

AGENDA



BERKELEY CITY COUNCIL MEETING

**Tuesday, September 14, 2021
6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/84315527586>. 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: 843 1552 7586. 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.*

1. Pledge of Allegiance to the Flag
2. Presentation on SB 1383 Implementation from StopWaste

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.

Recess Items

- 1. Contract: Berkeley Convention and Visitor's Bureau, d.b.a. Visit Berkeley**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a sole source contract and any amendments with the Berkeley Convention and Visitors' Bureau, d.b.a. Visit Berkeley, to distribute one-twelfth of annual Berkeley Transient Occupancy Tax funds to support tourism marketing and promotion for the period from July 1, 2020 through June 30, 2023 for a not to exceed amount of \$700,000.
Financial Implications: Transient Occupancy Tax Fund - \$700,000
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 2. Contract No. 32000240 Amendment: Berkeley Unified School District for Mental Health Services Act-Funded Programs**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to execute an amendment to Contract No. 32000240 with Berkeley Unified School District (BUSD) to provide Mental Health Services Act (MHSA) funded programs in local schools through June 30, 2022 increasing the contract by \$245,000 for a new total not to exceed amount of \$637,778.
Financial Implications: Mental Health Services Act Fund - \$245,000
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 3. Revenue Grant Contract: Fiscal Year 2021-22 Alcoholic Beverage Control Grant**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a grant contract and any subsequent amendments with the State of California Department of Alcoholic Beverage Control (ABC) in the amount of \$72,440 for one fiscal year, July 1, 2021 through June 30, 2022.
Financial Implications: \$72,440 in revenue
Contact: Jennifer Louis, Police, (510) 981-5900
- 4. Contract: ERA Construction, Inc. for 1322 Glendale Avenue Retaining Wall Project**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to approve plans and specifications for the 1322 Glendale Avenue Retaining Wall Project, Specification No. 21-11448-C; accept the bid of ERA Construction, Inc. as the lowest responsive and responsible bidder; and execute a contract and any amendments, extensions or other change orders until completion of the project, in accordance with the approved plans and specifications in an amount not to exceed \$1,038,103, which includes a 10% contingency for unforeseen circumstances.
Financial Implications: Various Funds - \$1,038,103
Contact: Liam Garland, Public Works, (510) 981-6300

Recess Items

5. **Contracts: TBWBH Props and Measures and V.W. Housen & Associates for Vision 2050 Implementation Services**
From: City Manager
Recommendation: Adopt two Resolutions ratifying the action taken by the City Manager during recess to execute contracts with:
 1. TBWBH Props and Measures for one year in an amount not to exceed \$175,000; and
 2. V.W. Housen & Associates for one year in an amount not to exceed \$175,000, for Vision 2050 Implementation Services.**Financial Implications:** General Fund - \$350,000
Contact: Liam Garland, Public Works, (510) 981-6300

6. **Contract: Elavon for Recreation Online Registration Payment Processing**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess, authorizing the City Manager to execute a contract with Elavon for online credit card payment processing transaction services for the Recreation Division's online registration system, for an amount not to exceed \$220,000 for the term commencing on or about September 1, 2021 through May 31, 2023.
Financial Implications: Various Funds - \$220,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Consent Calendar

7. **Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19) and Determining the Immediate Need for and Adopting a City Employee Vaccination Policy**
From: City Manager
Recommendation: Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, and July 20, 2021, and reviewing the need to adopt an employee vaccination policy immediately and ratifying adoption of such policy in advance of completion of the meet-and-confer process regarding the policy's potential bargainable impacts pursuant to Government Code section 3504.5
Financial Implications: See report
Contact: Farimah Brown, City Attorney, (510) 981-6950, Dee Williams-Ridley, City Manager, (510) 981-7000

Consent Calendar

- 8. Establish 2022 City Council Meeting Schedule**
From: City Manager
Recommendation: Adopt a Resolution establishing the City Council regular meeting schedule for 2022, with starting times of 6:00 p.m.
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 9. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the council meetings of July 1, 2021 (closed), July 13, 2021 (closed and regular), July 14, 2021 (closed), July 20, 2021 (special-4pm and special-6pm), July 27, 2021 (closed, special and regular) and July 29, 2021 (special).
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 10. Contract No. 108410-1 Amendment: Paw Fund for Spay and Neuter Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 108410-1 with Paw Fund to provide no cost spay and neuter surgeries to eligible pet owners, to increase the amount by \$9,812 for a total contract amount not to exceed \$116,966 and subject to the City's annual appropriation process, and to extend the contract through September 14, 2022.
Financial Implications: General Fund - \$9,812
Contact: Paul Buddenhagen, City Manager's Office, (510) 981-7000
- 11. Adopt a Resolution Authorizing MuniServices, LLC to Examine the Local Sales or Transactions and Use Tax Records on Behalf of the City of Berkeley**
From: City Manager
Recommendation: Adopt a Resolution authorizing MuniServices, LLC to perform examination of the local sales or transactions and use tax records. MuniServices provides City of Berkeley sales tax audit services which includes examination of the Local Sales or Transactions and Use Tax records pertaining to the Bradley-Burns Local Sales and Use Tax Law which is part of the Revenue and Taxation Code in California.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300

Consent Calendar

- 12. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 14, 2021**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: Various Funds - \$4,075,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 13. Amendments to Berkeley Municipal Code Section 19.44.020 (Housing Advisory Commission)**
From: City Manager
Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 19.44.020 to include oversight of Measure O bond-funded housing initiatives as established by Resolution No. 68,703-N.S. and future voter-approved bonds and measures dedicated to affordable housing.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 14. Contract No. 10209E Amendment: Bay Area Hearing Voices Network**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to amend Contract No. 10209 with Bay Area Hearing Voices Network for hearing voices support groups for adults and youth who hear voices and have visions, to increase the amount by \$34,736 for a total contract amount not to exceed \$137,914, and to extend the contract through June 30, 2022.
Financial Implications: Mental Health Services Act Fund - \$34,736
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 15. Mental Health Services Act Fiscal Year 2021-2022 Annual Update**
From: City Manager
Recommendation: Adopt a Resolution approving the Mental Health Services Act Fiscal Year 2021-2022 Annual Update, which provides information on current and proposed uses of funds for mental health programming, and forwarding the Update to appropriate state officials.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Consent Calendar

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

Consent Calendar

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

Consent Calendar

- 23. Contract No. 31900202 Amendment: Bay Area Tree Specialists for As-needed Tree Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend contract No. 31900202 with Bay Area Tree Specialists for as-needed tree services, increasing the amount by \$300,000 for a total contract amount not-to-exceed \$800,000 and extend the term to May 28, 2023.
Financial Implications: Various Funds - \$300,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 24. Contract No. 31900218 Amendment: West Coast Arborists, Inc. for As-needed Tree Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend contract No. 31900218 with West Coast Arborists Inc. for as-needed tree services, increasing the amount by \$300,000 for a total-amount-not to exceed amount of \$500,000 and extend the term to May 28, 2023.
Financial Implications: Various Funds - \$300,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 25. Purchase Orders Extension: Diesel Direct West, Inc. for Fuel for City Vehicles and Equipment**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend the multi-year purchase orders with Diesel Direct West, Inc. for fuel for City vehicles and equipment, increasing the combined amount by \$1,400,000 for a total amount not to exceed \$8,844,000, and extending the term through June 30, 2022 or until authorized funds are exhausted.
Financial Implications: Various Funds - \$1,400,000
Contact: Liam Garland, Public Works, (510) 981-6300
- 26. Transfer of Two Property Parcels to the State of California for the Ashby-San Pablo Intersection Improvements Project**
From: City Manager
Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute the attached Grant Deed for Parcel No. 63719 and Quitclaim Deed for easement on Parcel No. 63720-1 with the State of California, Department of Transportation (“Caltrans”) and any associated documents as necessary for the transfer of the property interests in these two parcels of property to Caltrans, for the Ashby-San Pablo Intersection Improvements Project (“Project”), Specification No. 18-11182-C.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

- 27. Recommendations for Fleet Electrification Policy and Financing**
From: Energy Commission
Recommendation: Refer to the City Manager to update the Municipal Fleet Electrification Assessment and electric vehicle (EV) charging funding priorities to respond to the City Auditor’s Report “Fleet Replacement Fund Short Millions” and to align with the objectives stated in the City’s Electric Mobility Roadmap to Prioritize Municipal Fleet Modal Shift to Electric Bicycles and Other Forms of Zero-Emissions Mobility Where Feasible.
Financial Implications: See report
Contact: Billi Romain, Commission Secretary, (510) 981-7400
- 28. Letter of Support for SB-459 Political Reform Act of 1974: Lobbying**
From: Open Government Commission
Recommendation: Send a letter of support to Senator Nancy Skinner in support of SB-459 Political Reform Act of 1974: Lobbying.
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950
- 29. Referral Response: Recommendation to Retain Current Structure of Zero Waste Commission**
From: Zero Waste Commission
Recommendation: The Zero Waste Commission recommends that its current structure remain intact, and with an updated charter that reflects historic goals, and both current and future developments in the City of Berkeley’s Zero Waste programs, facilities, services, policies, and state- and county-imposed mandates.
Financial Implications: See report
Contact: Heidi Obermeit, Commission Secretary, (510) 981-6300

Council Consent Items

- 30. 2022 UC Berkeley Chicanx Latinx Legacy Event**
From: Mayor Arreguin (Author)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$1,000 per Councilmember including \$1,000 from Mayor Arreguin, to the UC Berkeley Chicanx Latinx Alumni Association, the fiscal sponsor of the 2022 UC Berkeley Chicanx Latinx Legacy Events, with funds relinquished to the City’s general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.
Financial Implications: Mayor’s Discretionary Funds - \$1,000
Contact: Jesse Arreguin, Mayor, (510) 981-7100

Council Consent Items

- 31. Annual Appropriations Ordinance (AAO) Referral: Supply Bank**
From: Mayor Arreguin (Author)
Recommendation: Refer to the November 2021 Annual Appropriations Ordinance process \$25,000 for Supply Bank to support their services in providing essential school supplies to Berkeley families.
Financial Implications: \$25,000
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 32. Expansion of the Berkeley Fair Elections Program**
From: Mayor Arreguin (Author), Councilmember Droste (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor), Councilmember Harrison (Co-Sponsor)
Recommendation: Refer to the Fair Campaign Practices Commission (FCPC) to develop an ordinance to expand the Berkeley Fair Elections Program to include School Board Director, Rent Board Commissioner and City Auditor among the offices eligible to participate in the public financing program.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 33. Resolution in Support of Observance of August 30, the International Day of the Victims of Enforced Disappearances in El Salvador**
From: Councilmember Kesarwani (Author), Councilmember Harrison (Co-Sponsor)
Recommendation: Adopt a Resolution in support of retroactively enacting August 30 as a day of observance in recognition of the International Day of the Victims of Enforced Disappearances in El Salvador.
Financial Implications: None
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110
- 34. Resolution Expressing Conceptual Support for an East Bay Wildfire Prevention and Vegetation Management Joint Powers Agency**
From: Councilmember Wengraf (Author), Mayor Arreguin (Co-Sponsor), Councilmember Droste (Co-Sponsor), Councilmember Taplin (Co-Sponsor)
Recommendation: Adopt a Resolution in favor of Conceptual Support for an East Bay Wildfire Prevention and Vegetation Management Joint Powers Agency.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

Action Calendar

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

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

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

Action Calendar – Public Hearings

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

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

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

35. Adoption of the Baseline Zoning Ordinance (BZO)

From: City Manager

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

Financial Implications: See report

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

Action Calendar – Old Business

- 36. Objective Standards Recommendations for Density, Design and Shadows From: Joint Subcommittee for the Implementation of State Housing Laws** *(Continued from July 27, 2021) (Item contains supplemental material)*
Recommendation: Refer to the Planning Commission and Design Review Committee to review the recommendations from the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) for objective standards for density, design and shadows and draft Zoning Ordinance amendments for City Council consideration.
Financial Implications: See report
Contact: Alene Pearson, Commission Secretary, (510) 981-7400
- 37. Amending the Berkeley Election Reform Act (BERA) Relating to Officeholder Accounts** *(Reviewed by the Agenda & Rules Committee) (Continued from May 25, 2021)*
From: Agenda & Rules Committee: Mayor Arreguin, Councilmembers Hahn and Wengraf
Recommendation: Take one of the following actions:
1. Refer a proposal to the Fair Campaign Practices Commission (FCPC) amending the Berkeley Election Reform Act (BERA), BMC Chapter 2.12, and Lobbyist Registration Act, BMC Chapter 2.09, to enact “a reasonable set of limitations and rules” to regulate the maintenance of officeholder accounts, as developed and referred for consideration by the Agenda and Rules Committee; or
2. Refer a proposal to the FCPC amending BERA, BMC Chapter 2.12, to prohibit Officeholder Accounts, as originally proposed by the Fair Campaign Practices Commission.
Policy Committee Recommendation: Send the item to Council with two proposed alternatives: 1) Councilmember Hahn’s proposal to regulate officeholder accounts, and 2) the Fair Campaign Practices Commission proposal to prohibit officeholder accounts; and to include the Commission’s analysis of regulating officeholder accounts in the item that goes to the full Council.
Financial Implications: See report
Contact: Agenda & Rules Committee members: Jesse Arreguin, Committee Chair, (510) 981-7100, Sophie Hahn, Councilmember, District 5, (510) 981-7150, Susan Wengraf, Councilmember, District 6, (510) 981-7160

Action Calendar – New Business

- 38. Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Committee** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*
From: Councilmember Harrison (Author)
Recommendation: Refer to Berkeley’s Zero Waste and Energy Commissions (or successor Commission) to hold joint meetings regarding the proposed Ordinance regulating the use of carryout and pre-checkout bags and promoting the use of reusable bags by December 31, 2021.
As part of the series of meetings, the Commissions should: 1. strive to conduct community/business outreach and education events to include, but not limited to the following entities: a. all stores and events that provide pre-checkout bags (e.g., grocery stores, convenience stores, food marts, and food vendors); b. all restaurants, take-out food stores, food trucks, permitted events, and any other commercial establishment not regulated by the state that provide carryout bags; and 2. make any recommendations with respect to any amendments and appropriate phasing to the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee.
Policy Committee Recommendation: Make a positive recommendation to the City Council that the Council direct the Zero Waste and Energy Commission (or successor Commission) to hold joint meetings to conduct community outreach and education events and recommend proposed changes and appropriate phasing to the FITES Committee.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 39. Open Government Commission Recommendations to City Council Regarding Teleconferenced Meetings**
From: Open Government Commission
Recommendation: Establish City Council practices for holding public meetings via teleconference technologies: (1) clearly define how the order of public speakers is determined and maintain a speaker’s queue visible to members of the public; (2) clearly outline the process by which a speaker may cede time to another speaker; and (3) require that addendums to agenda items be made accessible to the public on the City Website as soon as they are made available to members of City Council.
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950

Information Reports

40. **Implementation of California Senate Bill 1383 Short-Lived Climate Pollutants**
From: City Manager
Contact: Liam Garland, Public Works, (510) 981-6300
41. **Mental Health Services Center Renovation Project Wins American Public Works Association (APWA) National Award**
From: City Manager
Contact: Liam Garland, Public Works, (510) 981-6300
42. **Fair Campaign Practices Commission FY2021-2022 Work Plan**
From: Fair Campaign Practices Commission
Contact: Sam Harvey, Commission Secretary, (510) 981-6950
43. **Open Government Commission FY2021-2022 Work Plan**
From: Open Government Commission
Contact: Sam Harvey, Commission Secretary, (510) 981-6950
44. **City Auditor Fiscal Year 2022 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.*

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

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

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

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

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

COMMUNICATION ACCESS INFORMATION:

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



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

I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on Thursday, September 2, 2021.

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

Mark Numainville, City Clerk

Communications – September 14, 2021

Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record.

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

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

18. Shmuel Weissman
19. Hillary Kilmnik
20. Ben Buettner
21. Tim Southwick, on behalf of Toyota of Berkeley

Housing (Infill + Affordable + BART + ADU)

22. Avram Gur Arye (3)
23. Councilmember Harrison
24. Andreas Clover, on behalf of the Building & Construction Trades Council of Alameda County
25. Tony Corman
26. Marica Poole
27. Chris Paizis

SB 9

28. Berkeley Neighborhoods Council
29. Madeleine Shearer

Berkeley Marina and Ferry

30. Camille Antinori

Dangerous Intersection of Ashby & MLK

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

UC Berkeley Agreement + 1921 Walnut + LRDP

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

Berkeley Mutual Aid

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

Ghost Guns

47. Eric Friedman

Consolidating Human Welfare & Peace and Justice Commissions

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

Francisco Street Danger

49. David Lerman

50. Public Works, City of Berkeley

Easy Does It Emergency Services – Abuse of Clients and Staff

51. HolLynn

52. Omowale Fowles

Frances Albrier Community Center Funding

53. Mikko Jokela

Berkeley Labor Commission

54. Andrea Mullarkey

Eden I&R Newsletter

55. Eden I&R (2)

Palestinian Action

56. Linda Franklin

Pet Parade in Downtown Berkeley

57. John Caner

58. Amy Murray

Vaccinations

59. Vivian Warkentin

August 8th as Burma Day

60. Jeremiah Pinguelo

5G

61. Carol Hirth

62. Stephanie Thomas

Police Use of Military Equipment

63. Carol Denney

Skate Park

64. Beth Mora

FAA Flight Pattern Change

65. Steven Miyake

Unusual Problems in the Supreme Court

66. Christopher Johnson

Afghanistan Crisis

67. Crystal Ngo

Disposition of Council Referral PRJ 0019733 and PRJ 0012451

68. Katherine Lee, Interim Director of Police Accountability

Requiring Vaccinations for Police Department Employees

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

70. LaTanya Bellows, Human Resources Director

Defective Induction Cooktops

71. Ben Hubbell

Demise of Milvia Street, near Civic Center

72. Michael Katz

Downtown Berkeley Association Staff Incident

73. Moni Law

Abusive Noise from 2734 College Avenue

74. Anne Whyte

California's Drought

75. Wende Williams Micco

76. Berkeley's Mayor Office

Community Gardens and Open Space

77. Bonnie Borucki

URL's Only

78. Russbumper (6)

Supplemental Communications and Reports

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

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



Office of the City Manager

RECESS ITEM
CONSENT CALENDAR
 September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Eleanor Hollander, Acting Manager, Office of Economic Development
 Subject: Contract: Berkeley Convention and Visitor's Bureau, d.b.a. Visit Berkeley

RECOMMENDATION

Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a sole source contract and any amendments with the Berkeley Convention and Visitors' Bureau, d.b.a. Visit Berkeley, to distribute one-twelfth of annual Berkeley Transient Occupancy Tax funds to support tourism marketing and promotion for the period from July 1, 2020 through June 30, 2023 for a not to exceed amount of \$700,000.

NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS

The Office of Economic Development (OED) will not be able to make payments on recent invoices received and Visit Berkeley will not have adequate operating funds for FY 2022 activities already underway.

FISCAL IMPACTS OF RECOMMENDATION

Transient Occupancy Tax (TOT) is assessed on the room charge for rental of transient lodging when the period of occupancy is 30 days or less. Hotel guests pay the tax and it is often referred to as a "hotel tax".

In 1991, the TOT collected by the City of Berkeley was raised from 11% to 12% in order to create and fund a Convention and Visitors Bureau (CVB). The City retained their original 11% TOT to the general fund and there was no out-of-pocket expense to the City for the organization's creation. Simultaneously, the lodging industry agreed to raise the TOT 1% with a goal that strategic marketing and sales outreach would increase revenues to lodging businesses and financially benefit the City by increasing general fund revenues, sales tax, and overall economic impacts from visitor spending.

Every year, the City of Berkeley collects twelve percent (12%) TOT from lodging establishments' short-term room rental revenues and distributes one-twelfth of the amount collected via a "TOT contract" with the Berkeley CVB, d.b.a. Visit Berkeley. The revenues are collected and the funds are expended from the General Fund using the budget code 011-21-208-251-0000-000-446-636110-.

While historically, a new contract was signed every fiscal year with a Not to Exceed (NTE) amount provided by the Budget Office based on the City's projections for TOT revenues, during the COVID-19 pandemic (FY 2021), OED continued distributing Visit Berkeley's TOT allocation using funds encumbered through the FY 2020 contract. As the NTE amount authorized under that contract is insufficient to distribute TOT funds owed to Visit Berkeley for FY 2020-2021 "true-up" payments, OED needs to enter a new contract with Visit Berkeley to make these payments. This same multi-year contract will also enable OED to distribute TOT payments to Visit Berkeley for FY 2022-2023.

While the contract will initially include the NTE amount of \$700,000 (based on City staff's FY 2022 proposed budget revenue projections for TOT and Visit Berkeley's estimate for FY 2023), the actual funds distributed will be based on actual TOT revenues and thus contract amendments will be executed to reflect actual TOT revenues collected by the City of Berkeley.

CURRENT SITUATION AND ITS EFFECTS

The concept of a Berkeley CVB was presented to and approved by City Council as a Consent Item on September 24, 1991 and the CVB was incorporated as a 501(c)6, Not for Profit Mutual Benefit Corporation that same year. Ever since, there has been an annual contract between the City of Berkeley and Visit Berkeley to enable the pass-through of TOT funds collected.

Council is requested to ratify the action taken by the City Manager to enter into a sole source contract with the Berkeley Convention and Visitors' Bureau, d.b.a. Visit Berkeley, for NTE \$700,000, where the amount requested reflects that:

- Visit Berkeley is owed \$45,934 for FY 2020 TOT funds (the true-up for FY 2020 that was never paid for a variety of reasons related to Visit Berkeley and the City of Berkeley OED's competing pandemic priorities)
- Visit Berkeley is owed \$35,953.80 (the TOT collected in April and May 2021 which has not yet been paid for FY 2021 because insufficient funds remain in the City's existing TOT contract with Visit Berkeley)
- Visit Berkeley will be owed the TOT collected in the final month of FY 2021 (June) after FY 2021 collections are reconciled (this amount is referred to as the "true-up" and is paid in the subsequent fiscal year)
- A new contract is needed to distribute one-twelfth of the FY 2022 TOT to Visit Berkeley (the City's FY 2022 Proposed Budget estimates that TOT collections in FY 2022 will result in \$181,125 funding for Visit Berkeley)
- One twelfth of the TOT revenues collected by the City in FY 2023 (projected by Visit Berkeley to equal approximately \$400,000 in CVB revenues) will be distributed to Visit Berkeley, as the City has concurrently entered into a contract (approved by Council on October 29, 2019) with Visit Berkeley to administer the Berkeley

Tourism Business Improvement District (BID) through FY 2027 for the NTE amount of \$7,966,000 (using revenue numbers estimated prior to the COVID-19 pandemic). The multi-year nature of the contract will make it more efficient for the City to issue "true-up" TOT payments for past and upcoming fiscal years, as tax collections for the prior fiscal year are not usually tallied until several months after the close of the prior fiscal year. While the total contract amount may be amended throughout the multi-year period, the cumulative funds distributed to Visit Berkeley will always be reconciled so they equal one twelfth of the TOT revenues collected by the City of Berkeley. For example, if an advance payment to enable Visit Berkeley's operations in any given year exceeds the TOT amount due to Visit Berkeley for that year, the following year's distributions will be adjusted to reflect the prior year's overpayment.

BACKGROUND

TOT is levied on all lodging establishments in Berkeley. As of July 2021, there are 25 such establishments. One new property is slated to open in Fall/ Winter 2021. The origin of the arrangement with Visit Berkeley is detailed in the March 1991 *Convention and Visitors Bureau Creation Documents* and Berkeley City Council Consent Calendar, September 24, 1991. Each year, the forecasted TOT collection amount is codified in the Annual Budget (with the most recent adopted for FY 2022 on June 29, 2021) and one-twelfth of the TOT collected annually is devoted to Visit Berkeley. OED staff receives the annual TOT revenue projection from Budget staff in the City Manager's Office, calculates one-twelfth of that number, and produces a contract with Visit Berkeley for that amount with a corresponding scope of work and payment schedule.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Visit Berkeley works to promote the Bay Area Green Business certification program with Berkeley's hotel owners, thereby encouraging the local lodging industry to take considerable action to meet environmental sustainability objectives.

RATIONALE FOR RECOMMENDATION

The FY 2021-2023 TOT contract will enable the City to distribute funds owed to Visit Berkeley over a multi-year period, as per the 1991 Convention and Visitors Bureau Creation Documents.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

CONTACT PERSON

Elizabeth Redman Cleveland, Economic Development Project Coordinator, (510) 981-7532.

Eleanor Hollander, Acting Economic Development Manager, (510) 981-7534

Attachments:

1: Resolution

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

RATIFYING THE ACTION TAKEN BY THE CITY MANAGER DURING RECESS TO EXECUTE A SOLE SOURCE CONTRACT WITH VISIT BERKELEY

WHEREAS, the City of Berkeley collects Transient Occupancy Tax (TOT) on room charges for rental of transient lodging every year; and

WHEREAS, TOT was raised from 11% to 12% to create and fund a Convention and Visitors Bureau (d.b.a. Visit Berkeley) in 1991 so strategic marketing and sales outreach would increase revenues to lodging businesses and financially benefit the City by increasing general fund revenues, sales tax, and overall economic impacts from visitor spending; and

WHEREAS, the City of Berkeley Office of Economic Development (OED) distributes one-twelfth of the TOT amount collected annually for the General Fund via a "TOT contract" with Visit Berkeley; and

WHEREAS, OED is unable to make payments on recent invoices received and Visit Berkeley will not have adequate operating funds for FY 2022 activities and beyond until a new contract is signed; and

WHEREAS, the City has concurrently entered into a contract (approved by Council on October 29, 2019) with Visit Berkeley to administer the Berkeley Tourism Business Improvement District (BID) through FY 2027 for similar tourism marketing; and

WHEREAS, payments due to Visit Berkeley for FY 2020-2021, the City's FY 2022 budget revenue projections for TOT, and Visit Berkeley's estimates for FY 2023 project equal approximately \$700,000 of TOT funds for Visit Berkeley; and

WHEREAS, the actual funds distributed to Visit Berkeley will be based on actual TOT revenues collected by the City of Berkeley.

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 a sole source contract and any amendments with Visit Berkeley to distribute one-twelfth of annual Berkeley TOT funds to support tourism marketing and promotion for the period from July 1, 2020 through June 30, 2023 for a not to exceed amount of \$700,000.



Office of the City Manager

RECESS ITEM
CONSENT CALENDAR
 September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing & Community Services
 Department

Subject: Contract No. 32000240 Amendment: Berkeley Unified School District for
 Mental Health Services Act Funded Programs

RECOMMENDATION

Adopt a Resolution ratifying the action taken by the City Manager during recess to execute an amendment to Contract No. 32000240 with Berkeley Unified School District (BUSD) to provide Mental Health Services Act (MHSA) funded programs in local schools through June 30, 2022 increasing the contract by \$245,000 for a new total not to exceed amount of \$637,778.

NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS

Payment of outstanding invoices to BUSD, a trusted partner in implementing a variety of programs for young people in Berkeley, will be delayed until a new academic year has begun, creating fiscal challenges for the vendor.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the scope of work in the amount of \$245,000 will be provided from Mental Health Services Act Fund budget code: 315-51-503-526-2016-000-451-636110 (\$95,000 for the Dynamic Mindfulness Program and \$150,000 for the African American Success Project).

CURRENT SITUATION AND ITS EFFECTS

On May 11, 2021 via Resolution No. 69,836-N.S., City Council approved amending Contract No. 32000240 with BUSD. The subject of this report involves the same amendment, allowing funds from the Fiscal Year 2022 Budget to be used for the services provided.

In the Fiscal Year 2020-2021 Mental Health Services Act Plan Update, funding for three BUSD projects was continued, and funding for one additional project was added. These programs have continued in the most recent academic year, with the exception of the MEET program, which was paused due to challenges associated with the COVID-19 pandemic. This council item is the mechanism for approval to transfer funds for these

projects to BUSD. Moreover, it allows the Mental Health Division to provide oversight for that funding through monitoring an approved contract.

The Mental Health Division has worked closely with BUSD for many years, successfully implementing a variety of programs to support the needs and enhance the well-being of the student body, and providing a solid foundation for positive youth development. Funding programs to be administered directly by BUSD has proven to be an effective model in the past, as it allows educators to tailor programs to meet the individual needs of students within the context of their school setting. Funding for these services and supports have been carried over from Fiscal Year 2021 and included in the Fiscal Year 2022 Budget.

BACKGROUND

On November 12, 2019 via Resolution No. 69,168-N.S., City Council approved entering into a contract with BUSD that encompassed four separate programs, each of which are administered by BUSD: the Mental Health Peer Education and Supports Project, the Dynamic Mindfulness Program, the Supportive Schools Program, and the African American Success Project.

Due to the COVID-19 pandemic, BUSD has encountered difficulties implementing the MEET program during Fiscal Year 2020-2021, and has requested that funding for this program be omitted from the current contract, with hopes to implement this important program in future years. The Supportive Schools program was implemented in Fiscal year 2020-2021, but funding for this program had been accounted for in previous fiscal years, so BUSD has agreed to forgo receiving additional funding for the program specifically in this contract. In future contracts, funding for both of these programs will be added.

The State of California MHSAs provide funding for local mental health services and supports. City of Berkeley MHSAs Three Year Program and Expenditure Plans (Three Year Plans) and Annual Updates detail the uses of local MHSAs funds. Development of local MHSAs Three Year Plans and Annual Updates require community program planning, writing a draft plan, providing a 30-day public review, and conducting a public hearing at the Mental Health Commission.

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

BUSD is a trusted partner in the implementation of programs to ensure students' needs are met in the most effective manner possible. Each of the programs funded by this contract 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 MHSA Plan Annual Update.

ALTERNATIVE ACTIONS CONSIDERED

Council could delay considering this item until it is back in session, causing a significant delay in payment to the vendor.

CONTACT PERSON

Conor Murphy, Assistant Management Analyst, HHCS, (510) 981-7611

Steven Grolnic-McClurg, Manager of Mental Health Services, HHCS, (510) 981-5249

Attachments:

1: Resolution

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

CONTRACT NO. 32000240 AMENDMENT: BERKELEY UNIFIED SCHOOL DISTRICT (BUSD) FOR MENTAL HEALTH MHSA-FUNDED PROGRAMS

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, 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, funds are available in FY22 in Mental Health Services Act Fund budget code: ERMA GL Account 315-51-503-526-2016-000-451-636110 (\$95,000 for the Dynamic Mindfulness Program and \$150,000 for the African American Success Project).

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, 2022 increasing the contract by \$245,000 for a new total not to exceed amount of \$637,778. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.



Office of the City Manager

RECESS ITEM
CONSENT CALENDAR
 September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Jennifer Louis, Interim Chief of Police
 Subject: Revenue Grant Contract: Fiscal Year 2021-22 Alcoholic Beverage Control Grant

RECOMMENDATION

Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a grant contract and any subsequent amendments with the State of California Department of Alcoholic Beverage Control (ABC) in the amount of \$72,440 for one fiscal year, July 1, 2021 through June 30, 2022.

NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS

If the award is not accepted timely, the City would have less time to implement the programs, educate individuals and businesses, and potentially save lives in our community.

FISCAL IMPACTS OF RECOMMENDATION

The City of Berkeley Police Department (BPD) will be the direct recipient of the grant in the amount of \$72,440 for state fiscal year 2021-22. The grant provides support for Berkeley Police Department operations and efforts to reduce underage drinking. Grant revenues will be deposited into the Alcoholic Beverage Control Fund (Fund 318). There is no required local match of funds to obtain the grant. Appropriation of the expenditures is being included in the First Amendment to the FY 2022 Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

The ABC grant is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city and be a customer-focused organization that provides excellent, timely, easily accessible service and information to the community. Over the years, BPD staff have worked diligently to reduce the number of alcohol related problems within the residential areas surrounding the University of California at Berkeley (UCB), especially the Greek community. Despite the education and preventative work conducted each year, we continue to experience alcohol related tragedies, many of which could have been prevented. The BPD and Berkeley Fire Department (BFD) have continued to experience an increase in calls for service. This

increase hampers and strains emergency services across the entire city. A report prepared by the BFD and provided to City Council, highlighted that over 1,500 people were transported in 2014 and 2015. Of those calls, more than 600 involved alcohol and approximately half of the intoxicated students were under the legal drinking age of 21. One-hundred and twenty of the intoxicated patients were under 18 years of age. During the 2015-16 grant, a total of 482 alcohol-related citations and arrests were made. The BPD has provided responsible beverage training for over 100 Berkeley managers and employees representing over 40 Berkeley businesses.

BACKGROUND

The BPD has been receiving the Alcoholic Beverage Control grant for over twelve years. The school year brings an influx of new students and new employees to various businesses which sell alcohol. The BPD will continue to inform, educate, and enforce under-age drinking laws in an effort to reduce and/or prevent alcohol related tragedies within the City of Berkeley.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Fewer calls to first-responders will result in less local air pollutants and greenhouse gas emissions due to reduced fuel consumption.

RATIONALE FOR RECOMMENDATION

The BPD has been awarded a Department of Alcoholic Beverage Control grant in the amount of \$72,440 to address the critical need to address underage drinking and alcohol availability to those individuals under the age of 21. Without this funding, the BPD would have fewer resources to reduce alcohol-related incidents which can have negative life-altering results for many young adults.

ALTERNATIVE ACTIONS CONSIDERED

If the award is not accepted, the City would not be able to provide these vital services to our community.

CONTACT PERSON

Jennifer Louis, Interim Chief of Police, 510-981-5700

Attachments:

1: Resolution

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

REVENUE GRANT: STATE OF CALIFORNIA DEPARTMENT OF ALCOHOLIC
BEVERAGE CONTROL GRANT FOR FISCAL YEAR 2021-22

WHEREAS, the Police Department is committed to providing a safe and secure environment through vigorous law enforcement within the City of Berkeley; and

WHEREAS, underage drinking and excessive drinking is currently a problem within the City of Berkeley; and

WHEREAS, there has been a longstanding problem with underage drinking and the availability of alcohol to persons under the age of 21 throughout the City; and

WHEREAS, despite years of education and preventive work, alcohol related problems persist; and

WHEREAS, the young adult community continues to acquire alcohol through fake identification, merchants who fail to check identification or asking someone to purchase alcohol for them; and

WHEREAS, several liquor stores can be magnets for criminal activity; and

WHEREAS, the police do not have sufficient resources within the existing budget to expand their work on these problems; and

WHEREAS, the Berkeley Police Department desires to undertake a certain project to limit access to alcohol by minors funded in part from state funds from the Department of Alcoholic Beverage Control (also referred to as ABC); and

WHEREAS, the funds have been appropriated into the Alcoholic Beverage Control Program Fund (Fund 318) with the agreement that grant funds received hereunder shall not be used to supplant expenditures controlled by this body.

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 a contract and any amendments or extensions with the State of California in order to accept funds in the amount of \$72,440 from the Department of Alcoholic Beverage Control for the enforcement of alcohol related laws for one fiscal year, July 1, 2021 through June 30, 2022.

BE IT FURTHER RESOLVED that any liability arising out of the performance of this contract, including civil court actions for damages, shall be the responsibility of the grant recipient and the authorizing agency. The State of California and ABC disclaim responsibility for any such liability.

BE IT FURTHER RESOLVED that this award is not subject to local hiring freezes.



Office of the City Manager

RECESS ITEM
CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Liam Garland, Director, Department of Public Works
Subject: Contract: ERA Construction, Inc. for 1322 Glendale Avenue Retaining Wall Project

RECOMMENDATION

Adopt a Resolution ratifying the action taken by the City Manager during recess to approve plans and specifications for the 1322 Glendale Avenue Retaining Wall Project, Specification No. 21-11448-C; accept the bid of ERA Construction, Inc. as the lowest responsive and responsible bidder; and execute a contract and any amendments, extensions or other change orders until completion of the project, in accordance with the approved plans and specifications in an amount not to exceed \$1,038,103, which includes a 10% contingency for unforeseen circumstances.

NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS

Awarding this construction contract would authorize ERA Construction to proceed with the replacement of a retaining wall along Glendale Avenue. The existing retaining wall's condition has deteriorated since bids were opened on June 8, 2021. It's critical that replacement begins as soon as possible so the new retaining wall can be in place before the upcoming rainy season. Delaying award until after Council recess would extend the construction period into the wet season and lead to increased risk of structural failure.

FISCAL IMPACTS OF RECOMMENDATION

Funding from the Measure BB Sales Tax (Fund 134) and the Capital Improvement Fund (Fund 501) will be requested for carryover as part of the First Amendment to the FY 2022 Annual Appropriations Ordinance. No other funding is required, and no other projects will be delayed due to this expenditure.

Low bid by Contractor	\$943,730
10% Contingency	\$94,373
Total construction cost	\$1,038,103

FY 2022 Funding:

Measure BB Sales Tax (134-54-623-673-0000-000-431-665110)	\$670,000
Capital Improvement Fund (501-54-623-673-0000-000-431-663110)	\$368,103
Total construction cost	\$1,038,103

CURRENT SITUATION AND ITS EFFECTS

The 1322 Glendale Avenue Retaining Wall Project (Specification No. 21-11448-C) was released for bids on May 12, 2021, and bids were opened on June 8, 2021 (see Attachment 3, Abstract of Bids). Four non-local bids were received, from a low of \$943,730 to a high of \$1,151,610. The engineer's estimate for the project was \$880,000. ERA Construction of San Pablo, California was the lowest responsive and responsible bidder, with a bid of \$943,730, and their references were found to be satisfactory. This project includes a 10% contingency, which brings the total contract amount up to the requested \$1,038,103. Staff recommends a contract for this project be awarded to ERA Construction Inc.

The 1322 Glendale Avenue Retaining Wall Project is a Strategic Plan Priority Project, advancing the City's goal to provide state-of-the art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

Glendale Avenue is a critical access route to the east Berkeley Hills. It's north branch, carved on a hillside overlooking Glendale-La Loma Park, connects La Loma Avenue and Campus Drive. Portions of this section of roadway are supported by a wood crib retaining wall constructed in the 1960's. Over time, poor drainage has led to erosion and sloughing of the soils directly behind the retaining wall eventually leading to the failure of some of its support structure. In 2020 the City retained the services of a geotechnical consultant to perform subsurface investigation and to provide an assessment of the existing retaining wall's structural stability. The conclusions from the investigation were summarized in a geotechnical report which included recommendations to replace portions of the retaining wall within two years. Based on these recommendations, City staff mobilized to retain the services of an engineering consultant to proceed with the design of the replacement wall.

After thorough planning, coordination with utility companies, field investigations, surveys, and a detailed design phase, project plans and specifications were finalized and released for bids. In addition to the retaining wall replacement, the project includes storm, sidewalk, curb & gutter, fencing, and guardrail improvements. The plans and specifications are on file in the Public Works Department.

The Living Wage Ordinance does not apply to this project since Public Works construction contracts are, pursuant to City policy, subject to State prevailing wage laws. ERA Construction has submitted a Certification of Compliance with the Equal Benefits Ordinance. The Community Workforce Agreement applies to this project because the estimated value of the project exceeds \$500,000. As a result, the contractor and all subcontractors will be required to sign an agreement to be bound by the terms of the Agreement.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The project includes storm system improvements which will not only maximize the life of the new retaining wall but also reduce erosion of the hillside at the toe of the wall.

Reduced erosion protects water quality by reducing sediments entering the storm drain system and Codornices Creek downhill of the retaining wall.

The new retaining wall will be constructed of steel piles and precast concrete lagging. These materials are durable and will ensure the new wall has a longer lifespan than the wood crib retaining wall currently in place. The longer lifespan will result in less frequent replacement of the wall and in turn eliminate the construction related greenhouse emissions associated with more frequent replacement.

RATIONALE FOR RECOMMENDATION

This project replaces infrastructure near the end of its useful life. Performing the work requires contracted services, as the City does not possess the in-house labor, equipment, or expertise necessary to complete the project.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered for this project. Failure to replace the aging retaining wall would result in continued degradation and eventual failure of the wall; placing private property and public infrastructure at risk.

CONTACT PERSON

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

Attachments:

- 1: Resolution
- 2: Location Map
- 3: Abstract of Bids

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

CONTRACT: ERA CONSTRUCTION, INC. FOR 1322 GLENDALE AVENUE
RETAINING WALL PROJECT

WHEREAS, an existing retaining wall along a portion of Glendale Avenue between La Loma Avenue and Campus Drive requires replacement; and

WHEREAS, the City does not possess the in-house labor, equipment, or expertise necessary to complete the 1322 Glendale Avenue Retaining Wall Project; and

WHEREAS, an invitation for bids was duly advertised and ERA Construction, Inc. was the lowest responsive and responsible bidder; and

WHEREAS, funding from the Measure BB Sales Tax (Fund 134) and the Capital Improvement Fund (Fund 501) will be requested for carryover as part of the First Amendment to the FY 2022 Annual Appropriations Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specification No. 21-11448-C for the 1322 Glendale Avenue Retaining Wall Project are approved.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley ratifies the action taken by the City Manager during recess to execute a contract and any amendments, extensions or change orders, until completion of the project in accordance with the approved plans and specifications with ERA Construction, Inc. for the 1322 Glendale Avenue Retaining Wall Project, in an amount not to exceed \$1,038,103, which includes a 10% contingency for unforeseen circumstances. A record signature copy of said agreement and any amendments to be on file in the Office of the City Clerk.

LOCATION MAP

1322 GLENDALE AVENUE

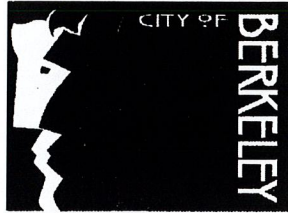
RETAINING WALL REPLACEMENT PROJECT

SPECIFICATION NO. 21-11448-C



ATTACHMENT 2

 - CONSTRUCTION AREA



City of Berkeley
Abstract of Bid Worksheet

Finance Department
General Services Division

FOR: Glendale Ave. Retaining Wall

Spec. #
21-11448-C

Bid Date: 6/8/2021

required w/ bid

	Bidders	Base Bid	Bid Bond	Addenda (0)	Exp. & Qual	Tax ID	NF	OS	SC	EBO
1	Azul Works Inc	\$ 1,056,582.00	x		x	x	x	x	x	x
2	Beliveau Engineering	\$ 1,151,610.00	x		x	x	x	x	x	x
3	ERA Construction	\$ <i>RD</i> 943,729.75 895,284.75	x		x	x	x	x	x	x
4	Kerex Engineering	\$ 1,034,305.00	x		x	x	x	x	x	x
5										
6										
7										
8										
9										
10										

Bid Recorder: *[Signature]* Darryl Sweet

Bid Opener: *[Signature]* Josh Roben

Project Manager: *[Signature]* Ricardo Salcedo

2180 Milvia Street, Berkeley, CA 94704
Tel: 510.981.7320 TDD: 510.981.6903 Fax: 510.981.7390
E-mail: finance@ci.berkeley.ca.us



Office of the City Manager

RECESS ITEM
CONSENT CALENDAR
 September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Liam Garland, Director, Department of Public Works
 Subject: Contracts: TBWBH Props and Measures and V.W. Housen & Associates
 for Vision 2050 Implementation Services

RECOMMENDATION

Adopt two Resolutions ratifying the action taken by the City Manager during recess to execute contracts with:

1. TBWBH Props and Measures for one year in an amount not to exceed \$175,000; and
2. V.W. Housen & Associates for one year in an amount not to exceed \$175,000, for Vision 2050 Implementation Services.

NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS

Awarding these contracts permits City Council and staff to keep on track with implementation of Vision 2050. Delaying award until after recess would risk the project going off-schedule and result in less time and opportunity for robust public engagement in advance of City Council's decision in the spring of 2022 on whether to place an infrastructure-focused revenue measure on the November 2022 ballot.

FISCAL IMPACTS OF RECOMMENDATION

Funding from the General Fund (Fund 011) in the amount of \$400,000 was approved by the City Council in the FY22 budget for Vision 2050 Implementation.

CURRENT SITUATION AND ITS EFFECTS

Berkeley's infrastructure dates to the early decades of the 20th century. Critical systems that we depend on every day are wearing out. Aging infrastructure is costly to maintain. For residents, workers, and businesses trying to go about their daily lives, infrastructure improvements must be a priority. Additionally, affordable housing is severely constrained and there is a need for significantly more affordable housing.

Now, as we begin to grapple with Berkeley's \$1 billion in infrastructure needs and deep affordable housing shortages, new challenges are emerging. The local impacts of global climate change are a major threat to our aging infrastructure. Extreme storm events, wildfires, heatwaves, drought, and sea level rise will challenge infrastructure that was

designed for a more benign environment. All of this will be happening as we wait and prepare for the next major earthquake. If our city is to survive and thrive, we must confront these challenges.

The Vision 2050 initiative was announced by Mayor Arreguin at his 2017 State of the City address to meet these challenges. Berkeley voters approved Measure R in November 2018. The measure asked: “Shall the measure, advising the Mayor to engage citizens and experts in the development of Vision 2050, a 30-year plan to identify and guide implementation of climate-smart, technologically-advanced, integrated and efficient infrastructure to support a safe, vibrant and resilient future for Berkeley, be adopted?” The response was a resounding yes. A residents’ task force of over 40 members was formed and the group worked for 18 months to prepare a framework to modernize Berkeley’s infrastructure. Their report, *Sustainable and Resilient Infrastructure, Creating a Better Future for Berkeley*, was approved by City Council in September 2020.

In December 2020, the City Manager convened a working team comprised of contributors to the Vision 2050 framework and City staff. This team was tasked with turning Vision 2050 into reality and kicked off with a draft implementation plan that was presented to the Vision 2050 steering committee, Disaster and Fire Safety Commission, Energy Commission, Public Works Commission, Parks and Waterfront Commission, and Transportation Commission. On March 16, 2021, City Council held a budget workshop and gave input on the Vision 2050 implementation plan. The adopted budget included \$400,000 for key tasks to advance the Vision 2050 implementation plan. This budget enables the requisite pre-work leading up to the Council’s decision on whether to place an infrastructure-focused revenue measure on the November 2022 ballot. The pre-work includes financial and bonding capacity analysis, robust public engagement, assessment of capital delivery, and creation of a program plan.

Ratification of these consultant contracts enables consultant support for a robust public engagement process, assessment of capital delivery, and creation of a program plan. After adoption of the FY 2022 budget, staff issued a Request for Proposals (RFP), Specification No. 21-11463-C, and received two proposals, and executed contracts during recess with TBWB for communications, surveying, and public engagement; and V.W. Housen & Associates for assessment of our current capital delivery and creation of the program plan.

BACKGROUND

The Vision 2050 report recommended a doubling of capital investment to address Berkeley’s current \$1+ billion in public infrastructure needs. At the same time, the need for affordable housing has never been as pressing and as much of a threat to our sustainability.

Paul Buddenhagen, Deputy City Manager, is leading an interdepartmental team in this work and will be assisted by the existing Vision 2050 working Team, comprised of contributors to the Vision 2050 framework and City staff. To advance Vision 2050, the implementation plan included the following tasks:

- Community engagement. The work shall include an active website, community forums, community survey and other activities. Input will be sought on infrastructure priorities through a variety of methods and two surveys will be conducted to help assess Berkeley's willingness to support an infrastructure-focused revenue measure. Results of the first survey and public engagement process will be shared with City Council in November 2021. TBWBH Props and Measures and its subconsultant Lake Research Partners will assist in this work.
- Evaluate funding options. There are various funding options to consider, and different asset groups will have different funding options. Those options will be evaluated. Consideration shall be given to funding options for both capital improvements and funding on-going maintenance. This work also includes a bonding capacity study. The Finance Department is using the City's Municipal Financial Adviser and an additional bonding capacity consultant for this work.
- Program delivery assessment. This task will evaluate the City's organizational capability to implement a major capital program. The work shall learn from the efforts of Measure M, Measure T1 and other City capital programs. The work shall also learn from other cities that have implemented major capital programs. The work product will be a recommendation on how the City should organize to construct and maintain its infrastructure if a more robust capital investment is made. V.W. Housen & Associates will conduct this assessment.
- Prepare a Program Plan. The information gathered above will be compiled into a Program Plan. It will plan the construction of infrastructure improvements over a longer time period, describe funding options, a project delivery approach, the community engagement process to date, and possible oversight if a revenue measure will be successful. City Council will consider the Program Plan in advance of a decision in spring 2022 on whether to move forward with a November 2022 revenue measure or measures. V.W. Housen & Associates will assist in the preparation of this plan.

With ratification of these contracts, this project will remain on schedule.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Implementing Vision 2050 would result in public infrastructure that is more resilient, creates fewer greenhouse gases, and reduces conflict between our built and natural environment. More affordable housing in Berkeley would reduce greenhouse gas emissions caused by employees finding lower cost housing farther away from employment centers and requiring longer commutes.

RATIONALE FOR RECOMMENDATION

Awarding of these contracts in recess ensured the project remains on schedule and can include a robust public engagement process.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered for this project.

CONTACT PERSON

Liam Garland, (510) 981-6303

Attachment:

1. Resolution - TBWBH Props and Measures
2. Resolution - V.W. Housen & Associates

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

CONTRACT: VISION 2050 IMPLEMENTATION SERVICES WITH TBWBH PROPS
AND MEASURES

WHEREAS, experienced consultants are needed to assist in preparation for the possible placement of an infrastructure-focused revenue measure or measures on the November 2022 ballot, including a robust community engagement process, evaluating program delivery capabilities, and developing an infrastructure program plan; and

WHEREAS, the City does not possess the in-house resources or expertise to execute on this project; and

WHEREAS, a request for proposals was duly issued and TBWBH Props and Measures and V.W. Housen & Associates were selected as the best value for the City; and

WHEREAS, TBWBH Props and Measures was selected for communications, surveying, and community engagement process; and

WHEREAS, funding from the General Fund (Fund 011) was approved by the City Council in the FY22 budget; and

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley ratifies the action taken by the City Manager during recess to execute contracts with TBWBH for one year in an amount not to exceed \$175,000, for the implementation of the Vision 2050 plan. A record signature copy of said agreements and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: VISION 2050 IMPLEMENTATION SERVICES WITH V.W. HOUSEN & ASSOCIATES

WHEREAS, experienced consultants are needed to assist in preparation for the possible placement of an infrastructure-focused revenue measure or measures on the November 2022 ballot, including a robust community engagement process, evaluating program delivery capabilities, and developing an infrastructure program plan; and

WHEREAS, the City does not possess the in-house resources or expertise to execute on this project; and

WHEREAS, a request for proposals was duly issued and TBWBH Props and Measures and V.W. Housen & Associates were selected as the best value for the City; and

WHEREAS, V.W. Housen & Associates was selected for assessment of the City's capital delivery program and creation of the program plan; and

WHEREAS, funding from the General Fund (Fund 011) was approved by the City Council in the FY22 budget; and

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley ratifies the action taken by the City Manager during recess to execute contracts with V.W. Housen & Associates for one year in an amount not to exceed \$175,000, for the implementation of the Vision 2050 plan. A record signature copy of said agreements and any amendments to be on file in the Office of the City Clerk.



Office of the City Manager

RECESS ITEM
CONSENT CALENDAR
 September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront
 Subject: Contract: Elavon for Recreation Online Registration Payment Processing

RECOMMENDATION

Adopt a Resolution ratifying the action taken by the City Manager during recess, authorizing the City Manager to execute a contract with Elavon for online credit card payment processing transaction services for the Recreation Division's online registration system, for an amount not to exceed \$220,000 for the term commencing on or about September 1, 2021 through May 31, 2023.

NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS

The City's Recreation online registration software, CivicRec, recently announced that they would no longer support our existing payment gateway configuration after September 16, 2021. This means we have limited time to execute this agreement, and we must move quickly to avoid any service interruption of Recreation Division online registration services to City of Berkeley residents.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the contract are available in the FY 2022 budget in the Camps Fund (125-52-543-570-0000-000-461-639110-) and General Fund (011-52-543-570-0000-000-461-639110-); the remainder will be appropriated in FY 2023.

CURRENT SITUATION AND ITS EFFECTS

The City's Recreation Division uses CivicRec software to manage all online registration for recreation programs, picnic site and court rentals, afterschool programs, swim lessons and lap swim, sports field reservations, and camps. Until now, CivicRec has integrated with the City's third-party payment processor, Official Payments, to process online credit card transactions.

CivicRec informed the City that as of September 16, 2021, they will not process any credit card transactions through Official Payments. In an effort to respond to PCI DSS 4.0 Security Standards, they are reducing the number of payment gateway service providers they support, including Official Payments.

A team of City staff from PRW, Finance and IT evaluated the payment gateways that will integrate with CivicRec software and determined that Elavon provides the best mix of pricing

Contract: Join State of California's Contract with Elavon for Recreation Online Registration Credit Card Processing

and services. Elavon, a subsidiary of US Bank, is one of the State of California's two contracted credit card processors. Elavon processes payments for 80% of the state's entities, encompassing approximately 6,000 organizations.

Elavon has an [existing contract](#) with the State of California Department of General Services that allows for Local Authorized Users to join to the agreement.¹ Piggybacking on this State agreement meets the City of Berkeley competitive bidding requirements, enables the City to benefit from the State's lower pricing, provides for a smooth transition of payment gateway services with CivicRec, and enables us to quickly enter into contract for these services. As a piggyback, the City joins the State's contract, and agrees to the State's negotiated terms and conditions. City staff have shared the City of Berkeley's local contracting policies and requested Elavon to review and sign those. While they will not be signed prior to the contract execution, City staff will continue to work with Evalon during the contract period to incorporate these provisions into the agreement.

BACKGROUND

The City of Berkeley Parks, Recreation and Waterfront Department (PRW) provides a wide range of recreation facilities, programs, classes, and events for Berkeley resident and non-resident community members. The City operates two (2) swimming pools, four (4) community centers, eleven (11) sports fields, fifty-two (52) parks, three (3) remote residential camp sites, and one (1) skate park. The City depends on our online recreation registration programs to help community members register for activities for families, adults and youth, including after-school programs, day camps, classes, residential camps, special events, sports, and swimming. In addition, PRW offers tennis court, picnic site, camp and field rentals. For more information about the Parks, Recreation and Waterfront Department, see:

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

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

In addition to time savings for residents, paying online via credit card has substantial environmental benefits compared to the alternative of driving to a site, completing paper-based transactions, paying via cash or check, then processing that payment and driving it to the Treasury and then to the bank.

RATIONALE FOR RECOMMENDATION

Piggybacking onto the State of California contract with Elavon provides a cost-effective and timely solution and ensures that Berkeley residents can continue to register and pay online for City of Berkeley Recreation programs, camps, classes, and rentals.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

¹ The State of California contract with Elavon is available at:
https://caleprocure.ca.gov/PSRelay/ZZ_PO.ZZ_CTR_SUP_CMP.GBL?Page=ZZ_CTR_SUP_PG&Action=U&SETID=STATE&CNRCT_ID=5-10-99-02

Contract: Join State of California's Contract with Elavon for
Recreation Online Registration Credit Card Processing

RECESS ITEM
CONSENT CALENDAR
September 14, 2021

Scott Ferris, Director, PRW, 981-6700
Christina Erickson, Deputy Director, PRW, 981-6703

Attachments:

1: Resolution

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

CONTRACT: JOIN STATE OF CALIFORNIA'S CONTRACT WITH ELAVON FOR RECREATION ONLINE REGISTRATION CREDIT CARD PROCESSING

WHEREAS, the City of Berkeley needs to procure new payment processing services to continue processing online credit card transactions for registration for camps, recreational programs and reservations for facilities at various locations; and

WHEREAS, on December 21, 2018, the City of Berkeley entered into a new contract with CivicPlus, Inc. for online registration services, requiring integration with a third-party credit card transaction payment processor; and

WHEREAS, on February 26, 2019, the City Council authorized the City to amend the City's contract with Official Payments Corporation, the City's existing third-party credit card transaction payment processor, to include Recreation Division online transactions processed through CivicRec; and

WHEREAS, CivicRec notified the City that as of September 16, 2021, they will no longer support processing credit card transactions through Official Payments; and

WHEREAS, Elavon is a payment gateway that will integrate with CivicRec; and Elavon has an existing contract with the State of California that allows for Local Authorized Users to join to the agreement; and piggybacking on this State agreement meets City of Berkeley competitive bidding requirements and allows the City to benefit from the State's lower pricing; and

WHEREAS, funds for this contract are available in the FY 2022 budget in the Camps Fund and General Fund; and the remainder will be appropriated in FY 2023.

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 a contract with Elavon for online credit card payment processing transaction services for the Recreation Division's online registration system, for an amount not to exceed \$220,000 for the term commencing on or about September 1, 2021 through May 31, 2023.



Office of the City Attorney

CONSENT CALENDAR
September 14, 2021

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) and Determining the Immediate Need for and Adopting a City Employee Vaccination Policy

RECOMMENDATION

Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, and July 20, 2021, and reviewing the need to adopt an employee vaccination policy immediately and ratifying adoption of such policy in advance of completion of the meet-and-confer process regarding the policy’s potential bargainable impacts pursuant to Government Code section 3504.5.

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 July 20, 2021. The Council therefore must review the continuing need for the local emergency by September 18, 2021.

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 and July 20, 2021. If reviewed and ratified on September 14, 2021, the Council will need to again review and ratify the proclamation by November 13, 2021 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).)

The Meyers Milias Brown Act (“Act”) provides that, “[e]xcept in cases of emergency as provided in this section, the governing body of a public agency...shall give reasonable written notice to each recognized employee organization affected of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the governing body...and shall give the recognized employee organization the opportunity to meet with the governing body.” (Gov. Code § 3504.5, subd. (a).) The Act further provides that, “[i]n cases of emergency when the governing body...determine[s] that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the governing body...shall provide notice and opportunity to meet at the earliest practicable time following the adoption of the ordinance, rule, resolution, or regulation.” (Gov. Code § 3504.5, subd. (b).) The City’s decision to implement a vaccination policy is itself a managerial decision and not subject to the Act’s meet-and-confer requirement. The City may, however, be required to meet-and-confer regarding the policy’s impacts on issues within the scope of representation. If the City invokes the emergency exception to this requirement, as described above in Government Code § 3504.5, subd. (b), then the City may implement the employee vaccination policy in advance of completing the meet-and-confer process, provide that the City provides notice and an opportunity to meet regarding the policy at the earliest practicable time following the Council’s ratification of this resolution and adoption of the employee vaccination policy.

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 4,500 confirmed cases of COVID-19 and at least 53 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, and July 20, 2021.

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
- 2: A.R. 7.1 COVID-19 Employee Vaccination Policy

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, and July 20, 2021; and

WHEREAS, the City Council does find that the aforesaid conditions of extreme peril continue to exist, and now include over 4,500 confirmed cases of COVID-19 and at least 53 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 November 13, 2021;

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, 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 finds 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

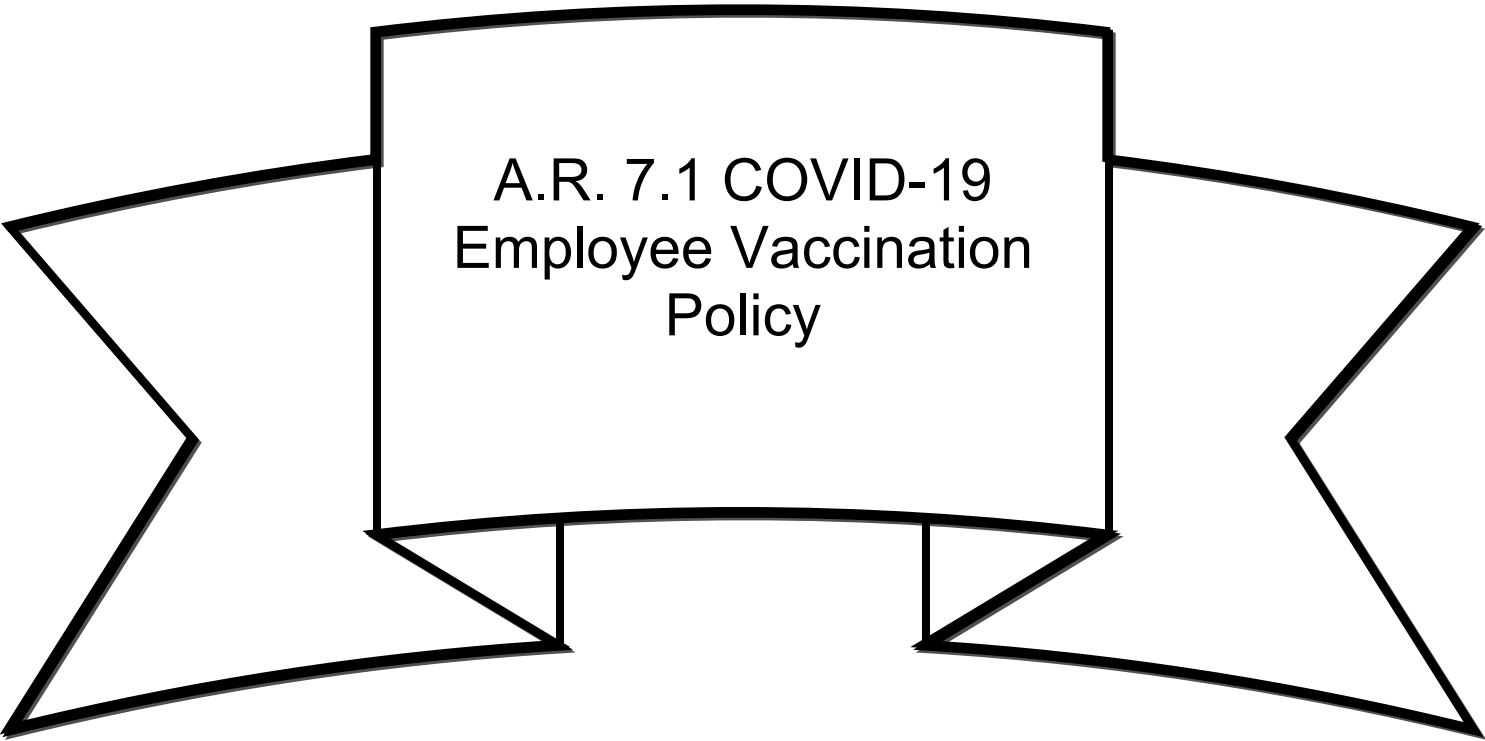
WHEREAS, given the urgency posed by the highly transmissible nature of the Delta variant, the City Council recognizes the variant’s existence as creating an emergency of grave character and as warranting adoption of a Citywide vaccination policy without prior notice or meeting with recognized employee organizations or in advance of completion of the meet-and-confer process regarding the impacts of the Citywide

vaccination policy, provided that the City shall provide notice and opportunity to meet at the earliest practicable time following adoption of this resolution and the policy itself.

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, and July 20, 2021, has been reviewed and is hereby again ratified and confirmed; and

BE IT FURTHER RESOLVED that, in light of the nature of the emergency posed by the Delta variant, the City Council determines that it must adopt the Citywide vaccination policy, attached to the staff report accompanying this Resolution and incorporated by reference herein, immediately without prior notice or meeting with its recognized employee organizations or before completion of the meet-and-confer process regarding the policy's impacts pursuant to its authority under Government Code section 3504.5; 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.



A.R. 7.1 COVID-19
Employee Vaccination
Policy

Attachment 2 to this report will be published in a Supplemental Communications packet.

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

The City of Berkeley, City Council's Web site:
<http://www.cityofberkeley.info/citycouncil/>



Office of the City Manager

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Mark Numainville, City Clerk
 Subject: Establish 2022 City Council Meeting Schedule

RECOMMENDATION

Adopt a Resolution establishing the City Council regular meeting schedule for 2022, with starting times of 6:00 p.m.

FISCAL IMPACTS OF RECOMMENDATION

None.

BACKGROUND

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

Seven City Council Worksessions will be scheduled for 2022. This number is slightly lower than previous years, but due to holidays, Election Day, and the need for two meetings in December to meet the 24-meeting requirement, only seven available Worksession dates are scheduled. The Worksession dates are scheduled for the following dates.

- February 15, 2022
- March 15, 2022
- April 19, 2022
- May 24, 2022
- June 21, 2022
- July 19, 2022
- October 18, 2022

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

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

CONTACT PERSON

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

Attachments:

1: Resolution

Exhibit A: 2022 Council Calendar

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

ADOPTING THE CITY COUNCIL 2022 REGULAR MEETING SCHEDULE

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

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

WHEREAS, the Council desires to establish as part of their schedule a Winter, Spring and Summer recess period for 2022; and

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

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council adopts the 2022 regular meeting schedule on specified Tuesdays at 6:00 p.m. as indicated:

Winter Recess – December 15, 2021 – January 17, 2022
January 18 and January 25, 2022
February 8 and February 22, 2022
March 8 and March 22, 2022
Spring Recess – March 23 – April 11, 2022
April 12 and April 26, 2022
May 10, May 17, and May 31, 2022
June 14 and June 28, 2022
July 12 and July 26, 2022
Summer Recess – July 27 – September 12, 2022
September 13 and September 20, 2022
October 11 and October 25, 2022
November 1, November 15, and November 29, 2022
December 6 and December 13, 2022
Winter Recess – December 14, 2022 – January 16, 2023

Exhibit A: 2022 Council Calendar

City Clerk Department 2022 Council Calendar

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

Date	Time
January	
Winter Recess (Dec. 15, 2021 – Jan. 17, 2022)	
Jan 18	6:00 p.m.
Jan 25	6:00 p.m.
February	
Feb 8	6:00 p.m.
Feb 22	6:00 p.m.
March	
Mar 8	6:00 p.m.
Mar 22	6:00 p.m.
April	
Spring Recess (March 23 – April 11, 2022)	
April 12	6:00 p.m.
April 26	6:00 p.m.
May	
May 10	6:00 p.m.
May 17	6:00 p.m.
May 31	6:00 p.m.
June	
June 14	6:00 p.m.
June 28	6:00 p.m.
July	
July 12	6:00 p.m.
July 26	6:00 p.m.
Summer Recess (July 27 – Sept. 12, 2022)	
September	
Sept 13	6:00 p.m.
Sept 20	6:00 p.m.
October	
Oct 11	6:00 p.m.
Oct 25	6:00 p.m.
November	
Nov 1	6:00 p.m.
Nov 15	
Nov 29	6:00 p.m.
December	
Dec 6	6:00 p.m.
Dec 13	6:00 p.m.
Winter Recess (Dec. 14, 2022 – Jan. 16, 2023)	



Office of the City Manager

CONSENT CALENDAR
September 14, 2021

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

RECOMMENDATION

Approve the minutes for the council meetings of July 1, 2021 (closed), July 13, 2021 (closed and regular), July 14, 2021 (closed), July 20, 2021 (special-4pm and special-6pm), July 27, 2021 (closed, special and regular) and July 29, 2021 (special).

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1. July 1, 2021 – Closed City Council Meeting
2. July 13, 2021 – Closed City Council Meeting
3. July 13, 2021 – Regular City Council Meeting
4. July 14, 2021 – Closed City Council Meeting
5. July 20, 2021 - Special City Council Meeting at 4pm
6. July 20, 2021 - Special City Council Meeting at 6pm
7. July 27, 2021 – Closed City Council Meeting
8. July 27, 2021 – Special City Council Meeting
9. July 27, 2021 – Regular City Council Meeting
10. July 29, 2021 – Special City Council Meeting

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

THURSDAY, JULY 1, 2021

3:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/87579140416>. 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: 875 7914 0416. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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

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

Preliminary Matters

Roll Call: 3:01 p.m.

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

Absent: Taplin, Bartlett, Droste

Public Comment – 1 speaker.

Councilmember Taplin present at 3:05 p.m.

Councilmember Bartlett present at 3:35 p.m.

Councilmember Droste present at 3:39 p.m.

CLOSED SESSION:

The City Council convened 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, David White, Deputy City Manager, LaTanya Bellow, Human Resources Director, Dania Torres-Wong, Chief Labor Negotiator, Burke Dunphy, Labor Negotiator, Jon Holtzman, Labor Negotiator, Abe Roman, Interim Fire Chief.

Employee Organizations: SEIU 1021 Community Services and Part-time Recreation Activity Leaders, Berkeley Fire Fighters Association Local 1227, Berkeley Police Association, Public Employees Union Local 1.

Action: No reportable action.

OPEN SESSION:

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

No reportable action.

Adjournment

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

Vote: All Ayes.

Adjourned at 4:37 p.m.

This is to certify that the foregoing is a true and correct record of the closed session meeting on July 1, 2021.

April Richardson, Assistant City Clerk

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

In accordance with the authority in me vested, I do hereby call the Berkeley City Council in special session as follows:

TUESDAY, JULY 13, 2021

4:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/86076393598>. 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: 860 7639 3598. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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

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

Preliminary Matters

Roll Call: 4:03 p.m.

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

Absent: Bartlett

Councilmember Bartlett present at 4:21 p.m.

Public Comment - Limited to items on this agenda only – 20 speakers

CLOSED SESSION:

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

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

- a. City of Berkeley v. Regents of the University of California, Alameda Superior Court Case No. RG19023058
- b. Save Berkeley's Neighborhoods, et al. v. The Regents of the University of California, et al., Alameda Superior Court, Case No. RG19006256

Action: No reportable action taken

2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION PURSUANT TO GOVERNMENT CODE SECTIONS 54956.9(c) and 54956 (d)(4):

Initiation of litigation – one case

The City Council will consider whether to initiate a lawsuit against the Regents of the University of California related to the Long Range Development Plan for the Berkeley Campus and related actions.

Action: No reportable action taken.

OPEN SESSION:

No reportable action.

Adjournment

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

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

Councilmember Droste absent 7:22 p.m. – 7:24 p.m.

Adjourned at 7:24 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on July 13, 2021.

Mark Numainville
City Clerk

MINUTES
BERKELEY CITY COUNCIL MEETING
Tuesday, July 13, 2021
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/82181611485>. 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: **821 8161 1485**. 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: 7:42 p.m.

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

Absent: None

Ceremonial Matters:

1. Recognition of Cal Move Out Day Coalition
2. Recognition of Plastic Free July
3. Adjourned in Memory of Chuck Feezel, Berkeley Resident

City Manager Comments: None

Public Comment on Non-Agenda Matters: 10 speakers.

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 7 speakers.

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

Vote: All Ayes.

1. **FY 2022 Tax Rate: Fund Emergency Services for the Severely Disabled (Measure E)**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,772-N.S. setting the FY 2022 tax rate for funding the provision of emergency services for the disabled at \$0.01796 (1.796 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. 7,772-N.S.

2. **FY 2022 Annual Appropriations Ordinance**
From: City Manager
Recommendation: Adopt second reading of Ordinance 7,779-N.S. adopting the FY 2022 Annual Appropriations Ordinance (AAO) in the amount of \$673,601,287 (gross appropriations) and \$552,265,708 (net appropriations).
First Reading Vote: All Ayes.
Financial Implications: See report
 Contact: Rama Murty, Budget Office, (510) 981-7000
Action: Adopted second reading of Ordinance No. 7,779-N.S.

Consent Calendar

3. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on July 13, 2021

From: City Manager

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

Financial Implications: Various Funds - \$663,976

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

Action: Approved recommendation.

4. Contract: ERA Construction, Inc. for the O&K Docks Electrical Upgrade Project at the Berkeley Marina

From: City Manager

Recommendation: Adopt a Resolution: 1. Approving the plans and specifications for the O&K Docks Electrical Upgrade Project (Bid Specification No. 21-11449-C); and 2. Rejecting the bid protest of Edward W. Scott Electric Co. Inc., the second-lowest bidder; and 3. Accepting the bid of ERA Construction, Inc. as the lowest responsive and responsible bidder on the Project; and 4. 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, with ERA Construction, Inc., for the O&K Docks Electrical Upgrade Project, in an amount not to exceed \$1,200,000, which includes a contract amount of \$1,117,980 and a 7.3% contingency in the amount of \$82,020.

Financial Implications: Various Funds - \$1,200,000

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

Action: Adopted Resolution No. 69,951–N.S.

5. Contract No. 32000274 Amendment: Suarez and Munoz Construction, Inc. for San Pablo Park Playground and Tennis Court Renovation Project

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000274 with Suarez and Munoz Construction, Inc. for the San Pablo Park Playground and Tennis Court Renovation Project, increasing the amount by \$60,000 for an amended total amount not to exceed \$2,154,056.

Financial Implications: Parks Tax Fund - \$60,000

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

Action: Adopted Resolution No. 69,952–N.S.

Consent Calendar

6. Authorize the City Manager to Accept REAP and PDA Planning Grant Applications

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to accept three planning grant awards and to execute documents or amendments associated with each grant. The three applications awarded are: A competitive Regional Early Action Planning (REAP) grant in the amount of \$75,000; a non-competitive REAP grant in the amount of \$83,506; and a Priority Development Area (PDA) Planning Grant for the San Pablo Avenue PDA in the amount of \$750,000.

Financial Implications: See report

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

Action: Adopted Resolution No. 69,953–N.S.

7. 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 to authorize the City Manager, or designee, to accept the “Cannabis Tax Fund Grant Program (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 \$135,462 for the period of July 1, 2021 through June 30, 2022.

Financial Implications: See report

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

Action: Adopted Resolution No. 69,954–N.S.

8. Approval and Levy of 2018 Clean Stormwater Fee in FY 2022

From: City Manager

Recommendation: Adopt a Resolution approving the proposed adjusted fees for the 2018 Clean Stormwater Fee and ordering the levy of the fees in Fiscal Year 2022.

Financial Implications: See report

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

Action: Adopted Resolution No. 69,955–N.S.

Consent Calendar

9. **Contract: Rainbow Waterproofing & Restoration Co., Inc. for the Central Library Stucco Restoration Project**
From: City Manager
Recommendation: Adopt a Resolution: 1. Approving plans and specifications for Central Library Stucco Restoration Project, Specification No.20-11405-C; 2. Accepting the bid of Rainbow Waterproofing & Restoration Co., Inc. as the lowest responsive and responsible bidder; and 3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, for an amount not to exceed \$702,384, which includes a contingency of \$117,064.
Financial Implications: Library Tax Fund - \$702,384
Contact: Liam Garland, Public Works, (510) 981-6300, Tess Mayer, Library, (510) 981-6100
Action: Adopted Resolution No. 69,956–N.S.
10. **Contract No. 32000092 Amendment: New Image Landscape Company for On-Call Landscaping Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract 32000092 with New Image Landscape Company to increase the spending authority by \$150,000 for a total not to exceed \$200,000 and to extend the contract term an additional two year to November 30, 2023 for on-call landscaping services.
Financial Implications: Various Funds - \$150,000
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 69,957–N.S.

Council Consent Items

11. **Resolution in Support of Ending Qualified Immunity Act**
From: Councilmember Taplin (Author), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution in Support of the Ending Qualified Immunity Act by Rep. Ayanna Pressley (D-Mass.) and Sen. Ed Markey (D-Mass) and send copy of resolution to the office of Rep. Barbara Lee (CA-13).
Financial Implications: None
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
Action: Councilmembers Wengraf and Harrison added as co-sponsors. Adopted Resolution No. 69,958–N.S.

Action Calendar – New Business

12. Endorse All Home CA Regional Action Plan on Homelessness
From: Mayor Arreguin (Author), Councilmember Hahn (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)

Recommendation:

1. Receive a presentation from All Home CA, a regional collective impact partnership, on their Regional Action Plan on homelessness.
2. Endorse the All Home CA Regional Action Plan and the 1-2-4 framework to support ending homelessness in the San Francisco Bay Area, with a goal of a 75% reduction by 2024.
3. Refer to the City Manager to utilize the assistance of All Home to analyze the City of Berkeley’s current homelessness expenditures and programs and explore recalibrating and prioritizing investments to align with the 1-2-4 RAP framework. The City Manager should return to the City Council and the Homeless Services Panel of Experts with a report on the findings of this analysis.

Financial Implications: See report

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

Action: 8 speakers. Councilmember Bartlett added as a co-sponsor. M/S/C (Arreguin/Wengraf) to adopt recommendations #2 and #3.

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

Councilmember Bartlett absent 10:00 p.m. – 10:12 p.m.

Recess 10:02 p.m. – 10:12 p.m.

13. Referral Response: General Plan Re-Designation and Zoning Map Amendment of Parcels Located at 1709 Alcatraz Avenue, 3404 King Street, 3244 Ellis Street, 1717 Alcatraz Avenue, and 2024 Ashby Avenue

From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion:

1. Adopt first reading of an Ordinance rezoning five parcels located at 1709 Alcatraz Avenue (APN 052-1533-001-03), 3404 King Street (APN 052-1435-001-02), 3244 Ellis Street (APN 052-1533-005-00), 1717 Alcatraz Avenue (APN 052-1533-006-00) and 2024 Ashby Avenue (APN 053-1592-022-00) to Commercial – Adeline Corridor District (C-AC), and
2. Adopt a Resolution changing the General Plan designation of the five parcels to Adeline Corridor Mixed Use and to revise the boundaries of the Adeline Corridor Specific Plan Area to include the five parcels.

Financial Implications: None

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

Public Testimony: The Mayor opened the public hearing. 3 speakers.

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

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

Action: M/S/C (Arreguin/Hahn) to:

1. Adopt first reading of Ordinance No. 7,780-N.S. Second reading scheduled for Tuesday, July 13, 2021.
2. Adopted Resolution No. 69,959–N.S.

Mayor Arreguin, Councilmembers Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Action Calendar – Public Hearings

- 14. Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04**
From: City Manager
Recommendation: Conduct a public hearing and, upon conclusion, adopt the first reading of a local Accessory Dwelling Unit (ADU) Ordinance [Berkeley Municipal Code (BMC) Chapter 23C.24] and amendments to relevant Definitions [BMC Chapter 23F.04] in the Zoning Ordinance.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400
Action: Public hearing continued to September 28, 2021.
- 15. Adopt a Resolution Updating City of Berkeley Street Maintenance and Rehabilitation Policy** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee) (Continued from the June 1, 2021 meeting) (Item contains Supplemental Material)*
From: Councilmember Harrison (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Taplin (Co-Sponsor)
Recommendation:
1. Adopt a Resolution updating the City's Street Maintenance and Rehabilitation Policy dated June 1, 2021.
2. Refer the exploration of potential bonding and funding opportunities for improving the Paving Condition Index (PCI) of streets and creating a Paving Master Plan back to the Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Committee for further review.
Policy Committee Recommendation: To move the Public Works supplemental item "City of Berkeley Street Maintenance and Rehabilitation Policy to Council" with a positive recommendation including amendments made during the meeting today, and ask Council to refer the exploration of potential bonding and funding opportunities for improving the PCI of streets and creating a Paving Master Plan back to the FITES Committee for further review.
Financial Implications: Staff time
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
Action: Item 15 referred to the Agenda & Rules Committee for future scheduling with the Five-Year Paving Plan.

Action Calendar

- 16. General Plan and Housing Element Annual Progress Report (APR)**
From: City Manager
Recommendation: Review and accept the 2020 General Plan Annual Progress Report (APR) and 2020 Housing Element APR, which were submitted to the State of California's Department of Housing and Community Development (HCD) and the Governor's Office of Planning and Research (OPR) on April 1, 2021.
Financial Implications: None
 Contact: Jordan Klein, Planning and Development, (510) 981-7400
- Action:** M/S/C (Arreguin/Robinson) to suspend the rules and extend the meeting to 11:15 p.m.
Vote: Ayes – Kesarwani, Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Bartlett.
- Action:** 3 speakers. Presentation made and discussion held. M/S/C (Arreguin/Harrison) to review and accept the 2020 General Plan Annual Progress Report (APR) and 2020 Housing Element APR.
Vote: Ayes – Kesarwani, Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Bartlett.
- 17. Amending BMC Section 14.56.070 for 3-Ton Commercial Truck Weight Limit on Tenth Street, Ninth Street, Eighth Street, and Seventh Street**
From: Councilmember Taplin (Author)
Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 14.56.070 to add 3-ton commercial truck weight limits on Tenth Street between University Avenue and Dwight Way, Ninth Street between University Avenue and Dwight Way, Eighth Street between University Avenue and Dwight Way, and Seventh Street between University Avenue and Dwight Way.
Financial Implications: See report
 Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
Action: Moved to consent Calendar. Adopted first reading of Ordinance No. 7,781-N.S as revised in Supplemental Communications Packet #1. Second reading scheduled for July 27, 2021.
- 18. Police Accountability Board – Appointment of Members (Continued from June 29, 2021)**
From: City Manager
Recommendation: Adopt a Resolution appointing nine members to the Police Accountability Board nominated by the Mayor and City Councilmembers, and appointing one alternate member. *(Note: Appointment of the alternate member is continued from the June 1, 2021 meeting.)*
Financial Implications: See report
 Contact: Mark Numainville, City Clerk, (510) 981-6900
Action: Moved to Consent Calendar to adopt Resolution No. 69,960-N.S. to appoint Elisa Batista as the alternate member on the Police Accountability Board.

Action Calendar – Public Hearings

Information Reports

19. **Animal Care Commission 2021/2022 Work Plan**
From: City Manager
Contact: Paul Buddenhagen, City Manager's Office, (510) 981-7000
Action: Received and filed.
20. **Commission on Disability Fiscal Year 2021-2022 Work Plan**
From: Commission on Disability
Contact: Dominika Bednarska, Commission Secretary, (510) 981-6300
Action: Received and filed.
21. **Fiscal Year 2022 Sugar-Sweetened Beverage Product Panel of Experts Commission Work Plan**
From: Sugar Sweetened Beverage Product Panel of Experts
Contact: Dechen Tsering, Commission Secretary, (510) 981-5300
Action: Received and filed.

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

Adjournment

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

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

Councilmember Droste absent 11:10 p.m. – 11:12 p.m.

Adjourned at 11:12 p.m.

I hereby certify that the foregoing is a true and correct record of the regular session meeting held on July 13, 2021.

Mark Numainville
City Clerk

Communications

TOD (Transit-Orientated Development)

1. Vicki Sommer (3)
2. Toni Casal
3. David Brandon
4. taptango@ (2)

5. Michai Freeman
6. Eileen Hughes

TOPA (Tenants Opportunity to Purchase Act)

7. Andrea Altschuler
8. William Goodwin
9. Chimey Lee
10. River Bradley
11. Katharine Bierce
12. Larisa Cummings
13. Steven Tupper
14. Jeannie Llewellyn

Homelessness – Encampments - Outreach

15. Eric Friedman
16. Homeless Action Coalition
17. David Lerman
18. Geoff Lomax
19. Wende Micco

Support Housing as a Human Right

20. Sam Warren
21. Julia Cato

Berkeley Marina - Pier

22. Nicholas Waton, on behalf of the Cal Sailing Club
23. Todd Jersey

Street Intersection of Dwight Way and California Street

24. Joann Brumfield

Step-Up Housing on University Avenue

25. Patrick Kennedy

Police Accountability Board & Police Related

26. Racial and Criminal Justice Reform Group
27. Eric Friedman

Rent Board

28. Jerry Berkman
29. Barbara Gilbert

Berkeley Asphalt

30. Christopher Kroll

Re-Opening Berkeley

31. Mark Chekal

Commission Reorganization

32. Councilmember Harrison

SB 9 – Housing Development

33. Mary Rose

34. Christopher Kroll

35. Joel Millar

Skate Park

36. Tine Munson, Sean O’Loughlin, Mara Mahmood, Lorenzo Lewis and Dandy Harris

37. Tony Benado, City Clerk’s Office

SCA 5 – Voting Rights of Student Members of the University of California

38. Emily Pekar

Everyday is Black Event

39. Eileen Joyce

Backpack Donation for BUSD Students

40. Nabatah Ahmed, on behalf of the Office of Family Engagement and Equity

Measure P – Transfer Tax

41. Barbara Gilbert

Star Alliance

42. Peter DuMont (2)

Juneteenth Closures in Berkeley

43. Sabina McMurty

FAA Proposal Reroute Commercial Air Traffic Reply

44. Raquel Girvin, Regional Administrator for the FAA

Heroine Needle Van at Hearst and San Pablo

45. Erin Mahoney

EBCE (East Bay Community Energy) Renewable

46. Jane Stromberg

Fix Your Walkways and Roads

47. Dave Mandel

City of Mountain View’s Plant-Based Eating Series

48. Nilang Gor

UC Berkeley's 2036-2037 Proposed Long Range Development Plan

49. Law Offices of Veneruso & Moncharsh

50. Harald Leventhal

1921 Walnut Street Tenants

51. Natalie Logusch (2)

Mental Health and Addiction Resources

52. Linda Press Wulf

Public Safety in Parks and Schools

53. Joanna Petrone

Volunteering at Grayson

54. Eric Friedman

URL's Only

55. Russbumper (8)

Supplemental Communications and Reports 1

Item #2: DY 2022 Annual Appropriations Ordinance

56. Peter Kuhn

Item #14: Response to Short Erm Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04

57. Kathleen Lopes

58. Lisa and Tim Goodman

59. Jonathan Bailey

60. George Buffington

61. Debra Sanderson & Kathy Crandall, Co-chairs, ADU Task Force

62. Jane Lenoir

63. Stan Momtchev

64. Loni Gray

Item #17: Amending BMC Section 14.56.070 for 3-Ton Commercial Truck Weight Limit on Tenth Street, Ninth Street, Eighth Street and Seventh Street

65. Revised material, submitted by Councilmember Taplin

Supplemental Communications and Reports 2

Item #14: Response to Short Erm Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04

66. Sara Hartley

67. George Porter

68. TM Scruggs

69. Susan Chainey

70. Susan Nunes Fadley
71. Peter Christy
72. Susan Morris
73. Genevieve Hoffman
74. Cynthia Larson
75. Jerry Skrainar
76. Beth Feingold
77. Enid Camps and Alan Miller
78. Debra Sanderson (2)
79. Jo Ann Driscoll
80. Phyllis Olin
81. Eric Arens
82. Tim Ryan
83. Bill and Judy Hein
84. Lois Brubeck
85. David Thill
86. Mike Trott
87. John McCarthy
88. Jan Knecht
89. Paku Khan
90. Megan Hall
91. D. Resek
92. Penny Barron
93. Ednah Beth Friedman
94. Paul Teicholz
95. Brian Gilbane
96. Robert Hester
97. Karen Lou
98. Jeff Robinson
99. Mark and Linda Fong
100. Reva and Elsa Tranter
101. John Arthur
102. Larry Hyman
103. Jeanette and Jim Cottle
104. Cat Zavis
105. George Porter
106. Fredica Drotos
107. Steven Segal
108. Theo Posselt
109. Jean Holmes
110. Joan Killeen
111. John Gilbert
112. John Damonte
113. John and Nancy Lawrence
114. Sue von Baeyer
115. John Bischoff

116. Nancy Rader
117. Barryett Enge
118. Ryan O'Connell
119. Steven Chainey
120. Katie Johnson
121. Stasha Vlasuk
122. Leah Isaacson
123. Michael McGowan
124. Carol Wolf
125. Robert Breuer
126. 103 similarly-worded letters (Postpone this item until the Fall)

Supplemental Communications and Reports 3

Item #11: Resolution in Support of Ending Qualified Immunity Act

127. Latinos Unidos de Berkeley

Item #12: Endorse All Home CA Regional Action Plan on Homelessness

128. Presentation, submitted by Mayor Arreguin

Item #13: Referral Response: General Plan Re-Designation and Zoning Map Amendment of Parcels Located at 1709 Alcatraz Avenue, 3404 King Street, 3244 Ellis Street, 1717 Alcatraz Avenue and 2024 Ashby Avenue

129. Presentation, submitted by Planning

Item #14: Response to Short Erm Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04

130. Deborah Binder
131. Michael Frantz
132. John Benson
133. Nancy Gillette
134. Bryce Nesbitt
135. Evan Kenward
136. Irpope@
137. Susan Chainey
138. David Johnson
139. Oren Leiman
140. Dalia Nagel
141. Cindy Rosenthal
142. Michael Gardner
143. Mary Ann Wenger
144. Gary Croner
145. Sue Martin
146. Deb Trillia
147. Todd Darling
148. Ellen Pasternack

- 149. Dylan Casey, on behalf of California Renters Legal Advocacy and Education Fund
- 150. Milton McClaskey
- 151. Chimey Lee (3)
- 152. George Porter
- 153. Bill Pottinger
- 154. Kathleen McGuire
- 155. Helen Finkelstein
- 156. Meghan O'Connell
- 157. James Mattson
- 158. 36 similarly-worded letters (Postpone this item until the Fall)

Item #16: General Plan and Housing Element Annual Progress Report (APR)

- 159. Presentation, submitted by Planning

Item #18: Police Accountability Board – Appointment of Members

- 160. Elisa Batista
- 161. Elliot Halpern, et al

Miscellaneous

- 162. Thomas Lord

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

WEDNESDAY, JULY 14, 2021

3:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81700770490>. 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: 817 0077 0490. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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

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

Preliminary Matters

Roll Call: 3:03 p.m.

Present: Kesarwani, Hahn, Robinson, Droste, Arreguin

Absent: Taplin, Bartlett, Harrison, Wengraf

Public Comment - 60 speakers.

Councilmember Bartlett present at 3:08 p.m.

Council member Taplin present at 3:10 p.m.

Councilmember Harrison present at 3:20 p.m.

Councilmember Wengraf present at 6:23 p.m.

CLOSED SESSION:

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

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

- a. WCAB Case Numbers: #ADJ1556675 and ADJ10831595

Action: M/S/C(Arreguin/Robinson) to approve a settlement by Compromise and Release with a release of future medical care, as to a workers' compensation matters, WCAB Case #ADJ11556675 and ADJ10831595.

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

2. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6

Negotiators: Dee Williams-Ridley, City Manager, Paul Buddenhagen, Deputy City Manager, David White, Deputy City Manager, LaTanya Bellow, Human Resources Director, Dania Torres-Wong, Chief Labor Negotiator, Burke Dunphy, Labor Negotiator, Jon Holtzman, Labor Negotiator, Jen Louis, Interim Chief of Police, Abe Roman, Interim Fire Chief.

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

Action: No reportable action.

OPEN SESSION:

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

City Council met in closed session on July 14, 2021 Pursuant to Government Code Section 54956.9(d)(2) and provided direction to outside counsel and approved a settlement by Compromise and Release with a release of future medical care, as to a workers' compensation matters, WCAB Case #ADJ11556675 and ADJ10831595.

Adjournment

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

Vote: All Ayes.

Adjourned at 6:45 p.m.

This is to certify that the foregoing is a true and correct record of the closed session meeting on July 14, 2021.

April Richardson, Assistant City Clerk

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

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

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/89932150811>. 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: 899 3215 0811. 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: 4:02 p.m.

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

Absent: Kesarwani, Taplin, Bartlett

Councilmember Taplin present at 4:03 p.m.

Councilmember Bartlett present at 4:03 p.m.

Councilmember Kesarwani present at 4:05 p.m.

Consent Calendar

Public Comment on Consent Calendar Item Only: 1 speaker.

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

Vote: All Ayes.

1. **Memorandum Agreement: International Brotherhood of Electrical Workers Local 1245**
From: City Manager
Recommendation: Adopt two Resolutions:
 1. Revising Resolution No. 69,927-N.S that adopted successor two-year Memorandum Agreement with the International Brotherhood of Electrical Workers Local 1245 (hereinafter referred to as the "Union") with a term of June 28, 2020 through June 30, 2022, authorizing the City Manager to execute and implement the revised terms and conditions of employment set forth in the Memorandum Agreement; and
 2. Approving a new salary resolution for Representation Unit C that implement the new salary levels negotiated in the new labor agreement and rescinding Resolution No. 68,671-N.S.**Financial Implications:** See report
 Contact: LaTanya Bellow, Human Resources, (510) 981-6800
Action: Adopted Resolution No. 69,961–N.S. (Agreement) and Resolution No. 69,962–N.S. (Salary)

Consent Calendar

2. **Memorandum Agreement: Service Employees International Union Local 1021 Maintenance and Clerical Chapters**
From: City Manager
Recommendation: Adopt two Resolutions:
1. Approving a new three-year Memorandum Agreement with the Service Employees International Union Local 1021 Maintenance and Clerical Chapters with a term of June 27, 2021 through June 26, 2024, and authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the new labor agreement; and
 2. Approving a new salary resolution for Representation Units D, J, K-1, and K-2 that implement the new salary levels negotiated in the Memorandum Agreement and rescinding Resolution No. 68,533-N.S.
- Financial Implications:** See report
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
Action: Adopted Resolution No. 69,963–N.S. (Agreement) and Resolution No. 69,964–N.S. (Salary)
3. **Memorandum of Understanding: Berkeley Police Association**
From: City Manager
Recommendation: Adopt two Resolutions:
1. Approving a new two-year Memorandum of Understanding (MOU) with the Berkeley Police Association which includes cost of living adjustments and market adjustments to two classifications with a term of July 1, 2021 through June 30, 2023 and authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the new MOU and to make non-substantive edits to the format and language of the MOU in alignment with the tentative agreement, and conforming to legal requirements; and
 2. Approving a new Classification and Salary resolution for Representation Units E and F that implement the salary adjustments reflected in the new MOU and rescinding Resolution No. 68,583,-N.S.
- Financial Implications:** See report
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
Action: Adopted Resolution No. 69,965–N.S. (MOU) and Resolution No. 69,966–N.S. (Salary)

Consent Calendar

4. **Unrepresented Employees: Salary Adjustments and Update to Unrepresented Employee Manual**
From: City Manager
Recommendation: Adopt two Resolutions:
1. Approving salary increases for the Unrepresented Employees in Units X-1; X-2; Z-1; Z-2; Z-3; Z-6; and Z-9, for the period July 20, 2021 through June 30, 2024 and rescinding Resolution No. 68,534-N.S. Classification and Salary Resolution; and
2. Adopting as amended the Unrepresented Employee Manual to attach a three (3) year Agreement with terms and conditions with the Unrepresented Employees group with a term of July 20, 2021 to June 30, 2024 that includes a new Payroll Specialty Pay, Salary, Longevity Pay, Recognized Holidays, Employee Contribution Toward Pension, and revisions to Cash-In-Lieu Payments and Public Safety Uniform Allowance for compliance, and rescinding Resolution No. 69,538-N.S.
Financial Implications: See report
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
Action: Adopted Resolution No. 69,967–N.S. (Salary) and Resolution No. 69,968–N.S. (Manual)

Adjournment

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

Vote: All Ayes.

Adjourned at 4:10 p.m.

I hereby certify that the foregoing is a true and correct record of the special session meeting held on July 20, 2021.

Mark Numainville
City Clerk

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

- None

Supplemental Communications and Reports 3

Adjournment

Item #2: Memorandum Agreement: Service Employees International Union Local 1021 Maintenance and Clerical Chapters

1. Barbara Gilbert

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

**Tuesday, July 20, 2021
6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/89932150811>. 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: 899 3215 0811. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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

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

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

Preliminary Matters

Roll Call: 6:04 p.m.

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

Absent: Bartlett

Councilmember Bartlett present at 6:09 p.m.

Consent Calendar

Action: M/S/C (Arreguin/Hahn) to accept supplemental material from Mayor Arreguin and Councilmember Taplin on Item 2; and to accept supplemental material from Councilmember Taplin on Item 2.

Vote: All Ayes.

Public Comment on Consent Calendar Item Only: 0 speakers.

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

Vote: All Ayes.

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

From: City Manager

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

Financial Implications: See report

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

Action: Adopted Resolution No. 69,969–N.S.

Worksession

2. **Bayer HealthCare LLC Development Agreement Amendment**

From: City Manager

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

Action: 20 speakers. Presentation made and discussion held. Supplemental material provided by Councilmember Taplin and Mayor Arreguin.

Recess 8:28 p.m. – 8:38 p.m.

3. Measure FF and Fire Prevention

From: City Manager

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

Action: 2 speakers. Presentation made and discussion held.

Adjournment

Action: M/S/C (Hahn/Bartlett) to adjourn the meeting.

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

Adjourned at 10:04 p.m.

I hereby certify that the foregoing is a true and correct record of the special session meeting held on July 20, 2021.

Mark Numainville
City Clerk

Communications

Item #2. Bayer HealthCare LLC Development Agreement Amendment

1. Dana Perls, on behalf of the Friends of the Earth U.S.

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

Item #2: Bayer HealthCare LLC Development Agreement Amendment

2. Supplemental material, submitted by Councilmember Taplin
3. Ali Kashani, on behalf of MPI Homes
4. Maryann O'Sullivan

Supplemental Communications and Reports 3

Item #2: Bayer HealthCare LLC Development Agreement Amendment

5. Supplemental material, submitted by Councilmember Taplin
6. Supplemental material, submitted by Mayor Arreguin
7. Presentation, submitted by Bayer
8. Presentation, submitted by Planning
9. Ana Vasudeo
10. Deborah Bookstein

Item #3: Measure FF and Fire Prevention

11. Presentation, submitted by Fire

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

TUESDAY, JULY 27, 2021

2:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/82584536795>. 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: 825 8453 6795. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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

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

Preliminary Matters

Roll Call: 2:02 p.m.

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

Absent: Bartlett, Droste

Councilmember Bartlett present at 2:08 p.m.

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

CLOSED SESSION:

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

1. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6

Negotiators: Dee Williams-Ridley, City Manager, Paul Buddenhagen, Deputy City Manager, David White, Deputy City Manager, LaTanya Bellow, Human Resources Director, Dania Torres-Wong, Chief Labor Negotiator, Burke Dunphy, Labor Negotiator, Jon Holtzman, Labor Negotiator, Jen Louis, Interim Chief of Police, Abe Roman, Interim Fire Chief.

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

Action: No reportable action taken.

OPEN SESSION:

No reportable action taken.

Adjournment

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

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

Councilmember Kesarwani absent at 2:38 p.m.

Adjourned at 2:42 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on July 27, 2021.

Mark Numainville
City Clerk

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

**Tuesday, July 27, 2021
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 Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81818068814>. 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: 818 1806 8814. 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: 4:03 p.m.

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

Absent: Taplin, Bartlett, Droste

Councilmember Bartlett present at 4:06 p.m.

Councilmember Taplin present at 4:15 p.m.

Action Calendar – Public Hearings

1. ZAB Appeal: 770 Page Street, Use Permit #ZP2020-0051

From: City Manager

Recommendation: Conduct a public hearing, and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2020-0051 to demolish an existing single-family dwelling unit and construct four detached, three-story, approximately 1,500-square-foot dwelling units on a 5,532-square-foot lot in the Mixed Use-Residential Zoning District (MU-R), and dismiss the appeal.

Financial Implications: None

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

Public Testimony: The Mayor opened the public hearing. 3 speakers.

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

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

Action: M/S/C (Arreguin/Kesarwani) to adopt Resolution No. 69,970–N.S.

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

Adjournment

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

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

Adjourned at 4:52 p.m.

I hereby certify that the foregoing is a true and correct record of the special session meeting held on July 27, 2021.

Mark Numainville
City Clerk

Communications

Item #1: ZAB Appeal: 770 Page Street, Use Permit #ZP2020-0051

1. Matthew Wadlund, on behalf of Wadlund+ Design Studio
2. Jessica Taylor, on behalf of Greenfire Law

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

- None

Supplemental Communications and Reports 3

Item #1: ZAB Appeal: 770 Page Street, Use Permit #ZP2020-0051

3. Barbara Gilbert

MINUTES
BERKELEY CITY COUNCIL MEETING
Tuesday, July 27, 2021
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81818068814>. 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: 818 1806 8814. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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

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

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

Preliminary Matters

Roll Call: 6:03 p.m.

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

Absent: Kesarwani, Droste

Councilmember Kesarwani present at 6:07 p.m.

Reports from Closed Session

1. The City Council met in closed session on July 13, 2021 pursuant to Government Code Sections 54956.9(a), 54956.9(d)(1), 54956.9(c) and 54956(d)(4) and took the following action:

The City Council authorizes the Mayor and City Manager to execute the final UC Berkeley-City of Berkeley Settlement Agreement based on the draft language presented in closed session, and modifications incorporated by Council, after the UC Board of Regents has approved the final 2021 Long Range Development Plan (LRDP) and provided that the final, approved 2021 LRDP does not differ substantially from the draft 2021 LRDP published by the University in April 2021. The Council also authorizes the City Attorney to make non-substantive changes to the document prior to.

The University of California Board of Regents approved the proposed settlement agreement on July 22, 2021. Today, July 27th, the final agreement was executed by the Mayor, City Manager, and UC officials. As both parties have now given final approval to the agreement, it is now a reportable action under Government Code Section 54957.1, the Ralph M. Brown Act.

The key terms of the final settlement agreement are as follows, and a copy of the agreement can be provided to any member of the public who requests it and will be posted on the City's website.

KEY TERMS:

Section 3 - FINANCIAL CONSIDERATION: ANNUAL PAYMENT

- The University will make an Annual Payment to the City in the amount of \$4.1 Million a year for city services and campus area projects. The amount of the Annual Payment will increase by 3% compounding each year for the term of the agreement until 2036.
- The Annual Payment shall not eliminate or otherwise supersede ongoing fees for services paid to the City by the University as of June 1, 2021, which may be increased under Section 5.1 of the Agreement. The Annual Payment supersedes and replaces the contributions specified in the 2005 Settlement Agreement annual allocation.

- The City will allocate the Annual Payment as follows, unless otherwise agreed to by the parties during the term of the agreement:
 - \$2.8 million (increased by three percent per year) for fire and other City services;
 - \$1.3 million (increased by three percent per year) for capital projects and other services benefiting residents living within one-half mile of the University's main campus boundaries and the Clark Kerr Campus, including but not limited to a joint BPD-UCPD Telegraph Area Beat (a community-based policing program). Priorities for these projects shall be determined by City and University leaders as specified in Section 3.7 of the agreement.

- For the 2021 Annual Payment, the City will allocate funds as follows:
 - \$920,000 shall be allocated by the City to the City's Housing Trust Fund, in recognition of the demolition of eight rent-controlled units at 1921 Walnut Street for the Anchor House Student Housing Project;¹
 - \$130,000 shall be allocated by the City for a permanent restroom in the Telegraph area;
 - An amount determined through joint planning between the City and the University will be allocated to fund a day-time drop-in/service center in the Telegraph area for the unhoused population;
 - The City shall allocate the remainder of the 2021 Annual Payment as it determines to be appropriate.

- For the 2022 Annual Payment, the City will allocate funds as follows:
 - \$250,000 shall be allocated by the City for Piedmont/Channing traffic circle pedestrian and street lighting improvements;
 - Amount to be determined for wildfire risk management and fuel reduction on UC owned property;
 - The City shall allocate the remainder of the 2022 Annual Payment in compliance with Section 3.4.

- The City will spend not less than 30 percent of the Annual Payment on services and infrastructure that benefit City residents living within one-half mile of the University's main campus boundaries and the Clark Kerr Campus. If the City fails to adhere to this commitment, then the University has the right to terminate this Agreement after providing the City written notice of the City's breach and a reasonable opportunity to cure the breach pursuant to Section 8.5. The Chancellor, Mayor, City Manager and Vice Chancellor for Administration shall meet annually to review the City's proposed list of projects and/or services satisfying the

¹ This amount does not replace or in any way impact any relocation benefits provided by the University to tenants at 1921 Walnut Street.

requirements of this Section. The parties shall use best efforts to reach mutual agreement on the list of expenditures, but the City shall make the allocations of its own expenditures, consistent with the terms of this Agreement. The City will not allocate any portion of the Annual Payment to the development of a new fire station, should the City decide to develop a new fire station during the term of this Agreement.

- The University intends, but is not obligated, to continue to fund the Chancellor's Community Partnership Fund during the term of this Agreement in the amount of approximately \$300,000/year, increased by three (3) percent annually. The University shall provide a summary of these expenditures to the City annually.

Section 4 – COOPERATIVE RELATIONSHIP AND PLANNING REGARDING MATTERS OF MUTUAL CONCERN

- The University and the City will negotiate in good faith to establish within two years of the Effective Date a collaborative planning process for the City to review and comment upon campus capital projects located in the City environs and implementation of sustainable development standards prior to campus approval of such projects.
- The University will continue its practice of typically voluntarily honoring the City's existing zoning standards in the design of projects off the main campus. The University will consult with City staff, the City Council and relevant commissions as well as community members about new projects off of the main campus and respond to any reasonably identified concerns presented during the public process. This consultation shall include, but not be limited to, the following actions:
 - LRDP Projects. While implementing the 2021 LRDP, the University will continue to review and consider the City's adopted planning and zoning documents, including without limitation the Downtown Area Plan (DAP) and the Southside Area Plan (SAP) when making decisions about the location of University facilities off of the main campus, and will use the design guidelines and standards prescribed in the DAP or SAP, as applicable, when designing projects in the respective plan areas to the extent they are consistent with the program for the building.
 - Off-Campus Projects. The University will submit all capital projects off of the main campus with an anticipated value in excess of \$5 million to the City's Planning Director and will either incorporate the City Planning Director's comments into the project or explain in writing its decision not to do so. Additionally, the University will submit all capital projects off of the main campus with a value in excess of \$5 million to the City's 4x6 City/Student/UC committee so that the committee and/or its members may provide comments to the University regarding such projects. When the University determines that it will not implement such projects consistent with the City's adopted planning and

zoning documents, the University will, upon the request of the City's Planning Director, provide a written explanation of the reasons for such decision.

- If campus undergraduate enrollment growth exceeds one percent per year on average over three consecutive years, then the Mayor, City Manager, the Chancellor and the Vice Chancellor for Administration shall meet to discuss the potential physical impacts of enrollment increases on the City and whether any amendments should be made to the terms of this Agreement to address the increase. The City shall present specific data and evidence to illustrate the physical impacts of campus enrollment increases on the City.
- During the term of this Agreement, so long as there is demonstrated need on and in areas adjacent to University, the University will continue to fund a position of a campus social worker to work with the unhoused population who visit People's Park and in the broader Telegraph area, inclusive of Willard Park.
- The City and University are parties to a Memorandum of Understanding (City of Berkeley Resolution No. 51,172-N.S.) regarding the development of the Clark Kerr Campus dated April 23, 1982 (the "MOU"). The terms of the MOU are not altered by this Agreement, though they are generally described for reference in this Section and its subsections. During the remaining term of the MOU, the University and the City will comply with the MOU by working cooperatively in planning and development of projects on the Clark Kerr Campus that would be constructed prior to the expiration of the time term of the MOU in 2032. The City and the University will also consult and work cooperatively regarding potential expanded public access to recreational facilities on the Clark Kerr Campus.

The University reaffirms its commitment to work in partnership with the City as prescribed in the MOU.

With regard to any development planned to be undertaken by the University after the expiration of the MOU in 2032, but during the time term of this Agreement, the City will take a lead role in soliciting community input along with the University for capital renovation and capital projects (demolition, remodeling, retrofit and new construction) at the Clark Kerr Campus. The City and University will work cooperatively to develop any operational mitigations, if necessary, regarding capital renovation and capital Projects at the Clerk Kerr Campus, and will consult and work cooperatively with the City regarding public access to recreational facilities on the Clark Kerr Campus.

- The University's leadership will work with the City's elected officials and staff to study the impacts and plan for the potential closure of Alta Bates Hospital and its emergency room in Berkeley, and identify alternatives to continue emergency and acute care for the University and city population.

- The University will cooperate in good faith with City efforts to collect and remit the City Parking Space Rental Tax from University-owned lots. The University will make best efforts to collect the tax from users by the date that the City begins collecting the tax from City-owned lots and demands collection by BART. The City acknowledges that the administrative processes between the City and the University related to collection of the tax must be established and that such establishment could preclude collection of the tax on behalf of the City prior to January 1, 2022.
- The University shall require its commercial tenants in buildings leased to non-University parties by the University (when such buildings are not on the main campus or the Clark Kerr Campus) for the sole purpose of generating revenue (as opposed to carrying out the program of the University) to obtain City permits and pay City impact fees. The University shall determine in good faith whether a space is leased to carry out its programs or exclusively to generate income. Nothing in this Section prevents the City from disagreeing with the University's determination that a commercial tenancy is in furtherance of the University's program.
- The University and the City will collaborate in good faith to reach an agreement regarding the University's master leasing of off-campus residential buildings, and will meet and confer in an effort to reach such an agreement within one year of the Effective Date. The University and City contemplate that such an agreement will set a date by which the University would reduce or eliminate its use of master leasing of residential facilities, excepting only temporary leasing necessary to create surge space during the renovation or construction of campus housing facilities. This Section does not require either party to enter into such an agreement, but the parties shall use their good faith best efforts to do so.
- The University commits in concept to assisting the City in its development of a new fire station by contributing land off of the main campus owned by the University as of the Effective Date and suitable for the development of a City fire station intended to serve the City and campus communities. The City and the University will engage in cooperative joint planning for a potential fire station in a location identified through such planning. This provision does not constitute a commitment by either party to entitle or fund a future fire station nor does this provision evidence that the City or the University have determined such a fire station to be necessary at this time.
- The University shall consider executing a ground lease to Resources for Community Development (or a similar private nonprofit housing developer) land at People's Park for the construction of a housing project to provide affordable and permanent supportive housing for the homeless. The University and City agree that the campus will entitle the project in order to enable the non-profit developer to fund and construct the project, and will work with the City and non-profit developer to support state and outside funding to complete the project. The obligations of the University regarding the supportive housing project are contingent upon compliance

with the California Environmental Quality Act and the approval of the design of the project by the Board of Regents, which is presently scheduled to consider the project in September of 2021.

- Explore relocation and the cost of relocating the eight-unit building at 1921 Walnut Street, if it is technically feasible, to a site to be determined, prior to the commencement of construction of the Anchor House Student Housing Project, so long as moving the building does not result in increased time to the Anchor House Student Housing Project and/or the University, or delay the construction of the Anchor House Student Housing Project.

Section 6 – CURRENT AND FUTURE LITIGATION

- The City agrees to promptly dismiss the Upper Hearst Project lawsuit with prejudice and will represent to any court in the remaining Save Berkeley's Neighborhoods lawsuit challenging the Upper Hearst Project and SEIR (Alameda County Superior Court Case No. RG19022887) that the City does not oppose the Upper Hearst Project or the SEIR.
- The City agrees to promptly dismiss the City as a party with prejudice in the Clark Kerr Covenants Lawsuit (Alameda County Superior Court Case No. RG19006256) and will represent to any court in the remaining Save Berkeley's Neighborhoods lawsuit challenging the Clark Kerr Covenants that the City has dismissed or intends to dismiss all causes of action in the lawsuit with prejudice.
- 2021 LRDP, People's Park Housing Project, and Anchor House Student Housing Projects. The City agrees not to file any lawsuits, pursue any legal challenges, or directly or indirectly support any litigation (including without limitation through funding or by encouraging any litigation by an organization) that opposes: (1) the 2021 LRDP and 2021 LRDP EIR (2) the Anchor House Student Housing Project, (3) the People's Park Housing Project, including without limitation the permanent supportive housing component; provided, however, the City retains all rights to challenge the Anchor House Student Housing Project and the People's Park Housing Project if the University materially changes the scope of such projects in such a way that would cause new significant impacts or substantially increase the severity of impacts previously found to be significant.
- Future Campus Capital Projects, Off-Campus Housing Projects & Enrollment Decisions. Unless the City terminates this Agreement pursuant to the termination rights described in Section 7.3 or 7.4 below, while the Agreement is in effect, the City will not file any lawsuit, pursue any legal challenges, or directly or indirectly support any litigation (including without limitation through funding or by encouraging any litigation by an organization) under CEQA or any other theory to challenge the University's decision to approve: (1) a campus capital project on the University main campus or the Clark Kerr Campus ("Campus Capital Project"); (2) any other campus capital project off of the University main campus that consists of more than

80 percent assignable square footage of housing (“Off-Campus Housing Project”); or (3) any enrollment decision made by the State of California or the University (“Enrollment Decision”). Unless the City terminates this Agreement pursuant to the termination rights described in Section 7.4 described below, the City will also not file any CEQA action challenging an enrollment increase.

Section 7 – TERMINATION

- The Agreement shall become effective upon execution of the undersigned, and shall supersede, replace, and terminate the 2005 Settlement Agreement in its entirety. Any monetary payments, if any, by the University to the City that would have been due on July 1, 2021 under the 2005 Settlement Agreement are replaced in full by the payment called for on July 1, 2021, in Section 3.1 of this Agreement. This Agreement shall terminate on June 30, 2037 (“Expiration Date”), or at such earlier date as set forth in this Agreement.
 - Upon prior written notice to the University, the City may terminate this Agreement if the City decides to file a lawsuit challenging a Campus Capital Project or Off-Campus Housing Project, as defined in Section 6.4. If the City desires to file such a lawsuit, then the City may terminate this Agreement and permanently forego entitlement to future Annual Payments under this Agreement. In the event of such termination, in such litigation or in any litigation filed by the City regarding a specific proposed capital project that is tiered from the 2021 LRDP EIR, the City shall not seek any compensation or damages related to enrollment increases at the University so long as the University does not increase campus undergraduate enrollment by an amount that exceeds one percent annual enrollment growth, compounded annually, compared to the 2020-2021 undergraduate enrollment level, at the time such litigation is filed.
 - Upon prior written notice to the University, the City may terminate this Agreement (which shall also permanently terminate the University’s obligation to make Annual Payments pursuant to Section 3.1 of this Agreement) if the University decides to increase campus undergraduate enrollment by an amount that exceeds one percent annual enrollment growth, compounded annually, compared to the 2020-2021 undergraduate enrollment level. In the event of such termination, the University and the City will have no further obligations under this Agreement except that the City’s obligation to not challenge a decision to approve the Upper Hearst Project, the 2021 LRDP, the Anchor House Student Housing Project and the People’s Park Housing Project expressly survives such termination.
2. City Council met in closed session on July 14, 2021 Pursuant to Government Code Section 54956.9(d)(2) and provided direction to outside counsel and approved a settlement by Compromise and Release with a release of future medical care, as to a workers’ compensation matters, WCAB Case #ADJ11556675 and ADJ10831595.

Ceremonial Matters:

1. Recognition of June 3 as Partition Remembrance Day

2. Adjourned the Meeting in Memory of Eli Kane, Recent BHS Graduate
3. Adjourned the Meeting in Memory of the victim of the recent traffic fatality on Ashby Avenue
4. Recognition of the 31st Anniversary of the signing of the Americans with Disabilities Act

City Manager Comments:

The City Manager provided a detailed update on the Reimagining Public Safety process.

Public Comment on Non-Agenda Matters: 9 speakers

Consent Calendar

Action: M/S/C (Arreguin/Harrison) to accept an urgency item from Councilmember Robinson pursuant to Government Code Section 54954.2(b)(2) entitled Support of AB 9: Wildfire Preparedness and Mitigation.

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

Action: M/S/C (Arreguin/Hahn) to accept an urgency item from Councilmember Robinson pursuant to Government Code Section 54954.2(b)(2) entitled Support for SB 290

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

Action: M/S/C (Arreguin/Robinson) to accept an urgency item from Councilmember Hahn pursuant to Government Code Section 54954.2(b)(2) Authorization to East Bay Community Foundation to disburse \$165,000 from The Berkeley COVID Relief Fund to BANANAS to distribute to Berkeley Childcare Providers most impacted by COVID-19

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

Public Comment on Consent Calendar and Information Items Only: 17 speakers.

Action: M/S/C (Arreguin/Hahn) to accept revised materials from Mayor Arreguin and Councilmember Hahn for Item 22.

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

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

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

Consent Calendar

Urgency Item: Support of AB 9: Wildfire Preparedness and Mitigation

From: Councilmember Robinson (Author)

Recommendation: Send a letter of support to Assemblymember Jim Wood, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Assembly Bill 9, which aims to focus on the state’s community preparedness and mitigation efforts, including assistance to local jurisdictions, by establishing new programs and operational structures within the Department of Conservation and the Office of the State Fire Marshal.

Financial Implications: None

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

Action: Councilmember Hahn added as a co-sponsor. Approved recommendation.

Urgency Item: Support for SB 290

From: Councilmember Robinson (Author)

Recommendation: Send a letter to Senator Nancy Skinner and Assemblymember Buffy Wicks in support of SB 290, which would improve the Density Bonus Lay by further incentivizing the inclusion of low-income student housing in student housing developments, among other changes.

Financial Implication: None

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

Action: Approved recommendation.

Urgency Item: Authorization to East Bay Community Foundation to disburse \$165,000 from The Berkeley COVID Relief Fund to BANANAS to distribute to Berkeley Childcare Providers most impacted by COVID-19

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

Recommendation: Adopt a Resolution directing the East Bay Community Foundation (EBCF) to disburse \$165,000 from the Berkeley Relief Fund to BANANAS for the purpose of providing grants to Berkeley childcare providers: 1. Authorize EBCF to disburse \$165,000 from the Berkeley Relief Fund to BANANAS, with \$150,000 available for grants and \$15,000 to BANANAS to cover administrative and program costs; and 2. Direct BANANAS to identify Berkeley’s most vulnerable licensed in-home childcare providers according to grant criteria and provider terms approved by the City Manager, and grant up to \$10,000 to each qualified provider to be used for purposes related to the provision of childcare.

Grants in excess of \$10,000 or diverging from approved criteria and/or terms shall require written approval of the City Manager, and all grants shall be reported to the City Manager before December 31, 2021

Financial Implications: \$165,000

Contact: Vice Mayor Sophie Hahn, Council District 5, (510) 981-7150.

Action: Councilmember Harrison added as a co-sponsor. Adopted Resolution No. 69,971-N.S.

- Referral Response: General Plan Re-Designation and Zoning Map Amendment of Parcels Located at 1709 Alcatraz Avenue, 3404 King Street, 3244 Ellis Street, 1717 Alcatraz Avenue, and 2024 Ashby Avenue**

From: City Manager

Recommendation: Adopt second reading of Ordinance No. 7,780-N.S. rezoning five parcels located at 1709 Alcatraz Avenue (APN 052-1533-001-03), 3404 King Street (APN 052-1435-001-02), 3244 Ellis Street (APN 052-1533-005-00), 1717 Alcatraz Avenue (APN 052-1533-006-00) and 2024 Ashby Avenue (APN 053-1592-022-00) to

Consent Calendar

- 2. Amending BMC Section 14.56.070 for 3-Ton Commercial Truck Weight Limit on Tenth Street, Ninth Street, Eighth Street, and Seventh Street**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,781-N.S. amending Berkeley Municipal Code (BMC) Section 14.56.070 to add 3-ton commercial truck weight limits on Tenth Street between University Avenue and Dwight Way, Ninth Street between University Avenue and Dwight Way, Eighth Street between University Avenue and Dwight Way, and Seventh Street between University Avenue and Dwight Way.
First Reading Vote: All Ayes
Financial Implications: See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
Action: Adopted second reading of Ordinance No. 7,781–N.S.
- 3. Contract: 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 not to exceed \$163,008 for fitness center memberships for City employees for the period July 1, 2021 through June 30, 2022.
Financial Implications: Various funds - \$163,008
Contact: Rama Murty, Budget Office, (510) 981-7000
Action: Adopted Resolution No. 69,972–N.S.
- 4. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the council meetings of June 1, 2021 (regular), June 3, 2021 (closed), June 10, 2021 (closed), June 15, 2021 (special and regular), June 17, 2021 (closed), June 25, 2021 (closed) and June 29, 2021 (regular).
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
Action: Approved the minutes as submitted.
- 5. Voting Delegates – League of California Cities Annual Conference**
From: City Manager
Recommendation: Designate, by motion, a voting delegate and alternate for the business meeting of the Annual League of California Cities conference to be held on Friday, September 24, 2021, in Sacramento.
Financial Implications: See report
Contact: Mark Numainville, City Clerk, (510) 981-6900
Action: Approved recommendation appointing Councilmember Hahn as the voting delegate and Councilmember Taplin as the alternate.

Consent Calendar

- 6. Contract: Citygate for Fire Department Standards of Coverage Study**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Citygate Associates, LLC (Contractor) to provide a Standards of Response Coverage study for the Berkeley Fire Department (Department) from August 1, 2021 to September 30, 2022, in an amount not to exceed \$125,000 with an option to extend for an additional two years, for a total contract amount not to exceed \$200,000.
Financial Implications: Measure FF - \$200,000
Contact: Abe Roman, Fire, (510) 981-3473
Action: Adopted Resolution No. 69,973–N.S.
- 7. Contract: East Bay Sanctuary Covenant – Trauma Support Services for Latinx/Latinas/Latinos**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute and amend a contract with the East Bay Sanctuary Covenant, funded through State of California Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) monies, for Trauma Support Services for Latinx/Latinas/Latinos, for an initial contract not to exceed \$100,000 through June 30, 2022.
Financial Implications: Mental Health Services Act Fund - \$100,000
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 69,974–N.S.
- 8. Contract No. 052129-1 Amendment: Pacific Center for Human Growth**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment for Contract No. 052129-1 with the Pacific Center for Human Growth for trauma support services for the Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex, Agender, Plus (LGBTQIA+) population, to increase the amount by \$100,000 for a total contract amount not to exceed \$415,150, and to extend the contract through June 30, 2022.
Financial Implications: Mental Health Services Act Fund - \$100,000
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 69,975–N.S.

Consent Calendar

- 9. Contract No. 088999-1 Amendment: Center for Independent Living**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment for Contract No. 088999-1 with the Center for Independent Living for trauma support services for older adults, to increase the amount by \$31,846 for a total contract amount not to exceed \$320,676, and to extend the contract through June 30, 2022.
Financial Implications: Mental Health Services Act Fund - \$31,846
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 69,976–N.S.
- 10. Contract No. 8392B 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 Contract No. 8392B with Innovative Claim 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), to increase the amount by an additional \$616,819, for a total contract amount of \$7,440,430, and extending the period through June 30, 2022.
Financial Implications: Workers’ Compensation Self-Insurance Fund - \$616,819
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
Action: Adopted Resolution No. 69,977–N.S.
- 11. Contract No. 090741-1 Amendment: Bartel Associates, LLC for Actuarial Consulting Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 090741-1 with Bartel Associates, LLC for Actuarial Consulting Services, increasing contract amount by \$95,000 for a revised total contract amount not to exceed \$270,000 through December 31, 2023.
Financial Implications: Various Funds - \$95,000
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
Action: Adopted Resolution No. 69,978–N.S.

Consent Calendar

- 12. Contract: OBS Engineering, Inc. for John Hinkel Park Amphitheater Area Improvements Project**
From: City Manager
Recommendation: Adopt a Resolution: 1. Approving the plans and specifications for the John Hinkel Park Amphitheater Area Improvements Project, Specification No. 21-11426-C; 2. Accepting the bid of the lowest responsive and responsible bidder, OBS Engineering, Inc.; and 3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with OBS Engineering, Inc. for the John Hinkel Park Amphitheater Area Renovations Project at 41 San Diego Road, in an amount not to exceed \$1,119,580 which includes a contract amount of \$1,017,800 and a 10% contingency in the amount of \$101,780.
Financial Implications: Various Funds - \$1,119,580
 Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 69,979–N.S. as revised in Supplemental Communications Packet #2 to reject the bid protest.
- 13. Contract No. 31900178 Amendment: Siegel & Strain Architects for Design and Construction Administration Services for the Cazadero Camp Jensen Dormitory Replacement Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 31900178 with Siegel & Strain Architects for design and construction support services for the Cazadero Camp Jensen Dormitory Replacement Project, increasing the contract by \$120,000 for a total amount not to exceed \$278,000.
Financial Implications: Camps Fund - \$120,000
 Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 69,980–N.S.
- 14. Contract No. 32100146 Amendment: Bellingham Inc. for Additional Dock Repairs at the Berkeley Marina**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32100146 with Bellingham Inc. to repair additional docks at the Berkeley Marina by increasing the construction contract amount by \$40,000 for a not-to-exceed amount of \$280,000.
Financial Implications: Marina Fund - \$40,000
 Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 69,981–N.S.

Consent Calendar

- 15. Contract No. 32100102 Amendment: DMR Builders for the 125/127 University Avenue Tenant Improvement Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32100102 with DMR Builders to complete renovation and facility upgrade work at the 125/127 University Avenue building, increasing the amount of the contract by \$146,000, for a new amount not to exceed of \$439,000.
Financial Implications: Parking Meter Fund - \$146,000
 Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 69,982–N.S.
- 16. Dana Complete Street Pilot Project by AC Transit**
From: City Manager
Recommendation: Adopt a Resolution: 1) approving the Dana Complete Street Pilot Project, including a conceptual design repurposing an existing traffic lane to install a two-way cycle track, construction of a boarding island for bus passengers, and specified changes to parking and loading zones, as necessary, and directing the City Manager to direct staff to work with Alameda-Contra Costa County Transit District (AC Transit) in developing the detailed engineering design of the project; 2) authorizing the City Manager to direct staff to grant permits for construction activities within City Right-of-Way, contingent on Public Works staff approval of final construction drawings and specifications from AC Transit, and directing the City Manager to direct staff to work with AC Transit on the evaluation phase of the project following construction.
Financial Implications: Staff time
 Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 69,983–N.S.
- 17. Creation of Climate Equity Action Fund**
From: Energy Commission
Recommendation: The Energy Commission recommends that City Council create a Climate Equity Action Fund, designate a process for making funding decisions, and appropriate \$600,000 to create a pilot test.
Financial Implications: See report
 Contact: Billi Romain, Commission Secretary, (510) 981-7400
Action: Approved recommendation as revised in Supplemental Communications Packet #1 by Councilmember Harrison to adopt Resolution No. 69,984-N.S. with further amendments to the be it resolved clause made at the meeting as follows:

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager establish a Climate Equity Action Fund as a repository of city, regional, state, and federal funds related to climate equity for income-qualified households with a preference for households at or below 50% of Area Median Income.

Consent Calendar

- 18. Request for Two Additional Meetings for the Commission**
From: Homeless Services Panel of Experts
Recommendation: That Council grant the Homeless Services Panel of Experts two additional meetings for the calendar year, 2021.
Financial Implications: See report
Contact: Josh Jacobs, Commission Secretary, (510) 981-5400
Action: Approved the City Manager recommendation. Additional meetings not approved.

Council Consent Items

- 19. Contract No. 32000196 Amendment: Szabo & Associates for Communications Consulting Services**
From: Mayor Arreguin (Author)
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32000196 with Szabo & Associates for communications consulting services for the Mayor's Office, in the amount of \$78,000, extending the contract to June 30, 2022.
Financial Implications: Mayor's Office Budget - \$78,000
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Adopted Resolution No. 69,985-N.S. as revised in Supplemental Communications Packet #2 by Mayor Arreguin.
- 20. Letter of Support for Senate Bill 379**
From: Councilmember Taplin (Author)
Recommendation: Send a letter of support for Senate Bill 379 to State Senator Scott Wiener (D-SF), State Senator Nancy Skinner (D-Berkeley), Asm. Buffy Wicks (D-Oakland) and Senate President Pro Tempore Toni Atkins (D-San Diego).
Financial Implications: None
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
Action: Councilmember Harrison added as a co-sponsor. Approved recommendation.
- 21. Proclamation: Partition Remembrance Day**
From: Councilmember Bartlett (Author), Mayor Arreguin (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)
Recommendation: That the Berkeley City Council adopts the Partition Remembrance Day Proclamation.
Financial Implications: None
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
Action: Approved recommendation.

Council Consent Items

- 22. Accelerating the City of Berkeley’s transition to Plant-Based Foods**
From: Councilmember Hahn (Author), Mayor Arreguin (Author)
Recommendation: Adopt a Resolution establishing a goal to achieve a 50% decrease in animal-based food products served by the City of Berkeley by 2024, and refer to the City Manager to report to the City Council on progress towards reaching this goal by January 31, 2022.
Financial Implications: See report
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
Action: Adopted Resolution No. 69,986–N.S. as revised in materials submitted at the meeting by Councilmember Hahn and Mayor Arreguin.
- 23. Appointment of Beverly Greene to the Board of Library Trustees**
From: Councilmember Hahn (Author)
Recommendation: Adopt a Resolution appointing Beverly Greene to the Board of Library Trustees (“BOLT”) for a term of four years beginning August 31, 2021.
Financial Implications: None
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
Action: Adopted Resolution No. 69,987–N.S.
- 24. Letter to Senators Feinstein and Padilla in Support of the Restaurant Revitalization Fund Replenishment Act**
From: Councilmember Hahn (Author)
Recommendation: Send a letter, attached, to Senators Feinstein and Padilla in Support of the Restaurant Revitalization Fund Replenishment Act.
Financial Implications: None
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
Action: Approved recommendation.
- 25. Moving Forward to Contract for Municipal Grant-Writing Services**
From: Councilmember Hahn (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Harrison (Co-Sponsor)
Recommendation: Direct the City Manager to move forward to establish needs and select a firm or firms to supplement the City’s grant writing capacity, and provide a budget referral in time to be considered for the November 2021 AAO Update, such that a new firm or firms can be in place by January of 2022.
Financial Implications: See report
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
Action: Approved recommendation.

Council Consent Items

26. **Calling on the U.S. Government to Negotiate the Elimination of Nuclear Weapons**
From: Councilmember Wengraf (Author), Councilmember Hahn (Co-sponsor)
Recommendation: Adopt a Resolution calling on the government of the United States to implement its obligations under international law to negotiate the elimination of nuclear weapons. Send a copy of the resolution to President Biden, Congressmember Barbara Lee, and Senators Dianne Feinstein and Alex Padilla.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
Action: Adopted Resolution No. 69,988–N.S.

Action Calendar

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

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

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

Action Calendar – Public Hearings

27. Updated Fees for the Home Occupations Ordinance

From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt a Resolution amending Resolution No. 67,985-N.S., the Planning Department Fee Schedule, to establish fees for new Home Occupation permit categories.

Financial Implications: See report

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

Public Testimony: The Mayor opened the public hearing. 2 speakers. M/S/C (Arreguin/Hahn) to close the public hearing.

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

Action: M/S/C (Arreguin/Hahn) to adopt Resolution No. 69,989–N.S.

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

Action Calendar – Old Business

28. Objective Standards Recommendations for Density, Design and Shadows

From: Joint Subcommittee for the Implementation of State Housing Laws
(Continued from March 23, 2021. Item contains supplemental material.)

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

Financial Implications: See report

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

Action: 6 speakers. M/S/C (Arreguin/Wengraf) to continue the item to September 14, 2021.

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

29. City Council Rules of Procedure and Order Revisions *(Item re-agendized by Council direction on April 20, 2021 to consider whether to extend the temporary rules in Appendix D.)*

From: City Manager

Recommendation: Adopt a Resolution revising the City Council Rules of Procedure and Order to add temporary rules for the legislative process during the COVID-19 declared emergency; sunset the temporary process to read written comments at meetings; and rescinding any preceding amendatory resolutions.

Financial Implications: None

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

Action: Moved to Consent Calendar. No action taken. Appendix D requirements

Action Calendar – New Business

Information Reports

- 30. Referral Response: Facilitate the Local Implementation of Senate Bill 1413 and Expedite the Development of Teacher and School Employee Housing**
From: City Manager
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Received and filed.
- 31. Annual Report on Landmarks Preservation Commission Actions**
From: Landmarks Preservation Commission
Contact: Fatema Crane, Commission Secretary, (510) 981-7400
Action: Received and filed.

Public Comment – Items Not Listed on the Agenda - 2 speakers.

Adjournment

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

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

Adjourned at 9:09 p.m.

I hereby certify that the foregoing is a true and correct record of the regular session meeting held on July 27, 2021.

Mark Numainville
City Clerk

Communications

Item #14: Dana Complete Street Pilot Project by AC Transit

1. Charles Siegel, Ben Gerhardstein, Karen Parolek for Walk Bike Berkeley

Transit-Oriented Development (TOD) at BART

2. 9 similarly-worded form letters
3. Cindy Shamban
4. Marianne Schulman
5. D.P. Neyhart
6. Laura Klein
7. Larry Orman
8. David Brandon

Appeal 1527 Sacramento – AUP# ZP2020-0034

- 9. Joyce Lewis
- 10. Michele and Micah Liedeker

Grizzly Peak

- 11. Joshua Bloom

Homelessness

- 12. Bob May (2)

Pedestrian Safety

- 13. David Lerman

Assembly Bill 1238 – Response to Letter Dated May 11, 2021 (Item 27)

- 14. State Senator Nancy Skinner

Public Restrooms

- 15. Judy Hunt

Defining Ecocide

- 16. Thomas Lord

Zoning

- 17. Helen Jones

Privatization of Some Public Spaces

- 18. Ann Hawkins

East Bay Community Energy (ECBE)

- 19. ECBE

Community for a Cultural Civic Center

- 20. Ann Harlow

URL's Only

- 21. Russbumber (7)

Supplemental Communications and Reports 1

Item #17: Creation of Climate Equity Action Fund

- 22. Revised material, submitted by Councilmember Harrison

Supplemental Communications and Reports 2

Item #12: Contract: OBS Engineering, Inc. for John Hinkel Park Amphitheater Area Improvement Project

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

Item #16: Dana Complete Street Pilot Project by AC Transit

24. Ryan Lau, on behalf of Alameda-Contra Costa Transit District

Item #19: Contract No. 32000196 Amendment: Szabo & Associates for Communications Consulting Services

25. Supplemental material, submitted by Mayor Arreguin

Supplemental Communications and Reports 3

Item #16: Dana Complete Street Pilot Project by AC Transit

26. Alex Knox, on behalf of the Telegraph Business Improvement District

Item #17: Creation of Climate Equity Action Fund

27. Thomas Lord

Item #22: Accelerating the City of Berkeley's transition to Plant-Based Foods

28. Revised material, submitted by Councilmember Hahn

Item #27: Updated Fees for the Home Occupations Ordinance

29. Presentation, submitted by Planning

30. Michai Freeman

Item #28: Objective Standards Recommendation for Density, Design and Shadows

31. Presentation, submitted by Planning

Item #29: City Council Rules of Procedures and Order Revisions

32. Andrea Mullarkey

Urgent Items

Support of AB 9: Wildfire Preparedness and Mitigation

33. Urgent item, submitted by Councilmember Robinson

Support of SB 290

34. Urgent Item, submitted by Councilmember Robinson

Direct the East Bay Community Foundation to disburse \$165,00 from the Berkeley COVID Relief Fund to a local non-profit, BANANAS, to distribute to Berkeley Childcare Providers most impacted by COVID

35. Urgent item, submitted by Councilmember Hahn

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

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

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/84636794436> 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: 846 3679 4436 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: 4:05 p.m.

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

Absent: Harrison, Droste

Consent Calendar

Public Comment on Consent Calendar Items Only: 0 speakers.

Action: M/S/C (Hahn/Wengraf) to accept revised material from the City Manager on Item 5 and to approve the Consent Calendar.

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

1. **Tentative Memorandum Agreement: Service Employee International Union Local 1021 Community Services Unit and Part-Time Recreation Leaders Association**

From: City Manager

Recommendation: Adopt two Resolutions:

- 1) Approving a new three-year Memorandum Agreement (hereafter referred to as the "MA") with the Service Employees International Union Local 1021 Community Services Unit And Part-Time Recreation Leaders Association (hereafter referred to as the "Union") with a term of June 27, 2021 through June 26, 2024, and authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the new labor agreement; and
- 2) Approving a new salary resolution for Representation Units G-1, G-3, I-A, I-B, L [CSU0], R-1 and R-2 [CSPT] and L-6 that implement the new salary levels negotiated in the MA and rescinding Resolution No. 69,626-N.S. pending Union ratification.

Financial Implications: See report

Contact: LaTanya Bellow, Human Resources, (510) 981-6800

Action: Adopted Resolution No. 69,990–N.S. and Resolution No. 69,991–N.S.

2. Memorandum of Understanding: Berkeley Fire Fighters Association/I.A.F.F. Local 1227 Berkeley Chief Fire Officers Association

From: City Manager

Recommendation: Adopt two Resolutions:

- 1) Approving a new two (2) year Memorandum of Understanding (hereafter referred to as "MOU") with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 Berkeley Chief Fire Officers Association (hereafter referred to as the "Association") with a term of July 1, 2021 through June 30, 2023 and authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the new MOU and to make non-substantive edits to the format and language of the Memorandum of Understanding in alignment with the tentative agreement, and conforming to legal requirements; and
- 2) Approving a new salary resolution for Representation Unit A to implement the new salary levels negotiated in the new labor agreement and rescinding Resolution No. 68,628-N.S pending Union ratification.

Financial Implications: See report

Contact: LaTanya Bellow, Human Resources, (510) 981-6800

Action: Adopted Resolution No. 69,992–N.S. and Resolution No. 69,993–N.S.

3. Memorandum Agreement: Berkeley Fire Fighters Association, Local 1227 I.A.F.F.

From: City Manager

Recommendation: Adopt two Resolutions:

- 1) Approving a new two (2) year Memorandum of Understanding (hereafter referred to as "MOU") with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 (hereafter referred to as the "Association") with a term of July, 1, 2021 through June 30, 2023 and authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the new MOU and to make non-substantive edits to the format and language of the MOU in alignment with the tentative agreement, and conforming to legal requirements; and
- 2) approving a new salary resolution for Representation Unit B to implement the new salary levels negotiated in the new labor agreement and rescinding Resolution No. 68,581-N.S.

Financial Implications: See report

Contact: LaTanya Bellow, Human Resources, (510) 981-6800

Action: Adopted Resolution No. 69,994-N.S. and Resolution No. 69,995–N.S.

4. Memorandum of Understanding: Public Employees Union – Local 1

From: City Manager

Recommendation: Adopt two Resolutions:

1) Approving a new three-year Memorandum of Understanding (hereafter referred to as “MOU”) with Public Employees Union (PEU) Local One (hereafter referred to as the “Union”) with a term of effective upon Council adoption through June 26, 2024 and authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the new MOU; and

2) Approving a new salary resolution for Representation Units M, P1, and P2 that implement the new salary levels negotiated in the new labor agreement and rescinding Resolution No. 68,710-N.S. Also, authorize the City Manager to make non-substantive edits to the format and language of the Memorandum of Understanding in alignment with Council Direction, the tentative agreements and conforming to legal requirements.

Financial Implications: See report

Contact: LaTanya Bellow, Human Resources, (510) 981-6800

Action: Adopted Resolution No. 69,996–N.S. and Resolution No. 69,997–N.S.

5. Unrepresented Employee Salaries and Salary Adjustments to Median for Police Chief and Assistant City Attorney

From: City Manager

Recommendation: Adopt a Resolution approving salary adjustment for the Unrepresented Employees in Units Z-1; Z-2; Z-3; Z-6; and Z-9, and simultaneously adopt a median salary adjustment for Police Chief and Assistant City Attorney effective upon council adoption and rescinding Resolutions No. 68,534-N.S. and 69,538-N.S.

Financial Implications: See report

Contact: LaTanya Bellow, Human Resources, (510) 981-6800

Action: Adopted Resolution No. 69,998–N.S. as amended in the revised materials accepted at the meeting.

Council Consent Items

6. Confirming Community Appointment to Reimagining Public Safety Task Force

From: Mayor Arreguin (Author)

Recommendation: Adopt a Resolution confirming the appointment of Jamaica Moon by the Steering Committee of the Berkeley Community Safety Coalition (BCSC) to the Reimagining Public Safety Task Force.

Financial Implications: None

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

Action: Adopted Resolution No. 69,999–N.S.

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 4:10 p.m.

I hereby certify that the foregoing is a true and correct record of the special session meeting held on July 29, 2021.

Mark Numainville
City Clerk

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

- None

Supplemental Communications and Reports 3

Item #5: Unrepresented Employee Salaries and Salary Adjustments to Median for Police Chief and Assistant City Attorney

1. Revised material, submitted by Human Resources

Item #6: Confirming Community Appointment to Reimagining Public Safety Task Force

2. Moni Law



Office of the City Manager

CONSENT CALENDAR
SEPTEMBER 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams Ridley, City Manager
 Submitted by: Paul Buddenhagen, Deputy City Manager
 Subject: Contract No. 108410-1 Amendment: Paw Fund for Spay and Neuter Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 108410-1 with Paw Fund to provide no cost spay and neuter surgeries to eligible pet owners, to increase the amount by \$9,812 for a total contract amount not to exceed \$116,966 and subject to the City's annual appropriation process, and to extend the contract through September 14, 2022.

FISCAL IMPACTS OF RECOMMENDATION

The "Spay Neuter Your Pet" (SNYP) grant comes from the General Fund and is a community agency allocation that is given by Animal Services each year. The SNYP program provided \$23,812 to Paw Fund for FY 2016, \$23,812 for FY 2017, \$23,812 for FY 2019, \$23,812 for FY 2020, and \$11,906 for FY 2021 for a total of \$107,154. In FY 2022 the amount of \$9,812 will be awarded to Paw Fund for an amount not to exceed \$116,966.

CURRENT SITUATION AND ITS EFFECTS

The current contract between the City of Berkeley and Paw Fund expired on June 30, 2021. Paw Fund has contracted with the City of Berkeley to provide no cost spay and neuter surgeries to eligible pet owners since FY 2016. By providing no cost spay and neuter surgeries, Paw Fund decreases the number of unwanted pet offspring and reduces the number of homeless animals entering the Dona Spring Animal Shelter. A second contractor, Fix Our Ferrels, has contracted with the City of Berkeley to provide no cost spay neuter and surgeries to eligible pet owners since 2017. The FY 2022 SNYP grant will be divided between these two community-based organizations.

BACKGROUND

Many low-income pet owners would like to access spay and neuter services for their pets but are unable to afford the cost of surgery through local veterinary clinics. Paw Fund consistently works with low-income pet owners and is able to reach out to eligible pet owners whose animals need spay and neuter surgeries. The SNYP program

provides for 159 free spay or neuter surgeries each year which decreases unwanted litters of pets and decreases the number of unwanted pets entering the Dona Spring Animal Shelter.

RATIONALE FOR RECOMMENDATION

Paw Fund is well equipped and capable of providing the services under the SNYP program. If this funding is not authorized, it would prevent 65 animals belonging to low income pet owners from being spay or neutered at no cost to the owner.

ALTERNATIVE ACTIONS CONSIDERED

The alternative to providing free spay and neuter surgeries to low income residents is to refer them to low cost spay and neuter clinics in the surrounding area. Prices in these clinics range from \$150 to \$300 and waiting lists for appointments are four months, which is prohibitive to many pet owners

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

CONTACT PERSON

Amelia Funghi, Animal Services Manager, (510) 981-6603

Attachments:

1. Resolution
2. Contract Amendment

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

CONTRACT NO. 108410-1 AMENDMENT: PAW FUND TO PROVIDE NO COST SPA
AND NEUTER SURGERIES TO ELIGIBLE PET OWNERS

WHEREAS, The City of Berkeley SNYP program funds no cost spay and neuter surgeries to eligible low-income pet owners,

WHEREAS, The Paw Fund is able to reach eligible low-income pet owners, and to provide no-cost spay and neuter services.

WHEREAS, The “Spay Neuter Your Pet” (SNYP) grant comes from the General Fund and is a community agency allocation that is given by Animal Services each year.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized execute an amendment to Contract No. 108410-1 with Paw Fund to provide no cost spay and neuter surgeries to eligible pet owners, to increase the amount by \$9,812 for a total contract amount not to exceed \$116,966, and to extend the contract through September 14, 2022.

Contract #108-410-1

AMENDMENT TO CONTRACT

THIS CONTRACT AMENDMENT is entered into September 15, 2021, between the CITY OF

BERKELEY ("City"), a Charter City organized and existing under the laws of the State of

California, and Paw Fund ("Contractor") a, doing business at PO Box 99485, Emeryville, CA 94662.

WHEREAS, City and Contractor previously entered into Contract Number 108-410-1 dated, January 1, 2016, which Contract was authorized by the Berkeley City Manager.

WHEREAS, on -----, by Resolution No.-----, the Berkeley City Council authorized amendment to said contract as set forth below and,

WHEREAS, both parties agree to amend Exhibit B to incorporate pricing for various urgent projects,

THEREFORE, City and Contractor mutually agree to amend said contract as follows:

1. Exhibit B to the contract shall be replaced with Exhibit B attached hereto and incorporated herein.
2. Section 3(a) to the contract shall be amended to read in its entirety: "This Contract Amendment shall begin on September 15, 2021 and end on September 14, 2022. The City Manager of the City of Berkeley may extend the term of this Contract by giving written notice to Paw Fund at least 90 days before the end of the term ending September 14, 2022."
3. In all other respects, the Contract dated July 1, 2016 shall remain in full force effect.

IN WITNESS WHEREOF, City and Contractor have executed this Contract as of the date written on the first paragraph of this Contract.

CITY OF BERKELEY

By _____
City Manager

THIS CONTRACT HAS BEEN
APPROVED AS TO FORM BY
THE CITY ATTORNEY FOR
THE CITY OF BERKELEY
5/09

Registered by:

City Auditor

Attest:

Deputy City Clerk

CONTRACTOR

Name (Printed)

By _____
Signature and Title

EXHIBIT B

PAYMENT

The City of Berkeley agrees to pay Paw Fund an amount not to exceed of \$116,966 with a unit cost of \$150 for each spay or neuter surgery performed in FY21 & FY22.

Invoices: All invoice will be paid within 30 days providing the charges are correct and have been approved. Invoices must be fully itemized, and provide sufficient information for approving payment and audit. The invoices will be reviewed by the Animal Shelter Manager before submission for payment.



Office of the City Manager

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Henry Oyekanmi, Director, Finance Department
 Subject: Adopt a Resolution Authorizing MuniServices, LLC to Examine the Local Sales or Transactions and Use Tax Records on Behalf of the City of Berkeley

RECOMMENDATION

Adopt a Resolution authorizing MuniServices, LLC to perform examination of the local sales or transactions and use tax records. MuniServices provides City of Berkeley sales tax audit services which includes examination of the Local Sales or Transactions and Use Tax records pertaining to the Bradley-Burns Local Sales and Use Tax Law which is part of the Revenue and Taxation Code in California.

FISCAL IMPACTS OF RECOMMENDATION

The resolution will ensure the continuity of MuniServices revenue enhancement activities on behalf of the City. The cost of the services is recovered by any new revenue produced from sales and use tax services provided by MuniServices.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley has designated Municipal Resource Consultants to examine sales and use tax records on behalf of the City of Berkeley since July 1, 2001. California Department of Tax and Fee Administration (CDTFA) requires that the City reference the same company name of MuniServices LLC, to properly comply with Revenue and Taxation Code Section 7056, Section, Subdivision (b).

BACKGROUND

The City of Berkeley has designated Municipal Resource Consultants to examine sales and use tax records on behalf of the City of Berkeley since July 1, 2001. Throughout the years, Municipal Resource Consultants has enacted business under the name MuniServices LLC, both Delaware limited liability companies, with offices in Centreville, Virginia. Therefore, per the requirement of the California Department of Tax and Fee Administration (CDTFA), the City is required to reference the same company name of MuniServices LLC, to property comply with Revenue and Taxation Code Section 7056, Section, Subdivision (b).

Adopt a Resolution Authorizing MuniServices, LLC to Examine
City's Sales and Use Tax Records.

CONSENT CALENDAR
September 14, 2021

Through acquisition, the company name has varied at times, however, MuniServices LLC is and always has been the registered legal entity. For that reason, the CDTFA issued a ruling that any contracts and/or resolutions that do not reference the company name of MuniServices LLC must be corrected. CDTFA Legal has agreed that this can be done with a contract novation agreement referencing MuniServices LLC's existing contract, which they have approved.

Therefore, staff is requesting that the novation agreement and resolution be approved to comply with the CDTFA guidelines and prevent any interruption in MuniServices LLC receiving the City's sales tax data, allowing them to continue to provide the City with audit and information services.

The Resolution attached hereto updates the legal entity name referenced in the City's original agreement dated June 12, 1990 with Municipal Resource Consultants to MuniServices LLC and authorizes the City Manager, and any other City personnel designated in writing by the City Manager, as well as MuniServices LLC to examine the records.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

Comply with the CDTFA (California Department of Tax and Fee Administration) guidelines and prevent any interruption in MuniServices LLC services.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, 981-7326

Attachments:

1: Resolution

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

AUTHORIZING MUNISERVICES, LLC TO EXAMINE THE LOCAL SALES OR TRANSACTIONS AND USE TAX RECORDS ON BEHALF OF THE CITY OF BERKELEY

WHEREAS, pursuant to Ordinance Number 55,402-N.S. the City of Berkeley (City) entered into a contract with the California Department of Tax and Fee Administration (Department) to perform all functions incident to the administration and collection of sales and use taxes; and

WHEREAS, pursuant to Revenue and Taxation Code Section 7270, the City entered into a contract with the California Department of Tax and Fee Administration (Department) to perform all functions incident to the administration and collection of transactions and use taxes; and

WHEREAS, the City Council of the City of Berkeley deems it desirable and necessary for authorized officers, employees and representatives of the City to examine confidential sales or transactions and use tax records of the Department pertaining to sales and use taxes collected by the Department for the City pursuant to that contract; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Department records, and Section 7056.5 of the California Revenue and Taxation Code establishes criminal penalties for the unlawful disclosure of information contained in, or derived from, the sales or transactions and use tax records of the Department.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BERKELEY:

Section 1. That the Director of Finance and Treasury Manager or other officer or employee of the City designated in writing by the City Manager to the California Department of Tax and Fee Administration is hereby appointed to represent the City with authority to examine sales or transactions and use tax records of the Department pertaining to sales and use taxes collected for the City by the Department pursuant to the contract between the City and the Department.

Section 2. The information obtained by examination of Department records shall be used only for purposes related to the collection of City sales and use taxes by the Department pursuant to that contract.

Section 3. That MuniServices, LLC. is hereby designated to examine the sales or transactions and use tax records of the Department pertaining to sales and use taxes collected for the City by the Department. The person or entity designated by this section meets all of the following conditions, which are also included in the contract between the City and MuniServices, LLC:

- a) has an existing contract with the City to examine those sales or transactions and use tax records;
- b) is required by that contract to disclose information contained in, or derived from, those sales or transactions and use tax records only to the officer or employee authorized under Section 1 of this resolution to examine the information.
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract;
- d) is prohibited by that contract from retaining the information contained in, or derived from those sales or transactions and use tax records, after that contract has expired.

BE IT FURTHER RESOLVED that the information obtained by examination of Department records shall be used only for purposes related to the collection of City sales and use taxes by the Department pursuant to the contract between the City and the Department.

Section 4. That MuniServices, LLC. is hereby designated to examine the sales or transactions and use tax records of the Department pertaining to any petition or appeal for the reallocation/redistribution of sales or transactions and use taxes that was filed by MuniServices, LLC. on behalf of the City pursuant to the contract between the MuniServices, LLC. and City. The person or entity designated by this section meets all of the following conditions, which are also included in the contract between the City and the MuniServices, LLC.:

- a) has an existing contract with the City to examine those sales or transactions and use tax records;
- b) is required by that contract to disclose information contained in, or derived from, those sales or transactions and use tax records only to the officer or employee authorized under Section 1 of this resolution to examine the information.
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract;
- d) is prohibited by that contract from retaining the information contained in, or derived from those sales or transactions and use tax records, after that contract has expired.

Section 5. That this resolution supersedes all prior resolutions of the City Council of the City of Berkeley adopted pursuant to Subdivision (b) of Revenue and Taxation Code Section 7056.



Office of the City Manager

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 14, 2021

RECOMMENDATION

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

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is \$4,075,000.

<u>PROJECT</u>	<u>Fund</u>	<u>Source</u>	<u>Amount</u>
Plan Checking Services	621	Permit Service Center	\$4,000,000
Scheduling Software Solution	011	General Fund	\$75,000
Total:			\$4,075,000

CURRENT SITUATION AND ITS EFFECTS

On May, 6, 2008, Council adopted Ordinance No. 7,035-N.S. effective June 6, 2008, which increased the City Manager's purchasing authority for services to \$50,000. As a result, this required report submitted by the City Manager to Council is now for those purchases in excess of \$100,000 for goods; and \$200,000 for playgrounds and construction; and \$50,000 for services. If Council does not object to these items being sent out for bid or proposal within one week of them appearing on the agenda, and upon final notice to proceed from the requesting department, the IFB (Invitation for Bid)

or RFP (Request for Proposal) may be released to the public and notices sent to the potential bidder/respondent list.

BACKGROUND

On May 6, 2008, Council adopted Ordinance No. 7,035-N.S., amending the City Manager's purchasing authority for services.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Finance Department reviews all formal bid and proposal solicitations to ensure that they include provisions for compliance with the City's environmental policies. For each contract that is subject to City Council authorization, staff will address environmental sustainability considerations in the associated staff report to City Council.

RATIONALE FOR RECOMMENDATION

Need for the services.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

Attachments:

- 1: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 14, 2021
 - a) Plan Checking Services
 - b) Scheduling Software Solution

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

DATE SUBMITTED: September 14, 2021

SPECIFICATION NO.	DESCRIPTION OF GOODS / SERVICES BEING PURCHASED	APPROX. RELEASE DATE	APPROX. BID OPENING DATE	INTENDED USE	ESTIMATED COST	BUDGET CODE TO BE CHARGED	DEPT. / DIVISION	CONTACT NAME & PHONE
22-11467-C	Plan Checking Services	10/1/2021	10/28/2021	Plan checking services for all types of projects, including but not limited to new and existing buildings, soft story building retrofits and high rise buildings subject to special life safety provisions.	\$4,000,000	621-53-585-634-0000-000-472-612990-	Planning/Building & Safety	Jenny McNulty 981-7451
DEPT. TOTAL					\$4,000,000			
22-11468-C	Scheduling Software Solution	9/15/2021	10/19/2021	Scheduling software solution for Berkeley Police Department, including all training, documentation, and technical service to install, test, train, integrate, and ensure the system is fully functional.	\$75,000	011-71-705-820-0000-000-421-612990	Police/Support Services Division	Captain Kevin Schofield kschofield@cityofberkeley.info
Dept TOTAL					\$75,000			
Dept TOTAL					\$75,000			
DEPT. TOTAL					\$4,075,000			



Office of the City Manager

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Lisa Warhuus, Director, Health, Housing, and Community Services
 Subject: Amendments to Berkeley Municipal Code Section 19.44.020 (Housing Advisory Commission)

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Section 19.44.020 to include oversight of Measure O bond-funded housing initiatives as established by Resolution No. 68,703-N.S. and future voter-approved bonds and measures dedicated to affordable housing.

FISCAL IMPACTS OF RECOMMENDATION

Reorganizing the oversight of all housing-focused bonds and measures, including Measure O, under the purview of the Housing Advisory Commission (HAC) will reduce staffing costs associated with oversight committees dedicated to specific bonds and measures.

CURRENT SITUATION AND ITS EFFECTS

On June 15, 2021, City Council directed the City Manager and City Attorney to amend commissions' enabling legislation to support a phased reorganization of the existing commission structure. The first phase of the recommendation directs the City Manager to "prioritize merging the Homeless Commission/Homeless Services Panel of Experts and Housing Advisory Commission/Measure O Bond Oversight Committee first, and request that the City Manager bring back changes to the enabling legislation to implement these consolidated commissions."

BMC Section 19.44.020.B.10 states, "the Housing Advisory Commission shall review and advise the City Council on housing policy, housing programs, and related issues. In particular, the Commission shall make recommendations on how and to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness."

The Measure O Bond Measure was codified as Resolution No. 68,703-N.S. after its approval by the voters in Berkeley. The requirements set forth by Resolution No. 68,703-N.S. require oversight by an independent oversight committee to ensure funds are being allocated to affordable housing development. This duty is consistent with the

HAC's role as established by BMC Section 19.44.020.B. The HAC oversees and makes recommendations for the various funds that support the Housing Trust Fund (HTF) program consistent with the charge established by the BMC. The HTF program has multiple funding streams with unique requirements that require oversight including General Funds received pursuant to Measure U1, federal HOME, Community Development Block Grant (CDBG), and Emergency Shelter Grant (ESG) funds.

Measure O is the only local affordable housing source not under the oversight of the HAC. Measure O and HTF funds typically need to be combined due to the allowable uses of each funding source, federal match requirements and the amount and timing of funds. This requires staff to seek two different approvals for a single funding commitment or Notice of Funding Opportunity (NOFA). This was recently exhibited in the City Council's commitment of housing funds to Ashby and North Berkeley BART stations on April 27, 2021, which staff brought to both the HAC and Measure O Commissions.

The proposed amendments are to Section 19.44.020.B.10. This amendment will expand the HAC's oversight and recommendations to City funding for housing programs to include all voter-approved bonds and ballot measures dedicated to affordable housing. This includes Measure O and will apply to any future affordable housing focused bonds that require recommendations and oversight, so that any future housing bond funds can also be used in conjunction with existing sources. The BMC amendment will also require the City Manager to provide the Commission with copies of all reporting requirements required by measures under the Commission's purview.

Adopting amendments to BMC Section 19.44.020 is a Strategic Plan Priority Project, advancing our goal to provide an efficient and financially-health City government.

BACKGROUND

The HAC and its jurisdiction over local housing funding is established by BMC Chapter 19.44.020. The Measure O Bond Oversight Committee (MOBOC) is established by Council Resolution No. 68,703-N.S. Section 6(e) of said resolution states, "all expenditures [of the Measure O Bond proceeds] will be subject to oversight by an independent oversight committee, composed of individuals appointed by the City Council, to confirm that Bond expenditures are consistent with the intent of this Measure."

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Consolidating these commissions could reduce vehicle miles travelled and greenhouse gas emissions for staff, commissioners, and members of the public who travel to meetings via automobile.

RATIONALE FOR RECOMMENDATION

The Measure O Bond is dedicated to funding affordable housing. The MOBOC is charged with ensuring these funds are allocated in accordance with the bond's requirements. The HAC is charged with oversight of the City's other affordable housing funding sources, collectively known as the Housing Trust Fund program. Incorporating the MOBOC's charge into the HAC's duties will facilitate uniform analysis and decision making, better coordination of the City's various affordable housing funding sources, and an expedited review process. This recommendation is consistent with the Council's direction on June 15, 2021.

ALTERNATIVE ACTIONS CONSIDERED

No other actions were considered due to the Council's direction June 15, 2021.

CONTACT PERSON

Mike Uberti, Community Development Project Coordinator, HHCS, 510-981-5114

Attachments:

- 1: Ordinance
- 2: June 15, 2021 Council Report
- 3: Resolution No. 68,703-N.S.

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 19.44.020 HOUSING
ADVISORY COMMISSION

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

Section 1. That Berkeley Municipal Code Section 19.44.020, Paragraph B is amended to read as follows:

Berkeley Municipal Code Section 19.44.020.B. Jurisdiction.

- B. Jurisdiction. The jurisdiction of the Commission shall extend the following manners and proceedings, as well as to any other matter made subject to its jurisdiction by any other chapter of this code, or by the Zoning Ordinance.
1. The Commission shall hear and determine appeals of all matters respecting the abatement of substandard or deficient buildings pursuant to the provisions of Chapter 19.40 of this code.
 2. The Commission shall review and advise the Council on matters respecting the Community Development Block Grant and Emergency Shelter Grant Programs.
 3. The Commission shall serve as a General Appeals Board for tenants and landlords regarding the correction of code violations as provided in Chapter 12.48 of this code, providing for periodic inspection of residential rentals and hotels.
 4. The Commission shall make recommendations to the Council defining hardship categories and shall hear appeals concerning the designation of the hardship category. The Commission may grant time extensions for compliance in hardship cases, excepting those violations which pose a clear and present danger to human life, health and safety.
 5. The Commission shall make recommendations to the City Council regarding code enforcement priorities.
 6. The Commission shall monitor code enforcement procedures to ensure adherence to Council policies and shall make recommendations for changes in such procedures to the City Council.
 7. The Commission shall be the Board of Appeals for the Uniform Housing Code. In order to determine the suitability of alternative materials and methods of construction and to provide for reasonable interpretations of the provisions of this Code, the City's Code Review Task Force shall serve as the Technical Advisory Committee to the Commission. When serving in this

- capacity, the Technical Advisory Committee shall render all recommendations in writing to the Commission with a duplicate copy to the Building Official and the appellant and may recommend such new legislation as is consistent therein.
8. The Commission shall be the Relocation Appeals Board for purposes of Chapter 13.84.
 9. The Commission shall hear appeals brought by any person regarding actions taken by the Building Official pursuant to Division 13, Page 5.5 of the California Health and Safety Code, beginning with Section 19950 (Disabled Access).
 10. The Housing Advisory Commission shall review and advise the City Council on housing policy, housing programs, and related issues. In particular, the Commission shall make recommendations on how and to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness. This includes and is not limited to oversight and recommendations for all voter-approved bonds and ballot measures dedicated to affordable housing to ensure that expenditures are consistent with the intent of the measures. The City Manager shall provide the Commission with copies of all reporting requirements required by measures under the Commission's purview. These recommendations may be made annually or biannually, as the Commission deems appropriate in light of the City's budget cycle and other relevant funding cycles. The Commission's recommendations shall be promptly published on the City's web-site and transmitted to the City Council. The City Council shall consider, but need not follow, the Commission's recommendations, and shall annually inform the Commission as to the extent to which it has implemented the recommendations.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of 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.



Lori Droste
Berkeley Vice Mayor

ACTION CALENDAR

June 15, 2021

(Continued from May 25, 2021)

To: Honorable Mayor and Members of the City Council

From: Councilmember Lori Droste (Author), Councilmembers Rigel Robinson (Co-Sponsor), Rashi Kesarwani (Co-Sponsor) and Mayor Jesse Arreguín (Co-Sponsor)

Subject: Commission Reorganization for Post-COVID19 Budget Recovery

RECOMMENDATION

1. Refer to the City Manager and City Attorney to bring back changes to the enabling legislation to reorganize existing commissions as proposed below in a phased approach.

Phase 1: Prioritize merging the Homeless Commission/Homeless Services Panel of Experts and Housing Advisory Commission/Measure O Bond Oversight Committee first, and request that the City Manager bring back changes to the enabling legislation to implement these consolidated commissions.

Phase 2: All other Commissions as proposed below.
As staff is able to make recommendations on consolidation, they can bring those recommendations forward one by one.

New Commission Name	Former Commissions to be Reorganized
Commission on Climate and the Environment	Zero Waste, Energy, Community Environmental Advisory, and Animal Care

Parks, Recreation, Waterfront (special Marina subcommittee)	Children, Youth, and Recreation and Parks and Waterfront
Peace, Justice, and Human Welfare ¹	Peace and Justice and Human Welfare, Community Action Commissions
Public Health Commission & Sugar Sweetened Beverage Panel of Experts	Community Health Commission and Sugar Sweetened Beverage Panel of Experts
Housing Advisory Commission	Measure O and Housing Advisory Commission
Homeless Services Panel of Experts	Homeless Commission and Measure P Homeless Services Panel of Experts
Public Works and Transportation	Public Works and Transportation
Planning	Planning and Cannabis
<p>All other commissions will maintain their current structure: Aging, Library Board of Trustees, Civic Arts, Disability, Commission on the Status of Women, Design Review Committee, Disaster and Fire Safety, BIDs, Fair Campaign Practices and Open Government, Redistricting, Landmarks Preservation, Labor, Loan Adjustments Board, Personnel, Planning, Police Review/Accountability, Reimagining Public Safety, Mental Health, Zoning Adjustments Board, and Youth</p>	

2. Refer to staff to develop recommendations on the transition to new consolidated commissions and the effective date of the changes.

3. Consider establishing 18 members on the new Climate and Environment Commission and establishing specific subcommittees focused on the policy areas of the merged commissions.

4. The Peace, Justice and Human Welfare Commission will be composed of only Mayor and Council appointees.

5. Refer to City Manager and Commissions the following additional considerations:
 - Federal, state or other external mandates that might be impacted, and determine how to handle.
 - Whether charters of to-be-merged Commissions were adopted by City Council, through measures or initiatives passed by voters, or are by Charter, and by what means they might be merged/adjusted

¹ Members will be appointed by Council and membership should adhere to Government Code Section 12736(e); 12750(a)(2) and 12751.

- What elements of each Commission to keep, update, or retire, as well as relevant topics/issues not currently covered that might be added to a more comprehensive and/or relevant merged Commission’s charter.
- Whether the merged Commission might include 9, or a greater number of members.
- The possibility of requiring specific qualifications for appointment to the merged Commission.
- The possibility of recommended or required Standing Committees of the Merged Commission
- Volunteer workload and capacity given scope of Commission’s charter

Policy Committee Oversight ²	Commissions
Agenda and Rules	<ol style="list-style-type: none"> 1. Fair Campaign Practices/Open Government Commission 2. Personnel Board
Budget and Finance	(Any legislation that requires funding)
Public Safety	<ol style="list-style-type: none"> 1. Disaster and Fire Safety Commission 2. Police Accountability Board/Police Review Commission 3. Reimagining Public Safety Task Force
Facilities, Infrastructure, Transportation and the Environment	<ol style="list-style-type: none"> 1. Commission on the Environment 2. Parks, Recreation and Waterfront with Marina subcommittee 3. Public Works and Transportation
Land Use and Economic Development	<ol style="list-style-type: none"> 1. Measure O Housing Commission 2. Planning Commission 3. Labor 4. Civic Arts Commission
Health, Equity, Life Enrichment, and Community	<ol style="list-style-type: none"> 1. Peace, Justice, and Civil Rights 2. Health and Sugar Sweetened Beverage Panel of Experts 3. Homeless Services Panel of Experts 4. Mental Health Commission (state/federal mandate) 5. Commission on the Status of Women 6. Disability Commission

² Primary policy committee oversight but legislation may be referred to multiple policy committees.

Other Commissions: Zoning Adjustments Board (DRC), Landmarks Preservation, Board of Library Trustees, BIDs, Independent Redistricting Commission, Loan Administration Board

POLICY COMMITTEE RECOMMENDATION

On April 5, 2021, the Agenda and Rules Committee made a qualified positive recommendation to City Council to:

1. Refer to the City Manager and City Attorney to bring back changes to the enabling legislation to reorganize existing commissions as proposed below in a phased approach.

Phase 1: Prioritize merging the Homeless Commission/Homeless Services Panel of Experts and Housing Advisory Commission/Measure O Bond Oversight Committee first, and request that the City Manager bring back changes to the enabling legislation to implement these consolidated commissions.

Phase 2: All other Commissions as proposed below.
As staff is able to make recommendations on consolidation, they can bring those recommendations forward one by one.

New Commission Name (suggested)	Former Commissions to be Reorganized
Commission on Climate and the Environment	Zero Waste, Energy, Community Environmental Advisory, and Animal Care
Parks, Recreation, Waterfront (special Marina subcommittee)	Children, Youth, and Recreation and Parks and Waterfront
Peace, Justice, and Human Welfare	Peace and Justice Commission and Human Welfare and Community Action Commission
Public Health Commission & Sugar Sweetened Beverage Panel of Experts	Community Health Commission and Sugar Sweetened Beverage Panel of Experts
Housing Advisory Commission	Measure O and Housing Advisory Commission
Homeless Services Panel of Experts	Homeless Commission and Measure P Homeless Services Panel of Experts

Public Works and Transportation	Public Works and Transportation
Planning	Planning and Cannabis
<p>All other commissions will maintain their current structure: Aging, Library Board of Trustees, Civic Arts, Disability, Commission on the Status of Women, Design Review Committee, Disaster and Fire Safety, BIDs, Fair Campaign Practices and Open Government, Redistricting, Landmarks Preservation, Labor, Loan Adjustments Board, Personnel, Planning, Police Review/Accountability, Reimagining Public Safety, Mental Health, Zoning Adjustments Board, and Youth</p>	

2. Refer to the Commissions impacted a process to determine the charge/responsibilities of the newly merged commissions, and bring Commission input to the appropriate Policy Committees (as proposed by Vice-Mayor Droste in 4/5/21 submittal) for further recommendations to the City Manager on revised charge/responsibilities of merged commissions.

3. Refer to staff to develop recommendations on the transition to new consolidated commissions and the effective date of the changes.

4. Consider establishing 18 members on the new Climate and Environment Commission and establishing specific subcommittees focused on the policy areas of the merged commissions.

5. The Peace, Justice and Human Welfare Commission will be comprised of only Mayor and Council appointees.

6. Refer Councilmember Hahn questions to City Manager and Commissions: “Commissions to Combine/Merge - Suggested Considerations”

- Federal, state or other external mandates that might be impacted, and determine how to handle
- Whether charters of to-be-merged Commissions were adopted by City Council, through measures or initiatives passed by voters, or are by Charter, and by what means they might be merged/adjusted
- What elements of each Commission to keep, update, or retire, as well as relevant topics/issues not currently covered that might be added to a more comprehensive and/or relevant merged Commission’s charter.
- Whether the merged Commission might include 9, or a greater number of members.
- The possibility of requiring specific qualifications for appointment to the merged Commission.
- The possibility of recommended or required Standing Committees of the Merged Commission
- Volunteer workload and capacity given scope of Commission’s charter

PROBLEM/SUMMARY STATEMENT

Commissions provide an important mechanism for residents to shape public policy and provide input on City business. However, the City of Berkeley maintains far more commissions than other cities of similar size, with a significant investment of City resources to staff all 37 commissions. Some commission secretaries report spending upwards of 20+ hours per week on commission business, which takes valuable time away from addressing other pressing City priorities. The local public health emergency created by the global COVID-19 pandemic has required City staff to shift to new roles and maintain an Emergency Operations Center since January 2020; recovery from the pandemic will continue to demand the full attention of our City staff for the foreseeable future. Given the uncertainties that our City faces in recovering from the COVID-19 pandemic and the demands that this recovery places on our City staff, it is an appropriate time to consider how best to consolidate our commissions in a manner that helps the City to achieve its core mission.

REITERATION OF PRINCIPLES

Commissions are a fundamental part of the City's policymaking process. Members of boards and commissions provide an invaluable service to our City. They advise the City Council on a wide variety of subjects by making recommendations on important policy matters. Without the assistance of the various boards and commissions, the City Council could give many complex and significant matters only a perfunctory review. The detailed studies and considered advice of boards and commissions are often catalysts for innovative programs and improved services. Serving on a board or commission can be a rewarding experience for community service-minded residents. It is an excellent way to participate in the functioning of local government and to make a personal contribution to the improvement of our community. Making local government effective and responsive is everybody's responsibility.

- The Public Works Commission, for example, develops the City's five year paving plan which they then present to City Council for approval. Through extensive community outreach and research, the Commission identifies the streets most in need of repaving.
- With the passage of Measure D in 2014, a Panel of Experts on Sugar-Sweetened Beverages has guided the City's spending of over \$5 million in revenue generated from the Measure. Those dollars have bolstered local public campaigns and education initiatives.

These are merely two examples of the powerful role that Commissions play in City policymaking.

CURRENT SITUATION AND ITS EFFECTS

Current Commission Structure

The City of Berkeley has approximately thirty-seven commissions overseen by city administration, most of which have at least nine members and who are appointed by individual councilmembers. These commissions were intended to be a forum for public participation beyond what is feasible at the City Council, so that issues that come before the City Council can be adequately vetted.

Some commissions are required by charter or mandated by voter approval or state/federal mandate. Those commissions are the following:

1. Board of Library Trustees (charter)
2. Business Improvement Districts (state mandate)
3. Civic Arts Commission (charter)
4. Community Environmental Advisory Commission (state/federal mandate--CUPA)
5. Fair Campaign Practices Commission/Open Government (ballot measure)
6. Homeless Services Panel of Experts (ballot measure)
7. Housing Advisory Commission (state/federal mandate)
8. Human Welfare and Community Action (state/federal mandate)
9. Measure O Bond Oversight Committee (ballot measure)
10. Mental Health Commission (state/federal mandate)
11. Personnel (charter)Police Review Commission (ballot measure)
12. Sugar-Sweetened Beverages (ballot measure)

Berkeley must have its own mental health commission because of its independent Mental Health Division. In order to receive services, the City needs to have to have an advisory board. Additionally, Berkeley's Community Environmental Advisory Commission is a required commission in order to oversee Certified Unified Program Agency (CUPA) under California's Environmental Protection Agency. Additionally, some commissions serve other purposes beyond policy advisories. The Children, Youth and Recreation Commission, Housing Advisory Commission, and the Human Welfare and Community Action Commission advise Council on community agency funding. However, some of the aforementioned quasi-judicial and state/federal mandated commissions do not need to stand independently and can be combined to meet mandated goals.

The Importance of Commissions

Commissions serve a vital role in the City of Berkeley’s rich process of resident engagement. An analysis of agendas over the past several years shows that the commissions have created policy that have benefited the community in meaningful and important ways. In 2020, 14 of the 16 commission items submitted to Council passed. From 2016-2020, an average of 34 items were submitted by commissions to Council for consideration.

The City’s Health, Housing and Community Development department serves an important role in addressing COVID-19, racial disparities, inequitable health outcomes, affordable housing, and other important community programs. Additionally, Health, Housing, and Community Development also staffs ten commissions, more than many cities of Berkeley’s size. Council needs to wrestle with these tradeoffs to ensure that we seek the maximum benefit for *all* of the Berkeley community, particularly our most vulnerable.

Commission Structures in Neighboring Jurisdictions

In comparison to neighboring jurisdictions of similar size, Berkeley has significantly more commissions. The median number of commissions for these cities is 12 and the average is 15.

Comparable Bay Area City	Population (est.)	Number of Commissions	Links
Berkeley	121,000	37	https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Commissions/External%20Roster.pdf
Antioch	112,000	6	https://www.antiochca.gov/government/boards-commissions/
Concord	130,000	14	https://www.cityofconcord.org/264/Applications-for-Boards-Committees-Commi
Daly City	107,000	7	http://www.dalycity.org/City_Hall/Departments/city_clerk/Commissions_Information/boards.htm
Fairfield	117,000	7	https://www.fairfield.ca.gov/gov/comms/default.asp
Fremont	238,000	15	https://www.fremont.gov/76/Boards-Commissions-Committees
Hayward	160,000	12	https://www.hayward-ca.gov/your-government/boards-commissions

Richmond	110,000	29	https://www.ci.richmond.ca.us/256/Boards-and-Commissions
San Mateo	105,000	7	https://www.cityofsanmateo.org/60/Commissions-Boards
Sunnyvale	153,000	10	https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?blobid=22804
Vallejo	122,000	17	http://www.ci.vallejo.ca.us/cms/one.aspx?pagelid=22192

To understand the impact on various departments and staffing capacity, the following table shows which departments are responsible for overseeing various commissions.

Staffing and Resources Supporting Berkeley’s Current Commission Structure

Commission Name	Overseeing Department (Total Commissions in Department)
Animal Care Commission	City Manager (8)
Civic Arts Commission	City Manager (8)
Commission on the Status of Women	City Manager (8)
Elmwood BID Advisory Board	City Manager (8)
Loan Administration Board	City Manager (8)
Peace and Justice Commission	City Manager (8)
Solano Ave BID Advisory Board	City Manager (8)
Cannabis Commission	Planning (7)
Community Environmental Advisory Commission	Planning (7)
Design Review Committee	Planning (7)
Energy Commission	Planning (7)
Landmarks Preservation Commission	Planning (7)
Planning Commission	Planning (7)
Zoning Adjustments Board	Planning (7)

Children, Youth, and Recreation Commission	Parks (3)
Parks and Waterfront Commission	Parks (3)
Youth Commission	Parks (3)
Commission on Aging	Health, Housing, and Community Services (HHCS) (10)
Commission on Labor	HHCS (10)
Community Health Commission	HHCS (10)
Homeless Commission	HHCS (10)
Homeless Services Panel of Experts	HHCS(10)
Housing Advisory Commission	HHCS (10)
Human Welfare & Community Action Commission	HHCS (10)
Measure O Bond Oversight Committee	HHCS (10)
Mental Health Commission	HHCS (10)
Sugar-Sweetened Beverage Product Panel of Experts	HHCS (10)
Disaster and Fire Safety Commission	Fire (1)
Commission on Disability	Public Works (4)
Public Works Commission	Public Works (4)
Transportation Commission	Public Works (4)
Zero Waste Commission	Public Works (4)
Fair Campaign Practices Commission/Open Government Commission	City Attorney (1)
Personnel Board	Human Resources (1)

Police Review Commission/Police Accountability Board	Police Review Commission/Police Accountability Board Staff
Reimagining Public Safety Task Force	City Manager *(8) and BPD (2)
Board of Library Trustees	Library (1)

Gray=charter
 Red=state/federal mandate
 Yellow=quasi-judicial
 Blue=ballot initiative
 Orange=state/federal mandate and quasi-judicial
 Green=quasi-judicial and ballot initiative

The departments that staff more than five commissions are Health, Housing, and Community Services (10 commissions), Planning (7 commissions), and the City Manager’s department (8 commissions). At the same time, some smaller departments (e.g. the City Attorney’s office) may be impacted just as meaningfully if they have fewer staff and larger individual commission workloads.

Policy Committee Structure Expands Opportunities for Public Input

With the recent addition of policy committees, proposed legislation is now vetted by councilmembers in these forums. Each policy committee is focused on a particular content area aligned with the City of Berkeley’s strategic plan and is staffed and an advisory policy body to certain city departments. Members of the public are able to provide input at these committees as well. The policy committees currently have the following department alignment:

Department and Policy Committee alignment

1. **Agenda and Rules**—all departments
2. **Budget and Finance**—City Manager, Clerk, Budget, and Finance
3. **Land Use and Economic Development**—Clerk, Planning, HHCS, City Attorney, and City Manager (OED)
4. **Public Safety**—Clerk, City Manager, Police, and Fire
5. **Facilities, Infrastructure, Transportation, Environment and Sustainability** (Clerk, City Manager, Planning, Public Works, and Parks)
6. **Health, Equity, Life Enrichment, and Community** (Clerk, City Manager, HHCS)

Staffing Costs

Based upon preliminary calculations of staff titles and salary classifications, the average commission staff secretary makes roughly \$60-\$65/hour. Based upon recent interviews with secretaries and department heads, individual commission secretaries work

anywhere from 8-80 hours a month staffing and preparing for commission meetings. To illustrate this example, a few examples are listed below.

Commission	Step 5 Rate of Pay	Reported Hours a Month	Total Direct Cost of Commission per Month
Animal Care	\$70.90	8	\$567.20
Landmarks Preservation Commission	\$57.96	80	\$4,636.80
Design Review Commission	\$52.76	60	\$3,165.60
Peace and Justice	\$60.82	32	\$1,946.24

It is extremely challenging to estimate a specific cost of commissions in the aggregate because of the varying workload but a safe estimate of salary costs dedicated to commissions would be in the six-figure range.

Many commissions--particularly quasi-judicial and land use commissions-- require more than one staff member to be present and prepare reports for commissions. For example, Zoning Adjustment Board meetings often last five hours or more and multiple staff members spend hours preparing for hearings. The Planning Department indicates that *in addition* to direct hours, additional commission-related staff time adds an extra 33% staff time. Using the previous examples, this means that the Landmarks Preservation Commission would cost the city over \$6,000 in productivity while the Design Review Commission would cost the City over \$4,000 a month.

Productivity Losses and Administrative Burden

Current productivity losses are stark because of the sheer amount of hours of staffing time dedicated to commissions. As an example, in 2019 one of the City of Berkeley’s main homeless outreach workers staffed a commission within the City Manager’s department. She spent approximately 32 hours a month working directly on commission work. While this is not a commentary on a particular commission, this work directly impacted her ability to conduct homeless outreach.

RATIONALE FOR RECOMMENDATION

At a time when the City needs to demonstrate efficiency and fiscal restraint, the current commission structure is costly and duplicative. At the same time, civic engagement and commission work absolutely deserve an important role in Berkeley. Consequently, this legislation retains commissions but centers on overall community benefit, staff productivity, and associated costs. This is imperative to address, especially in light of COVID-19 and community demands for reinvestment in important social services.

FISCAL IMPACTS

Significant savings associated with reduced staffing.

CONTACT

Vice Mayor Lori Droste 510-981-7180

RESOLUTION NO. 68,703-N.S.

AUTHORIZING THE CITY OF BERKELEY TO ISSUE GENERAL OBLIGATION BONDS TO FINANCE AFFORDABLE HOUSING PROJECTS

SECTION 1. Findings.

WHEREAS, the City Council of the City of Berkeley recognizes the existence of a housing crisis in the City that has caused housing to become increasingly scarce and expensive, to the point that housing is out of reach for many extremely low-, very low-, low-, median-, and middle-income and working families and individuals, including, but not limited to, teachers, seniors, veterans, the homeless, students, people with disabilities, and other vulnerable populations; and

WHEREAS, the City Council has adopted a goal of achieving at least 10% reserved affordable housing by 2030; and

WHEREAS, the housing crisis is causing displacement of long-time communities, impacting local businesses' ability to retain workers, and leading to an increase in homelessness and housing insecurity among Berkeley residents, threatening the public health, peace and safety; and

WHEREAS, homelessness in the City has been increasing, and recent estimates project that there are approximately 1,000 homeless people in the City, almost 1% of the City's population, on any given night; and

WHEREAS, shelter beds are inadequate, and people experiencing homelessness are left to sleep in public spaces throughout the City; and

WHEREAS, providing additional affordable housing options will allow people to live in safe, decent, affordable homes and still have enough money for groceries, medicine, transportation and other basic necessities; and

WHEREAS, improving housing stability and security has been demonstrated to improve health, education, and employment outcomes; and

WHEREAS, the City is in need of safe and affordable housing for Berkeley residents to help extremely low-, very low-, low-, median-, and middle-income and working families and individuals purchase or rent homes and stay in the community, and provide supportive housing for people experiencing homelessness; and

WHEREAS, existing funds and funding sources are inadequate to finance affordable housing projects necessary to address the affordable housing crisis; and

WHEREAS, the City may have the opportunity to leverage state and county funds allocated for affordable housing if it issues bonds to finance affordable housing projects; and

WHEREAS, the City intends to issue general obligation bonds to finance the acquisition and improvement of real property for affordable housing, including the application of bond proceeds by the City directly, or indirectly through third parties as loans, grants, or other disbursements to qualified individuals, not-for-profit entities acting alone or together with tax credit investors, not-for-profit corporations, partnerships, associations, and government agencies, to acquire real property for the purpose of constructing, rehabilitating or preserving affordable housing, or to construct, rehabilitate or preserve affordable housing; including but not limited to supportive housing, nonprofit rental housing, and limited-equity housing cooperatives affiliated with community land trusts, to reimburse City funds for the prior acquisition and improvement of property to be used for affordable housing; and

WHEREAS, the impact on the average Berkeley home assessed at \$425,000 is currently projected to be \$97 per year while Bonds are outstanding, currently estimated to be 36 years.

SECTION 2. Object and Purpose of Bonds. This measure (the "Measure") authorizes the issuance of general obligation bonds (the "Bonds"), the object and purpose of which is to finance, by the City of Berkeley or a third party, the acquisition or improvement of real property for affordable housing for extremely low-, very low-, low-, median- and middle-income and working families and individuals, including teachers, seniors, veterans, the homeless, students, people with disabilities and other vulnerable populations.

The Improvements (as defined below) will be completed as needed, and each is assumed to include its share of costs, including planning, program management and construction costs. The final cost of each Improvement will be determined as real property is purchased, plans are finalized, construction bids are awarded, or projects are completed. In addition, certain acquisition or improvement funds are expected from non-bond sources, including funds which have not yet been secured. Therefore, the City Council cannot guarantee that the Bonds will provide sufficient funds to allow completion of all needed improvements.

Proceeds of the Bonds shall be used to finance the acquisition and improvement of real property for affordable housing (the "Improvements"), including the application of bond proceeds for the City directly, or indirectly through third parties as loans, grants, or other disbursements to qualified individuals, not-for-profit entities acting alone or together with tax credit investors, not-for-profit corporations, partnerships, associations and government agencies, to acquire real property for the purpose of constructing, rehabilitating or preserving affordable housing, or to construct, rehabilitate or preserve affordable housing; including but not limited to supportive housing, nonprofit rental housing, and limited-equity housing cooperatives affiliated with community land trusts, to

reimburse City funds for the prior acquisition and improvement of property to be used for affordable housing.

Proceeds of the Bonds may be used to reimburse the City for amounts advanced from the general fund or other funds or accounts to acquire real property when such purchases are made prior to the availability of Bond proceeds.

SECTION 3. Estimated Cost of Improvements. The estimated cost of the portion of the costs of the Improvements to be paid for from the Bonds is \$135 million. The estimated cost includes legal and other fees and the cost of printing the Bonds and other costs and expenses incidental to or connected with the authorization, issuance or sale of the Bonds. The cost of the Improvements include planning, program management and construction costs.

SECTION 4. Principal Amount of Bonds. The aggregate principal amount of Bonds to be issued is not to exceed \$135 million.

SECTION 5. Maximum Interest Rate. The maximum rate of interest to be paid on the Bonds shall be 12% per annum.

SECTION 6. Accountability Requirements. The following accountability measures apply to the issuance of Bonds pursuant to this Measure:

- (a) The specific purpose of the Bonds is to finance the Improvements for affordable housing; and
- (b) The proceeds from the sale of the City's Bonds will be used only for the purposes specified in this Measure, and not for any other purpose; and
- (c) The proceeds of the Bonds will be deposited into an account to be created and held by the City; and
- (d) The City Manager of the City shall file an annual report with the Berkeley City Council which report shall contain pertinent information regarding the amount of funds collected and expended, as well as the status of the Improvements; and
- (e) All expenditures will be subject to oversight by an independent oversight committee, composed of individuals appointed by the City Council, to confirm that Bond expenditures are consistent with the intent of this Measure; and
- (f) All expenditures also will be subject to an annual independent financial audit to confirm that Bond expenditures are consistent with the intent of this Measure.


The foregoing is a true and correct copy of Resolution No. 68,703-N.S., and the same was approved by a vote of the electorate of the City of Berkeley on November 6, 2018.

The foregoing Resolution was adopted by the Berkeley City Council on December 11, 2018 by the following vote:

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

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk



Office of the City Manager

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Lisa Warhuus, Director, Health, Housing & Community Services
 Subject: Contract No. 10209E Amendment: Bay Area Hearing Voices Network

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to amend Contract No. 10209E with Bay Area Hearing Voices Network (BAHVN) for Hearing Voices Support Groups for adults and youth who hear voices and have visions, to increase the amount by \$34,736 for a total contract amount not to exceed \$137,914, and to extend the contract through June 30, 2022.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the additional scope of work in the amount of \$34,736 will be provided from Mental Health Services Act Fund budget code 315-51-503-526-2017-000-451-612990 and are currently included in the FY 2022 budget.

CURRENT SITUATION AND ITS EFFECTS

Berkeley Mental Health (BMH) has partnered with BAHVN since 2016 to provide Hearing Voices Support Groups to the community. BAHVN has proven an effective vendor for this service, and continuing this partnership will provide continuity to consumers and ensure support for community members who experience extraordinary perception. Funding for these services and supports, all of which has been authorized by the MHS Plan, has been included in the FY22 Budget.

BACKGROUND

On February 2, 2016 BMH entered into Contract No. 10209 with BAHVN to provide support groups to community members who hear voices, see visions, and experience other forms of extraordinary perception. Community input informed the decision to partner with BAHVN, as stakeholders expressed concern that they or those they loved were unable to have their needs met by the existing programs in place at the time.

On December 3, 2019 by Resolution No. 69,193-N.S. City Council authorized the City Manager to amend that contract to expand the scope of services to include both a new Youth support group and a Family Members/Caregivers support group. The purpose of the Youth group is to support young people who hear, see, or sense things others don't, by providing better information, advice, and support for participants. The Family

Members/Caregivers group helps improve relationships and provides supports on better ways to communicate and respond about their own experiences which often include fears, anxieties, and confusions about what their loved ones are going through.

On July 14, 2020 by Resolution No. 69,493-N.S. City Council authorized the City Manager to amend the contract to add an additional year of services. The groups have been well-received by the community and are providing a service that was previously lacking. This amendment will ensure that the vendor can continue offering these groups for the next fiscal year.

Recently, after the shelter-in-place was ordered as a result of COVID-19, BAHVN adjusted their work and began offering their meetings over the Zoom platform, and will continue to offer groups in this manner as needed, allowing those who benefit from this service to maintain a sense of community and engage with others who have similar experiences.

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

BAHVN had demonstrated capacity and specialized practices in administering Hearing Voices Support Groups, providing an enhanced level of service to consumers.

ALTERNATIVE ACTIONS CONSIDERED

As an alternative action, Council could instead direct staff to circulate a formal RFP to competitively solicit a different vendor, or to not fund this service altogether.

CONTACT PERSON

Conor Murphy, Assistant Management Analyst, HHCS, 510-981-7611

Steven Grolnic-McClurg, Manager of Mental Health Services, HHCS, 510-981-5249

Attachments:

1: Resolution

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

CONTRACT NO. 10209E 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 February 2, 2016, the City entered into Contract No. 10209 with Bay Area Hearing Voice Network, which has subsequently been amended several times to add funding and extend the term, most recently with amended Contract No. 10209D for an expenditure limit not to exceed \$103,178, authorized by Resolution No. 69,493-N.S on July 14, 2020; and

WHEREAS, MHSA funds in the amount of \$34,736 are available in the current budget year in Mental Health Services Act Fund budget 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 amend Contract No. 10209E with Bay Area Hearing Voices Network (BAHVN) for Hearing Voices Support Groups for adults and youth who hear voices and have visions, to increase the amount by \$34,736 for a total contract amount not to exceed \$137,914, and to extend the contract through June 30, 2022. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.



Office of the City Manager

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Lisa Warhuus, Director, Health, Housing & Community Services
 Subject: Mental Health Services Act (MHSA) Fiscal Year 2021-2022 Annual Update

RECOMMENDATION

Adopt a Resolution approving the Mental Health Services Act (MHSA) Fiscal Year 2021 - 2022 Annual Update (MHSA FY22 Annual Update), which provides information on current and proposed uses of funds for mental health programming, and forwarding the MHSA FY22 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 & Early Intervention; Innovations; Workforce, Education & 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 FY22 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 approximate revenues and expenditures for each year. This MHSA FY22 Annual Update includes the following estimated revenue and expenditures in each MHSA component:

MHSA FUNDING COMPONENT	Estimated Unspent Funds	Estimated New Funding	Estimated Expenditures
Community Services & Supports	\$6,310,561	\$6,595,582	\$8,701,483
Prevention & Early Intervention	\$1,885,708	\$1,648,896	\$1,912,904
Innovations	\$1,387,243	\$433,920	\$626,500

MHSA FUNDING COMPONENT	Estimated Unspent Funds	Estimated New Funding	Estimated Expenditures
Workforce, Education & Training	\$40,157	\$0	\$40,157
Capital Facilities & Technological Needs	\$189,599	\$0	\$189,599
TOTALS	\$9,813,268	\$8,678,398	\$11,470,643

The budget provides an update to the estimated revenue and expenditures that were projected for FY22 in the previously approved MHSA Three Year Plan.

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. As a result, MHSA revenue increased in FY21 and a 43% increase is projected in FY22 in the MHSA Fund. Additionally, the expenditure projections for FY21 in the approved MHSA Three Year Plan reflected the total costs of each program if it was fully operable. The actual expenditures in FY21 were less than what was projected, due to several factors including staff attrition and vacancies, and slower start-ups with new programs because of changes due to the pandemic.

The savings from the FY21 expenditures, together with the projected additional revenue in FY21 and FY22, will provide increased funding to support MHSA programs and services over the next two years. 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 FY23 Annual Update.

CURRENT SITUATION AND ITS EFFECTS

The MHSA FY22 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 FY22 Annual Update details current mental health programs and services, proposes areas of new programming and/or increased staffing and includes the state required MHSA FY2020 Prevention and Early Intervention Annual Evaluation Report and the FY2020 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 FY22 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 25 through June 23; and a Public Hearing on the evening of July 22 before the Mental Health Commission. There were no public Comments received during the 30 Day Public Review.

During the Public Hearing, questions about MHSA programs, funding and the MHSA Plan process were addressed by either the Department Director, the Mental Health Manager, or the MHSA Coordinator. What followed was a robust discussion that included both considerations of the MHSA FY22 Annual update and overall needs and gaps in community services that require funding from a multitude of sources. All input will be utilized to inform this MHSA Annual Update and/or future MHSA Three Year Plans and Updates. Input received on the MHSA FY22 Annual Update during the Public Hearing is below. Comments received from one individual on the same subject over the course of the Public Hearing are organized in one bullet point. Comments were mostly clustered on the following themes—the Specialized Care Unit, Substance Use Disorder Services, MHSA Unspent Funds, Mental Health Promotion Campaign, INN Homeless Wellness Encampment Project, the MHSA Plan Process—with additional comments outside of these.

Summary of Public Hearing comments:

Specialized Care Unit (SCU)

- The budget looks like it is from another year and the world I see is not reflected in this plan as only \$200,000 are being allocated to the SCU. The SCU should not only have a one-time funding allotment from MHSA. I don't understand why the Mental Health Budget is not the right place to ask for ongoing funds for the SCU.
- Many of the programs being funded above the SCU are not even remotely needed and there is no evidence of any positive outcomes as many are pre-existing programs. They want the money for the Clinics that benefits the Clinicians and not the clients.

Substance Use Disorder (SUD) Services

- I'm alarmed that the budget doesn't really reflect the current realities we are dealing with, as there is such a meager allocation for SUD services to make any impact. Berkeley is in need of more SUD services. We need services on-demand, real quick. The current level is not enough. We need more SUD Services, period.
- The \$100,000 is so little of an amount for co-occurring disorder services and it's unclear whether that will be going to current clients or other people who are in need of services.

MHSA Unspent Funds

- There seems to be a disconnect between the services needed and the level of unspent funds.

- Utilize unspent MHSA funds on areas such as the Specialized Care Unit and for Substance Use Disorder services.
- I can't see how all the reserve funds are going to be spent down.
- I approve of reducing the MHSA Reserves (Unspent funds).

Mental Health Promotion Campaign

- Maybe somebody can help me understand how a Mental Health Promotion Campaign, however vague and imaginably targeted toward some vague unspecified population is supposed to get more money than the SCU? Who is being benefitted by the Mental Health Promotion Campaign? People in the community need long-term usually trauma based expert psychotherapist help – not a superficial campaign. This Mental Health Promotion Campaign, where is this money going? Money is needed for co-occurring disorders, people are dying, people are getting paralyzed, people are being hit by cars in the middle of the street, people are suicidal. What you need is what you need. It doesn't address the overwhelmingly horrific situation not only in the streets but for the underserve, some of whom are clients. Don't see a map, don't see details, don't see outcomes, just told, this sounds good, we know what we are doing so support us, I really hope and pray you don't.

INN Homeless Wellness Encampment Project

- I don't know what the Wellness Project is going to do. There is a trust issue in this town and I don't see how a Wellness Project is going to help. When someone has a link to the Wellness Encampment Project, please send it. It seems more than \$500,000 is a big expense to simply vote yes on without any detailed information.
- Unless the Wellness Center includes psychologists, best practice informed outreach, Social Workers, resources and links, Trauma Informed, Psycho-Social support material resources – it is a throw away. The Homeless Wellness Encampment Project is being funded at a higher level than the SCU. Take the money out of the Wellness Center and the Mental Health Promotion campaign and give it to Substance Use Disorder Services, the SCU, and best practices in outreach services.
- When I was involved in this project they were talking about providing hygiene products and music. There is so much crisis and trauma in the homeless population. We need a more specific strategy to address it. The Mental Health Division made the decision on the Homeless monies. These are important monies targeted to the Homeless from the State. It could have been used in many directions benefitting the homeless. There have been public forums but the Mental Health Division pointed it in the direction being taken.

MHSA Plan Process

- As there were no Public Comments in the 30-day Public Review, I have to question your method.
- The detailed information in the Public Hearing presentation is extremely helpful, but it is way too much information to digest in one sitting. This is the only body in the

City that has experts on Mental Health subjects and I feel we weren't given the information until the time we must approve or disapprove, and I don't feel respected.

- Can't make a decision based on the presentation, it was too much information.
- Philosophy of engagement of public needs an upgrade.
- I've been doing this for four years and there were four Community sessions each an hour and a half that Karen sent to every single person multiple times. I went to one of these sessions for an hour and 15 minutes and my inquiries were about staff increases and what those people are doing and how does that look when you have an organizational chart and the kind of job duties people are engaged in, and I got all my questions answered and she made a chart of all staff funded under MHSA. I don't think you can say that Berkeley Mental Health is not responsive. There are opportunities to participate before the plan gets sent to the City.
- We need to keep working and shifting our culture. The Commission is very diverse and not everyone absorbs information in the same way. Need to get materials out that aren't so dense. Look at the process itself and design it in a way to remind everyone that this is the opportunity to provide input.
- The MHSA expressively states that there be meaningful stakeholder input. Meaningful means more than a rubber stamp. Karen does an excellent job of fulfilling her responsibilities but she too, defers to the Mental Health Division. As a Commission you should be able to propose amendments which provide for the meaningful input required by law.
- There is so much information that we get for this committee (Commission) that maybe we should have an alert on high priority issues.

Additional Comments Received

- The social complexity of the difficult child experience needs further engagement.
- The social role of police needs an upgrade.
- I'm thrilled about the Security Guards being removed from the clinics and being replaced by Peer Staff.
- Currently there is not enough people engaging with individuals clearly in need of services. We could set up a services tent near an encampment. I can't understand what all BMH staff are doing. My biggest concern is that there is not a presence in the street of your staff.
- Need more suicide prevention education and resources in the community. I'm unclear whatever happened to the report that a Berkeley Mental Health Intern wrote on Suicide Prevention and what strategies were proposed and implemented from that report.
- Can we see the outcomes from previous years before supporting funding on pre-existing programs? Oh well, here we are today with people knowing the priorities don't send monies to vital needs and don't understand the programs, the outcomes historically, the funding strains limits. Forget blame – don't approve it today. We are talking about massive funds going to meaningless programs like the Wellness

Center and Mental Health Promotion to line the pockets of Berkeley Mental Health – you know that much.

- There are many excellent elements to this plan, trauma monies are needed, for example, for the African American community. Can you approve of the rest of the plan and propose minor amendments on issues of concern to Commissioners? Particularly co-occurring disorders and how new homeless monies should be used?
- The following report was also submitted prior to the Public Hearing to be used to review the number of LGBT individuals residing in the Bay Area: Conron, K.J., Luhur, 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.

The Division will utilize the input received to:

- Assess the amount of funding that should be allocated in the next MHSA Annual Update to increase co-occurring (Mental Health and Substance Use Disorder) services;
- Continue working with Department and City Leadership on the amount of MHSA funds to allocate for future funding of the Specialized Care Unit;
- Analyze the projected amount of unspent MHSA funds that may be available in future years to assess whether there are opportunities to add new programming;
- Partner with the Mental Health Commission on strategies to strengthen the MHSA Community Program Planning, information sharing, and input process for Three Year Plans and Annual Updates;
- Analyze whether changes are needed on the Draft MHSA Innovations (INN) Homeless Encampment Wellness Project, which was created to address local needs based on input received from individuals residing in homeless encampments, homeless advocates, and other community stakeholders. Per MHSA INN funding procedures, the draft project plan is currently under review by staff at the State Mental Health Oversight and Accountability Commission (MHSOAC), prior to being released locally for public review and comment.
- Revisit the Berkeley Mental Health Suicide Prevention Plan to assess implementation strategies for resources.

In response, staff will also revise the Annual Update's demographic section to update the number of LGBT people living in the Bay Area to be consistent with the "Estimated Number of US LGBT Adults in Large Metropolitan Areas" Brief that was submitted.

During the July 22, 2021 Public Hearing the Mental Health Commission passed the following motion regarding the MHSA FY22 Annual Update:

M/S/C (Fine, cheema) Motion to approve the MHSA FY22 Annual Update and submit it to the Berkeley City Council. Ayes: Blanton, cheema, Fine, Jones. Noes: Pritchett; Abstentions: Opton; Absent: Moore, 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 & 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 & 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 & Supports, Prevention & Early Intervention, and Innovations. Workforce, Education & Training and Capital Facilities and Technological Needs funds were awarded with expenditure timeframes 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 CFTN and WET projects were continued past the original timeframes.

This MHSA FY22 Annual Update is required by the state to update the previously approved FY2020/21 – 2022/23 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.

Prior to July 2012, draft MHSA plans had to be approved by the State Department of Mental Health (DMH) after the community review process had been completed. The

passage of AB1467 in July 2012 requires the local governing board, Berkeley City Council, to approve MHSA Plans and Annual Updates before submitting to the State. An exception is Innovation Plans, which must be approved by City Council as well as the State Mental Health Oversight and Accountability Commission (MHSOAC) when requesting funds for new Innovations programs.

Past Council Action

Since the inception of the MHSA program in 2006, Council has taken actions to approve all MHSA Plans and Annual Updates. The most recent actions taken on MHSA Three Year Plans or Annual Updates are as follows:

- May 26, 2015, approval of the MHSA Fiscal Years 2015/2016 – 2017/2018 Three Year Program and Expenditure Plan.
- June 28, 2016, approval of the MHSA Fiscal Year 2015/16 Annual Update.
- January 24, 2017, approval of the MHSA Fiscal Year 2016/17 Annual Update.
- July 25, 2017, approval of the MHSA Fiscal Years 2017/2018 – 2019/2020 Three Year Program and Expenditure Plan.
- October 30, 2018, approval of the MHSA Fiscal Year 2018/19 Annual Update.
- July 23, 2019, approval of the MHSA Fiscal Year 2019/20 Annual Update.
- December 1, 2020, approval of the MHSA Fiscal Years 2020/2021 – 2022/2023 Three Year Program and Expenditure Plan.

Council has also previously approved the initial MHSA component plans, Innovation 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 FY22 Annual Update will fulfill state requirements.

ALTERNATIVE ACTIONS CONSIDERED

As obtaining approval on MHSA Plans and Annual Updates by the local governing body is a state requirement, no other alternative action was considered.

CONTACT PERSON

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

Attachments:

- 1: Resolution
2. Exhibit A: MHSA Fiscal Year 2021-2022 Annual Update

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

MENTAL HEALTH SERVICES ACT (MHSA) FISCAL YEAR 2021-2022 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 & Supports; Prevention & Early Intervention; Innovations; Workforce, Education & Training; and Capital Facilities and Technological Needs; and

WHEREAS, the City's Department of Health, Housing & Community Services, Mental Health Division, receives MHSA Community Services & Supports, Prevention & Early Intervention, and Innovations funds on an annual basis, and received one-time distributions of MHSA Workforce, Education & 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, Annual Update, or Three-Year Program and Expenditure Plan in place for the funding timeframe; and

WHEREAS, on May 7, 2013 by Resolution No. 66,107-N.S., the City Council authorized the City Manager to approve the MHSA Fiscal Year 2012 through 2013 Annual Update; and

WHEREAS, on June 24, 2014 by Resolution No. 66,668-N.S., the City Council authorized the City Manager to approve the MHSA Fiscal Year 2013 through 2014 Annual Update; 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, on June 28, 2016 by Resolution No. 67,552-N.S., the City Council authorized the City Manager to approve the MHSA Fiscal Year 2015 through 2016 Annual Update; and

WHEREAS, on January 24, 2017 by Resolution No. 67,799-N.S., the City Council authorized the City Manager to approve the MHSA Fiscal Years 2016 through 2017 Annual Update; and

WHEREAS, on July 25, 2017 by Resolution No. 68,109-N.S., the City Council authorized the City Manager to approve the MHSA Fiscal Years 2017/2018 - 2019/2020 Three Year Program and Expenditure Plan; and

WHEREAS, on October 30, 2018 by Resolution No. 68,639-N.S., the City Council authorized the City Manager to approve the MHSA Fiscal Year 2018 through 2019 Annual Update; and

WHEREAS, on July 23, 2019 by Resolution No. 69,033-N.S., the City Council authorized the City Manager to approve the MHSA Fiscal Year 2019 through 2020 Annual Update; and

WHEREAS, on December 1, 2020 by Resolution No. 69,620-N.S., the City Council authorized the City Manager to approve the MHSA Fiscal Years 2020/2021 - 2022/2023 Three Year Program and Expenditure Plan; and

WHEREAS, City Council has previously approved MHSA funding for local housing development projects and for 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 2021 through 2022 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 2021-2022 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 2021/22 Annual Update to appropriate state officials.

Exhibit A: MHSA Fiscal Year 2021-2022 Annual Update

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



FY2021-2022 Annual Update

TABLE OF CONTENTS

Background and Overview 1

Message From The Mental Health Manager... 4

Demographics..... 5

Community Program Planning (CPP) 9

COVID-19 Public Health Emergency 14

MHSA FY2/22 Annual Update15

Proposed New Funding Additions..... 16

Program Descriptions and FY20 Data By Funding Component... 18

-Community Services & Supports 19

-Prevention & Early Intervention43

-Innovations..... 80

-Workforce, Education & Training 84

-Capital Facilities and Technological Needs 86

FY20 Average Cost Per Client.....87

Budget Narrative.....88

Program Budgets.....1A

Appendix A – Prevention and Early Intervention Annual Evaluation Report.....1B

Appendix B – Innovation Annual Evaluation Report..... 1C

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 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 MHSA funds, a stakeholder informed plan outlining how funds will be utilized must be developed and locally approved. Development of an MHSA 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 [MHSA AB114 Reversion Expenditure Plan](#) some CFTN and WET projects were continued past the original timeframes.

MHSA legislation requires mental health jurisdictions to provide updates on MHSA 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 MHSA 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 MHSA 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 (ACBHCS);
- Funding for increased services for Older adults and the API population.

Additionally, an outcome of the implementation of the MHSA 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 MHSAs services and supports. Even prior to the passage of Proposition 63, BMH convened (and has since maintained) an MHSAs Advisory Committee which serves in an advisory capacity on MHSAs programs and is comprised of mental health consumers, family members, and individuals from unserved, underserved and inappropriately served populations, among other community stakeholders.

MHSAs funding is based on a percentage of the total population in a given area. The amount of MHSAs funds the City of Berkeley receives is comprised of a calculation based on the total population in Berkeley. MHSAs 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 MHSAs funds to provide services in the City of Albany, although Albany is a part of the Alameda County total population. As agreed to in contract negotiations with ACBHCS, beginning in FY21 the Division began only using MHSAs funds for services and supports in Berkeley. Going forward, ACBHCS will provide MHSAs funded services in Albany.

This City of Berkeley MHSAs FY2021-2022 (FY22) 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 MHSAs services, and provides a reporting on FY20 program data.

As with the Three Year Plan last year, community program planning for this Annual Update was conducted while a global pandemic and public outcry for racial justice amid the excessive use of force by police against many African Americans around the country, were still occurring. Both crises further exposed the pervasive racial, social and health inequities that exist and detrimentally impact African Americans and other communities of color. Additionally, since the beginning of the pandemic, and particularly recently during the planning timeframe for this Annual Update, there has been a significant increase in violence and hate crimes around the country against individuals in the API community.

In response to public input received through previous MHSAs planning processes and from a variety of other local gatherings and venues, one of the additions the Division proposed through the previously approved Three Year Plan was to increase funding in the Prevention and Early Intervention Community Education and Supports program to provide additional services for the African American, Latinos/Latinas/Latinx, and LGBTQIA+ populations. Additionally, through previous MHSAs Plans and Updates, increased funding has been allocated from the Community Services and Supports System Development funding component to provide enhanced services and supports for the API, Older Adult and TAY populations. It is envisioned that the existing programs that will be continued, and new programs that will be implemented out of this funding, will provide vital services and supports for these vulnerable populations in Berkeley.

MESSAGE FROM THE MENTAL HEALTH MANAGER

Our community faces enormous challenges. Racial injustice, health inequities, isolated families and children, far too many unhoused people, and a continuing pandemic; these are just a few of the myriad issues impacting the mental health of residents of Berkeley. At the same time, the Covid-19 pandemic has made providing care much more difficult. During the past year, 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 emerging safety procedures 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. An important part of our community's response to these enormous needs will be made possible by the MHSA FY22 Annual Update.

The MHSA FY22 Annual Update reflects the input of a wide variety of community stakeholders. Ongoing funds will support the Berkeley Wellness Center in providing an accessible place for all to connect to peers and community. We are using funds allocated in this plan to attempt to contract with community-based organizations to provide culturally specific services for Latino/Latina/Latinx, African American/Black, Asian Pacific Islander, and LGBTQIA+ communities. We will be utilizing MHSA Innovation funding to make available for all adults who live, work or go to school in Berkeley mental health apps at no cost. We have created a Homeless Full-Service Partnership to outreach to and provide services for unhoused individuals. Utilizing MHSA funding, the Aging Division will be contracting with a provider to deliver counseling services for Seniors. New funding will support a pilot Specialized Care Unit that will help individuals in mental health crisis without the use of law enforcement; the doubling of the size of our Wellness and Recovery team; a new mental health promotion campaign; and an increase in school based mental health services.

This year also marks significant improvements in the facilities where City of Berkeley mental health services are provided, with the re-opening of the renovated Adult Mental Health Clinic at 2640 Martin Luther King Jr. Way and the coming move of the Family, Youth and Children Clinic to 1521 University Avenue. With the support of MHSA funds, treatment sites will be accessible, welcoming, wellness and recovery focused, and safe for clients and staff. While there remains a lot of economic uncertainty as California re-opens, we thankfully have not seen decreases in MHSA funding yet. In coming years, we will closely watch both revenue and expenditures to ensure that we are able to sustain existing mental health investments.

The Mental Health Division presents the City of Berkeley's MHSA FY22 Annual Update with gratitude for all the hard work that went into the programs it describes. Our community partners, consumers, Mental Health Commission, and City staff all deserve appreciation for their efforts, input, and partnership.

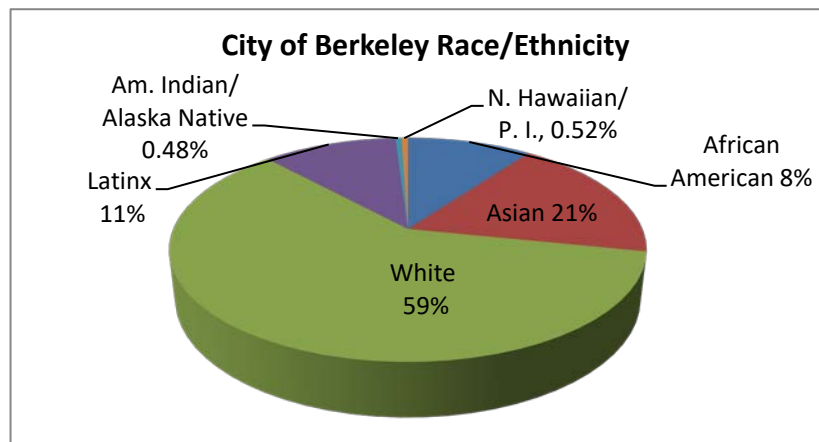
DEMOGRAPHICS

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 120,763 the City of Berkeley is densely populated and larger than 23 of California’s small counties.

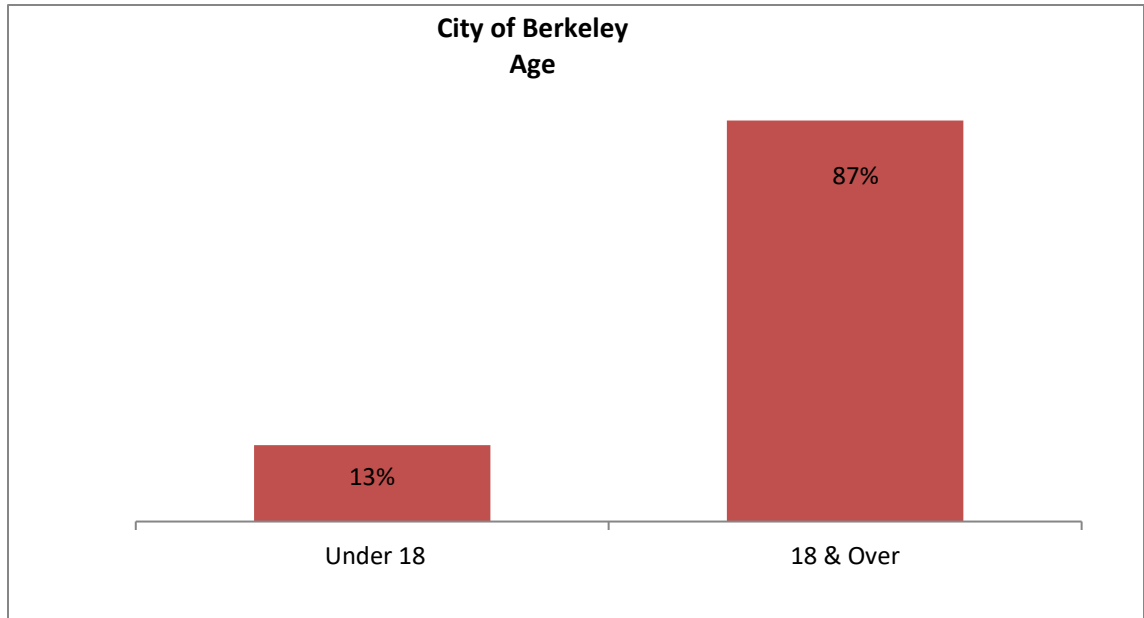
Race/Ethnicity

Berkeley is a diverse community with changing demographics. The African American population has decreased in recent years while the Latino 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:

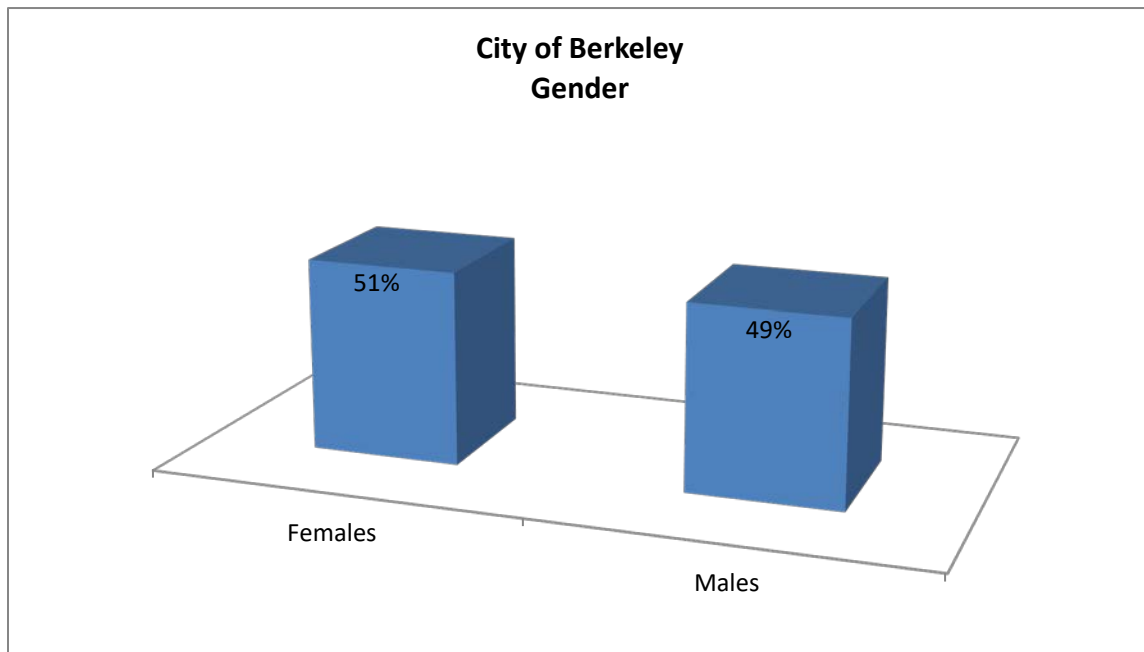


Age/Gender

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, Luhur.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

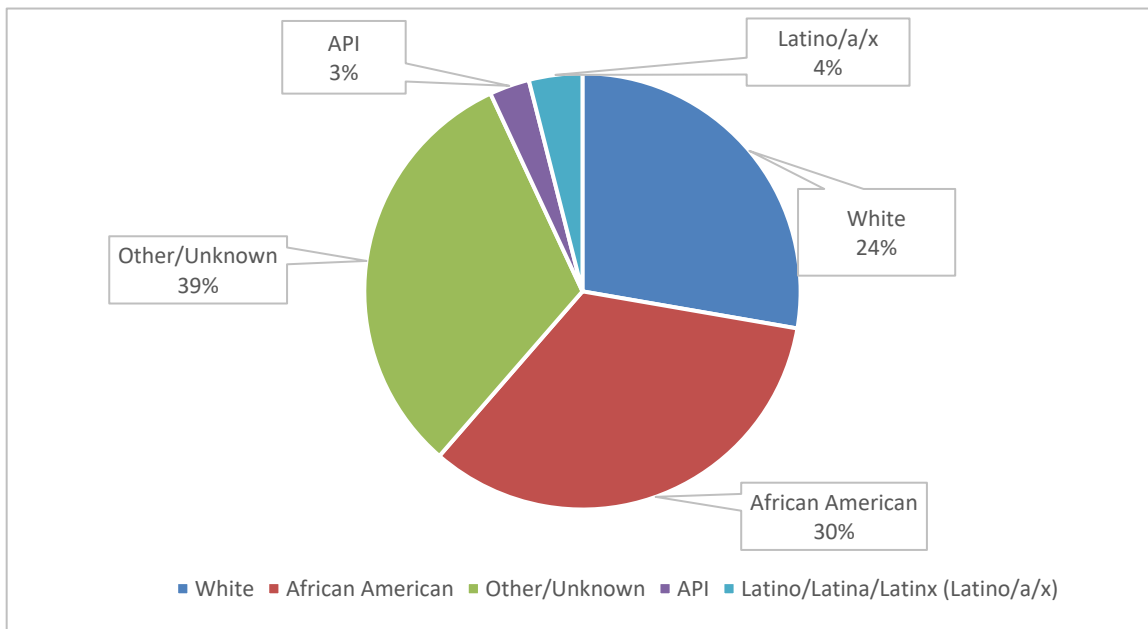
With some of the highest housing costs in the Bay Area, the Berkeley median household income is \$85,530. Nearly 20% of Berkeley residents live below the poverty line and approximately 42% of Berkeley children qualify for free and reduced lunches. While 43% of Berkeley residents own their own homes, 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 74% 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 2020 was as follows:



Community Program Planning (CPP)

Community Program Planning (CPP) for this City of Berkeley MHSa FY22 Annual Update was conducted while a global pandemic was still occurring. For the first three and a half months of FY21, the MHSa Coordinator was deployed for two days a week to the City's Emergency Operation Center to support the work around the vaccine roll-out response to the pandemic. During the same timeframe the MHSa Analyst was working on a reduced time schedule. Both of these changes impacted the ability to do some of the regular outreach to the community that is usually conducted during community program planning for a Three Year Plan or Annual Update.

During the CPP process, one MHSa Advisory Committee meeting and four Community Input meetings were conducted through the Zoom platform. A copy of the presentation that was conducted during community meetings was also posted on the City of Berkeley MHSa Webpage. The meetings and posting of the presentation enabled opportunities for input from MHSa Advisory Committee members, consumers, family members, representatives from community-based organizations, individuals from unserved, underserved and inappropriately served populations, BMH Staff, City Commissioners, and other MHSa Stakeholders.

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 FY22 Annual Update began with an internal examination of existing programs, unaddressed needs, and available funding which included a review of input received 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 that were considered in this process included:

- Increase in funds for the Berkeley Food and Housing Project, Russell Street Residence;
- Addition of two full-time Peer positions to augment Wellness Recovery Services;
- Increase in funding and flexibility around Substance Use Disorder Services;
- One-time funding to support the Specialized Care Unit Pilot Program;
- Increase in funding for the Supportive Schools Project; and
- One-time funding for a Mental Health Promotion Campaign.

The Division is also proposing to increase funding to McKinley House.

Input received during Community Program Planning Zoom meetings largely supported the proposed additions. Additional input received during community meetings and/or through email was as follows:

- There is a broad category breakdown with Dissociative Identity Disorders (DID) and Trauma. Training should be provided to staff on how to provide DID group services, and group services for this population should be implemented;
- There is a need for internal support services and systems to help identify trauma and to prevent misdiagnosis of individuals, especially people of color;
- Continue supporting the Prevention Early Intervention programs;

- Having peers at the location of services is super helpful;
- Implement phone-in program services and tailor services for those who do not have a computer;
- There is a need to address underused funding resources to PEI programs; and
- The Division should consider combining and integrating funding streams.

Input that was specific to the proposed new INN Homeless Encampment Project (that is currently undergoing a separate plan development and approval process) was as follows:

- For the proposed new INN Homeless Encampment project the Division should take into consideration how Homeless Encampments may change in several years per the federal American Rescue Act and State Whole Person Care funding; and
- The Division should think through how confidential services and supports will be provided to individuals who experience Domestic Violence and their partners.

A 30-Day Public Review was held from Tuesday, May 25th through Wednesday, June 23rd to invite input on this MHSA Annual Update. A copy of the Annual Update was posted on the BMH MHSA website and announcements of the 30-Day Public Review were mailed and/or emailed to community stakeholders. A Public Hearing was held at 7:00pm on Thursday, July 22nd during the Mental Health Commission meeting which was held on the Zoom platform. There were no comments received during the 30 Day Public Review period. Input received on the MHSA FY22 Annual Update during the Public Hearing fell into the following areas outlined below (Comments received from one Individual on the same subject over the course of the Public Hearing are organized in one bullet point):

Specialized Care Unit (SCU)

- The budget looks like it is from another year and the world I see is not reflected in this plan as only \$200,000 are being allocated to the SCU. The SCU should not only have a one-time funding allotment from MHSA. I don't understand why the Mental Health Budget is not the right place to ask for ongoing funds for the SCU.
- Many of the programs being funded above the SCU are not even remotely needed and there is no evidence of any positive outcomes as many are pre-existing programs. They want the money for the Clinics that benefits the Clinicians and not the clients.

Substance Use Disorder (SUD) Services

- I'm alarmed that the budget doesn't really reflect the current realities we are dealing with, as there is such a meager allocation for SUD services to make any impact. Berkeley is in need of more SUD services. We need services on-demand, real quick. The current level is not enough. We need more SUD Services, period.
- The \$100,000 is so little of an amount for co-occurring disorder services and it's unclear whether that will be going to current clients or other people who are in need of services.

MHSA Unspent Funds

- There seems to be a disconnect between the services needed and the level of unspent funds.
- Utilize unspent MHSA funds on areas such as the Specialized Care Unit and for Substance Use Disorder services.
- I can't see how all the reserve funds are going to be spent down.
- I approve of reducing the MHSA Reserves (Unspent funds).

Mental Health Promotion Campaign

- Maybe somebody can help me understand how a Mental Health Promotion Campaign, however vague and imaginably targeted toward some vague unspecified population is supposed to get more money than the SCU? Who is being benefitted by the Mental Health Promotion Campaign? People in the community need long-term usually trauma based expert psychotherapist help – not a superficial campaign. This Mental Health Promotion Campaign, where is this money going? Money is needed for co-occurring disorders, people are dying, people are getting paralyzed, people are being hit by cars in the middle of the street, people are suicidal. What you need is what you need. It doesn't address the overwhelmingly horrific situation not only in the streets but for the underserve, some of whom are clients. Don't see a map, don't see details, don't see outcomes, just told, this sounds good, we know what we are doing so support us, I really hope and pray you don't.

Homeless Wellness Encampment Project

- I don't know what the Wellness Project is going to do. There is a trust issue in this town and I don't see how a Wellness Project is going to help. When someone has a link to the Wellness Encampment Project, please send it. It seems more than \$500,000 is a big expense to simply vote yes on without any detailed information.
- Unless the Wellness Center includes psychologists, best practice informed outreach, Social Workers, resources and links, Trauma Informed, Psycho-Social support material resources – it is a throw away. The Homeless Wellness Encampment Project is being funded at a higher level than the SCU. Take the money out of the Wellness Center and the Mental Health Promotion campaign and give it to Substance Use Disorder Services, the SCU, and best practices in outreach services.
- When I was involved in this project they were talking about providing hygiene products and music. There is so much crisis and trauma in the homeless population. We need a more specific strategy to address it. The Mental Health Division made the decision on the Homeless monies. These are important monies targeted to the Homeless from the State. It could have been used in many directions benefitting the homeless. There have been public forums but the Mental Health Division pointed it in the direction being taken.

MHSA Plan Process

- As there were no Public Comments in the 30-day Public Review, I have to question your method.
- The detailed information in the Public Hearing presentation is extremely helpful, but it is way too much information to digest in one sitting. This is the only body in the City that has experts

on Mental Health subjects and I feel we weren't given the information until the time we must approve or disapprove, and I don't feel respected.

- Can't make a decision based on the presentation, it was too much information.
- Philosophy of engagement of public needs an upgrade.
- I've been doing this for four years and there were four Community sessions each an hour and a half that Karen sent to every single person multiple times. I went to one of these sessions for an hour and 15 minutes and my inquiries were about staff increases and what those people are doing and how does that look when you have an organizational chart and the kind of job duties people are engaged in, and I got all my questions answered and she made a chart of all staff funded under MHSA. I don't think you can say that Berkeley Mental Health is not responsive. There are opportunities to participate before the plan gets sent to the City.
- We need to keep working and shifting our culture. The Commission is very diverse and not everyone absorbs information in the same way. Need to get materials out that aren't so dense. Look at the process itself and design it in a way to remind everyone that this is the opportunity to provide input.
- The MHSA expressively states that there be meaningful stakeholder input. Meaningful means more than a rubber stamp. Karen does an excellent job of fulfilling her responsibilities but she too, defers to the Mental Health Division. As a Commission you should be able to propose amendments which provide for the meaningful input required by law.
- There is so much information that we get for this committee (Commission) that maybe we should have an alert on high priority issues.

Additional Comments Received

- The social complexity of the difficult child experience needs further engagement.
- The social role of police needs an upgrade.
- I'm thrilled about the Security Guards being removed from the clinics and being replaced by Peer Staff.
- Currently there is not enough people engaging with individuals clearly in need of services. We could set up a services tent near an encampment. I can't understand what all BMH staff are doing. My biggest concern is that there is not a presence in the street of your staff.
- Need more suicide prevention education and resources in the community. I'm unclear whatever happened to the report that a Berkeley Mental Health Intern wrote on Suicide Prevention and what strategies were proposed and implemented from that report.
- Can we see the outcomes from previous years before supporting funding on pre-existing programs? Oh well, here we are today with people knowing the priorities don't send monies to vital needs and don't understand the programs, the outcomes historically, the funding strains limits. Forget blame – don't approve it today. We are talking about massive funds going to meaningless programs like the Wellness Center and Mental Health Promotion to line the pockets of Berkeley Mental Health – you know that much.
- There are many excellent elements to this plan, trauma monies are needed, for example, for the African American community. Can you approve of the rest of the plan and propose minor amendments on issues of concern to Commissioners? Particularly co-occurring disorders and how new homeless monies should be used?

- The following Brief was also submitted prior to the Public Hearing o be used to review the number of LGBT individuals residing in the Bay Area:
Conron,K.J, Luhur.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.

During the Public Hearing questions around various MHSA programs, funding and the MHSA Plan process were addressed by either the Department Director, the Mental Health Manager, or the MHSA Coordinator. All input received will be utilized to inform this MHSA Annual Update and/or future MHSA Three Year Plans and Updates.

The only input received that will warrant a change to this MHSA FY22 Annual Update was information “Estimated Number of US LGBT Adults in Large Metropolitan Areas” Brief that was submitted. To align with information in the Brief, the current number of LGBT living in the Bay Area will be updated in the demographic section of the Annual Update. The Division will utilize the other input received to:

- Assess the amount of funding that should be allocated in the next MHSA Annual Update to increase co-occurring (Mental Health and Substance Use Disorder) services;
- Continue working with Department and City Leadership on the amount of MHSA funds to allocate for future funding of the Specialized Care Unit;
- Analyze the projected amount of unspent MHSA funds that may be available in future years to assess whether there are opportunities to add new programming;
- Partner with the Mental Health Commission on strategies to strengthen the MHSA Community Program Planning, information sharing, and input process for Three Year Plans and Annual Updates;
- Analyze whether changes are needed on the Draft MHSA Innovations (INN) Homeless Encampment Wellness Project, which was created to address local needs based on input received from individuals residing in homeless encampments, homeless advocates, and other community stakeholders. Per MHSA INN funding procedures, the draft project plan is currently under review by staff at the State Mental Health Oversight and Accountability Commission (MHSOAC), prior to being released locally for public review and comment.
- Revisit the Berkeley Mental Health Suicide Prevention Plan to assess implementation strategies for resources.

Following the Public Hearing the Mental Health Commission passed the following motion regarding the MHSA FY22 Annual Update:

M/S/C (Fine, cheema) Motion to approve the MHSA FY22 Annual Update and submit it to the Berkeley City Council. Ayes: Blanton, cheema, Fine, Jones. Noes: Pritchett; Abstentions: Opton; Absent: Moore, Taplin.

COVID-19 PANDEMIC AND MHSA FLEXIBILITIES

The Covid-19 pandemic has caused an unprecedented, unstable time where individuals have experienced a variety of physical health, mental health and financial needs. In response to uncertainties around the amount of MHSA revenue that would be generated, and the increased workload that staff in Mental Health jurisdictions would be undertaking as a result of the pandemic, new temporary MHSA regulations were enacted. The following regulations around MHSA Flexibilities were passed on July 1, 2020, and have been extended through July 1, 2022:

- **Three Year Program and Expenditure Plan Extension:** If a County/City is unable to complete and submit a Three Year Program and Expenditure Plan for the year beginning FY20/21 or an Annual Update beginning year FY21/22 due to the Covid-19 Public Health Emergency, they may extend their current approved plan. The new due deadline for the FY21/22 Annual Update has been extended to July 1, 2022.
- **Prudent Reserve:** Per MHSA legislation mental health jurisdictions are required to maintain a local Prudent Reserve to be able to fund the most crucial support services in the event there is a downturn in the amount of MHSA revenues received. MHSA regulations require the State to determine when Prudent Reserve funds can be locally accessed. New MHSA flexibilities allow mental health jurisdictions to determine when Prudent Reserve funds are needed for local use, and enables the transfer of funds into their CSS and PEI components to meet local needs, without a determination or initiation from the State.
- **CSS Allocations:** MHSA Generally requires at least 51% of CSS funds to be allocated to Full Service Partnership (FSP) programs. To allow more flexibility in allocating CSS funding according to local needs during the Public Health Emergency, counties can determine the allocation percentages across the three CSS funding components: Full Service Partnership; General System Development and Outreach and Engagement.

Local MHSA Services During the Pandemic

Through the implementation of social distancing protocol, and utilization of tele-health and Zoom technologies, local MHSA funded programs and services have largely continued during the Covid-19 pandemic. This Annual Update provides a reporting on programs and services in FY20, a timeframe that included the first three months of the pandemic.

MHSA FY21/22 Annual Update

This City of Berkeley's MHSA FY21/22 (FY22) 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 three years, and a reporting on FY20 program data. Additionally, per state regulations, this Annual Update includes the FY20 Prevention and Early Intervention (PEI) Annual Evaluation Report (Appendix A) and the FY20 Innovations (INN) Annual Evaluation Report (Appendix B).

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

- 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 55 of this Three Year Plan provides an aggregated summary of some of the results of this initiative. The full report on the Impact Berkeley PEI program results can be accessed on the MHSA website: [MHSA Plans and Updates - City of Berkeley, CA](#)

- Homeless Outreach & Treatment Team: This pilot project supports homeless mentally ill individuals in Berkeley/Albany engaging them in mental health services. A local consultant, Resource Development Associates (RDA), was hired to measure the outcomes and effectiveness of this pilot project. In late FY20, the [Homeless Outreach and Treatment Team Final Evaluation Report](#) was released. Some of the many results of this evaluation can be reviewed in the PEI Section of this Three Year Plan.
- 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 Fiscal Year 2020 Prevention & Early Intervention Annual 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 Fiscal Year 2020 Innovations Annual Evaluation Report.
- **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.

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

PROPOSED NEW FUNDING ADDITIONS

A review of proposed staffing and services to be added through this MHSA Annual Update, are outlined below:

- **Increase Funding for the Berkeley Food & Housing Project, Russell Street Residence**

The Berkeley Food & Housing Project (BFHP) operates the Russell Street Residence (RSR) which provides permanent supportive housing for seventeen formerly homeless adults diagnosed with serious and persistent mental illness. Residents at RSR receive the following services: meals; therapeutic groups, activities and outings; transportation to medical appointments; assistance with daily activities including laundry and personal hygiene.

BMH has provided funding to the BFHP for many years, to operate the RSR which provides housing to clients served by the Division. In FY21, the RSR experienced an increase in rent. The Division is proposing through this Annual Update, to utilize CSS System Development monies to increase the amount of funding for the BFHP RSR to cover the rent increase. The total proposed amount of the increase to cover FY21 and FY22 is \$47,716. Following FY22, the proposed annual increase going forward will be an additional \$17,716 on top of the base contract amount each year.

- **Add two Social Service Specialist Positions to hire Mental Health Peer Staff**

The Division is proposing to allocate \$321,993 of CSS System Development funds to add two Social Service Specialist positions to increase staff with lived experience as mental health peers, on the Wellness and Recovery Team. This proposed use of funds comes out of a desire to both increase mental health peer staff at BMH and the provision of peer driven services, and to reduce the use of security guards in the mental health setting. The addition of

peer staff will enable a greater ability to provide a variety of peer led services, and will allow the Wellness Recovery Team to provide activities and supports to individuals in the waiting room, replacing the use of security guards. It is envisioned that this change in practice will create a more welcoming space for individuals waiting for their appointments.

- **Increase funding and flexibility for 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, the Division proposed through the previously approved MHSA FY20 Annual Update to add a Social Services Specialist staff position, who would work directly with individuals to assist them in obtaining the resources and supports they need.

Through this Annual Update, the Division is proposing to increase the flexibility of the use of the previously allocated MHSA Funds, and to add \$100,003 of MHSA CSS System Development Funds to support SUD services. The additional funding and flexibility will enable 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.

- **Provide funding for the Specialized Care Unit**

On July 14, 2020 City Council passed Resolution No, 69,501-N.S., City Council passed 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 calls that a Public Safety Communications Center evaluate as non-criminal and posing no threat to the safety of community members, responding crisis workers, and/or other involved parties. The SCU will be a pilot model that will inform the long-term implementation of the program.

Currently, Resource Development Associates (RDA), who was chosen through a competitive Request For Proposal (RFP) process is providing a comprehensive feasibility study, community engagement process, best practice research, data collection, program design, and an implementation plan for the SCU. Through this Annual Update, the Division is proposing to allocate MHSA funding in the amount of \$200,000 (\$132,000 of CSS System Development funds and \$68,000 of PEI funds) to be used to leverage other City funds for this pilot program. This is a one-time funding amount, as the City determines how to best fund this Specialized Care Unit.

- **Increase funding for the Supportive Schools Project**

Through the Supportive Schools Project, \$55,000 of MHSA PEI funds are allocated on an annual basis to 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.

The effects of the Covid-19 pandemic on youth has increased the scope and number of students requiring interventions, and mental health services. In an effort to increase and strengthen the mental health support for each school site, the Division is proposing through this Annual Update to allocate an additional \$55,000 of PEI funds for this project, for a total amount of \$110,000 on an annual basis.

- **Allocate funds for a 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 is proposing through this Annual Update to allocate \$100,000 of 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. This is a one-time funding amount as the Division works with the community to determine how to best promote mental health and wellness in Berkeley.

- **Increase funding for McKinley House for Permanent Housing for FSP Clients**

Through the previously approved FY15/16 Annual Update the Division allocated \$100,000 of CSS FSP funds to be allocated on an annual basis to provide seven permanent housing units at McKinley House for FSP level clients. Through this Annual Update the Division is proposing to add \$40,000 to cover the actual costs for the operating site and subsidies in FY21 and FY22. Following FY22, the ongoing amount will be \$120,000 on an annual basis.

PROGRAM DESCRIPTIONS AND FY20 DATA BY FUNDING COMPONENT

Outlined in this section per each funding component are descriptions of current City of Berkeley MHSA services along with FY20 program data. Across all MHSA funded programs, in FY20, a total of 4,601 individuals participated in some level of services and supports. Additionally, a total of 781 individuals attended BMH Diversity and Multi-cultural trainings aimed at transforming the system of care, and 130 individuals attended BMH Diversity and Multicultural events. Among the largest of accomplishments in FY20 is that almost all MHSA funded services were able to continue providing services in some capacity during the pandemic. Some of the FY20 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 CSS Plan was approved by the California Department of Mental Health (DMH) in September 2006. Updates to the original plan were subsequently approved in September 2008, October 2009, April 2011, May 2013, May 2014, May 2015, June 2016, January 2017, July 2017, October 2018, July 2019, and December 2020. From the original CSS Plan and/or through subsequent plan updates, the City of Berkeley has provided the following services:

- Wrap-around Services for Children and their families;
- TAY, Adult and Older Adult Intensive Treatment Services;
- Multi-cultural Outreach & Engagement;
- TAY Support Services;
- Consumer Advocacy;
- Wellness and Recovery Services;
- Family Advocacy;
- Housing Services and Supports;
- Homeless Outreach Services;
- A Wellness Recovery Center;
- Benefits Advocacy; and
- Transitional Outreach Services.

Descriptions and updates for each CSS funded program and FY20 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 0-25 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 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.

In FY20, a total of 28 children/youth and their families were served through this program. Demographics on those served were as follows:

CLIENT DEMOGRAPHICS N=28		
<i>Client Gender</i>	<i>Number Served</i>	<i>% of total</i>
Male	19	68%
Female	9	32%
Race/Ethnicity		
<i>Client Race/Ethnicity</i>	<i>Number Served</i>	<i>% of total</i>
African American	14	50%
Asian Pacific Islander	1	4%
Caucasian	4	14%
Latino/a/x	2	7%
More than one Race	5	18%
Declined to Answer (or Unknown)	2	7%

Flex funds are used to provide various supports for FSP program participants. In FY20, a total of 119 flex funds were provided to 30 children/youth and/or their families for field trips, food, transportation, school supplies and pro-social activities.

Children/youth outcomes were as follows: 7 clients reached 100% of their treatment goals and their cases were closed; 8 clients stepped down to a lower level of care; 7 client cases were closed due to low/no engagement; 4 clients moved out of the area; 9 clients were placed on 5150/5585 hold.

Successes:

- Linkage to other service providers for psychiatric medication, on going therapy, and numerous community based organizations for pro-social activities;
- Reduction in psychiatric hospitalizations and the use of crisis services;
- Eleven clients met and/or exceeded stated objectives in their treatment plan;

- FSP services continued to be provided by clinicians who mirror the racial/ethnic identity of the populations served;
- On going access to services for clients/families whose primary language is Spanish;
- Team transitioned to online mental health care in Mid-March 2020, due to the pandemic. Staff were provided a HIPPA compliant Zoom account and they worked with their individual clients to transition to the platform;
- Families/clients typically used their chrome books that were provided by the school to meet with the team. The clinicians also connected by telephone, for families who were unable to access the technology necessary for Zoom;
- FSP team supported the families to connect with their school so they could pick up their chrome book and Wi-Fi hot spot;
- Team used flex funds to support the needs of families during the shelter in place (food, clothing, school supplies, utility bills etc.); and
- Addition of a licensed clinician to the FSP team in April 2020.

Challenges:

- Unable to provide medication support to clients within the division; and
- The transition during the pandemic while seamless for some clients, presented challenges for other FSP clients due to Zoom fatigue, financial stress within the family, Covid-19 health concerns, grief due to the death of family members, and social isolation.

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 are 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.

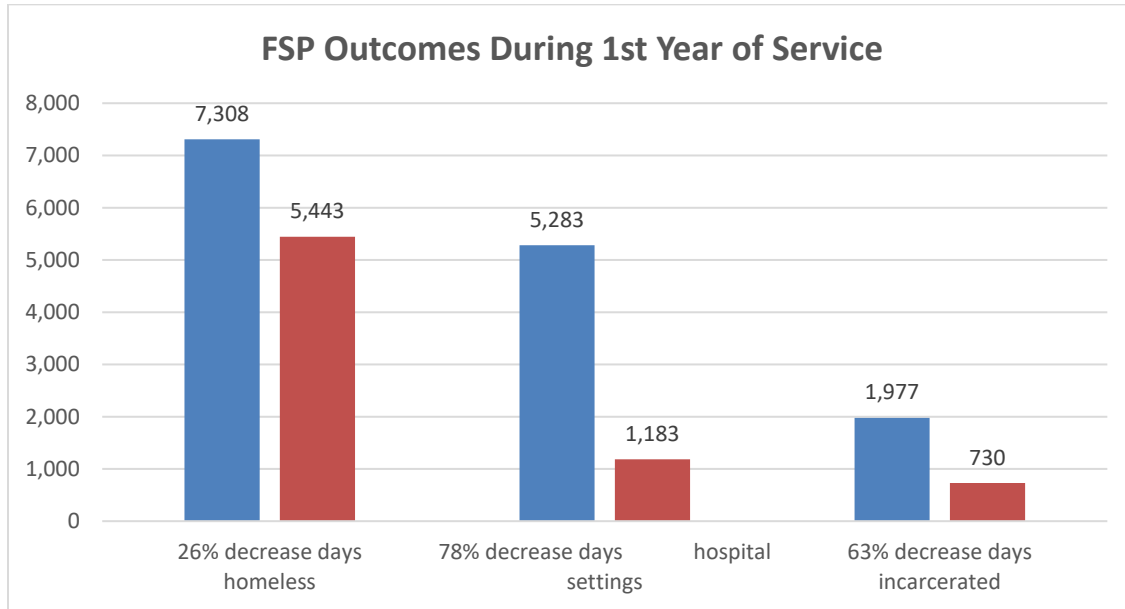
The team utilizes an ACT approach which maintains a low staff-to-client ratio (12:1) that allows for frequent and intensive support services. Clients are provided assistance with finding appropriate housing and in some cases may qualify for temporary financial assistance. A full range of mental health services are provided by a team comprised of 1 Clinical Supervisor, 5 masters level Behavioral Health Clinicians, 1 Social Services Specialist, 1.5 mental health nurses and a ½ time psychiatrist. 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 program serves up to 60-70 clients at a time.

In FY20 a total of 82 TAY, Adults, and Older Adults participated in the program for all or part of the fiscal year. Demographics on those served include the following:

CLIENT DEMOGRAPHICS N=82		
<i>Client Gender</i>	<i>Number Served</i>	<i>% of total</i>
Male	53	65%
Female	29	35%
Race/Ethnicity		
<i>Client Race/Ethnicity</i>	<i>Number Served</i>	<i>% of total</i>
African American	24	29%
Asian Pacific Islander	1	1%
Caucasian	18	22%
Latino/a/x	4	5%
Declined to Answer (or Unknown)	35	43%
Age Category		
<i>Client Age Category</i>	<i>Number Served</i>	<i>% of total</i>
Transition Age Youth	6	7%
Adult	56	68%
Older Adult	20	25%

Flex funds are used to provide supports for FSP program participants. In FY20, 21 partners received rental and housing assistance; 26 received food and groceries and 19 partners were provided with miscellaneous assistance with clothing, bus passes, pharmacy needs, furniture, etc. FSP outcomes included the following: 8 partners were dis-enrolled from the program during FY20: 2 partners met treatment goals and graduated to lower levels of care (25%), 2 partners moved out of the county (25%), 2 partners died (25%), 1 partner made the decision to discontinue services (12.5%) and 1 partner was transferred to a Full Service Partnership team specializing in criminal justice involved individuals (12.5%). 20 new partners were enrolled and completed 1 year of service during the course of the fiscal year.

There were 71 FSP program participants in FY20 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 **26% reduction in days spent homeless**. Partners spent 7,308 days homeless (on the street, couch surfing and in shelters) the year before program enrollment and 5,443 days homeless during the first year of program participation. There was and **78% 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 5,283 days in hospital settings the year before program enrollment and 1,183 days in these settings during the first year of program participation. There was a **63% reduction of days spent incarcerated** during the first year of program participation. Partners spent 1,977 days incarcerated (jail and prison) the year prior to program enrollment as compared with 730 days incarcerated during the first year of program participation.



Overall, as with previous years, the program continued to have strong outcomes with regard to reducing days spent in hospital settings (78%) and days spent incarcerated (63%). The program had more modest success with reducing the number of days spent homeless for participants (26%). Program challenges included the ongoing housing crisis in the Bay Area, the rollout of the Coordinated Entry System for access to housing resources and the Covid-19 pandemic.

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 was implemented in FY21 and provides services and supports for homeless individuals who are experiencing mental health needs.

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.

Participants involved in Berkeley Mental Health's trainings, committees, groups, cultural/ethnic community events and activities are city staff, community providers, consumers/clients, 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 Berkeley, and other areas within the region.

Program services, events and activities conducted in FY20, are summarized below:

Diversity & Multicultural Trainings & Events: (Culturally Diverse Participants)

Latino Conference 2019 - Cultural Values, Unity & Respect: Creating Safe Spaces -

September 20, 2019 - (Approximately 125 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.

Mental Health And Spirituality Conference - October 10th & 11th, 2019 - (Approximately 100 individuals attended on the 10th & 140 on the 11th attended the conference) - Attendees included faith-based community, staff, consumers, family members, community partners, students, and residents. This was a collaborative with the California Mental Health and Spirituality Statewide Initiative and NAMI Contra Costa County.

Black History Month Youth Celebration - Talent Show - Thursday, February 20, 2020 - (Approximately 80 individuals attended this event) - Attendees included youth, family members, teachers, staff, and residents. This was collaboration with BUSD.

Berkley Mental Health's Black History Month - Wednesday, February 26, 2020 - (Approximately 50 individuals attended this event) - Attendees included staff, consumers/peers, and family members.

"Supporting the Asian Community during this COVID-19 Pandemic: Wellness and Self-Care" - May 27, 2020 - (16 individuals attended this webinar training) - Attendees included staff and community partners.

Embracing and Healing the Latino/x Community in the Midst of COVID-19 - May 28, 2020 - (60 individuals attended this webinar training) - Attendees included staff, consumers, family members, community partners, students, and residents.

Confronting the Devastation of Covid-19 in the African American Community: Utilizing Faith Based Approaches - Jun 3, 2020 - (91 individuals attended this webinar training) - Attendees included staff, consumers, family members, faith-based community, community partners, students, and residents.

"Inspiring Healing, Hope, and Understanding" - Jun 25, 2020 - (64 individuals attended this webinar training) - Attendees included staff, consumers, family members, community partners, students, and residents. - This training was a collaborative with BUSD.

LGBTQQI2-S People of Color - Health and Wellness - Jun 30, 2020 - (124 individuals attended this webinar training) - Attendees included staff, consumers, family members, community partners, students, 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 Albany, 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)

Suicide Prevention and Intervention Skills Building Workshop - September 2nd & 3rd, 2019 - (55 individuals attended this training) - Attendees included staff and community partners.

Cranky and Speedy Patients/Clients: Identifying, Understanding, and Offering Treatment for Harmful Stimulant Use - October 2, 2019 - (38 individuals attended this training) - Attendees included staff and community partners.

Working with Freeze (Dissociation) - November 15, 2019 - (22 individuals attended this training) - Attendees included staff and community partners.

Suicide Prevention and Intervention Skills Building Workshop - January 31, 2020 - (38 individuals attended this training) - Attendees included staff and community partners.

Law and Ethics for Mental Health, Behavioral Health and Health Care Providers - March 4, 2020 - (48 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
- R.I.S.E. – Youth/Students
- 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
- Eden Project – LGBTQI2-S – TAY
- Pacific Center – LGBTQI2-S Community
- BAHIA, Inc. – Latino/a/x population
- Healthy Black Families – African American Women & Children Population
- BUSD – Staff, Students, and Families

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 FY20, a total of 109 TAY between the ages of 18-24 were served. Demographics on TAY served were as follows:

CLIENT DEMOGRAPHICS N=109		
<i>Client Gender</i>	<i>Number Served</i>	<i>% of Total</i>
Male	65	60%
Female	41	38%
Transgender	2	2%
Questioning or Unsure	1	<1%
Race/Ethnicity		
<i>Client Race/Ethnicity</i>	<i>Number Served</i>	<i>% of Total</i>
American Indian or Alaska Native	5	4%
African American	52	48%
Asian Pacific Islander	5	4%
Caucasian	27	25%
More than one Race	14	13%
Declined to Answer (or Unknown)	6	6%
Age Category		
<i>Client Age</i>	<i>Number Served</i>	<i>% of Total</i>
Transition Age Youth	109	100%
Sexual Orientation		
<i>Client Sexual Orientation</i>	<i>Number Served</i>	<i>% of Total</i>
Gay or Lesbian	6	6%
Heterosexual or Straight	98	90%
Bisexual	5	4%

During FY20, 5,248 outreach activities were conducted with a total of 5,408 duplicated contacts. A total of 164 individuals received engagement services and 109 individuals participated in ongoing program services. There were 460 referrals to the following services and supports:

96 Mental Health; 94 Physical Health; 109 Social Services; 61 Housing; and 100 other unspecified services. Per a Satisfaction Survey that was administered, youth participants reported the following: 91% indicated satisfaction with the treatment services they received; 17% exited the program into stable housing; and 39% became employed or entered into school. During the pandemic, services have continued to be provided.

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 FY20, there were a total of 438 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 FY20, nine Berkeley Pool of Consumer Champions (POCC) meetings were held prior to the pandemic. During the meetings the POCC focused on the following: Giving suggestions for the update to the Berkeley Resource Guide; sponsoring a South Berkeley Art Walk; presenting about their work at the Alameda County POCC Steering Committee; creating a space for people to make cards for people in locked facilities at the POCC Bar-B-Que and honoring people who were not present by placing their name on candles at the Alameda County POCC Cultural Holiday party. The Berkeley POCC focused on creating position for new members and reviewing the mission statement. In the past the POCC committee was involved in other activities such as, tabled at the 8 dimension of wellness 10x10 “We Move for Health” event for Mental Health Awareness month in May. Attending the May is Mental Health event sponsored by Berkeley Mental Health but due to Covid-19 events were cancelled. As a steering committee representative for the Berkeley POCC the committee was involved in updating the POCC Action Plan, help revised the Guidelines for respectful engagement for virtual meetings and gave input and managed two- forums on African American Town hall about cultural awareness, voting and covid-19 responses. An average of 4.2 people attended each meeting with a total of 15 unduplicated participants and 38 total number of people.

Wellness Recovery Activities

Designed with, and building on the talents of consumers, the BMH Wellness Recovery activities included workshops, trainings and ongoing health groups. In FY20, a total of 24 groups occurred from before the pandemic. Due to the closing of the facility for Covid-19, the Wellness Recovery activities were cancelled until further notice. During the time period, 20 unduplicated consumers attended this program, facilitating peer led activities, which included:

- Facilitated Discussions - Topics included: Ways to Reduce Stress; Our Values; Watching and Discussing the Video Mind Games; Plans for Summer; What to do When You Are Down; Progress On Your Goals; Things to do to Stay Well.
- Creative Writing - Topics included: Writing a story about a picture; Highs and Lows of Recovery; Description of yourself- Your Wishes and Dreams; Gratitude list; Three Truths and a Lie; What Helps and What Doesn't; Goal Setting; Your Recovery Journey; Recovery Essay; Letters to our Younger Selves; Things You Like About Yourself; What to do When Someone is Rude; The Ups and Downs of the Past Week; Your Most Memorable Walk.
- Creating – Mandalas; Greeting Cards; “Wreck This Paper Art”; Origami Cranes for “Day of the Dead” Altar; Using Dots to Create Art; Choices You Regret and What to do About it; Valentine and Christmas Cards; Cards to our Future Selves.
- Exercise – Yoga; Stretching; Meditation; Catching balls; Chi Gung; Walking to the park, and Mindful walking.
- Games - Wellness Tools Hangman; Moods; Creating a Dinner for Under \$30 from Ads; Recovery Hangman; Stress Reduction Hangman; Life Stories; Boggle and Jenga!
- Drawing – Including: Nature scenes; A summer day; Coloring mandalas; Outlining objects to create a composition; Using Lines; Shared Drawing; Creating Art with Stray Lines; Abstract drawing.

Field Trips

In FY20 a total of 6 field trips were offered with 30 participants. Peer led field trips at the museums and in nature incorporating expressive arts included trips to: Berkeley Marina; National NightOut in South Berkeley; the San Francisco Museum Of Modern Art; South Berkeley Art Walk; Berkeley Art Museum; and a trip to 4th Street in Berkeley to see the Holiday lights and the local Open Art studios; and a tour of the Berkeley Main Library.

Card Party Groups

In FY20 a total of 39 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 over 360 cards were created and sent to the Reach Out Program. This program was impacted by the pandemic and meetings were moved to virtual platforms such as Zoom. During the reporting timeframe there were approximately 19 unduplicated participants. There was an increase of participants attending, when the groups started meeting virtually, which was an increase in attendance over prior years.

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 FY20, the weekly support group focused on mood scales and enabled time for participants to share freely among non-judgmental peers. There were 27 groups with a total of 19 attendees. Attendance in this group was impacted due to the Pandemic.

Mental Health Advance Directives

Consultations on Mental Health Advance Directives have generally been offered by phone or on a drop-in basis. Interested individuals can contact the Wellness Recovery Staff to receive information and consultations around Advance Directives. In FY20, 3 sessions were offered and 5 people received consultations.

The Wellness Recovery Team also conducted or participated in the following activities during the reporting timeframe: Developed a monthly color calendar of activities; published a six page newsletter highlighting wellness tools, resources, fun activities, and information about Covid-19; sent these informational documents to approximately 150 individuals via mail and another 130 individuals via email; created an introductory letter about the Wellness Recovery Team to be given to consumers; worked on the development of a Mission Statement for the Wellness Recovery Team; participated in the planning and implementation of the May is Mental Health Month event in Berkeley; co-facilitated 1 Adult Mental Health First Aid training and 1 Youth Mental Health First Aid training; participated in the Creative Wellness Center Task Force; conducted Consumer Perception surveying in June 2020 by mail, during the State survey period as well as submitted completed surveys to the state; continued work and discussion on the Stipend Policy for the POCC members; assisted

consumers with accessing the POCC BBQ and tabled the event with cards and information about Berkeley Mental Health; held a POCC Annual Cultural Holiday celebration, participated in the planning of the Health and Human Resource and Education Center-10x10 8 Dimensions of Wellness, “We move for Health”, which was cancelled in person but moved into a #mentalhealth365 virtual campaign; and attended the Spirituality Conference.

Hearing Voices Support Group

The Hearing Voices Support Group is offered through a contract with the Bay Area Hearing Voices Network. The 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 FY20, a total of 561 individuals were served through weekly support groups. Demographics on individuals served were as follows:

CLIENT DEMOGRAPHICS N=561		
<i>Client Gender</i>	<i>Number Served</i>	<i>% of total</i>
Male	157	28%
Female	338	60%
Declined to Answer (or Unknown)	64	12%
Race/Ethnicity		
<i>Client Race/Ethnicity</i>	<i>Number Served</i>	<i>% of total</i>
African American	22	4%
Asian Pacific Islander	89	16%
Caucasian	336	60%
Latino/a/x	28	5%
More than one Race	22	4%
Declined to Answer (or Unknown)	64	11
Age Category		
<i>Client Age Category</i>	<i>Number Served</i>	<i>% of total</i>
Transition Age Youth	6	1%
Adult	555	99%
Sexual Orientation		
Heterosexual or Straight	313	56%
Bi-Sexual	45	8%
Queer	9	2%
Declined to Answer (or Unknown)	194	34%

In FY20 there was an increase in participation for the adult groups. Per program staff report, based on survey responses received from group members, this increase in attendance can be attributed to the increased stress and need for support and community due to the Covid-19 pandemic, and the improved access afforded to participants as groups transitioned to an on-line platform. While some individuals expressed that they missed meeting in-person, many more

individuals reported that on-line groups were easier to attend. The following are some comments received on a survey of group members regarding on-line meetings:

"I like the group on line because it is easier for me because I have a disabled husband. If it wasn't online I would probably not be able to attend all of the meetings"

"Since I do not drive, it makes it easy to get there"

"More people are able to take part"

"Not everyone has the Internet"

"It is more accessible to people who don't feel like leaving the house or live in a remote area"

"I only joined it after it was online. Very convenient for me"

"It is better online. It allows a greater audience to attend. Also no car traffic to deal with. And it is aligned with global warming. You need to get folks out of their cars"

"I can do it in the comfort of my own home"

"I don't feel safe to go in person"

There is something freeing about not having to drive and about how intimately we talk. As if Zoom cuts out the small talk".

"Harder to connect not being in the same room".

This increase in attendance was not matched with the Youth Groups and the groups were subsequently put on a hiatus due to low attendance. Per program staff report, the reason for the low attendance in the Youth Groups is that, due to the Covid-19 restrictions, the contractor was unable to do the necessary in-person outreach to schools, parents' organizations, and family support mental health clinics that are so important in getting the word out and building attendance for this new group. Experience shows that group attendance for new groups tends to build over time through word of mouth and increase once mental health professionals, schools, community organizations, and clinics hear about the groups.

Going forward offering groups both on-line and in-person will be explored as well as doing expanded outreach to build attendance and awareness of all of the groups.

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 FY20, 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: An English speaking Family Support group was offered to parents, children, siblings, spouses, significant others or caregivers. The group met twice 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.

During FY20 a total of 41 family members were served. Demographics of individuals served are outlined below:

CLIENT DEMOGRAPHICS N=41		
<i>Client Gender</i>	<i>Number Served</i>	<i>Percent of Total Number Served</i>
Male	10	24%
Female	30	73%
Declined to Answer (or Unknown)	1	3%
Race/Ethnicity		
<i>Client Race/Ethnicity</i>	<i>Number Served</i>	<i>Percent of Total Number Served</i>
African American	4	10%
Asian Pacific Islander	8	19%
Caucasian	23	56%

Latino/a/x	5	12%
Native American	1	3
Age Category		
<i>Client Age in Years</i>	<i>Number Served</i>	<i>Percent of Total Number Served</i>
26-55 years	13	32%
56+ years	28	68%

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 FY20, 13 clients were served through this agency. Demographics on those served were as follows:

CLIENT DEMOGRAPHICS N=13		
<i>Client Gender</i>	<i>Number Served</i>	<i>Percent of Total Number Served</i>
Male	7	54%
Female	5	38%
Non-binary	1	8%
Race/Ethnicity		
<i>Client Race/Ethnicity</i>	<i>Number Served</i>	<i>Percent of Total Number Served</i>
African American	4	31%
Caucasian	5	38%
Latino/a/x	1	8%
Other	3	23%
Age Category		
<i>Client Age</i>	<i>Number Served</i>	<i>Percent of Total Number Served</i>
18-59	10	77%
Over 59	3	23%

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 FY20, there were a total of 438 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 get connected to the resources they may need.

In FY20, 302 individuals were served through this project. Demographics on those served were as follows:

CLIENT DEMOGRAPHICS N=302		
<i>Client Gender</i>	<i>Number Served</i>	<i>Percent of Total Number Served</i>
Male	43	14%
Female	151	50%
Transgender	4	2%
Declined to Answer (or Unknown)	104	34%
Client Race/Ethnicity		
<i>Client Race/Ethnicity</i>	<i>Number Served</i>	<i>Percent of Total Number Served</i>
African American	104	34%
Asian	24	8%
Caucasian	99	33%
Latino/a/x	16	5%
More than One Race	3	1%
Other	56	19%
Age Category		
<i>Client Age in Years</i>	<i>Number Served</i>	<i>Percent of Total Number Served</i>
0-15	10	3%
16-25	65	22%
26-59	146	48%
60+	37	12%
Declined to Answer (or Unknown)	44	15%

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.

TOT which normally is comprised of two staff, operated on a single staff person for the last seven months of the reporting timeframe, due to staff being out on leave. The redirection of operations and services due to the pandemic also changed what was provided to the public by this team. Additionally, some of the regular collaborative partners such as John George and Herrick Hospital severely reduced contact, referrals, and linkages due to pandemic related changes in service. The remaining TOT staff person was re-deployed to the HOTT team for the last four months of this report period. Systemic issues also hampered the ability to connect agencies to TOT as some institutions and referring parties continued to make contact with the BMH Crisis Assessment Team (CAT) or other clinicians who have been with BMH for long periods of time, instead of the TOT staff.

Outcomes of the program during the reporting timeframe:

- Provided short-term flexible and client centered interface to connect eligible individuals to mental health and other services;
- Connected clients and families to many resources, including mental health, housing, medical, and social services;
- Provided marketing materials and connections to other agencies in order to facilitate education and relationships with TOT;
- Continued building relationships and in-roads with partner agencies where residents coming out of a crisis were being discharged and needed supports in connecting to longer term services; and
- Continued to develop processes and procedures to better communicate with MCT team and provide effective follow-up to mutual clients.

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 has been for clinicians to act as representative payees, managing client's money. While on some levels this practice has improved clients' attendance at regular appointments, it has 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 providing Sub-Representative Payee Services in April 2019. Approximately 79 individuals receive services a year.

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. From March through June 2020, services continued to be provided via phone or tele-health. Group services, Crisis support and other mental health services were also provided via the Zoom platform.

In FY20, 133 individuals participated in this program. Demographics on individuals served were as follows:

CLIENT DEMOGRAPHICS N=133		
<i>Client Gender</i>	<i>Number Served</i>	<i>% of total</i>
Male	54	41%
Female	79	59%
Race/Ethnicity		
<i>Client Race/Ethnicity</i>	<i>Number Served</i>	<i>% of total</i>
American Indian or Alaska Native	1	1%
African American	10	7%
Asian Pacific Islander	9	7%
Caucasian	101	76%
Other	12	9%
Age Category		
<i>Client Age in Years</i>	<i>Number Served</i>	<i>% of total</i>
25-44	39	29%
45-54	57	43%
55-61	26	20%
62 and Above	11	8%

Results to the following questions on a “Program Satisfaction Survey” that was filled out by participants are outlined below:

- “I am satisfied with the services I have received from this program”.
Out of 132 responses:
-51% Strongly Agreed
-49% Agreed
- “This program’s staff treated me with respect”.
Out of 122 responses:
-100% Strongly Agreed
- “This program helped me make progress towards my goals”.
Out of 122 responses:
-70% Strongly Agreed
-30% Agreed
- “This program met my needs”.
Out of 122 responses:

-75% Strongly Agreed
-25% Agreed

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 early August 2018, a Peer Specialist was hired to support the Wellness Recovery services work.

Two additional positions are being proposed through this 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 will allow the Wellness Recovery Team to provide activities and supports to individuals in the waiting room, replacing the use of security guards. It is envisioned that this change in practice will create a more welcoming environment for individuals waiting for their appointments.

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 this pilot program was created 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 included the following: Persistent and Consistent Outreach; Supportive Case Management; Linkage to Care; and Treatment. The program was in operation until early FY21, when it was replaced by the Homeless Full Service Partnership.

In FY20, 616 individuals were served through this program. A local consultant, Resource Development Associates (RDA), conducted an evaluation of this project. In late FY20, the [Homeless Outreach and Treatment Team Final Evaluation Report](#) was released. As this program is funded in both the CSS and PEI MHSA components, demographics on individuals served and program outcomes are outlined in the PEI section of this Three Year Plan. In FY21, HOTT continued to be in operation until March 2021, when the Homeless FSP was fully implemented.

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 transitions back to in-person service provision, remote services will also remain as an option.

In FY20, a total of 41 youth were served through this project. Demographic data on youth participants is outlined below:

CLIENT DEMOGRAPHICS N=41		
<i>Client Gender</i>	<i>Number Served</i>	<i>% of total</i>
Male	17	42%
Female	16	39%
Transgender	7	17%
Declined to answer or Unknown	1	2%
Race/Ethnicity		
<i>Client Race/Ethnicity</i>	<i>Number Served</i>	<i>% of total</i>
American Indian or Alaska Native	1	2%
African American	28	44%
Asian Pacific Islander	5	12%
Caucasian	6	15%
Latino/a/x	6	15%
More than one Race	5	12%
Age Category		
<i>Client Age Category</i>	<i>Number Served</i>	<i>% of total</i>
Transition Age Youth	41	100%
Sexual Orientation		
Gay or Lesbian	9	22%
Heterosexual or Straight	20	49%
Bi-Sexual	11	27%
Other	1	2%

Of the 41 youth participants:

- 10 were referred to and linked to specialty mental health services (off site therapists);
- 17 were referred to primary care/physical health care and 6 were able to make their appointments;
- 25 worked on their SMART goals at the YSA facility, and
- 1 was linked to housing.

During the pandemic, outreach was conducted through social media and by reaching out to area service providers. While finding new enrollments proved to be a challenge, there were successes in setting up systems and procedures that will be used going forward.

Successes included training staff and youth participants on the use of Zoom for remote conferencing for services, meetings, workshops and laying the groundwork for a larger referral

system through outreach and collaborations with the Berkeley schools, County’s department of Juvenile Probation, and community based agencies who work with youth. The program was also successful at expanding the use of social media for communications and event announcements. YSA maintains active accounts on Facebook (3,093 followers), Twitter (283 followers), and Instagram (1, 694 followers) that provide information and photographs about services, projects and events.

Through this program youth historically build community and social supports, as they participate in services and projects with other participants. YSA employs Youth Leaders who are adept at creating a welcoming and supportive community. This in-person relationship building was a challenge during the pandemic.

Albany Community Resource Center – Albany CARES

Through previously approved MHSA plans the City of Berkeley allocated funding to support the City of Albany Community Resource Center. The Albany Community Resource Center was initially a short-term pilot project that offered residents a one-stop venue to learn about and receive referrals and resources to assist with a range of social and economic needs. The Community Resource Center was staffed by a half-time Community Resource Center Director. In early 2018, due to a loss of staffing the Albany Community Resource Center closed prematurely. In March 2018, the Albany City Council authorized the development of a Human Services Resource Linkage Program which was subsequently named “Albany CARES.”

The Albany CARES program operated through FY20 providing outreach, assistance and referrals to resources and services that supported Albany’s most vulnerable and low-income residents. Up through mid-March 2020 (when services were transitioned to tele-health and Zoom) , the programs drop-in hours provided a welcoming environment where services were tailored to each client’s unique needs.

In FY20, 337 individuals received services or supports through this program. Demographics on those served were as follows:

CLIENT DEMOGRAPHICS N=337		
<i>Client Gender</i>	<i>Number Served</i>	<i>Percent of Total Number Served</i>
Male	121	36%
Female	214	64%
Non-binary	1	<1%
Transgender	1	<1%
Client Race/Ethnicity		
<i>Client Race/Ethnicity</i>	<i>Number Served</i>	<i>Percent of Total Number Served</i>
African American	33	10%
Asian	31	9%
Caucasian	93	28%
Latino/a/x	22	6%
Other	23	7%
Declined to Answer (or Unknown)	135	40%

Age Category		
<i>Client Age in Years</i>	<i>Number Served</i>	<i>Percent of Total Number Served</i>
Under 18	6	2%
18-25	4	1%
26-39	28	8%
40-49	21	6%
50-61	28	8%
62-79	103	31%
80+	21	6%
Declined to Answer (or Unknown)	126	38%

Albany CARES has been responsive to the needs of vulnerable individuals and families. The number of individuals assisted by this program increased steadily. The program enabled individuals to be connected to resources that they wouldn't normally access. Many individuals made a connection with a mental health professional during the Drop-In hours, which was essential, as a lot of individuals will not follow-up on a mental health referral or appointment.

A Berkeley Mental Health clinician supported the work at Albany Cares providing counseling on-site or by phone to individuals, assisting with a referral to BMH Crisis Services and providing consultation to the Program Director. This support provided critical connections on-site to mental health services for individuals which otherwise, would not have been possible. Having support from BMH allowed critical connections on-site to be made to mental health services that otherwise would have not been possible.

The successes of Albany CARES created its own challenges. The number of clients presenting during Drop In hours, was unpredictable. Approximately 25% of individuals needed assistance beyond the services that could be provided, during Drop In hours. The Program Director spent time outside of the regular hours doing research and gathering information for specific clients, and also finding agencies that could assist with specific needs.

The pandemic also created program challenges as drop in hours came to a halt during the 4th quarter of the Fiscal year. During this time, the Program Director continued to assist and make referrals via phone, and email and conducted Zoom meetings. As the City of Albany transitioned to essential services during the pandemic, the Albany CARES phone line was promoted extensively as the City's hotline for information on social/human services and COVID related services.

Beginning in FY21, the City of Albany was funded under Alameda County's MHSA Plan.

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 two 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,

during the Division will be re-assessing the best way to provide additional services and supports for the API population.

Results Based Accountability Evaluation

Feedback received over the past several years regarding program outcomes has been largely focused on implementing evaluative 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 and the specialized skills of a consultant will ensure the most successful outcome.

In response to this input, BMH proposed through the previously approved MHSA FY19 Annual Update to allocate CSS System Development funds for a Consultant who will 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 RDA began working with BMH staff to implement the RBA evaluation framework across the mental health system. Updates on this evaluation will be reported on in future MHSA Plans and Updates.

Counseling Services at Senior Centers

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 up to \$150,000 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. In FY21 a Request For Proposal (RFP) was issued and the Wright Institute, was the chosen contractor to implement these services.

PREVENTION & EARLY INTERVENTION (PEI)

The original City of Berkeley Prevention & Early Intervention (PEI) Plan was approved by DMH in April 2009. Subsequent Plan Updates were approved in October 2010, April 2011, May 2013, May 2014, May 2015, June 2016, January 2017, July 2017, October 2018, July 2019 and December 2020. From the original approved PEI Plan and/or through Plan Updates, the City of Berkeley has provided the following services through this funding component:

- 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;
- Intervention services for at-risk children; and
- Increased homeless outreach services for TAY, adults, and older adults.

PEI Reporting Requirements

Per MHSA PEI regulations, all PEI funded programs must collect specified state identified outcome measures and detailed demographic information. MHSA also requires Evaluation Reports for PEI funded programs. Beginning in FY19, PEI Evaluations were required to be included in each MHSA Annual Update or Three Year Plan. See Appendix A for the Fiscal Year 2020 Prevention & Early Intervention Annual 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. Beginning in FY18, this 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. Page 55 of this Annual Update provides an aggregated summary of some of the results of this initiative. The full report on the Impact Berkeley PEI program results can be accessed on the MHSA website: [MHSA Plans and Updates - City of Berkeley, CA](#)

New PEI Regulations

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 new PEI regulations, outlined below are the City of Berkeley PEI Programs, Priorities and Projected funding amounts:

CITY OF BERKELEY PEI PROGRAMS	PEI PRIORITIES	Approximate Projected Funding Per Priority
<ul style="list-style-type: none"> • Be A Star • Community Based Child & Youth Risk Prevention Program • Supportive Schools 	Childhood trauma prevention and early intervention to deal with the early origins of mental health needs.	\$227,267
<ul style="list-style-type: none"> • High School Youth Prevention Project • Mental Health Peer Mentor Program • Dynamic Mindfulness Program 	Youth Engagement and Outreach Strategies that target secondary school and transition age youth, with a priority on partnership with college mental health programs.	\$851,368

CITY OF BERKELEY PEI PROGRAMS	PEI PRIORITIES	Approximate Projected Funding Per Priority
<ul style="list-style-type: none"> African American Success Project 	Early identification programming of mental health symptoms and disorders, including but not limited to, anxiety, depression, and psychosis	\$851,368
<ul style="list-style-type: none"> Community Education & Supports 	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.	\$300,000 \$32,046 \$32,046

Programs and services funded with PEI funds are as follows:

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, eight out of ten local PEI programs provide services for children and youth, 5 of which are in the Berkeley Unified School District (BUSD). Programs are as follows: Behavioral-Emotional Assessment, Screening, Treatment and Referral (BE A STAR); Community-Based Child/Youth Risk Prevention Program; 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.

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.

In FY20, there were vacancies in staff. A short time after an MHSA program staff was hired, they were deployed to the City’s Emergency Operations Center to support work around the pandemic. A minimal level of support enabled continuity with the Pediatric and Alameda County Help Me Grow Collaborative partners to this program. A total of 1,538 screenings were able to be conducted through the area Pediatric partners: Due to the limited program support, the demographic information on individuals served through other programs, in FY20 is not available.

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 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 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.

In FY20, the following services were provided:

- Over 15 Early Childhood Mental Health Reflective Case Consultation groups for five classrooms. Case consultation meetings allow teachers to develop clear plans and interventions in the classroom for individual children (and families) who have 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 in five classrooms;
- Individual and group consultations to the Center Program Supervisor, 15-18 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 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-facilitated monthly Resiliency Circles to promote self-care and trauma informed care principles with teaching staff; and
- Maintenance of a presence of mental health consultation despite the impact of the pandemic.

In FY20, 54 children were served through this program. Demographics on those served is as follows:

PARTICIPANT DEMOGRAPHICS N=54	
Age Groups	
0-15 (Children/Youth)	100%
Race	
Asian	5%
Black or African American	56%
White	4%
More than one Race	19%
Other	2%
Ethnicity: Hispanic or Latino/Latina/Latinx	
Mexican/Mexican-American/Chicano	33%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
Declined to Answer (or Unknown)	67%
Primary Language	
Declined to Answer (or Unknown)	100%
Disability	
Declined to Answer (or Unknown)	100%

Gender: Assigned sex at birth	
Declined to Answer (or Unknown)	100%
Current Gender Identity	
Declined to Answer (or Unknown)	100%

A major challenge in FY20 was the Shelter in Place that closed the school down for about 3 months. Another challenge was that the Mental Health Consultant and teachers have limited time out of the classroom to create visuals and prompts. Lastly, in general challenges occur when teachers and the Mental Health Consultant attempt to address developmental and or social – emotional needs of a particular student and the family is not ready to accept services. The teachers and the Mental Health Consultant are then limited on how to proceed or support the child in the classroom if the family is not willing to access internal and/or external services/resources.

Berkeley Unified School District PEI Funded Children/Youth Programs

Since the very first MHSA PEI Plan the City of Berkeley has provided MHSA funding to Berkeley Unified School District (BUSD) to implement mental services and supports for children and youth. Currently, MHSA PEI funds, support five programs that provide school-based mental health services and supports for BUSD students. Descriptions of each program and FY20 data are outlined below:

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.

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 the providing remote therapy sessions had its challenges. Supports for each school per each service provider, and numbers served in FY20 were as follows:

Elementary School	Agency/Provider	Number of Students Served
Cragmont Emerson Malcolm X Oxford Ruth Acty Thousand Oaks	Bay Area Community Resources (BACR)	229
Bay Area Arts Magnet (BAM) Washington	Child Therapy Institute	39
John Muir Sylvia Mendez	School Site Counselor	No Data Available
Rosa Parks	Child Therapy Institute	No Data Available
Total		268

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 268 students that were served from this project, is outlined below:

PARTICIPANT DEMOGRAPHICS N= 268	
Age Group	
0-15 (Children/Youth)	100%
Race	
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%
Ethnicity: Hispanic or Latino/Latina/Latinx	
Mexican/Mexican-American/Chicano	22%
Declined to Answer (or Unknown)	5%
Ethnicity: Non-Hispanic or Non- Latino/Latina/Latinx	
Asian Indian/South Asian	1%
Filipino	<1%
More than one Ethnicity	10%
Declined to Answer (or Unknown)	62%
Primary Language Used	
English	13%
Spanish	3%
Other	<1%
Declined to Answer (or Unknown)	84%
Sexual Orientation	
Declined to Answer (or Unknown)	100%
Disability	
Mental domain not including a mental illness (including but not limited to a learning disability, developmental disability, dementia)	6%
No Disability	11%
Declined to Answer (or Unknown)	83%
Veteran Status	
No	100%
Gender: Assigned sex at birth	
Male	55%
Female	45%
Current Gender Identity	
Male	55%
Female	45%

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 are 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.

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.

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 9th 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.

In FY20, this program was not in operation.

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 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.

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 rooted 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:

PARTICIPANT DEMOGRAPHICS N=23	
Age Groups	
Children/Youth (0-15)	100%
Race	
Black or African American	74%
More than one Race	26%
Ethnicity: Hispanic or Latino/Latina/Latinx	
More than one Ethnicity	17%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
Black/African American	74%
More than one ethnicity	4%
Other	4%
Declined to Answer (or Unknown)	1%
Primary Language	
English	99%
Other	1%
Sexual Orientation	
Declined to Answer (or Unknown)	100%
Disability	
Other	43%
Veteran Status	
No	100%

Gender: Assigned sex at birth	
Male	70%
Female	30%
Current Gender Identity	
Male	70%
Female	30%

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, 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. Approximately 2600 Berkeley High School Students and 100 B-Tech students receive some level of outreach, counseling, individual or group 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 HHCS Department. As the program has developed, the staffing structure for the program 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, and 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.

In FY20, approximately 801 students at Berkeley High School (BHS) and Berkeley Technology Academy (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

services, and 169 visits for Behavioral Health Group sessions. Demographics on youth served are outlined below:

PARTICIPANT DEMOGRAPHICS N=801	
Age Groups	
Youth 14-18 Years	100%
Race	
Asian	6%
Black or African American	19%
White	36%
More than one Race	20%
Declined to Answer (or Unknown)	3%
Ethnicity: Hispanic or Latino/Latina/Latinx	
Declined to Answer (or Unknown)	16%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
Declined to Answer (or Unknown)	84%
Primary Language	
Declined to Answer (or Unknown)	100%
Sexual Orientation	
Declined to Answer (or Unknown)	100%
Disability	
Declined to Answer (or Unknown)	100%
Veteran Status	
No	100%
Gender: Assigned sex at birth	
Male	30%
Female	70%
Current Gender Identity	
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 12th due to the pandemic and related school closure. Mental Health in-person and group services were suspended the following day and on April 28th 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 Berkeley High School and B-Tech 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”.

Successes

- Applied for and awarded 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.

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.

Adult and Older Adult and Additional TAY PEI Funded Programs

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; Asian Pacific Islanders; Latino/a/x; LGBTQIA+; TAY; and Senior Citizens. All services are conducted through area community-based organizations. In FY20 each of the Community Education & Supports program contractors participated in the HHCS Results-Based Accountability (RBA) Evaluation. RBA implementation results were presented in an aggregated format aggregated 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"> • 555 Support Groups/Workshops • 5,183 Support Groups/Workshop Encounters • 188 Individual Contacts/Individuals • 3,342 Outreach Contacts • 1,245 Referrals 	<ul style="list-style-type: none"> • 13 Support groups or workshop sessions attended on average per person (5 out of 7 programs reporting). • 98% Survey respondents were satisfied with services (4 out of 7 programs reporting) • Referrals by type: 277 Mental Health 252 Social Services 230 Physical Health 125 Housing 361 Other Services (6 out of 7 programs reporting) 	<ul style="list-style-type: none"> • 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). • 88% of program participants reported positive changes in terms of coping strategies, feeling anxious or overwhelmed (3 out of 7 programs reporting).

For additional details, definition of terms, and technical notes on how various data variables were quantified and for full reporting on other data elements, access the full report on the Impact Berkeley PEI program results on the MHSA website: [MHSA Plans and Updates - City of Berkeley, CA](#)

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, will begin providing services to each population.

Per the previously approved Three Year Plan, in an effort to ensure each unserved, underserved and inappropriately served population had an equitable amount of dedicated MHSA funds for programs and services, the Division made the following changes to this program, which will begin in FY22: Increased the amount up to \$100,000 per each of the following populations, African Americans, Latino/a/x 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.

Descriptions for each project within the Community Education & Supports program are outlined below:

Albany Trauma Project

Implemented through Albany Unified School District this project provides trauma support services to Latino/a/x, 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: Adult one-on-one outreach and engagement 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 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 is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

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.

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 is to reduce at-risk behaviors, reduce a sense of alienation, and increase a sense of belonging among group members. Various psycho-educational techniques are 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: provides information about the effects of trauma, and helpful coping strategies; serves a preventive function by offering interventions that will keep at-risk individuals and families from developing serious 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.

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 or drop out.

Elementary School Support Groups: Through this project, Support Groups are 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 are 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 are 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 provide psycho-education, coping skills, and a safe environment in which to address and process traumatic experiences.

In FY20, nine support groups were provided to a total of ten 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.

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 are provided at Albany High School for Asian Pacific Islander, Latinx, and African American youth. Groups meet for 1-2 hours a week throughout the school year and are 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 FY20, 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 per each program were as follows:

PARTICIPANT DEMOGRAPHICS N=65*			
Age Group	Golden Gate Fields Racetrack Supports	Elementary Support Groups	High School Support Groups
Percent of total participants served	28%	15%	57%
0-15		90%	
16-25	6%	10%	100%
26-59	56%		
60+	39%		
Race			
Asian	6%		24%
Black or African American		50%	27%
White	56%	20%	41%
Other	39%	30%	
More than one Race			8%
Ethnicity: Hispanic or Latino/Latina/Latinx			
Mexican/Mexican-American/Chicano	94%	10%	32%
Central American			3%
Puerto Rican		10%	5%

Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	Golden Gate Fields Racetrack Supports	Elementary School Support Groups	High School Support Groups
Asian Indian/South Asian		10%	3%
Chinese			14%
Filipino	6%		5%
Japanese			3%
More than one Ethnicity			35%
Declined to Answer (or Unknown)		70%	
Primary Language Used			
English	17%	100%	100%
Spanish	83%		
Sexual Orientation			
Gay or Lesbian			3%
Heterosexual or Straight	100%	100%	95%
Bisexual			3%
Disability			
Other Disability	22%		
No Disability	78%	30%	100%
Declined to Answer (or Unknown)		70%	
Veterans Status			
No	100%	100%	100%
Gender: Assigned sex at birth			
Male	83%	50%	51%
Female	17%	50%	49%
Current Gender Identity			
Male	83%	50%	51%
Female	17%	50%	49%

*Percentages may not add up to 100% due to rounding.

Beginning in FY21, Albany services will be funded through Alameda County MHSA Funds.

Transition Age Youth Trauma Support Project

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 program is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

In FY20, 96 TAY participated in one or more program 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:

CLIENT DEMOGRAPHICS N = 96*	
Age Group	
16-25 (Transition Age Youth)	100%
Race	
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%
Ethnicity: Latino/Latina/Latinx	
Central American	5%
Mexican/Mexican-American	15%
South American	1%

Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
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%
Primary Language Used	
English	86%
Spanish	14%
Sexual Orientation	
Gay or Lesbian	8%
Heterosexual or Straight	81%
Bisexual	10%
Disability Status	
Mental (not mental health)	50%
Chronic Health Condition	11%
Other Disability	20%
No Disability	16%
Declined to Answer (or Unknown)	3%
Veteran Status	
Yes	1%
No	99%
Gender: Assigned sex at birth	
Male	33%
Female	26%
Declined to Answer (or Unknown)	41%
Current Gender Identity	
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 was as follows: 77 Mental Health; 102 Physical Health; 88 Social Services; 76 Housing; 80 other unspecified services. A total of 46% of program participants received individual counseling through this program; 29% exited the program into stable housing; and 39% obtained employment or entered school during the program. Per participant feedback, 100% reported being satisfied with program 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 program is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

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 program. In all 59 Senior Citizens participated in the Living Well Workshops. Demographics of Workshop participants are outlined below:

PARTICIPANT DEMOGRAPHICS N=59*	
Age Groups	
26-59 (Adult)	2%
Age 60+ (Older Adult)	97%

Declined to Answer (or Unknown)	2%
Race	
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%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
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%
Primary Language Used	
English	92%
Other	3%
Declined to Answer (or Unknown)	5%
Sexual Orientation	
Gay or Lesbian	2%
Heterosexual or Straight	68%
Bisexual	2%
Declined to Answer (or Unknown)	29%
Disability	
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%
Veteran Status	
Yes	2%
No	95%
Declined to Answer (or Unknown)	3%
Gender: Assigned sex at birth	
Male	14%
Female	83%
Declined to Answer (or Unknown)	3%
Current Gender Identity	
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 program 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.

Harnessing Hope Project

Implemented through GOALS for Women this project provides community-based, culturally competent, outreach and support services for African Americans residing in the South and West Berkeley neighborhoods who have experienced traumatic life events including racism and socioeconomic oppression and have unmet mental health support needs. The primary goals of the project are 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 is to train and mentor community leaders to become Peer Facilitators of Kitchen Table Talk and Just Like Sunday Dinner groups. This project serves approximately 50-130 individuals a year.

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 prevention of suicide.

In FY20, 22 individuals were served through this project. Demographics on individuals served were as follows:

PARTICIPANT DEMOGRAPHICS N=22*	
Age Groups	
0-15 (Children/Youth)	5%
16-25 (Transition Age Youth)	18%
26-59 (Adult)	73%
Ages 60+ (Older Adult)	5%
Race	
Asian	14%
Black or African American	82%
Other	5%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
African	77%
Asian Indian/South Asian	9%
Vietnamese	5%
More than one Ethnicity	5%
Declined to Answer (or Unknown)	5%
Primary Language Used	
English	100%
Sexual Orientation	
Heterosexual or Straight	95%
Questioning or Unsure	5%

Disability	
Chronic Health Condition	18%
No Disability	82%
Veteran Status	
No	100%
Gender: Assigned sex at birth	
Female	100%
Current Gender Identity	
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.

MHSA funded services did not continue with GOALS in FY21, as the program was no longer in operation. A Request For Proposal (RFP) process was executed in April 2021 for these services. In FY22, Trauma Support Services for African Americans will be provided through the chosen vendor of this RFP process.

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 program is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

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:

PARTICIPANT DEMOGRAPHICS N=151*	
Age Groups	
16-25 (Transitional Age Youth)	28%
26-59 (Adult)	41%
Ages 60+ (Older Adult)	26%
Declined to Answer (or Unknown)	4%
Race	
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%
Ethnicity: Hispanic or Latino/Latina/Latinx	
Caribbean	1%
Central American	2%
Mexican/Mexican-American/Chicano	5%

Puerto Rican	1%
South American	1%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
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%
Primary Language Used	
English	98%
Spanish	1%
Mandarin	1%
Sexual Orientation	
Gay or Lesbian	23%
Heterosexual or Straight	7%
Bisexual	25%
Questioning or Unsure	2%
Queer	25%
Other	17%

Declined to Answer (or Unknown)	3%
Disability	
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%
Veteran Status	
Yes	1%
No	99%
Gender: Assigned sex at birth	
Male	26%
Female	50%
Declined to Answer (or Unknown)	24%
Current Gender Identity	
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 are in place to train new QTBIPOC facilitators, develop new required group agreements, develop trainings and implement QTBIPOC Support Groups.

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.

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:

PARTICIPANT DEMOGRAPHICS N= 22*	
Age Groups	
26-59 (Adult)	18%
Ages 60+ (Older Adult)	36%
Declined to Answer (Or Unknown)	46%
Race	
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%
Ethnicity: Hispanic or Latino/Latina/Latinx	
Mexican	4%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
Declined to Answer (or Unknown)	96%
Primary Language Used	
English	41%
Declined to Answer (or Unknown)	59%
Sexual Orientation	
Gay or Lesbian	4%
Heterosexual or Straight	27%
Bisexual	4%
Queer	4%
Questioning	9%
Declined to Answer (or Unknown)	52%
Disability	
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%
Veteran Status	
Declined to Answer (or Unknown)	100%
Gender: Assigned sex at birth	
Female	41%
Declined to Answer (or Unknown)	59%
Current Gender Identity	
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 time frame, focusing on the topic and give effective feedbacks 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 was 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.

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.

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.

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 on FY18 showed many positive findings including the following:

- HOTT is 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 meets people where they are, in parks, encampments, motels;
- The program had successfully connected homeless individuals to critical resources and service linkages.

In FY20, 616 individuals were served through this program. Demographics on individuals that received services through this pilot project were as follows:

PARTICIPANT DEMOGRAPHICS N= 616	
Age Groups	
16-25 (Transition Age Youth)	2%
26-59 (Adult)	36%
Ages 60+ (Older Adult)	16%
Declined to Answer (or Unknown)	46%
Race	
Asian	4%
Black or African American	36%
White	45%
More than one Race	1%
Other	7%
Ethnicity: Hispanic or Latino/Latina/Latinx	
Hispanic	7%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
Declined to Answer (or Unknown)	100%
Sexual Orientation	
Declined to Answer (or Unknown)	100%
Disability	
Declined to Answer (or Unknown)	100%

Veteran Status	
Declined to Answer (or Unknown)	100%
Gender: Assigned sex at birth	
Male	61%
Female	37%
Declined to Answer (or Unknown)	2%
Current Gender Identity	
Male	61%
Female	37%
Declined to Answer (or Unknown)	2%

Flex funds are 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/groceries; 15 - transportation; 9 - clothing/hygiene; 4 - household items; 1 - housing.

Due to the nature of the many brief interactions attempting to engage with clients, as well as trying to not put up 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.

HOTT, planned as a short term pilot project, was initially slated to wrap up in April of 2020. During the last four months of this reporting period, 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 Operation 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 persons 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.

The RDA [Homeless Outreach and Treatment Team Final Evaluation Report](#) which 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 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."

HOTT continued to be in operation until March 2021, when the Homeless FSP was fully implemented.

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 from FY2018 – FY2020 to these statewide initiatives. In the City of Berkeley, this has varied from year to year to 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.

In FY20, through this initiative resources on Suicide Prevention, Student Mental Health and Stigma and Discrimination 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.

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 YMCA Head Start sites in Berkeley. In September 2018, BMH also received approval from the MHSOAC for a third INN project that would allocate funds to join the Technology Suite Multi-County Collaborative.

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. See Appendix B for the Fiscal Year 2019 Innovations Annual Evaluation Report.

A description of the currently funded INN programs and project updates 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 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 on the project outcomes. The report is part of the larger "City of Berkeley Mental Health Services Act (MHSA) Fiscal Year 2017 Innovations Evaluation Report" referenced above.

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 TIC Plan Update was approved through City Council in October 2018 and by the MHSAOAC 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) began in January 2019 at four YMCA Head Start sites located in Berkeley: Ocean View, South YMCA, Vera Casey, and West YMCA. The project provides 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 provides training, coaching and peer support to staff and parents who have children enrolled in Head Start and advances Berkeley's 2020 Vision priority, that all Berkeley children enter kindergarten ready to learn.

The learning objectives of this project are:

- 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 FY20, 197 children received services through this program. An evaluation was conducted during the reporting timeframe by HTA. Below are demographics of individuals impacted by this program. The full evaluation is attached to this report.

PARTICIPANT DEMOGRAPHICS N=197	
Age Groups	
0-15 (Children)	100%
Race	
American Indian or Alaska Native	3%
Asian	4%
Black or African American	47%
White	23%
Other	9%
More than one Race	13%
Declined to Answer (or Unknown)	1%
Ethnicity: Hispanic or Latino/Latina/Latinx	
Caribbean	<1%
Central American	<1%
Mexican/Mexican-American/Chicano	27%
Puerto Rican	<1%
South American	3%
More than one ethnicity	9%
Declined to Answer (or Unknown)	<1%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
African	37%
Asian Indian/south Asian	2%
Cambodian	1%
Chinese	1%
Eastern European	<1%
European	1%
Japanese	<1%
Middle Eastern	1%
Other	7%
More than one Ethnicity	4%
Declined to Answer (or Unknown)	8%
Primary Language	
English	60%
Spanish	22%
Urdu	1%
Arabic	2%

French	1%
Berber	1%
Punjabi	<1%
Amharic	<1%
Tigrina	<1%
Chinese/Mandarin	<1%
Nepalese	<1%
Declined to Answer (or Unknown)	1%
Disability	
Communication: other, speech/language impairment	10%
Mental domain	1%
Chronic health condition	<1%
Other	2%
No Disability	87%
Gender	
Female	47%
Male	53%

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 was approved by the MHSOAC. This project allocates a total of \$462,916 to join a Statewide Collaborative with other California counties to pilot a Mental Health Technology Project that will make various technology-based mental health services and supports available locally in Berkeley. The proposed INN project will seek to learn whether the Technology Suite Project 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 the City of Berkeley has been working both internally and with the State collaborative on various aspects of this project to prepare for citywide implementation. In keeping with changes made via the Technology Suite multi-county collaborative, the new name of this project has been changed to "Help@Hand". As a result of a competitive recruitment process that was conducted in FY20, Resource Development Associates (RDA) was hired to conduct the Project Coordination work on this project. Pre-work for the implementation of this project is currently underway. It is envisioned that the mental health apps will be locally available in early FY22 in Berkeley.

New INN Project

In FY20, the community program planning process for the next round of INN funded Projects was conducted by Resource Development Associates (RDA), who was chosen through a competitive recruitment process to conduct this work. Based on the community input received around the need for additional services and supports for homeless individuals who have mental health needs, the potential new INN project would pilot a Mobile Wellness Center at Homeless encampments in Berkeley.

This project is currently under development. It is envisioned that the project would be implemented for a five year period and have a projected budget amount of a little over 2.8 million, with approximately \$560,000 of estimated expenditures in FY22, following project approval. The City is currently working with staff at the MHSOAC on a final draft plan, that will be released to the public for a 30-Day Public Review, and Public Hearing prior to going to the City Council and the MHSOAC for approval.

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](#) one WET program (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) is allocating \$40 million in Workforce, Education and Training funds for Regional Partnerships across the state for mental health workforce strategies that will be implemented in FY20-FY25. Each Regional Partnership will be able to decide which strategies they want to allocate funds for to benefit the local area. Strategies include:

Pipeline Development: Introduce the public mental health system to kindergarten through 12th grades, community colleges, and universities. Ensure that these programs incorporate developmentally appropriate concepts of mental health needs, self-care, and de-stigmatization and target resources at educational institutions with underrepresented communities. The Regional Partnerships would conduct pipeline activities to identify students as potential scholarship and stipend candidates.

Undergraduate College and University Scholarships: Provide scholarships to undergraduate students in exchange for service learning received in a public mental health system.

Clinical Master and Doctoral Graduate Education Stipends: This program would provide funding for post-graduate clinical master and doctoral education service performed in a local public mental health system.

Loan Repayment Program: Provide educational loan repayment assistance to public mental health system professionals that the local jurisdiction identifies as serving in hard-to-fill and hard-to-retain positions.

Retention: Increase the continued employment of public mental health system personnel identified as high priority by county behavioral health agencies, by increasing and enhancing evidence-based and community-identified practices.

The Division participated in meetings with representatives from the other counties in the Greater Bay Area Regional Partnership. All participating counties chose to allocate these funds for the Loan Repayment program. This program will enable funds in the amount of approximately \$12,000 to \$15,000 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 served in the Public Mental Health system.

OSHPD requested that each Regional Partnership contribute an additional portion of local funds towards this initiative. For the Bay Area Regional Partnership, the total amount of the contribution is \$2.6 million, and the proposed contribution from Berkeley is \$40,157. Through the previously approved Three Year Plan, the Division proposed to transfer CSS Funds to the WET funding component to participate in this initiative, through the following process:

Per MHPA 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."

It is envisioned that Berkeley will allocate these funds in FY22, to begin participating in the Loan Repayment Program.

A description of the only WET program that was in operation in FY20, and a report on data from that timeframe is outlined below:

Graduate Level Training Stipend Program

Per the original WET Plan, this program offered stipends to Psychologists, Social Workers, Marriage and Family Therapists and other counseling trainees and interns who have cultural and linguistic capabilities. Guidelines were developed and a system was implemented to recruit and provide incentives to those meeting criteria, thereby allowing BMH to attract a more culturally and linguistically diverse pool of graduate level trainees and interns. In FY21 this program provided stipends 5 counseling trainees and interns at BMH and the remaining WET

funds were expended. Funding for Graduate Level Training Stipends will continue through other, non-MHSA Mental Health funds.

CAPITAL FACILITIES AND TECHNOLOGICAL NEEDS (CFTN)

The original City of Berkeley CFTN Plan was approved by DMH 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 has 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 therapy, and psychiatric medication support, FSP/Intensive Case Management Teams, Clinical services, Mobile Crisis, and Homeless Outreach. In its previous condition, use of the Adult Clinic space was inefficient and inadequately aligned with MHSA goals, including that of creating welcoming spaces for client and family centered wellness and recovery programs and services. In addition to electrical, HVAC and other environmental upgrades, it was originally envisioned that CFTN funds would be used to re-configure shared work spaces to increase safety; improve clinical, wellness/recovery, support services, and administrative functions; and support the implementation of electronic health records and other emerging technologies. In FY18, renovation on the Adult Clinic was in the design and pre-construction phase. In FY19 construction on the Adult Clinic began and in FY21, the reconstruction of the Adult Clinic was completed and staff moved back into the building and it was re-opened for services in June 2021. It is anticipated that there may be a small amount of CFTN funds remaining in the approximate amount of \$189,599. These funds will be utilized in FY22 on a plumbing project in an adjacent property to the Adult Clinic where some staff and offices are located.

FY20 AVERAGE COST PER CLIENT*

*(Includes programs that utilized MHPA funds in FY20)

COMMUNITY SERVICES & SUPPORTS			
Program Name	Approx. # of Clients	Cost	Average Cost Per Client
Children and Youth Intensive Support Services FSP	28	\$226,288	\$8,082
TAY, Adult & Older Adult FSP	82	\$1,546,727	\$18,862
TAY Support Services	109	\$122,856	\$1,127
System Development (includes: Wellness Recovery Services; Family Support Services; Benefits Advocacy; Employment/Educational Services; Housing Services and Supports; Crisis Services; HOTT; TOT; TAY Case Management Services; Hearing Voices; Albany CARES; Berkeley Wellness Center)	2,441	\$1,200,091	\$492
PREVENTION & EARLY INTERVENTION			
Supportive Schools Program	268	\$55,000	\$205
Albany Trauma Project	65	\$64,192	\$988
Living Well Project	59	\$32,046	\$543
Harnessing Hope Project	22	\$32,046	\$1,457
LGBTQI Trauma Project	151	\$32,046	\$212
TAY Trauma Project	96	\$32,046	\$334
High School Youth Prevention Program	801	\$506,825	\$633
Homeless Outreach and Treatment Team	616	\$156,672	\$254
Child And Youth at Risk Project	54	\$29,711	\$550
Dynamic Mindfulness	380	\$150,000	\$395
African American Success Project	23	\$81,250	\$3,533
INNOVATION			
Trauma Informed Care Project	197	\$138,651	\$704

BUDGET NARRATIVE

The enclosed budget provides an update to the estimated revenue and expenditures that were projected for FY22 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. Projections received from the state last year, 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 last year 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 in MHSA revenue in FY21, and a 43% increase is projected in FY22 in the MHSA Fund. Additionally, the expenditure projections for FY21 in the approved Three Year Plan reflected the total costs of each program if it was fully operable. The actual expenditures in FY21 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 FY21 expenditures, and the projected additional revenue in FY21 and FY22, will provide increased monies to support MHSA programs and services over the next couple of years. 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 FY23 Annual Update.

PROGRAM BUDGETS

1B

**FY 2021/22 Mental Health Services Act Annual Update
Funding Summary**

County: City of BerkeleyDate: 5/24/21

	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
A. Estimated FY2021/22 Funding						
1. Estimated Unspent Funds from Prior Fiscal Years	6,310,561	1,885,708	1,387,243	40,157	189,599	
2. Estimated New FY2021/21 Funding	6,595,582	1,648,896	433,920			
3. Transfer in FY 2021/22 ^{a/}						
4. Transfer Local Prudent Reserve in FY 2021/22						
5. Estimated Available Funding for FY 2021/22	12,906,143	3,534,604	1,821,163	40,157	189,599	
B. Estimated FY21/22 Expenditures	8,701,483	1,912,904	626,500	40,157	189,599	
G. Estimated FY21/22 Fund Balance	4,204,660	1,621,700	1,194,663	0	0	

H. Estimated Local Prudent Reserve Balance	
1. Estimated Unspent Local Prudent Reserve on June 30, 2021	1,237,629
2. Contributions to the Local Prudent Reserve in FY2021/22	0
3. Distributions from the Local Prudent Reserve in FY2021/22	0
4. Estimated Local Prudent Reserve balance on June 30, 2022	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 2021/22 Mental Health Services Act Annual Update
Community Services and Supports (CSS) Funding

County: City of Berkeley

Date: 5/24/21

	Fiscal Year 2021/22					
	A	B	C	D	E	F
	Estimated Total Mental Health Expenditures	Estimated CSS Funding	Estimated Medi- Cal FFP	Estimated 1991 Realignment	Estimated Behavioral Health Subaccount	Estimated Other Funding
FSP Programs						
1. TAY, Adult & Older Adult FSP	2,689,827	2,689,827				
2. Children's FSP	680,239	680,239				
3. Homeless FSP	1,176,437	1,176,437				
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					
Non-FSP Programs						
1. Multicultural Outreach & Engagement	456,040	456,040				
2. System Development, Wellness & Recovery	2,838,693	2,838,693				
3. Crisis Services	194,653	194,653				
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					
CSS Administration	665,594	665,594				
CSS MHSA Housing Program Assigned Funds						
Total CSS Program Estimated Expenditures	8,701,483	8,701,483	0	0	0	0
FSP Programs as Percent of Total	52.2%					

**FY 2021/22 Mental Health Services Act Annual Update
Prevention and Early Intervention (PEI) Funding**

County: City of BerkeleyDate: 5/24/21

	Fiscal Year 2021/22					
	A	B	C	D	E	F
	Estimated Total Mental Health Expenditures	Estimated PEI Funding	Estimated Medi- Cal FFP	Estimated 1991 Realignment	Estimated Behavioral Health Subaccount	Estimated Other Funding
PEI Programs - Prevention						
1. High School Prevention Program	258,184	258,184				
2. Social Inclusion	9,000	9,000				
3. African American Success Project	37,500	37,500				
4. CalMHSA	65,956	65,956				
5. Dynamic Mindfulness	71,250	71,250				
6. Mental Health Peer Education Program (MEET)	67,500	67,500				
7. Mental Health Promotion Campaign	100,000	100,000				
8.						
9.	0	0				
10.	0	0				
PEI Programs - Early Intervention						
11. High School Prevention Program	258,184	258,184				
12. African American Success Project	112,500	112,500				
13. BE A STAR	27,903	27,903				
14. Community Based Children & Youth Risk	34,364	34,364				
15. Community Education & Supports	364,092	364,092				
16. Dynamic Mindfulness	23,750	23,750				
17. Mental Health Peer Education Program (MEET)	22,500	22,500				
18. Supportive Schools	110,000	110,000				
19. Specialized Care Unit	68,000	68,000				
20.						
PEI Administration	282,221	282,221				
PEI Assigned Funds						
Total PEI Program Estimated Expenditures	1,912,904	1,912,904	0	0	0	0

FY 2021/22 Mental Health Services Act Annual Update
 Innovations (INN) Funding

County: City of Berkeley

Date: 5/24/21

	Fiscal Year 2021/22					
	A	B	C	D	E	F
	Estimated Total Mental Health Expenditures	Estimated INN Funding	Estimated Medi- Cal FFP	Estimated 1991 Realignment	Estimated Behavioral Health Subaccount	Estimated Other Funding
INN Programs						
1. Help@Hand - Technology Suite Project	66,500	66,500				
2. New INN Homeless Encampment Project	560,000	560,000				
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					
INN Administration						
Total INN Program Estimated Expenditures	626,500	626,500	0	0	0	0

FY 2021/22 Mental Health Services Act Annual Update
 Workforce, Education and Training (WET) Funding

County: City of Berkeley

Date: 5/24/21

	Fiscal Year 2021/22					
	A	B	C	D	E	F
	Estimated Total Mental Health Expenditures	Estimated WET Funding	Estimated Medi- Cal FFP	Estimated 1991 Realignment	Estimated Behavioral Health Subaccount	Estimated Other Funding
WET Programs						
1. Greater Bay Area Regional Partnership	40,157					
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					
WET Administration	0					
Total WET Program Estimated Expenditures	40,157	0	0	0	0	0

FY 2021/22 Mental Health Services Act Annual Update
Capital Facilities/Technological Needs (CFTN) Funding

County: City of Berkeley

Date: 5/24/21

	Fiscal Year 2021/22					
	A	B	C	D	E	F
	Estimated Total Mental Health Expenditures	Estimated CFTN Funding	Estimated Medi- Cal FFP	Estimated 1991 Realignment	Estimated Behavioral Health Subaccount	Estimated Other Funding
CFTN Programs - Capital Facilities Projects						
1. 2636 MLK Jr. Way - Adult Clinic Office Repair	189,599	189,599				
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
CFTN Programs - Technological Needs Projects						
11.						
12.						
13.						
14.						
15.						
16.						
17.						
18.						
19.						
20.						
CFTN Administration						
Total CFTN Program Estimated Expenditures	189,599	189,599				

APPENDIX A
Fiscal Year 2020
Prevention and Early
Intervention
Annual Evaluation Report

City of Berkeley Mental Health Services Act (MHSA)



Fiscal Year 2020 Prevention and Early Intervention Annual 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 components:

- 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 people with mental health challenges or mental illness.
- Access and linkages to necessary medical care for those 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 jurisdiction must submit a Prevention and Early Intervention (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 each fiscal year. 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 Comment period and approval from the local governing board. In FY21, the Fiscal Year 2020 (FY20) PEI Annual Evaluation Report that covers data from FY20 is due.

This FY20 PEI Annual Evaluation Report provides descriptions of currently funded MHSA services, and reports on FY20 program and demographic data to the extent possible. The main obstacles in collecting data for this PEI Annual 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. Page 28 of this Annual Evaluation Report provides an aggregated summary of some of the results of this initiative. The report on the results can be accessed on the MHSA website: [MHSA Plans and Updates - City of Berkeley, CA](#)

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. Subsequent updates to the original plan were approved in October 2010, April 2011, May 2013, May 2014, June 2016, January 2017, July 2017, October 2018, July 2019 and December 2020. 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 Supportive Schools Program (originally named “Building Effective Schools Together”- BEST) Community Based Child & Youth Risk Prevention Program	<ul style="list-style-type: none"> ➤ At-Risk Children, Youth and Young Adult Populations 	<ul style="list-style-type: none"> • Children and Youth in Stressed Families • Children and Youth at Risk for School Failure • Underserved Cultural Populations
High School Youth Prevention Project Mental Health Peer Mentor Program Dynamic Mindfulness Program African American Success Project	<ul style="list-style-type: none"> ➤ At-Risk Children, Youth and Young Adult Populations ➤ Disparities in Access to Mental Health services ➤ Psycho-social Impact of Trauma 	<ul style="list-style-type: none"> • Trauma Exposed • Children and Youth in Stressed Families • Children and Youth at Risk for School Failure • Underserved Cultural Populations
Community Education & Supports	<ul style="list-style-type: none"> ➤ Psycho-social Impact of Trauma ➤ At-Risk Children, Youth and Young Adult Populations 	<ul style="list-style-type: none"> • Trauma Exposed • Underserved Cultural Populations • Children/Youth in Stressed Families • Children and Youth at Risk for School Failure •

PEI Programs	Key Community Mental Health Needs	PEI Priority Populations
Homeless Outreach & Treatment Team (HOTT)	<ul style="list-style-type: none"> ➤ Psycho-social Impact of Trauma ➤ Disparities in Access to Mental Health services At-Risk Children, Youth and Young Adult Populations 	<ul style="list-style-type: none"> • Underserved Cultural Populations • Trauma Exposed
Social Inclusion	<ul style="list-style-type: none"> ➤ Stigma and Discrimination ➤ Psycho-social Impact of Trauma 	<ul style="list-style-type: none"> • Trauma Exposed • Underserved Cultural Populations

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 all of 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. 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 must 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"> • 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. 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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.

The new PEI Regulations, also included 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"> ➤ Describe the target population- type of risk(s) and the criteria used for establishing/identifying those at risk ➤ 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) ➤ Demonstrate the use of an evidence-based or promising practice or a community or practice-based evidence standard* ➤ Collect all PEI demographic variables
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"> ➤ Provide services that do not exceed 18 months ➤ Program may include services to parents, caregivers, and other family members of the person with early onset of a mental illness. ➤ Program may be combined with a Prevention program ➤ 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). ➤ Demonstrate the use of an evidence-based or promising practice or a community or practice-based evidence standard* ➤ Collect all PEI demographic variables
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"> ➤ Collect # of unduplicated individuals served ➤ Collect # of unduplicated referrals made to a Treatment program (and type of program) ➤ Collect # of individuals who followed through (participated at least once in Treatment) ➤ Measure average time between referral and engagement in services per each individual ➤ Measure duration of untreated mental illness (interval between onset of symptoms and start of treatment)per each individual ➤ Collect all PEI demographic variables
Stigma and Discrimination Reduction	Direct activities to reduce negative feelings, attitudes, beliefs, perceptions, stereotypes and/or discrimination related to being diagnosed with a mental illness,	<ul style="list-style-type: none"> ➤ Collect the number of individuals reached by activity (e.g., # who participated in each service or activity)

PROGRAM TYPE	PROGRAM DEFINITION	PROGRAM AND DATA COLLECTION REQUIREMENTS
	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"> ➤ Measure changes in attitude, knowledge, and/or behavioral related to seeking mental health services or related to mental illness ➤ Collect all PEI demographic variables
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"> ➤ May include reaching out to individuals with signs and symptoms of a mental illness, so they can recognize and respond to their own symptoms. ➤ 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. ➤ Unduplicated # of individual potential responders ➤ The types of potential responders engaged in each setting (e.g., nurses, principals, parents, etc.) ➤ The # and kind of settings in which the potential responders were engaged ➤ 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) ➤ Collect all demographic variables for all unduplicated individual potential responders
<u>OPTIONAL</u> Suicide Prevention	Activities to prevent suicide as a consequence of mental illness.	<ul style="list-style-type: none"> ➤ Collect available #of individuals reached ➤ Collect # of individuals reached by activity (ex. # trained, # who accessed website) ➤ Select and use a validated method to measure changes in attitudes, knowledge and/or behavior regarding suicide related mental illness ➤ Collect all PEI demographic variables for all individuals reached

* 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

Upon the release of the 2018 PEI Regulations, the City of Berkeley programs were reviewed to evaluate whether programs that were already funded would fit into the new required PEI Program definitions. As a result, local PEI funded programs were re-classified from the previous construct, into the following:

STATE REQUIRED PEI PROGRAMS	CITY OF BERKELEY PEI PROGRAMS
Combined Prevention and Early Intervention	<ul style="list-style-type: none"> • Be A Star • High School Youth Prevention Project • Community Based Child & Youth Risk Prevention Program • Mental Health Peer Education Program* • Dynamic Mindfulness Program* • African American Success Project*
Early Intervention	<ul style="list-style-type: none"> • Supportive Schools Program • Community Education & Supports Projects
Access and Linkage to Treatment	<ul style="list-style-type: none"> • Homeless Outreach & Treatment Team
Stigma and Discrimination Reduction	<ul style="list-style-type: none"> • Social Inclusion Project
Outreach for Increasing Recognition of Early Signs of Mental Illness	<ul style="list-style-type: none"> • High School Youth Prevention Project

*This project was added through the MHSA FY19 or FY20 Annual Update

The City then assessed the current capacity both internal and at Contractor sites that would be necessary to collect and evaluate the new PEI Data and quickly realized there were very limited resources and staffing available. Beginning in FY18, as a measure to provide resources to assist with the collection of data at Contractor sites, additional funds were added to each PEI funded contract.

Additionally, within FY18, the City of Berkeley Health, Housing and Community Services (HHCS) Department began the roll-out of “Impact Berkeley” in various Public Health and Mental Health programs. “Impact Berkeley” is an evaluation that utilizes the methodology of “Results Based Accountability” (RBA), which seeks to answer how many individuals are being served, how well the program is providing services, and whether participants are better off as a result of participating in the program, or receiving services. Through this initiative the Department envisioned, clarified, and developed a common language about the

outcomes and results that each program seeks to achieve, and then began implementing a rigorous framework to measure and enhance programs towards these results. The first part of this roll-out included the PEI Community Education & Supports Program contracted services. In FY18, staff began working with PEI funded Contractors both on establishing measures for “Impact Berkeley” and for PEI program requirements. Results of the FY20 RBA Evaluation are captured in this report and will continue to be reported in future PEI Evaluation Reports.

This FY20 Annual PEI 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, eight out of 10 local PEI programs provide services for children and youth, 5 of which are in the Berkeley Unified School District (BUSD). Programs are as follows: Behavioral-Emotional Assessment, Screening, Treatment and Referral (BE A STAR); Community-Based Child/Youth Risk Prevention Program; 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.

PREVENTION AND EARLY INTERVENTION COMBINED PROGRAMS



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.

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 1538 children were able to be screened through community partners.

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 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 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.

In FY20, the following services were provided:

- Over 15 Early Childhood Mental Health Reflective Case Consultation groups for five classrooms. Case consultation meetings allow teachers to develop clear plans and interventions in the classroom for individual children (and families) who have 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 in five classrooms;

- Individual and group consultations to the Center Program Supervisor, 15-18 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 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-facilitated monthly Resiliency Circles to promote self-care and trauma informed care principles with teaching staff; and
- Maintenance of a presence of mental health consultation despite the impact of the pandemic.

In FY20, 54 children were served through this program. Demographics on those served is as follows:

PARTICIPANT DEMOGRAPHICS N=54	
Age Groups	
0-15 (Children/Youth)	100%
Race	
Asian	5%
Black or African American	56%
White	4%
Other	19%
More than one Race	2%
Ethnicity: Hispanic or Latino/Latina/Latinx	
Mexican/Mexican-American/Chicano	33%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
Declined to Answer (or Unknown)	67%
Primary Language	
Declined to Answer (or Unknown)	100%
Disability	
Declined to Answer (or Unknown)	100%

Gender: Assigned sex at birth	
Declined to Answer (or Unknown)	100%
Current Gender Identity	
Declined to Answer (or Unknown)	100%

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 2600 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 HHCS Department. As the program has developed, the staffing structure for the program 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.

In FY20, approximately 801 students at Berkeley High School (BHS) and Berkeley Technology Academy (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:

PARTICIPANT DEMOGRAPHICS N=801	
Age Groups	
Youth 14-18 Years	100%
Race	
Asian	6%
Black or African American	19%
White	36%
More than one Race	20%
Declined to Answer (or Unknown)	3%
Ethnicity: Hispanic or Latino/Latina/Latinx	
Mexican/Mexican-American/Chicano	16%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
Declined to Answer (or Unknown)	84%
Primary Language	
Declined to Answer (or Unknown)	100%
Sexual Orientation	
Declined to Answer (or Unknown)	100%
Disability	
Declined to Answer (or Unknown)	100%
Veteran Status	
No	100%
Gender: Assigned sex at birth	
Male	30%
Female	70%
Current Gender Identity	
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 12th due to the pandemic and related school closure. Mental Health in-person and group services were suspended the following day and on April 28th 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 Berkeley High School and B-Tech 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”.

Successes

- Applied for and awarded 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.

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;

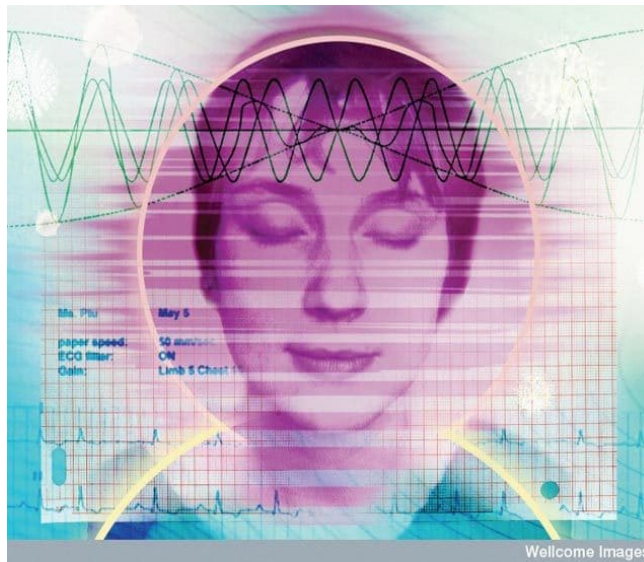
- Decline in accessibility and utilization of Mental Health services due to the pandemic;
- Impact of the pandemic on staff;
- Vicarious trauma for staff due to the nature and content of the therapeutic work, high volume, and impact of the pandemic; and
- Limited staff time for team meetings to discuss/plan/review administrative and programmatic considerations.

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.

In FY20, 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.

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.



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.

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.

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 rooted 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:

PARTICIPANT DEMOGRAPHICS N=23	
Age Groups	
Children/Youth (0-15)	100%
Race	
Black or African American	74%
More than one Race	26%
Ethnicity: Hispanic or Latino/Latina/Latinx	
More than one Ethnicity	17%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
Black/African American	74%
More than one ethnicity	4%
Other	4%
Declined to Answer (or Unknown)	1%
Primary Language	
English	99%
Other	1%
Sexual Orientation	
Declined to Answer (or Unknown)	100%
Disability	
Other	43%
Veteran Status	
No	100%
Gender: Assigned sex at birth	
Male	70%
Female	30%
Current Gender Identity	
Male	70%
Female	30%

EARLY INTERVENTION (ONLY) PROGRAMS



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.

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 the 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 Emerson Malcolm X Oxford Ruth Acty Thousand Oaks	Bay Area Community Resources BACR	229
Bay Area Arts Magnet (BAM) Washington	Child Therapy Institute	39
John Muir Sylvia Mendez	School Site Counselor	No Data Available
Rosa Parks	Child Therapy Institute	No Data Available
Total		268

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, is outlined below:

PARTICIPANT DEMOGRAPHICS N= 248	
Age Group	
0-15 (Children/Youth)	100%
Race	
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%
Ethnicity: Hispanic or Latino/Latina/Latinx	
Mexican/Mexican-American/Chicano	22%
Declined to Answer (or Unknown)	5%
Ethnicity: Non-Hispanic or Non- Latino/Latina/Latinx	
Asian Indian/South Asian	1%
Filipino	<1%
More than one Ethnicity	10%
Declined to Answer (or Unknown)	62%
Primary Language Used	
English	13%
Spanish	3%
Other	<1%
Declined to Answer (or Unknown)	84%

Sexual Orientation	
Declined to Answer (or Unknown)	100%
Disability	
Mental domain not including a mental illness (including but not limited to a learning disability, developmental disability, dementia)	6%
No Disability	11%
Declined to Answer (or Unknown)	83%
Veteran Status	
No	100%
Gender: Assigned sex at birth	
Male	55%
Female	45%
Current Gender Identity	
Male	55%
Female	45%

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.

In FY20 each of the Community Education & Supports contractors participated in the HHCS Results-Based Accountability (RBA) Evaluation. Some of the results are presented in an aggregated format aggregated 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"> • 555 Support Groups/Workshops • 5,183 Support Groups/Workshop Encounters • 188 Individual Contacts/Individuals • 3,342 Outreach Contacts • 1,245 Referrals 	<ul style="list-style-type: none"> • 13 Support groups or workshop sessions attended on average per person (5 out of 7 programs reporting). • 98% Survey respondents were satisfied with services (4 out of 7 programs reporting) • Referrals by type: 277 Mental Health 252 Social Services 230 Physical Health 125 Housing 361 Other Services (6 out of 7 programs reporting) 	<ul style="list-style-type: none"> • 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). • 88% of program participants reported positive changes in terms of coping strategies, feeling anxious or overwhelmed (3 out of 7 programs reporting).

For additional detail on how various data variables were quantified and for full reporting on other data elements, access the full report on the Impact Berkeley PEI program results on the MHSA website: [MHSA Plans and Updates - City of Berkeley, CA](#)

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, will begin providing services to each population.

Per the previously approved Three Year Plan, in an effort to ensure each unserved, underserved and inappropriately served population had an equitable amount of dedicated MHSA funds for programs and services, the Division made the following changes to this program, which will begin 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.

Descriptions of services provided and numbers served through this project are outlined below:

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: Adult one-on-one outreach and engagement 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 is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

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.

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 is to reduce at-risk behaviors, reduce a sense of alienation, and increase a sense of belonging among group members. Various psycho-educational techniques are 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 provides information about the effects of trauma, and helpful coping strategies; serves a preventive function by offering interventions that will keep at-risk individuals and families from developing serious 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.

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 or drop out.

Elementary School Support Groups: Through this project, Support Groups are 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 are 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 are 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 provide psycho-education, coping skills, and a safe environment in which to address and process traumatic experiences.

In FY20, nine support groups were provided to a total of ten 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.

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 are provided at Albany High School for Asian Pacific Islander, Latino/Latina/Latinx, and African American youth. Groups meet for 1-2 hours a week throughout the school year and are 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 FY20, 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:

Among all services conducted for children, youth and Adults through the Albany Trauma Project, a total of 65 individuals were served. Demographics on individuals served were as follows:

PARTICIPANT DEMOGRAPHICS N=65*			
Age Group	Golden Gate Fields Racetrack Supports	Elementary Support Groups	High School Support Groups
Percent of total participants served	28%	15%	57%
0-15		90%	
16-25	6%	10%	100%
26-59	56%		
60+	39%		
Race			
Asian	6%		24%
Black or African American		50%	27%
White	56%	20%	41%
Other	39%	30%	
More than one Race			8%

Ethnicity: Hispanic or Latino/Latina/Latinx	Golden Gate Fields Racetrack Supports	Elementary School Support Groups	High School Support Groups
Mexican/Mexican-American/Chicano	94%	10%	32%
Central American			3%
Puerto Rican		10%	5%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx			
Asian Indian/South Asian		10%	3%
Chinese			14%
Filipino	6%		5%
Japanese			3%
More than one Ethnicity			35%
Declined to Answer (or Unknown)		70%	
Primary Language Used			
English	17%	100%	100%
Spanish	83%		
Sexual Orientation			
Gay or Lesbian			3%
Heterosexual or Straight	100%	100%	95%
Bisexual			3%
Disability			
Other Disability	22%		
No Disability	78%	30%	100%
Declined to Answer (or Unknown)		70%	
Veterans Status			
No	100%	100%	100%
Gender: Assigned sex at birth			
Male	83%	50%	51%
Female	17%	50%	49%
Current Gender Identity			
Male	83%	50%	51%
Female	17%	50%	49%

*Percentages may not add up to 100% due to rounding.

Beginning in FY21, Albany services will be funded through Alameda County MHSA Funds.

Transition Age Youth Trauma Support Project

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 program is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

In FY20, 96 TAY participated in one or more program 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:

CLIENT DEMOGRAPHICS N = 96*	
Age Group	
16-25 (Transition Age Youth)	100%
Race	
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%

Ethnicity: Hispanic or Latino/Latina/Latinx	
Central American	5%
Mexican/Mexican-American	15%
South American	1%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
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%
Primary Language Used	
English	86%
Spanish	14%
Sexual Orientation	
Gay or Lesbian	8%
Heterosexual or Straight	81%
Bisexual	10%
Disability	
Mental (not mental health)	50%
Chronic Health Condition	11%
Other Disability	20%
No Disability	16%
Decline to Answer (or Unknown)	3%
Veteran Status	
Yes	1%
No	99%
Gender: Assigned sex at Birth	
Male	33%
Female	26%

Decline to Answer (or Unknown)	41%
Gender Identity	
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 was as follows: 77 Mental Health; 102 Physical Health; 88 Social Services; 76 Housing; 80 other unspecified services. A total of 46% of program participants received individual counseling through this program; 29% exited the program into stable housing; and 39% obtained employment or entered school during the program. Per participant feedback, 100% reported being satisfied with program 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 program is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.

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 program. In all 59 Senior Citizens participated in the Living Well Workshops. Demographics of Workshop participants are outlined below:

PARTICIPANT DEMOGRAPHICS N=59*	
Age Groups	
26-59 (Adult)	2%
Age 60+ (Older Adult)	97%
Declined to Answer (or Unknown)	1%
Race	
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%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
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%
Primary Language Used	
English	92%
Other	3%
Declined to Answer (or Unknown)	5%
Sexual Orientation	
Gay or Lesbian	2%
Heterosexual or Straight	68%
Bisexual	2%
Declined to Answer (or Unknown)	29%

Disability	
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%
Veteran Status	
Yes	2%
No	95%
Declined to Answer (or Unknown)	3%
Gender: Assigned sex at birth	
Male	14%
Female	83%
Declined to Answer (or Unknown)	3%
Current Gender Identity	
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 program 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.

Harnessing Hope Project

Implemented through GOALS for Women this project provides community-based, culturally competent, outreach and support services for African Americans residing in the South and West Berkeley neighborhoods who have experienced traumatic life events including racism and socioeconomic oppression and have unmet mental health support needs. The primary goals of the project are 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 is to train and mentor community leaders to become Peer Facilitators of Kitchen Table Talk and Just Like Sunday Dinner groups. This project serves approximately 50-130 individuals a year.

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 prevention of suicide.

In FY20, 22 individuals were served through this project. Demographics on individuals served were as follows:

PARTICIPANT DEMOGRAPHICS N=22*	
Age Groups	
0-15 (Children/Youth)	4%
16-25 (Transition Age Youth)	18%
26-59 (Adult)	73%
Ages 60+ (Older Adult)	5%
Race	
Asian	14%
Black or African American	82%
Other	5%

Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
African	77%
Asian Indian/South Asian	9%
Vietnamese	5%
More than one Ethnicity	5%
Declined to Answer (or Unknown)	5%
Primary Language Used	
English	100%
Sexual Orientation	
Heterosexual or Straight	95%
Questioning or Unsure	5%
Disability	
Chronic Health Condition	18%
No Disability	82%
Veteran Status	
No	100%
Gender: Assigned sex at birth	
Female	100%
Current Gender Identity	
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.

MHSA funded services did not continue with GOALS in FY21, as the program was no longer in operation. A Request For Proposal (RFP) process was executed in April 2021 for these services. In FY22, Trauma Support Services for African Americans will be provided through the chosen vendor of this RFP process.

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 program is to address and promote recovery and related functional outcomes for a mental illness early in its emergence, including the prevention of suicide.



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 LGBTQIA+ 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:

PARTICIPANT DEMOGRAPHICS N=151*	
Age Groups	
16-25 (Transition Age Youth)	28%
26-59 (Adult)	41%
Ages 60+ (Older Adult)	26%
Declined to Answer (or Unknown)	4%
Race	
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%
Ethnicity: Hispanic or Latino/Latina/Latinx	
Caribbean	1%
Central American	2%
Mexican/Mexican-American/Chicano	5%
Puerto Rican	1%
South American	1%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
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%
Primary Language Used	
English	98%
Spanish	1%
Mandarin	1%
Sexual Orientation	
Gay or Lesbian	23%
Heterosexual or Straight	7%
Bisexual	25%
Questioning or Unsure	2%
Queer	25%
Other	17%
Declined to Answer (or Unknown)	3%
Disability	
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%
Veteran Status	
Yes	1%
No	99%
Gender: Assigned sex at birth	
Male	26%
Female	50%
Declined to Answer (or Unknown)	24%

Current Gender Identity	
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 are in place to train new QTBIPOC facilitators, develop new required group agreements, develop trainings and implement QTBIPOC Support Groups.

ACCESS AND LINKAGE TO TREATMENT PROGRAM



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.

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.

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 on FY18 showed many positive findings including the following:

- HOTT is 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 meets people where they are, in parks, encampments, motels;
- The program had successfully connected homeless individuals to critical resources and service linkages.

In FY20, 616 individuals were served through this program. Demographics on individuals that received services through this pilot project were as follows:

PARTICIPANT DEMOGRAPHICS N= 616	
Age Groups	
16-25 (Transition Age Youth)	2%
26-59 (Adult)	36%
Ages 60+ (Older Adult)	16%
Declined to Answer (or Unknown)	46%
Race	
Asian	4%
Black or African American	36%
White	45%
More than one Race	1%
Other	7%
Ethnicity: Hispanic or Latino/Latina/Latinx	
Hispanic	7%

Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
Declined to Answer (or Unknown)	100%
Primary Language Used	
Declined to Answer (or Unknown)	100%
Sexual Orientation	
Declined to Answer (or Unknown)	100%
Disability	
Declined to Answer (or Unknown)	100%
Veteran Status	
Declined to Answer (or Unknown)	100%
Gender: Assigned sex at birth	
Male	61%
Female	37%
Declined to Answer (or Unknown)	2%
Current Gender Identity	
Male	61%
Female	37%
Declined to Answer (or Unknown)	2%

Flex funds are 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.

Due to the nature of the many brief interactions attempting to engage with clients, as well as trying to not put up 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.

HOTT, planned as a short term pilot project, was initially slated to wrap up in April of 2020. During the last four months of this reporting period, 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 Operation 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 persons 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.

The RDA [Homeless Outreach and Treatment Team Final Evaluation Report](#) which 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 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, the 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 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 of 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 need for people like me.”

HOTT continued to be in operation until March 2021, when the Homeless FSP was fully implemented.

STIGMA AND DISCRIMINATION REDUCTION 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.



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:

PARTICIPANT DEMOGRAPHICS N= 22*	
Age Groups	
26-59 (Adult)	18%
Ages 60+ (Older Adult)	36%
Declined to Answer (or Unknown)	46%

Race	
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%
Ethnicity: Hispanic or Latino/Latina/Latinx	
Mexican	4%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
Declined to Answer (or Unknown)	96%
Primary Language Used	
English	41%
Declined to Answer (or Unknown)	59%
Sexual Orientation	
Gay or Lesbian	4%
Heterosexual or Straight	27%
Bisexual	4%
Queer	4%
Questioning	9%
Declined to Answer (or Unknown)	52%
Disability	
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%
Veteran Status	
Declined to Answer (or Unknown)	100%

Gender: Assigned sex at birth	
Female	41%
Declined to Answer (or Unknown)	59%
Current Gender Identity	
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 time frame, focusing on the topic and give effective feedbacks 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 was 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.

OUTREACH FOR INCREASING RECOGNITION OF EARLY SIGNS OF 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.

High School Youth Prevention Project

The High School Youth Prevention Project which is also classified as a Prevention and Early Intervention program. The data elements for the “Outreach for Increasing Recognition of Early Signs of Mental Illness” component of this program were not collected in the reporting timeframe.

Mental Health First Aid

City of Berkeley Mental Health staff provide Mental Health First Aid training throughout the year. 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. The required data elements for the “Outreach for Increasing Recognition of Early Signs of Mental Illness” component of this program were not collected in the reporting timeframe.



California Mental Health Services Authority (CalMHSA) PEI Statewide Projects

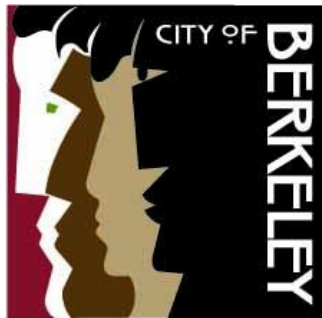
Per PEI State Regulations Mental Health Jurisdictions have an option on whether to utilize MHSA PEI funds on Suicide Prevention programs. While the City of Berkeley has not previously chosen to utilize PEI funds to implement a local Suicide Prevention program, in FY18 Berkeley Mental Health began contributing 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 FY20, through the CalMHSA Statewide Projects initiative resources on Suicide Prevention, Student Mental Health and Stigma and Discrimination 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.



APPENDIX B
Fiscal Year 2020
Innovation Annual
Evaluation Report

City of Berkeley Mental Health Services Act (MHSA)



Fiscal Year 2020 Innovation 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 Mental Health Services Act (MHSA) State requirements, Mental Health jurisdictions are to submit an Innovation (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 Comment period and approval from the local governing board. Per state regulations in 2021, the Fiscal Year 2020 (FY20) INN Annual Evaluation Report that covers data from FY20 is due.

This FY20 INN Annual Evaluation Report provides descriptions of currently funded MHSA INN services, and reports on FY20 program and demographic data to the extent possible. While, it may be a multi-year process before the City of Berkeley will be able to present a complete data set for each INN Program on an Annual basis, ongoing efforts will continue towards accomplishing this goal.

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 and what changes were made to the Innovative Project during the reporting period and the 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

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 was approved by the MHSOAC. This project allocates a total of \$462,916 to join a Statewide Collaborative with other California counties to pilot a Mental Health Technology Project that will make various technology-based mental health services and supports available locally in Berkeley. The proposed INN project will seek to learn whether the Technology Suite Project 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 the City of Berkeley has been working both internally and with the State collaborative on various aspects of this project to prepare for citywide implementation. In keeping with changes made via the Technology Suite multi-county collaborative, the new name of this project has been changed to "Help@Hand". As a result of a competitive recruitment process that was conducted in FY20, Resource Development Associates (RDA) was hired to conduct the Project Coordination work on this project. Pre-work for the implementation of this project is currently underway. It is envisioned that the mental health apps will be locally available in early FY22 in Berkeley.

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 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.

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 TIC Plan Update 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 local Head Start sites.

The new TIC modified project, "Early Childhood Trauma and Resiliency" (ECTR) began in January 2019 at four YMCA Head Start sites located in Berkeley: Ocean View, South YMCA, Vera Casey, and West YMCA. The project provides 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 provides training, coaching and peer support to staff and parents who have children enrolled in Head Start and advances Berkeley's 2020 Vision priority, that all Berkeley children enter kindergarten ready to learn.

The learning objectives of this project are:

- 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 FY20, 197 children received services through this program. An evaluation was conducted during the reporting timeframe by HTA. Below are demographics of individuals impacted by

this program. The full evaluation is attached to this report.

PARTICIPANT DEMOGRAPHICS N=197	
Age Groups	
0-15 (Children)	100%
Race	
American Indian or Alaska Native	3%
Asian	4%
Black or African American	47%
White	23%
Other	9%
More than one Race	13%
Declined to Answer (or Unknown)	1%
Ethnicity: Hispanic or Latino/Latina/Latinx	
Caribbean	<1%
Central American	<1%
Mexican/Mexican-American/Chicano	27%
Puerto Rican	<1%
South American	3%
More than one ethnicity	9%
Declined to Answer (or Unknown)	<1%
Ethnicity: Non-Hispanic or Non-Latino/Latina/Latinx	
African	37%
Asian Indian/south Asian	2%
Cambodian	1%
Chinese	1%
Eastern European	<1%
European	1%
Japanese	<1%
Middle Eastern	1%
Other	7%
More than one ethnicity	4%
Declined to Answer (or Unknown)	8%

Gender	
Female	47%
Male	53%
Primary Language	
English	60%
Spanish	22%
Urdu	1%
Arabic	2%5
French	1%
Berber	1%
Punjabi	<1%
Amharic	<1%
Tigrina	<1%
Chinese?Mandarin	<1%
Nepalese	<1%
Declined to Answer (or Unknown)	1%
Disability	
Communication: other, speech/language impairment	10%
Mental domain	1%
Chronic health condition	<1%
Other	2%
No Disability	87%

Early Childhood Trauma and Resiliency Project (ECTR)

City of Berkeley, Berkeley's 2020 Vision

Year Two Evaluation Report, September 2020



Prepared by
Ruthie Chang, EdM
Sophie Lyons, MPH, MSW
Hatchuel Tabernik and Associates

Table of Contents

Project Description.....	2
Key Partners.....	2
Theory of Change.....	2
Methodology.....	3
Implementation.....	5
Implementation Activities to Date.....	5
Pivots to Programming During COVID-19.....	7
Findings.....	9
Demographic Data.....	9
Child (Participant) Demographics.....	9
Staff Demographics.....	11
Staff Views and Perceptions.....	14
Staff Behaviors.....	16
Staff Morale.....	18
Mental Health Referrals.....	19
Number of Mental Health Referrals.....	19
Referrals to “Appropriate” Mental Health Services.....	20
Conclusion.....	21
Appendix.....	23
Focus Group Notes.....	23
Full Narrative Transcript, ECTR Project Coordinator.....	27
Open-Ended Responses from Staff Survey (May/June 2020).....	29
How have the trauma trainings or Resiliency Circles changed how you work with families/children?.....	29
In what ways has your relationship with families changed since you attended the trauma trainings or resiliency circles, if at all?.....	30
Additional thoughts and comments.....	31

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 30th, 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, 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.¹ 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?

¹ 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
Training attendance sheets	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.
Annual participant survey	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.
YMCA Child Plus	YMCA database with demographics of children for MHSA reporting requirements.
YMCA supplemental demographics survey	YMCA survey administered at the door to families to collect missing demographic data for MHSA that is missing from ChildPlus.
Program Information Reports (PIR)	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.
Mental health referral follow-up form	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.
Focus group	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.
Post-training surveys	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 18 months of program implementation from January 1st 2019 through June 30th, 2020. Head Start kicked off the ECTR project in February 15th, 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 10th, 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 10th, 2019. Champions attended ten three-hour training sessions through November 1st, 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

Four all-staff trainings were held during this second year of the program. The first, a four-hour training, was held on August 22nd, 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 14th 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 27th. 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 27th, 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 8th and February 6th. 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 16th, 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

	%
Providing activities for children/families	73%
Diaper/supply distribution	31%
Referring families to resources	40%
Crisis management	12%
Learning kits for each family	14%
Gift card distribution for emergency support	20%
Developing resources and media	37%
Not working with children/families	6%
Other	11%
<ul style="list-style-type: none"> • <i>Call families once or twice a week to meet their needs and know about children learning and development at home</i> • <i>call parents once a week and check on children.</i> • <i>More managerial tasks--putting much of the work we do online, hiring, supporting Family Advocates, etc.</i> • <i>Other management task</i> • <i>referring to our mental health</i> • <i>Take trainings</i> 	

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 18th, 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 18th and three hours on the 28th. 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 9th, 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 21st, 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 4th, 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 6th, 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.

Table 3. Training Sessions and Attendance

Training Name	Date	Length	# Attendees
<i>Year One Trainings</i>			
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
<i>Year Two Trainings</i>			
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
<u>Resiliency Circles (site-based)</u>			
South Y	Feb 19, 2020	2 hours	12
Vera Casey	Mar 10, 2020	2 hours	8
<u>Resiliency Circles-virtual (site-based)</u>			
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

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 and also 197 in 2019-20 (see Table 4). The majority of children's primary language is English (60%), and 22% primarily speak Spanish. There are slightly more male (53%) than female (47%) children. All children are in the 0-5 age group. The most common disability among the children is a speech/language impairment (10%).

Table 4. ECTR Child Demographics²

	n	Y1 (N=197) %	n	Y2 (N=197) %
Site				
<i>Oceanview</i>	49	25%	48	24%
<i>South YMCA</i>	69	35%	63	32%
<i>Vera Casey</i>	16	8%	19	10%
<i>West YMCA</i>	63	32%	67	34%
Total	197	100%	197	100%
Gender (assigned at birth)				
<i>Female</i>	97	49%	93	47%
<i>Male</i>	100	51%	104	53%
Total	197	100%	197	100%
Age				
<i>0-5</i>	197	100%	197	100%
Primary Language				
<i>English</i>	130	66%	119	60%
<i>Spanish</i>	41	21%	43	22%
<i>Urdu</i>	5	3%	2	1%
<i>Arabic</i>	4	2%	4	2%
<i>French</i>	4	2%	2	1%
<i>American Sign Language</i>	2	1%	0	0%
<i>Berber</i>	2	1%	2	1%
<i>Mongolian</i>	2	1%	0	0%
<i>Punjabi</i>	2	1%	1	<1%
<i>Tigrina</i>	2	1%	1	<1%
<i>Amharic</i>	0	0%	1	<1%
<i>Chinese/Mandarin</i>	1	1%	1	<1%
<i>Laotian</i>	1	1%	0	0%
<i>Nepalese</i>	0	0%	1	<1%
<i>Russian</i>	1	1%	0	0%
<i>Missing</i>	0	0%	20	10%
Total	197	100%	197	100%
Disability				
<i>Communication: difficulty seeing</i>	0	0%	0	0%
<i>Communication: difficulty hearing</i>	0	0%	0	0%
<i>Communication: other, speech/language impairment</i>	39	20%	20	10%
<i>Mental domain</i>	4	2%	2	1%
<i>Physical/mobility domain</i>	3	2%	0	0%
<i>Chronic health condition</i>	11	6%	1	<1%
<i>Other</i>	11	6%	3	2%
<i>[No Disability]</i>	129	65%	171	87%
Total	197	100%	197	100%

Source: YMCA ChildPlus

A supplemental survey asking only the following race and ethnicity questions was administered to families in May 2020. Black/African American children are the largest ethnic/racial group served (47%) followed by white children (23%). (See Table 5).

² The MHSA categories of sexual orientation, veteran status, and current gender identity are excluded as instructed.

Table 5. ECTR Child Race and Ethnicity Demographics³

	Year 1 (N=154)		Year 2 (N=158)	
	n	%	n	%
Race				
<i>American Indian or Alaska Native</i>	3	2%	4	3%
<i>Asian</i>	8	5%	6	4%
<i>Black or African American</i>	64	42%	75	47%
<i>Native Hawaiian or other Pacific Islander</i>	0	0%	0	0%
<i>White</i>	17	11%	36	23%
<i>Other</i>	42	27%	15	9%
<i>More than one race</i>	18	12%	20	13%
<i>Declined to answer/Unspecified</i>	2	1%	2	1%
Total	154	100%	158	100%
Ethnicity: Hispanic or Latino				
<i>Caribbean</i>	1	<1%	1	<1%
<i>Central American</i>	2	1%	1	<1%
<i>Mexican/Mexican-American/Chicano</i>	46	30%	42	27%
<i>Puerto Rican</i>	1	<1%	1	<1%
<i>South American</i>	1	<1%	2	3%
<i>Other</i>	1	<1%	0	0%
<i>More than one ethnicity</i>	6	4%	15	9%
<i>Declined to answer</i>	4	3%	1	<1%
Total Hispanic or Latino	62	40%	63	40%
Ethnicity: Non-Hispanic or Non-Latino				
<i>African</i>	61	40%	59	37%
<i>Asian Indian/ South Asian</i>	2	1%	3	2%
<i>Cambodian</i>	1	1%	2	1%
<i>Chinese</i>	1	1%	2	1%
<i>Eastern European</i>	0	0%	1	<1%
<i>European</i>	1	1%	2	1%
<i>Filipino</i>	1	1%	0	0%
<i>Japanese</i>	0	0%	1	<1%
<i>Korean</i>	4	3%	0	0%
<i>Middle Eastern</i>	8	5%	2	1%
<i>Vietnamese</i>	0	0%	0	0%
<i>Other</i>	5	3%	11	7%
<i>More than one ethnicity</i>	4	3%	0	0%
<i>Declined to answer</i>	8	5%	12	8%
Total Non-Hispanic or Non-Latino	96	62%	95	60%

Source: ECTR Supplemental MHSA Race/Ethnicity Survey

Staff Demographics

A total of 52 staff who work at the four Berkeley YMCA Head Start sites responded to an online survey in the summer of 2020 for the evaluation. The survey was sent to 68 YMCA Head Start staff, including teachers and assistant teachers, managers, directors, coaches, family advocates, mental health consultants, and program assistants. The response rate was 76%.

³ The MHSA categories of sexual orientation, veteran status, and current gender identity are excluded as instructed.

Survey respondents in this second year of the ECTR program work at West YMCA (35%), South YMCA (31%), Oceanview (21%), 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 42% 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 (48%) and teacher assistants (25%), family advocates (8%), and administrative staff including center directors (6%), managers (6%), and other staff (6%). The great majority are female (85%), and nearly half identified as either Hispanic/Latinx (37%) or Black/African-American (17%). About a third of respondents were also Resiliency Champions (35%).

Table 6. Demographics of ECTR Staff Surveyed

	Year 1 %	Year 2 %
Site		
<i>Oceanview</i>	17%	21%
<i>South YMCA</i>	30%	31%
<i>Vera Casey</i>	8%	12%
<i>West YMCA</i>	43%	35%
<i>Other (responses: all sites, admin office)</i>	2%	2%
Length of time at YMCA		
<i>Less than one year</i>	12%	8%
<i>1-2 years</i>	22%	14%
<i>3-5 years</i>	20%	27%
<i>6-8 years</i>	12%	10%
<i>More than 9 years</i>	35%	42%
Job Title/Role		
<i>Teacher Assistant</i>	30%	25%
<i>Teacher/Head Teacher</i>	37%	48%
<i>Area Manager</i>	5%	6%
<i>Center Director</i>	5%	6%
<i>Coach</i>	2%	0%
<i>Family Advocate</i>	5%	8%
<i>Mental Health Consultant</i>	5%	0%
<i>Program Assistant</i>	3%	0%
<i>Other Manager</i>	7%	0%
<i>Other (responses: floater, inclusion manager, kitchen)</i>	2%	6%
<i>Missing</i>	0%	2%
Sex		
<i>Female</i>	77%	85%
<i>Male</i>	5%	0%
<i>Missing/Declined to answer</i>	18%	15%
Race		
<i>American Indian or Alaska Native</i>	2%	0%
<i>Asian</i>	7%	10%
<i>Black or African American</i>	18%	17%
<i>Native Hawaiian or other Pacific Islander</i>	0%	0%
<i>White</i>	5%	8%
<i>Hispanic or Latinx</i>	30%	37%
<i>Other</i>	5%	2%
<i>More than one race</i>	3%	0%
<i>Missing/Declined to answer</i>	30%	27%

	Year 1 %	Year 2 %
Staff is a Resiliency Champion		
Yes	N/A	35%
No		50%
Missing		15%

Source: ECTR Evaluation Staff Survey, June/July 2019 (N=60), May/June 2020 (N=52)

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. 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.

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 the findings in this very unique year of ECTR programming.

The majority (69%) of participants in the staff survey expressed that prior to this year's trainings, they were "somewhat familiar" with trauma-informed approaches while 29% of participants expressed that they were "very" familiar, an increase from 18% who expressed this last 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	
	n	%	n	%
Very familiar	11	18%	15	29%
Somewhat familiar	39	65%	36	69%
Not at all familiar	7	12%	1	2%
Not Sure	1	2%	0	0%
No response	2	3%	0	0%

Source: ECTR Evaluation Staff Survey, June/July 2019 (N=60), May/June 2020 (N=52)

On average, survey respondents attended 2.25 trauma trainings, either among those offered through the ECTR project. See Table 8 below.

Table 8. Number of Trauma Trainings Attended by Staff

	n	%
0 trainings	7	14%
1 training	13	25%
2 trainings	8	15%
3 trainings	10	19%
4 trainings	12	23%
5 trainings	2	4%
Mean # of trainings attended	2.25	

Source: ECTR Evaluation Staff Survey, May/June 2020 (N=52)

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 second year of the program, staff felt most confident "that my actions had the ability to help a child who has been exposed to trauma"

(72%) and “in using trauma informed strategies” (67%). (See Table 9 below). Interestingly, all of the questions regarding staff’s self-perception of their own trauma and triggers and their sense of being able to use the tools they learned with children fell to rates reported by staff from before the program began (the “pre” survey) or below. It is important to note the timing of the survey: it was conducted approximately three months after the shelter-in-place Covid-19 health order. Head Start teachers and staff were working with families remotely during this period, and were not managing a classroom. This circumstance likely explains the dramatic drop in those who had difficulty maintaining “a positive learning environment because of challenging classroom behavior” (3%). Responses to questions related to reflecting on their own trauma and triggers (29%) and noticing when they felt triggered by a child’s behavior (49%) reverted close to the rates at the pre survey.

These results may be related to the fact that staff were not working directly with children at the time of the survey. The results may also be a result of staff themselves being thrust into highly unstable and uncertain circumstances both personally and professionally. Head Start staff are generally low-wage workers, many of whom were likely grappling with their own finances, health, and family issues at this time. In light of these variables, it is not surprising that the survey responses would slip considerably amid these unsettling events.

Table 9. Staff Self-Perception

	Pre % “Often” or “Always”	Post Y1 % “Often” or “Always”	Post Y2 % “Often” or “Always”
I felt I could handle every serious behavioral issue by myself	38%	43%	38%
I reflected on my own trauma and triggers	38%	67%	29%
I noticed when I felt triggered by a child’s behavior	51%	70%	49%
I felt confident in using trauma informed strategies	69%	74%	67%
I had difficulty maintaining a positive learning environment because of challenging classroom behavior	21%	26%	3%
I felt confident that my actions had the ability to help a child who has been exposed to trauma	76%	81%	72%

Source: ECTR Evaluation Staff Survey, June/July 2019 (N=60), May/June 2020 (N=52)

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.

For the survey items regarding staff perceptions of students and parents, staff sentiment about children and their future remained generally very positive. (See Table 10 below). Fewer staff “felt that a child’s actions/behavior made me irritated” (from 14% in post-Year 1 to 6% in post-Year 2) and most felt generally hopeful about the lives of the children” (78%) and “understood why families may not seek out or accept mental health services/programs they need” (78%). In fact, this last area is the only one with growth since Year 1, likely as a result of increased collaboration between teachers, staff, mental health consultants, and family advocates.

Staff members may have felt like they had less access to observe their students and, therefore, less insight into what students and families were experiencing. About half of the families were available only via telephone (audio only), which did not allow staff to follow visual cues from the parents and children they serve. Contacts were also far more limited in time. While a teacher would typically have a child in her/his classroom for at least 8 hours a day, 5 days a week. Phone calls and other contacts during the pandemic, were both shorter and less frequent.

All of these factors may account for the decrease since Year 1 in a few questions asking about what they directly “saw” such as the percentage of those who “saw how children at my site have been impacted by trauma” (69% to 56%), “saw how parents/families have been impacted by trauma” (66% to 46%), “saw how ‘class disruptions’ or ‘behavior problems’ could be related to trauma the child has experienced” (74% to 38%), and “saw improvements in a child’s behavior after I used trauma-informed strategies” (59% to 33%).

Table 10. Changes in Perceptions of Students and Parents

	Pre % “Often” or “Always”	Post Y1 % “Often” or “Always”	Post Y2 % “Often” or “Always”
A child’s actions/behavior irritated me	11%	14%	6%
I saw how children at my site have been impacted by trauma	67%	69%	56%
I saw how parents/families have been impacted by trauma	66%	66%	46%
I saw how “class disruptions” or “behavior problems” could be related to trauma the child has experienced	67%	74%	38%
I saw improvements in a child’s behavior after I used trauma-informed strategies	46%	59%	33%
I felt hopeful about the lives of the children at my site	81%	84%	78%
I understood why families may not seek out or accept mental health services/programs they need	70%	70%	78%

Source: ECTR Evaluation Staff Survey, June/July 2019 (N=60), May/June 2020 (N=52)

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.

Staff Behaviors

Nearly all staff (94%) reported that they kept themselves “calm and regulated in moments working with a student who is challenging.” About one in five respondents (21%) “felt hesitant to refer students to mental health resources.” (See Table 11 below.) The one area of growth was 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” (81% to 85%). Nearly three quarters (74%) “used strategies rooted in trauma informed practices.” Staff appear to feel that they have tools to cope with their responses to challenging behaviors.

Looking at change over time, many of the responses to these questions about staff behaviors also reverted to the “pre” survey rates or even decreased. As with the other survey items, it is important to note the timing of the survey took place while teachers and staff were working with families

virtually during an incredibly chaotic and stressful time and were not managing a classroom. Not surprisingly, the results showed no growth on questions about relationship-building with families like “I was able to build rapport with most parents/families” (79% to 66%), “I felt comfortable talking to parents about their child’s emotional, developmental, or behavioral issues” (67% to 68%), “I worked with a child’s parent/family to support a child’s emotional or behavior issues related to trauma” (63% to 53%), “I shared information about trauma and its effects on behavior with parents/caregivers” (50% to 53%), and “I shared ways that I manage challenging trauma-related behavior with parents/caregivers” (51% to 50%).

Some of these early findings were shared with the ECTR project leaders who posited that what may be causing some of the lack of growth is that staff are feeling helpless while working with children and families remotely. They may be seeing children on Zoom and witnessing negative behavior from their parents, but while they may feel confident intervening in person, they have difficulty asserting their allyship virtually. The Project Coordinator and YMCA Executive Director also discussed that because staff are only seeing children for an hour or less rather than every day for a full day, they may be feeling disconnected.

Table 11. Changes in Staff Behaviors

	Pre % “Often” or “Always”	Post Y1 % “Often” or “Always”	Post Y2 % “Often” or “Always”
I was able to build rapport with most parents/families	79%	81%	66%
I felt comfortable talking to parents/families about their child’s emotional, developmental, or behavioral issues related to trauma	67%	79%	68%
I worked with a co-worker to support a child with emotional or behavior issues related to trauma	80%	84%	64%
I worked with a child’s parent/family to support a child who had emotional or behavior issues related to trauma	63%	75%	53%
I shared information about trauma and its effects on behavior with parents/families	50%	67%	53%
I used strategies rooted in trauma informed practices	67%	79%	74%
I shared ways that I manage challenging trauma-related behavior with parents/families	51%	63%	50%
I felt hesitant to refer a child to mental health resources (e.g., mental health specialist, outside mental health services)	21%	28%	21%
I knew where or to whom to go when I had questions about a child’s or parent’s mental health	79%	81%	85%
I kept myself calm and regulated when working with a child with challenging behavior	87%	93%	94%

Source: ECTR Evaluation Staff Survey, June/July 2019 (N=60), May/June 2020 (N=52)

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.

In open-ended survey responses, staff described how the trauma trainings and/or resiliency circles impacted how they work with families. (See Appendix for all responses.) Many staff expressed how the trainings allowed them to have a better understanding of 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”** and some felt the trainings allowed them to reflect on their own trauma and triggers: **“I have a better understanding of my own trauma and how I am impacted by others, i.e. triggers, etc.”**

They were also asked how the trauma trainings and resiliency circles have changed their relationships with families. Many staff feel more confident about building the relationship with families: **“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”** and others felt that they have a better relationship with parents, even despite Covid-19: **“The families and I have been more connected, even when this has happened remotely.”**

Dr. Anita Smith, ECTR Project Coordinator, expressed that despite the survey results suggesting that staff have not grown in their knowledge and understanding of trauma and how it impacts families, she has seen firsthand how the ECTR trauma trainings have increased staff’s ability to work with children and families. “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.”

Staff Morale

The evaluation also asked two questions to assess staff morale at the YMCA Head Start sites. While not a comprehensive review of the organizational culture of YMCA, the two questions reveal that nearly all staff enjoy working at the school (93%), and staff relationships are consistently positive and supportive (91%). (See Table 12 below).

As the program continues 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 % “Often” or “Always”	Post Y1 % “Often” or “Always”	Post Y2 % “Often” or “Always”
The relationships among the staff at this school were generally positive and supportive	85%	85%	91%
I enjoyed working at this school	98%	94%	93%

Source: ECTR Evaluation Staff Survey, June/July 2019 (N=60), May/June 2020 (N=52)

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.

In a focus group of seven staff members (five teachers, a family advocate, and an enrollment/childcare specialist) held in November 2019, staff revealed how much they rely on each other, particularly in challenging situations with children and families. (See Appendix for full summary). 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, or too frustrated. They use a team approach in the classroom and “are champions for each other, we feel protective of each other.”

Mental Health Referrals

Number of Mental Health Referrals

As a critical component of the MHSA grant, mental health referrals will 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 have slightly increased this school year to five referrals (Table 13). 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

Source: YMCA Program Information Reports (PIR) forms

In the 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.”

They also shared best practices and recommendations for how to manage the relationships with families and staff when there is an issue with a child and referral may be necessary:

- 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
- If you’re a new teacher, you’ll get walked over by the parents. You need to **have a veteran teacher in the room** with you
- **Staff have to be on the same page** and need to have good working relationships

- Teachers will talk to parents and then they will go to the family advocate, the **family advocate needs to know what's going on** before they talk to the parent
- Some parents would rather talk to the family advocate, so all teachers and staff need to be aware and on the same page, **family advocates sometimes know more** about what is going on with the family. This may bring up feelings for the teacher who may feel as if families should be comfortable talking to the teacher
- **Inclusion/mental health consultants need to be available** for the one-on-one meetings
- There needs to be a process so that when a referral form is submitted, there is **follow up with the teacher**

Referrals to “Appropriate” Mental Health Services

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 our 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 (See Appendix for full narrative):

“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 help 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.”

Conclusion

In this second year of the ECTR program, staff remain in a strong position in terms of feeling confident in their ability to work with the children at the four YMCA sites with trauma-informed strategies and tools. The YMCA program, and likewise the families they serve, faced unprecedented challenges this year with Covid-19 and the sudden closure of their sites. Despite these obstacles, the YMCA managed to quickly pivot to engage with families and children in a virtual setting, provided immediate assistance in the way of diapers, supplies, and other resources, and reached out individually to check in on families and manage crises when necessary.

The Early Childhood Trauma and Resiliency (ECTR) project also made important shifts to ensure staff trainings on trauma as well as Resiliency Circles continued, adapting them to a virtual format. In a survey taken in May and June of 2020 while working remotely, staff felt most confident “that my actions had the ability to help a child who has been exposed to trauma” (72%) and “in using trauma informed strategies” (67%). Fewer staff “felt that a child’s actions/behavior made me irritated” (from 14% to 6%) and most felt generally hopeful about the lives of the children” (78%) and “understood why families may not seek out or accept mental health services/programs they need” (78%). Nearly all staff (94%) report that they kept themselves “calm and regulated in moments working with a student who is challenging.” About one in five respondents (21%) “felt hesitant to refer students to mental health resources.”

Looking at change over time, we do not see the growth that we may have expected, but we must be cautious before drawing conclusions. The survey was conducted while teachers and staff were working with children virtually, rather than in-person in their classrooms, and all of this took place during an incredibly chaotic and stressful time.

As the program continues into its third year, ECTR leaders plan to expand the Resiliency Circles and develop greater leadership from the Resiliency Champions, encouraging them to participate in training new staff on trauma-informed care and in starting to take on more a leadership role in the Resiliency Circles. Also, in the third year, the program will engage parents in these opportunities as well. Given the drastic change of circumstances and the unprecedented challenges facing families during the pandemic, the ECTR project leaders will have to assess the extent to which they need to re-visit knowledge and skills around previously delivered trauma-informed care trainings. The following strategies are in development for year three:

1. **Resiliency Champions and Staff Onboarding.** Trainings for new staff will continue to be conducted remotely rather than in-person for the foreseeable future. Dr. Smith will work with Resiliency Champions to turn the “Intro to Trauma Informed Care” onboarding training into a webinar which will be shared with new employees. In it, she and Resiliency Champions will provide a high-level overview and consolidation of the trauma trainings. Resiliency Champions will be centered as site-based leaders in trauma-informed care and strategies in order to sustain the program and demonstrate that the entire organization is trauma-informed.
2. **Resiliency Champions to co-facilitate Resiliency Circles.** Dr. Smith will identify five Resiliency Champions among the four sites to co-facilitate Resiliency Circles with her. These will begin by the first quarter of this next school year.
3. **Parent Trainings and Resiliency Circles.** Trainings on trauma-informed care will be provided specifically to parents in this third year. These will begin with the parents on the Policy Council as early as either September 25th or October 23rd. Parent Resiliency Circles are also in development with leaders first gathering input on topics of interest in order to garner buy-in.

The pandemic has significantly and unexpectedly impacted the ECTR project. While some of the survey results during the pandemic have been discouraging, at the same time, organizationally, project leaders feel the positive impact of the trauma-informed work. As a result, they are more effectively able to support Head Start staff and families through a devastating time. They are deeply appreciative of the tools, skills, and perspectives that they have acquired through this project and recognize how their growing expertise in trauma-informed care practice is enabling them to work more effectively with each other and the children and families they serve.

As a testament to the successful work of the ECTR program, this coming year (2020-21), the YMCA of the East Bay received federal funding to support and expand their mental health and trauma informed systems. Program leaders were able to submit a well-developed plan based on their current work at these four sites in Berkeley in order to scale the trauma-informed systems training to all of their Bay Area centers from Hayward to Rodeo. Dr. Anita Smith, Melanie Mueller, and other ECTR leaders are looking forward to implementing and expanding the trauma-informed systems developed through MHSA funding across the YMCA’s regional programs.

Appendix

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

1. 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

2. 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

3. 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
- 4. 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
- 5. 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
- 6. 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 then 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 is 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
September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Lisa Warhuus, Director, Health, Housing & Community Services
 Subject: Revenue Contract: Department of Health Care Services Performance
 Contract for City of Berkeley

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with the California Department of Health Care Services (DHCS) from July 1, 2021 through June 30, 2024, for the Mental Health Services Act (MHSA), Lanterman-Petris-Short (LPS) Act, Projects for Assistance in Transition from Homelessness (PATH), Community Mental Health Services Block Grant (MHBG), and Crisis Counseling Assistance and Training Program (CCP) programs and county provision of community mental health services pursuant to the Bronzan-McCorquodale Act. For the purposes of this contract, DHCS considers the City of Berkeley a small County.

FISCAL IMPACTS OF RECOMMENDATION

The Mental Health Division is projected to receive approximately \$8,678,398 in FY22 funds through the Mental Health Services Act. These funds will be deposited in ERMA GL Code 315-51-503-520-0000-000-000-432390-. It is anticipated that a similar amount will be received for all years covered by the contract (FY22-FY24) for a total anticipated 3-year amount of \$26,035,194.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley receives direct funding from the MHSA from the State of California, and DHCS requires a performance contract with the City of Berkeley in order to delineate the responsibilities and requirements connected with transferring these funds to the City of Berkeley.

BACKGROUND

The California Department of Health Care Services provides funding and oversight for mental health care plans administered primarily through County Health Plans. In 2011, the contract that delineates the responsibilities and requirements for receiving these funds was consolidated into a single "performance contract." When this occurred, the City entered into a contract with Alameda County authorizing services and part of the Alameda County Behavioral Healthcare Plan.

On October 13, 2020 via Resolution No. 69,580-N.S., City Council approved entering into Contract No. 42100054 with DCHS. DHCS is again requiring Berkeley to enter into a performance contract regarding funds received directly from the State. DHCS does not amend previous contracts, but requires new agreements for each period. The standard State Performance Contract covers a wide variety of possible funding streams. The City of Berkeley only receives MHSA revenue from DHCS, and therefore only those sections of the performance contract applicable to the MHSA apply to the City of Berkeley.

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

In order to receive MHSA funding, Berkeley is required to enter into this performance contract with DHCS. As MHSA funding is the largest funding source for mental health services provided by the Mental Health division of the Health, Housing and Community Services Department, it is vital that HHCS continue to receive these funds to provide mental health services in Berkeley. These funds support numerous programs including Full Service Partnerships that provide specialized, comprehensive outpatient services to highest need individuals in Berkeley to the Berkeley Wellness Center, which is available to support everyone in the City.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Steven Grolnic-McClurg, Manager of Mental Health, HHCS, (510) 981-5249

Attachments:

1: Resolution

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

REVENUE CONTRACT: DEPARTMENT OF HEALTH CARE SERVICES
PERFORMANCE CONTRACT FOR CITY OF BERKELEY

WHEREAS, the California Department of Health Care Services (DHCS) requires the City of Berkeley to enter into a performance contract to receive funding from the Mental Health Services Act; and

WHEREAS, On October 13, 2020 via Resolution No. 69,580-N.S., City Council approved entering into Contract No. 42100054 with DHCS; and

WHEREAS, the Mental Health Division utilizes the Mental Health Services Act to fund a wide variety of mental health programs for residents of Berkeley. Funds from this revenue contract will be deposited in ERMA GL Code 315-51-503-520-0000-000-000-432390- for a total projected amount of \$26,035,194.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute a contract and any amendments with the California Department of Health Care Services for the Mental Health Services Act, Lanterman-Petris-Short (LPS) Act which may be larger or smaller than the projected amount of \$26,035,194; and implement the following projects and appropriation of funding for related expenses: Projects for Assistance in Transition from Homelessness (PATH), Community Mental Health Services Block Grant (MHBG), and Crisis Counseling Assistance and Training Program (CCP) programs and county provision of community mental health services pursuant to the Bronzan-McCorquodale Act. Budget Codes (Revenue): 315-51-503-520-0000-000-000-432390; (Expenditure): 315-51-503-520-0000-000-451- various; A record signature copy of said contract and any amendments to be on file in the City Clerk Department.



Office of the City Manager

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services
 Subject: Revenue Contracts: FY 2022 Aging Services Programs

RECOMMENDATION

Adopt five Resolutions authorizing the City Manager or her designee to execute any resultant revenue agreements and amendments with Alameda County to provide congregate and home-delivered meals, family caregiver support, senior center activities and information and assistance services to seniors for the following programs for Fiscal Year 2022:

1. Congregate Meals in the amount of \$47,000;
2. Home Delivered Meals in the amount of \$57,527;
3. Family Caregiver Support Program in the amount of \$41,195;
4. Senior Center Activities in the amount of \$28,350; and
5. Information and Assistance Services in the amount of \$61,500.

FISCAL IMPACTS OF RECOMMENDATION

The City of Berkeley will receive five grants totaling \$235,572 from Alameda County Area Agency on Aging for FY 2022 for the programs listed below. The contracts require matching funds totaling \$58,895 as detailed below, and the Division will utilize General Fund in its approved FY 2022 budget to provide the match. The grant budgets will be adjusted to match the contract amounts and these changes will be included in the First Amendment to the FY 2022 Annual Appropriations Ordinance.

1. **Congregate Meals:** ERMA GL Code 011-051-505-549-2041. The FY 2022 contract is for \$47,000 and supports staff coordination and management of home delivered meals. The contract requires a match of \$274,079.
2. **Home Delivered Meals:** ERMA GL Code 011-051-505-549-2044. The FY 2022 contract is for \$57,527 and supports staff coordination and management of home delivered meals. The contract requires a match of \$394,606.

3. **Family Caregiver Support Program:** ERMA GL Code 011-051-505-541-2036. The FY 2022 contract is for \$41,195 and supports caregiver outreach, training and respite services for care receivers. The contract requires a match of \$9,463.
4. **Senior Center Activities:** ERMA GL Code 011-051-505-544-2069. The FY 2022 contract is for \$28,350 and supports staff coordination and delivery of senior center outreach, activities, classes, and special events. The contract requires a match of \$9,463.
5. **Information and Assistance Services:** ERMA GL Code 011-051-505-541-2035. The FY 2022 contract is for \$61,500 and supports staff management and delivery of information, assistance, referral and follow-up services. The contract requires a match of \$9,463.

CURRENT SITUATION AND ITS EFFECTS

In February 2018, Alameda County issued a request for proposals for caregiver, senior center, information and assistance, and nutrition services. The City of Berkeley applied for this funding and received notification of grant awards for caregiver services, senior center activities and administration of Senior Nutrition Programs on April 13, 2018 for a four-year period.

BACKGROUND

The City of Berkeley receives funding from city, county and state sources as well as private donations to serve senior residents of Berkeley, and to coordinate the Tri-City Nutrition Program. The Department of Health, Housing & Community Services is committed to providing a broad range of community services, including services to meet the needs of seniors in the community. The Aging Services Division provides nutritious meals, outreach, activities, social events, classes, and individual support and referral services to seniors and their families in the community.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The home-delivered and congregate meal programs composts meal waste.

RATIONALE FOR RECOMMENDATION

These funds support the City's senior centers and meals programs, and provide critical support to ensure the Aging Services Division can continue to provide services at the North and South Berkeley Senior Centers, and Senior Nutrition Programs.

ALTERNATIVE ACTIONS CONSIDERED

The Aging Services Division assesses each funding source to ensure that it supports the City's mission and goals. The alternative action of not seeking any of these funding sources would result in a significant reduction in services available to seniors in the community.

CONTACT PERSON

Tanya Bustamante, Manager of Aging Services, HHCS, 981-5178

Attachments:

1. Resolution: Congregate Meals
2. Resolution: Nutrition Meals
3. Resolution: Family Caregiver Support Program
4. Resolution: Senior Center Activities
5. Resolution: Information and Assistance Services

RESOLUTION NO. -N.S.

REVENUE CONTRACT: ALAMEDA COUNTY FISCAL YEAR 2022 CONGREGATE
MEAL PROGRAM

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

WHEREAS, the Aging Services Division provides a broad range of services to Berkeley seniors, and coordinates the delivery of meals to three cities – Berkeley, Albany and Emeryville – as the lead partner in the Tri-City Nutrition Program; and

WHEREAS, the City of Berkeley should seek outside funding wherever possible to fund vital senior services; and

WHEREAS, Alameda County provides funding to support the Congregate Meal programs for Fiscal Year 2022 in the amount of \$51,000 (Revenue Budget Code 320-51-505-549-2044-000-000-433110-); and

WHEREAS, the City of Berkeley provides match of \$274,079 in General Funds (Expense Code 011-51-505-549-2041-000-444-various and 011-51-505-549-2044-000-444-various); and

WHEREAS, the funds will support the coordination and management of congregate meals at four sites (North Berkeley Senior Center, South Berkeley Senior Center, Emeryville Senior Center and Albany Senior Center) (budget code 320-51-505-549-2044-000-444-various).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to submit a contract agreement to Alameda County for funding for fiscal year 2022 for the Congregate Meal Program, and to accept the grants and to execute any resultant revenue agreements and amendments. A record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.

RESOLUTION NO. -N.S.

REVENUE CONTRACT: ALAMEDA COUNTY FISCAL YEAR 2022 HOME
DELIVERED MEAL PROGRAM

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

WHEREAS, the Aging Services Division provides a broad range of services to Berkeley seniors, and coordinates the delivery of meals to three cities – Berkeley, Albany and Emeryville – as the lead partner in the Tri-City Nutrition Program; and

WHEREAS, the City of Berkeley should seek outside funding wherever possible to fund vital senior services; and

WHEREAS, Alameda County provides funding to support the Home Delivered Meal program for Fiscal Year 2022 in the amount of \$61,527 (Revenue Budget Code 320-51-505-549-2044-000-000-433110-); and

WHEREAS, the City of Berkeley provides match of \$394,606 in General Funds (Expense Code 011-51-505-549-2044-000-444-various); and

WHEREAS, the funds will support the coordination and management of home delivered meals to the partner cities in the Tri-City Nutrition Program (Berkeley, Albany and Emeryville) (budget code 320-51-505-549-2044-000-444-various).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to submit a contract agreement to Alameda County for funding for fiscal year 2022 for the Home Delivered Meal Program, and to accept the grants and to execute any resultant revenue agreements and amendments. A record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.

RESOLUTION NO. -N.S.

REVENUE CONTRACT: ALAMEDA FISCAL YEAR 2022 FAMILY CAREGIVER
SUPPORT PROGRAM

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

WHEREAS, the Aging Services Division provides a broad range of services to Berkeley seniors; and

WHEREAS, the City of Berkeley should seek outside funding wherever possible to fund vital senior services; and

WHEREAS, Alameda County provides funding to support the Family Caregiver Support services for Fiscal Year 2022 in the amount of \$46,200 (Revenue Budget Code 328-51-505-541-2036-000-000-43310); and

WHEREAS, the City of Berkeley provides match of \$9,463 in General Funds (Expense Code 011-51-505-541-2036-000-444-various); and

WHEREAS, the funds will support the provision of caregiver outreach, training and respite services for care receivers (budget code 328-51-505-541-2036-000-444-various).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to submit a contract agreement to Alameda County for funding for fiscal year 2022 for the Family Caregiver Support Program, and to accept the grants and to execute any resultant revenue agreements and amendments. A record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.

RESOLUTION NO. -N.S.

REVENUE CONTRACT: ALAMEDA COUNTY FISCAL YEAR 2022 SENIOR CENTER
ACTIVITIES

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

WHEREAS, the Aging Services Division provides a broad range of services to Berkeley seniors; and

WHEREAS, the City of Berkeley should seek outside funding wherever possible to fund vital senior services; and

WHEREAS, Alameda County provides funding to support Senior Center Activities for Fiscal Year 2022 in the amount of \$33,400 (Revenue Budget Code 328-51-505-544-2069-000-000-433110-); and

WHEREAS, the City of Berkeley provides match of \$9,463 in General Funds (Expense Code 011-51-505-544-2069-000-444-various); and

WHEREAS, the funds will support the coordination and delivery of senior center outreach, activities, classes, and special events (budget code 328-51-505-544-2069-000-444-various).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to submit a contract agreement to Alameda County for funding for fiscal year 2022 for Senior Center Activities, and to accept the grants and to execute any resultant revenue agreements and amendments. A record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.

RESOLUTION NO. -N.S.

REVENUE CONTRACT: ALAMEDA COUNTY FISCAL YEAR 2022 INFORMATION
AND ASSISTANCE SERVICES

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

WHEREAS, the Aging Services Division provides a broad range of services to Berkeley seniors; and

WHEREAS, the City of Berkeley should seek outside funding wherever possible to fund vital senior services; and

WHEREAS, Alameda County provides funding to provide Information and Assistance Services for Fiscal Year 2022 in the amount of \$66,300 (Revenue Budget Code 327-51-505-541-2035-000-000-433110-); and

WHEREAS, the City of Berkeley provides match of \$9,463 in General Funds (Expense Code 011-51-505-541-2035-000-444-various); and

WHEREAS, the funds will support the management and delivery of information, assistance, referral and follow-up services provided in the North and South Berkeley Senior Centers, and in the Social Services Unit (budget code 327-51-505-541-2035-000-444-various).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to submit a contract agreement to Alameda County for funding for fiscal year 2022 for Information and Assistance Services, and to accept the grants and to execute any resultant revenue agreements and amendments. A record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: LaTanya Bellow, Director of Human Resources
 Subject: Classification and Salary Range: Communications Specialist

RECOMMENDATION

Adopt a Resolution amending Resolution No. 69,998-N.S. Classification and Salary Resolution for Unrepresented Manual to add to Unit Z-2 (Confidential Professional Employees) the classification Communications Specialist with an hourly salary range of \$47.33 - \$56.18 effective September 14, 2021.

FISCAL IMPACTS OF RECOMMENDATION

The Human Resources Department contracted with Bryce Consulting to develop a base salary recommendation based on internal equity. Bryce Consulting is an agency that provides a variety of human resource services to non-profit and public-sector clients. After considering the internal relationships among classifications, staff is recommending a monthly salary range of \$8,203.63 - \$9,738.55.

CURRENT SITUATION AND ITS EFFECTS

The Communications Division currently has 4 Full Time Equivalent (FTE) positions and would add 1 additional FTE dedicated to support the Fire Department. Staff is requesting the classification be created and will be asking for the position. The addition is illustrated in the proposed organization chart.

The Communications Division within the City Manager's Office provides support to all City Departments on a variety of strategic communications issues, including external messaging; website strategy, governance and guidance; media relations; social media; and emergency communications. These critical responsibilities are also layered with the complexity of the City's broad and unique set of communications needs, reflective of the City's operations. No other California city has all three of its own public health, mental health, and environmental health divisions. In addition, the City has its own marina and runs its own refuse collection. City departments regularly do innovative work.

Berkeley also has a highly engaged community, one that justly has high expectations. In recent years, City communications have launched a variety of social media channels, an online forum and increased engagement with community members. The Communications

Division is also leading the City through a transformation of its website to help the City better communicate with the general public.

The City of Berkeley, on a fairly consistent basis, also attracts regional, national and even international media attention. All have to be handled with sophistication that respectfully considers the community we serve.

Most significantly, communications is an essential part of disaster response, codified into the Incident Command System (ICS) that frames all emergency response. The ICS system has the Public Information Officer (PIO) report directly to the Incident Commander. This would be the City's first PIO classification. City communications have excelled in recent years, providing support for the City's response to COVID-19, extreme fire weather and Public Safety Power Shutoffs. However, due to the resources needed to address the ongoing multi-year pandemic and to support ongoing services that need to be communicated virtually, the City does not currently have the capacity to provide communications support for Fire events as it has in the past.

Wildfire threat is more extreme than ever and the Fire Department currently does not have staff with the high level technical and messaging skill required for today's digital environment. The Fire Department has recognized this need and has created funding for the newly established Communications Specialist. The Fire Department anticipates filling this position in FY 2022 and will ask City Council to appropriate the funds for this position as part of the upcoming AAO process.

BACKGROUND

The Personnel Board met on March 2, 2020 and approved the classification and salary range for Communications Specialist.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

It has been the policy of the City to create the necessary classification and salary schedule to accommodate new duties and responsibilities, reflect programmatic changes, maintain competitive salaries and, when applicable, comply with regulatory requirements.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Matthai Chakko, Assistant to the City Manager, City Manager's Office, 510-981-7008.

Attachments:

- 1: Resolution
- 2: Communication Specialist Classification Specification
- 3: Organization Chart

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

CLASSIFICATION AND SALARY RANGE: COMMUNICATIONS SPECIALIST

WHEREAS, the Human Resources Department maintains the Classification and Compensation plan for the City of Berkeley; and

WHEREAS, the Assistant to the City Manager had recommended adding the Communications Specialist; and

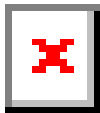
WHEREAS, the City Manager's Office and Human Resources Department have completed a classification and salary review; and

WHEREAS, the Personnel Board approved on March 2, 2020 to approve the classification of Communications Specialist with a salary range of \$45.5083 - \$54.0230.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Resolution No. 69,998-N.S., Classification and Salary Resolution for Unrepresented Employees is amended to include the classification of Communications Specialist with an hourly salary range of \$47.33 - \$56.18 effective September 14, 2021.

Attachment 2

Class Code:
28990



Communications Specialist

Bargaining Unit: Unrepresented Classifications

CITY OF BERKELEY
Established Date: XXXX

SALARY RANGE

\$47.33 - \$56.18 Hourly
\$3,786.29 - \$4,494.72 Biweekly
\$8,203.63 - \$9,738.55 Monthly
\$98,443.56 - \$116,862.60 Annually

DESCRIPTION:

DEFINITION

Under general supervision, performs professional public communication duties to facilitate Citywide initiatives that include the coordination and dissemination of information to the public and media; develops methods and techniques for accomplishing improved communication between the general community, special targeted audiences, the media and the City; and provides professional level support to the Communications Director/Assistant to the City Manager.

CLASS CHARACTERISTICS

This is the journey level class, fully competent to perform responsible and difficult communications duties in support of various departments. Incumbents are expected to exercise independent judgment in the development and implementation of communications strategies.

EXAMPLES OF DUTIES:

The following list of duties is intended only to describe the various types of work that may be performed and the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, or is similar or closely related to another duty statement.

1. Coordinates and performs professional public service communication duties involving the coordination and dissemination of information to the public and media;

- develops methods and techniques for accomplishing improved communication between the City and general community;
2. Collaborates with City staff to develop a comprehensive communication plan; outlines the City's communication objectives, identifies tools and activities to implement those objectives; improves public access to timely, accurate, helpful information about the City and its services; provides the public with a variety of easy and accessible ways to engage with the City;
 3. Develops and utilizes communication strategies to inform and promote City activities, both internally and externally, through written and visual communications with distribution through a variety of channels, including digital platforms such as the web and social media, and print; creates and writes daily content regarding City news and events;
 4. Serves as back up to the Communications Director in crisis communications efforts in emergency situations; under the Incident Command System, would serve as lead PIO;
 5. Develops, implements and coordinates outreach programs for community engagement; strengthens social media outreach; proactively addresses issues and misinformation through communication;
 6. Analyzes the effectiveness of communications and outreach efforts via digital analytics and quantitative and qualitative data;
 7. Coordinates the creation and dissemination of assets and resources designed to serve the public through information; writes and creates news and informational content via print, digital and multimedia platforms;
 8. Responds to public, radio, television, print media and other electronic media and forums with information about programs and services as well as unusual circumstances/situations of immediate public interest; will act as a City media representative and spokesperson;
 9. Coordinates with departments to ensure information to the community is clear, accurate and comprehensive; works with staff to plan, organize and launch programs; writes copy for materials of public interest;
 10. Develops positive relationships with media by proactively reaching out to them with City news and information and preparing news releases; researches and organizes information and material and writes copy; be available to the media to ensure information is being provided in an effective and efficient manner;
 11. Provides technical assistance to City management and staff on digital communications software, how to effectively talk with the news media, and social media best practices;
 12. Builds and maintains positive working relationships with co-workers, other employees and the public using principles of good customer service;
 13. Performs related duties as assigned.

KNOWLEDGE AND ABILITIES:

Note: The level and scope of the knowledges and skills listed below are related to job duties as defined under Class Characteristics.

Knowledge of:

1. Principles, best practices and modern techniques of public information, dissemination, communication program development, media relations, crisis communication, and content-marketing;
2. Techniques of effective interviewing, writing, layout, editing, and multimedia production;
3. Methods and procedures to utilize computer applications and technology related to the work, including but not limited to, web design and maintenance, photography, video production, presentation software, and image editing software;
4. Information dissemination techniques and method;
5. Methods and techniques of clear, concise and accurate oral and written communications.

Ability to:

1. Develop and manage complex communication projects in support of City operations;
2. Effectively prepare and deliver oral presentations and compose clear and organized correspondence, reports, press releases, proclamations, speeches, articles and other written materials;
3. Effectively represent the City with governmental agencies, news media, community groups, employee groups, and various business and professional organizations;
4. Communicate technical information including complex rules, regulations, legislation, and laws in a manner that is appropriate for the intended audience;
5. Use sound judgment in recognizing scope of authority;
6. Operate and use modern office equipment including computers and applicable software;
7. Establish and maintain effective working relationships with those contacted in the course of work;
8. Communicate clearly and concisely, both orally and in writing;
9. Work nights and weekends.

MINIMUM QUALIFICATIONS:

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS:

Equivalent to a Bachelor's degree from an accredited college or university with major

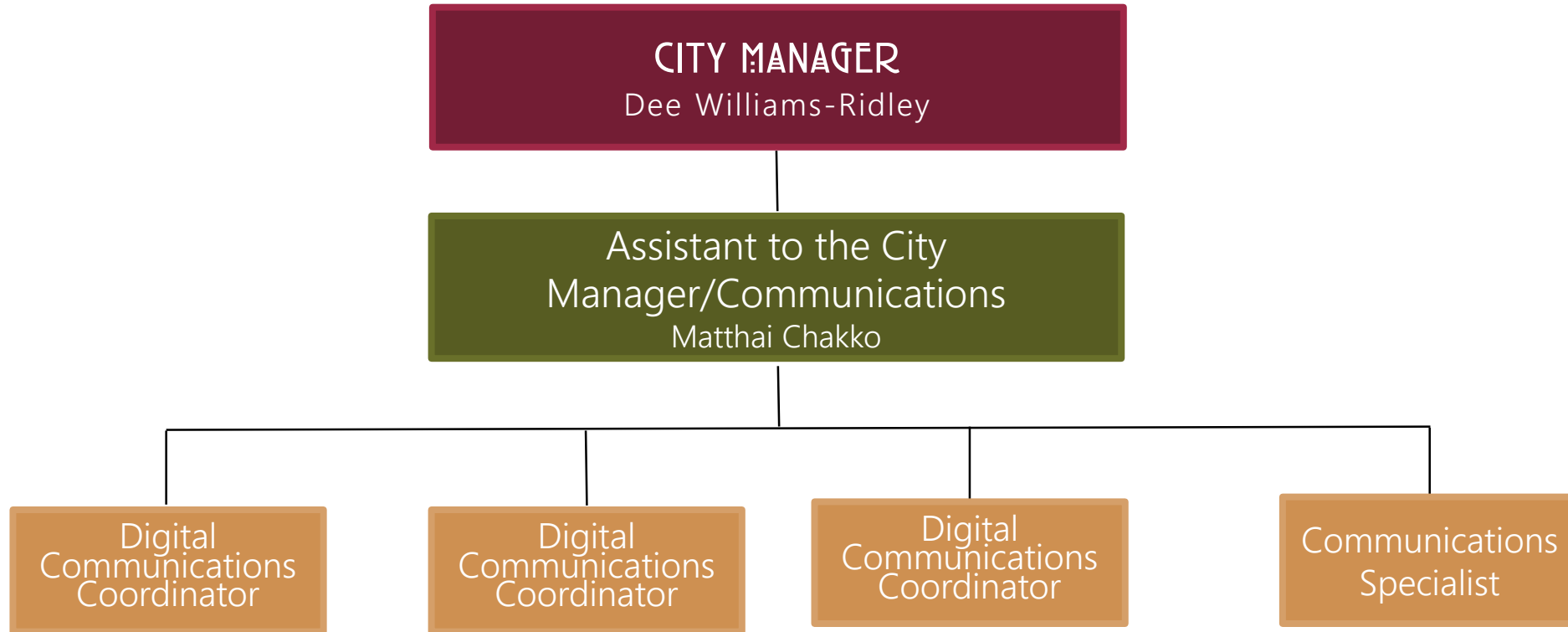
coursework in journalism, communications, public relations, or a related field and four years of responsible professional public communications, media relations, public relations or content-development experience including the development and implementation of communication programs.

OTHER REQUIREMENTS:

Must be able to travel to various locations within and outside the City of Berkeley to meet program needs and to fulfill the job responsibilities. When driving on City business, the incumbent is required to maintain a valid California driver's license as well as a satisfactory driving record.

CLASSIFICATION HISTORY:

Established: xx/xx
Unrepresented
Non-exempt





Office of the City Manager

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Savita Chaudhary, Director, Information Technology

Subject: Contract No. 104583-1 Amendment: Government Finance Officers Association for System Design Document Review to support Enterprise Resource Planning implementation

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract amendment with the Government Finance Officers Association (GFOA) for Business Process Review services, increasing the amount by \$40,000 for a total contract value not to exceed \$194,285 from March 16, 2015 to December 30, 2021.

FINANCIAL IMPACTS OF RECOMMENDATION

Funding for additional services related to the implementation of Tyler Munis for the online Enterprise Resource Planning (ERP) is available in the FUND\$ Replacement Fund Account code: 503-35-362-376-0000-000-412-612990.

Spending for this contract in future fiscal years is subject to Council approval of citywide budget and annual appropriation ordinances.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley has implemented Phases 1A and 1B of Tyler Technologies' Munis ERP system. Part of the ERP implementation process includes conducting a review of existing and proposed business processes, in addition to system design. It is important to conduct continuous quality improvement which in turn supports better adoption of a new ERP System.

BACKGROUND

GFOA has supported the city of Berkeley throughout the ERP implementation process from business analysis to Request for Proposal development and throughout negotiations with Tyler Technologies to develop an implementation contract and has conducted several reviews of documentation for the project. This portion of the funding is for GFOA to provide a written analysis of each deliverable in the contract with Tyler Munis.

GFOA is a non-profit organization that has no affiliation with any software or hardware vendors, therefore serves as a completely independent agent for the government agency

they work for. In 2015, a waiver of competitive solicitation was approved for advisory services. This request is for the extension of these advisory services.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The adoption of a modern ERP system will reduce the City's reliance for paper for processing several critical business transactions. The business process analyses provided by GFOA continues to provide additional opportunities for the City to explore improvement of environmentally sustainable processes.

RATIONALE FOR RECOMMENDATION

GFOA provides ERP implementation advisory services by focusing on business process, organizational change, and requirements definition to ensure follow through on project scope and goals.

GFOA has grown to become a market leader in assisting local governments with their ERP systems. GFOA consultants have past consulting experience, best practice research, and conducts benchmark reach with leading comparable organizations. GFOA has assisted approximately 300 cities, counties, and school districts with system selection, contract negotiation, implementation readiness, and business document review.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered taking no action, however it is important to continually assess the quality of the system design of an ERP to ensure system improvement for the City to ensure decisions are consistent with best practices.

CONTACT PERSON

Savita Chaudhary, Director, Information Technology, 510-981-6541

Attachments:
1: Resolution

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

CONTRACT NO. 104583-1 AMENDMENT: GOVERNMENT FINANCE OFFICERS
ASSOCIATION FOR SYSTEM DESIGN DOCUMENT REVIEW TO SUPPORT
ENTERPRISE RESOURCE PLANNING IMPLEMENTATION

WHEREAS, on March 16, 2015 the City entered into a contract with the Government Finance Officers Association to support the implementation of the new Enterprise Resource Planning (ERP) system utilizing sole source documentation for specialized advisory services for the public sector, and this request is for the extension of these advisory services; and

WHEREAS, the City of Berkeley has implemented Phases 1A and 1B of Tyler Technologies' Munis ERP system; and

WHEREAS, the ERP implementation process includes conducting a review of existing and proposed business processes, and it is important to conduct continuous quality improvement which in turn supports better adoption of a new ERP System; and

WHEREAS, GFOA has supported the City of Berkeley throughout the ERP implementation process from business analysis to Request for Proposal development and throughout negotiations with Tyler Technologies to develop an implementation contract and has conducted several reviews of documentation for the project; and

WHEREAS, GFOA is a non-profit organization that has no affiliation with any software or hardware vendors, therefore serves as a completely independent agent for the government agency they work for.

WHEREAS, funding for these additional services is available in the Fiscal Year 22 FUND\$ Replacement Fund, and spending for this contract in future fiscal years is subject to Council approval of citywide budget and annual appropriation ordinances.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to amend contract 104583-1 with the Government Finance Officers Association for Business Process Review services, increasing the amount by \$40,000 for a total contract value not to exceed \$194,285 from March 16, 2015 to December 30, 2021.



Office of the City Manager

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Savita Chaudhary, Director, Information Technology
Subject: Contract No. 32100060 Amendment: RevolutionCyber, LLC for Professional Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 32100060 with RevolutionCyber, LLC for additional professional services for the implementation of the City’s Data Safety program, for an amount not to exceed \$19,250 and a total contract value not to exceed \$121,275 from November 13, 2020 through June 30, 2022.

FISCAL IMPACTS OF RECOMMENDATION

One-time funding for this project is available in the Department of Information Technology’s Fiscal Year (FY) 2022 General Fund allocation as itemized below.

\$19,250 FY 2022: Professional Services
FY 2022 Budget Code: 011-35-363-380-0000-000-412-612990-

(General Fund, IT Department, Professional Services)

\$19,250 Total FY 2022 Professional Services

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 funding that allowed the City to move forward on six high-priority projects, including launching a Data Safety Program.

The launch of the Data Safety Program will focus on implementing technologies that impact the City’s information safety, and is also a Strategic Plan Priority Project, advancing the City’s goal to:

- Provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.
- Create a resilient, safe, connected, and prepared city.

RevolutionCyber, LLC (RC) will develop the draft of the policy and procedures that will serve as the foundation of the Data Safety Program. The policy that RC will develop will ensure that all City information/data remains sufficiently protected with respect to its sensitivity, privacy, criticality, and context. RC will develop this policy in the form of an Administrative Regulation (AR) and it will apply to all City departments and staff.

This contract amendment extends the initial contract work to include an additional assessment of City's Data Risk Exposure of how and where sensitive information, including privacy data, is exposed in the daily operation of City's delivery of services by its departments. RC will develop a Data Risk Exposure Matrix Report (DREM) and the AR and DREM will address the creation, labeling, use, sharing, governance, and disposition of information/data created and managed by the City.

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 for the next 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. Establishing and launching a Data Safety Program was one of the six projects selected for FY 21.

Between March and the end of June, RevolutionCyber, LLC (RC) has worked with the Information Security Manager, Department of IT, the Senior Leadership Team (SLT) and their designees, and the City Manager in creating and vetting a comprehensive Data Safety AR. This AR is in its final stages of being published.

Furthermore, during the same timeframe, RC has conducted surveys with and met with each City department, the Rent Stabilization Board, the Library, and Berkeley Housing Authority (BHA) to conduct an assessment as to the exposure that sensitive data, including privacy information, is subjected to in the course of doing the daily business of the City. The resulting analysis will provide the City and SLT a heatmap which, in turn, will aid the City in prioritizing the data safety needs of its various business units, and in rolling out unit-specific procedures, guidance and training, supplementing the AR.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

While there are no direct environmental sustainability or climate impacts associated with this proposed assessment of the City's Data Risk Assessment, Revolution Cyber will conduct all work remotely which reduces greenhouse gas emissions related to travel from City facilities.

RATIONALE FOR RECOMMENDATION

RC currently works with the City's senior leaders and their designees to assess the risk to the information in the structure of the City and its departments and to design and develop the standards for the Data Safety Program, which addresses those risks and the departments' data access needs.

Staff recommends continuing to work with RC to publish the AR and the DREM for the Data Safety Program. RC has the outside perspective that provides industry best practices and experience in working with other local municipalities to help establish a framework that the City will use in the near future.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered developing and launching the Data Safety Program internally, however staff determined that the work would be completed timelier by having RC build on the work that they have previously completed for the City. Hiring another consultant would involve additional time and expenses to become familiar with the City's data distribution, departments, controls and technologies.

CONTACT PERSON

Savita Chaudhary, Director, Information Technology, 510-981-6541

Attachments:

1: Resolution

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

CONTRACT NO. 32100060 AMENDMENT: REVOLUTIONCYBER, LLC 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 six of the projects setting their completion date to be on or by June 30, 2021; and

WHEREAS, establishing and launching a Data Safety Program was one of the six projects selected for FY 21; and

WHEREAS, RevolutionCyber, LLC currently works with the City’s senior leaders and their designees to assess the risk to the information within the structure of the City and its departments and to design and develop the standards and aids for the Data Safety Program, which addresses those risks and the departments’ data access needs; and

WHEREAS, RevolutionCyber, LLC has the outside perspective that provides industry best practices and experience in working with other local municipalities to help establish a framework that the City will use in the near future; and

WHEREAS, one time funding for this project is available in the Department of Information Technology’s Fiscal Year (FY) 2022 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. 32100060 RevolutionCyber, LLC for Professional Services, for an amount not to exceed \$19,250 and a total contract value not to exceed \$121,275 from November 13, 2020 through June 30, 2022.



Office of the City Manager

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront

Subject: Contract No. 10785 Amendment: West Coast Arborist, Inc. for Tree Removal and Pruning Service

RECOMMENDATION

Adopt a resolution authorizing the City Manager to amend contract No. 10785 with West Coast Arborist, Inc. for tree removal and pruning service by increasing the contract amount by \$250,000 for a not-to-exceed amount of \$1,190,000 and extend the term to November 24, 2023.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this contract amendment of \$250,000 is available in the Fiscal Year (FY) 2022 Parks Tax Fund budget allocation (138-52-542-566-0000-000-461-612990).

CURRENT SITUATION AND ITS EFFECTS

The City currently has a contract with West Coast Arborist to perform various tree services, primarily consisting of tree and stump removals and tree pruning throughout the city on the public right of way, street medians, pathways, and in public parks. To-date, staff has identified additional trees to be removed and pruned to reduce fire fuel and improve public safety. A contract amendment for this work will bring the contract total to a not-to-exceed amount of \$1,190,000.

BACKGROUND

In September of 2017, the City conducted a competitive Request For Proposal (RFP) bidding process to solicit tree removal and pruning services (Specifications No. 17-11124-C). On September 28, 2017 the City received four bids. West Coast Arborists, Inc. received the best score according to the criteria contained in the RFP. The City confirmed that West Coast Arborist Inc. was a qualified firm and executed contract No. 10785. In March of 2020, the contract period was extended from November 26, 2020 to November 25, 2022 and the contract value increased from \$640,000 to \$940,000 as provided in Resolution No. 68,189-N.S.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

The maintenance of the urban forest and the prevention of destructive urban fires are essential in meeting the City's Climate Action Goals over the long term.

RATIONALE FOR RECOMMENDATION

Staff has identified trees to be removed at various parks, on City paths, and along the public right of way which will reduce the fire fuel load and improve public safety. Staff has also identified trees to be pruned to improve the health and safety of the urban forest. Staff solicited bids from qualified firms and West Coast Arborist, Inc. submitted responses that were cost-effective. The City does not have the in-house labor or equipment resources to complete these jobs in an efficient manner.

Alternative Actions Considered

None

CONTACT PERSON

Bruce Pratt, Parks Superintendent, 981-6632
Dan Gallagher, Senior Forestry Supervisor, 981-6687

Attachments:

1: Resolution

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

CONTRACT NO. 10785 AMENDMENT: WEST COAST ARBORIST, INC. FOR TREE
REMOVAL AND PRUNING SERVICE

WHEREAS, the Urban Forestry Unit of the Parks, Recreation and Waterfront Department contracts with private companies for the removal of public trees that are dead, diseased, dying, hazardous to life or property, or causing substantial property damage; and the pruning of specific public trees to improve their safety and

WHEREAS, on September 28, 2017, the City determined that West Coast Arborists, Inc received the best score as the most responsive and responsive bidder, and

WHEREAS, in March of 2020, the contract period was extended from November 26, 2020 to November 25, 2022 and the contract value increased from \$640,000 to \$940,000 as provided in Resolution No. 68,189-N.S.

WHEREAS, staff has identified trees to be removed to reduce the fire fuel load and other trees to be removed or pruned to improve the health and safety of the urban forest; and

WHEREAS, funding for this contract amendment of \$250,000 is available in the Fiscal Year (FY) 2022 budget from the Parks Tax Fund (138).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to execute a contract amendment with West Coast Arborist, Inc. in the amount not to exceed \$250,000 for a total contract amount not to exceed \$1,190,000. The terms are extended from November 25, 2022 to November 24, 2023. A record signature copy of said contract amendment to be on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront
Subject: Contract No. 31900137 Amendment: ELS Architecture and Urban Design for On-Call Architectural Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 31900137 for on-call architectural services with ELS Architecture and Urban Design by increasing the contract amount by \$900,000 for a total not-to-exceed amount of \$2,600,000.

FISCAL IMPACTS OF RECOMMENDATION

The following funding source and amount is an estimate as funding for these on-call contracts will be identified and expended only for actual architectural services required. Funding is available in the FY 2022 budget, and additional funding is subject to appropriation in the FY 2022 budget as noted below.

Measure T1 Fund.....\$900,000

CURRENT SITUATION AND ITS EFFECTS

The Departments of Public Works (Public Works) and Parks, Recreation, and Waterfront (Parks) require architectural services to implement the City’s Capital Improvement Program. On January 22, 2019, Council authorized a \$1,700,000 contract for on-call architectural design services with ELS Architecture and Urban Design for the period February 1, 2019 through June 30, 2022 (Resolution No. 69,738-N.S.) The contract amount is projected to be depleted by August 31, 2021, and will require additional funding in order to provide architectural design services for projects currently in design or construction in FY 2022, including the John Hinkel Park Amphitheater Area Improvements Project, the Fire Station #2 Project, and the Willard Clubhouse and Restroom Replacement Project.

Architectural services are also required during the construction phase of projects to respond to design related questions. These architectural design and construction administration services will extend beyond the current June 30, 2022 contract expiration date. Thus, the contract will require an extension through June 30, 2024 in order to provide architectural services through completion of the projected work.

BACKGROUND

The City utilizes on-call consultants to supplement City staff for project design and management, including situations where the nature of the work is specialized, such as architectural design and construction administration. In addition, on-call consultants are an efficient way for the City to meet tightly-run project schedules.

On August 15, 2018, the City issued a Request for Qualifications (RFQ) for On-Call Architectural Services (Specification No. 18-11235-C). The City received Statements of Qualifications (SOQs) from 15 firms. After evaluation of the SOQs by the review panel, ELS Architecture and Urban Design, Noll and Tam, and Siegel and Strain Architects were among the firms selected, and on January 22, 2019, the City Council authorized the City Manager to execute contracts for On-Call Architectural Services for each of the three firms in the amount of \$1,700,000 from February 1, 2019 through June 30, 2022.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Consultants and City staff evaluate water and energy efficiency upgrade opportunities during the design of improvement and renovation projects. Improving City facilities and reducing water and energy consumption is consistent with the City's Climate Action Plan goals.

RATIONALE FOR RECOMMENDATION

The firm ELS Architecture and Urban Design includes highly qualified staff for the projects. They have the required expertise in design, architecture, project management, and support to meet the City's on-going capital program needs, and complement the personnel and capacity available in the Public Works and Parks Department to complete existing projects. Staff plans to issue a new Request for Qualifications for on-call architectural services in 2022 to give Public Works and Parks staff the capacity to continue to provide needed architectural services for future capital improvement projects.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Scott Ferris, Director, Parks Recreation & Waterfront, (510) 981-6700
Elmar Kapfer, Supervising Civil Engineer, Public Works, (510) 981-6435
Evelyn Chan, Supervising Civil Engineer, PRW, (510) 981-6430
Wendy Wellbrock, Associate Civil Engineer, PRW, (510) 981-6346

Attachments:

1: Resolution: ELS Architecture and Urban Design

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

CONTRACT NO. 31900137 AMENDMENT: ELS ARCHITECTURE AND URBAN DESIGN FOR ON-CALL ARCHITECTURAL SERVICES

WHEREAS, on January 22, 2019 by Resolution No. 69,738-N.S. the City Council authorized Contract No. 31900137 with ELS Architecture and Urban Design in an amount not to exceed \$1,700,000 for on-call architectural design services for various Department of Public Works and Department of Parks, Recreation and Waterfront capital improvement projects through June 30, 2022; and

WHEREAS, City staff does not have the expertise to provide architectural services; and

WHEREAS, the current contract not-to-exceed amount is projected to be depleted by August 31, 2021 and the City has a need for continued architectural services through June 30, 2024 from ELS Architecture and Urban Design; and

WHEREAS, funds are available from the Measure T1 Fund.

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. 31900137 with ELS Architecture and Urban Design for architectural services increasing the amount by \$900,000 for a revised not-to-exceed contract amount of \$2,600,000.



Office of the City Manager

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront

Subject: Contract No. 31900202 Amendment: Bay Area Tree Specialists for As-Needed Tree Services

RECOMMENDATION

Adopt a resolution authorizing the City Manager to amend contract No. 31900202 with Bay Area Tree Specialists for as-needed tree services, increasing the amount by \$300,000 for a total contract amount not-to-exceed \$800,000 and extend the term to May 28, 2023.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this contract amendment in the amount of \$300,000 is available in the Fiscal Year 2022 and 2023 budget in the Parks Tax Fund (138-52-542-566-0000-000-461-612990) and the General Fund allocation for Fire Fuel Abatement (011-52-542-566-1001-000-461-612990).

CURRENT SITUATION AND ITS EFFECTS

The City currently has a contract with Bay Area Tree Specialists to perform various tree services, primarily consisting of tree and stump removals and tree pruning throughout the city on the public right of way, street medians, pathways, and in public parks. To-date, staff has identified additional trees to be removed and pruned to reduce fire fuel and improve public safety.

BACKGROUND

In April 2019, a Request for Proposals (RFP) was issued seeking qualified firms to provide tree services on an as-needed basis. The City determined that Bay Area Tree Specialists met the requirements as described in the RFP and executed contract No. 31900202. To-date, the contractor has completed tree removals at Codornices Park, Wildcat Canyon Road, John Hinkel Park, Remillard Park, Woodmont Avenue, Dorothy Bolte Park, and on Columbia Path.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

The maintenance of the urban forest and the prevention of destructive urban fires are essential in meeting the City's Climate Action Goals over the long term.

RATIONALE FOR RECOMMENDATION

Staff has identified additional trees to be removed at various parks, on City paths, and along the public right of way which will reduce the fire fuel load and improve public safety. The City does not have the in-house labor or equipment resources to complete these jobs in an efficient manner.

Alternative Actions Considered

None

CONTACT PERSON

Bruce Pratt, Parks Superintendent, 981-6632
Dan Gallagher, Senior Forestry Supervisor, 981-6687

Attachments:

1: Resolution

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

CONTRACT NO. 31900202 AMENDMENT: BAY AREA TREE SPECIALISTS FOR AS-NEEDED TREE SERVICES

WHEREAS, in April 2019, a Request for Proposals (RFP) was issued seeking firms to provide tree services on an as-needed basis; and

WHEREAS, on May 28, 2019, the City determined that Bay Area Tree Specialist met the requirements described in the RFP and executed contract no. 31900202; and

WHEREAS, on April 14, 2020, the not-to-exceed amount of the contract increased from \$300,000 to \$500,000 by Resolution No. 68,972 -N.S.; and

WHEREAS, to-date, staff has identified additional trees to be removed to reduce the fire fuel load and other trees to be pruned to improve the health and safety of the urban forest; and

WHEREAS, funding for this contract amendment of \$300,000 is available in the Fiscal Year 2022 and 2023 budget from the Parks Tax Fund (138) and the General Fund Fund (011).

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager execute an amendment to Contract No. 31900202 with Bay Area Tree Specialists for as-needed tree services, increasing the amount by \$300,000 for a total contract amount not-to-exceed \$800,000 and extend the term to May 28, 2023.



Office of the City Manager

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront

Subject: Contract No. 31900218 Amendment: West Coast Arborists, Inc. for As-needed Tree Services

RECOMMENDATION

Adopt a resolution authorizing the City Manager to amend contract No. 31900218 with West Coast Arborists Inc. for as-needed tree services, increasing the amount by \$300,000 for a total-amount-not to exceed amount of \$500,000 and extend the term to May 28, 2023.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this contract amendment of \$300,000 is available in the Fiscal Year 2022 and 2023 budget in the Parks Tax Fund (138-52-542-566-0000-000-461-612990) and the General Fund Fire Fuel Abatement Program (011-52-542-566-1001-000-461-612990).

CURRENT SITUATION AND ITS EFFECTS

The City currently has a contract with West Coast Arborists to perform various tree services, primarily consisting of tree and stump removals and tree pruning throughout the city on the public right of way, street medians, pathways, and in public parks. To date, staff has identified additional trees to be removed to reduce the fire fuel load and other trees to be pruned to improve the health and safety of the urban forest.

BACKGROUND

In April 2019, a Request for Proposals (RFP) was issued seeking qualified firms to provide tree services for fire fuel reduction on an as-needed basis. The City determined that West Coast Arborists met the required contained in the RFP and executed contract No. 3190218. To-date, the contractor has completed tree removals at Remillard Park, Grizzly Peak Boulevard, John Hinkel Park, Del Mar Avenue, Glendale-La Loma Park, Live Oak Park, Wildcat Canyon Road, Shasta Road, and Fairlawn Drive.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

The maintenance of the urban forest and the prevention of destructive urban fires are essential in meeting the City's Climate Action Goals over the long term.

RATIONALE FOR RECOMMENDATION

Staff has identified additional trees to be pruned and removed at various parks, on City paths, and along the public right of way which will reduce the fire fuel load and improve public safety. The City does not have the in-house labor or equipment resources to complete these jobs in an efficient manner.

Alternative Actions Considered

None

CONTACT PERSON

Bruce Pratt, Parks Superintendent, 981-6632
Dan Gallagher, Senior Forestry Supervisor, 981-6687

Attachments:

1: Resolution

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

CONTRACT NO. 31900218 AMENDMENT: WEST COAST ARBORISTS FOR AS-NEEDED TREE SERVICES

WHEREAS, in April 2019, a Request for Proposals (RFP) was issued seeking firms to provide tree services on an as-needed basis; and

WHEREAS, on May 28, 2019, the City determined that West Coast Arborists met the requirements contained in the RFP and executed contract no. 31900218; and

WHEREAS, to-date, staff has identified trees to be removed to reduce the fire fuel load and other trees to be pruned to improve the health and safety of the urban forest; and

WHEREAS, funding for this contract amendment of \$300,000 is available in the Fiscal Year (FY) 2022 budget from the Parks Tax Fund (138) and the General Fund Fire Fuel Abatement Program (011).

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager execute an amendment to Contract No. 31900218 with West Coast Arborist for as-needed tree services, increasing the amount by \$300,000 for an amended total amount not to exceed \$500,000 and extend the term to end on May 28, 2023.



Office of the City Manager

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Liam Garland, Director, Public Works
Subject: Purchase Orders Extension: Diesel Direct West, Inc. for Fuel for City Vehicles and Equipment

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend the multi-year purchase orders with Diesel Direct West, Inc. for fuel for City vehicles and equipment, increasing the combined amount by \$1,400,000 for a total amount not to exceed \$8,844,000, and extending the term through June 30, 2022 or until authorized funds are exhausted.

FISCAL IMPACTS OF RECOMMENDATION

Funds to pay for continued fuel purchases in FY22 are available in the Equipment Maintenance Fund (Fund 672) and Fire Department (General Fund 011).

Original Authorized NTE Amount.....	\$7,444,000
<u>12 Month Extension Amount.....</u>	<u>\$1,400,000</u>
POs Amended NTE Amount	\$8,844,000

CURRENT SITUATION AND ITS EFFECTS

Fuel is purchased by Public Works Equipment Maintenance Division for use by City vehicles and equipment including emergency generators, and by Fire Department for fuel at City Fire Stations.

The amount expended to date is \$7,172,681.58 leaving \$271,318.42 remaining in authorization.

Purchasing anticipates issuing an Invitation to Bid (IFB) and having a new multi-year purchase order approved by City Council prior to the new Fiscal Year.

BACKGROUND

On June 18, 2020 the City Manager signed an Extension to Term of Contract extending the multi-year purchase order authorization term with Diesel Direct West, Inc. from June 30, 2020 to June 30, 2021 and again to extend the term through September 30, 2021. It had been anticipated that a new IFB would be released, but due to the impacts of the COVID-19 pandemic, staff has been unable to release a new IFB.

In 2018 Diesel Direct West, Inc. notified the City of Berkley that they had acquired Golden Gate Petroleum's fuel delivery business and will continue to offer the City the same in terms of pricing, delivery and schedule.

On January 26, 2016 City Council approved, Resolution 67,363-N.S. for multi-year purchase orders with Golden Gate Petroleum for fuel for City vehicles and equipment in the amount not to exceed \$820,000 for remaining FY2016 and \$6,624,000 for the next four fiscal years (FY2017 through FY2020) for a total not to exceed \$7,444,000.

On October 16, 2015, Public Works released an Invitation for Bid Specification No. 16-10979-C for Fuels, Oils and Lubricants. The solicitation purpose was for the City of Berkeley to award a four (4) year contract with three (2) year options to extend the contract for a total maximum period of ten years. The solicitation was released for approximately twenty-one days. Four bids were received and after review by the Department of Public Works and Finance-General Services it was determined that Golden Gate Petroleum submitted the lowest responsible bid that met the specifications.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The City currently uses a combination of renewable diesel, gasoline, and electricity to power its fleet and equipment. The City has used renewable diesel exclusively for diesel vehicles and equipment since 2016. The City is transitioning gasoline vehicles to electric and needs to continue to purchase fuel in the transition period from gas to electric. The overall annual consumption of gasoline by City vehicles and equipment has declined from 226,560 gallons in 2001 to in 150,171 in 2020. The Municipal Fleet Electrification Assessment proposed to install 51 charging stations with 100 chargers and upgrade all 129 vehicles in the light duty fleet to EV by 2030. To date, PW has installed 31 charging stations and 61 chargers. In the next two years, another five charger installations are planned primarily for installations at the Corporation Yard. In 2020, the fleet included 46 hybrids and 15 plug in hybrid-electric vehicles. Since then, the fleet has added 6 EV sedans, 11 hybrid SUVs for the Police Department (PD), and 4 hybrid pickup trucks. In the next FY, the City will add another 11 EV sedans. Public Works is on track to complete conversion of sedans and SUVs to EVs by 2028, two years ahead of the assessment's schedule.

RATIONALE FOR RECOMMENDATION

This extension is needed out of administrative urgency. With the existing purchase orders and fuel market volatility, staff finds extension of the current POs to be prudent and cost effective.

ALTERNATIVE ACTIONS CONSIDERED

Buy fuel on the open market without indexed price or cost savings from volume considerations.

CONTACT PERSON

Purchase Orders Extension: Diesel Direct, Inc.
for Fuel City Vehicles and Equipment

CONSENT CALENDAR
September 14, 2021

Greg Ellington, Equipment Superintendent, 981-6469

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

PURCHASE ORDERS EXTENSION: DIESEL DIRECT, INC. FOR FUEL FOR CITY
VEHICLES AND EQUIPMENT

WHEREAS, fuel is needed for purchase by Public Works Equipment Maintenance for use by City vehicles and equipment including emergency generators, and by the Fire Department for fuel at City fire stations; and

WHEREAS, additional funding is needed to be added to the existing purchase order to allow for time to issue a new invitation for bids; and

WHEREAS, funding is available in FY22 in the Equipment Maintenance Fund (Fund 672) and Fire Department (General Fund 011).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a purchase order extension with Diesel Direct, Inc. for fuel for City vehicles and equipment, increasing the combined amount by \$1,400,000 for a total amount not to exceed \$8,844,000, and extending the term 9 months through June 30, 2022 or until authorized funds are exhausted.



Office of the City Manager

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Public Works

Subject: Transfer of Two Property Parcels to the State of California for the Ashby-SanPablo Intersection Improvements Project

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to execute the attached Grant Deed for Parcel No. 63719 and Quitclaim Deed for easement on Parcel No. 63720-1 with the State of California, Department of Transportation (“Caltrans”) and any associated documents as necessary for the transfer of the property interests in these two parcels of property to Caltrans, for the Ashby-San Pablo Intersection Improvements Project (“Project”), Specification No. 18-11182-C.

FISCAL IMPACTS OF RECOMMENDATION

Although Ashby Avenue (State Highway 13) and San Pablo Avenue (State Highway 123) are owned by Caltrans, the City of Berkeley (“City”) is responsible for maintenance of the public infrastructure and receives reimbursement from Caltrans, as per the agreement, *Delegated Maintenance Agreement for Maintenance of State Highways in the City of Berkeley*. The City’s maintenance responsibilities will remain the same as a result of transferring these two parcels to Caltrans, and so any cost impacts to the City are anticipated to be negligible.

CURRENT SITUATION AND ITS EFFECTS

Ashby Avenue (also known as Highway 13), immediately east of San Pablo, has two lanes in each of the eastbound and westbound directions with no dedicated left- or right-turn lanes. This lane configuration results in congestion on Ashby and poses a safety issue, as visibility of vehicles is hampered by the lack of a left turn lane and corresponding signal phase at this location. The Project will address these issues by improving sightlines and providing queuing space and dedicated signal phasing for left-turning vehicles on westbound Ashby. This will be accomplished by widening approximately 100 feet of this portion of Ashby to fit a new, dedicated left turn lane in the westbound direction.

Parcel Nos. 63719 and 63720-1 are located along the south and north sides, respectively, of Ashby Avenue, in the area to be widened. Parcel No. 63719 will be conveyed to Caltrans via a grant deed because the City owns this parcel. The

easement on Parcel No. 63720-1, however, will be assigned to Caltrans with Walgreens retaining ownership of this parcel. The property interests in these parcels need to be transferred to Caltrans, as the current Caltrans property boundaries only cover the current roadway width and are too narrow to encompass the proposed roadway widening.

Although not specifically identified as a Strategic Plan Priority project, the Project has been a priority project for the City for over twenty years, and construction of this project will advance the City's goal to create a resilient, safe, connected, and prepared city.

BACKGROUND

Over the years, the City has taken incremental steps to acquire interests in the two parcels, which will allow for the widening of Ashby Avenue, including a dedicated left turn lane in the westbound direction. In 1991, as a condition of the Walgreens development at 2995 San Pablo, an easement on a 10-foot-wide strip of land (Parcel No. 63720-1) was dedicated to the City on the north side of Ashby Avenue. In 2009, as part of the City's approval of the five-story mixed-use building at 1200 Ashby, a five-foot-wide strip of land (Parcel No. 63719) was dedicated to the City by the applicants of that development.

In order for the Project to proceed, the City will need to transfer property interests in these two parcels to Caltrans. Caltrans would then review the City's design of the Project and issue an encroachment permit, which would allow the City to begin construction.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The transfer of interests in these two parcels to Caltrans would help ensure successful completion of the Project. The work of the Project is intended to reduce the risk of collisions between motor vehicles, pedestrians, and bicyclists. It is also intended to improve the overall efficiency of the Ashby/San Pablo intersection, thereby reducing emissions from trips made by motor vehicles.

RATIONALE FOR RECOMMENDATION

This is a Priority Project which has taken considerable staff resources over the past 20 years due to its complexity. The City will need to transfer property interests in the two parcels to Caltrans in order for the Project to proceed into the construction phase. The estimated completion date is late 2022/early 2023 and depends on Caltrans' review and approval of the design and issuance of an encroachment permit.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Farid Javandel, Transportation Manager, Public Works Department, (510) 981-7061

Kenneth Jung, Associate Civil Engineer, Public Works Department, (510) 981-7028
Dionne Early, Community Development Project Coordinator, Public Works Department,
(510) 981-6453

Attachments:

1: Ordinance

Exhibit A: Right of Way Acquisition Certificate of Sufficiency Exhibit –
Parcels 63719 and 63720-1

Exhibit B: Grant Deed for Parcel No. 63719

Exhibit C: Quitclaim Deed for Parcel No. 63720-1

ORDINANCE NO. -N.S.

TRANSFER OF TWO PARCELS TO THE STATE OF CALIFORNIA FOR THE
ASHBY-SAN PABLO INTERSECTION IMPROVEMENTS PROJECT

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

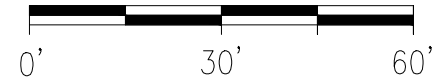
Section 1. That the City Manager and City Clerk or their designees are authorized and directed to make, execute, and deliver for and on behalf of the City of Berkeley, as its corporate act and under its corporate name and seal, a transfer of property interests in two parcels of property to the State of California, Department of Transportation ("Caltrans") via a grant deed for Parcel No. 63719 and a quitclaim deed for the easement over Parcel No. 63720-1, a map and copies of which are attached hereto as Exhibits A, B, and C.

Section 2. That the City Clerk or his designee is authorized and directed to deliver the signed grant deed and quitclaim deed to Caltrans for execution and recording.

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

Exhibits

- A: Right of Way Acquisition Certificate of Sufficiency Exhibit –
Parcels 63719 and 63720-1
- B: Grant Deed for Parcel No. 63719
- C: Quitclaim Deed for Parcel No. 63720-1



SCALE: 1" = 30'

**SAN PABLO AVENUE
(ROUTE 123)
100' WIDE**

CENTERLINE

MONUMENT LINE
TO CITY MONUMENT
N13°13'35"W 318.04' (R1)
EX. STATE R/W

LOT 44
EASEMENT
CITY OF BERKELEY
DOC 92243673, ORAC

**LOT 43, BLOCK B
22 M 8, ORAC**

LOT 42

FUTURE STATE R/W

12.00'

EX. STATE R/W

23.00'

EX. STATE R/W

N76°43'15"E 75.87' (R1)

MONUMENT LINE

N76°43'15"E 851.26' (R1)

TO CITY MONUMENT

N13°14'39"W
3.33' (R1)

CENTERLINE

38.00'

EX. STATE R/W

FUTURE STATE R/W

**ASHBY AVENUE (ROUTE 13)
60' WIDE**

EX. STATE R/W

50.00'

50.00'

N76°43'15"E 125.00' (R1)

POB

S76°43'15"W 125.00' (R1)

N13°13'35"W
5.00' (R1)

**PARCEL 1
125 PM 60-61
ORAC**

63719

FEE
625 SQ FT +/-
OFFER OF DEDICATION
CITY OF BERKELEY
DOC 2013300424, ORAC

S13°13'35"E
5.00' (R1)

LEGEND

- = AREA TO BE CONVEYED
- DOC = DOCUMENT
- EX. = EXISTING
- ORAC = OFFICIAL RECORDS OF ALAMEDA COUNTY
- POB = POINT OF BEGINNING
- R/W = RIGHT OF WAY
- = CITY MONUMENT

DOC REFERENCE

- (R1) = DOC 2013300424, ORAC
- (R2) = DOC 92243673, ORAC

EXHIBIT "A"

**RIGHT OF WAY ACQUISITION
CERTIFICATE OF SUFFICIENCY
EXHIBIT - PARCEL 63719**



Aug 02, 2018 - 6:34pm c:\survey2\2018\2018-25 San Pablo Ashby COB\5000 Technical\5200 CAD\5230 DWG\Boundary\2018-25 San Pablo Ashby COB.dwg



2300 Clayton Road, Ste 1400
Concord, CA 94520
(925) 446-3800

PARCEL NO.	GRANTOR	ACQ. CODE	AREAS IN SQUARE FEET					EASEMENT TYPE	REMARKS
			TOTAL	R/W	REM	EXCESS	EASEMENT		
63719	CITY OF BERKELEY	F	625	625	0				

DR. BY: BMC				DATE: 8/2/2018			
CHK. BY: BMC				SCALE: 1" = 30'			
DIST.	CO.	RTE.	POST MILE	SHEET	TOTAL		
04	ALA	13/123	13.18/1.93	1	2		

**SAN PABLO AVENUE
(ROUTE 123)
100' WIDE**

CENTERLINE

MONUMENT LINE

TO CITY MONUMENT
N13°13'35"W 318.04' (R1)
EX. STATE R/W

LOT 44

63720

DOC 2004511819
ORAC

63720-1

EASEMENT

1,000 SQ FT +/-
CITY OF BERKELEY
DOC 92243673, ORAC

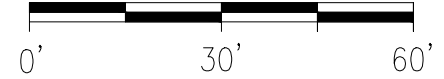
LOT 43, BLOCK B
22 M 8, ORAC

LOT 42

N76°43'15"E 100.03' (R2)

FUTURE STATE R/W

S13°14'35"E
10.00' (R2)



SCALE: 1" = 30'



N13°14'51"W
10.00' (R2)

POB

S76°43'15"W 100.03' (R2)

EX. STATE R/W

EX. STATE R/W

N76°43'15"E 75.87' (R1)

MONUMENT LINE

N76°43'15"E 851.26' (R1)

TO CITY MONUMENT

N13°14'39"W
3.33' (R1)

CENTERLINE

**ASHBY AVENUE (ROUTE 13)
60' WIDE**

EX. STATE R/W

50.00'

38.00'

12.00'

EX. STATE R/W

FUTURE STATE R/W

PARCEL 1
125 PM 60-61
ORAC

OFFER OF DEDICATION
CITY OF BERKELEY
DOC 2013300424, ORAC

LEGEND



= AREA TO BE CONVEYED

DOC = DOCUMENT

EX. = EXISTING

ORAC = OFFICIAL RECORDS OF ALAMEDA COUNTY

POB = POINT OF BEGINNING

R/W = RIGHT OF WAY

● = CITY MONUMENT

DOC REFERENCE

(R1) = DOC 2013300424, ORAC

(R2) = DOC 92243673, ORAC

EXHIBIT "A"

**RIGHT OF WAY ACQUISITION
CERTIFICATE OF SUFFICIENCY
EXHIBIT - PARCEL 63720-1**



AECOM

2300 Clayton Road, Ste 1400
Concord, CA 94520
(925) 446-3800

PARCEL NO.	GRANTOR	ACQ. CODE	AREAS IN SQUARE FEET					EASEMENT TYPE	REMARKS
			TOTAL	R/W	REM	EXCESS	EASEMENT		
63720-1	CITY OF BERKELEY	E					1,000	PUBLIC R/W	

DR. BY: BMC				DATE: 8/2/2018		
CHK. BY: BMC				SCALE: 1" = 30'		
DIST.	CO.	RTE.	POST MILE	SHEET	TOTAL	
04	ALA	13/123	13.18/1.93	2	2	

RECORDING REQUESTED BY
STATE OF CALIFORNIA

WHEN RECORDED RETURN TO
DEPARTMENT OF TRANSPORTATION
PO BOX 23440, MS-11A
OAKLAND, CA 94623-0440
Attn: Qin Phu

Space above this line for Recorder's Use

GRANT DEED

District	County	Route	Postmile	Number
04	ALA	13	13.16	63719

City of Berkeley, Alameda County, a political subdivision of the State of California, hereinafter called GRANTOR, hereby grants to the State of California, Department of Transportation, hereinafter called STATE, all that real property in the City of Berkeley, County of Alameda, State of California, described as follows:

See Exhibits "A", attached hereto.

Transfer Tax Not Applicable: R & T Code 11922

STATE BUSINESS: Free

This is to certify that this document is presented for recordation by the State of California under Government Code 27383 and is necessary to complete the chain of title of the State to property acquired by the State of California.

DISTRICT DIRECTOR

BY _____

MARK L. WEAVER
Deputy District Director
Right of Way and Land Surveys

Number
63719

Dated this _____ day of _____ 202__

CITY OF BERKELEY

Date: _____

By _____
DEE WILLIAMS-RIDLEY
City Manager

This is to certify that the State of California, acting by and through the Department of Transportation (according to Section 27281 of the Government Code), accepts for public purposes the real property described in this deed and consents to its recordation.

Dated _____

ADETOKUNBO OMISHAKIN
Director of Transportation

By _____
MARK L. WEAVER, Attorney in Fact
Deputy District Director
Right of Way and Land Surveys

Number
63719

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
 County of _____ } SS

On _____ before me, _____ ,
Here insert Name and Title of the Officer

personally appeared _____ ,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Number
63719

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
 County of _____ } SS

On _____ before me, _____ ,
Here insert Name and Title of the Officer

personally appeared _____ ,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Number
63719

EXHIBIT "A"

Parcel 63719

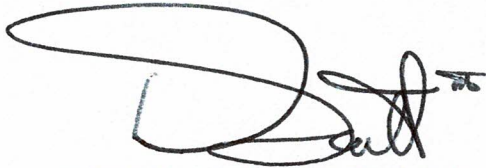
The parcel of land described in the Corrective Offer of Dedication to the City of Berkeley, Alameda County, a political subdivision of California, recorded September 6, 2013 as Document Number 2013300424, Official Records of Alameda County, California, described as follows:

"Real property in the City of Berkeley, Alameda County, California.

Being the northern 5 feet of Parcel 1, Parcel Map 3423, filed on March 30, 1981, Map Book 125, Pages 60-61, in the Office of the County Recorder of Alameda County, more particularly described as follows:

Beginning at the northwest corner of said Parcel 1; thence along the northern line of said Parcel 1, said line also being the southern line of Ashby Avenue, North 76° 43' 15" East, 125.00 feet, to the northeast corner of said Parcel 1; thence along the eastern line of said Parcel 1, South 13° 13' 35" East, 5.00 feet, thence along a line parallel to the northern line of said Parcel 1, South 76° 43' 15" West, 125.00 feet, to the western line of said Parcel 1, said line also being the eastern line of San Pablo Avenue; thence along said line, North 13° 13' 35" West, 5.00 feet to the Point of Beginning."

CONTAINING an area of 625 square feet, more or less.



Dan S. Scott III, PLS 7840

December 8, 2020

Date



RECORDING REQUESTED BY
STATE OF CALIFORNIA

WHEN RECORDED RETURN TO
DEPARTMENT OF TRANSPORTATION
PO BOX 23440, MS-11A
OAKLAND, CA 94623-0440
Attn: Qin Phu

Space above this line for Recorder's Use

QUITCLAIM DEED

District	County	Route	Postmile	Number
04	ALA	13	13.16	63720-1

City of Berkeley, Alameda County, a political subdivision of the State of California, hereinafter called GRANTOR, hereby releases and quitclaims to the State of California, Department of Transportation, hereinafter called STATE, all right, title and interest in and to that real property in the City of Berkeley, County of Alameda, State of California, described as follows:

See Exhibits "A", attached hereto.

Transfer Tax Not Applicable: R & T Code 11922

STATE BUSINESS: Free

This is to certify that this document is presented for recordation by the State of California under Government Code 27383 and is necessary to complete the chain of title of the State to property acquired by the State of California.

DISTRICT DIRECTOR

BY _____
MARK L. WEAVER
Deputy District Director
Right of Way and Land Surveys

Number
63720-1

Dated this _____ day of _____ 202__

CITY OF BERKELEY

Date: _____

By _____
DEE WILLIAMS-RIDLEY
City Manager

This is to certify that the State of California, acting by and through the Department of Transportation (according to Section 27281 of the Government Code), accepts for public purposes the real property described in this deed and consents to its recordation.

Dated _____

ADETOKUNBO OMISHAKIN
Director of Transportation

By _____
MARK L. WEAVER, Attorney in Fact
Deputy District Director
Right of Way and Land Surveys

Number
63720-1

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
 County of _____ } SS

On _____ before me, _____ ,
Here insert Name and Title of the Officer

personally appeared _____ ,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Number
63720-1

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
 County of _____ } SS

On _____ before me, _____ ,
Here insert Name and Title of the Officer

personally appeared _____ ,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Number
63720-1

EXHIBIT "A"

Parcel 63720-1

An easement for public right of way purposes described in the Grant of Easement to the City of Berkeley, a political subdivision of California, recorded July 28, 1992 as Document Number 92243673, Official Records of Alameda County, California, described as follows:

"All that certain real property situated in the City of BERKELEY, County of Alameda, State of California described as follows:

THE SOUTH 10 FEET OF LOT 43 OF BLOCK B, MAP NO. 2 "SAN PABLO PARK" FILED DECEMBER 4, 1906, IN BOOK 22 OF MAPS AT PAGE 8, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF ASHBY AVENUE (60 FEET WIDE) AND THE EASTERLY LINE OF SAN PABLO AVENUE (100 FEET WIDE); THENCE FROM SAID POINT OF BEGINNING NORTH 13° 14' 51" WEST, 10.00 FEET ALONG SAID EASTERLY LINE OF SAN PABLO AVENUE; THENCE NORTH 76° 43' 15" E 100.03' TO THE EASTERLY LINE OF SAID LOT 43 (22 M 8); THENCE SOUTH 13° 14' 35" EAST 10.00 FEET ALONG THE EASTERLY LINE OF SAID LOT 43 TO THE NORTHERLY LINE OF SAID ASHBY AVENUE; THENCE SOUTH 76° 43' 15" WEST, 100.03 FEET ALONG SAID NORTHERLY LINE OF ASHBY AVENUE TO THE POINT OF BEGINNING.

CONTAINING 1,000 SQUARE FEET MORE OR LESS."



Dan S. Scott III, PLS 7840

December 8, 2020

Date





Energy Commission

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Energy Commission
 Submitted by: Janet Strömberg, Chairperson, Energy Commission
 Subject: Recommendations for Fleet Electrification Policy and Financing

RECOMMENDATION

Refer to the City Manager to update the Municipal Fleet Electrification Assessment and electric vehicle (EV) charging funding priorities to respond to the City Auditor's Report "Fleet Replacement Fund Short Millions" and to align with the objectives stated in the City's Electric Mobility Roadmap to Prioritize Municipal Fleet Modal Shift to Electric Bicycles and Other Forms of Zero-Emissions Mobility Where Feasible.

SUMMARY

The Energy Commission recommends that Council refer to the City Manager to align an updated Municipal Fleet Electrification Assessment and transition plan¹ (Fleet EV Plan) and vehicle funding priorities with the objectives stated in the City's Electric Mobility Roadmap,² in Agenda Item 37³ as approved by Council April 20, 2021, and in the City Auditor's Report "Fleet Replacement Fund Short Millions" (June 2, 2021)⁴ (Audit Report). These documents aim to guide the City in achieving a zero-emission fleet by 2030 and "...prioritize municipal fleet modal shift to electric bicycles and other forms of zero-emissions mobility, where feasible."⁵

Specifically the Energy Commission recommends that Council refer to the City Manager:

¹ City of Berkeley Municipal Fleet Electrification Assessment done by East Bay Community Energy
https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_General/04-Municipal%20Fleet%20Electrification%20Assessment%202020.pdf

² Berkeley Electric Mobility Roadmap, April 2020,
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/City%20of%20Berkeley%20Electric%20Mobility%20Roadmap_2020.pdf

³ Refer to the City Manager to Prioritize Municipal Fleet Modal Shift to Electric Bicycles and Other Forms of Zero-Emissions Mobility Where Feasible, from Councilmember Harrison, Item 37 on City Council Agenda 4-20-21,
https://www.cityofberkeley.info/Clerk/City_Council/2021/04_Apr/Documents/2021-04-20_Item_37_Refer_to_the_City_Manager.aspx

⁴ Fleet Replacement Fund Short Millions, Audit Report by Berkeley City Auditor, June 2, 2021,
https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/Fleet%20Replacement%20Fund%20Short%20Millions.pdf

⁵ Item 37, Note 3

1. Adjust the Fleet Replacement Funding Model and budget to ensure that the City's transition to zero emissions mobility, including Electric Vehicles (EVs), e-bikes, and other zero emissions modes of transportation, aligns with the City's greenhouse gas (GHG) emission reduction goals.
2. Incorporate the City's existing commitment to "aggressively accelerate" electrification of the City's fleet and phase out fossil fuel vehicles by 2030, as described in the Electric Mobility Roadmap⁶ and in Item 37 into Public Works directives.
3. Implement Item 37 and the requested updated Fleet EV Plan, as a supplement to the City's response to the Auditor's recommendations regarding Public Works' plans, regulations, fleet replacement policy and priorities, RFPs and vendor contracts (i.e. the recommendations and management's responses in Auditor's report on pages 20, 27, 28, 30).
4. Dedicate adequate funds in the FY2022 budget to replace City fleet vehicles with EVs, e-bikes, and/or other zero-emission modes of transportation as scheduled. The Fleet EV Plan identified 32 vehicles to replace with EVs in FY2021 (requiring an estimated \$1.16 million). Public Works has collected \$747,000 to replace 29 vehicles scheduled to be replaced with EVs in 2021. These EV replacements – some of which could potentially be replaced with e-bikes or other zero-carbon forms of transport per Item 37 Referral – should be prioritized in the budget and in Public Works' plans.
5. Commence investment in the needed EV charging infrastructure urgently to prevent delay in operations of newly leased and purchased EVs.

FISCAL IMPACTS OF RECOMMENDATION

The 2020 City of Berkeley Municipal Fleet Electrification Assessment prepared by EBCE projects a \$1.42 million (17%) increase in cost over the next ten years for replacing the city's light duty vehicle fleet with electric vehicles, compared to replacing with internal combustion engine (ICE) vehicles, due primarily to expenses associated with needed charging infrastructure.⁷ Reviewing this plan, the Auditor's Report further states the backlog of vehicles overdue for replacement may cost the City more than purchasing or leasing new vehicles.

However, shifting even a small portion of the ICE light-duty vehicle replacements to e-bikes and other zero-carbon forms of transportation could lower costs substantially, potentially sufficiently to eliminate projected added costs for fleet replacement. For example, e-bikes cost \$2,000-6,000 to purchase and require only a regular 120V outlet for charging compared with an estimated \$30,000 for a new Bolt EV, along with costs for charging infrastructure.⁸

CURRENT SITUATION AND ITS EFFECTS

On June 23, 2021, the Berkeley Energy Commission voted to send this recommendation to update the Municipal Fleet Electrification Assessment and electric vehicle (EV) charging funding priorities, moved by Commissioner Leger, second by Commissioner Gil, motion carried

⁶ Berkeley Electric Mobility Roadmap, April 2020, see Note 2.

⁷ City of Berkeley Municipal Fleet Electrification Assessment done by East Bay Community Energy, see Note 1

⁸ Walk Bike Berkeley, E-bikes: Key to Berkeley's Climate & Public Safety Goals
https://drive.google.com/file/d/1slSMSq0h2HF2KaXVj0GC30o3P_oosf5t/view

by vote 8-0-0-0; Ayes: Stromberg, Moore, Gil, Paulos, Zuckerman, Guliassi, Leger, Wolf. Noes: None. Abstain: None. Absent: None.

The Audit Report “Fleet Replacement Fund Short Millions” found that the City’s fleet replacement funding model is not aligned with how funding decisions are made, the replacement fund is underfunded by several million dollars, and delays in vehicle replacement may undermine the City accomplishing its goal to transition its fleet from internal combustion engines (ICE) vehicles by 2030 to reduce greenhouse gas emissions. The Audit Report prompted the Energy Commission to review City policies and plans for fleet transition. The Energy Commission agrees with the Audit Report’s recommendations that the Fleet Replacement Funding Model be adjusted to align with how funding decisions are made, and that additional funds be allocated for timely fleet replacement. However, we also recommend unequivocally that funding decisions must align with the emission reduction goals of the Electric Mobility Roadmap and the Council’s April 20, 2021 directive to “Prioritize Municipal Fleet Modal Shift to Electric Bicycles and other forms of Zero Emission Mobility Where Feasible.”

The City’s current plans to transition its municipal fleet to electric vehicles and the Audit Report on the Fleet Replacement Fund shortfall are both missing the inclusion of less expensive and less polluting electric bicycles and other micro-modal and zero-carbon forms of transportation. The climate impacts of delaying the replacement of the City’s gas-fueled vehicles with electric vehicles due to possible Fleet Replacement Fund shortfalls are substantial: millions of tons of greenhouse gases for every year of delay, as estimated below. The City could benefit significantly from both cost-savings and greenhouse gas emissions reductions by replacing some of its vehicles with e-bikes and/or other zero-carbon modes of transport. Shifting even a small portion of existing gas-fueled light-duty vehicle replacements to e-bikes and other zero-carbon forms of transportation could lower costs substantially, potentially enough to eliminate projected added costs for fleet replacement. This recommendation is consistent with the Referral Item 37 by Councilmember Harrison approved on April 20, 2021, and aligns with the City’s Strategic Plan Priorities, its municipal expenditure policy, and with its previously adopted Climate Action Policies to reduce municipal GHGs from the transportation sector.

BACKGROUND

Item 37 notes: “In response to Council direction in 2019, the Public Works Department is in the process of transitioning its light, medium and heavy-duty fleet to zero emissions vehicles. Replacing the City’s fleet with zero-emissions vehicles will require significant budgetary and carbon investments. Given the carbon, environmental, and budgetary costs of these investments, it is in the public interest to explore opportunities to shift the mode of municipal transit, where feasible, to less-intensive modes, including electric bicycles, scooters and public transportation.”

Item 37 further states that e-bikes and micro-modal transportation have significantly lower embodied and operational carbon footprints. A University of Oxford study cited in the item “concluded that even partial substitution of vehicle travel with walking, cycling or e-biking are

critical strategies for addressing climate change and lower mobility-related lifecycle CO₂, and that cyclers have 84% lower CO₂ emissions impact as compared to non-cyclers.”⁹

This is also supported by research prepared by Walk Bike Berkeley, which found that e-bikes are 18 to 32 times cleaner than EVs comparing both operational and embodied carbon dioxide equivalent (CO₂e).¹⁰

A key conclusion of the Auditor’s Report is that the Fleet Replacement Fund fell \$7.2 million short of the American Public Works Association’s recommended level in FY 2020, and that the City’s funding model is not working to ensure sufficient funding for timely replacement.

Additionally the Report states **“This shortfall may also prevent the City from adhering to its plan to transition to an electric fleet by 2030.”**

(emphasis added) A shortfall in the Fleet Replacement Fund will undermine the City’s commitments to reduce GHG emissions.

However, the Fleet EV Plan and Auditor’s report only consider replacement of the City’s fleet with comparable EVs, and do not consider e-bikes and other zero-carbon modes of transportation, thus missing other important opportunities to further reduce the City’s GHG emissions. To prioritize the reduction of GHGs and make the best use of public funds, both the Fleet EV Plan and the Auditor’s report need to be updated to include the costs and environmental impacts of fleet replacement with e-bikes and other micro-modal and zero-carbon forms of transportation.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Fleet EV Plan previously presented to Council estimates 308 Million tons of additional greenhouse gases would be emitted cumulatively during 2021 - 2030 if the City continues with its existing Internal combustion engine (ICE) fleet and does not replace with EVs as planned.¹¹ This is a worst-case scenario if no vehicles are replaced with EVs. For example, per the Fleet EV Plan, if the City does not replace light-duty ICE cars with EVs as scheduled in 2021, it will produce an additional 10.6 MT of GHG emissions in 2021; if not replaced as planned in 2022 an additional 19.5 MT of GHGs would be emitted in 2022; and so on. The City should also plan for the replacement of medium- and heavy-duty vehicles with EVs, such as the new electric Ford F-150 coming to market.

Further GHG reductions and cost savings can be achieved if some ICE vehicles are replaced with e-bikes and other micro-modal forms of transport. As outlined on Walk Bike Berkeley’s website:

⁹ “Study Shows Walking, Cycling, & e-Biking Make Significant Impact On Carbon Emissions,” CleanTechnica, February 3, 2021, <https://cleantechnica.com/2021/02/03/study-shows-walking-cycling-e-biking-make-significant-impact-on-carbon-emissions>

¹⁰ Walk Bike Berkeley, E-bikes: Key to Berkeley’s Climate & Public Safety Goals https://drive.google.com/file/d/1sISMSq0h2HF2KaXVj0GC30o3P_oosf5t/view

¹¹ Estimate calculated by adding the difference between baseline and EV “well to wheels” GHG emissions for each year 2021 to 2030, as shown in Figure 5 on page 11 of Municipal Fleet Electrification Assessment. [City Council Report ##-##-####](#)

- E-bikes get anywhere from 1,000 to almost 4,000 miles per gallon equivalent.
- E-bikes can go 40 to 140 times as far as a 30-mpg gas car per pound of climate emissions with California's electricity energy mix (*Note: Berkeley's municipal electricity accounts at 100% renewable means the savings can be even larger*)
- E-bikes get 30-100 times more miles per pound of battery than an electric car.¹²

The Fleet EV Plan notes that in mid-2020 Public Works planned to implement a GPS tracking (telematics) system on some vehicles that would provide real-time data on vehicle usage that will help determine "right sizing" of vehicles and whether some vehicles could be shared by more staff, thereby expanding City services without adding more vehicles. It would seem reasonable that such telematics could help determine if an e-bike or other mode could be used instead of a car.¹³

RATIONALE FOR RECOMMENDATION

Fleet replacement and electrification, and shifts to zero-carbon modes of transportation, are vital elements in becoming a Fossil Fuel Free City, and align with the City's Strategic Plan Priorities. The City has many excellent goals, commitments, and plans for advancing electric mobility and zero-carbon transportation across several departments and programs. This Energy Commission recommendation is an opportunity to integrate, coordinate, and leverage the City's efforts and implement the plans into operational procedures, directives, and budgets.

The Energy Commission's mission to advise the Council on climate protection, energy conservation, and alternative energy development in Berkeley includes reducing GHGs from the transportation sector. **Missing opportunities to replace some of the City's gas-fueled vehicles with less expensive and less polluting e-bikes or other zero-carbon transport modes, and delaying replacement of the City's gas-fueled vehicles with EVs due to Fleet Replacement Fund shortfalls, will both have measurable climate and fiscal impacts due to the continued use of fossil fueled vehicles.**

This Recommendation aligns the City's municipal expenditure policy with its previously adopted Climate Action Policies to reduce municipal GHGs from the transportation sector.

Thank you for your consideration of our recommendations regarding the Fleet Electrification Assessment, the Fleet Replacement Fund, and plans to prioritize funds in the FY2022 budget to accelerate the City of Berkeley's transition to EVs and other zero-carbon modes of transportation.

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report. Staff will be updating implementation of the fleet assessment to accelerate fleet

¹² Walk Bike Berkeley, "E-Bike 1000 MPG Project," <https://sites.google.com/view/ebikestudy>

¹³ Appendix A, pp. 29-30 of the Municipal Fleet Electrification Assessment, see link in Note 1

transition to electric vehicles and will consider opportunities to prioritize municipal fleet modal shift to electric bicycles and other forms of zero-emissions mobility where feasible.

CONTACT PERSON

Billi Romain, Secretary, Energy Commission, 510-981-7432



Open Government Commission

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Open Government Commission
 Submitted by: Brad Smith, Chairperson, Open Government Commission
 Samuel Harvey, Secretary, Open Government Commission
 Subject: Letter of Support for SB-459 Political Reform Act of 1974: lobbying

RECOMMENDATION

Send a letter of support to Senator Nancy Skinner in support of SB-459 Political Reform Act of 1974: lobbying (Attached).

SUMMARY

Current lobbying reports don't provide information about who is funding lobbying efforts until after the bills have passed or died. SB-459 would require the following reforms:

1. Monthly, rather than quarterly, disclosures for the largest lobbyist.
2. 72-hour reporting of significant spending on issue ads and the naming of the special interests that bought the ads.
3. Requiring lobbying reports to disclose their position (e.g., "Support" or "Oppose")

Passage of SB-459 will increase lobbying transparency with the public being more capable of "following the money."

M/S/C (Smith/O'Donnell) to submit recommendation to City Council
 Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, Hynes, Humbert, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Difficult for the public to know who is attempting to influence our elected officials.

BACKGROUND

Currently, it is impossible to know who is spending money lobbying our lawmakers until after their votes have been cast and the session ends. This legislation will increase the transparency of money spent to influence legislation.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identified environmental effects related to this recommendation.

RATIONALE FOR RECOMMENDATION

To increase transparency about who is funding lobbying efforts.

ALTERNATIVE ACTIONS CONSIDERED

Not sending a letter to Senator Nancy Skinner.

CITY MANAGER

The City Manager takes no position.

CONTACT PERSON

Brad Smith, Chair, Open Government Commission
Samuel Harvey, Secretary, Open Government Commission

Attachments:

1. SB-459 Senate Committee Analyses
2. SB-459 Political Reform Act of 1974: lobbying, text

AMENDED IN SENATE APRIL 28, 2021

AMENDED IN SENATE APRIL 12, 2021

AMENDED IN SENATE MARCH 10, 2021

SENATE BILL

No. 459

Introduced by Senator Allen
(Coauthors: Senators Glazer and Newman)
(Coauthor: Assembly Member Mullin)

February 16, 2021

An act to amend Sections 86114, 86116, 86117, and 86118 of, and to add Section 86119 to, the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

SB 459, as amended, Allen. Political Reform Act of 1974: lobbying.

Existing law, the Political Reform Act of 1974, regulates the activities of lobbyists, lobbying firms, and lobbyist employers in connection with attempts to influence legislative and administrative action by legislative and other state officials, including by requiring that lobbyists, lobbying firms, and lobbyist employers register and file periodic reports with the Secretary of State.

This ~~bill~~ *bill*, beginning January 1, 2023, would require lobbyists, lobbying firms, and lobbyist employers to include information in the periodic reports that identifies each bill or administrative action subject to lobbying activity, and the respective position advocated for, during that period. This bill would require a lobbying firm or lobbyist employer to file a monthly report for any calendar month in which the total amount of payments subject to reporting exceeds \$15,000, and would require a lobbying firm or lobbyist employer to file monthly reports for 12

months following any calendar quarter in which the total amount of payments subject to reporting exceeds \$45,000. The bill would require certain persons to file specified reports following a calendar quarter in which that person incurs cumulative costs equal to or exceeding \$5,000 for issue lobbying advertisements, as defined.

A violation of the act is punishable as a misdemeanor, and reports and statements filed under the act are required to be signed under the penalty of perjury. By expanding the scope of existing crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act’s purposes upon a 2/3 vote of each house of the Legislature and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 86114 of the Government Code, as
- 2 amended by Section 38 of Chapter 662 of the Statutes of 2018, is
- 3 amended to read:
- 4 86114. (a) Lobbying firms shall file periodic reports containing
- 5 all of the following:
- 6 (1) The full name, address, email address, and telephone number
- 7 of the lobbying firm.
- 8 (2) (A) The full name, business address, and telephone number
- 9 of each person who contracted with the lobbying firm for lobbying
- 10 services, a description of the specific lobbying interests of the
- 11 person, and the total payments, including fees and the
- 12 reimbursement of expenses, received from the person for lobbying
- 13 services during the reporting period.
- 14 (B) (i) For each client, the report shall indicate the name or
- 15 number of each bill or administrative action, with regard to which
- 16 a partner, owner, officer, or employee of the lobbying firm either

1 engaged in direct communication, including through issue lobbying
2 advertisements, or was directed by that client to engage in direct
3 communication, with an elective state official, agency official, or
4 legislative official on behalf of that client for the purpose of
5 influencing legislative or administrative action during the reporting
6 period, either by reference to its legislative or administrative
7 identification number if one exists or by brief description if no
8 such number exists.

9 (ii) For each bill or issue lobbying advertisement related to a
10 bill, the report shall indicate one of the following that most closely
11 describes the client position publicly communicated: “support,”
12 “oppose,” “support if amended,” “oppose unless amended,”
13 “neutral seeking amendment,” “neutral expressing concerns.” The
14 report shall list in chronological order any changes in position
15 during that reporting period but shall not be required to disclose
16 the date of any change in position.

17 (iii) The report shall not include bills or administrative actions
18 which have failed passage prior to the reporting period, bills or
19 administrative actions which the lobbying firm is only watching
20 or monitoring, or bills or administrative actions which the lobbying
21 firm has not attempted to influence during the reporting period.

22 (3) The total amount of payments received for lobbying services
23 during the period.

24 (4) A periodic report completed and verified by each lobbyist
25 in the lobbying firm pursuant to Section 86113.

26 (5) Each activity expense incurred by the lobbying firm
27 including those reimbursed by a person who contracts with the
28 lobbying firm for lobbying services. A total of all activity expenses
29 of the lobbying firm and all of its lobbyists shall be included.

30 (6) If the lobbying firm subcontracts with another lobbying firm
31 for lobbying services:

32 (A) The full name, address, email address, and telephone number
33 of the subcontractor.

34 (B) The name of the person for whom the subcontractor was
35 retained to lobby.

36 (C) The total amount of all payments made to the subcontractor.

37 (7) The date, amount, and the name of the recipient of any
38 contribution of one hundred dollars (\$100) or more made by the
39 filer to an elected state officer, a state candidate, a committee
40 controlled by an elected state officer or state candidate, or a

1 committee primarily formed to support or oppose those officers
2 or candidates. If this contribution is reported by the lobbying firm
3 or by a committee sponsored by the lobbying firm in a campaign
4 statement filed pursuant to Chapter 4 which is required to be filed
5 with the Secretary of State, the filer may report only the name of
6 the committee and the identification number of the committee.

7 (8) Any other information required by the commission consistent
8 with the purposes and provisions of this chapter.

9 (b) In addition to the information required by subdivision (a),
10 lobbying firms which qualify pursuant to paragraph (2) of
11 subdivision (a) of Section 82038.5 shall also report the name and
12 title of each partner, owner, officer, and employee of the lobbying
13 firm who, on at least five separate occasions during the reporting
14 period, engaged in direct communication with any elective state
15 official, legislative official, or agency official, for the purpose of
16 influencing legislative or administrative action on behalf of a
17 person who contracts with the lobbying firm for lobbying services.
18 This does not include individuals whose actions were purely
19 clerical.

20 SEC. 2. Section 86116 of the Government Code, as amended
21 by Section 39 of Chapter 662 of the Statutes of 2018, is amended
22 to read:

23 86116. Every person described in Section 86115 shall file
24 periodic reports containing the following information:

25 (a) The name, business address, email address, and telephone
26 number of the lobbyist employer or other person filing the report.

27 (b) The total amount of payments to each lobbying firm.

28 (c) The total amount of all payments to lobbyists employed by
29 the filer.

30 (d) (1) A description of the specific lobbying interests of the
31 filer.

32 (2) The information required by subparagraph (B) of paragraph
33 (1) of subdivision (a) of Section 86114. A person described in
34 Section 86115 may, through a form adopted by the commission,
35 refer to and incorporate by reference the information contained in
36 a report filed by the person's lobbying firm pursuant to Section
37 86114 to meet the requirement of this paragraph.

38 (e) A periodic report completed and verified by each lobbyist
39 employed by a lobbyist employer pursuant to Section 86113.

1 (f) Each activity expense of the filer. A total of all activity
2 expenses of the filer shall be included.

3 (g) The date, amount, and the name of the recipient of any
4 contribution of one hundred dollars (\$100) or more made by the
5 filer to an elected state officer, a state candidate, or a committee
6 controlled by an elected state officer or state candidate, or a
7 committee primarily formed to support or oppose the officer or
8 candidate. If this contribution is reported by the filer or by a
9 committee sponsored by the filer in a campaign statement filed
10 pursuant to Chapter 4 which is required to be filed with the
11 Secretary of State, the filer may report only the name of the
12 committee, and the identification number of the committee.

13 (h) (1) Except as set forth in paragraph (2), the total of all other
14 payments to influence legislative or administrative action including
15 overhead expenses and all payments to employees who spend 10
16 percent or more of their compensated time in any one month in
17 activities related to influencing legislative or administrative action.

18 (2) A filer that makes payments to influence a ratemaking or
19 quasi-legislative proceeding before the Public Utilities
20 Commission, as defined in subdivision (b) or (c), respectively, of
21 Section 82002, may, in lieu of reporting those payments pursuant
22 to paragraph (1), report only the portion of those payments made
23 to or for the filer's attorneys for time spent appearing as counsel
24 and preparing to appear as counsel, or to or for the filer's witnesses
25 for time spent testifying and preparing to testify, in this type of
26 Public Utilities Commission proceeding. This alternative reporting
27 of these payments made during a calendar month is not required
28 to include payments made to an attorney or witness who is an
29 employee of the filer if less than 10 percent of the attorney's or
30 witness's compensated time in that month was spent in appearing,
31 testifying, or preparing to appear or testify before the Public
32 Utilities Commission in a ratemaking or quasi-legislative
33 proceeding. For the purposes of this paragraph, time spent
34 preparing to appear or preparing to testify does not include time
35 spent preparing written testimony.

36 (i) Any other information required by the commission consistent
37 with the purposes and provisions of this chapter.

38 SEC. 3. Section 86117 of the Government Code is amended
39 to read:

1 86117. (a) Reports required by Sections 86114 and 86116
2 shall be filed during the month following each calendar quarter.
3 The period covered shall be from the first day of January of each
4 new biennial legislative session through the last day of the calendar
5 quarter prior to the month during which the report is filed, except
6 as specified in subdivision (b), and except that the period covered
7 shall not include any information reported in previous reports filed
8 by the same person. When total amounts are required to be
9 reported, totals shall be stated both for the period covered by the
10 statement and for the entire legislative session to date.

11 (b) The period covered by the first report a person is required
12 to file pursuant to Sections 86114 and 86116 shall begin with the
13 first day of the calendar quarter in which the filer first registered
14 or qualified. On the first report a person is required to file, the total
15 amount shall be stated for the entire calendar quarter covered by
16 the first report.

17 (c) In addition to the requirements of subdivision (a), a person
18 described in Section 86115 shall also do both of the following:

19 (1) File a monthly report pursuant to Section 86116 for any
20 calendar month where the sum of the total amount of all payments
21 subject to reporting pursuant to that section exceeds fifteen
22 thousand dollars (\$15,000). The monthly report required by this
23 subdivision shall be filed during the first 15 days of the month
24 following any qualifying calendar month.

25 (2) During the period beginning 60 days before the deadline for
26 the passage of ~~bills established by joint resolution of the~~
27 ~~Legislature, bills~~, file a report within 72 hours of retaining a
28 lobbying firm to influence legislative or administrative action
29 during those 60 days, including the amount paid to the lobbying
30 firm upon being retained or to be paid to the lobbying firm pursuant
31 to a contract for lobbying. The report required by this subparagraph
32 shall be made public within 24 hours of receipt, either through the
33 internet or distribution or posting of portable document formats
34 (PDFs) of the documents or summaries of the documents online.

35 (d) If the sum described in paragraph (1) of subdivision (c)
36 exceeds forty-five thousand dollars (\$45,000) in a calendar quarter,
37 the person described in Section 86115 shall file monthly reports
38 pursuant to Section 86116 for the next 12 months.

39 (e) In addition to the requirements of subdivision (a), a lobbying
40 firm shall also file a monthly report pursuant to Section 86114 for

1 any calendar month where the total amount of payments received
2 for lobbying services exceeds fifteen thousand dollars (\$15,000).
3 The monthly report required by this subdivision shall be filed
4 during the first 15 days of the month following any qualifying
5 calendar month.

6 (f) If the sum described in subdivision (e) exceeds forty-five
7 thousand dollars (\$45,000) in a calendar quarter, the person
8 described in Section 86115 shall file monthly reports for the next
9 12 months.

10 (g) Regardless of the total amounts of payments made or
11 received, any person described in Section 86115, or any lobbying
12 firm, may elect to file monthly reports pursuant to subdivision (c)
13 or (e). Notwithstanding subdivision (a), any person described in
14 Section 86115, or any lobbying firm, that files monthly reports
15 pursuant to subdivision (c) or (e) for each month of a calendar
16 quarter shall not file a quarterly report covering that same period.

17 (h) When total amounts are required to be reported, totals shall
18 be stated both for the period covered by the statement and for the
19 entire legislative session to date.

20 SEC. 4. Section 86118 of the Government Code, as amended
21 by Section 40 of Chapter 662 of the Statutes of 2018, is amended
22 to read:

23 86118. (a) Reports required by Sections 86114 and 86116
24 shall be filed online or electronically with the Secretary of State.

25 (b) Original documents may be signed and filed with electronic
26 signatures.

27 SEC. 5. Section 86119 is added to the Government Code, to
28 read:

29 86119. (a) (1) "Issue lobbying advertisement" as used in this
30 chapter means any communication as described in Section 84501
31 that is authorized and paid for, directly or indirectly, by a person
32 described in Section 86115 and that refers to one or more clearly
33 identified pending legislative or administrative actions and does
34 any of the following:

35 (A) Solicits or urges persons other than the person described in
36 Section 86115 to communicate directly with an elective state
37 official, agency official, or legislative official for the primary
38 purpose of attempting to influence state legislative or administrative
39 action.

1 (B) Refers to a state legislative or administrative action and
2 urges its defeat, amendment, postponement, enactment, or
3 promulgation.

4 (2) The types of communications that may qualify as an issue
5 lobbying advertisement include those described in Section 82041.5,
6 subdivision (a) of Section 84501, subdivision (a) of Section
7 84504.3, a prerecorded telephone call made to more than 200
8 persons, a substantially similar email, text message, or other
9 electronic communication that is sent to over 200 recipients, or
10 any other substantially similar communication determined by
11 regulations adopted by the commission.

12 (3) A pending legislative or administrative action is clearly
13 identified if the communication states a legislative or administrative
14 identification number, official title, or popular name associated
15 with the action. In addition, the action is clearly identified if the
16 communication refers to the subject matter of the action and either
17 states that the measure is before an elective state official, agency
18 official, or legislative official for a vote or decision or, taken as a
19 whole and in context, unambiguously refers to the action.

20 (b) (1) An issue lobbying advertisement shall clearly and
21 conspicuously indicate in the communication the person described
22 in Section 86115 that authorized and paid for the communication
23 as the source or payor of the communication. If the person who
24 authorized and paid for the issue lobbying advertisement is a
25 lobbying firm, the lobbyist employer on whose behalf the issue
26 lobbying advertisement was authorized and paid for shall be
27 disclosed in place of the lobbying firm.

28 (2) An issue lobbying advertisement complies with this
29 subdivision if the communication does either of the following:

30 (A) Clearly and conspicuously identifies the person described
31 in Section 86115 as the sender, broadcaster, or creator of the
32 communication.

33 (B) Includes the words “Paid for by” or a ~~smaller~~ *similar* phrase
34 followed by the name of the person.

35 (c) A copy of any issue lobbying advertisement which clearly
36 identifies an elective state official, agency official, or legislative
37 official shall be provided by mail, email, or hand delivery to that
38 elective state official, agency official, or legislative official within
39 72 hours of being communicated.

1 (d) (1) A person described in Section 86115 that incurs
2 cumulative costs equal to or exceeding five thousand dollars
3 (\$5,000) for issue lobbying advertisements in a calendar quarter
4 shall file a report with the Secretary of State within 72 hours. The
5 report shall be filed with the Secretary of State by online or
6 electronic transmission only using the online filing system
7 described in subdivision (b) of Section 84602.

8 (2) The cost of an issue lobbying advertisement shall include
9 actual costs attributable to the communications, but shall not
10 include the payment of salary for staff time.

11 (3) A report required by this subdivision shall include the
12 following information:

13 (A) The dates or period of time that each issue lobbying
14 advertisement was communicated.

15 (B) The legislative or administrative identification numbers
16 associated with the legislative or administrative action that was
17 the subject of the lobbying issue advertisement. If an action is not
18 associated with an identification number, a short description of
19 the subject matter of the action.

20 (C) For each legislative or administrative action for which there
21 were issue lobbying advertisements, the position on the legislative
22 or administrative action urged on the lobbying issue advertisement,
23 which may include “support,” “oppose,” “support if amended,”
24 “oppose unless amended,” “neutral seeking amendment,” or a
25 similar short description.

26 (D) For each legislative or administrative action for which there
27 were issue lobbying advertisements, the medium of the issue
28 lobbying advertisements which referenced the action, which may
29 include, for example, direct mail, text messages, television
30 advertisements, radio advertisements, social media advertisements,
31 search engine advertisements, or other online advertisements.

32 (E) For each legislative or administrative action for which there
33 were issue lobbying advertisements, the cumulative cost of the
34 issue lobbying advertisements they appear in. If an issue lobbying
35 advertisement referenced more than one legislative or
36 administrative action, then the cost of the advertisement for
37 purposes of this paragraph shall be apportioned between those
38 actions.

39 (F) Any other relevant information determined by regulations
40 adopted by the commission.

1 (4) Issue lobbying advertisement costs shall be reported on
2 subsequent periodic lobbying reports without regard to reports
3 filed pursuant to this subdivision.

4 ~~(e) This section shall become operative on January 1, 2023.~~

5 ~~(f)~~

6 (e) The commission may, by regulation, increase the dollar
7 amounts specified in this section.

8 SEC. 6. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.

17 SEC. 7. Sections 1 to 5 of this act shall not become operative
18 until January 1, 2023.

19 SEC. 8. The Legislature finds and declares that this bill furthers
20 the purposes of the Political Reform Act of 1974 within the
21 meaning of subdivision (a) of Section 81012 of the Government
22 Code.

O

SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 459 (Allen) - Political Reform Act of 1974: lobbying

Version: April 28, 2021

Policy Vote: E. & C.A. 4 - 0

Urgency: No

Mandate: Yes

Hearing Date: May 10, 2021

Consultant: Robert Ingenito

Bill Summary: SB 459 would (1) require lobbying entities to disclose additional information on lobbying reports, as specified, (2) increase the frequency of reporting if certain conditions are met, and (3) require additional disclosures on issue lobbying advertisements, as specified.

Fiscal Impact: The Fair Political Practices Committee (FPPC) indicates that it would incur costs of \$387,000 in 2021-22, and \$336,000 annually thereafter, to implement the provisions of the bill (General Fund). Potential costs to the Secretary of State (SOS) have yet to be identified.

Background: In 1974, California voters passed the Political Reform Act (Proposition 9), which created FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. The PRA stipulates that amendments to it are not required to be submitted to voters if the amendments further the purposes of the PRA, are approved by a two-thirds vote of both houses of the Legislature, and chaptered. Additionally, the PRA requires periodic reports to be filed that disclose payments made in connection with efforts to influence legislative or administrative action. These periodic lobbying disclosure reports are also required to include information about the legislative and administrative actions that were lobbied during the period covered by the report.

In 1997, SB 49 (Karnette) established the Online Disclosure Act of 1997, which required SOS, in consultation with FPPC, to develop and implement a process whereby reports and statements required by the PRA could be filed online and viewed by the public. Consequently, SOS established the California Automated Lobby Activity and Campaign Contribution and Expenditure Search System, commonly known as Cal-Access. SB 49 also required certain candidates, committees, slate mailer organizations, lobbyists, lobbyist employers, and lobbying firms to file campaign reports online.

In 2016, the Legislature passed and Governor Brown signed SB 1349 (Hertzberg), which required SOS, in consultation with FPPC, to develop and certify for public use a new online filing and disclosure system for statements and reports that provides public disclosure of campaign finance and lobbying information in a user-friendly, easily understandable format. This new system, also known as the Cal-Access Replacement System (CARS), will be available for filers and public use on June 30, 2021.

Current law requires disclosures of certain payments made for issue advocacy advertisements. Specifically, existing law requires payments in connection with these advertisements be disclosed on lobbying disclosure reports, under certain circumstances. Lobbyist employers and persons who do not employ an in-house

lobbyist or contract with a lobbying firm, but who directly or indirectly make payments of \$5,000 or more in any calendar quarter to influence or attempt to influence legislative or administrative action, must file periodic lobbying disclosure reports. Among the types of expenditures that count toward the \$5,000 filing threshold are payments for or in connection with soliciting or urging other persons to enter into direct communication with state officials, including payments made for advertisements that urge voters to communicate with elected officials on pending legislation.

However, the information that is required to be disclosed by \$5,000 filers and lobbyist employers with respect to payments made for issue advocacy communications can be limited. Lobbyist employers and \$5,000 filers must disclose the total of all payments to influence legislative or administrative action, and must provide information about the recipients of payments of \$2,500 or more made to influence legislative or administrative action. They are not required to link specific payments with the legislative or administrative action that those payments were designed to influence, specify the position expressed in the advertisement, or provide a copy of the advertisement to the targeted official.

Proposed Law: This bill, beginning January 1, 2023 would, among other things, do the following:

- Require specific lobbying entities to provide in their periodic reports the name or number of each bill or administrative action that either engaged in direct communication or was directed by that entity to engage in direct communication with an elective state official, agency official, or legislative official on the entity's behalf for the purpose of influencing legislative or administrative action during the reporting period, as specified. Require the report to indicate, in chronological order, a specific position that most closely describes the client position publicly communicated, as specified.
- Require monthly reporting of lobbying disclosure reports if the sum of the total amount of all payments subject to reporting exceeds \$15,000, as specified. Requires this monthly report be filed during the first 15 days of the month following any qualifying calendar month.
- Require, during the period beginning 60 days before the deadline for the passage of bills established by joint resolution of the Legislature, the filing of a report within 72 hours of retaining a lobbying firm to influence legislative or administrative action during those 60 days, including the amount paid to the lobbying firm upon being retained or to be paid to the lobbying firm pursuant to a contract for lobbying.
- Provide that the types of communications that may qualify as an issue lobbying advertisement, as defined, include those established in specific provisions of existing law, a prerecorded telephone call made to more than 200 persons, a substantially similar email, text message, or other electronic communication that is sent to over 200 recipients, or any other substantially similar communication determined by regulations adopted by the FPPC.

- Provide that a pending legislative or administrative action is clearly identified if the communication states a legislative or administrative identification number, official title, or popular name associated with the action. Provides that the action is also clearly identified if the communication refers to the subject matter of the action and either states that the measure is before an elective state official, agency official, or legislative official for a vote or decision or, taken as a whole and in context, unambiguously refers to the action.
- Require an issue lobbying advertisement to clearly and conspicuously indicate in the communication the person that authorized and paid for the communication as the source or payor of the communication, as specified. Provides that if the person who authorized and paid for the issue lobbying advertisement is a lobbying firm, the lobbyist employer on whose behalf the issue lobbying advertisement was authorized and paid for shall be disclosed in place of the lobbying firm.
- Require a copy of any issue lobbying advertisement which clearly identifies an elective state official, agency official, or legislative official be provided by mail, email, or hand delivery to that elective state official, agency official, or legislative official within 72 hours of being communicated, as specified.
- Require a person that incurs cumulative costs equal to or exceeding \$5,000 for issue lobbying advertisements in a calendar quarter to file a report with SOS within 72 hours, as specified. Require a report regarding issue lobbying advertisements to include specified information.

Related Legislation:

- AB 1217 (Mullin, 2019), among other provisions, would have required individuals who publish an “issue lobbying communication” within 60 days of the end of the legislative session to disclose the funders of the advertisement, as specified. The bill died in the Senate Committee on Elections and Constitutional Amendments.
- SB 1239 (Hertzberg, Chapter 662, Statutes of 2018) among other changes associated with filing campaign and lobbying reports to the CARS, eliminated the requirement to file paper copies of lobbying reports required to be filed online or electronically upon the certification of CARS by the SOS.
- SB 49 (Karnette, Chapter 866, Statutes of 1997) required SOS, in consultation with the FPPC, to develop and implement a process whereby reports and statements required under the PRA could be filed online and viewed by the public, as specified. This system is known as Cal-Access.

Staff Comments: FPPC indicates that it would require three new positions to accommodate the additional workload generated by the bill, resulting from (1) the increase in referrals due to the increased filing and reporting requirements, and (2) the new issue lobbying advertisements requirements.

Any local government costs resulting from the mandate in this measure are not state-reimbursable because the mandate only involves the definition of a crime or the penalty for conviction of a crime.

-- END --

**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Steven Glazer, Chair
2021 - 2022 Regular

Bill No: SB 459 **Hearing Date:** 4/26/21
Author: Allen
Version: 4/12/21
Urgency: No **Fiscal:** Yes
Consultant: Scott Matsumoto

Subject: Political Reform Act of 1974: lobbying

DIGEST

This bill requires lobbying entities to disclose additional information on lobbying reports, as specified, and increases the frequency of reporting if certain conditions are met. This bill also requires additional disclosures on issue lobbying advertisements, as specified.

ANALYSIS

Existing law:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act of 1974 (PRA).
- 2) Requires lobbying firms, lobbyist employers, lobbying coalitions, and individual lobbyists to register and file periodic reports with the Secretary of State (SOS), as specified. Requires the SOS to maintain on the internet an updated list of lobbyists, lobbying firms, and lobbyist employers.
- 3) Requires a lobbyist to complete and verify periodic reports containing all activity expenses by the lobbyist during the reporting period. Requires this report be provided to their lobbyist employer or lobbying firm within two weeks following the end of each calendar quarter, as specified.
- 4) Requires lobbying firms to file periodic reports containing specified information about the lobbying firm and the services provided, as specified. This includes, but is not limited to, a description of the specific lobbying interests of the person and the total amount of payments, as specified, during the reporting period. Requires these reports to be filed quarterly, as specified.

This bill:

- 1) Requires specific lobbying entities to provide in their periodic reports the name or number of each bill or administrative action that either engaged in direct communication or was directed by that entity to engage in direct communication with an elective state official, agency official, or legislative official on the entity's behalf for the purpose of influencing legislative or administrative action during the reporting

period, as specified. Requires the report to indicate, in chronological order, a specific position that most closely describes the client position publicly communicated, as specified.

- 2) Requires monthly reporting of lobbying disclosure reports if the sum of the total amount of all payments subject to reporting exceeds \$15,000, as specified. Requires this monthly report be filed during the first 15 days of the month following any qualifying calendar month.
- 3) Requires, during the period beginning 60 days before the deadline for the passage of bills established by joint resolution of the Legislature, the filing of a report within 72 hours of retaining a lobbying firm to influence legislative or administrative action during those 60 days, including the amount paid to the lobbying firm upon being retained or to be paid to the lobbying firm pursuant to a contract for lobbying.
- 4) Provides that if the sum of the total amount of payments exceeds \$45,000 in a calendar quarter, then monthly reports shall be filed for the next 12 months, as specified.
- 5) Defines “issue lobbying advertisement” to mean any communication that is authorized and paid for, directly or indirectly, by a specified lobbying entity, that refers to one or more clearly identified pending legislative or administrative actions and does any of the following:
 - a) Solicits or urges persons other than the lobbying entity to communicate directly with an elective state official, agency official, or legislative official for the primary purpose of attempting to influence state legislative or administrative action, as specified.
 - b) Refers to a state legislative or administrative action and urges its defeat, amendment, postponement, enactment, or promulgation.
- 6) Provides that the types of communications that may qualify as an issue lobbying advertisement include those established in specific provisions of existing law, a prerecorded telephone call made to more than 200 persons, a substantially similar email, text message, or other electronic communication that is sent to over 200 recipients, or any other substantially similar communication determined by regulations adopted by the FPPC.
- 7) Provides that a pending legislative or administrative action is clearly identified if the communication states a legislative or administrative identification number, official title, or popular name associated with the action. Provides that the action is also clearly identified if the communication refers to the subject matter of the action and either states that the measure is before an elective state official, agency official, or legislative official for a vote or decision or, taken as a whole and in context, unambiguously refers to the action.
- 8) Requires an issue lobbying advertisement to clearly and conspicuously indicate in the communication the person that authorized and paid for the communication as the source or payor of the communication, as specified. Provides that if the person

who authorized and paid for the issue lobbying advertisement is a lobbying firm, the lobbyist employer on whose behalf the issue lobbying advertisement was authorized and paid for shall be disclosed in place of the lobbying firm.

- 9) Provides that an issue lobbying advertisement complies if the communication does either of the following:
 - a) Clearly and conspicuously identifies the person as the sender, broadcaster, or creator of the communication, as specified.
 - b) Includes the words "Paid for by" or a smaller phrase followed by the name of the person.
- 10) Requires a copy of any issue lobbying advertisement which clearly identifies an elective state official, agency official, or legislative official be provided by mail, email, or hand delivery to that elective state official, agency official, or legislative official within 72 hours of being communicated, as specified.
- 11) Requires a person that incurs cumulative costs equal to or exceeding \$5,000 for issue lobbying advertisements in a calendar quarter to file a report with the SOS within 72 hours, as specified. Requires a report regarding issue lobbying advertisements to include the following information:
 - a) The dates or period of time that each issue lobbying advertisement was communicated.
 - b) The legislative or administrative identification numbers associated with the legislative or administrative action that was the subject of the lobbying issue advertisement, as specified.
 - c) For each legislative or administrative action for which there were issue lobbying advertisements, the position on the legislative or administrative action urged on the lobbying issue advertisement.
 - d) For each legislative or administrative action for which there were issue lobbying advertisements, the medium of the issue lobbying advertisements which referenced the action.
 - e) For each legislative or administrative action for which there were issue lobbying advertisements, the cumulative cost of the issue lobbying advertisements they appear in, as specified.
 - f) Any other relevant information determined by regulations adopted by the FPPC.
- 12) Provides that the provisions of this bill shall not become operative until January 1, 2023.
- 13) Makes technical, nonsubstantive changes.

BACKGROUND

Political Reform Act of 1974. In 1974, California voters passed Proposition 9, also known as the PRA, and created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. The PRA stipulates that amendments to the PRA are not required to be submitted to voters if the amendments further the purposes of the PRA, approved by a two-thirds vote of both houses of the Legislature, and chaptered.

Additionally, the PRA requires periodic reports to be filed that discloses payments made in connection with efforts to influence legislative or administrative action. These periodic lobbying disclosure reports are also required to include information about the legislative and administrative actions that were lobbied during the period covered by the report.

Cal-Access and the Cal-Access Replacement System. In 1997, the Legislature passed and Governor Wilson signed SB 49 (Karnette), Chapter 866, Statutes of 1997, and established the Online Disclosure Act of 1997. SB 49 required the SOS, in consultation with the FPPC, to develop and implement a process whereby reports and statements required by the PRA could be filed online and viewed by the public. As a result, the SOS established the California Automated Lobby Activity and Campaign Contribution and Expenditure Search System, commonly known as Cal-Access. SB 49 also required certain candidates, committees, slate mailer organizations, lobbyists, lobbyist employers, and lobbying firms to file campaign reports online.

In 2016, the Legislature passed and Governor Brown signed SB 1349 (Hertzberg), Chapter 845, Statutes of 2016. SB 1349 required the SOS, in consultation with the FPPC, to develop and certify for public use a new online filing and disclosure system for statements and reports that provides public disclosure of campaign finance and lobbying information in a user-friendly, easily understandable format. According to the SOS website, this new system, also known as the Cal-Access Replacement System (CARS), will be available for filers and public use on June 30, 2021.

Issue Lobbying Advertisements. Existing law currently requires disclosures of certain payments made for issue advocacy advertisements. Specifically, existing law requires payments in connection with these advertisements be disclosed on lobbying disclosure reports, under certain circumstances. Lobbyist employers and persons who do not employ an in-house lobbyist or contract with a lobbying firm, but who directly or indirectly make payments of \$5,000 or more in any calendar quarter to influence or attempt to influence legislative or administrative action, must file periodic lobbying disclosure reports. Among the types of expenditures that count toward the \$5,000 filing threshold are payments for or in connection with soliciting or urging other persons to enter into direct communication with state officials, including payments made for advertisements that urge voters to communicate with elected officials on pending legislation.

However, the information that is required to be disclosed by \$5,000 filers and lobbyist employers with respect to payments made for issue advocacy communications can be limited. Lobbyist employers and \$5,000 filers must disclose the total of all payments to

influence legislative or administrative action, and must provide information about the recipients of payments of \$2,500 or more made to influence legislative or administrative action. They are not required to link specific payments with the legislative or administrative action that those payments were designed to influence, specify the position expressed in the advertisement, or provide a copy of the advertisement to the targeted official.

COMMENTS

- 1) According to the author: In California, lobbying firms and interest groups that hire them must file quarterly reports on their lobbying activity. These reports are due one month after the close of each quarter. The third quarter (Q3) lobbying report covers the most significant legislative quarter of the year: July through September. This period includes the Legislature's final committee and floor votes and, in even-years, the Governor's entire bill-signing period. Unsurprisingly, in terms of lobbying expenditures, this is the most expensive quarter of the year, with over \$100 million being spent in both Q3 of 2020 and 2019.

However, because of quarterly lobbying reporting, these three months of increased lobbying are not disclosed until *after* the Legislature has decided which bills to pass or defeat and *after* the Governor has decided which bills to sign or veto. Thus, Q3 reporting provides no useful transparency and accountability about the most intense lobbying affecting whether bills live or die.

More must be done to ensure that accurate, timely and useful information about the millions of dollars spent every year to influence the fate of legislation is available to lawmakers, the press and the public.

- 2) Argument in Support. In a letter supporting SB 459, the League of Women Voters of California stated, in part, the following:

SB 459 would increase the frequency of reporting for major lobbyists, requiring monthly reporting for lobbying firms and interest groups that report more than \$15,000 in lobbying activity in a month. In addition, lobbying groups that report more than \$45,000 in lobbying activity in a quarter would be required to report monthly for the next 12 months. During the 60-day period before the deadline for passage of bills, a report would need to be filed within 24 hours of retaining a lobbying firm hired to influence legislative action. The careful parsing of fiscal triggers ensures visibility into the influence of the wealthiest, most powerful interests while safeguarding small non-profits from costly reporting requirements.

SB 459 would also expand transparency by requiring: lobbyists to disclose the public positions they are taking on bills; 72-hour reporting of issue ads buys over a specified amount; and interest groups to put their names on their ads, thereby eliminating anonymous pressure campaigns.

The League of Women Voters of California strongly supports SB 459 because Californians deserve to know who is spending millions of dollars to influence legislation being made in their names.

- 3) Apply it to Everybody? Lobbying reports are required to be filed quarterly. Under the provisions of the bill, a lobbying entity could be required to file these reports monthly if a certain monetary spending threshold within a specified period of time is met and/or exceeded. Once this threshold is met, the report must be filed monthly for the next 12 months. This would create an additional requirement for lobbying entities because they would have to keep track of their spending within a month or quarter and may have to track the start and end of a 12-month period. The author should consider whether these additional reporting requirements should be required monthly for all lobbying entities currently required to file these periodic reports regardless of the amount spent within a period of time.
- 4) Positions Publicly Communicated. This bill specifies a lobbying disclosure report is required to provide the name or number of each bill or administrative action as well as the position publicly communicated. The position reported must indicate one of the following that most closely describes the client position publicly communicated: “support,” “support if amended,” “neutral seeking amendment,” “neutral expressing concerns,” “oppose unless amended,” and “oppose.”

While there is not a universal standard for positions taken on actions and legislation, there is a general understanding that a position can be “support,” “neutral,” or “opposed.” Depending on the entity, “support if amended” and “oppose unless amended” is also a common stance taken on actions or bills. However, even though a “support if amended” position is used frequently in legislative conversation, for some entities that officially lists positions on an action or on a bill, “support if amended” is considered the same as “neutral” and is not different than “watch,” “with concerns,” “neutral expressing concerns,” “request amendments,” or “neutral seeking amendments.” A similar comparison could also be used for “oppose” and “oppose unless amended” because “oppose” and “oppose unless amended” both signal opposition to an action or bill. The difference is that “oppose unless amended” provides a recommended path to remove an entity’s opposition position versus outright opposition.

As the bill moves through the legislative process, the author should consider having a “neutral” option instead of “neutral seeking amendment or “neutral expressing concerns.” The author should also consider whether “support if amended” and “oppose unless amended” provides an accurate and insightful portrayal of an entity’s position. If the bill is amended and changes are made to these positions, then it should also apply to the reporting requirements for issue lobbying advertisements.

- 5) Copies of an Issue Lobbying Advertisement. For issuing lobbying advertisements, the bill requires a copy of any issue lobbying advertisement that clearly identifies an elective state official, agency official, or legislative official be provided by mail, email, or hand delivery to that elective state official, agency official, or legislative official within 72 hours of being communicated. This includes, but is not limited to, an issuing lobbying advertisement that is a piece of mail, an email, a text message, or any other electronic communication.

As the bill moves through the legislative process, the author should consider whether an email, text message, or other typically internal method of communication should be delivered to the targeted individual and whether this provision interferes

with the ability of a person to freely communicate and urge a position to a wider audience. The required reports regarding issue lobbying advertisements, as prescribed by this bill, will likely provide an appropriate level of disclosure regarding how much is being spent on an advertisement and the type of advertisement.

- 6) It's the Final Countdown. This bill requires a lobbying report to be filed within 72 hours of retaining a lobbying firm to influence legislative or administrative action during those 60 days, including the amount paid to the lobbying firm upon being retained or to be paid to the lobbying firm pursuant to a contract for lobbying during the period beginning 60 days before the deadline for the passage of bills established by joint resolution of the Legislature. The goal is to encompass and provide additional insight during the final days of the legislative year.

However, the Legislature establishes deadlines through joint rules in a concurrent resolution and the Senate uses custom and practice if joint rules are not in place. For the deadline to pass legislation in the second year of a legislative session, the California Constitution provides that “no bill may be passed by either house on or after September 1 of an even-numbered year except statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes, and bills passed after being vetoed by the Governor.”

Committee staff recommends removing “established by joint resolution of the Legislature” from the bill so it reads, “...beginning 60 days before the deadline for the passage of bills” (Page 6, Lines 21-22).

- 7) Minor Amendments. On Page 8, Lines 27-28, there is a provision specifying that an issue lobbying advertisement is in compliance with the requirements prescribed by the bill if the words “Paid for by” or a smaller phrase followed by the name of the person is used in the communication. Committee staff recommends the bill be amended to replace “smaller” with “similar.”

Additionally, this bill has an operative date of January 1, 2023. However, the operative date is mentioned in two places. First, it is mentioned in Section 5 (Page 9, Line 37) of the bill. It is also mentioned in Section 7 (Page 10, Lines 10-11) of the bill. Committee staff recommends the author delete the operative date in Section 5 of the bill since Section 7 of bill includes Section 5 and states, “Sections 1 to 5 of this act shall not become operative until January 1, 2023.”

RELATED/PRIOR LEGISLATION

AB 1217 (Mullin) of 2019, among other provisions, would have required individuals who publish an “issue lobbying communication” within 60 days of the end of the legislative session to disclose the funders of the advertisement, as specified.

AB 1574 (Mullin) of 2019 would have required lobbying disclosure reports be filed monthly instead of quarterly.

SB 1239 (Hertzberg), Chapter 662, Statutes of 2018, among other changes associated with filing campaign and lobbying reports to the CARS, eliminated the requirement to file paper copies of lobbying reports required to be filed online or electronically upon the certification of CARS by the SOS.

AB 71 (Huber) of 2011 would have, among other changes, clarified that when a filer describes their lobbying interests on a periodic lobbying report, the lobbying entity include the bill number, if any, of legislation lobbied for or against during the reporting period. AB 1274 (Huber) of 2009 was similar to AB 71.

SB 49 (Karnette), Chapter 866, Statutes of 1997, required the SOS, in consultation with the FPPC, to develop and implement a process whereby reports and statements required under the PRA could be filed online and viewed by the public, as specified. This system is known as Cal-Access.

POSITIONS

Sponsor: California Common Cause

Support: California Clean Money Campaign
Courage Campaign
League of Women Voters of California
Mi Familia Vota

Oppose: None received

-- END --



Zero Waste Commission

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Zero Waste Commission

Submitted by: Christienne de Tournay Birkhahn, Chairperson, Zero Waste Commission

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

RECOMMENDATION

The Zero Waste Commission recommends that its current structure remain intact, and with an updated charter that reflects historic goals, and both current and future developments in the City of Berkeley's Zero Waste programs, facilities, services, policies, and state- and county-imposed mandates.

FISCAL IMPACTS OF RECOMMENDATION

Moderate amount of Zero Waste Division staff time, as follows current practice.

CURRENT SITUATION AND ITS EFFECTS

Zero Waste is a Strategic Plan Priority Project, advancing our goal to be a global leader in addressing climate change, advancing environmental justice, protecting the environment, and achieve our established goal of 100% waste diverted from landfill by 2020. The Zero Waste Division's top focus falls close behind police and fire in terms of providing essential city services that affect everyone (note that this service was completely uninterrupted or abbreviated during the entire ongoing pandemic period).

The people of Berkeley care deeply and passionately about where their discards go, who handles them, and how they are handled. Large corporate forces continue to contend for control over the very structure that has evolved over time from entrepreneurial efforts in Berkeley. Citizen advisory voices are necessary to continue movement toward Berkeley's Zero Waste goal.

On June 15, 2021, City Council voted to consolidate the Zero Waste Commission, the Community Environmental Advisory Commission, and the Energy Commission into one 9-member Commission on Climate and the Environment. Zero Waste issues related to facilities are consolidated with the Public Works Commission and issues related to policy are consolidated with the Commission on Climate and the Environment. Council referred additional considerations regarding the reorganization to staff and Commissions for feedback.

On July 26, 2021, the Zero Waste Commission approved submitting a recommendation to Council to retain the current structure of the Zero Waste Commission with the following vote: M/S/C (de Tournay/Sherman) Ayes: de Tournay, Poliwka, Sherman, Doughty, Stein, Curtis, Ulakovic; Abstain: None; Absent: Schueler, Grubb

BACKGROUND

Established in 1972, the Berkeley Zero Waste Commission would celebrate its 50th Anniversary next year. In 2005, Berkeley was one of the first cities in the United States to adopt a Zero Waste goal, aiming for 75% recovery by 2010, which it achieved. It continues to work toward its ambitious goal of 100% zero waste to landfill. With a history of being a leader in waste reduction and resource recovery, Berkeley became the first city in the nation to offer curbside recycling pickup in 1973.

Berkeley is one of the few cities to operate their own waste collection and disposal company. Berkeley's Zero Waste Program is a \$50 million dollar-a-year enterprise that ensures public health through the collection and processing of discarded materials, including trash, recyclables, compostables, and universal (hazardous) wastes.

To this end, the City employs independent local non-profit organizations and businesses as contractors (Ecology Center, Community Conservation Centers, Urban Ore), who build our local economy, returning profits back to the community through recycling and materials recovery. The upcoming rebuild of the City's Solid Waste & Recycling Transfer Station is an example of how the on-going existence of a commission specifically focused on disposal management is a key asset.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

A unified Zero Waste Commission will help further our City's mandated goal to achieve 100% of waste diverted from landfill by 2020, as well as the state's SB1383 goals.

RATIONALE FOR RECOMMENDATION

For Zero Waste efforts to succeed, its policies and implementation, operation of facilities and services, and necessary public outreach and education both merit and demand a unified, holistic approach.

ALTERNATIVE ACTIONS CONSIDERED

The Zero Waste Commission recommends *against* the action of taking the unprecedented step to inefficiently divide and subsume the Zero Waste Commission's purview into two separate advisory bodies, as Zero Waste by nature is achieved through a comprehensive, holistic, and systemic approach.

CITY MANAGER

On June 15, 2021, City Council voted to consolidate the Zero Waste Commission with other commissions that have similar missions. The consolidation will allow for issues of sustainability to be addressed more comprehensively and efficiently. Staff supports the consolidation and is developing new enabling legislation to effectuate the council direction.

CONTACT PERSON

Heidi Obermeit, Zero Waste Commission Secretary, Recycling Program Manager,
Public Works, (510) 981-6357



Office of the Mayor

CONSENT CALENDAR
September 14, 2021

To: Honorable Members of the City Council
 From: Mayor Jesse Arreguín
 Subject: 2022 UC Berkeley Chicanx Latinx Legacy Event

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$1,000 per Councilmember including \$1,000 from Mayor Arreguín, to the UC Berkeley Chicanx Latinx Alumni Association, the fiscal sponsor of the 2022 UC Berkeley Chicanx Latinx Legacy Events, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguín and any other Councilmembers who would like to contribute.

BACKGROUND

The UC Berkeley Chicanx Latinx Alumni Association (CLAA) was founded in 1984 to provide a mechanism for organizing, networking, and stewardship among alumni and students. The organization has played an important role in highlighting the role students have played on social movements and provide resources and mentorship to recruit, retain, and help Latinx students graduate.

The Legacy Event, which takes place on September 30 – October 2, 2022, aims to celebrate and uplift the contributions of Chicanx Latinx Alumni from UC Berkeley. As part of their legacy of giving back to UC Berkeley, the campus community is planning a series of events to highlight the new campus initiatives, accomplishments and current work under way.

Mayor Arreguín, an alumnus of UC Berkeley, is on the honorary committee for the Legacy Event, in which it is requested that \$1,000 be raised to support CLAA's efforts.

FINANCIAL IMPLICATIONS

No General Fund impact; \$1,000 is available from Mayor Arreguín's Office Budget discretionary accounts.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

2021 CLAA Legacy Event

CONSENT CALENDAR
September 14, 2021

Attachments:
1: Resolution

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

WHEREAS, Mayor Jesse Arreguin has surplus funds in his office expenditure account; and

WHEREAS, a California non-profit tax exempt corporation, the UC Berkeley Chicanx Latinx Alumni Association, seeks funds in the amount of \$1,000 for their Legacy Event to provide the following public services: to provide resources and mentorship to recruit, retain, and help Latinx students graduate; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose of supporting educational opportunities to communities that have historically been underserved and to highlight and celebrate the accomplishments of UC Berkeley Latinx students and alumni.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$1,000 per office shall be granted to the UC Berkeley Chicanx Latinx Alumni Association to fund the following services of providing resources and mentorship to recruit, retain, and help Latinx students graduate



Office of the Mayor

CONSENT CALENDAR
September 14, 2021

To: Honorable Members of the City Council
 From: Mayor Jesse Arreguín
 Subject: AAO Referral: Supply Bank

RECOMMENDATION

Refer to the November 2021 Annual Appropriations Ordinance process \$25,000 for Supply Bank to support their services in providing essential school supplies to Berkeley families.

BACKGROUND

Supply Bank, formerly known as K to College, is a non-profit founded in 2008 by UC Berkeley students and alumni with the goal of equal access to higher education for low-income students. Throughout the years, Supply Bank broadened their mission from improving higher education accessibility to addressing the education resource gap afflicting low-income communities from kindergarten to college, primarily through its successful School Supply Initiative.

For over a decade, Supply Bank has partnered with the City of Berkeley and the Berkeley Unified School District to serve approximately 1,000 low-income students in Berkeley each year with a yearly citywide school supply and dental kit distribution. Despite the COVID-19 pandemic, Supply Bank was able to continue this tradition by providing supply kits to families at San Pablo Park on August 14.

Historically, the City Council has approved the request of Supply Bank to provide \$25,000 annually for their program. However, due to the COVID-19 pandemic, Supply Bank was unable to make this request in time for the FY22 budget adoption in June. The \$25,000 would be retroactively applied to fund the event at San Pablo Park, and ensure that they can continue this essential program in future years.

FINANCIAL IMPLICATIONS

\$25,000

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts associated with the recommendations in this report.

CONTACT PERSON

AAO Referral: Supply Bank

CONSENT CALENDAR
September 14, 2021

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Program Summary of 2021 Supply Bank Fair

2021 Citywide Berkeley School Supply Distribution and Resource Fair, Program Summary

Background

SupplyBank.Org's K to College program serves approximately 1,000 low-income students in Berkeley each year with a yearly citywide school supply and dental kit distribution in partnership with the City of Berkeley. SupplyBank.Org's collaborative effort, which also includes the Berkeley Unified School District, the Berkeley Public Education Fund, the City of Berkeley, First Covenant Church, local businesses and community leaders, will provide comprehensive grade-appropriate school supply and dental supply kits for low income (free/reduced price meal eligible) TK-12 Berkeley students.

Timeline

- **July and August 2021:** As described in K to College's memorandum of understanding (MOU) with Berkeley Unified School District (BUSD), BUSD will utilize its "robo-call" system, mailing lists and/or any other outreach methods to inform eligible and target students and families about planned distributions of the assembled kits.
- **August 2021:** Due to COVID-19, SupplyBank.Org was unable to host our annual school and dental supply assembly with several hundred volunteers at the Chevron Auditorium of the UC Berkeley International House in Berkeley. SupplyBank.Org leveraged our local relationships to have the kits built at a warehouse, transferring none of the additional costs to BUSD or the City of Berkeley.
- **August 14, 2021:** SupplyBank.Org coordinated with BUSD and the City of Berkeley Parks, Recreation & Waterfront Department to conduct a one-day citywide distribution of the assembled kits. In addition to distributing supplies, this distribution was an excellent opportunity to continue the citywide resource fair where volunteers and staff from other organizations provided resources and other information to families. The distribution site remains San Pablo Park (2800 Park Street, Berkeley). A list of participating partners can be found below.
- **Summary:** The 2021 effort has served 1,110 BUSD students to date, with another 240 school supply kits being reserved for students identified as homeless or otherwise in need throughout the academic year. This is 1,350 students in total.



Above: Volunteers assembling supply kits at 2010 K to College event in UC Berkeley Pauley Ballroom



Above: Families line up to receive school supply kits at the K to College distribution event in Berkeley

- **History:** This is SupplyBank.Org’s oldest event and 12th citywide distribution (11th at San Pablo Park). The program has grown over the years and merged with several other citywide efforts to provide a one-stop back-to-school event for low-income children and families in Berkeley.

Current Sponsors and Volunteer Groups:

- City of Berkeley
- Covenant Church (food boxes)
- Berkeley Public Education Fund
- Junior League Volunteers East Bay,
- BUSD Student Services
- BUSD Information Technology department
- BUSD Admissions Office
- City of Berkeley



Office of the Mayor

CONSENT CALENDAR
September 14, 2021

To: Members of the City Council

From: Mayor Jesse Arreguín (Author), Vice Mayor Lori Droste, Councilmember Rashi Kesarwani, Councilmember Kate Harrison (Co-Sponsors)

Subject: Expansion of the Berkeley Fair Elections Program

RECOMMENDATION

Refer to the Fair Campaign Practices Commission (FCPC) to develop an ordinance to expand the Berkeley Fair Elections Program to include School Board Director, Rent Board Commissioner and City Auditor among the offices eligible to participate in the public financing program.

BACKGROUND

In November 2016 Berkeley voters approved Measure X1 by a vote of 65% Yes, 35% No. This measure amended the City Charter and Berkeley Election Reform Act to create a system of public funding of municipal election campaigns, called the Berkeley Fair Elections Act. The Fair Elections Act provides limited public matching funds to participating candidates who commit to raising small dollar donations from Berkeley residents.

The Fair Elections Act is currently available to candidates for City Council and Mayor. The program has worked as designed in both the 2018 and 2020 Berkeley elections, decreasing barriers to running for office and helping increase trust in government, as participating candidates are funded by small donations from Berkeley residents instead of relying on larger donations from individuals and wealthy interest groups.

The Fair Elections Act is currently funded, per Article III, Section 6.2 of the City Charter, with a specified amount every year. This amount was \$500,000 in 2016 and is adjusted for inflation and population changes each year. The program was designed with funding sufficient to support all five City offices: Mayor, City Councilmember, School Board Director, Rent Board Commissioner, and City Auditor. However, the supporters of Measure X1, which included California Common Cause, MapLight, the NAACP, the ACLU, and other groups and citizens, decided to write the measure to implement the program for Mayor and Council first, starting in 2018, thus allowing the Council and the Berkeley Fair Campaign Practices Commission (FCPC) to expand the program to School Board, Rent Board, and Auditor later. This allowed the City the opportunity to launch the program and evaluate its effectiveness before expanding it to other offices.

Since launching the program in 2018, the City has been able to sufficiently budget funding for administration and matching funds, while also balancing other budget priorities. Additionally, numerous candidates have participated in the program, and the City has adjusted regulations and administration procedures to streamline implementation.

The City Council and FCPC can implement this expansion to School Board Director, Rent Board Commissioner, and City Auditor with the "double green light" process of amending the Berkeley Election Reform Act, as prescribed in Berkeley Municipal Code Section 2.12.051. This process requires a two-thirds vote of the Commission, followed by a two-thirds vote of the Council. By passing this referral today, the Council signals its strong support for expanding the program to these additional offices, to level the playing field, increase opportunities for residents to have a voice in our elections and reduce the impact of money in politics. The specific details of the expanded program would be developed and potentially passed by the Commission and then come to Council for review and potential approval.

FINANCIAL IMPLICATIONS

To be determined

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts associated with the recommendations in this report.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: BMC Chapter 2.12, Article 8. Berkeley Fair Elections Act of 2016
- 2: City of Berkeley campaign expenditures 2014-2020 for School Board, Rent Board, and Auditor

penalties enumerated in California Government Code Section [91013](#), which is incorporated herein. (Ord. 7234-NS § 5, 2012; Ord. 6096-NS, § 2 (part), 1991)

Article 8. Berkeley Fair Elections Act of 2016

2.12.490 Title and purpose.

This Article shall be known as the Berkeley Fair Elections Act of 2016. Its purposes are to:

- A. Diminish the public perception of corruption and strengthen public confidence in the governmental and election processes.
- B. Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- C. Help reduce the influence of private campaign contributions on Berkeley government.
- D. Reduce the impact of wealth as a determinant of whether a person becomes a candidate.
- E. Foster more meaningful participation in the political process.
- F. Provide candidates who participate in the program with sufficient resources with which to communicate with voters.
- G. Increase the accountability of elected officials to the constituents who elect them, as opposed to the contributors who fund their campaigns.
- H. Free candidates from the time needed to raise campaign money, and allow officeholders more time to carry out their official duties. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.495 Offices covered.

Candidates for the offices of Mayor and City Council shall be eligible to participate in the public campaign financing program established by this chapter. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.500 Eligibility for Fair Elections campaign funding.

- A. To be eligible to be certified as a participating candidate, a candidate must:
 - 1) During the qualifying period for the election involved, choose to participate in the Fair Elections program by filing with the City a written application for certification as a participating candidate in such form as may be prescribed by the Commission, containing the identity of the candidate, the office that the candidate seeks, and the candidate's signature, under penalty of perjury, certifying that:
 - a) The candidate has complied with the restrictions of this chapter during the election cycle to date;
 - b) The candidate's campaign committee has filed all campaign finance reports required by law during the election cycle to date and that they are complete and accurate; and
 - c) The candidate will comply with the requirements of this Act during the remainder of the election cycle and, specifically, if certified an eligible participating candidate, will comply with the requirements applicable to participating candidates.
 - 2) Meet all requirements to be eligible to hold the office of Mayor or Councilmember as set forth in Sections 9 and 10 of Article V of the Charter of the City of Berkeley;
 - 3) Before the close of the qualifying period, collect and submit at least 30 qualified contributions, from at least 30 unique contributors, of at least ten dollars (\$10), for a total dollar amount of at least five-hundred dollars

(\$500).

- a) Each qualified contribution shall be acknowledged by a receipt to the contributor, with a copy retained by the candidate. The receipt shall include the contributor's signature, printed name, home address, and telephone number, if any, and the name of the candidate on whose behalf the contribution is made. In addition, the receipt shall indicate by the contributor's signature that the contributor understands that the purpose of the qualified contribution is to help the candidate qualify for Fair Elections campaign funding and that the contribution is made without coercion or reimbursement.
 - b) A contribution for which a candidate has not obtained a signed and fully completed receipt shall not be counted as a qualified contribution.
- 4) Maintain such records of receipts and expenditures as required by the Commission;
 - 5) Obtain and furnish to the Commission or City staff any information they may request relating to his or her campaign expenditures or contributions and furnish such documentation and other proof of compliance with this chapter as may be requested by such Commission or City staff;
 - 6) Not make expenditures from or use his or her personal funds or funds jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her election except as a monetary or non-monetary contribution to his or her controlled committee of \$250 or less. Contributions from a participating candidate to his or her own controlled committee are not eligible for matching funds.
 - 7) Not accept contributions in connection with the election for which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with a fair market value not greater than fifty dollars (\$50). The aggregate value of all contributions from any individual must not be greater than fifty dollars (\$50);
 - 8) Not solicit or direct contributions in connection with any election during the election cycle in which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with fair market value not greater than fifty dollars (\$50) to such candidate's controlled committee.
 - 9) Not accept loans from any source.
 - 10) The City has the authority to approve a candidate's application for public financing, despite a violation by the candidate related to participation and qualification in the public financing program, if the violation is minor in scope and the candidate demonstrates a timely, good-faith effort to remedy the violation. The Commission shall adopt regulations setting forth guidelines for what constitutes a minor violation under this provision.
- B. At the earliest practicable time after a candidate files with the City a written application for certification as a participating candidate, the City shall certify that the candidate is or is not eligible. Eligibility can be revoked if the Commission determines that a candidate has committed a substantial violation of the requirements of this Act, in which case all Fair Elections funds shall be repaid.
- C. At the discretion of the Commission or at the applying candidate's request, the City's denial of eligibility is subject to review by the Commission. The Commission's determination is final except that it is subject to a prompt judicial review pursuant to Section [2.12.235](#).
- D. If the City or Commission determines that a candidate is not eligible, the candidate is not required to comply with provisions of this Act applicable only to participating candidates. (Ord. 7723-NS § 1, 2020: Ord. 7691-NS § 2, 2020: Ord. 7674-NS § 1, 2019: Ord. 7564-NS § 7, 2017: Ord. 7524-NS § 3.6 (part), 2016)

2.12.505 Fair Elections fund payments.

- A. A candidate who is certified as an eligible participating candidate shall receive payment of Fair Elections funds equal to six-hundred percent (600 percent) of the amount of qualified contributions received by the candidate during the election cycle with respect to a single election subject to the aggregate limit on the total amount of Fair Elections funds payments to a candidate specified in Section [2.12.505.B](#).
- B. The aggregate amount of Fair Elections funds payments that may be made to a participating candidate during an election cycle may not exceed:
- 1) \$120,000 for a candidate running for the office of Mayor;
 - 2) \$40,000 for a candidate running for the office of City Council.
- C. A participating candidate's application for Fair Elections funds, including an initial request submitted with an application for certification as a participating candidate, shall be made using a form prescribed by the Commission and shall be accompanied by qualified contribution receipts and any other information the Commission deems necessary. This application shall be accompanied by a signed statement from the candidate indicating that all information on the qualified contribution receipts is complete and accurate to the best of the candidate's knowledge.
- 1) All Qualified Contributions, of any dollar amount, eligible for matching Fair Elections funds must be publicly disclosed with the contributor information required under Sections [2.12.280](#) and [2.12.283](#).
 - 2) All campaign filings must be current in order for a Participating Candidate to receive a disbursement of Fair Elections funds and the Participating Candidate and a Participating Candidate's controlled committee must not have any outstanding fines related to campaign filings or violations of municipal, state or federal election law. All applications for Fair Elections funds shall include a certification by the Participating Candidate that the Participating Candidate or his or her controlled committee does not have any outstanding fines or penalties related to campaign filings. Upon submission of outstanding campaign filings and payment of any outstanding fines, withheld Fair Elections funds will be disbursed at the next regularly scheduled distribution for that election cycle.
- D. The City shall verify that a candidate's qualified contributions meet all of the requirements and restrictions of this Act prior to the disbursement of Fair Elections funds to the candidate. A participating candidate who receives a qualified contribution that is not from the person listed on the qualified contribution receipt shall be liable to pay the Fair Elections Fund the entire amount of the inaccurately identified contribution, in addition to any penalties.
- E. The City shall make an initial payment of Fair Elections funds within seven business days of the City's certