultural resources.
9. The proposed work includes new features in the public right-of-way such as an ADA ramp and surface pavement, will be compatible with the historic design by virtue of its seamless installation, low profile and limited overall impact. These features will not destroy spatial relationships of the historic landscape design.
10. If the proposed improvements were removed, they would not permanently impair the integrity or essential form of the Olmsted design.

### **FINDINGS REQUIRED UNDER LANDMARK PRESERVATION ORDINANCE**

1. As required by Section 3.24.260 of the Landmarks Preservation Ordinance, the Commission finds that proposed work is appropriate for and consistent with the purposes of the Ordinance, and will preserve and enhance the characteristics and features specified in the designation for this property. Specifically:
  - A. The character-defining features of the subject Olmsted landscape design are its curvilinear form, broad width of 100 ft., the placement and delineation of auto and pedestrian pathways throughout, and the central planted medians. As conditioned herein, these features would not be adversely affected by the request for ADA access improvements.

### **STANDARD CONDITIONS**

The following conditions, as well as all other applicable provisions of the Landmarks Preservation Ordinance, apply to this Permit:

#### **1. Conditions Shall be Printed on Plans**

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Permit, under the title 'Structural Alteration Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions

shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

## **2. Plans and Representations Become Conditions**

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

## **3. Subject to All Applicable Laws and Regulations**

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Zoning Adjustments Board or Zoning Officer, Building and Safety Division, Public Works Department and other affected City divisions and departments.

## **4. Exercise and Lapse of Permits (Section 23.404.060.C)**

- A. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- B. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

## **5. Indemnification Agreement**

The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

## **6. Halt Work/Unanticipated Discovery of Tribal Cultural Resources**

In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American

groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.

## **7. Archaeological Resources (*Ongoing throughout demolition, grading, and/or construction*)**

Pursuant to CEQA Guidelines Section 15064.5(f), “provisions for historical or unique archaeological resources accidentally discovered during construction” should be instituted. Therefore:

- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
- B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
- C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
- D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources are carried out.
- E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

## **8. Human Remains (*Ongoing throughout demolition, grading, and/or construction*)**

In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to CEQA Guidelines Section 15064.5 (e)(1). If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to Health and Safety Code Section 7050.5(c), and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

### **9. Paleontological Resources (*Ongoing throughout demolition, grading, and/or construction*)**

In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

### **ADDITIONAL CONDITIONS**

The following additional conditions are attached to this Permit:

10. The proposed project is approved as shown on the drawings dated “received May 17, 2022” subject to the conditions herein.
11. No changes can be made to these approved plans without prior approval.
12. **PUBLIC WORKS PERMIT** – This Structural Alteration Permit approval is contingent upon Public Works permit approval.
13. Repair and replacement of character-defining features. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old or historic feature in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
14. Chemical or physical treatments, if appropriate, shall be called out in the scope or work for any building permit for this project and shall be undertaken using the gentlest means possible. Treatments causing damage to historic materials shall not be used.
15. Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit color and materials information for review and approval by Landmarks staff, in coordination with the LPC Chair as needed.
16. Applicant shall submit a separate application for the signage. It is not included in this permit.
17. (A) Prior to Landmarks plan checker sign-off of the building permit set of drawings, the applicant shall submit lighting details showing all existing and proposed site and building lighting. Exterior lighting, including for signage, shall be downcast and not cause glare on the public right-of-way and adjacent parcels.



(B) Proposed lamp post shall be placed so as to avoid obstructing sight lines of the I-House stairs.

**18. LANDSCAPE PLANS** – (A) Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall revise the landscape plan to include areas of new plantings and, where possible, street trees within the traditional landscape strip between the curb and edge of sidewalk. The revised landscape plan must call out the number, location, and species of all proposed plantings, and which existing plantings shall be removed. The applicant shall provide irrigation for all landscaped areas or provide drought tolerant plant palette. This shall be called out on Landscape building permit drawings.

(B) Plans shall include at least two street trees; placement shall to be symmetrical to the extent possible.

**19.** The applicant shall provide irrigation for all landscaped areas. This shall be called out on Landscape building permit drawings.

**20.** All curbs and curb cuts shall be constructed per the standards and specifications of the Public Works Department. Curb cuts no longer utilized shall be restored per the Public Works Department specifications.

**21.** The applicant shall be responsible for identifying and securing all applicable permits from the Building and Safety Division and all other affected City divisions/departments prior to the start of work.

**22.** The applicant is responsible for complying with all the above conditions. Failure to comply with any condition could result in construction work being stopped, issuance of citations, as well as further review by the Landmarks staff, which may modify or impose additional conditions, or revoke approval.

**23.** All building permit drawings and subsequent construction shall substantially conform to the approved plans as outlined in Condition #1. Any modifications must be reviewed by the Landmarks plan checker to determine whether the modification requires approval.

**24.** The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this

condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

## **PROPOSED PIEDMONT AVENUE ADA IMPROVEMENTS**



Slope at Shuttle Stops does not comply with ADA standards



Non compliant ADA parking space-  
No level exit area from vehicle



# Piedmont Ave. ADA Improvements

## Existing Non ADA Compliant Areas

NTS

May 17th, 2022



L1.0



Landing for stairs and ramp do not comply with ADA and are within the street



Landing for stairs is within the street



# Piedmont Ave. ADA Improvements

## Existing Non ADA Compliant Areas

NTS

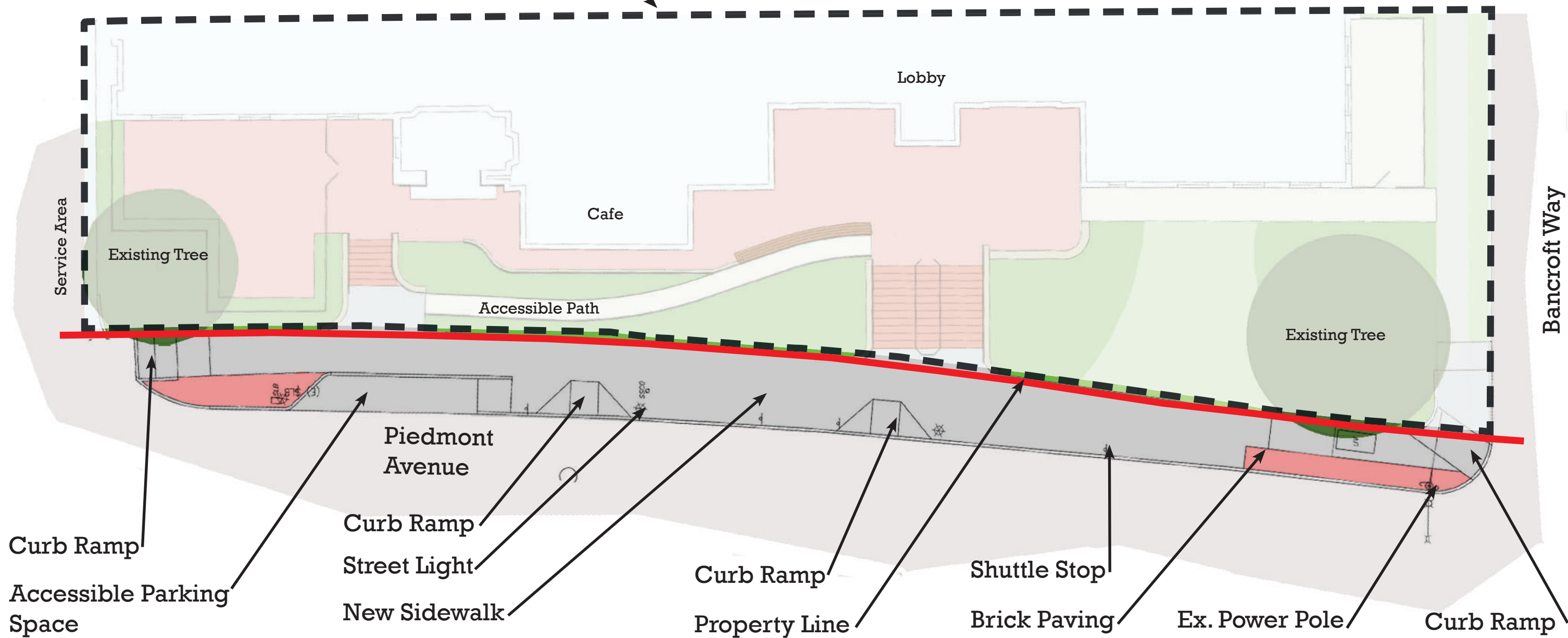
May 17th, 2022



L1.1



THIS AREA SHOWN FOR REFERENCE ONLY



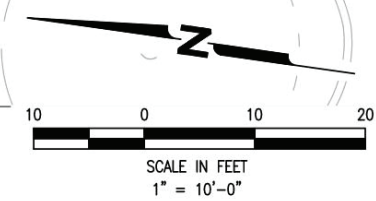
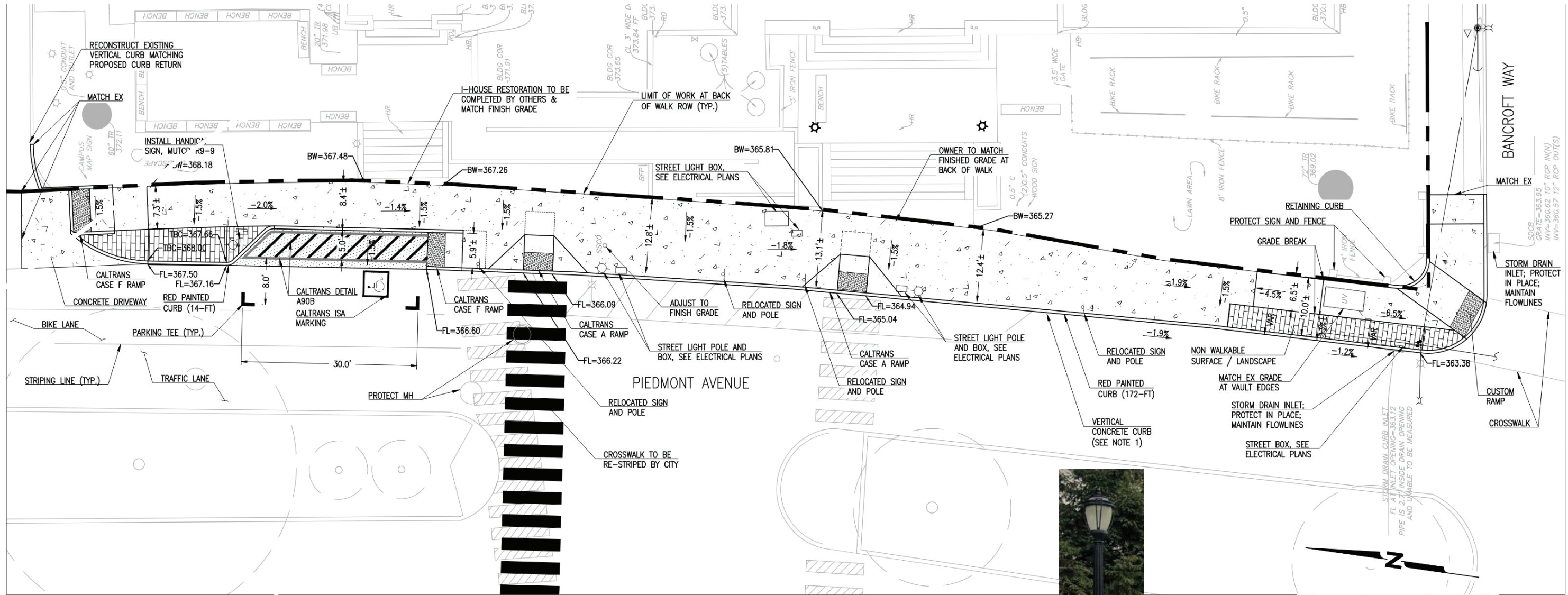
# Piedmont Ave. ADA Improvements Master Plan

NTS

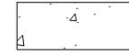



May 17th, 2022



L1.2



**IMPROVEMENT LEGEND**

-  CONCRETE SIDEWALK PER THE CITY OF BERKELEY STANDARD PLAN
-  CONCRETE PAD (VEHICULAR)
-  NON-WALKABLE/PAVER SURFACE
-  DETECTABLE WARNING STRIP

**NOTES**

1. NEW 6-INCH CONCRETE VERTICAL CURB SHALL MATCH EXISTING FLOW LINE AND ALIGNMENT, WITH MINOR ADJUSTMENTS AS NEEDED FOR CONTRACTIBILITY PURPOSES. NEW SIDEWALK WILL HAVE A MAXIMUM 2% CROSS SLOPE.

**Street Light to match existing on Piedmont Avenue**



**Brick by McNear  
Brick and Block  
Commercial Series  
Style: McNear Red**



**Piedmont Ave. ADA Improvements  
Improvement Plans**

NTS

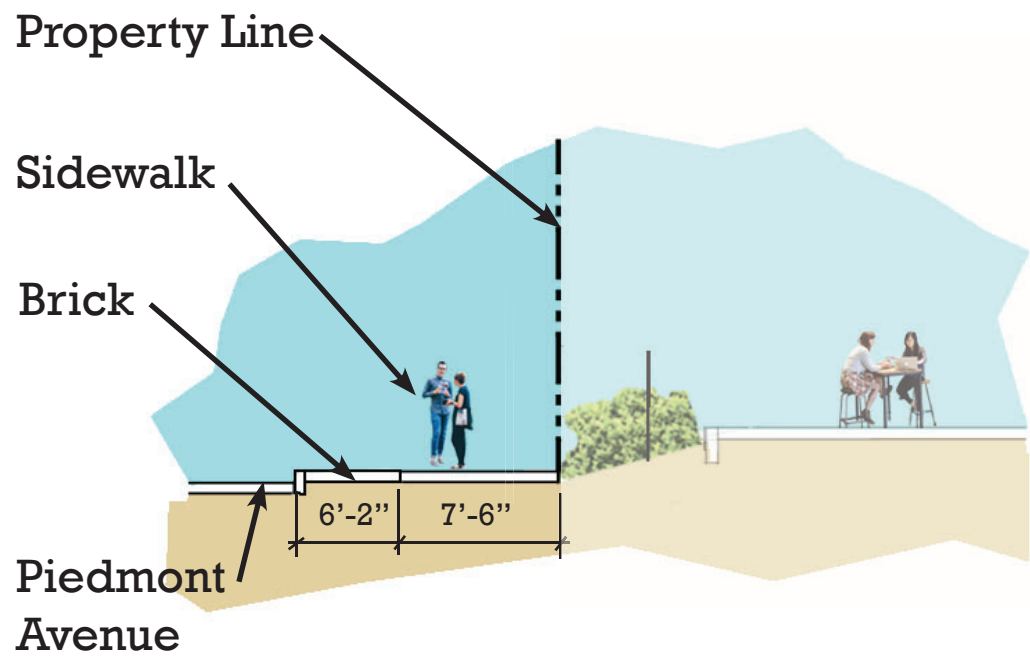
May 17th, 2022



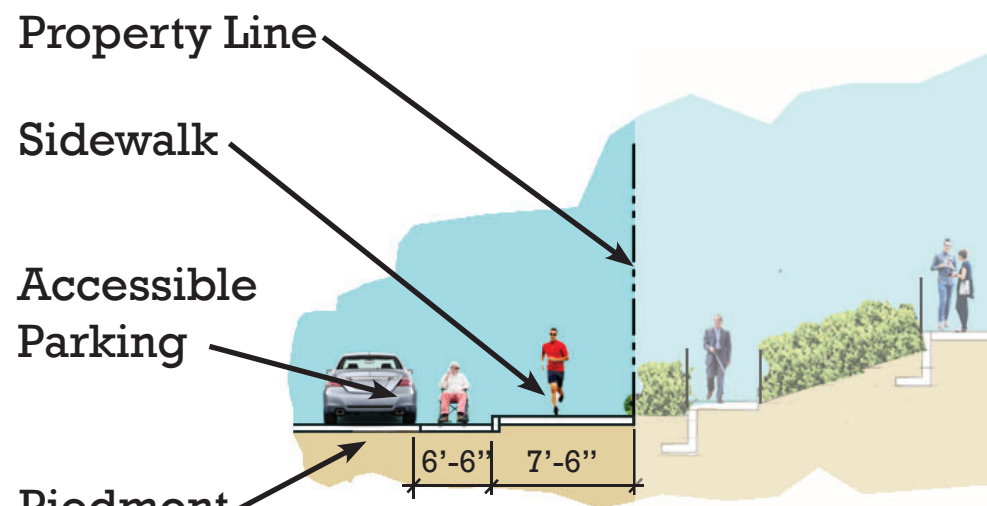
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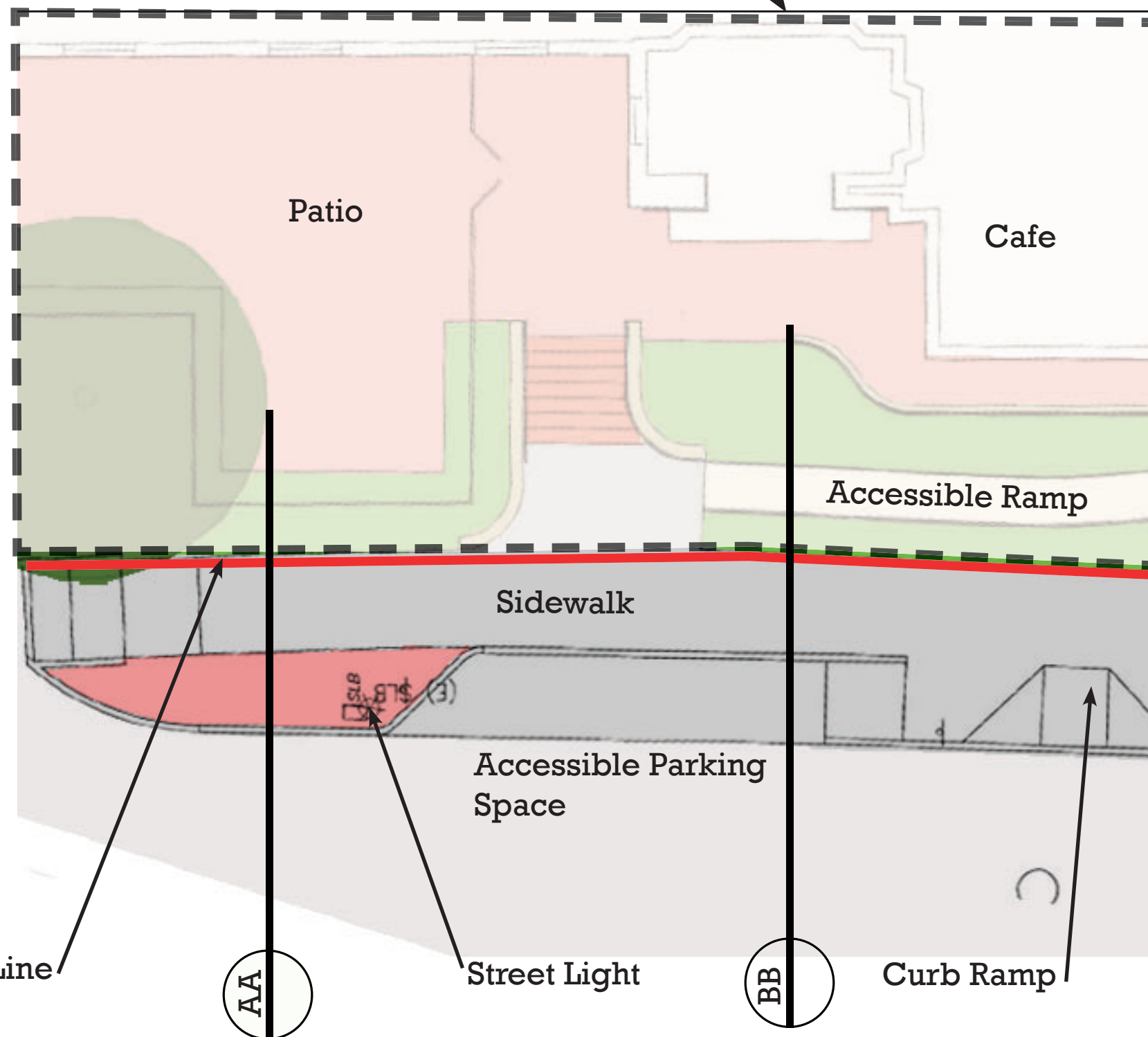
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**Section AA**



**Section BB**



# Piedmont Ave. ADA Improvements

## Sections

NTS

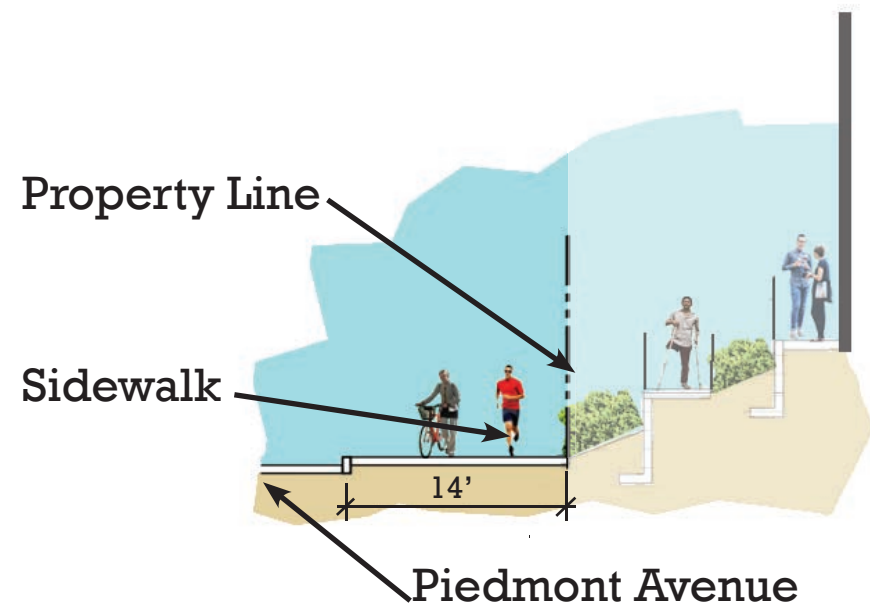
May 17th, 2022



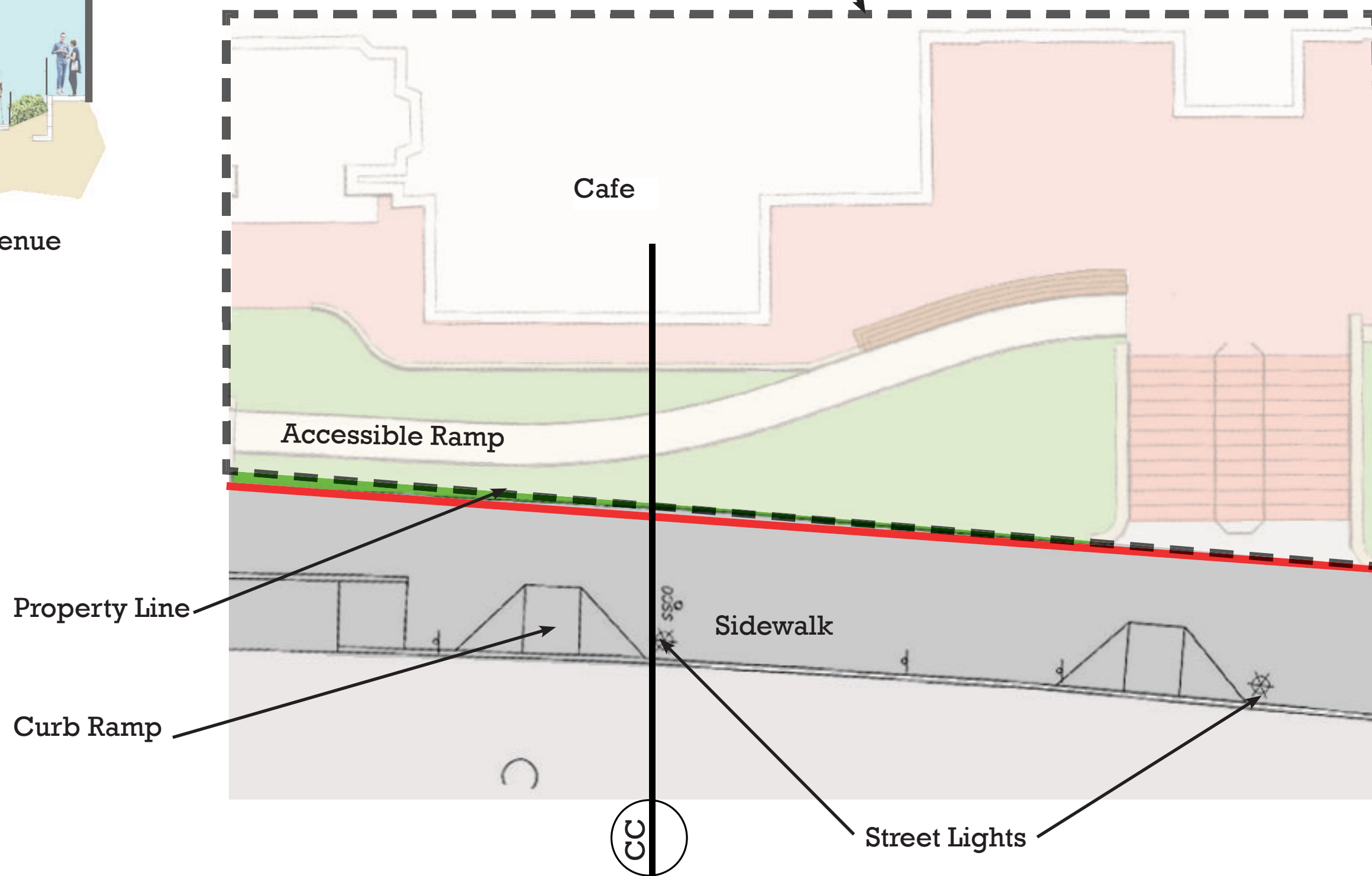
**L1.4**



THIS AREA SHOWN FOR REFERENCE ONLY



**Section CC**



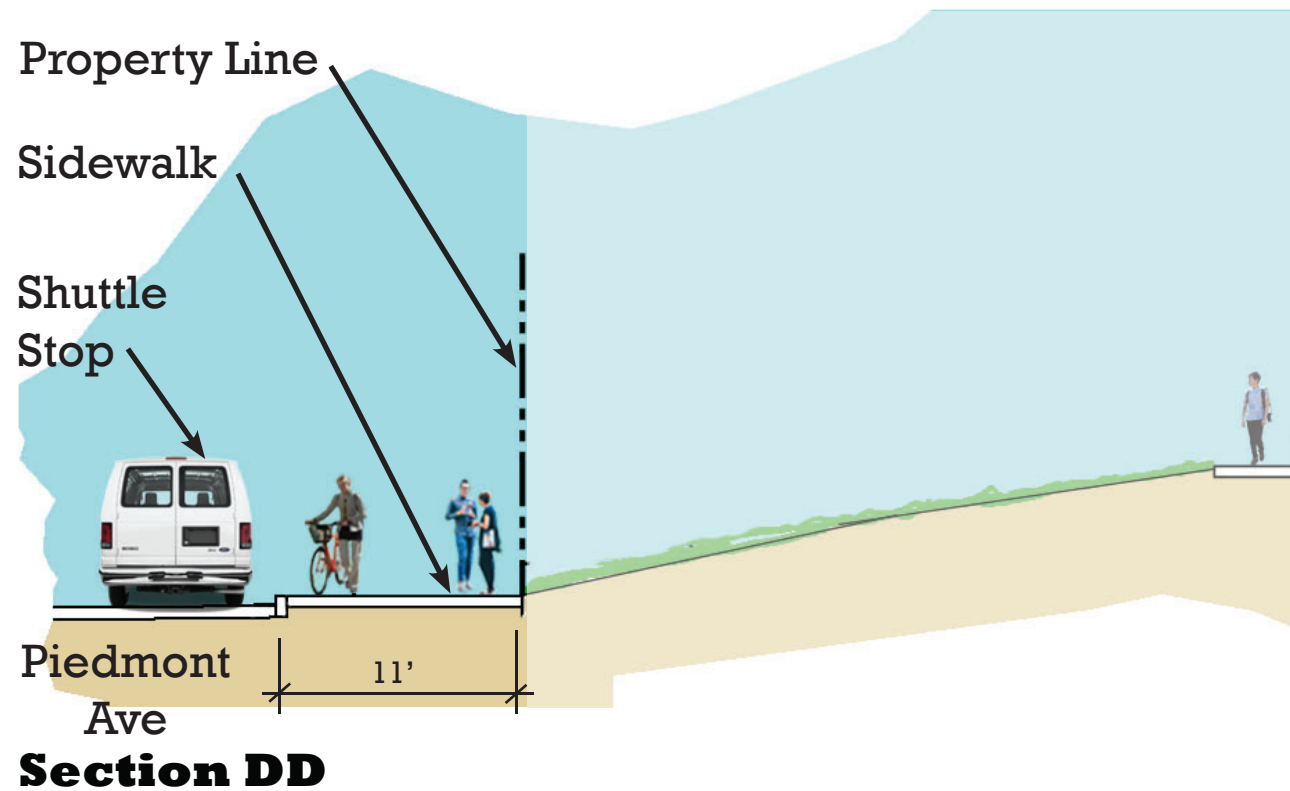
**Piedmont Ave. ADA Improvements**  
**Sections**

NTS

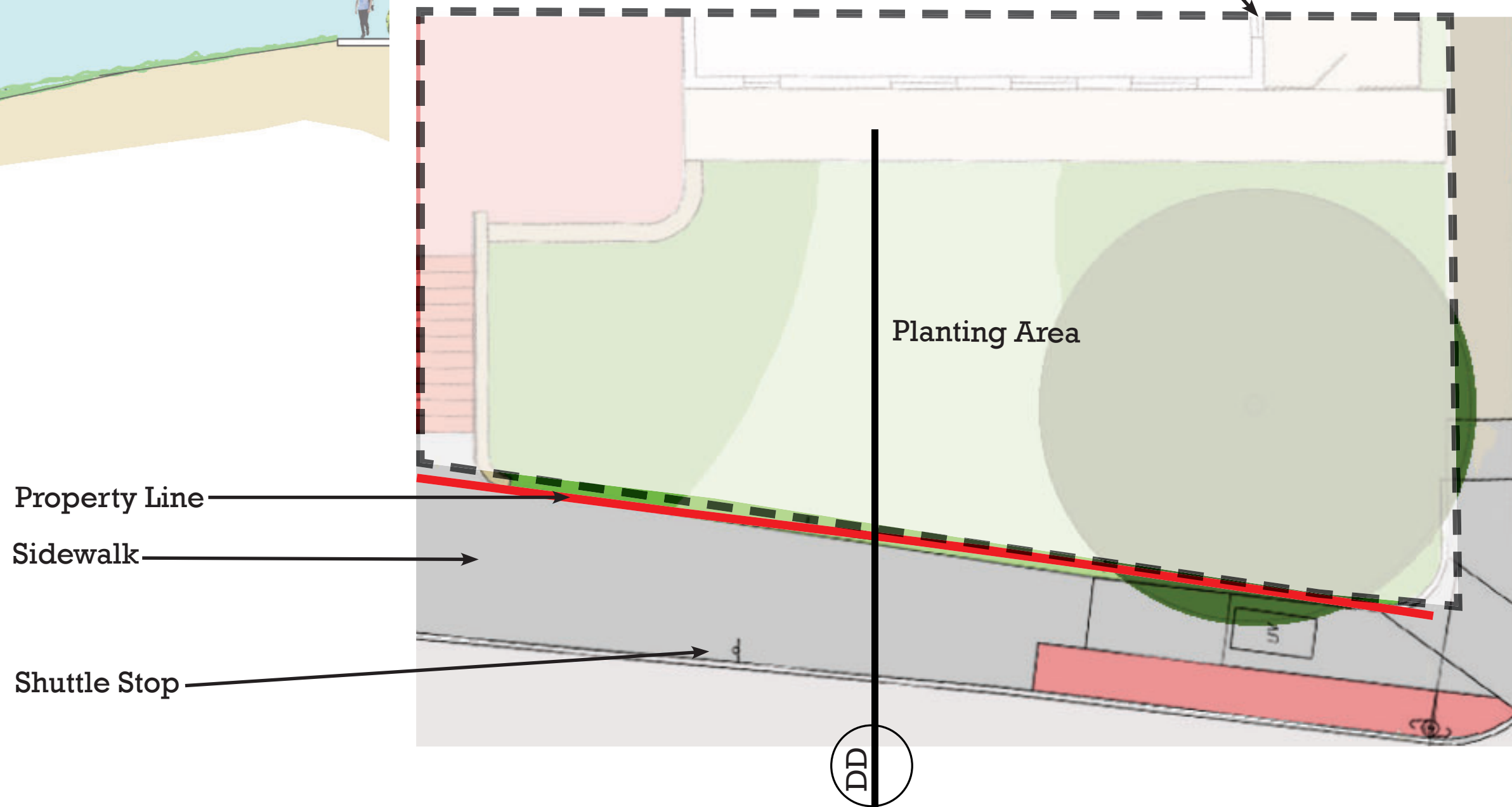
May 17th, 2022



**L1.5**



THIS AREA SHOWN FOR REFERENCE ONLY



# Piedmont Ave. ADA Improvements

## Sections

NTS

May 17th, 2022



L1.6



Office of the City Manager

INFORMATION CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Director, Planning and Development Department  
 Subject: LPO NOD: 8 Greenwood Common/#LMSAP2022-0002

INTRODUCTION

The attached Landmarks Preservation Commission Notice of Decision (NOD) is presented to the Mayor and City Council pursuant to Berkeley Municipal Code/Landmarks Preservation Ordinance (BMC/LPO) Section 3.24.240.A, which requires that “a copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.”

CURRENT SITUATION AND ITS EFFECTS

The Landmark Preservation Commission (LPC/Commission) has approved a Structural Alteration Permit (SAP) for the subject City Landmark property. This action is subject to a 15-day appeal period, which began on July 11, 2022.

BACKGROUND

BMC/LPO Section 3.24.300 allows City Council to review any action of the Landmarks Preservation Commission in granting or denying a Structural Alteration Permit. For Council to review the decision on its merits, Council must appeal the Notice of Decision. To do so, a Council member must move this Information Item to Action and then move to set the matter for hearing on its own. Such action must be taken within 15 days of the mailing of the Notice of Decision, or by July 26, 2022. Such certification to Council shall stay all proceedings in the same manner as the filing of an appeal.

If the Council chooses to appeal the action of the Commission, then a public hearing will be set. The Council must then rule on the designation within 30 days of closing the hearing, otherwise the decision of the Commission is automatically deemed affirmed.

Unless the Council wishes to review the determination of the Commission and make its own decision, the attached NOD is deemed received and filed.

ENVIRONMENTAL SUSTAINABILITY & CLIMATE IMPACTS

Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The Council may choose to appeal the decision, in which case it would conduct a public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no known fiscal impacts associated with this action.

CONTACT PERSON

Fatema Crane, Senior Planner, Planning and Development Department, 510-981-7410

Attachments:

1: Notice of Decision – #LMSAP2022-0002 for 8 Greenwood Common



L A N D M A R K S  
P R E S E R V A T I O N  
C O M M I S S I O N

---

N O T I C E O F D E C I S I O N

**DATE OF BOARD DECISION: May 5, 2022**  
**DATE NOTICE MAILED: July 11, 2022**  
**APPEAL PERIOD EXPIRATION: July 26, 2022**  
**EFFECTIVE DATE OF PERMIT (Barring Appeal): July 27, 2022<sup>1</sup>**

## 8 Greenwood Common

**Structural Alteration Permit (#LMSAP2021-0002) to complete limited exterior alteration a single-family residence included in the City Landmark Greenwood Common.**

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the following permit:

**PERMITS REQUIRED:**

- Structural Alteration Permit

**APPLICANT:** Kerstin Fischer, Fischer Architecture, 2984 San Pablo Ave., Berkeley, CA

**ZONING DISTRICT:** Single Family Residential, Hillside Overlay (R-1/H)

**ENVIRONMENTAL REVIEW STATUS:** Categorically exempt pursuant to Section 15331 of the CEQA Guidelines (Historical Resource Restoration and Rehabilitation).

**The Application materials for this project are available online at:**

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

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<sup>1</sup> Pursuant to BMC Section 1.04.070, if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day. Pursuant to BMC Section 3.24.190, the City Council may “certify” any decision of the LPC for review, within fifteen days from the mailing of the NOD. Such certification shall stay all proceedings in the same manner as the filing of a notice of appeal.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMSAP2022-0002  
8 Greenwood Common  
July 11, 2022  
Page 2 of 4

**FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE**

**COMMISSION VOTE: 7-0-0-1 (one vacancy)**

**YES:** ADAMS, CRANDALL, ENCHILL, FINACOM, LEUSCHNER, SCHWARTZ, TWU  
**NO:** [NONE]  
**ABSTAIN:** [NONE]  
**ABSENT:** MONTGOMERY

**TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code)**

An appeal may be taken to the City Council by the City Council on its own motion, by motion of the Planning Commission, by motion of the Civic Art Commission, by the verified application of the owners of the property or their authorized agents, or by the verified application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of this chapter.

Such appeal shall be taken by filing a written notice of appeal with the City Clerk within fifteen days after the mailing of the notice of the decision of the commission. The notice of appeal shall clearly and concisely set forth the grounds upon which the appeal is based. If the appeal is taken by an owner of the property affected, or an authorized agent, the notice of appeal shall be filed in duplicate and the City Clerk shall immediately forward one copy to the secretary of the commission. If the appeal is taken by someone other than an owner of affected property or an authorized agent, the notice of appeal shall be filed in triplicate and the City Clerk shall immediately forward one copy to the owner or authorized agent of the affected property and one copy to the secretary of the commission. Within ten days after the filing of a notice of appeal, the secretary of the commission shall transmit to the City Council a copy of the application, a copy of the notice of appeal and a written statement setting forth the reasons for the commission’s decision, and shall make available to the council, at the time the matter is considered by the council, all other papers constituting the record upon which the action appealed from was taken.

The City Clerk is located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley. The City Clerk’s facsimile number is (510) 981-6901. The City Clerk’s telephone number is (510) 981-6900.

An appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

The required fee is as follows (checks and money orders must be payable to “City of Berkeley”):

- a. The basic fee for persons other than the applicant is \$500. This fee may be

LANDMARKS PRESERVATION COMMISSION  
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reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.

- b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
- c. The fee for all appeals by Applicants is \$2,500.

**STRUCTURAL ALTERATION PERMIT ISSUANCE:**

If no appeal is received, the Structural Alteration Permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time. Information about the Building Permit process can be found at the following link:

<http://www.ci.berkeley.ca.us/permitservicecenter/>.

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

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If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised in a public hearing and/or written correspondence during the proceedings related to this permit.
2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
  - A. That this belief is a basis of your appeal.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMSAP2022-0002  
8 Greenwood Common  
July 11, 2022  
Page 4 of 4

- B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
- C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

**PUBLIC COMMENT:**

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Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

**FURTHER INFORMATION:**

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Questions about the project should be directed to the project planner, Fatema Crane, at (510) 981-7413 or [fcrane@cityofberkeley.info](mailto:fcrane@cityofberkeley.info). All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, between 8 a.m. and 4 p.m., Monday through Thursday.

**ATTACHMENTS:**

- 
- 1. Findings and Conditions
  - 2. Project Plans, revised **MARCH 1 & MAY 5, 2022**

**ATTEST:**   
Fatema Crane, Senior Planner  
Secretary to the Landmarks Preservation Commission

cc: City Clerk  
Applicant: Kerstin Fischer, Fischer Architecture, 2984 San Pablo Ave., Berkeley, CA  
Property Owner: Cindy & Rory Reid, 8 Greenwood Common, Berkeley, CA



ATTACHMENT 1, PART 2  
FINDINGS AND CONDITIONS

## 8 Greenwood Common – Greenwood Common

### **Structural Alteration Permit #LMSAP2022-0002**

**Structural Alteration Permit #LMSAP2022-0002 to make limited exterior alterations to a residential property in the Hillside neighborhood.**

### **FINDINGS REQUIRED UNDER CEQA**

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15331 of the CEQA Guidelines (“Historic Resource Restoration/Rehabilitation”). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, and (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5.

### **FINDINGS RELATED TO THE SECRETARY OF THE INTERIOR’S STANDARDS**

Regarding the Secretary of the Interior’s Standards for Rehabilitation, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

1. The property will continue to be used as a residence, consistent with its historic use.
2. The scope of proposed work is limited to window and door replacement, and removal and in-fill of exterior building materials will match the existing historic features and materials. The project would not remove any significant features of the building design or alter its distinctive architectural character.
3. This property does not feature changes that have acquired significance in their own right, and, therefore, it cannot affect such features.
4. The approved alterations to the building are limited in scope, would replace and in-fill exterior building materials, and would not impair any distinctive materials, features, finishes, and construction techniques, or examples of craftsmanship that characterize this property.
5. Has conditioned herein, if deteriorated historic features will be affected by this request, then they would be repaired or replaced to match the materials, design, and finishes of the original items.

6. The applicant does not propose chemical or physical treatments. However, standard conditions of Structural Alteration Permit approval would require any chemical or physical treatments to be undertaken using the gentlest means possible.
7. The project does not have the potential to affect any archaeological resources because the applicant proposes no excavation.
8. The proposed new windows and doors feature a selection of style and materials that are compatible with the historic building design. These new elements are more contemporary than the features to be removed and, yet, are similarly understated in style and tone (color). They are found to be sufficiently differentiated and compatible.
9. If the proposed improvements were removed, they would not permanently impair the integrity or essential form of the subject building or collective Common.

#### **FINDINGS REQUIRED UNDER LANDMARK PRESERVATION ORDINANCE**

1. As required by Section 3.24.260 of the Landmarks Preservation Ordinance, the Commission finds that proposed work is appropriate for and consistent with the purposes of the Ordinance, and will preserve and enhance the characteristics and features specified in the designation for this property. Specifically:
  - A. The character-defining exterior features of this Third Bay Tradition residential property include its overall building massing, low-pitched shed roof, horizontal wood siding, use of natural materials and understated detailing. These features would be retained and unaffected by the proposed alteration of the window/door configuration.
  - B. The special character of the subject property may lie in its relationship to the other properties in the Common where they form a collective representation of Third Bay Tradition architectural and landscape design. The proposed door and window alterations at 8 Greenwood Common are limited in their scope and location, and would not be readily visible from the public right-of-way along Greenwood Terrace, or from within the Common owing to their location on the southside of the subject building and behind an existing perimeter fence.

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**STANDARD CONDITIONS**

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The following conditions, as well as all other applicable provisions of the Landmarks Preservation Ordinance, apply to this Permit:

**1. Conditions Shall be Printed on Plans**

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Permit, under the title 'Structural Alteration Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

**2. Plans and Representations Become Conditions**

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

**3. Subject to All Applicable Laws and Regulations**

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Zoning Adjustments Board or Zoning Officer, Building and Safety Division, Public Works Department and other affected City divisions and departments.

**4. Exercise and Lapse of Permits (Section 23.404.060.C)**

- A. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- B. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

**5. Indemnification Agreement**

The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

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**ADDITIONAL CONDITIONS**

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The following additional conditions are attached to this Permit:

6. The proposed project is approved as shown on the drawings dated “received March 1, 2022,” and “May 5, 2022.”
7. No changes shall be made to these approved plans without prior approval.
8. This Structural Alteration Permit approval is contingent upon use permit approval.
9. **Repair and replacement of character-defining features.** Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old or historic feature in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
10. **COLORS.** Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit color and materials information for review and approval by Landmarks staff, in coordination with the LPC Chair as needed.
11. **CLEAR GLASS.** All glass is assumed to be clear glass. Any proposed glass that is not clear glass, or includes signage, shall be indicated on all drawings, and shall be reviewed for approval by Landmarks staff.
12. **DETAILS.** Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit window, door, base, and trim details for review and approval by the Landmarks plan checker.
13. **ROOF EQUIPMENT.** Any above ground or roof equipment, such as transformer(s), utilities, fire apparatus, air conditioning units, compressors, etc. shall be shown to scale on the architectural drawings of the building permit set of drawings in both plan and elevation, in order to determine if additional screening and SAP may be required.
14. **LIGHTING** Prior to Landmarks plan checker sign-off of the building permit set of drawings, the applicant shall submit lighting details showing all existing and proposed site and building lighting. Exterior lighting shall be downcast and not cause glare on the public right-of-way and adjacent parcels.
15. **LANDSCAPE PLANS** Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit a Landscape plan including the number, location, and species of all proposed plantings, and which existing plantings shall be removed. The applicant shall provide irrigation for all landscaped areas or provide drought tolerant plant palette. This shall be called out on Landscape building permit drawings.
16. The applicant shall be responsible for identifying and securing all applicable permits from the Building and Safety Division and all other affected City divisions/departments prior to the start of work.

17. The applicant is responsible for complying with all the above conditions. Failure to comply with any condition could result in construction work being stopped, issuance of citations, as well as further review by the Landmarks staff, which may modify or impose additional conditions, or revoke approval.
18. All building permit drawings and subsequent construction shall substantially conform to the approved plans as outlined in Condition #1. Any modifications must be reviewed by the Landmarks plan checker to determine whether the modification requires approval.
19. The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.



# GENERAL NOTES

- EXAMINATION OF THE SITE AND PORTIONS THEREOF WHICH WILL AFFECT THIS WORK SHALL BE MADE IMMEDIATELY BY THE CONTRACTOR, WHO SHALL COMPARE IT WITH THE DRAWINGS AND SATISFY HIMSELF TO CONDITIONS UNDER WHICH WORK IS TO BE PERFORMED. HE SHALL AT SUCH TIME ASCERTAIN AND CHECK LOCATIONS OF THE EXISTING STRUCTURES AND EQUIPMENT WHICH MAY AFFECT HIS WORK. NO ALLOWANCE SHALL BE MADE FOR ANY EXTRA EXPENSE TO WHICH HE MAY BE DUE BECAUSE OF FAILURE OR NEGLIGENCE ON HIS PART TO MAKE SUCH EXAMINATIONS. ANY CONFLICTS OR OMISSIONS, ETC., SHALL BE REPORTED TO THE ARCHITECT BEFORE PROCEEDING WITH ANY WORK.**
- ANY ERRORS, OMISSIONS, OR CONFLICTS FOUND IN THE VARIOUS PARTS OF THE CONSTRUCTION DOCUMENTS SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT AND THE OWNER BEFORE PROCEEDING WITH THE WORK.**
- WHERE REFERENCED IN NOTES, ARCHITECT SHALL BE FISCHER ARCHITECTURE, OWNER SHALL BE CINDY AND RORY REID.**
- CONTRACTOR SHALL PROVIDE ARCHITECT AND OWNER WITH A COMPLETE COST BREAKDOWN AND SCHEDULE OF CONSTRUCTION FOR THIS PROJECT PRIOR TO COMMENCEMENT OF WORK.**
- CONTRACTOR SHALL PROTECT NEW MATERIALS AND FINISHES FROM DAMAGE WHICH MAY OCCUR FROM CONSTRUCTION, DEMOLITION, DUST, WATER, ETC., AND SHALL PROVIDE AND MAINTAIN TEMPORARY BARRICADES, CLOSURE WALLS, ETC., AS REQUIRED TO PROTECT THE PUBLIC AS REQUIRED DURING THE PERIOD OF CONSTRUCTION. DAMAGE TO NEW MATERIALS, FINISHES, STRUCTURES, AND EQUIPMENT SHALL BE REPAIRED OR REPLACED. CONTRACTOR SHALL COORDINATE TEMPORARY BARRICADES WITH ARCHITECT AND / OR OWNER PRIOR TO COMMENCEMENT OF WORK.**
- ALL CONSTRUCTION WORK IS TO COMPLY WITH THE 2016 CALIFORNIA BUILDING, RESIDENTIAL, MECHANICAL, ELECTRICAL, PLUMBING, ENERGY, HISTORICAL, EXISTING AND GREEN BUILDING STANDARDS CODE AS AMENDED BY THE CITY OF BERKELEY, AND AS APPLICABLE. (CAC 1-2016(a)) ALL WORK SHALL BE DONE IN A THOROUGH, WORKMANLIKE MANNER AND EQUAL TO THE BEST STANDARDS OF THE PRACTICE.**
- ALL WORK LISTED, SHOWN OR IMPLIED ON ANY CONSTRUCTION DOCUMENT SHALL BE SUPPLIED AND INSTALLED BY THE CONTRACTOR EXCEPT WHERE NOTED. THE CONTRACTOR SHALL CLOSELY COORDINATE HIS WORK WITH THAT OF OTHER CONTRACTORS OR VENDORS TO ASSURE THAT ALL SCHEDULES ARE MET AND THAT ALL WORK IS DONE IN CONFORMANCE TO MANUFACTURERS REQUIREMENTS. WORK REQUIRED UNDER THIS CONTRACT SHALL INCLUDE ALL LABOR, MATERIALS, EQUIPMENT, ETC., NECESSARY TO COMPLETE THIS PROJECT. ALL MATERIALS SHALL BE NEW AND UNUSED, UNLESS SPECIFICALLY NOTED, AND BE OF A QUALITY ACCEPTABLE BY INDUSTRY STANDARDS.**
- THE USE OF THE WORD "PROVIDE" IN CONNECTION WITH ANY ITEM SPECIFIED IS INTENDED TO MEAN THAT SUCH ITEM SHALL BE FURNISHED, INSTALLED, AND CONNECTED WHERE SO REQUIRED, EXCEPT AS NOTED.**
- THE CONTRACTOR SHALL MAINTAIN A CURRENT AND COMPLETE SET OF CONSTRUCTION DOCUMENTS ON THE JOB SITE DURING ALL PHASES OF CONSTRUCTION FOR USE OF ALL TRADES AND SHALL PROVIDE ALL SUBCONTRACTORS WITH CURRENT CONSTRUCTION DOCUMENTS AS REQUIRED. THE CONTRACTOR, IN ASSUMING RESPONSIBILITY FOR THE WORK INDICATED, SHALL COMPLY WITH THE LETTER IN WHICH THEY WERE DRAWN.**
- THE CONTRACTOR SHALL REMOVE ALL RUBBISH AND WASTE MATERIALS OF ALL SUBCONTRACTORS AND TRADES ON A REGULAR BASIS, AND SHALL EXERCISE STRICT CONTROL OVER JOB CLEANING TO PREVENT ANY DIRT, DEBRIS OR DUST FROM AFFECTING IN ANY WAY, FINISHED AREAS IN OR OUTSIDE THE JOB SITE.**
- THE CONSTRUCTION DOCUMENTS ARE PROVIDED TO ILLUSTRATE THE DESIGN INTENT AND GENERAL TYPE OF CONSTRUCTION DESIRED.**
- DETAILS SHOWN ARE TYPICAL U.O.N. SIMILAR DETAILS APPLY IN SIMILAR CONDITIONS.**
- ALL ELECTRICAL, MECHANICAL, AND PLUMBING WORK AND MATERIALS SHALL BE IN FULL ACCORDANCE WITH THE LATEST RULES AND REGULATIONS OF THE NATIONAL BOARD OF FIRE UNDERWRITERS, THE STATE FIRE MARSHAL, THE SAFETY ORDERS OF THE DIVISION OF INDUSTRIAL SAFETY, AND ANY APPLICABLE STATE OR LOCAL LAWS AND ORDINANCE. NOTHING ON THESE DRAWINGS IS TO BE CONSTRUED TO PERMIT WORK NOT CONFORMING TO THESE CODES. ANY QUESTIONS REGARDING INSTALLATIONS SHALL BE BROUGHT TO THE ARCHITECT FOR CLARIFICATION.**
- INSTALL BATT INSULATION BETWEEN STUDS AND JOISTS AT ALL EXTERIOR WALLS, CEILINGS, AND FLOORS WHERE EXPOSED.**
- ALL DIMENSIONS ON CONSTRUCTION DRAWINGS ARE TO FACE OF FINISH UNLESS NOTED AS BEING TO FACE OF FRAMES OR TO BOTTOM OF FINISHED CEILING OR TOP OF FINISHED FLOOR IN INTERIOR ELEVATIONS UNLESS OTHERWISE NOTED.**
- ALL DIMENSIONS TAKE PRECEDENCE OVER SCALE. ANY DISCREPANCIES SHALL BE BROUGHT IMMEDIATELY TO THE ATTENTION OF THE ARCHITECT. CONTRACTOR SHALL NOT SCALE DRAWINGS. QUESTIONS REGARDING DIMENSIONS SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT PRIOR TO ANY START OF WORK.**
- WINDOW AND DOOR SIZES ARE NOMINAL DIMENSIONS. REFER TO MANUFACTURER FOR ACTUAL ROUGH OPENING SIZES.**
- NOT USED.**
- NOT USED.**
- SEALANT, CAULKING, AND FLASHING, ETC., LOCATIONS SHOWN ON DRAWINGS ARE NOT INTENDED TO BE INCLUSIVE. FOLLOW MANUFACTURER'S INSTALLATION RECOMMENDATIONS AND STANDARD INDUSTRY AND BUILDING PRACTICES.**
- PROVIDE SOLID WOOD BACKING FOR ALL SURFACE MOUNTED ACCESSORIES.**
- ALL WORK SHALL BE GUARANTEED AGAINST DEFECTS IN DESIGN, INSTALLATION AND MATERIAL FOR A MINIMUM PERIOD OF ONE YEAR FROM DATE OF COMPLETION.**
- ALL MATERIALS FOR USE ON THE PROJECT SHALL BE STORED WITHIN THE PROJECT SITE.**
- CONTRACTOR SHALL PERSONALLY SUPERVISE AND DIRECT THE WORK OR SHALL KEEP A COMPETENT EMPLOYEE, AUTHORIZED TO RECEIVE INSTRUCTIONS AND ACT ON THE CONTRACTOR'S BEHALF, CONTINUOUSLY ON SITE DURING WORKING HOURS.**
- ALL QUESTIONS REGARDING PROJECT EITHER DURING BIDDING PHASE OR DURING CONSTRUCTION SHALL BE DIRECTED TO THE ARCHITECT IN WRITING BY EMAIL OR FAX: andrew@fischerarchitecture.com**
- DEMOLITION:** THE CONTRACTOR SHALL ENTIRELY DEMOLISH AND REMOVE FROM SITE ANY STRUCTURE OR PORTION THEREOF, OR SITE FEATURE INDICATED TO BE REMOVED.
- SALVAGE & RECYCLING:** ALL ITEMS DEEMED SALVAGEABLE OR RECYCLABLE BY THE OWNER WILL EITHER HAVE BEEN INDICATED ON THE DRAWINGS, REMOVED PRIOR TO THE START OF DEMOLITION, OR WILL BE DIRECTED BY THE OWNER TO BE STORED BY THE CONTRACTOR AND SHALL REMAIN THE PROPERTY OF THE OWNER. ITEMS TO BE RELOCATED WILL HAVE BEEN INDICATED ON THE DRAWINGS. REFER TO CITY RECYCLING AND SALVAGING REQUIREMENTS ON FOLLOWING PAGES.
- DESIGN BUILD:** ALL ELECTRICAL, MECHANICAL, AND PLUMBING WORK SHALL BE DESIGN BUILD BASED ON THE INFORMATION PROVIDED IN THE CONSTRUCTION DOCUMENTS.
- Contractor shall submit a list of paints, primers, sealants, caulking, and adhesives installed within the interior of the building. List to include material type (per CALGreen tables 4.504.1 and 4.504.3) manufacturer name, model name/number, VOC amount, and CALGreen VOC not to exceed limit per product. \*
- PROJECT CLOSEOUT:**
  - CONTRACTOR SHALL REVIEW PROJECT WITH ARCHITECT AND/OR OWNER TO ENSURE THAT ALL REQUIREMENTS OF THE CONTRACT DOCUMENTS HAVE BEEN FOLLOWED.**
  - CONTRACTOR SHALL OBTAIN ALL REQUIRED CERTIFICATES AND NOTICES.**
  - ALL WORK PERFORMED SHALL BE CLEAN AND READY FOR USE.**
  - UPON SUBSTANTIAL COMPLETION, THE ARCHITECT SHALL, AT THE CONTRACTOR'S WRITTEN REQUEST, COMPILER A PROJECT PUNCH LIST NOTING ANY CORRECTIONS OR OMISSIONS. ARCHITECT'S ACCEPTANCE WILL BE CAUSE FOR FINAL PAYMENT, UNLESS SPECIFICALLY DETERMINED OTHERWISE BY OWNER.**

# PROJECT DESCRIPTION

Remodel of existing detached Studio building.  
 Exterior alterations include replacing one window on the east elevation, removing an existing window and existing door on the south elevation and adding new multi-panel folding doors, adding one venting skylight in the existing roof, locating a new heat pump on the site, addition of a new concrete landing, and repair of the existing wooden fence.  
 Interior alterations include creating a bathroom and kitchenette, new electrical and HVAC, new finishes.

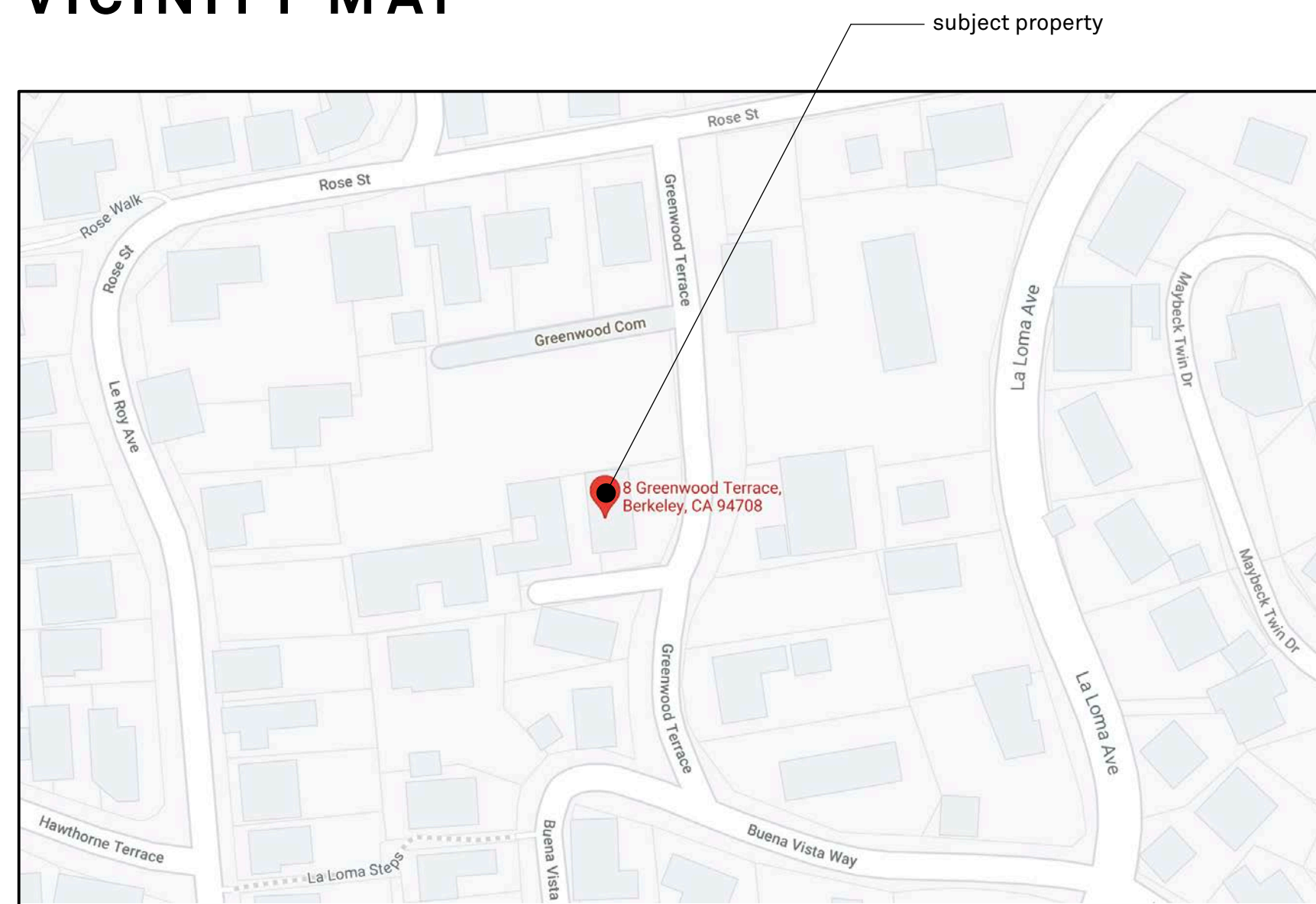
# PROJECT INFORMATION

|                     |                                                                 |                            |                                                                   |
|---------------------|-----------------------------------------------------------------|----------------------------|-------------------------------------------------------------------|
| Project Address:    | 8 Greenwood Common<br>Berkeley, CA 94708                        | Studio/Carport:            |                                                                   |
| APN:                | 058 224400211                                                   | Front Yard Setback:        | 6'-1" existing                                                    |
| Zoning District:    | R-1H                                                            | Side Yard Setback:         | 0" existing (north)                                               |
| Construction Type:  | V-B                                                             | Building Height:           | 8'-9" existing (12' max allowed)                                  |
| Occupancy Type:     | R-3                                                             | Lot Area:                  | 4800 sf                                                           |
| Parking Spaces:     | 1 covered                                                       | Gross Floor Area-existing: | 1565 sf (residence); 251 sf (studio) = 1816 gsf total             |
| Number of Stories:  | 1 (residence); 1 (studio)                                       | Gross Floor Area-proposed: | 1565 sf (residence); 251 sf (studio) = 1816 gsf total [no change] |
| House:              |                                                                 | Applicable Codes:          | 2019 CBC, CRC, CEC, CPC, CMC, CFC                                 |
| Front Yard Setback: | 20' required; 21'-0" existing                                   | Fire Zone/WUI:             | 2/Yes                                                             |
| Side Yard Setback:  | 4' required; 4'-5" existing (north)/<br>11'-1" existing (south) | Sprinkler System:          | No                                                                |
| Rear Yard Setback:  | 20' required, 8'-5" existing                                    | Fire Alarm System:         | No                                                                |

# ADJACENT NEIGHBOR OUTREACH

| Name                                      | Address                | Renter/ Owner | Date       | Have no objections | Comments |
|-------------------------------------------|------------------------|---------------|------------|--------------------|----------|
| Red Koeth                                 | 1 Greenwood Common     | owner         | 4 Feb 2022 | NO objection       |          |
| Nancy and James Russell<br>Gardner Nugent | 2 Greenwood Common     | owner         | 1/30/22    | NO objection       |          |
| Katinka Wyle                              | 3 Greenwood Common     | owner         | 2 Feb/22   | NO objection       |          |
| Sp Master                                 | 4 Greenwood Common     | owner         | 5 Feb 22   | NO objection       |          |
| Mosko Spin<br>Marcus von Eschel           | 9 Greenwood Common     | owners        | 1/30/22    | NO objection       |          |
| DAN & KATE FUNK<br>DeFunk                 | 10 Greenwood Common    | owner         | 1/29/22    | NO objection       |          |
| Tina Dennis Echeverry                     | 1471 Greenwood Terrace | owner         | 2/16/22    | NO objection       |          |
| Matt White Sarah<br>Holtzman              | 1476 Greenwood Terrace | owner         | 2/14/22    | NO objection       |          |

# VICINITY MAP



# SYMBOLS/ ABBREVIATIONS

|        |                                  |          |                         |
|--------|----------------------------------|----------|-------------------------|
|        | Exterior Elevation / Section Cut | ga       | gauge                   |
|        | Detail Key                       | galv     | galvanized              |
|        | Room Name / Number               | gyp. bd. | gypsum board            |
|        | Door Number                      | hr       | hour                    |
|        | Window Number                    | ht       | height                  |
|        | Elevation Marker                 | max      | maximum                 |
| adj    | adjustable                       | mech     | mechanical              |
| af.f.  | above finished floor             | manuf    | manufacturer            |
| blkg   | blocking                         | min      | minimum                 |
| CL     | center line                      | mtl      | metal                   |
| clng   | ceiling                          | min      | minimum                 |
| clr    | clear                            | mtl      | metal                   |
| dim    | dimension                        | NIC      | not in contract         |
| DN     | down                             | NTS      | not to scale            |
| dtl    | detail                           | (n)      | new                     |
| dwg    | drawing(s)                       | o.c.     | on center               |
| ea     | each                             | opp      | opposite                |
| el     | elevation (height)               | o/       | over                    |
| elect  | electrical                       | PL       | property line           |
| elevs  | elevation (drawings)             | ply      | plywood                 |
| eq     | equal                            | ptd      | painted                 |
| (e)    | existing                         | r        | radius                  |
| ext    | exterior                         | req'd    | required                |
| f.b.o. | furnished by owner               | r.o.     | rough opening           |
| f.f.   | finished floor                   | s.s.d.   | see structural drawings |
| fluor  | fluorescent                      | s.c.d.   | see civil drawings      |
|        |                                  | s.l.d.   | see landscape drawings  |
|        |                                  | sim      | similar                 |
|        |                                  | st. stl. | stainless steel         |
|        |                                  | st.      | steel                   |
|        |                                  | std      | standard                |
|        |                                  | (t)      | tempered glass          |
|        |                                  | t.b.d.   | to be determined        |
|        |                                  | thru     | through                 |
|        |                                  | t.o.     | top of                  |
|        |                                  | typ.     | typical                 |
|        |                                  | ver      | verify                  |
|        |                                  | v.i.f.   | verify in field         |
|        |                                  | w.o.     | where occurs            |
|        |                                  | u.o.n.   | unless otherwise noted  |
|        |                                  | UP       | up                      |

# PROJECT TEAM

**OWNER**  
 Cindy and Rory Reid  
 8 Greenwood Common  
 Berkeley, CA 94708

**ARCHITECT**  
 Fischer Architecture  
 2984 San Pablo Avenue  
 Berkeley, CA 94702  
 tel. 510.204.9250  
 Kerstin Fischer, Principal  
 Andrew Fischer, Principal

**STRUCTURAL ENGINEER**  
 Berkeley Structural Design  
 1411 Glendale Avenue  
 Berkeley, CA 94708  
 tel. 510.981.1053  
 Bill Lynch, Principal

**GENERAL CONTRACTOR**  
 Olson Brothers, Inc.  
 706 Rincon Road  
 El Sobrante, CA 94803  
 tel 510.375.9211  
 Gordon Olson, President

# SHEET INDEX

## Architectural Drawings

- A0.1 Project Data / Site Plan
- A1.0 Existing Floor Plan Proposed Demolition
- A1.1 Existing Elevations Proposed Demolition
- A1.2 Existing Elevations Proposed Demolition
- A2.0 Proposed Floor Plan
- A3.0 Proposed Elevations
- A3.1 Proposed Elevations

# FISCHER ARCHITECTURE

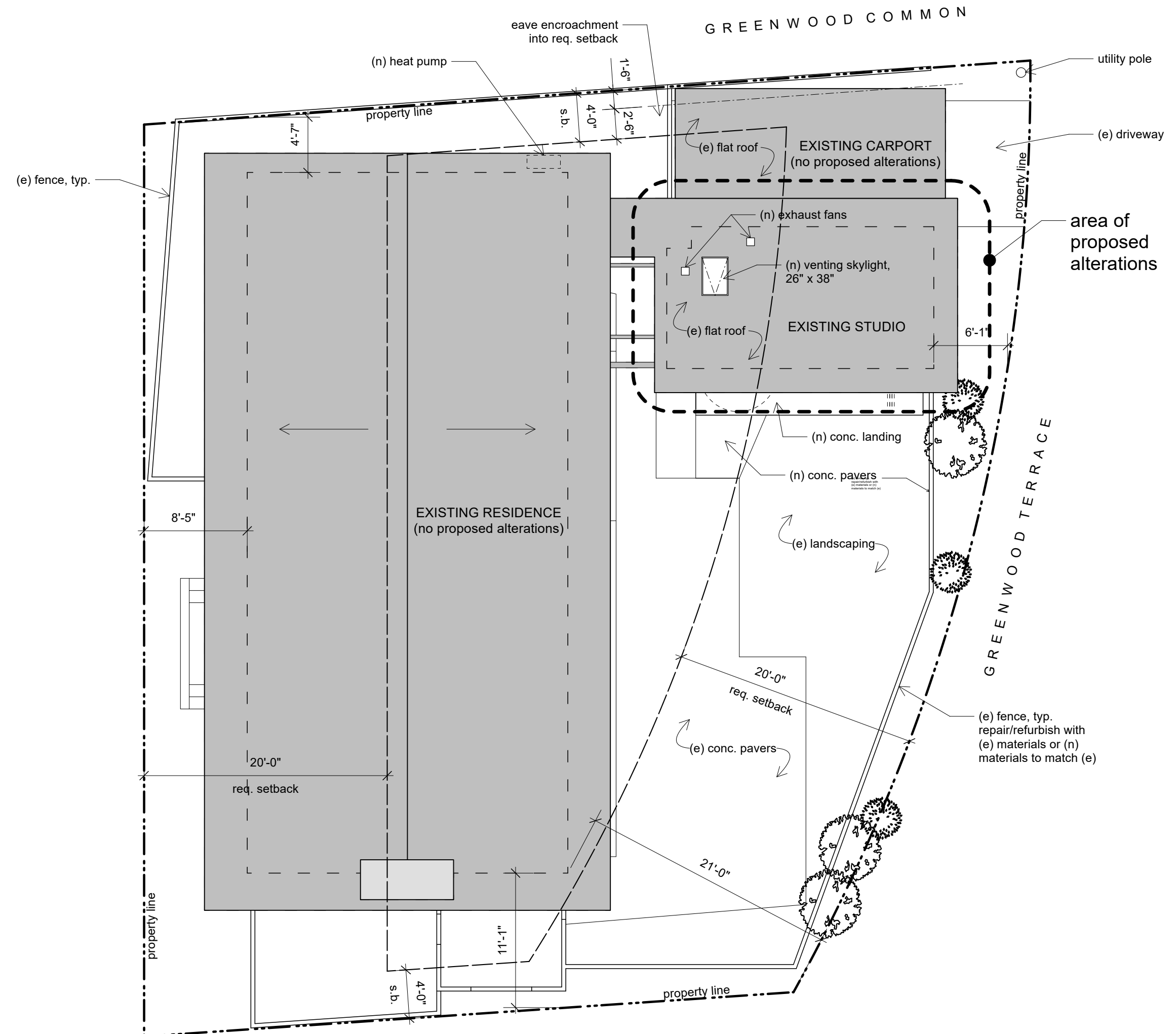
tel 510.204.9250 | fischerarchitecture.com  
 2984 San Pablo Ave, Berkeley, CA 94702

**REID RESIDENCE**  
 8 GREENWOOD COMMON  
 BERKELEY, CA 94708  
 APN: 058 224400211

| REV.    | DATE | ISSUE               | DRWN. |
|---------|------|---------------------|-------|
| 1.29.22 |      | AUP / SAP Submittal | KF    |

DESCRIPTION  
 PROJECT DATA & INFORMATION  
 SITE PLAN

SHEET



# SITE/ROOF PLAN

SCALE: 1/8" = 1'-0"

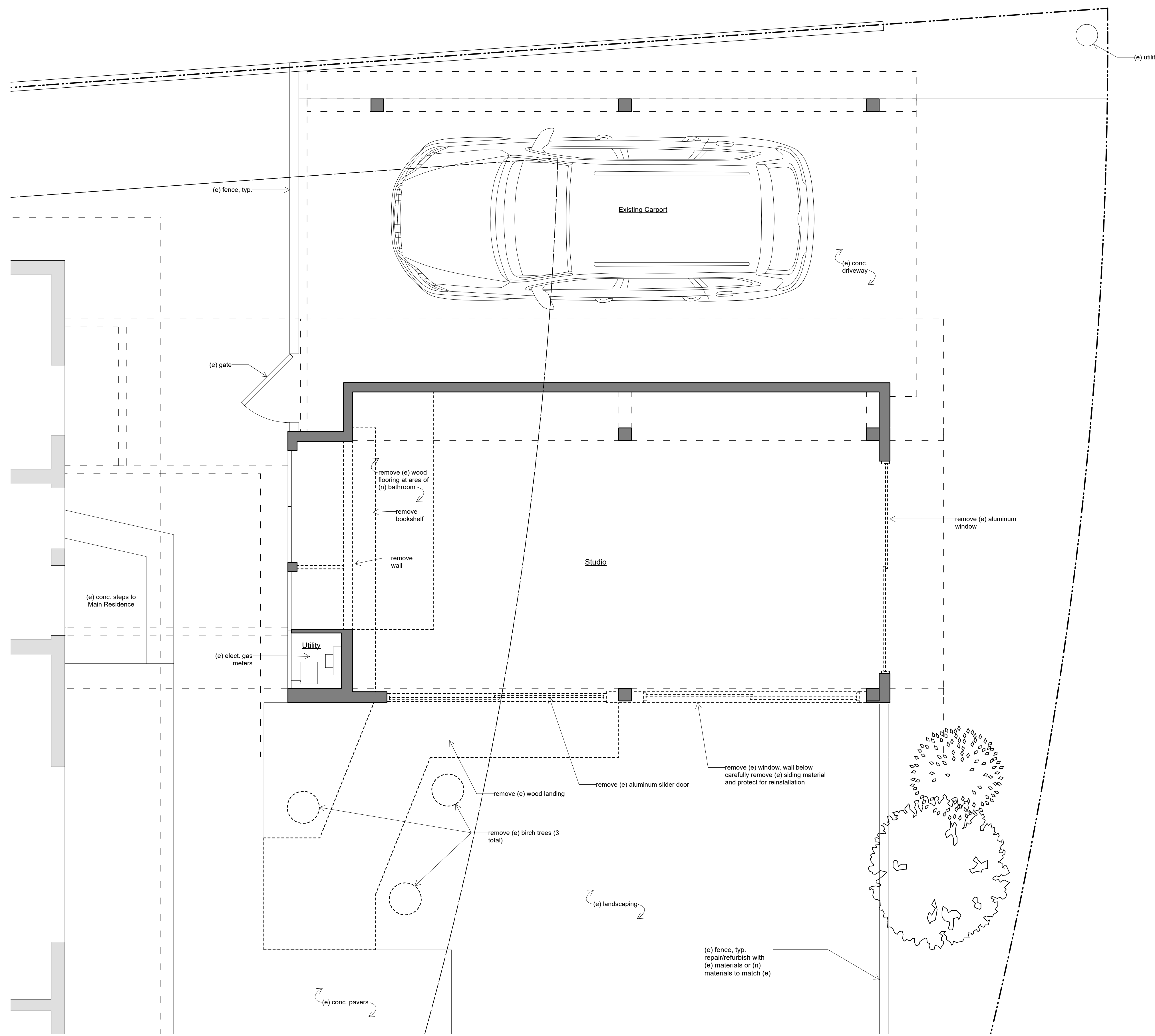


**LEGEND**

- Existing Wall, Fence, or Fixture to be Removed
- Existing Wall to Remain

**NOTES:**

1.--



**FISCHER ARCHITECTURE**

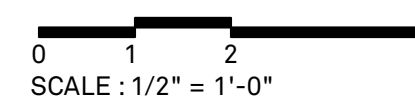
tel 510.204.9250 | fischerarchitecture.com  
2984 San Pablo Ave, Berkeley, CA 94702

**REID RESIDENCE**  
8 GREENWOOD COMMON  
BERKELEY, CA 94708  
APN: 058 224400211

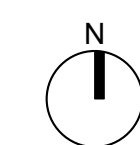
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|------|---------|---------------------|-------|
| 1.   | 1.29.22 | AUP / SAP Submittal | KF    |

DESCRIPTION  
EXISTING FLOOR PLAN PROPOSED DEMOLITION

**1. EXISTING FLOOR PLAN PROPOSED DEMOLITION**  
SCALE: 1/2" = 1'-0"



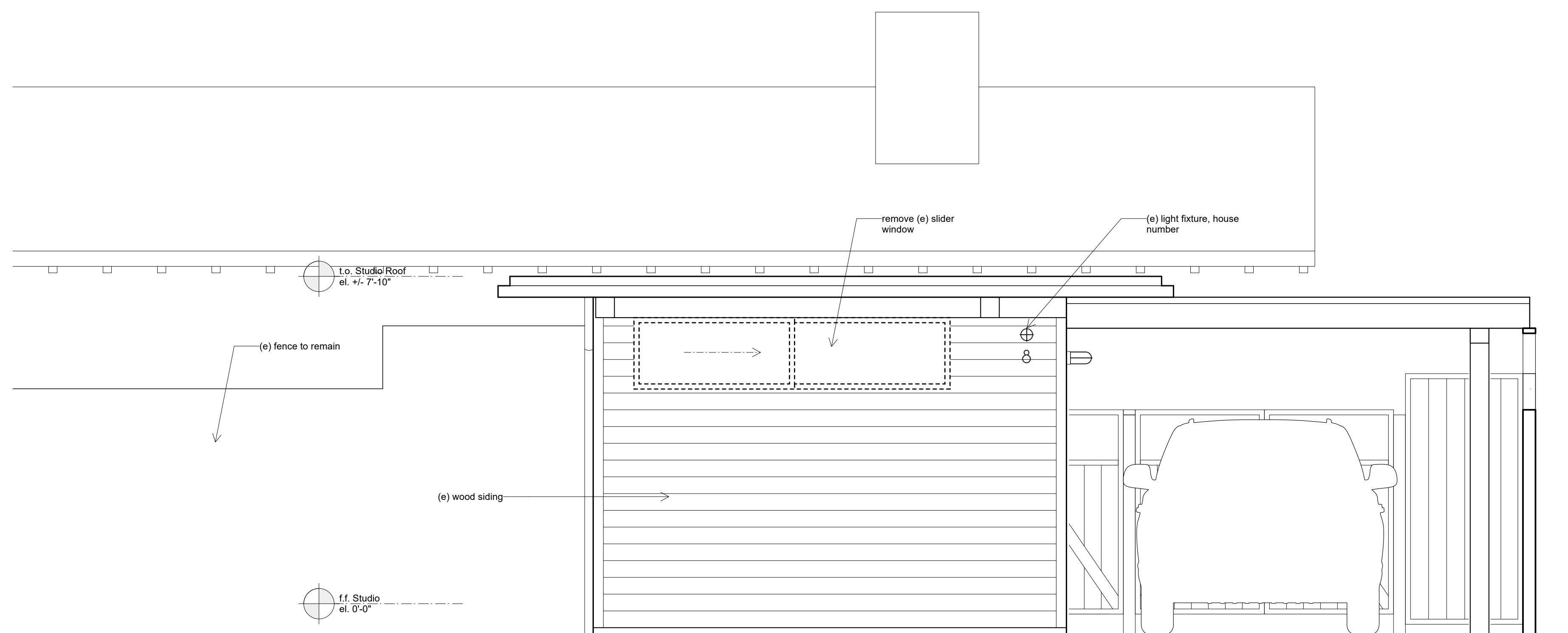
SHEET



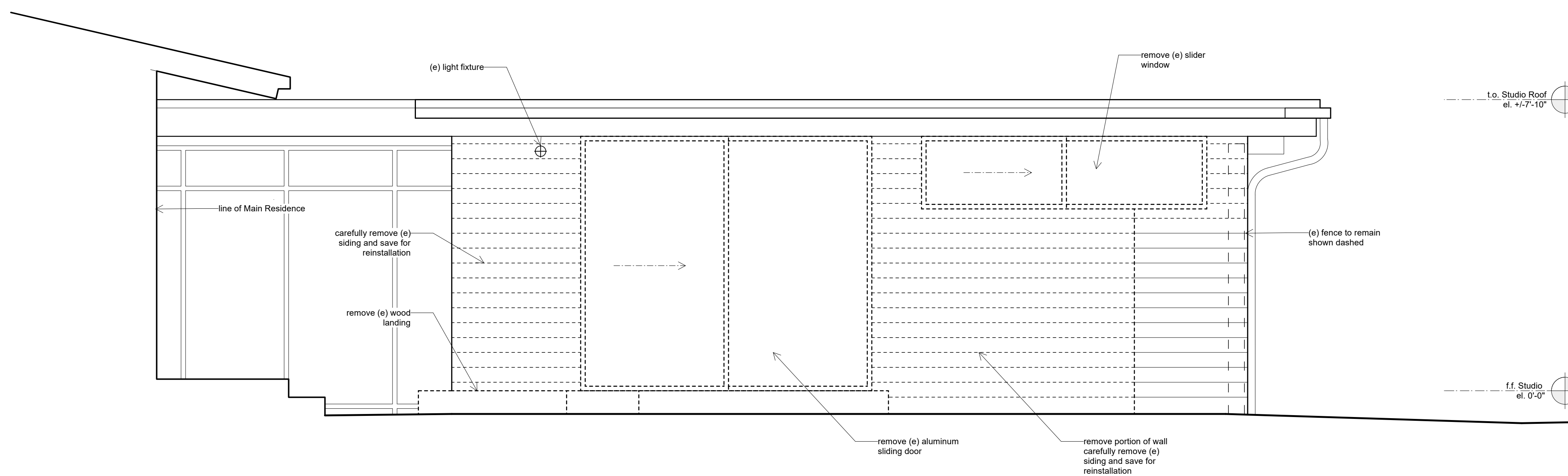
**A1.0**  
Page 1 of 3

LEGEND

Existing Wall, Fence, or Fixture to be Removed



2. EAST ELEVATION - PROPOSED DEMOLITION  
SCALE: 1/2" = 1'-0"



1. SOUTH ELEVATION - PROPOSED DEMOLITION  
SCALE: 1/2" = 1'-0"

# FISCHER ARCHITECTURE

tel 510.204.9250 | fischerarchitecture.com  
2984 San Pablo Ave, Berkeley, CA 94702

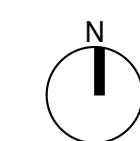
**REID RESIDENCE**  
8 GREENWOOD COMMON  
BERKELEY, CA 94708  
APN: 058 224400211

| REV. | DATE    | ISSUE               | DRWN. |
|------|---------|---------------------|-------|
| 1.   | 1.29.22 | AUP / SAP Submittal | KF    |

DESCRIPTION  
EXISTING ELEVATIONS PROPOSED DEMOLITION

0 1 2 4  
SCALE: 1/2" = 1'-0"

SHEET



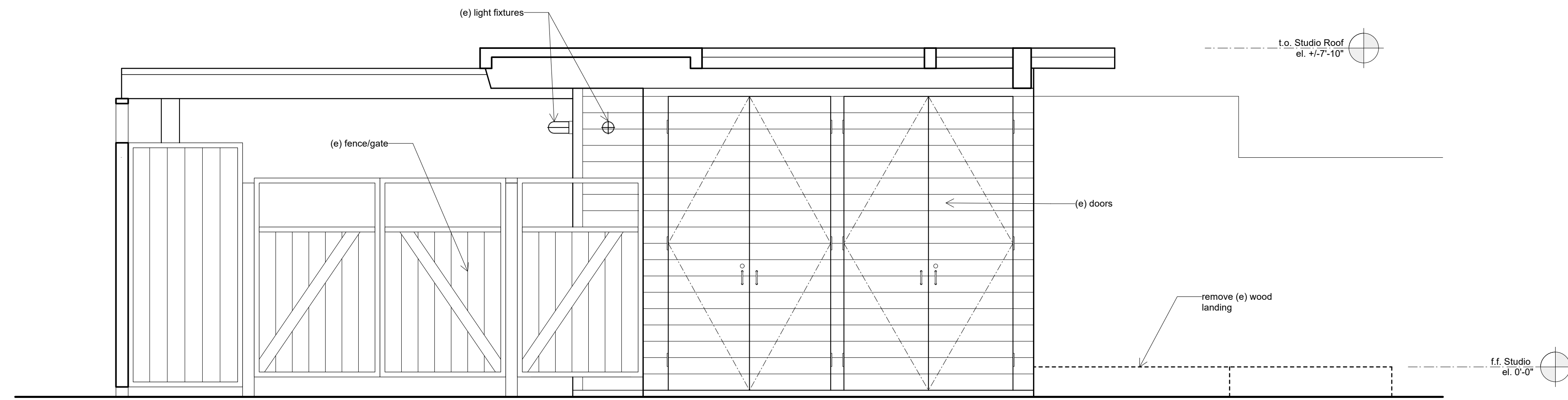
**A1.1**  
Page 14 of 14



LEGEND

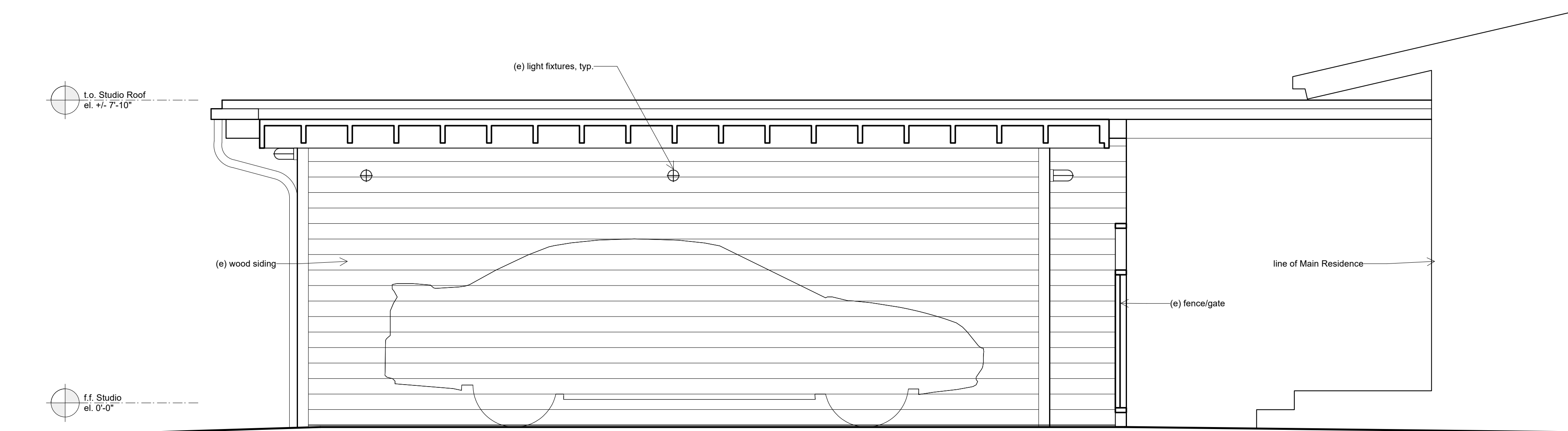
Existing Wall, Fence, or Fixture to be Removed

NOTE:  
No Work Proposed to West Elevation



2. WEST ELEVATION - EXISTING  
SCALE: 1/2" = 1'-0"

NOTE:  
No Work Proposed to North Elevation



1. NORTH ELEVATION - EXISTING  
SCALE: 1/2" = 1'-0"

# FISCHER ARCHITECTURE

tel 510.204.9250 | fischerarchitecture.com  
2984 San Pablo Ave, Berkeley, CA 94702

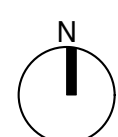
**REID RESIDENCE**  
8 GREENWOOD COMMON  
BERKELEY, CA 94708  
APN: 058 224400211

| REV. | DATE    | ISSUE               | DRWN. |
|------|---------|---------------------|-------|
| 1.   | 1.29.22 | AUP / SAP Submittal | KF    |

DESCRIPTION  
EXISTING ELEVATIONS PROPOSED DEMOLITION

0 1 2 4  
SCALE: 1/2" = 1'-0"

SHEET



LEGEND

- New Wall
- Existing Wall to Remain

NOTES:

1.--

unit size approx. 13" deep x 24" high x 39" wide



SINGLE-ZONE UNIVERSAL HEAT PUMP

Model: **SUZ**

The SUZ Universal Heat Pump is a single-zone outdoor unit compatible with five different indoor unit types in a 1-to-1 configuration. This high-efficiency heat pump is compatible with MLZ EZ FIT Ceiling Cassettes, SLZ Four-way Ceiling Cassettes, SVZ Multi-position Air Handlers, SEZ Low Static Horizontal-ducted Indoor Units, and PEAD Mid Static Horizontal-ducted Indoor Units.

Capacities: 9,000 to 36,000 BTU/H

Sound: as low as 48 dB(A)

SEER: up to 22.4

HSPF: up to 13.6

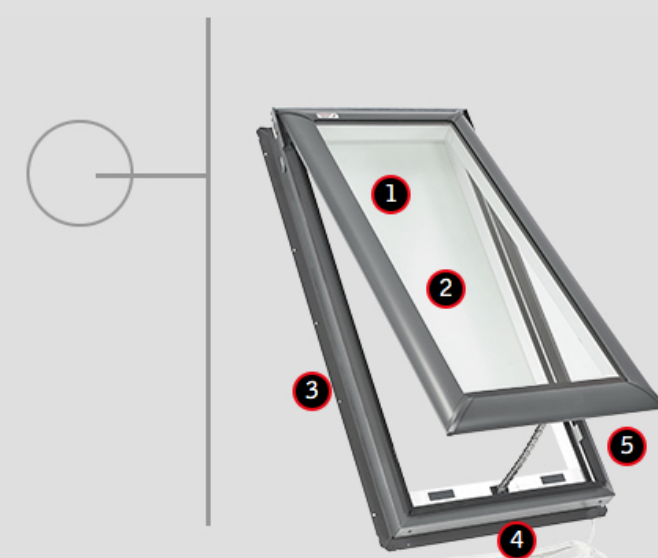
COP: up to 4.2

ENERGY STAR®: most systems

3. HEAT PUMP CUT SHEET , FINAL SPEC TBD

dark bronze finish

Product Details

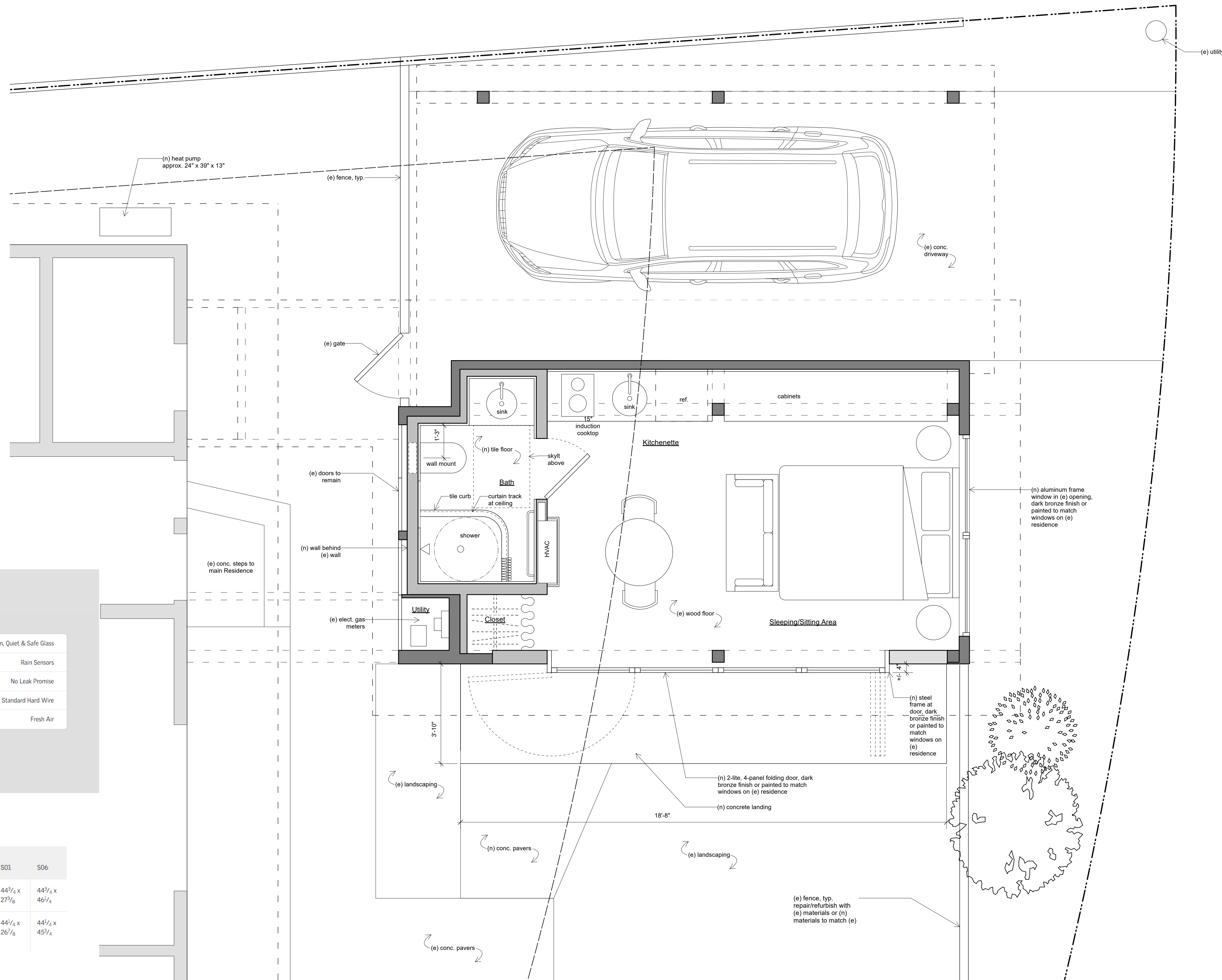


- 1 Clean, Quiet & Safe Glass
- 2 Rain Sensors
- 3 No Leak Promise
- 4 Standard Hard Wire
- 5 Fresh Air

VSE Skylight sizes

| VSE Size Code                            | C01             | C04             | C06             | C08             | M04              | M06              | M08               | S01             | S06             |
|------------------------------------------|-----------------|-----------------|-----------------|-----------------|------------------|------------------|-------------------|-----------------|-----------------|
| Outside frame (W"xH")                    | 21 1/2 x 27 3/8 | 21 1/2 x 38 3/8 | 21 1/2 x 46 1/4 | 21 1/2 x 54 1/8 | 30 7/16 x 38 3/8 | 30 7/16 x 46 1/4 | 30 7/16 x 54 1/8  | 44 3/4 x 27 3/8 | 44 3/4 x 46 1/4 |
| Rough opening/<br>Finished frame (W"xH") | 21 x 26 7/8     | 21 x 37 7/8     | 21 x 45 3/4     | 21 x 54 1/16    | 30 1/16 x 37 7/8 | 30 1/16 x 45 3/4 | 30 1/16 x 54 1/16 | 44 1/4 x 26 7/8 | 44 1/4 x 45 3/4 |

2. SKYLIGHT CUT SHEET



1. PROPOSED FLOOR PLAN

SCALE: 1/2" = 1'-0"

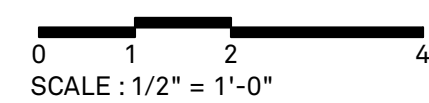
FISCHER ARCHITECTURE

tel 510.204.9250 | fischerarchitecture.com  
2984 San Pablo Ave, Berkeley, CA 94702

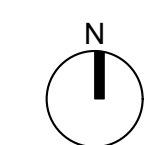
REID RESIDENCE  
8 GREENWOOD COMMON  
BERKELEY, CA 94708  
APN: 058 224400211

| REV.    | DATE | ISSUE               | DRWN. |
|---------|------|---------------------|-------|
| 1.29.22 |      | AUP / SAP Submittal | KF    |

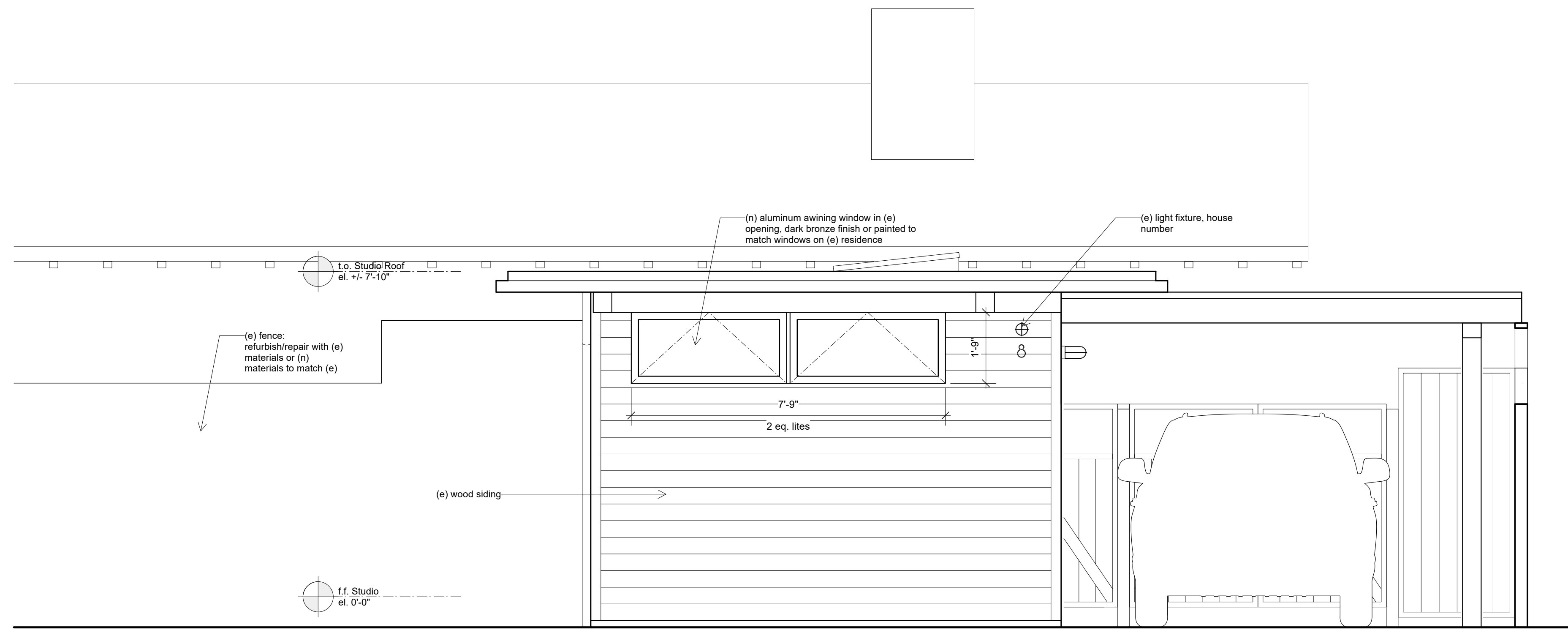
DESCRIPTION  
PROPOSED FLOOR PLAN



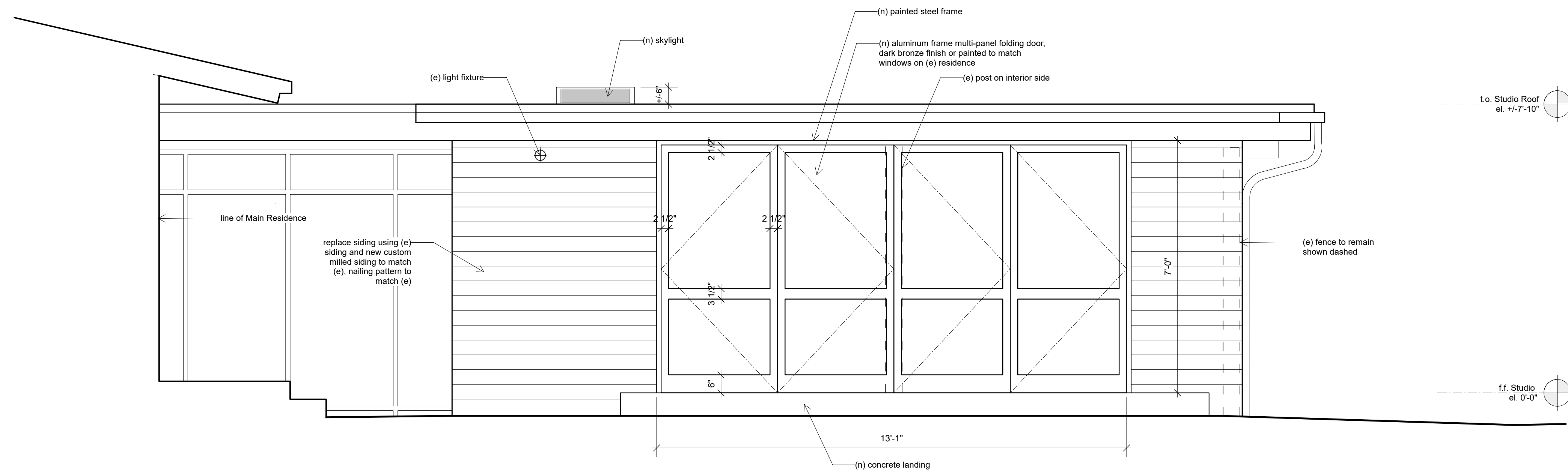
SHEET



A2.0



2. PROPOSED EAST ELEVATION  
SCALE: 1/2" = 1'-0"



1. PROPOSED SOUTH ELEVATION  
SCALE: 1/2" = 1'-0"

# FISCHER ARCHITECTURE

tel 510.204.9250 | fischerarchitecture.com  
2984 San Pablo Ave, Berkeley, CA 94702

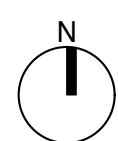
**REID RESIDENCE**  
8 GREENWOOD COMMON  
BERKELEY, CA 94708  
APN: 058 224400211

| REV. | DATE    | ISSUE               | DRWN. |
|------|---------|---------------------|-------|
| 1.   | 1.29.22 | AUP / SAP Submittal | KF    |

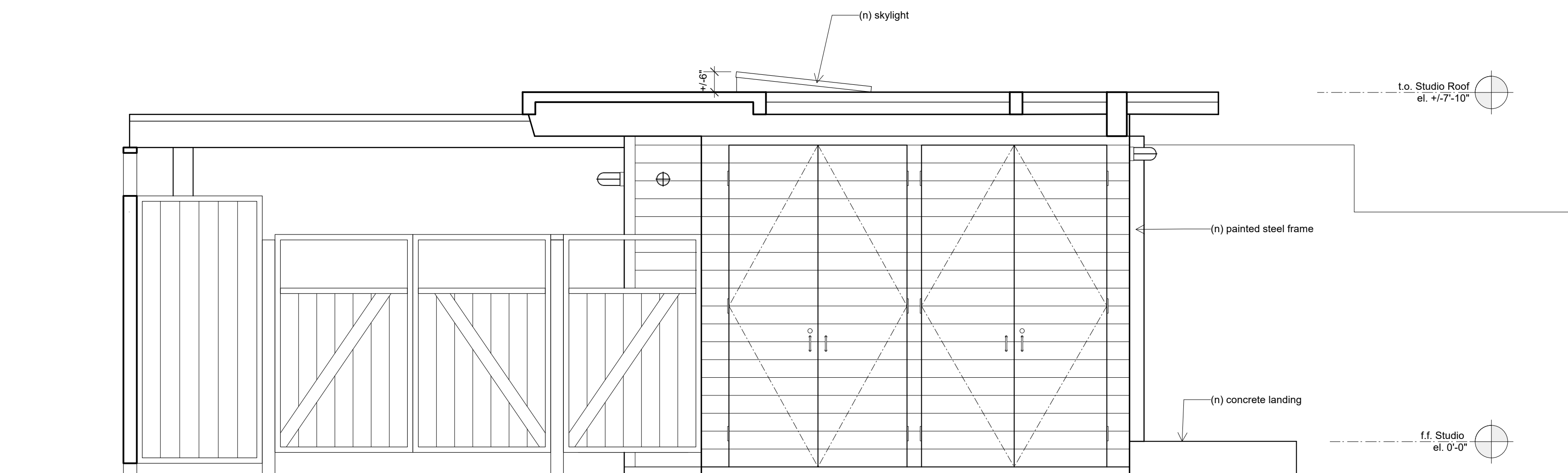
DESCRIPTION  
PROPOSED ELEVATIONS

0 1 2 4  
SCALE: 1/2" = 1'-0"

SHEET

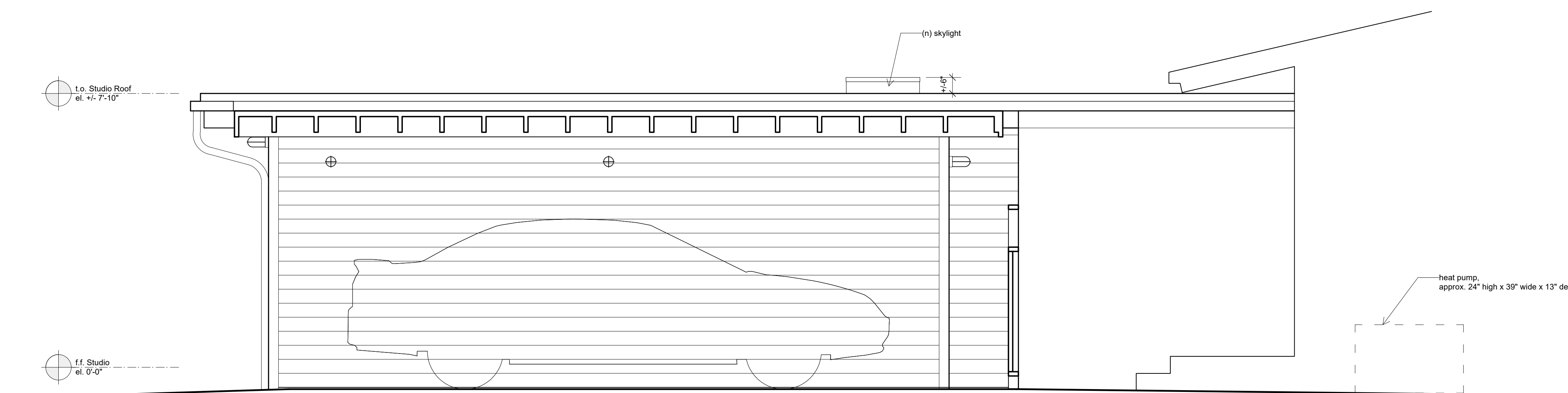


**A3.0**  
Page 14 of 17



2. PROPOSED WEST ELEVATION

SCALE: 1/2" = 1'-0"



1. PROPOSED NORTH ELEVATION

SCALE: 1/2" = 1'-0"

# FISCHER ARCHITECTURE

tel 510.204.9250 | fischerarchitecture.com  
2984 San Pablo Ave, Berkeley, CA 94702

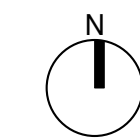
**REID RESIDENCE**  
8 GREENWOOD COMMON  
BERKELEY, CA 94708  
APN: 058 224400211

| REV. | DATE    | ISSUE               | DRWN. |
|------|---------|---------------------|-------|
| 1.   | 1.29.22 | AUP / SAP Submittal | KF    |

DESCRIPTION  
PROPOSED ELEVATIONS

SCALE: 1/2" = 1'-0"

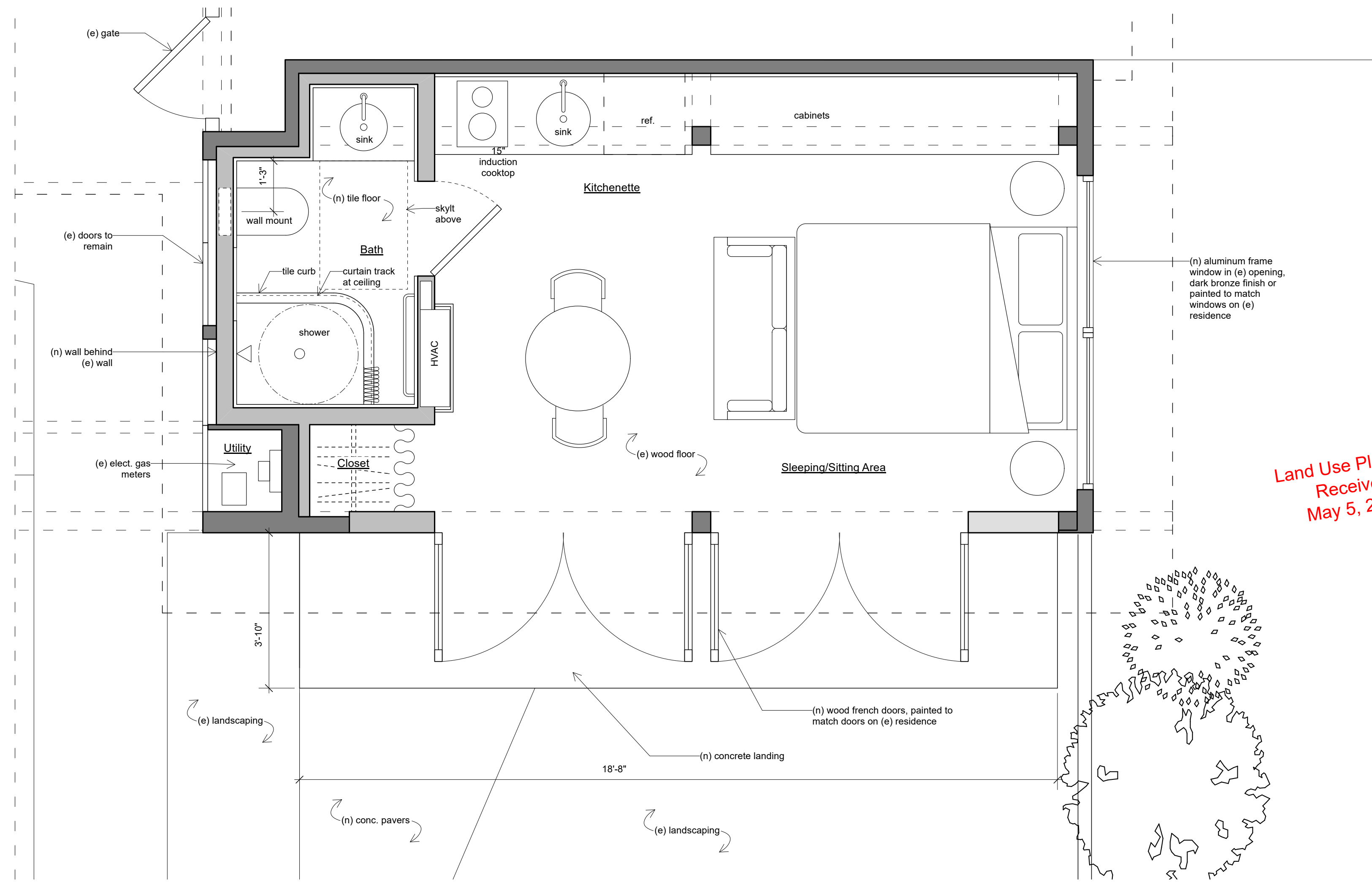
SHEET



# A3.1



**2. PROPOSED FLOOR PLAN- ALTERNATE  
WITH 2 PAIR WOOD FRENCH DOORS**  
SCALE: 1/2" = 1'-0"



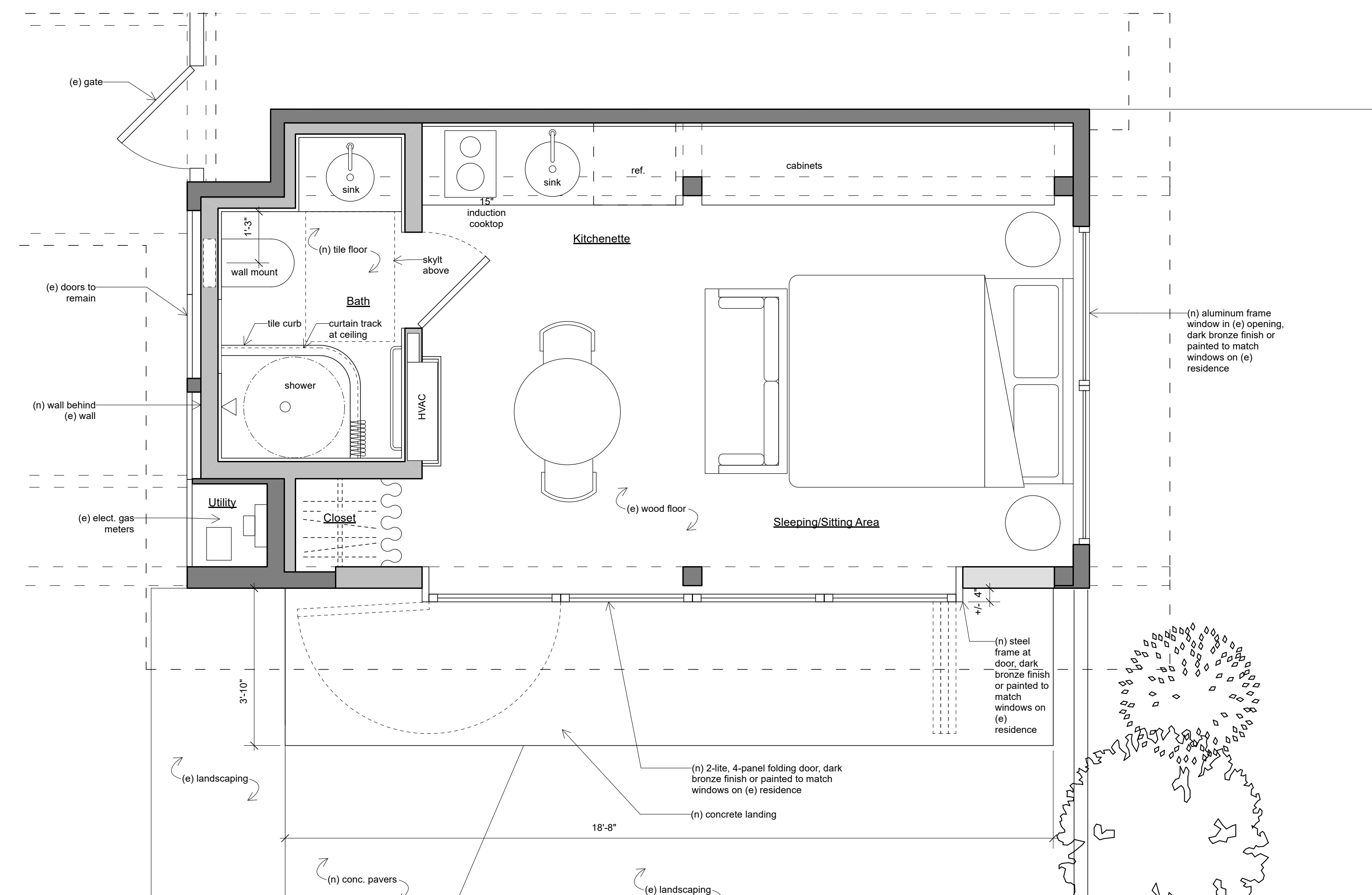
Land Use Planning  
Received  
May 5, 2022

**LEGEND**

- New Wall
- Existing Wall to Remain

**NOTES:**  
1.--

**1. PROPOSED FLOOR PLAN- ORIGINAL  
WITH 4-PANEL FOLDING/SLIDING DOOR**  
SCALE: 1/2" = 1'-0"



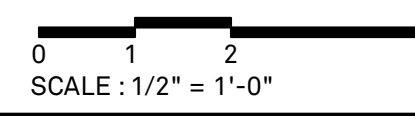
**FISCHER  
ARCHITECTURE**

tel 510.204.9250 | fischerarchitecture.com  
2984 San Pablo Ave, Berkeley, CA 94702

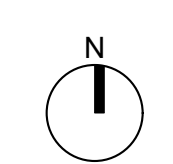
**REID RESIDENCE**  
8 GREENWOOD COMMON  
BERKELEY, CA 94708  
APN: 058 224400211

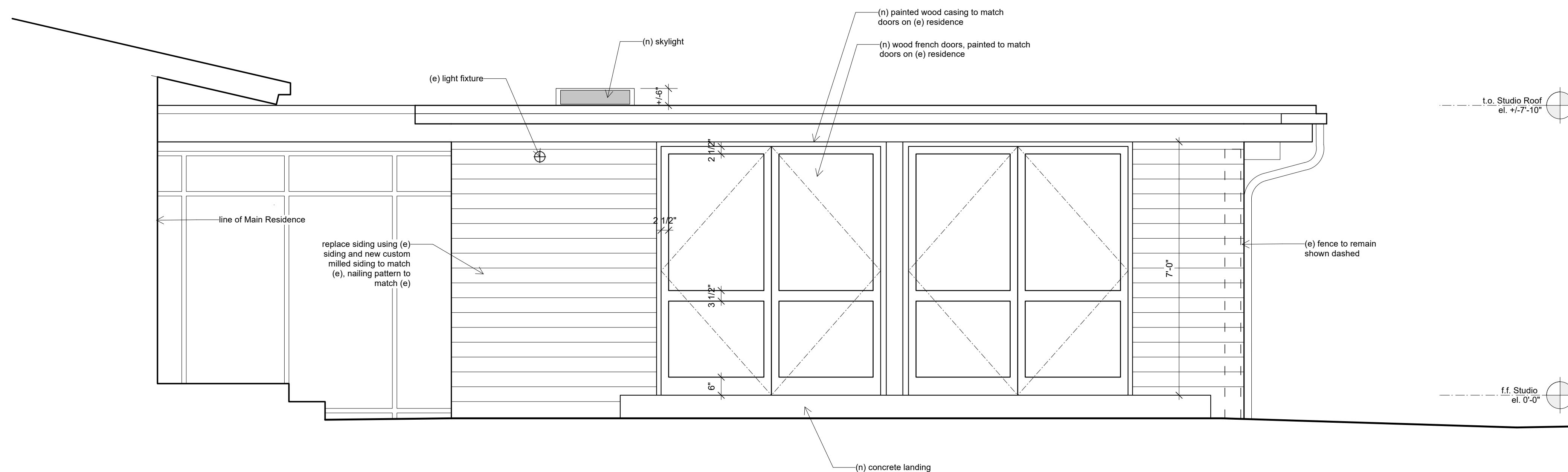
| REV. | DATE   | ISSUE       | DRWN. |
|------|--------|-------------|-------|
|      | 5.5.22 | LPC Hearing | KF    |

DESCRIPTION  
PROPOSED FLOOR PLAN

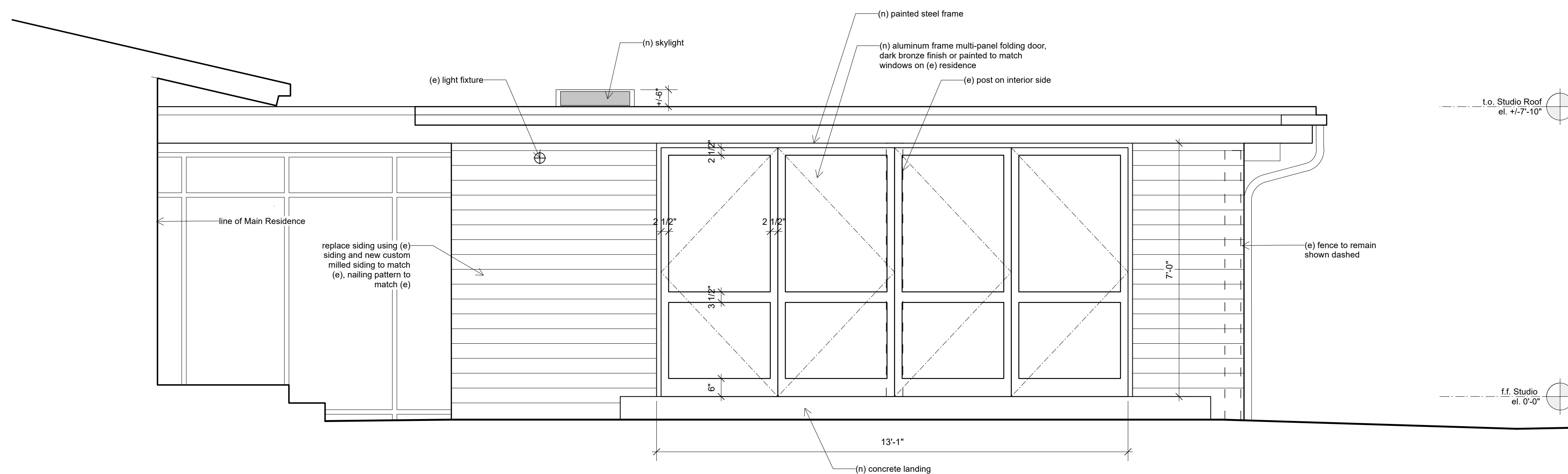


SHEET





2. PROPOSED FLOOR PLAN- ALTERNATE  
WITH 2 PAIR WOOD FRENCH DOORS  
SCALE: 1/2" = 1'-0"



1. PROPOSED FLOOR PLAN- ORIGINAL  
WITH 4-PANEL FOLDING/SLIDING DOOR  
SCALE: 1/2" = 1'-0"

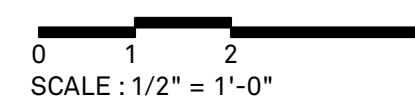
# FISCHER ARCHITECTURE

tel 510.204.9250 | fischerarchitecture.com  
2984 San Pablo Ave, Berkeley, CA 94702

**REID RESIDENCE**  
8 GREENWOOD COMMON  
BERKELEY, CA 94708  
APN: 058 224400211

| REV. | DATE   | ISSUE       | DRWN. |
|------|--------|-------------|-------|
|      | 5.5.22 | LPC Hearing | KF    |

DESCRIPTION  
PROPOSED ELEVATIONS



SHEET



Office of the City Manager

INFORMATION CALENDAR

July 26, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: LPO NOD: 2113 Kittredge Street/#LMIN2022-0001

INTRODUCTION

The attached Notice of Decision (NOD) for the Landmarks Designation is presented to the Mayor and City Council pursuant to Berkeley Municipal Code/Landmarks Preservation Ordinance (BMC/LPO) Section 3.24.160, which requires that “a copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.”

CURRENT SITUATION AND ITS EFFECTS

The Landmark Preservation Commission (LPO/Commission) has designated the subject property as a City Landmark. This action is subject to a 15-day appeal period, which began on July 11, 2022.

BACKGROUND

BMC/LPO Section 3.24.190 allows the Council to review any action of the Commission in granting or denying Landmark, Structure of Merit or Historic District status. In order for Council to review the decision on its merits, Council must appeal the NOD. To do so, a Councilmember must move this Information Item to Action and then move to “certify” the decision. Such action must be taken within 15 days from the mailing of the NOD, or by July 26, 2022. Such certification to Council shall stay all proceedings in the same manner as the filing of an appeal.

If the Council chooses to appeal the action of the Commission, then a public hearing will be set within 25 days pursuant to BMC/LPO Section 3.24.300. The Council must then rule on the designation within 30 days from the date that the public hearing is opened or the decision of the Commission is automatically deemed affirmed.

Unless the Council wishes to review the determination of the Commission and make its own decision, the attached NOD is deemed received and filed.

ENVIRONMENTAL SUSTAINABILITY & CLIMATE IMPACTS

Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than

their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The Council may choose to certify or appeal the decision to grant designation status, setting the matter for public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no known fiscal impacts associated with this designation action.

CONTACT PERSON

Fatema Crane, Senior Planner, Planning and Development Department, 510-981-7410

Attachments:

1: Notice of Decision – #LMIN2022-0001 for 2113 Kittredge Street





L A N D M A R K S  
 P R E S E R V A T I O N  
 C O M M I S S I O N

---

N O T I C E O F D E C I S I O N

**DATE OF COMMISSION DECISION: May 5, 2022**  
**DATE NOTICE MAILED: July 11, 2022**  
**APPEAL PERIOD EXPIRATION: July 26, 2022**  
**EFFECTIVE DATE OF DECISION (Barring Appeal or Certification): June 27, 2022<sup>1</sup>**

## 2113 Kittredge Street

### City Landmark application (#LMIN2022-0001) for designation of the California Theater as a City of Berkeley Landmark

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the following designation:

**DESIGNATION:** City of Berkeley Landmark

**APPLICANT:** Art Deco Society of California, P. O. Box 5539, Berkeley, CA

**ZONING DISTRICT:** C-D/MU, Commercial Downtown-Mixed Use

**ENVIRONMENTAL REVIEW STATUS:** The designation qualifies for a Categorical Exemption under Section 15061 of the Public Resources Code, Guidelines for Implementation of the California Environmental Quality Act (CEQA).

**The application materials for this project are available online at:**

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

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#### FINDINGS AND APPROVED APPLICATION ARE ATTACHED TO THIS NOTICE

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<sup>1</sup> Pursuant to BMC Section 1.04.070, if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day. Pursuant to BMC Section 3.24.190, the City Council may “certify” any decision of the LPC for review, within fifteen days from the mailing of the NOD. Such certification shall stay all proceedings in the same manner as the filing of a notice of appeal.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMIN 2022-0001  
2113 Kittredge Street  
July 11, 2022  
Page 2 of 4

**COMMISSION VOTE: 7-0-0-1** (one vacancy)

**YES:** ADAMS, CRANDALL, ENCHILL, FINACOM, LEUSCHNER, SCHWARTZ, TWU  
**NO:** [NONE]  
**ABSTAIN:** [NONE]  
**ABSENT:** MONTGOMERY

**TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code):**

To appeal a decision of the Landmarks Preservation Commission to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley; or by facsimile to (510) 981-6901. The City Clerk's telephone number is (510) 981-6900.
2. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).
3. Submit the required fee (checks and money orders must be payable to 'City of Berkeley'):
  - a. The basic fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
  - b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
  - c. The fee for all appeals by Applicants is \$2500.

If no appeal is received, the landmark designation will be final on the first business day following expiration of the appeal period.

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Landmarks Preservation Commission at, or prior to, the public hearing.
2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.

LANDMARKS PRESERVATION COMMISSION

NOTICE OF DECISION

#LMIN 2022-0001

2113 Kittredge Street

July 11, 2022

Page 3 of 4

3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must including the following information:
  - A. That this belief is a basis of your appeal.
  - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

**PUBLIC COMMENT:**

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Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMIN 2022-0001  
2113 Kittredge Street  
July 11, 2022  
Page 4 of 4

**FURTHER INFORMATION:**

Questions about the project should be directed to the project planner, Fatema Crane, at (510) 981-7410 or Fcrane@cityofberkeley.info. All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning counter), 2120 Milvia Street, between 8 a.m. and 4 p.m., Monday through Friday.

**ATTACHMENTS:**

---

1. Findings
2. Landmark Application, received **JANUARY 10, 2022**

ATTEST: 

Fatema Crane, Senior Planner  
Secretary to the Landmarks Preservation Commission

cc: City Clerk  
Applicant: Art Deco Society of California  
P. O. Box 5539  
Berkeley, CA  
Property Owner: Mary J Ferrogiaro & Addington L. Wise, Jr  
3434 Tice Creek Drive, #2  
Walnut Creek, CA

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# FINDINGS FOR DESIGNATION

MAY 5, 2022

## 2113 Kittredge Street – California Theater

**Landmark application #LMIN2022-0001 for the consideration of City Landmark or Structure of Merit designation status for a theater completed in 1914 – APN 057-2020-009-00**

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### PROJECT DESCRIPTION

City Landmark designation of the property at 2113 Kittredge Street – California Theater

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### CEQA FINDINGS

1. The project is found to be exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15061.b.3 of the CEQA Guidelines (activities that can be seen with certainty to have no significant effect on the environment).

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### LANDMARK PRESERVATION ORDINANCE FINDINGS

2. Pursuant to Berkeley Municipal Code (BMC) Section 3.24.110.A.1.b of the Landmarks Preservation Ordinance (LPO), the Landmarks Preservation Commission of the City of Berkeley (Commission) finds that the subject building exhibits architectural merit as an example of Art Deco architectural design in Berkeley's Downtown. The extant building was constructed in 1914 and then renovated during the Art Deco period. It retains many of its character-defining features of this style, including: simplified overall building form; linear massing and appearance; stepped outline; smooth wall surface; stylized, often geometric, ornamentation and detailing; fluting details; and low-relief decorative elements. The building is in good condition and retains all necessary aspects of design integrity.
3. Pursuant to BMC Section 3.24.110.A.1.c, the Commission finds that the subject property is an architectural example that is worthy of preservation for the exceptional value it adds as part of the Downtown Berkeley neighborhood fabric. The City's 2015 intensive survey evaluation of this property concluded that the California Theater is an important primary Contributor to the establishment of a historic district in the greater Shattuck Avenue area.
4. Pursuant to BMC Section 3.24.110.A.4, the Commission finds that the subject property expresses and embodies the history of Berkeley through its direct associations with the development of Downtown Berkeley as a center of commerce and transportation. The Shattuck Avenue Commercial Corridor Historic Context and Survey (2015) determined that this building, in its extant condition, continues to represent commercial forms and materials that were prominent in the Downtown during the period of historical significance.

## FEATURES TO BE PRESERVED

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This designation shall apply to the subject property and the following distinguishing features of the main building shall be preserved, and missing features shall be restored to the extent possible:

- Overall height and composition of the primary building facade
- Stucco façade
- Art Deco-style façade with five vertical piers & six ornamental bays
- Art Deco stepped design pattern of façade and roof parapets
- Four stepped roof parapets
- Main central bay and two flanking bays on upper 3/4<sup>th</sup> of street façade
- Angled fluted upper string course and Art Deco curved coping
- Zigzag saw-tooth pattern under the coping
- Banding trim divided into four strips above the entrance that visually separates the base and the upper part of the building
- Two slightly coved niches located on the widest, outer architectural bays
- Projecting corbels and zigzag ornaments
- Plaster *bas-reliefs* (frozen fountains motif)
- Two rectangular neon signs on a projecting prow with stylized lettering that each spell out CALIFORNIA
- Projecting prow/angled marquee, surrounded in neon tubing
- Lyre shaped center metal piece covered in neon tubing
- Leaf-patterned ceiling/soffit beneath the projecting marquee
- Recessed entry
- Stucco-and-glass box office
- Glass-and-aluminum entry doors

**CITY OF BERKELEY**  
*Ordinance #4694 N.S.*  
**LANDMARK APPLICATION**

**California Theatre**  
**2113 Kittredge Street**  
**Berkeley, CA 94704**

*Land Use Planning  
Received  
January 11, 2022*



*Figure 1. California Theatre, November 2021. Photo: Anthony Bruce.*



*Figure 2. California Theatre, circa 1930, Jack Tillmany Collection (courtesy Berkeley Architectural Heritage Association)*



1. **Street Address:** 2113 Kittredge Street  
**County:** Alameda      **City:** Berkeley      **ZIP:** 94704
  
2. **Assessor's Parcel Number:** 57-2020-9 (Blake Tract No. 3, Lots 7 & 8)  
**Dimensions:** 100 feet x 135 feet  
**Cross Streets:** Shattuck Avenue & Fulton Street
  
3. **Is property on the State Historic Resource Inventory?** Yes  
**Is property on the Berkeley Urban Conservation Survey?** Yes  
**Form #:** 21286
  
4. **Application for Landmark Includes:**
  - a. **Building(s):** Yes      **Garden:**      **Other Feature(s):** Neon sign
  - b. **Landscape or Open Space:**
  - c. **Historic Site:** No
  - d. **District:** No
  - e. **Other:** Entire property
  
5. **Historic Names:** T&D Theatre; Fox California Theatre  
**Commonly Known Name:** California Theatre, The Cal
  
6. **Date of Construction:** 1913-14      **Factual:** Yes  
**Source of Information:** Building Permit #3418, December 15, 1913
  
7. **Architect:** A. W. Cornelius (1913); Balch & Stanbery (1929-30)
  
8. **Builder:** Kidder & McCullough (1913); A.J. Lane (1929-1930)
  
9. **Style:** Art Deco
  
10. **Original Owners:** John Muldoon & Frank M. Wilson  
  
**Original Use:** Cinema
  
11. **Present Owner:** Ann Belcher et al  
  
**Present Occupant:** Vacant
  
12. **Present Use:** Movie Theatre until Oct 2021  
**Current Zoning:** CD-MU Core  
**Adjacent Property Zoning:** CD-MU Core

**13. Present Condition of Property:**

**Exterior:** Good    **Interior:** Good    **Grounds:** N/A

**Has the property's exterior been altered?** Yes in 1929–30 and again in 1952

**Executive Summary**

The California Theatre in central downtown Berkeley on Kittredge Street is a rare extant movie theatre in the Art Deco style that is also beloved by the community.

The California Theatre was initially completed in 1914 as an early motion picture theatre for Turner & Dahnken, also known as the T&D Circuit, a large operator of movie theatres in the then-nascent film industry. The theatre was altered and modernized in 1929-1930 by its new operator, Fox West Coast Theatres, in the Moderne style, which is today referred to as Art Deco. Even though the breathless newspaper copy announcing the theatre's reopening<sup>1</sup> was lifted straight from the advertising, the description of the theatre as a "Symphony in Modernism" was an apt one.

Although it has undergone some remodeling and a seismic upgrade, the theatre remains a striking example of Art Deco in downtown Berkeley, completing a trio of buildings in the style within a two-block radius: the Berkeley Public Library (Berkeley City Landmark #56) at 2090 Kittredge Street, completed in 1930 by architect James W. Plachek, and the U.A. Theatre at 2274 Shattuck, completed in 1932, and in which the 1929 architect of the Cal was also involved.

The California is also one of the last 12 surviving movie theatres in the Art Deco style in the San Francisco Bay Area, many of which are either local and/or national landmarks. The California's 107-year history is interwoven with the history of movies and with the students and the faculty of its neighbor, the University of California at Berkeley, just blocks away.

**14. Description**

The California Theatre is a two-story, brick-framed, rectangular building, situated on two lots, with a façade about 60' high. Initially designed for showing movies and live performances during the early days of motion pictures, the theatre stands on the north side of Kittredge Street in downtown Berkeley, just off Shattuck Avenue, and is a contributing structure in the proposed Shattuck Avenue Commercial Corridor historic district.<sup>2</sup>

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<sup>1</sup> "Modernism is keynote of new theater building," *Berkeley Daily Gazette*, Oct. 9, 1930.

<sup>2</sup> Shattuck Avenue Commercial Corridor, Historic Context and Survey, for the City of Berkeley, 2015. [https://www.cityofberkeley.info/uploadedFiles/Planning\\_\(new\\_site\\_map\\_walk-through\)/Level\\_3\\_-\\_General/ShattuckContextFINAL%20r091515.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_(new_site_map_walk-through)/Level_3_-_General/ShattuckContextFINAL%20r091515.pdf) accessed Nov. 2021.

It dominates the block, where it sits between the Beaux-Arts-style Brooks Apartments on the western corner of Kittredge and Shattuck and the late 19<sup>th</sup>-century A.H. Broad House and Storefronts, completed in 1894, to the east. Across the street, at 2124–2126 Kittredge, stands the Robert & Elma Elder House (1895), behind a 1926 Mediterranean-style commercial addition. Next door, at 2138 Kittredge, the John C. Fitzpatrick house (1903–04) hides behind a 1935 Georgian Colonial commercial brick addition. On the northeastern corner of Kittredge and Oxford streets stands Oxford Plaza (WRT-Solomon Etc, architects), a multi-use infill development completed in 2009.

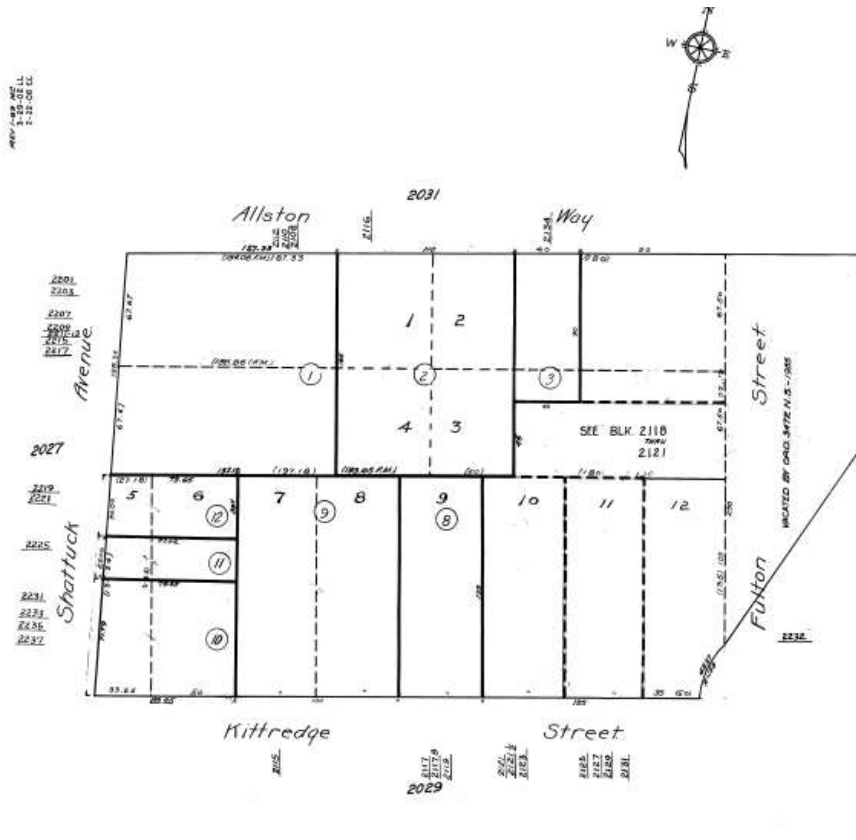


Figure 3. Map No. 3 of the Blake Tract, Alameda County Assessor's Office, Map 57. Note that lot numbers 7 and 8 are identified with the address of 2115 Kittredge, instead of 2113 Kittredge.

According to the original building permits, the theatre's construction in 1913 used concrete footings and piers, and the foundation is concrete with steel rebar. Walls and other piers are brick, and the trusses and girders are steel.

The exterior today is clad in stucco and features a host of Art Deco elements, dating from a major alteration in 1929–1930. The façade presents a symmetrical design with a central architectural bay and four parapet walls, two on each side. The central bay is divided by a row of five vertical piers and is located in a central plane under the highest parapet. Just below the central plane, are two overlapping flanking wall planes on each side, in a stepped pattern, under the

lower parapets. The wider, outer walls are each punctuated with a narrow vertical niche, separated from the base of the building by wide horizontal bands.

The ornament course along the parapet has a curving, scalloped coping. Beneath the coping is an elongated zigzag that resembles a saw tooth pattern. It peeks out from the coping, an unusual treatment of the typical zigzag motif that was popular in the 1920s and 1930s Moderne style.

The five vertical piers that step out from the wall separate a series of plaster *bas-reliefs* of stylized curves. The design looks like a shell or a fan, and is also known as frozen fountains. At the base of the fountains are cascading swirls, like bubbling water. Below the frozen fountains are projecting rectangular corbels, faced with a vertical zigzag motif.



Figure 4. Art Deco details on façade, including piers, rectangular corbels, and “frozen fountain” bas-reliefs, November 2021. Photo: Therese Poletti

At the center of the façade, above the entrance, is the theatre’s large marquee, from whose center projects a neon sign that curves like a lyre. A two-sided projecting prow in the marquee showcases stylized neon letters, with each side spelling out California on a background of navy-blue, highlighted by light blue vertical neon tubes. The blue neon tubes in the background were originally set to act as chasers, and flashed one after the other, in sequence.

The metal neon letters and the lyre-like centerpiece are outlined in gold, denoting the blue and gold school colors of U.C. Berkeley. The letter forms are

straight up and down, instead of slanted, and in a typography style that marks a transition between the Art Deco era and into mid-century modernism.



Figure 5. California Theatre's blue and gold marquee and neon sign. November 2021.  
Photo: Therese Poletti

One unusual feature of this sign is that the letters are individually formed or sculpted of metal and outlined in neon tubing, giving the letters a sculptural quality. Many theatre signs of the era often had letters painted onto the so-called metal tin can. The neon tubes were then attached over the painted letters, bent to spell out a business or a theatre, such as C A S T R O at the Castro Theatre.<sup>3</sup>

Beneath the marquee is a recessed entry, where the glass doors and a basic blocky ticket box in glass and steel are currently covered by plywood. The soffit of the recessed entrance is faced with thick plaster ornamentation depicting tropical leaves or vines. On each side of the main entrance are glass display windows, along the building's base, for posters of feature films and coming attractions. This entry, marquee, and stylized neon sign were part of a 1952 remodel by Fox West Coast Theatres.

The building is set back from the sidewalk by about six feet, and both brick sidewalls are visible from the street. Both sidewalls and the rear are exposed brick and completely braced to full height with steel bracing, placed in vertical, horizontal and diagonal patterns in a seismic retrofit, completed in 2002.<sup>4</sup> New fire escapes were also added to each side. A 20-foot-high block to store the stage machinery used in vaudeville and other live performances in the early days at the back of the theatre was also removed at that time.

<sup>3</sup> Phone interviews with Jim Rizzo, founder of Neon Works of Oakland and former service provider of the California Theatre and Randall Ann Homan, co-author of "San Francisco Neon: Survivors and Lost Icons" and neon preservationist.

<sup>4</sup> City of Berkeley Planning Department, Permit Number, B2001-03243.



Figure 6. Side walls, right side, of the California Theatre, November, 2021.  
Photo: Therese Poletti

## Features to Be Preserved

The distinguishing features of the California Theatre include the following:

- Rectangular mass
- Height of approximately 60 feet
- Brick wall structure
- Stucco façade
- Art Deco-style façade with five vertical piers & six ornamental bays
- Art Deco stepped design pattern of façade and roof parapets
- Four stepped roof parapets
- Main central bay and two flanking bays on upper 3/4<sup>th</sup> of street façade
- Angled fluted upper string course and Art Deco curved coping
- Zigzag saw-tooth pattern under the coping
- Banding trim divided into four strips above the entrance that visually separates the base and the upper part of the building
- Two slightly coved niches located on the widest, outer architectural bays
- Projecting corbels and zigzag ornaments
- Plaster *bas-reliefs* (frozen fountains motif)
- Two rectangular neon signs on a projecting prow with stylized lettering that each spell out CALIFORNIA
- Projecting prow/angled marquee, surrounded in neon tubing

- Lyre shaped center metal piece covered in neon tubing
- Leaf-patterned ceiling/soffit beneath the projecting marquee
- Recessed entry
- Stucco-and-glass box office
- Glass-and-aluminum entry doors
- Glass poster-display cases

## 15. History

The original Blake Tract was made up of land that had originally been owned by José Domingo Peralta, the son of a Spanish pioneer and soldier, Don Luís Maria Peralta, who had divided his property among his four sons. Domingo Peralta sold his land, including today's central Berkeley, to a group of investors. In 1856, George Mansfield Blake purchased Plot 69, made up of approximately 160 acres of the 640-acre Rancho San Antonio, for \$5,000, a plot that he had just three years prior unsuccessfully tried to claim, along with three other Berkeley pioneers: Francis Kittredge Shattuck, James Leonard, and William Hillegass.<sup>5</sup>

Kittredge Street and Shattuck Avenue are both named for Francis Kittredge Shattuck, often called the "founder of Berkeley," having been an early investor in Berkeley real estate, a developer of its downtown core, and an early promoter of rail service to Berkeley.



*Figure 7. Francis Kittredge Shattuck, Berkeley Daily Gazette, September 10, 1898*

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<sup>5</sup> Daniella Thompson, "The Tapes of Russell Street," February 1, 2005. [http://berkeleyheritage.com/essays/block\\_h\\_blake\\_tract.html](http://berkeleyheritage.com/essays/block_h_blake_tract.html)



In a tragic irony, Shattuck, who was also one of the early mayors of Oakland, died at age 73 of injuries after being accidentally struck with major force by a hurried passenger who was exiting the train at Shattuck Avenue and Center Streets in downtown's Berkeley Station.<sup>6</sup>

In 1876, two years before the incorporation of Berkeley, portions of the Blake Tract were put up for auction by Shattuck, who was Blake's brother-in-law and co-executor of his will. Blake, who died in 1875, was also an influential East Bay citizen, having been a mayor of Oakland, district attorney for Alameda County, and at the time of his death, a judge. His wife, Millicent K. Blake, was F.K. Shattuck's sister and an early educator. Shattuck and his sister were executors of Blake's will.<sup>7</sup>

An ad appeared in all the local papers in October, 1876, describing the auction of much of the Blake Tract as, "That Splendid Property, Known as the Blake Tract!" That auction was for 40 business and residence lots and 140 residence lots, some with frontage on the university.<sup>8</sup>

The Blake Tract, Map No. 3, which includes Kittredge Street, was subdivided in 1881. One early sale was in 1887 of Lots 13 and 14 on the southwest corner of Fulton and Kittredge streets (then spelled Kittridge) to George W. Webb, by Blake's widow, for \$900.<sup>9</sup> Webb apparently purchased the lots as an investor, as he and his family continued to live in their residence nearby, on Bancroft Way & Fulton.<sup>10</sup>

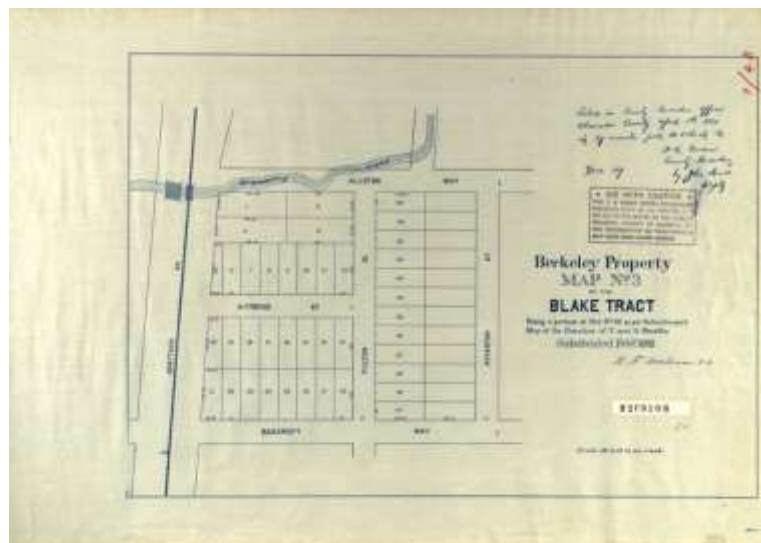


Figure 8 Blake Tract, Map No. 3, 1881. Courtesy Berkeley History Online, Berkeley Public Library, Berkeley, CA.

<sup>6</sup> "Passing of the Founder of Berkeley," *Berkeley Daily Gazette*, September 10, 1898.

<sup>7</sup> "Judge Blake's Will," *Oakland Tribune*, October 23, 1875.

<sup>8</sup> Onley & Co Real Estate Auctioneers ad, *Oakland Tribune*, October 9, 1876.

<sup>9</sup> *Oakland Tribune*, August 29, 1887.

<sup>10</sup> Berkeley City Directory, 1888-1889.



## The Muldoon Family

The California Theatre is located on lots 7 and 8 of Blake Tract No. 3. Lot 7 was occupied by the home of John F. Muldoon, a real estate investor, who moved to Berkeley sometime after the San Francisco earthquake and fire of 1906.

Muldoon's family and heirs still own the property and the theatre today.

John Muldoon's mother and father were both Irish immigrants, and John was born in Philadelphia in 1862. His father Michael, born in Cork, Ireland and his two older brothers worked as coal miners in the industrial county of Lackawanna, Pennsylvania. John was born in Philadelphia. At age 16, John and a third brother were also working in the mines as drivers.<sup>11</sup>

By the time he was 21, John had moved west to California's gold country, where he registered to vote in 1884 while living in the town of Jackson in Amador County. According to his obituary, he worked in the Muldoon Mine,<sup>12</sup> named after Edward Muldoon, an unrelated man who discovered it on his grazing land outside of Jackson. (The mine later became known as the Kennedy Extension and the target of a lawsuit between two rival mining firms in 1909.<sup>13</sup> The Kennedy Mine went to a depth of 5,912 feet, was the deepest gold mine in the U.S. and closed in 1942.)

Even though it was not his claim, Muldoon's early mining ventures appear to have been successful, because he stayed for 20-plus years in the small Gold Rush town of Ione, where he ran his own livery and stable business and was involved in local politics. He also met and, in 1894, married his wife Teresa Scully, of the prominent Scully family. Muldoon eventually amassed many real estate holdings in Amador County, while his wife was busy with her family, a local Masonic order, the Native Sons and Daughters of California, and raising their three children, William, John Jr., and a daughter, Madeline. Her family home in Ione, the Scully Ranch, is listed in the National Register of Historic Places.

The Muldoon family left Amador County for the Bay Area sometime after 1906. Muldoon's name can be found buying parcels, lots, or houses in Berkeley and Oakland, beginning in August 1906, when he takes over the deed to a lot in Claremont.<sup>14</sup> It's likely he saw a major investment opportunity in East Bay real estate amid the rush of refugees fleeing San Francisco after the 1906 earthquake and fire,<sup>15</sup> and that could have even been the impetus for him to move his family.

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<sup>11</sup> 1880 United States Census of Lackawanna, PA, via Ancestry.com, accessed November 2021.

<sup>12</sup> "Funeral Tomorrow for John Muldoon," *Oakland Tribune*, July 30, 1933.

<sup>13</sup> "Big Mining Suit, Kennedy Extension vs. Argonaut, \$700,000 Damages Asked," *Amador Ledger*, December 3, 1909.

<sup>14</sup> "Lizzie Smith to John Muldoon, Lot 23 Parkside, Claremont," *Oakland Tribune*, August 14, 1906.

<sup>15</sup> Berkeley's population grew from 26,000 in 1906 to about 38,000 a year later, according to Richard Schwartz, "Earthquake Exodus, 1906: Berkeley Responds to the San Francisco Refugees," (Berkeley: RSB Books, 2006), p. vii.

John Muldoon first appeared at 2113 Kittredge Street in the 1908 Alameda County voter registration rolls, but he was listed in assessor's records as early as 1907 as owner of Lot 7, while local investor Frank M. Wilson owned Lot 8. In the 1910 U.S. Census, Muldoon and his family were enumerated as living at 2113 Kittredge Street in a house he owned, and his profession was described as a broker of real estate and stock.

While the Muldoon family were settling into their more urban life in Berkeley, change was happening all around them. The small town of Berkeley was experiencing a major early 20<sup>th</sup>-century growth burst. The downtown commercial district was undergoing a building boom, and more public transportation was being added to the main Shattuck Avenue commercial corridor, including a new Southern Pacific Railroad station. Constructed for mixed use, many new buildings marked the transition from wood-frame structures to fireproof buildings, clad in brick and/or stucco, with fire escapes and some with fireproof metal sashes.<sup>16</sup>

At the same time, entertainment venues for the growing population were also starting up, as the early days of motion pictures proved to be very profitable for savvy entrepreneurs in the young rough-and-tumble business.



*Figure 9. Southern Pacific station on Shattuck Avenue, circa 1909*

Just around the corner from the Muldoons, on Shattuck Avenue, was the new collegiately named Varsity Theater, reportedly the first playhouse in Berkeley devoted primarily to movies, which opened in November, 1908 on the street level of the newly constructed Brooks Apartments Building.

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<sup>16</sup> Franklin Maggi, Leslie Dill and Sarah Winder, State of California DPR 523 Primary Record, Brooks Apartments.

"The Varsity theater on Shattuck Avenue which was opened about two weeks ago by an aggressive San Francisco business man, is one of the prettiest moving picture show houses on the Pacific Coast, and is attracting large houses every afternoon and evening," reported the *Berkeley Daily Gazette* on November 20, 1908. "The Varsity gives nothing but clean, high class programs."



Figure 10. Ad for *The Varsity* in the *Berkeley Daily Gazette*, November 6, 1908.

The Varsity's aggressive business man was Claude E. Langley, a directing manager of the Turner & Dahnken circuit, an up-and-coming moving pictures company in San Francisco. The Varsity was doing so well that in December, 1910, it got a permit to expand into one of the stores next to the cinema, which would add another 200 seats to its capacity.<sup>17</sup> The Varsity closed a year later, when T&D opened the larger Berkeley Theatre at Shattuck & Haste in August, 1911, also run by Langley. In November, T&D officially closed the Varsity. In a bit of a self-serving statement they noted that "the pull" to the larger, more commodious new Berkeley Theatre was too strong to compete against, even though it was also a T&D theatre.<sup>18</sup> But Turner & Dahnken were not finished investing in Berkeley.

San Francisco-based T&D, one of the largest independent theatre chains, began as a partnership between William Turner and Fred Dahnken who started together in the film-supply business after the 1906 earthquake and fire.

Eventually, Turner and Dahnken sold their film exchange and invested in early movie theatres. Among their first investments were two small movie houses on Market Street in San Francisco.<sup>19</sup>

<sup>17</sup> "Varsity Theater to be Improved," *Berkeley Daily Gazette*, December 8, 1910.

<sup>18</sup> "Doors of Varsity Theater Closed," *Berkeley Daily Gazette*, November 17, 1911.

<sup>19</sup> "The History of Contra Costa County," by Frederick Hulaniski (Elm Publishing Co., 1917), p. 588-589.



Another early venture was the Oakland Photo Theatre (1911), funded by department store magnate H.C. Capwell and located on Broadway and 15<sup>th</sup> Street, with 1,900 seats and a vaudeville stage.<sup>20</sup> By 1913, they had also taken over the Lyric in Oakland, where they had once been the film supplier, as seen in this February 1909 ad in the *Oakland Tribune*.

As T&D expanded in the East Bay, the central section of Shattuck Avenue in Berkeley, closer to the university, still interested them. After opening the Berkeley Theatre, they looked at a property on Shattuck and University, but deemed the two lots near their former Varsity on Shattuck as more suitable.

Real estate investor, banker, and Berkeley mover-and-shaker Frank M. Wilson,<sup>21</sup> who owned one of the two Kittredge Street lots with Muldoon, held lengthy talks with T&D Circuit executives over several weeks.<sup>22</sup> In September 1913, the *Berkeley Daily Gazette* reported that Wilson and Muldoon had agreed to build a \$150,000 motion picture theatre to be operated by Turner & Dahnken.

After Wilson orchestrated the deal with the T&D executives, and permits were filed for the theatre, it appears that Muldoon had the family's two-story Victorian wood-frame house moved to 2417 Blake Street, based on the permits filed at the time with the City of Berkeley.<sup>23</sup>

Muldoon's children would stay at the Blake Street house until they married, and John Sr. lived there until his death in 1933 at age 71.<sup>24</sup>



Figure 9. Frank Wilson in his garden at 2400 Ridge Road, courtesy BAHA.

<sup>20</sup> "Oakland Theater largest of its kind in the U.S.," *Oakland Tribune*, September 29, 1911.

<sup>21</sup> Thompson, Daniella, City of Berkeley Landmark Application, 2508 Ridge Road.

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_LPC/2016-02-04\\_LPC\\_ATT2\\_2508%20Ridge\\_Landmark%20Application.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_LPC/2016-02-04_LPC_ATT2_2508%20Ridge_Landmark%20Application.pdf)

<sup>22</sup> "Turner and Dahnken Complete Negotiations for a \$150,000 Theater Here," *Berkeley Daily Gazette*, September 18, 1913.

<sup>23</sup> City of Berkeley, Permit #3490, February 3, 1914, "Repairs to a building moved to that location," Berkeley Architectural Heritage Association archives.

<sup>24</sup> "Funeral Tomorrow For John Muldoon," *Oakland Tribune*, July 30, 1933.

John Jr., the second oldest son, went on to be a star rugby player at Berkeley High School and Santa Clara University. After graduating in 1919, John played on the U.S. Olympic Rugby Team<sup>25</sup> which won the gold medal in 1920 in Antwerp, and again in 1924. His younger brother William, also a Santa Clara student, was another member of the two gold-medal-winning teams.<sup>26</sup>



Figure 11. U.S. Olympic Team, 1920, J. Muldoon, back row, 4<sup>th</sup> from right, W. Muldoon, middle row, 3<sup>rd</sup> from right. Photo: Rugbyfootballhistory.com

John Jr., who became part owner of the Dana Garage in Berkeley, died at age 47, after an illness, leaving behind his wife and three children, including Jack Muldoon (John Muldoon III),<sup>27</sup> who ultimately became the owner of the Cal Theatre before his death in 2012.

### The T& D in Berkeley

The permits for the new, single-screen Berkeley T&D Theatre were filed in December 1, 1913, with an estimated initial cost of \$50,000.<sup>28</sup>

The T&D Theatre ended up costing \$150,000. It opened on December 9, 1914 and showed the film "Cabiria," a three-hour Italian epic silent film with towering sets and thousands of extras, and a two-reel Keystone comedy, "The Property Man." Despite a downpour of heavy rain, the theatre opened to a full house, and Mayor Charles Haywood participated in the opening ceremonies.<sup>29</sup>

The architect chosen by the T&D Circuit was Albert W. Cornelius, also of San Francisco, and the builders were Kidder and McCullough of Berkeley. Cornelius

<sup>25</sup> "Alumni Rugby Teams Stage Fast Battle," *Oakland Tribune*, December 26, 1920

<sup>26</sup> "Rugby at the Olympics," list of team members, 1920, 1924 Olympics, Rugbyfootballhistory.com

<sup>27</sup> "Garage Man Dies in Berkeley Hospital," *Oakland Tribune*, January 3, 1944

<sup>28</sup> City of Berkeley Building Permit No. 3418, December 1, 1913.

<sup>29</sup> "New Berkeley Theatre Ceremoniously Opened," *Oakland Tribune*, December 11, 1914.



designed several theatres in California for the T&D Circuit, including those in Pittsburg, Richmond, Sacramento and Salinas. He also designed several residential homes in Oakland, Berkeley and San Francisco.

The Berkeley T&D was an imposing two-story edifice, with heavy ornamentation, sculpted *bas-reliefs* inside arches over the upper windows, and a larger arched window over the entrance. The massive window was divided into multiple panes of art glass. The theatre was described as Greek or Greek revival in style, but as in most early movie theatres, the designs often were an eclectic combination of architectural motifs and styles.

Inside, the theatre had a large auditorium and a balcony. With 2,000 seats, it was described as the largest auditorium in Alameda County at the time.<sup>30</sup> The theatre had velvet carpets, French tapestries, a ventilation system, a stage and equipment for full theatrical productions, an immense pipe organ, a huge balcony with supporting posts, an enclosed projection room, orchestra pit, upholstered seats, and many exits. Balcony seats cost 20 cents, twice the price of the standard seat. Even though it was the 10<sup>th</sup> movie theatre in Berkeley at the time, it received a lot of press, due to its central location, size and design.

“Architect Cornelius has made a life study of this particular branch of his profession, and in designing the new building he has incorporated the latest and most modern ideas in theater construction,” reported the *Berkeley Daily Gazette*<sup>31</sup>

Cornelius’s theatre in Pittsburg, named the California Theatre and completed in 1920, is an extant example of a theatre similar to the T&D Berkeley, before its remodel in 1929–1930. The California in Pittsburg is currently a community arts performance venue and has many neoclassical features, such as Corinthian columns, sculpted urns, figurative sculptures, and, as in the T&D Berkeley, a large arched window, set with art glass, over the entrance.

The California Theatre in Pittsburg was also clearly inspired by the Palais Garnier, also known as the Paris Opera House, albeit on a much smaller, less grand and ornate scale. The Paris Opera, designed by Charles Garnier and completed in 1875, was one of the major achievements of Emperor Napoleon III’s reconstruction of Paris, led by Baron Haussmann, and an inspiration to students of Paris’s influential architecture school, l’École des Beaux-Arts.

Many of the early theatres before World War I were designed in the Beaux-Arts style, which became popular in America after the 1893 World’s Columbian Exposition in Chicago. After many of the best architects in the U.S. studied at the École des Beaux-Arts, in part due to the paucity of architecture schools in the U.S. during the late 19<sup>th</sup> century, they passed on the school’s teachings to their American colleagues. Methods included competitions to address an architectural problem, planning, and academic precision in drawing. Studies at the École were

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<sup>30</sup> “New Theater is formally opened,” *Berkeley Daily Gazette*, December 10, 1914.

<sup>31</sup> “New T&D Theater to open Wednesday,” *Berkeley Daily Gazette*, December 7, 1914.

also heavily influenced by the embrace of classical architecture and the antiquities of ancient Rome and Greece.



Figure 12. *California Theatre in Pittsburg, CA, A.W. Cornelius*  
Photo: *Cinema Treasures.org*

The conservative, imposing style also fit the changing movie business, as it transitioned from the small, scrappy storefront venues – where fire was a danger because of the nitrate film and open projectors – to safer, fire-proofed playhouses to accommodate the growing audiences.

The T&D Berkeley was one of the better of the T&D theatres in the Beaux-Arts style. It also featured the signature T&D logo in plaster, set in the middle of the massive metal awning, directly below the arched art-glass window. Part of T&D's appeal, news stories reported, was its fine selection of moving pictures "of a high moral character," seen as a hallmark of the T&D Theatres. In mid-December, after the showing of "Cabiria," the T&D Berkeley hosted a spectacular production of "Neptune's Daughters" with a cast of 1,000.

"Berkeley's Picture Palace," got far more press attention than the smaller Strand (now the Elmwood) on College Avenue, which opened just days before the T&D in 1914,<sup>32</sup> possibly because the Strand didn't buy any newspaper ads for its grand opening, lacking the funds of the T&D Circuit.

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<sup>32</sup> "Big Drama of the North Will Open New Theater on College Ave. and Derby St., *Berkeley Daily Gazette*, December 7, 1914.



Figure 13. New T&D Theatre, *The Architect & Engineer*, February, 1915

### The T&D Circuit

Several months after the December opening of the T&D Berkeley, the young company was riding high, with a one-page spread in a 1915 issue of *The Moving Picture World* featuring photos of its top four executives, and five of its Bay Area theatres, including the Berkeley theatre.

As a company, though, T&D had already experienced one brief ownership squabble with a manager at the Lyric in Oakland, an incident that landed in the press when an attorney for T&D used an iron bar to batter down the front doors in a standoff with the Lyric's manager.<sup>33</sup>

It was a precursor to an even fiercer battle after the unexpected death of co-founder James Turner, struck by the Spanish Flu in 1918, aged 45. Turner died after a 10-day illness, the second death at the circuit during the influenza

<sup>33</sup> "Oakland Attorney Retakes Theater," *Oakland Tribune*, July 25, 1913.



pandemic. Dahnken, who had recovered from it, had just returned to work when Turner succumbed.<sup>34</sup>

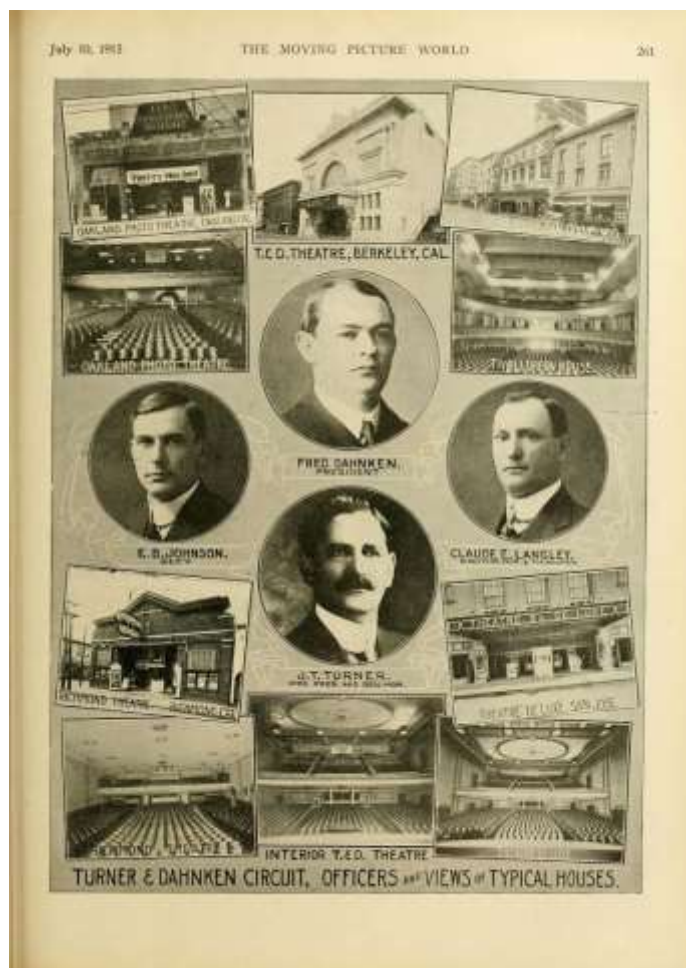


Figure 14. *The Moving Picture World*, July 10, 1915, courtesy Daniella Thompson

After Turner's death, his widow Hattie Turner took over his position, but "dissatisfaction arose in the corporation between [Fred] Dahnken and Mrs. Turner interests."<sup>35</sup> In the summer of 1921, Dahnken was ousted as president by the board, and Turner's widow took his place. Dahnken refused to acknowledge the vote and release T&D's books and records to the board. Ultimately, a few months later, the two sides reached an agreement, and Dahnken was made chairman of an advisory committee.

But this saga was the beginning of the end for the T&D Circuit. In January 1923, executives announced that the T&D and its 26 movie houses would be sold

<sup>34</sup> "James T. Turner Dies of Influenza," *San Francisco Examiner*, November 5, 1918.

<sup>35</sup> "Fred Dahnken Concedes Election of Mrs. Turner as Head of Corporation," *San Francisco Examiner*, October 8, 1921

to a Los Angeles group led by film pioneer Sol Lesser and his firm West Coast Theatres, Inc., for a sum of under \$4 million. The deal was called “one of the largest deals in the history of motion pictures.”<sup>36</sup> When the deal actually closed in March, it was described as a \$1.67 million deal for 90% of T&D stock.<sup>37</sup>

In the very first days of the completed deal, the general manager for the group, A.W. Bowles, talked about plans for some of the theatres, and mentioned the T&D in Berkeley as on the list for a \$100,000 remodel.<sup>38</sup> One month later, West Coast Theaters filed for a permit to erect a scaffolding as part of an interior remodeling project to remove the box seats, change rows of balcony seats, and install a new office door. The permit estimated the work at \$4,500, a far cry from the promised \$100,000.<sup>39</sup>

The year 1923 was also a tumultuous one for the city of Berkeley, which after over a decade of commercial and residential growth, had its own natural disaster: a major fire that started in the Berkeley Hills but descended toward the U.C. Berkeley campus and downtown. Most of the structures destroyed were homes, and another wave of construction in Berkeley followed in the 1920s.

As the 1920s roared on, the Shattuck Avenue commercial district grew with new, taller buildings, department stores, restaurants, and small parking garages. One major downtown development was the creation of Shattuck Square, next to the Southern Pacific station. The three Beaux-Arts style buildings in the square were designed by architects J.R. Miller and Tim Pflueger of San Francisco, and one was designed as the Berkeley branch of the Roos Brothers department store.

With growing commerce, population, and more transit options in urban areas, the movie business was growing, too. Ever-larger movie palaces, featuring revivalist European architecture or references to faraway locales seen only on the silver screen, became part of the cinema-going experience.

Sometime after the T&D sale to West Coast Theaters was completed in August 1923, the theatre on Kittredge Street was renamed the California. While several other theatres in the chain were also named the California, in Berkeley, the new name was also an opportunity to connect more with the local U.C. Berkeley community. The first ads with its new name began to appear in late 1923. Under the new owners, the theatre and its management also got involved with the growing downtown Berkeley business community: they hosted Christmas parties for children, PTA meetings, a fundraiser for the U.C. crew team, and had boy scouts as ushers for an event. The theatre also hosted fashion shows for Roos Brothers, usually in conjunction with a film screening.

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<sup>36</sup> “Lesser Takes T&D Circuit for \$4 million,” *San Francisco Chronicle*, January 23, 1923.

<sup>37</sup> “T&D Theatres Sold for Sum of \$1,675,000,” *San Francisco Chronicle*, March 20, 1923.

<sup>38</sup> “Old Factor in Movie Game Passes,” *San Francisco Examiner*, August 23, 1923.

<sup>39</sup> City of Berkeley, Building Permit 14961, September 18, 1923, Berkeley Architectural Heritage Association archives



Figure 15. Roos Bros ad, Berkeley Daily Gazette, February 24, 1926

## Enter Fox Studios

The film industry evolved from small nickelodeon operators, to upstart companies, to studio conglomerates with moguls at the top. These studio heads wanted ownership of more theatres. In January, 1928, Fox Studios, led by William Fox, purchased the parent company of West Coast Theaters, Westco Corp., for \$100 million, a deal that included four other cinema chains. A total of 250 movie theatres were involved in the deal.<sup>40</sup>

When Fox made this big acquisition, the industry was just becoming obsessed with a new technology: sound. Even though there had been experiments with sound effects prior to Al Jolson's 1927 film, "The Jazz Singer," when that film became a major smash hit with recorded sound performances, there was no looking back.

The development of sound in film culminated in another shift in the business, a change more technological than architectural. But it still led to a flurry of upgrading and remodeling in many houses, and Berkeley's California Theatre was among them. The switch to sound also was an excuse to further modernize many theatres, or to redecorate and remodel in the range of revivalist, exotic and escapist styles that were becoming popular after World War I.

<sup>40</sup> Fox Films Buys 250 Theaters, *Los Angeles Times*, January 26, 1928.

Just a few months after the Fox acquisition of the West Coast Theatres, in May, 1928, the California closed with a small, cryptic notice in the *Berkeley Daily Gazette*, which announced, "'The Dove,' [a film starring Norma Talmadge] will automatically come to a close tonight with the closing of the California Theatre."<sup>41</sup> It wasn't until November, 1929 that Fox West Coast Theatres filed a permit for alterations. Nothing else was on the permit, except "per plans." Costs were cited as \$40,000, it was filed by the Los Angeles contractor, A.C. Lane.<sup>42</sup>

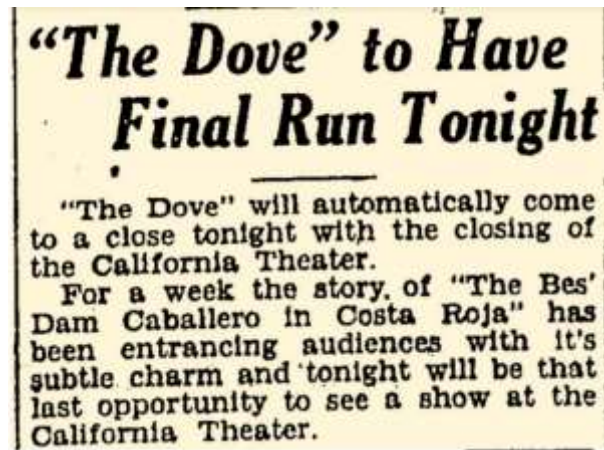


Figure 16. Mention of California Theatre closure in the *Berkeley Daily Gazette*, May 5, 1928.

The year 1929 was a tumultuous one in America. The stock market crash in October ultimately led to the Great Depression of the 1930s. But in the first few weeks after the crash, it wasn't immediately clear how severe the impact would be, or that the Roaring 1920s were at an end. All over America, building was still going at a breakneck pace; movie palaces were still on drawing boards, including in the Bay Area. In June, 1929, Fox had just completed the San Francisco Fox, a 4,651-seat, so-called spectacular theatre, designed by New York architect Thomas Lamb. In October, Paramount Publix started talking to San Francisco architect Tim Pflueger about a major movie palace in Oakland, an approximately 3,000-seat theatre to compete with the one-year-old Oakland Fox around the corner.

When the California Theatre, now known as the Fox California, finally reopened in October, 1930, as noted by Betty Marvin in the State's Historic Resources Inventory form filed in 1978, "reporters in 1930 were uncertain whether to say the 1914 T&D had been remodeled or demolished."<sup>43</sup>

<sup>41</sup> "'The Dove' to Have Final Run Tonight," *Berkeley Daily Gazette*, May 5, 1928.

<sup>42</sup> City of Berkeley, Permit No. 33702, November 12, 1929, Berkeley Architectural Heritage Association archives.

<sup>43</sup> Marvin, Betty, State of California, Department of Parks and Recreation, Historic Resources Inventory, "California Theater," January 13, 1978.



Figure 17. California Theatre under construction, 1929 or 1930  
Swingle Collection, BAHA archives.

The *Berkeley Daily Gazette* said, “the new structure rises on the site of the old California, an important and colorful theater in the city’s past.”<sup>44</sup> The *Oakland Tribune*, though, noted that most of the reported \$250,000 in expenditures on the theatre were on the interior furnishings and stage equipment.

In under a year, the theatre had been transformed into a “symphony in modernism” by the theatre’s architect, Clifford A. Balch, his engineer partner, Floyd E. Stanbery, and their decorators. But it is clear from a construction photo at the time that the work was mostly on the façade, where the contractors transformed the once-ornate Beaux-Arts façade into an imposing, tripartite front with a stepped parapet and roofline, narrow niches and Art Deco motifs such as zigzags and frozen fountains, and a new marquee designed of modern materials such as metal, plastic, and neon.

While the exterior of the theatre was modern or modernistic, the interior also combined different themes and references, common among theatre architects of the 1920s. The Fox California followed a “modernistic theme in structure” with “several forms of architecture” adapted for the interior. “A touch of Kipling’s India is to be found in the stage curtains, with French renaissance architecture for the auditorium, and modernized Spanish schemes for the foyer,” commented the *Oakland Tribune*.<sup>45</sup>

The yearning for exotic foreign lands and styles was also a key element of the Art Deco movement, which sought to eschew the standard classical European

<sup>44</sup> “Theater will be Opened Friday,” *Berkeley Daily Gazette*, October 9, 1930.

<sup>45</sup> “Fox Opens New Film Theater in Berkeley,” *Oakland Tribune*, October 11, 1930.



references, or at least transform them. As Maggie Valentine describes in her book on theatre architect S. Charles Lee, *The Show Starts on the Sidewalk*:

Exotic styles not only connoted escape but demonstrated the ambivalence of American attitudes in the 1920s. Having seen much of Europe during the war, America soldiers returned with images of French chateaus and Tudor cottages that over the next decade sprang up in bungalows, apartment buildings, and commercial architecture throughout the United States. However, national disillusion with international commitment and the rejection of a position as a world power shaped the isolationism and laissez-faire policies that characterized the 1920s. Period revival architecture was the cultural expression of that ambivalence.<sup>46</sup>

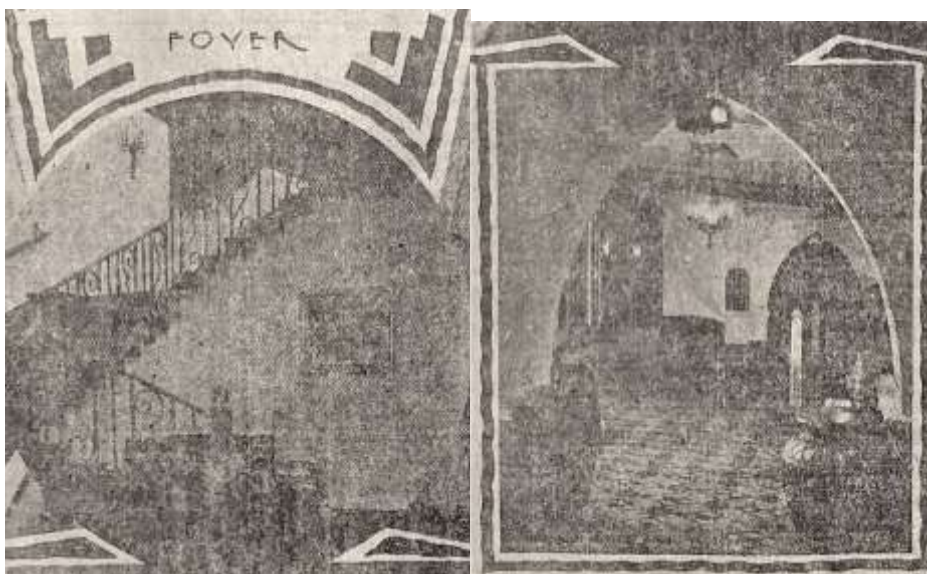


Figure 18. 1930 photos of foyer and mezzanine, published in the Berkeley Daily Gazette

The new theatre maintained much of its original footprint and the wing for theatrical and stage equipment. Its total auditorium, including a new balcony built with steel trusses, still held about 2,000 seats. Patrons went upstairs via one of two sweeping “futuristic” staircases that featured new metal railings with a swirling pattern, passing into the mezzanine through pointed Moorish arches. Black-and-red occasional chairs, comfortable lounges and settees dotted the foyer and the mezzanine, all modelled on modernistic lines.

The main auditorium featured a new proscenium design, where neutral walls flowed into the proscenium of buff- and sand-colored blocks surrounding the screen and stage area, where “one vivid spot of color” came from the curtain designed to cover the new screen, made of a “shimmering orange velvet” with a modernistic floral design, in magenta and a royal blue as a border, trimmed with

<sup>46</sup> Valentine, Maggie, “The Show Starts on the Sidewalk, An Architectural History of the Movie Theatre Starring S. Charles Lee,” (New Haven: Yale University Press, 1994), p. 72.

multi-colored gems, silver sequins and metallics. The new pipe organ was a \$25,000 Wurlitzer, finished in gold with raised fleur-de-lis on either side.<sup>47</sup>

There was also a new projection booth twice as large as standard booths, with a double ceiling that was designed as a safeguard against fire, three projectors in sound-proof compartments, and two generators, in case of breakdowns.

Other new equipment included a new Magnascope screen for better picture quality and, most important, the latest in “talking equipment” from Western Electric, intending to give “the people of Berkeley a show house of perfect sound.”<sup>48</sup> The theatre also provided headsets for the hard of hearing.



Figure 19. Ad in a special section on the theater of the Berkeley Daily Gazette, October 9, 1930.

While the *Oakland Tribune* sounded disappointed by the lack of pomp and long speeches by Berkeley Mayor Thomas Caldecott, throngs were reported to attend the second grand opening of the theatre. The 1930 talking film “Follow Thru,” a whirlwind romantic comedy starring Buddy Rogers and Nancy Carroll, was preceded by some short subjects, including a Mickey Mouse cartoon.

<sup>47</sup> “‘Modernism’ is Keynote of New Theatre Building,” *Berkeley Daily Gazette*, October 9, 1930.

<sup>48</sup> “Perfect Acoustics Worked Out After Study by Engineers,” *Berkeley Daily Gazette*, October 9, 1930.

## The Architect

In the six-page special section on the theatre in the *Berkeley Daily Gazette*, which gave the theatre the most coverage, nothing was written about the firm Balch & Stanbery, responsible for the design and engineering of the theatre.

Balch and Stanbery were based in Los Angeles and appear to have formed their partnership in the late 1920s<sup>49</sup> as an architect and engineer team, much like Dankmar Adler and Louis Sullivan in Chicago. They worked together off-and-on until the late 1930s. Balch also worked with Walker & Eisen, a highly regarded and prolific firm in the Los Angeles area, as an associated architect, where he designed more theatres in the Art Deco style, including the United Artists Theatre in downtown Pasadena and its Berkeley twin on Shattuck Avenue, which opened two years after the California Theatre.

Clifford Allison Balch was born in Preston Lake, Minn. in 1880, the son of a carpenter and the oldest of four siblings. His family moved to California around the end of the 19<sup>th</sup> century, and in the 1900 census, they were listed as living in Pasadena and the 19-year-old Clifford was working as a day laborer. Ten years later, his mother Anna was a widow, and Clifford described his profession as architect, still living in Pasadena, where he and his three brothers all resided in the parental home.

In 1917, Balch, already a second lieutenant in the National Guard, took a War Department exam and was appointed first lieutenant in the U.S. Army, which had not yet entered World War I.<sup>50</sup> He eventually joined Company 1 of the 160<sup>th</sup> Infantry. In 1918, he shipped out of Brooklyn, N.Y. to France. During his service there, his mother's letter-writing friendship with the French woman who was hosting Balch in her home was featured briefly in the *Los Angeles Times*.<sup>51</sup>

Balch fits the type of architect described in Valentine's book on S. Charles Lee, as one of the many architects who served in the First World War, and returned to the U.S. with revivalist visions of Europe or other foreign lands. He began working on movie theatres in the 1920s, and one of his first designs to receive attention was the Bard Theatre Building in his home town of Pasadena. The theatre in the mixed-use commercial building was described as Egyptian and presented vaudeville shows produced by Alexander Pantages.

After the 1922 discovery of Tutankhamun's tomb in Egypt, the architect and the theatre's owner, Lou Bard, were swept up in the ensuing Tut-mania that was all the rage through the 1920s, influencing architecture, clothing design and even the makeup of many flappers. Balch and his patron were also likely also inspired

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<sup>49</sup> Pacific Coast Architecture Database (PCAD), listing on Balch & Stanbury, [pcad.lib.washington.edu](http://pcad.lib.washington.edu) accessed December, 2021.

<sup>50</sup> "California Commissions in the Guard Confirmed," *Los Angeles Times*, August 17, 1917.

<sup>51</sup> "Strangers But War Makes Them Friends," *Los Angeles Times*, November 11, 1918.



by Sid Grauman's Egyptian Theatre on Hollywood Boulevard, which had opened in October, 1922, with the first-ever Hollywood movie premiere.



Figure 20. Ad for Bard Theatre Building, *The Pasadena Evening Post*, June 22, 1925

Great pharaoh heads, silent sphinxes, and racing chariots were among the motifs to decorate the theatre. Reds, jade green, and black intermingled with hundreds of pounds of gold leaf in the mural decorations inside the theatre, reported the *Pasadena Evening Post*.<sup>52</sup>

Little is known about Balch's early training, but he clearly was interested in drawing and was talented as an artist. In 1902, at age 22, he entered a Board of Trade contest to design the cover of a souvenir book and won.<sup>53</sup> According to the Pacific Coast Architecture Database, Balch worked on approximately 38 movie theatres, all of them in California, either on his own, with Floyd Stanbery, Walker & Eisen, or a firm he started later with his brother, Balch & Balch.

One project—the West Coast outpost of the famous New York restaurant Sardi's—showed Balch working in an even more modern style, in collaboration with the Austrian modernist, R. M. Schindler, who by then had settled in Los Angeles. One *Los Angeles Times* mention in 1932 noted, “plans are now being completed by architects C.A. Balch and R.W. [sic] Schindler” for Sardi's. A later ad cites Schindler as the building architect; Balch was architect for the owners.

<sup>52</sup> “Egyptian Elegance to be Disclosed in Bard's New Theater,” *Pasadena Evening Post*, June 22, 1925.

<sup>53</sup> “Sixteen Identified,” *Los Angeles Times*, December 30, 1902.

Sadly, the sleek modernist café-restaurant burned in a kitchen fire in 1936.<sup>54</sup>



Figure 21. Ad for the new Sardi's, Los Angeles Times, January 3, 1933.

As a WWI veteran, Balch tried to serve his country again during the Second World War, registering for the draft in 1942 at age 61. In 1948, Balch and his brother William worked on an "ultra modern" drive-in theatre in Pomona, called the Valley Drive-In. This appears to have been Balch's last project. He died at age 83 in 1963.<sup>55</sup>

### Balch and Art Deco

In many of his theaters that survive today, Balch was working in what we refer to today as the Art Deco style, and described at the time as Art Moderne, Zigzag Moderne, modernistic, zigzag, jazz or, as the ad copy for the Fox California read, simply modernism. The style derived its current name from a 1925 exposition in Paris, called *L'Exposition des Arts Décoratifs et Industriels Modernes*, where a

<sup>54</sup> "Eight Injured as Sardi's Café Destroyed by Fire," *Los Angeles Times*, November 2, 1936.

<sup>55</sup> Funeral announcements, "Clifford A. Balch," *Los Angeles Times*, December 18, 1963.

decorative style that had been bubbling up in Europe, influenced by a convergence of modern art movements, made its debut.

In her book, *Essential Art Deco*, author and V&A museum curator Ghislaine Wood describes the wide-ranging style:

Art Deco is perhaps best understood as the style of an age of extremes. Spanning the boom of the roaring twenties and the bust of the Depression-ridden thirties, it came to represent many things for many people. It was the style of the flapper girl and the factories of Fordism, the luxury ocean liner and the skyscraper, the fantasy world of Hollywood and the real world of the Harlem Renaissance. It could be deeply nationalistic, but it spread like wildfire all over the world, dominating the skylines of cities from New York to Shanghai and sheathing offices and factories from London to Rio. It presented a return to tradition and simultaneously celebrated the mechanized modern world. It embraced handcraft production and the machine...It affected all forms of design, from the fine and decorative arts to fashion, film, photography, transport and product design and reached beyond these to encompass literature, music and dance. It was modern and it was everywhere.<sup>56</sup>

While the newspapers did not go into much detail about the exterior of the California Theatre in its 1930 re-opening, the massing of the façade and its plaster ornament are quintessential of the style and are highly regarded today.

The stepped pattern of the façade is an element that became quite popular, one that was an oblique reference to ancient temples of Mesopotamia, the Mayans, and the Egyptians. This fascination with ancient worlds, combined with the 1914 zoning requirement in New York for setbacks on new skyscrapers to allow more sunlight on the streets, fueled a fascination with ziggurat shapes. This shape, and various Cubist interpretations of it, led to the so-called “skyscraper style,” where even furniture took on the shape, such as the skyscraper bookcases created by designer by Paul Frankl.

Another common motif is what are referred to as frozen fountains, captured in plaster, as seen in the California’s façade. This motif repeats itself again and again in many buildings around the world, from the mid- to late 1920s, when the style was effervescent. The concept of the frozen fountain is possibly a reference to the fountain of glass designed by Renée Lalique, one of the foremost designers of the period, for the Paris Expo. A stained-glass version of the fountain was also depicted on the cover of the French weekly news magazine *L’Illustration*.

In addition, the zigzag pattern, seen on the theatre’s façade, was such a popular motif that it was sometimes used as a nick-name for the style in the 1920s. It was also a likely double entendre referring to carefree drinking during Prohibition, since zigzag was used during World War I to denote drunkenness.

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<sup>56</sup> Wood, Ghislaine, *Essential Art Deco*, (London: Bullfinch Press, 2003), p. 6.



Figure 22. Postcard featuring Lalique's fountain, Paris 1925 Exposition



Figure 23. Stained glass window created for the 1925 Exposition des Arts Décoratifs et Industriels Modernes depicts the new style as seen in Lalique's fountain.

Balch also deployed the style in several other theatres, notably in five United Artists theatres, including the Berkeley U.A. on Shattuck Avenue, which was completed two years after the California Theatre on Kittredge. Balch was described as an associate architect with Walker & Eisen of Los Angeles.

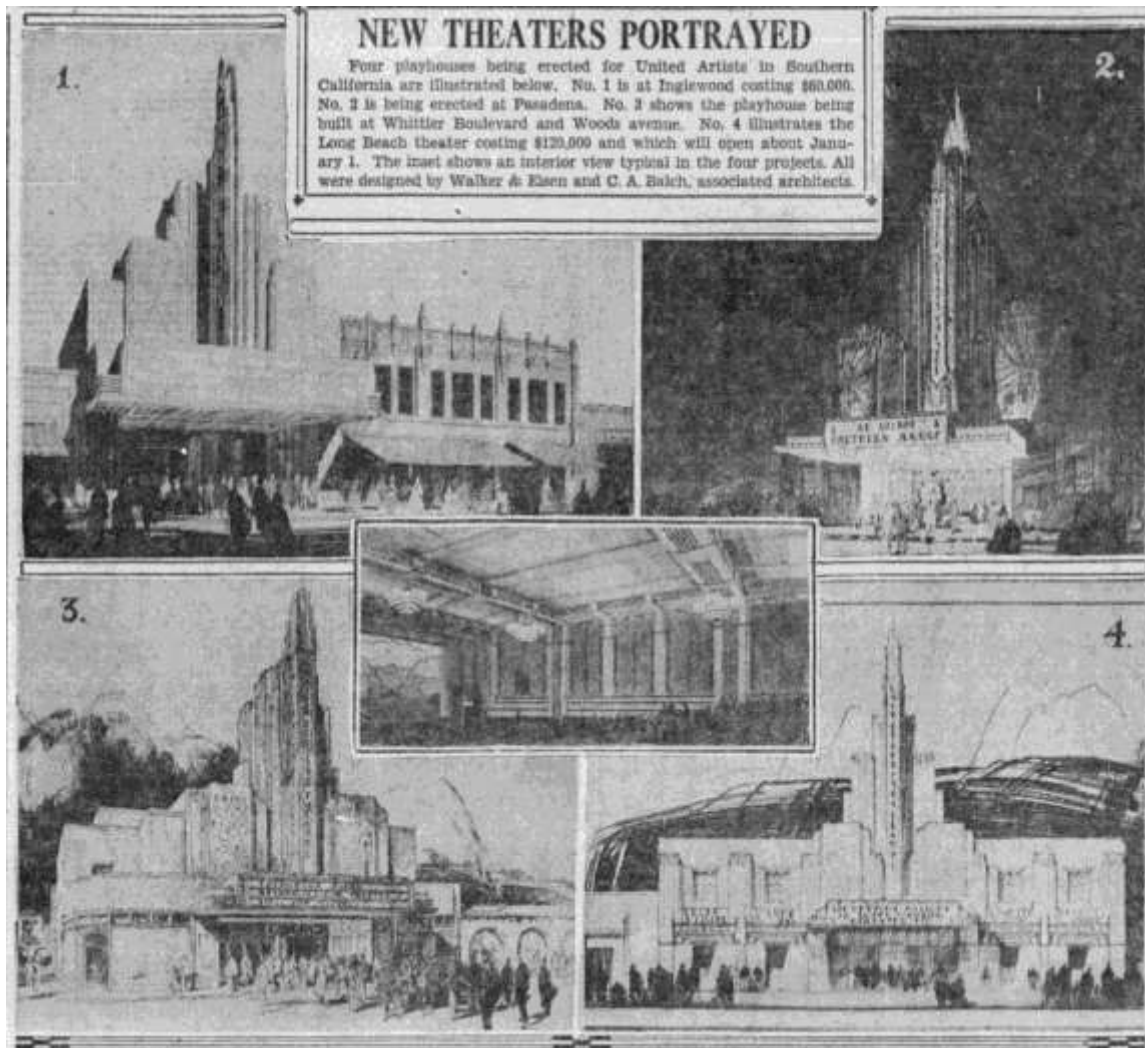


Figure 24. Architectural renderings of four U.A. theatres in the Art Deco style by Walker & Eisen, C.A. Balch as associated architect. (c) Los Angeles Times, September 13, 1931.

The Pasadena Theatre, as seen in illustration No. 3 above, is still extant on Colorado Avenue as a gym and a restaurant. The United Artists Theatre, still an active movie theatre on Shattuck Avenue, is nearly identical in form, with a stepped façade, narrow tower, vertical lines, and sculpted *bas-reliefs* on each side of the tower, depicting “Artistry” on the left and “Unity,” on the right. Theatre historian Gary Parks has noted that the art work is reversed on the façade of the Pasadena theatre.



When the U.A. Theatre opened in September, 1932, the tower glowed with neon, which was removed, possibly sometime in the 1960s or 1970s.<sup>57</sup> The original United Artists marquee has also been removed.

Like many of the architects of his era, Balch would gradually become more modernist in his designs, as the Art Deco ornament would be stripped from designs in the later 1930s, partly due to budgetary consideration, and as the design evolved into what we now call Streamline Moderne.



*Figure 25. United Artists on Shattuck Avenue, November 2017  
Photo: Therese Poletti*

## **The Cal Endures**

In 1933, as the economy worsened during the Great Depression, Fox West Coast Theatres filed for bankruptcy as a way to get out of many unprofitable movie theatre leases. The move was criticized by legislators during a Senate committee hearing on bankruptcies that took place in Los Angeles. One year later, the assets of the bankrupt chain, including 125 theatres, were sold for \$15.6 million to National Theatres Corp., a company organized to purchase the Fox

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<sup>57</sup> Finacom, Steven, "Berkeley's United Artists Theater Turns 75," *The Berkeley Daily Planet*, September 14, 2007.

chain and headed up by Spyros Skouras, the brother of Charles Skouras, a former top executive of Fox West Coast and a trustee of the bankrupt company.<sup>58</sup>

Back in Berkeley, the California Theatre carried on; it continued to screen movies and hosted or sponsored typical community events, such as an Easter egg hunt with partner the *Berkeley Daily Gazette*. The theatre was still named the Fox California; it wasn't until the early 1950s that another big change occurred, as the Fox West Coast chain sought to counter post-war issues that were affecting the movie theatre business. Drive-in movie theatres were becoming all the rage as America started moving to the suburbs, and the threat from television was beginning in earnest, as the numbers of operating television stations grew.

In April, 1952, the Fox California closed for two weeks, as rumors were dropped in a gossip column in the *Berkeley Daily Gazette* about plans in the works for a star-studded opening in May. After its brief closure, the theatre had a grand "reopening" to celebrate a remodel that featured a marquee redo and the addition of a huge glowing neon sign, spelling out California on two sides. The exterior of the theatre was also repainted in a shade of chartreuse.<sup>59</sup> The neon sign today remains the most enduring element of the 1952 remodel.



Figure 26. California Theatre's working neon in 2008. Photo © Thomas Hawk

At the grand re-opening in 1952, actresses Clare Trevor and Jeanne Crain, and the actor Charles Coburn were the biggest stars to attend the event, which raised funds for a U.S. Olympic Games Fund and a Berkeley Chamber of Commerce youth program.

<sup>58</sup> "National Theaters Take \$15 Million Chain, 125 Houses are Involved, Out of Bankruptcy," *Los Angeles Daily News*, November 20, 1934.

<sup>59</sup> "Grand Opening Being Planned for California Theater," *Berkeley Daily Gazette*, April 30, 1952.

“The theatre itself has been completely remodeled and redecorated,” the *Gazette* reported.<sup>60</sup> In its own two-page ad, Fox West Coast said it had “engaged the most progressive and modern creators in the architectural and decorative professions.”

In reality, Fox had given its theatre the so-called “Skouras Style” treatment, which was an interior remodel style of Fox West Coast Theatres under the leadership of Charles Skouras, who took over the chain sometime in 1933. The signature style involved the use of plaster in three-dimensional hand-tinted floral patterns and scrolls, applied to interior walls and the surrounds of the proscenium. Fox worked with theatre designer Carl G. Moeller, who also remodeled the box office and the soffit of the marquee in the same scrolling, three-dimensional style. The arches at the top of the staircases were also reconstructed, and turned into curving, rounded entry ways, leading into the revamped mezzanine area.

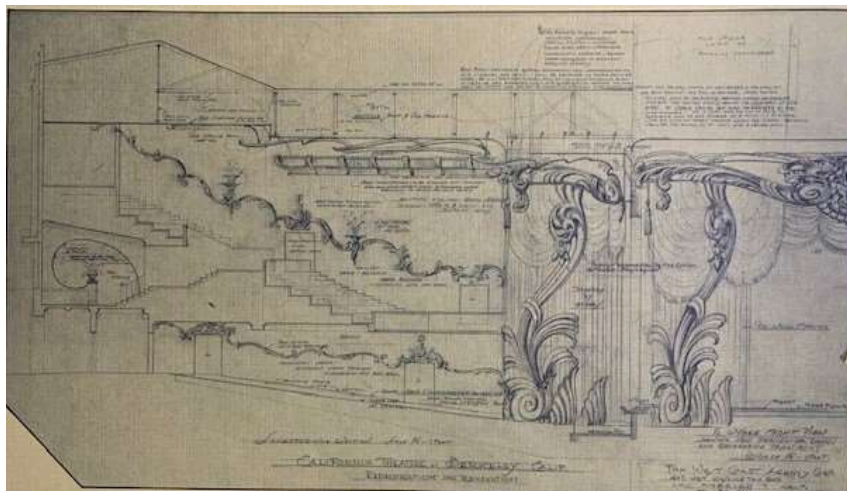


Figure 27. Renderings of the California Theatre interior, longitudinal view, reproduced in the *Annual of the Theatre Historical Society of America*, 1987. Photo courtesy Gary Parks

Preston Kaufmann, the author of a now-highly collectible book on the San Francisco Fox Theatre, also wrote an issue for the Theatre Historical Society of America on the Skouras Style in 1987. Kaufmann said that this form of decoration was almost exclusively seen in showplaces operated by National Theatres, especially the Fox West Coast Theatres. Kaufmann described it as:

Showmanship in architecture...sweeping scrollwork, deep hanging festooned drapes, multi-colored neon-lit coves, generous use of gold leaf, and lighting fixtures of brass and aluminum...are just a few of the very unique components of what historians call the “Skouras-Style.”... Film goers were greeted in the lobby by a clean but fanciful concession stand, decorated with

<sup>60</sup> “Hollywood Stars to Be Here for Berkeley’s Gala Theater Premier May 14,” *Berkeley Daily Gazette*, May 8, 1952.



etched aluminum panels. Skouras-Style ornament and painting continued in the auditorium – on the walls and ceiling. Seemingly as in days past, the theatre was a show in itself.<sup>61</sup>

The Skouras treatment could be called a lower-cost, three-dimensional version of the heralded Heinsbergen murals that decorated many Californian movie theatres of the 1920s and early 1930s, but at a fraction of the cost. “Obviously, these decorations were relatively inexpensive, compared to use of intricate staff work,” Kaufmann wrote. “But the Skouras[es] were interested in only one thing – making money.” He noted that the style was used for approximately nine years. When Charles Skouras died suddenly of a heart attack in 1954, the inspiration behind the style came to an end.

Not much can be learned about Carl Moeller, the chief creative behind these effects. He is cited as one of the designers of the now demolished Hawaii Theatre (1940) on Hollywood Boulevard, which featured some precursors to the Skouras Style, with floral embellishments.

An ad in the *Berkeley Daily Gazette* (Fig. 26) included some rare photos of the stylized ornament on each side of the California Theatre’s proscenium.



Figure 28. Partial section of two-page ad from the *Berkeley Daily Gazette*, May 14, 1952.

<sup>61</sup> Kaufmann, Preston, “Skouras-ized for Showmanship,” *Theatrical Historical Society of America, Annual*, No. 14, 1987.



*Figure 29. Mezzanine photo circa 1950s, with redone archways, 1930 staircase railings and bas relief in gold or aluminum leaf on the left. Jack Tillmany Collection, BAHA archives.*

### **The 1970s to today**

As movie theatres continued to be hurt by the explosion of television in the 1950s and 1960s, some theatres closed or sought new ways to attract the public and remain viable and profitable. The advent of shopping malls and the megaplex in the late 1970s led to another round of pressure on single-screen theatre operators, and many went out of business. Other theatre owners responded by partitioning their theatres, splitting large auditoriums into two or three separate small theatres, where they could screen a handful of movies every day.

The California was one of those venues. In 1976, the theatre was managed by Marty Foster and Phil Harris, whose company, Marphil Corp., operated a chain of art house theatres in the East Bay. They hired architect John A. Elphick of Oakland to split the upstairs balcony into two smaller theatres, each with its own separate entrance off the mezzanine. As much of the Skouras treatment as possible was left intact, but decorative elements that got in the way of the twinning of the balcony level had to be removed.

After the split into three screening rooms, the theatre was called the California 3 for a time. By the 1980s, it was known as California Cinema, as repertory houses came into vogue. In 1994, a company founded by Gary Meyer, who managed the U.C. Theatre, a popular rep house on University Avenue, took over the lease. His then-young company, Landmark Theatres, had the lease on the theatre until October, 2021. Like all movie theatres across the U.S., the theatre was shuttered during the COVID-19 pandemic and was on the verge of reopening when the heirs of John Muldoon III cancelled Landmark's lease.

Under Landmark's management, the California began again to host big movie events that involved the community, as it had done in its early years.

Daniel Ellsberg, author and former military analyst who was the source of the Pentagon Papers, was a frequent movie goer at the Cal. Another local Berkeley celebrity, U.C. Berkeley professor of public policy and former secretary of labor Robert Reich, was also in the house on three occasions for the showing of a documentary, "Inequity for All," by Berkeley filmmaker Jake Kornbluth. Reich, who stars, in the film, participated in a Q&A at each showing.

Another major event took place in 2013 for the showing of the film "Fruitvale Station," about the 2009 shooting of Oscar Grant by a BART police officer, who said he mistook his gun for a taser. The film's director, Ryan Coogler, hosted a packed Q&A session after one showing of the movie.



Figure 30. Filmmaker Ryan Coogler during an audience Q&A after a showing of the film "Fruitvale Station" in 2013. Photo courtesy Dale Sophia

## 16. Context

The California Theatre is located on Kittredge Street between Fulton Street and Shattuck Avenue, on two parcels, known as Lot 7 and Lot 8. The block is part of Blake Tract, Map No. 3, which was originally bounded by Shattuck Avenue, Allston Way, Atherton Street (now part of the U.C. campus), and Bancroft Way.

This block of Kittredge built up slowly in pre-1906 Berkeley, and then experienced more change in the rapid post-earthquake and fire growth of the small city. From its earliest days, the quiet block right off the hubbub of Shattuck was a popular area for rooming houses and apartments for both students and families, with its easy proximity to the university. In the mid-1920s and again in 1935, commercial storefronts were added to the oldest historic Victorian homes on the block, as the theatre and large corner apartment buildings added to the business activity in the area and the mixed-use nature that still exists today.

Although Blake Tract, Map No. 3 was subdivided in 1881, its development was slow. By 1890, only two houses had been built on the north side of Kittredge, including on Lot 8, the lot that investor Frank M. Wilson would eventually purchase in 1906. This early dwelling on Kittredge was an income property from the beginning, with a dwelling and a small carriage house in the rear.

According to Assessor Records, Lot 8 was owned from 1890 to 1903 by Ann A. Shepard,<sup>62</sup> who moved to California from Iowa with her daughter, May, a very early student at the University of California, in 1879. They settled at 2020 Hearst Way (then College Avenue), a rooming house where May met her future husband, a law student named Lemuel Warren Cheney. After May and Warren married in 1883, Mrs. Shepard continued to live with them.

Warren Cheney became a journalist and was a well-regarded contributor to the literary magazine called *The Californian*, and eventually took it over in 1882, and then merged it into *The Overland Monthly*.<sup>63</sup> After the Cheneys married and sojourned in Europe, they briefly resided in Lodi. They returned to Berkeley in 1886, where they lived on what was then called Audubon Street (now College Avenue), north of Bancroft Way. Their home was located adjacent to the U.C. campus, an appropriate location at the time for the Cheneys.

May Cheney would go on to found the first teacher placement agency west of the Rockies, and her husband would join in its management. In addition, May Cheney was a co-leader in the movement to have Phoebe Apperson Hearst named as the first woman regent of the University of California.<sup>64</sup> Warren Cheney also sold real estate, where he made important contributions to the development of Berkeley.<sup>65</sup> In 1890, it appears that Mrs. Shepard purchased the property on Kittredge for investment purposes.

By 1894, most of the north side of the block had been built up, but the south side remained undeveloped. An additional dwelling on the north side of Kittredge, as seen in the 1894 Sanborn map, was a dwelling on Lot 7, also known as 2113 Kittredge. In 1893, that dwelling was owned and occupied by William Murray, a bookkeeper, and his daughter Anita L. Murray, a music teacher,

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<sup>62</sup> Alameda County Assessor Records, BAHA archives.

<sup>63</sup> "The Californian magazine has changed hands." *Alameda Daily Argus*, July 22, 1882.

<sup>64</sup> Thompson, Daniella, "U.C. Offers the American Turgenev's House for One Dollar," BAHA website, [http://berkeleyheritage.com/berkeley\\_landmarks/cheney.html](http://berkeleyheritage.com/berkeley_landmarks/cheney.html).

<sup>65</sup> Ibid.

according to City Directories and assessor records. William Murray died in 1896, leaving Anita the house on Kittredge.<sup>66</sup>

Street grading and curbing of the block of Kittredge to the east of Shattuck and west of Fulton did not occur until 1895.<sup>67</sup> Cement sidewalks were laid out on each side of Kittredge in 1896.<sup>68</sup>

That same year, the *Berkeley Gazette* (which later became the *Berkeley Daily Gazette*) published a cheerful progress report on the young town.

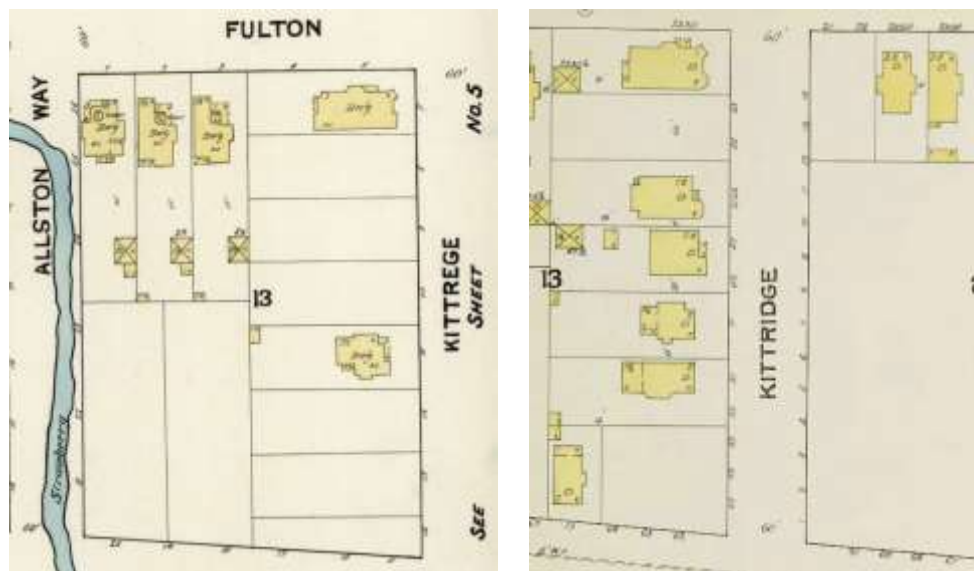


Figure 31. Sanborn map 1890 (left) and Sanborn 1894 (right)

The newspaper was an advocate, citing all the reasons home-seekers should look to Berkeley for the “most beautiful building sites,” with the University a nucleus as an education center. Noting the town’s achievements to date, the writer added, “It is not yet eighteen years since Berkeley was organized.”<sup>69</sup>

Those achievements included a growing manufacturing industry, a police force, a banking institution, services such as electricity in every home, good markets for food, a new public library and a growing number of graded streets. Commercial buildings were one or two stories, wood frame construction, but as the Shattuck Avenue Commercial Corridor Historic Context and Survey noted, “by 1895, more substantial multi-story structures began to appear that were of brick construction.”<sup>70</sup>

<sup>66</sup> *Berkeley Gazette*, May 8, 1896.

<sup>67</sup> “Kittredge Street Macademize and Gutter: Resolution Ordering the Work,” *Berkeley Gazette*, October 3, 1895.

<sup>68</sup> *Berkeley Gazette*, May 26, 1896.

<sup>69</sup> “Berkeley’s Progress, Something about the Past and Present Time,” *Berkeley Gazette*, December 24, 1895.

<sup>70</sup> Shattuck Avenue Commercial Corridor Historic Context and Survey, City of Berkeley, p. 25.



Public transportation to the fledgling university and the young town growing around it was initiated in 1876 with the 3.84-mile Berkeley Branch Railroad from Oakland. This subsidiary of the Central Pacific had its first terminal on Shattuck Avenue between Center Street and University Avenue.

In 1895, two buyers purchased properties on the south side of Kittredge Street, again for investment purposes. One was Robert Elder, an investor who built a house across the street, slightly cater-cornered, from the California Theatre. The house was originally a two-story wood-frame Shingle Style house. In 1896, it became the home of the new U.C. chapter of the Delta Upsilon fraternity for a couple of years, until the growing fraternity moved to larger quarters. In need of its own house, in 1902, the fraternity began raising funds by incorporating a house association, and built a fraternity house on Channing and Bowditch streets in 1905.<sup>71</sup>

Also in 1895, Ivy Melvin Tripp and his wife Emma built a house at 2106 Kittredge Street (Lot 19).<sup>72</sup> By 1900, the Tripp family had moved out, and their former home became a boarding house. In 1902, a suspicious fire in the boarding house, owned for one week by former miner and capitalist Gustave Wanger, greatly damaged the building.<sup>73</sup> A year later, Wanger commissioned Berkeley architect William H. Wharff to design a three-story, fire-proof building on the southeast corner of Shattuck and Kittredge for apartments and commercial storefronts. In mid-1904, J. F. Hink & Sons Dry Goods (the precursor to Hink's Department Store), moved into the ground floor.



Figure 32. J.F. Hink & Son promotional postcard, circa 1904, of the new store in the Wanger Block courtesy Daniella Thompson.

<sup>71</sup> "The Delta Upsilon Quarterly," Volume XXIV, October 1, 1906, p. 260-261.

<sup>72</sup> *Oakland Tribune*, January 14, 1895.

<sup>73</sup> "Disastrous Fire is Probably Due to Incendiarism," *Berkeley Daily Gazette*, December 29, 1902.

The unbuilt lots on Kittredge Street continued to be sold in the early 1900s, and most of them were income properties, with apartments or rooming houses that appealed to the growing university community. E.J. Martin, a North Berkeley resident who was the manager at the San Francisco gas company, acquired lots as a speculative venture in 1901 and planned to build “tasteful cottages of seven rooms.”<sup>74</sup> In April of that year, Martin filed a permit for all work except electrical wiring and gas fixtures on a two-story house on the north side of Kittredge, 50 feet west of Fulton, with double specifications.

This likely was the two-story building at 2125-27-29-31 Kittredge, originally four flats that had grown to 12 apartments and rooms by 1950. A classified ad from 1902 for 2127 Kittredge described clean, well-furnished rooms for rent, and a French and Spanish table, where both languages were spoken and practiced.<sup>75</sup>

By 1903, there were dwellings on all seven lots on the north side of Kittredge, while the south side was gradually developing, along with downtown Berkeley. More public transit had an even larger impact on the growth, with the formation of the Key System in 1902 and its arrival in Berkeley with streetcars that left Shattuck for a ferry connection to San Francisco beginning in 1903.<sup>76</sup>

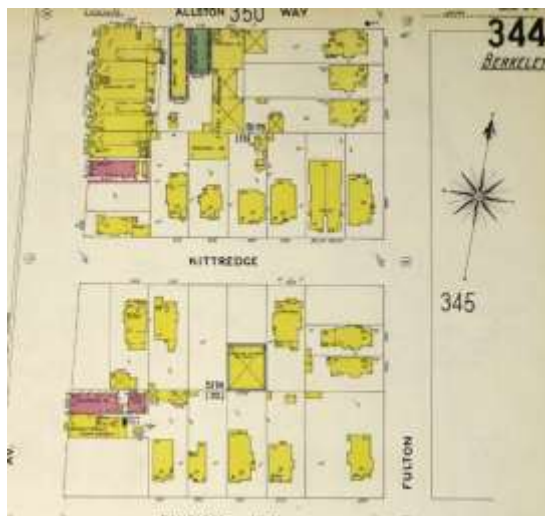


Figure 33. Sanborn Fire Insurance Map, 1903

In January, 1904, a livery and stable owner named John C. Fitzpatrick hired the well-regarded Berkeley architect Wharff to build a two-story residence with a basement on the south side of the block, at what is now 2138 Kittredge, for the large sum of \$4,090.<sup>77</sup> Fitzpatrick had also purchased the lot next door, to the

<sup>74</sup> “Will Improve Real Estate,” *Berkeley Daily Gazette*, May 17, 1901.

<sup>75</sup> Classified ads, *Berkeley Daily Gazette*, September 30, 1902.

<sup>76</sup> Shattuck Avenue Commercial Corridor Historic Context and Survey, p. 24.

<sup>77</sup> “To Erect Large Building,” *Berkeley Daily Gazette*, January 4, 1904.

east. He, his wife and their five children, had been living across the street at 2115 Kittredge, according to the 1904 Husted's directory. After many years as a railway superintendent, at the turn of the century, Fitzpatrick had opened up his own livery and stable business on Allston.

After Fitzpatrick's new home was built, he also moved his livery and stable business next door. The original 1904 home, which was built set back from the street, features a full-width hipped main roof and other Victorian era features such as a projecting bay to the east and curved wooden brackets.<sup>78</sup>

Fitzpatrick's livery and stable business evolved with the times. In 1907, it even had a veterinarian who had his office on site, which probably was very useful when horses were stabled there. But transportation was shifting to the automobile, and by 1915, a year after the T&D Theatre opened, it was advertising limousines available at any time at Fitzpatrick's Garage.<sup>79</sup>



*Figure 34. View of Kittredge Street circa 1915 with Fitzpatrick's Garage covered in ivy on the left. Postcard courtesy Anthony Bruce*

Two major events led to a further explosion of growth of downtown Berkeley. The San Francisco earthquake and fire of 1906 and the construction of the Southern Pacific railroad station in 1908, both led to more commercial

<sup>78</sup> Franklin Maggi, Leslie Dill, and Sarah Winder, "John C. Fitzpatrick House," State of California DPR 523 Primary Record, March 2, 2015, p. 1.

<sup>79</sup> Classified ads, *Berkeley Daily Gazette*, December 2, 1907 and December 15, 1915.



construction and development. Some buildings in downtown Berkeley suffered some damage, but nothing like the devastation seen in downtown San Francisco.

The year 1906 was also important for the block. The Victorian house at 2113 Kittredge on Lot 7 was sold by Anita Murray to John Muldoon and his family in 1906, while the house next door passed from Mrs. Ann Shepard at her death in 1903 to her other daughter, Fannie Beardsley.

In March 1906, one month before the San Francisco earthquake and fire, Frank Wilson purchased that same property from Stanford and Sarah Luella Cartwright,<sup>80</sup> who owned the property for about three years. Wilson is named in Alameda County historic assessor's records as the owner of the property from 1907 through 1913, but the assessment on the Lot 8 improvements was markedly reduced by 1911. The 1911 Sanborn map (Fig. 34) shows only a shed in the rear of Lot 8, indicating that Wilson either razed or moved the house circa 1910-11.

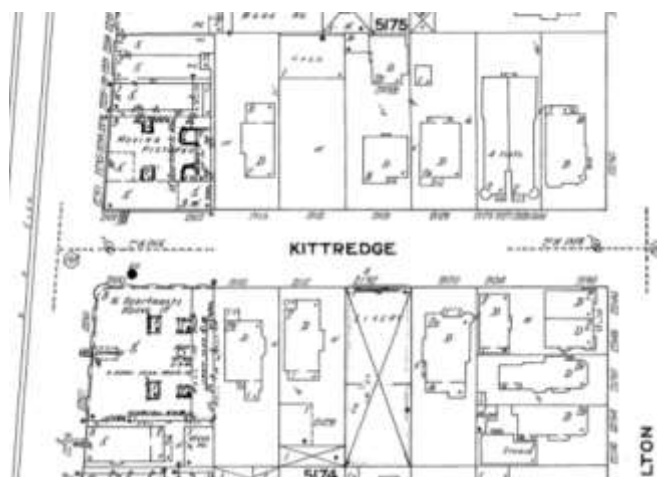


Figure 35. Sanborn Fire Insurance Map, 1911

With so many people fleeing San Francisco, many in Berkeley saw an opportunity both to profit from and to boost the young city's growth in this time of tragedy across the bay. For example, a group of real estate men formed, dubbing themselves the Berkeley Real Estate Exchange, to market the city of Berkeley and its locations, including the Berkeley Wharf, to manufacturers and other businesses in San Francisco that had been ruined or damaged in the earthquake.<sup>81</sup> Their efforts were successful. A few months later, Warren Cheney wrote in the December issue of *Sunset* magazine about the host of commercial enterprises that had moved to Berkeley from the city.<sup>82</sup>

<sup>80</sup> *Berkeley Daily Gazette*, March 6, 1906.

<sup>81</sup> "Real Estate Exchange is Working to Secure Large Business Houses," *Berkeley Daily Gazette*, May 1, 1906.

<sup>82</sup> Shattuck Avenue Commercial Corridor Historic Context, p. 26-27.

Another investor who sought to capitalize on the 1906 rush of refugees from San Francisco was business leader B.F. Brooks of Berkeley, who commissioned San Francisco architects Henry Meyers and Clarence Ward to design a three-story apartment building of reinforced concrete and brick, for the corner of Shattuck and Kittredge, at a cost of \$60,000.<sup>83</sup>

Shortly after the Muldoons purchased their home, construction began in October, 1906 on the Brooks Apartment building (also known as the Amherst, Berkeley City Landmark No. 253.) Upon the completion of the Neoclassic Revival style building in 1907, the section of Shattuck Avenue from University to Bancroft was “solidly built” on both sides.<sup>84</sup> In addition to the large apartments upstairs, the building was home to commercial storefronts, including the storefront Varsity nickelodeon, the first home of the T&D Circuit in Berkeley, accessed on the Shattuck street side.



Figure 36. Postcard circa 1907, showing corner of Shattuck and Kittredge, with Brooks Apartments (left) and Wanger Block (right), courtesy Daniella Thompson

The neighborhood continued its growth into the 1920s, and some of the original building owners, seeing an opportunity, adapted their structures to the need for commercial storefronts. The Robert Elder House, for example, was altered in the 1920s. The charming Mediterranean-style commercial storefront addition, which today has the address of 2124–2126 Kittredge, was built in 1926 and retains its architectural integrity.<sup>85</sup>

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<sup>83</sup> “Two Handsome Modern Buildings Soon to be Erected in this City,” *Berkeley Gazette*, October 23, 1906.

<sup>84</sup> Two Handsome Modern Buildings Soon to be Erected Landmark in this City,” *Berkeley Daily Gazette*, October 23, 1906.

<sup>85</sup> Franklin Maggi, Leslie Dill & Sarah Winder, State of California DPR 523 Primary Record, Robert Elder House, March 2, 2015.

Another earlier survivor on the block is the A.H. Broad House (1894) that added commercial storefronts. The A.H. Broad House stands adjacent to the California Theatre, at 2117 Kittredge Street. This Structure of Merit, designated in 2001, was the home of Berkeley builder and artist Alphonso Herman Broad,<sup>86</sup> who lived there with his family from 1907 to 1915, during a period when the block's character was being transformed from residential to commercial.

Broad would take advantage of this transformation in the mid-1920s, when he built two storefronts in front of his former home.<sup>87</sup>

"Two new businesses that definitely foretell the speedy conversion of Kittredge street to one of commercial activity have just made their bow to the Berkeley public," wrote the *Berkeley Daily Gazette*.<sup>88</sup>



Figure 37. Photo of A.H. Broad building and new commercial storefronts, June 12, 1925, *Berkeley Daily Gazette*.

"Residences and rooming houses have long held sway in this block of Kittredge street, despite the nearness to the city's main artery," said the *Berkeley Gazette*. "Only the California theatre and the Pepper Tree Inn disputing residential dominance in the past."<sup>89</sup> The new storefront closest to the theatre was a lunch and candy shop, called "The California Sweets," an excellent companion to the T&D Theatre, which had already brought the biggest change to the block since its opening in 1914.

Across the street from the theatre was a relatively new Pepper Tree Tea Room, a neighborhood restaurant and café, which was opened in 1923 by Alma Taylor, after her husband purchased their home at 2138 Kittredge from John C.

<sup>86</sup> Thompson, Daniella, "Builder-artist A.H. Broad left his mark on Berkeley," August 6, 2009, BAHA website, [http://berkeleyheritage.com/eastbay\\_then-now/ah\\_broad.html](http://berkeleyheritage.com/eastbay_then-now/ah_broad.html)

<sup>87</sup> Thompson, Daniella, "Builder-artist A.H. Broad left his mark on Berkeley," BAHA website.

<sup>88</sup> "Rapid Development on Kittredge," *Berkeley Daily Gazette*, June 12, 1925.

<sup>89</sup> "Rapid Development on Kittredge," BDG, 1925.

Fitzpatrick. Fitzpatrick's wife died in 1919 and in 1921, he put his garage and auto repair shop up for sale, saying it was "at sacrifice, account sickness."<sup>90</sup> At the time, the garage had storage for 35 cars, was doing a good business, and cleared about \$400 a month, the ad in the *Berkeley Daily Gazette* stated.

The T&D Circuit ended up buying the garage, which it sold a few years later in 1925, to the operators of the University Garage on Telegraph.<sup>91</sup>

The second business was a hair salon, described as a ladies and children's hair-cutting parlor. Various owners would take over the hair salon, which lasted through the 1950s.

A Sanborn fire insurance map from 1929, after Fox West Coast Theatres took over the theatre, shows all the commercial activity on the block, including a new gas station on the corner of Kittredge and Fulton.

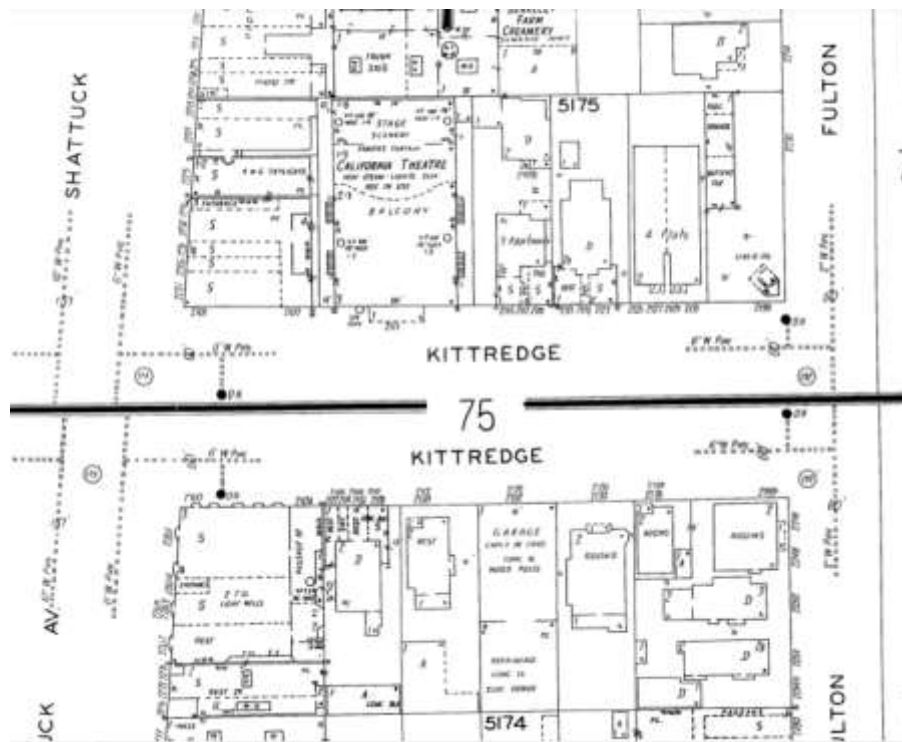


Figure 38. 1929 Sanborn Fire Insurance map, BAHA archives.

The biggest development on the other side of Shattuck Avenue would be the construction of the new main public library, at 2090 Kittredge. The library, completed in 1931, after the 1929–1930 remodel of the California Theatre, would continue the Moderne or Art Deco style. The building was designed by James W.

<sup>90</sup> "Mrs. C. Fitzpatrick Called by Death," *Berkeley Daily Gazette*, March 1, 1919. Classified ad, *Oakland Tribune*, June 15, 1921.

<sup>91</sup> "Felt and Millett buy T&D Garage," *Berkeley Daily Gazette*, September 5, 1925. (This sale was likely conducted by the heirs of Turner and Danhken, since T&D had been sold by that time.)

Plachek, a local architect who single-handedly reshaped downtown Berkeley and the Civic Center area between the wars. The new library was built to replace the smaller library designed by John Galen Howard, the main architect of the U.C. Berkeley core, with funding from industrialist Andrew Carnegie.<sup>92</sup>

Today, as local City of Berkeley Landmark No. 56 and listed in the National Register, the Berkeley Public Library is an exquisite example of the Art Deco style, in massing, design, and ornament, with *bas-reliefs* that reference Egyptian art, illustrating the trend of designers of the period to incorporate motifs of non-European derivation.



Figure 39. Detail of Berkeley Public Library, November 2021. Photo: Therese Poletti

One year later, the United Artists Theatre on Shattuck was completed, also in the Art Deco style, by Walker & Eisen architects, with Balch as associated architect. Including the California Theatre, these three Art Deco buildings in the area are all excellent examples of the style, and represent the neighborhood's change from early residential to an even larger, modern commercial district.

Another nod to the increased commerce in the area happened in the mid-1930s, when the Taylors, as new owners of the Fitzpatrick house at 2138 Kittredge, also embarked on a commercial renovation, a move that would also accommodate more patrons in the popular Pepper Tree. Their project was built 10 years after storefronts were added in front of the A.H. Broad and Robert Elder houses and injected additional charm to the block.<sup>93</sup>

<sup>92</sup> Maggi, Franklin, Leslie Dill & Sarah Winder, State of California, DPR 523 Primary Record, Berkeley Public Library, March 15, 2015.

<sup>93</sup> Maggi, Franklin, Leslie Dill, & Sarah Winder, State of California, DPR 523 Primary Record, John Fitzpatrick House, March 2, 2015.



In 1935, the Taylors commissioned a brick-faced addition to their home, with a two-story, modified Georgian Colonial façade, “inspired by early-American house construction.”<sup>94</sup> There are graceful arched door openings and arched windows on the ground floor, symmetrical focal windows on the second floor, and decorative steel half-round balconettes. The small, stately addition would fit right in among the Federalist homes on Boston’s Beacon Hill.



Figure 40. Taylor addition (1935) to Fitzpatrick House, 2138 Kittredge Street.  
Photo © 2021 Anthony Bruce.



Figure 41. Ad for the remodeled Pepper Tree, November 1935, Berkeley Daily Gazette

Today, this core area of Kittredge Street next to Shattuck Avenue retains its mixed-use character, and most of its historic buildings are contributors to a

<sup>94</sup> Maggi, Franklin, Leslie Dill, & Sarah Winder, State of California, DPR 523 Primary Record, John Fitzpatrick House, March 2, 2015.

potential historic district of Shattuck Avenue. In addition, these historic mixed-use buildings from the 1890s to the 1930s are all important links to downtown Berkeley's historic past and its evolution to today's dense urban center.

## 17. Significance

**Consistent with Section 3.24.110A.1.a.** The California Theatre possesses architectural merit. Originally constructed in 1913–1914, it was remodeled in 1929–1930 in the Art Deco or Moderne style and retains most of those features: Art Deco façade, including Art Deco style massing and design features such as stepped parapets. The theatre retains all its original Art Deco ornaments, such as the curved coping, zigzag trim, vertical stepped out piers, frozen fountains, and protruding corbels with zigzags. A remodel in 1952 added a neon sign of architectural significance, with rare so-called raceway letters that extend upwards. The stylized letter forms are also individual sculptures of metal and the letter form is a rare up and down script and is fitting with the Art Deco style.

**Consistent with Section 3.24.110A.1.b.** The California Theatre is one of the last three movie theatres in the Art Deco style in Berkeley, and one of the last 12 extant in that style in the San Francisco Bay Area. It is one of two theatres in Berkeley to be designed in its 1929–1930 remodel by a significant theatre architect, Clifford A. Balch of Los Angeles, who was a prolific theatre designer.

**Consistent with Section 3.24.110A.1.c.** The California Theatre is an architectural example worth preserving for the value that it adds to the neighborhood fabric. The California Theatre is a striking presence on Kittredge Street and is an extant example of the commercial boom in the 1920s of the area, after the block transitioned from residential homes to small neighborhood businesses. The theatre added to the neighborhood fabric when it was an active movie theatre as a venue for the community to attend films and documentaries, sometimes interacting with directors, and in general, providing educational events on film. The theatre has a history supporting the University of California through hosting events or sponsoring fundraisers.

**Consistent with Section 3.24.110A.4.** The California Theatre also possesses historic value, as one of the earliest moving picture theatres in Berkeley, and one that is still extant. The theatre also has a close association with early California motion picture pioneers, the owners of the T&D Circuit, William Turner and Fred Dahnken, who commissioned its construction as their third movie house in Berkeley. The California also has a close association with Fox West Coast Theatres, a major force in the early days of Hollywood. The California hosted

many Hollywood film stars and prominent actors during its grand openings of 1914, 1930, and again in 1952.

**Historic Value:** City Yes Neighborhood Yes

**Architectural Value:** City Yes Neighborhood Yes

**18. Is the property endangered?** Possibly. The building is vacant, its fate is unknown.

**19. Reference Sources/Bibliography/Acknowledgements:**

Special thanks for advice, help, and editing to historian Daniella Thompson. Additional thanks to Fran Cappelletti, BAHA archivist, and Anthony Bruce, BAHA executive director, who were also generous with their help. Thanks again for all the assistance.

Also thanks to Gary Parks, theatre historian and author; Jim Rizzo, neon restorer extraordinaire; Randall Ann Homan of SF Neon; Thomas Hawk; Ira Serkes; Dale Sophiea, a former manager of the Cal; and Gary Meyer and Allen Michaan for their help. Any errors of fact are the responsibility of the recorder.

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**20. Recorder:** Therese Poletti Preservation Director, Art Deco Society of California

**Date:** January 10, 2022



Figure 42. California Theatre at night, 2018. Photo courtesy of Ira Serkes





Commission on Aging

INFORMATION CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
 From: Commission on Aging  
 Submitted by: George Porter, Chairperson, Commission on Aging  
 Subject: 2022 Commission on Aging Work Plan

SUMMARY

The Commission on Aging strives to enhance the quality of life for people 55 years and older in the Berkeley Community, and to increase public awareness of their contributions and needs by actively promoting their health, safety, independence and participation in our community.

Having built both a policy-focused and service-focused framework of senior needs in Berkeley, the Commission on Aging has adopted a set of priorities to advance to the City Council which will serve to organize and direct the Commission's work in the coming years:

- Referrals from Council
- Support Berkeley Age Friendly Initiatives
- Advocate for the needs of older citizens in the implementation of alternative & senior-friendly transportation modes in conjunction with "Safe-Streets" and parking issues
- Advocate for Affordable Housing for older adults as well as other housing policies that are consistent with Berkeley's commitment to encouraging "Aging in Place" and/or "Aging in Community"
- Identify and examine the emerging issues and policies regarding public health and safety that are of particular concern to the older adult population and propose policy recommendations that address these specific concerns.
- Examine the work-plans and agendas of other commissions for elder relevant items

CURRENT SITUATION AND ITS EFFECTS

The Commission on Aging has focused much of its energy on identifying the spectrum and intricacies of senior needs within the city. The Commission has worked to establish a broad knowledge base of City projects, services, and resources which it can use to best address these needs and meet policy and service shortcomings which affect daily life for Berkeley seniors. Given the Commission's consistent work and communication with City commissions, City task forces, the Aging Services Division, and Berkeley's

citizenry, the Commission plans to use this information and knowledge to construct a cohesive set of priorities through which it will hold itself accountable to the needs of the public.

### **Finalization of Work Plan 2022**

Motion/Second: Porter/ Collins

Ayes: Porter, Collins, Cochran, Futran, Acampora

Noes: None

Abstain: None

### *PRIORITIES*

#### **1. Referrals from Council**

- a. Staff time will be used to gather the needed official documents for the commission and, when necessary, coordinate presentations from and communications with the relevant City departments and Commissions regarding these referrals
- b. Commission will take up these issues during regular meetings and, when necessary, create sub-committees to examine these in greater depth.
- c. Reports to Council will be submitted when asked to respond to the specific request in order to reinforce the practice of ensuring that the needs of Seniors are taken into consideration during the development of municipal policy and additional staff time to assist in research and preparation of recommendations to Council, preferably during commission meeting hours.

#### **2. Support Berkeley Age Friendly Initiatives**

- a. Staff time will be used for coordination of Age Friendly “town halls” when necessary, for coordination of presentations to the commission from guests relevant to Age Friendly issues and for assistance in the preparation of recommendations to Council.
- b. If and when needed, the commission will hold “town halls” to better inform the public of the progress of Age Friendly Initiatives in relation to “The Age-Friendly Berkeley Action Plan”. The commission will also seek public input and discussion regarding that Action Plan. Commission will identify key issues in the Age Friendly Initiatives strategic plan and communicate with relevant commissions urging support for the policies that reflect these, including examining the funding needed to implement the Age Friendly plan and policies.
- c. Increased awareness of and communication regarding “The Age-Friendly Berkeley Action Plan” will be maintained as well as recommendations to City Council regarding Age Friendly Initiatives. Short-term desired change is broader community and municipal consideration of age-friendliness. Long-term desired changes are Age-friendly concerns being reflected in the development of all, relevant, city policies.

- d. Enhancing broad participation, public policy engagement, and involvement of the community in Commission meetings.
- 3. Advocate for Needs of Older Citizens in the Implementation of alternative & senior-friendly transportation modes in conjunction with “Safe-Streets” and parking issues.**
- a. Staff time will be used for coordination of presentations to the commissions from guests relevant to the changes in both emerging transportation options and the public policies surrounding these.
  - b. Commission will seek public input from Berkeley citizens regarding this changing landscape. The Commission will also designate two commissioners to research the ramifications of these changes specifically as regards Berkeley’s growing senior population. When necessary, the commission will send liaisons to Transportation Commission to directly communicate any concerns we might have.
  - c. The Commission will make recommendations to other commissions regarding these concerns. Commission will develop recommendations for City Council regarding these transportation and associated issues as regards the elder population i.e. senior-friendly shuttle system, parking issues, and sidewalk safety.
  - d. Short-term desired needs and concerns: more public awareness of the senior specific concerns surrounding these issues and how these concerns apply to making changes to our current situation. Long-term desired changes: to ensure that these concerns are taken into account as the situation changes resulting in new policy proposals. To report to council about these and make suggestions as to how any senior-specific negative effects can be mitigated and/or positive effects be enhanced.
- 4. Advocate for Affordable Housing for Older Adults as well as other housing policies that are consistent with Berkeley’s commitment to encouraging “Aging in Place” and/or “Aging in Community”**
- a. Staff time will be used for coordination of presentations to the commission from guests with information relevant to these issues and to give aid in communication with Council and other City entities.
  - b. The commission will designate two commissioners to identify relevant City Council agenda items and report back to commission. When necessary, the commission will send liaisons to other commissions to address concerns during public comment. The commission may form a subcommittee in order to better prepare any recommendations it may have for council. The commission will invite relevant speakers to present on key issues related to housing policy at commission meetings.
  - c. Commission will actively seek input from Berkeley’s aging citizens regarding housing, will actively seek a clearer understanding of the range of housing concerns facing Berkeley’s increasing older population as well

as encouraging better communication between the City, its various departments and the elder population itself regarding the issue. Recommendations to Council addressing policies that will enable our elder citizens to remain in Berkeley will be made if necessary.

- d. Short-term desired changes are that current housing policies do not discourage, but instead encourage our older citizens to remain in Berkeley. Long-term desired changes are that any changes to our housing policies not only support the current living situations of elder residents when possible, but also allow for changing residence while still remaining in Berkeley.
- 5. Identify and examine the emerging issues and policies regarding public health and safety that are of particular concern to the older adult population and propose policy recommendations that address these specific concerns.**
- a. Staff time and assistance requested when necessary.
  - b. The issues we will focus on, but not be limited to, are physical safety (sidewalks, pedestrian safety, wildfire risk, crime, physical abuse, etc.) as well as economic (scammers and other predatory business practices, etc.) and psychological safety (emotional abuse, systemic ageist attitudes, etc.)
  - c. Commission will actively seek input from Berkeley's aging citizens regarding their safety concerns in order to identify that demographic's unique vulnerabilities and as well as determine priorities.
  - d. Short term desired change change is a better, general awareness on the part of Council and various City Departments of these elder specific concerns.
  - e. Long term desired changes is that these concerns be better addressed in municipal policy and that these concerns always be taken into account from the outset when any new policies are being considered.
- 6. Examine the work-plans and agendas of other commissions for elder relevant items.**
- a. Individual commissioners (with some assistance of staff) will be encouraged to examine the work-plans and agendas of certain, other commissions of their choice for items that may affect the health, well-being, and community participation of the aging population and report back to the full commission regarding these.
  - b. When deemed helpful, the CoA will send liaisons to these other commissions to state our position on relevant items. In other cases, we will simply communicate via email with these other commissioners.
  - c. Timely input given to other commissions regarding policies early in the process of development. These liaisons will seek timely input regarding policies early in their development. When necessary, communication to

City Council regarding those elements of other commission's policy development and/or planning that we deem relevant to senior concerns.

- d. Short term desired changes are other commissions considering the needs of elders as these relate to specific items on their calendar and ensure that the concerns of our elder community are reflected in all phases of the policy making and planning process.

### BACKGROUND

The City of Berkeley's Commission on Aging is naming the advocacy categories described above as "Commission Priorities" on which its members will focus their collective efforts. The Commission will prioritize policy and programming in these priority categories in order to impact and benefit the lives of older adults in a Berkeley whose senior population continues to grow. Each category includes a sampling of priority projects on which the Commission will focus subsequent Commission meetings and discussions.

### ENVIRONMENTAL SUSTAINABILITY

The Commission's work plan does not directly affect the environmental sustainability of the city, yet many of our priorities may lead to a more economical use of City land and commercial/residential spaces. Our work plan may positively impact City expenditures by reducing numbers of homeless individuals and reducing the physical and mental health needs of our seniors that may require emergency attention.

### POSSIBLE FUTURE ACTION

Based on Commission research and public hearings, the Commission will draft and submit recommendations and communications to Council when necessary.

### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

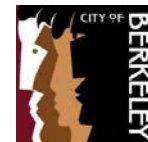
The Commission's work plan does not itself have any fiscal impact. The execution of many projects outlined in the work plan, however, may require the allocation of existing City funds and services.

### CONTACT PERSON

Richard Castrillon, Commission Secretary, HHCS, 510-981-7777  
George Porter, Chairperson, Commission on Aging  
Rose Ann Cochran, Vice Chair, Commission on Aging





INFORMATION CALENDAR

July 26, 2022

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor *zw*

Subject: City Auditor Fiscal Year 2023 Audit Plan

INTRODUCTION

The Berkeley City Charter requires the City Auditor to provide the City Council with a planned audit schedule by the beginning of each fiscal year and to notify the Council when audits are added. In deciding what to audit, our office considers suggestions from the City Manager, staff, the City Council, the Rent Stabilization Board, commissioners, and other community members. We examine risks that might prevent the City from reaching its goals, including strategic, financial, regulatory, operational, and reputational risks.

CURRENT SITUATION AND ITS EFFECTS

As required by the City Charter, we are notifying the Council of our annual audit plan. The following plan assumes being fully staffed to conduct these audits. Reductions in our budget will decrease capacity of audit services from our office.

The impacts of COVID-19 are still ongoing and uncertain. In 2020, the City had to quickly adapt to the COVID-19 pandemic and make necessary changes to protect City employees and Berkeley residents. As we exit the emergency phase of the pandemic, the City will likely be developing new policies for a more sustainable future. Therefore, audits that provide oversight and accountability of these policies will be more important than ever. Our work is crucial in ensuring that city services function properly and truly benefit the Berkeley public.

For Fiscal Year 2023, we have identified areas we hope to address in the upcoming year:

- Employee retention (in progress, resumed after being put on hold in FY 2020 due to COVID-19)
- Rent Stabilization Board
- Homelessness
- Follow-up on prior audit recommendations
- Short-term projects

BACKGROUND

The mission of the Berkeley City Auditor is to promote transparency and accountability in Berkeley government. This is achieved through independent evaluations of City programs and activities. The FY 2023 Audit Plan reflects our office's commitment to continuous improvement by enhancing the

value, products, staffing, communications, and overall impact of the Berkeley City Auditor's Office on behalf of Berkeley residents, businesses, and visitors.

#### ENVIRONMENTAL SUSTAINABILITY

This report is not associated with identifiable environmental effects or opportunities.

#### POSSIBLE FUTURE ACTION

Our future audit recommendations will address the risks that could prevent the City from providing efficient, effective, and equitable service delivery. We will be asking the Council to accept those recommendations and request that the City Manager report on their actions to implement them. We may also make recommendations requiring Council action.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Audit work leads to new or enhanced revenue, cost recovery, and increased efficiency, with economic impact well beyond the audit costs. Long-range financial benefits of our audits result in significant improvements to internal controls and service delivery.

Ensuring timely implementation of audit recommendations could result in additional savings and risk reduction, including fraud risk. Reducing fraud risk more than protects money; it builds trust in government. Maintaining a strong audit function and fiscal management will reduce future costs and enhance public trust.

#### CONTACT PERSON

Jenny Wong, City Auditor, 510-981-6750

Attachment:

1. Audit Plan Fiscal Year 2023

# Audit Plan Fiscal Year 2023

## Inside

Letter from the Auditor

Planned Engagements

Plan Description

Audit Selection Process

Auditor's Authority



BERKELEY CITY AUDITOR

# Letter from the Auditor



I am pleased to present the Berkeley City Auditor’s Fiscal Year 2023 Audit Plan.<sup>1</sup> Our office conducts performance audits of city functions, where we investigate city programs to determine their effectiveness and compliance with local laws and regulations. Our goal with each audit is to ensure that the City is using taxpayer dollars efficiently and delivering high-quality services. We aim to initiate all the engagements identified in the audit plan during the fiscal year. Our capacity to initiate and complete projects this fiscal year will be dependent on resource constraints.

We drafted this plan by considering audit topics that can add the most value to the City while also evaluating resource constraints in the City and my department. In 2020, the City had to quickly adapt to the COVID-19 pandemic and make necessary changes to protect city employees and Berkeley residents. As we exit the emergency phase of the pandemic, the City will likely be developing new policies for a more sustainable future. Therefore, audits that provide oversight and accountability of these policies will be more important than ever. Our work is crucial in ensuring that city services function properly and truly benefit the Berkeley public.

In the past fiscal year, our office published relevant and timely reports on some of the most pressing issues facing the City. We released an audit of Berkeley Police overtime and outside security work in February 2022 after the public called for the City to reimagine its public safety system in 2020. This audit provided important considerations for BPD, City Council and City Management as they look to change the way public safety is conducted in the City. Our office also released a report in May 2022 analyzing the City’s financial condition; a particularly relevant topic as the City faced decreased revenues due to the COVID-19 pandemic.

In FY 2023, we will continue an audit of city employee retention that was initially started in FY 2020 and postponed during the pandemic. We will also initiate an audit of the City’s role in addressing issues related to homelessness and an audit of the Rent Stabilization Board. Our office has additionally restarted our process of following up on departments’ implementation of recommendations from previous audits. We will be publishing a dashboard of open recommendations to increase transparency of the status of audit recommendations; see page four for a current list of open recommendations. Finally, we may also conduct various projects that provide pertinent information to stakeholders on issues affecting the Berkeley public.

I am committed to our mission of promoting transparency and accountability in Berkeley government, therefore I look forward to administering these audits in order to provide independent assessments of city funded programs and operations. As an elected official who serves the residents of Berkeley, I will be working with the Berkeley public and on behalf of everyone who cares about Berkeley, including residents, business owners, visitors, workers, students, and decision-makers.

Respectfully,

JENNY WONG  
City Auditor

<sup>1</sup> We emailed this audit plan to City Council on DATE as required by the Berkeley Municipal Code.



# Planned Engagements FY 2023

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## Homelessness

The Auditor’s Office will conduct an audit of the City’s role in addressing issues related to homelessness.

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## Rent Stabilization Board

The Auditor’s office will conduct an audit examining the Rent Stabilization Board’s finances or operations.

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## Follow-Up

The Auditor’s office will continue to track and follow up on all audit recommendations to determine if they are properly implemented. We will also be launching an online public dashboard to increase transparency and accountability of the implementation status of open audit recommendations.

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## Short-Term Projects

In order to be responsive to the needs of the City and the public, we may engage in short-term projects to provide timely and relevant information and analysis to the City and community.

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## Ongoing Engagements

We will continue our analysis of employee retention that was deferred during FY 2020 and restarted in FY 2022.

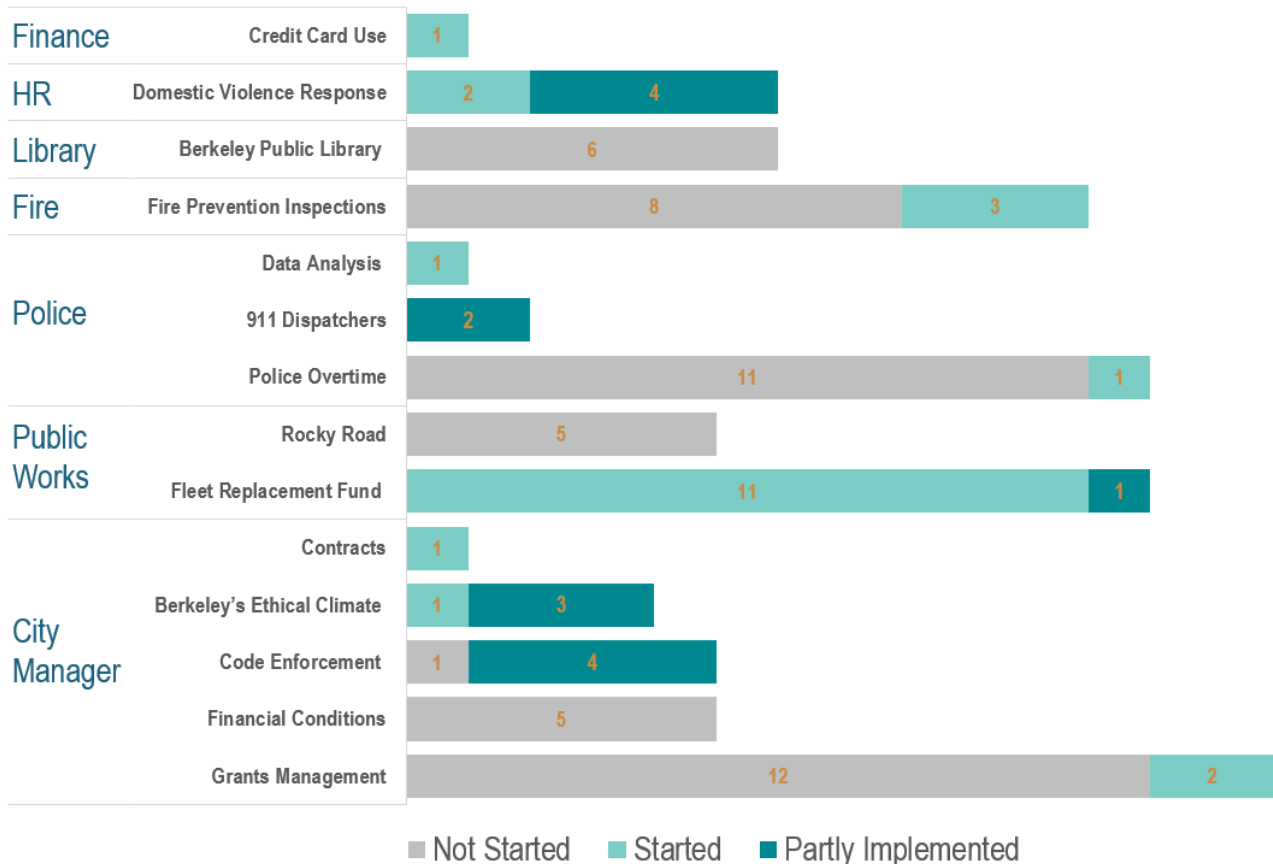
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# Open Audit Recommendations

In fiscal year 2023, the Auditor’s Office will follow up on 85 open recommendations from 14 audits. We will use the following statuses to report on the implementation of audit recommendations:

- **Implemented:** auditee has addressed the audit risk by completely implemented the recommendation.
- **Partly implemented:** auditee has implemented 50 percent or more of the recommendation.
- **Started:** the auditee has started to address the recommendation but has not reached the 50 percent threshold.
- **Not started:** auditee has not yet taken action to implement the recommendation.
- **Dropped:** the auditee has accepted the risk to the city that the recommendation is meant to address and is unable or unwilling to implement the recommendation. Additionally, all open recommendations will be reported as dropped if they are not implemented within five years of audit issuance.

**As of June 30, 2022, there are 85 open recommendations from 14 audits across seven departments.**



Source: Berkeley City Auditor

# Plan Description

The mission of the Berkeley City Auditor is to promote transparency and accountability in Berkeley government. This is achieved through independent evaluations of city programs and activities. The Fiscal Year 2023 Audit Plan reflects the office's steadfast commitment to continuous improvement by enhancing the value, products, staffing, communications, and overall impact of the Berkeley City Auditor's Office on behalf of Berkeley residents, businesses, and visitors.

## Auditing Under the City Charter

The Charter provides that the Auditor shall have the authority to conduct:

- Performance and financial audits or special studies of all phases of the City of Berkeley government in accordance with government auditing standards;
- Financial, compliance, efficiency and economy, and program results auditing; and
- Examinations of payrolls, bills, and other claims and demands made against the City.

The FY 2023 Audit Plan ensures broad audit coverage throughout the City while also addressing specific performance, financial, contractual, and system risks. Audit resources are limited, thus prohibiting one hundred percent coverage each year. This significant limiting factor is inherent in the concept of using risk assessment to help prioritize audits. According to the City Charter, the ultimate decision to perform any audit shall be at the sole discretion of the Auditor. Our approach to scheduling audits is flexible and subject to change throughout the year based on newly identified risks.

## Audit Follow-Up Program

Audit follow-up activities are conducted for every audit to assess whether city personnel implemented the agreed-upon audit recommendations. The Auditor's Office issues follow-up audit reports to City Council on the status of our recommendations. Our office measures the audit recommendation implementation rate as an indicator of the degree to which the City is using information provided by our audit reports to mitigate identified risks and to enhance efficiency, effectiveness, and economy of operations. Our expectation is that the City should take no more than two years to implement our audit recommendations.

## Focus on Integrity, Independence, Impact, and Inclusion

The concepts of integrity, independence, impact, and inclusion are core tenets of operations within the Berkeley City Auditor's Office. Although the Auditor operates independently from other city entities, Auditor Wong and staff meet regularly with the Mayor, City Council, city personnel, neighborhood groups, and civic leaders to solicit input regarding risks. The objective of this strategy is to improve services and stewardship of city resources.

# Audit Selection Process

Developing an annual Audit Plan is an iterative process, conducted by assembling ideas from a variety of internal and external stakeholders, examining a broad range of City programs and activities, and assessing risk factors together with additional considerations. This approach results in a diverse list of departments, programs, and activities that are examined to determine whether they are operating efficiently, effectively, and in accordance with the law and other requirements.

In developing a list of potential audits, ideas come from a variety of sources:

- Input from the community, elected officials, department staff, and City management;
- Assessment of operations and controls in previous audit reports;
- Assessment of citywide risks;
- Consideration of current local events, financial conditions, capital improvement projects, and public policy issues; and
- Consideration of risks identified in other government audits that could emerge in Berkeley.

Our office identifies and prioritizes potential audits and other assessments using a risk-based approach that examines a variety of factors that may expose the City to fraud, misuse of funds, waste, liability, or reputational harm. The following risk factors are used to determine the audits included in the audit plan:

- Perception of risk from management, City Council, the community, and audit staff;
- Economic factors such as financial impact, volume of transactions, number of personnel, and revenue generated;
- Changes in organization, management, key personnel, and information systems; and
- Time since last audit.

After the plan is finalized, new information may come to light; events, initiatives, priorities, and risks within the City may change. The flexible nature of the Audit Plan as a living document provides the ability to change course when it is in the best interest of the City.



# Auditor's Authority

The Berkeley City Auditor's Office provides independent oversight of city operations. Audits, conducted by the Office, provide the City Manager, City Council, and the public with objective, timely, and accurate information about city program performance. By providing this information and making recommendations for improvement, the Office helps to hold government accountable in its stewardship of public resources. Berkeley City Charter, Section 61, establishes this independence and provides for the Auditor's general authority and duties. The Charter also establishes the duty to present a planned audit schedule to City Council at the beginning of each fiscal year.

Several key components serve as the cornerstone for Berkeley's auditing framework. These elements provide the Auditor with the independence that results in the office's ability to conduct high-impact audits.

**Elected Auditor** — The City of Berkeley has an elected Auditor who is independent from all other elected officials and City management.

**Comprehensive Access** — The City Charter and Municipal Code authorize the Auditor to have unrestricted access to all officials, employees, records, and reports maintained by the City, and to all external entities, records, and personnel related to contracted business interactions with the City.

**Audit Response Requirements** — City Municipal Code requires that City management formally respond to all audit findings and recommendations, establishing the Auditor's ability to work in conjunction with audited departments while maintaining independence.

**Recommendation Follow-up Requirements** — City Municipal Code requires that city management report back to Council on the status of audit recommendations every six months until all recommendations are implemented, establishing the Auditor's ability to determine the adequacy, effectiveness, and timeliness of management's actions to correct reported issues and recommendations.

**Adherence to Professional Auditing Standards** — The Auditor's Office conducts all audits in accordance with Generally Accepted Government Auditing Standards produced by the United States Government Accountability Office.



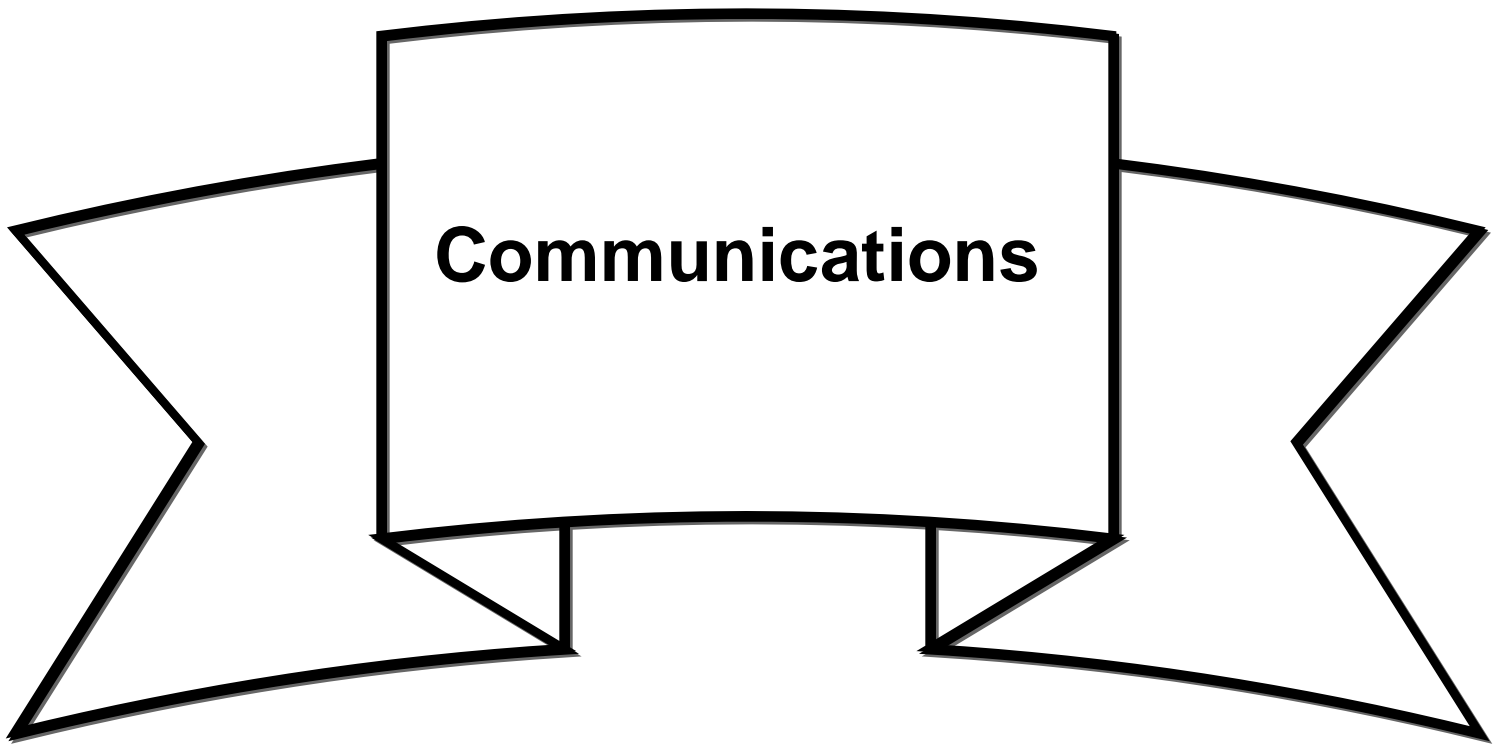
BERKELEY CITY AUDITOR

2180 Milvia Street, 3rd Floor, Berkeley, California 94704

510-981-6750

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





All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

**City Clerk Department**

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

**Records Online**

<https://records.cityofberkeley.info/>

To search for communications associated with a particular City Council meeting using Records Online:

1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF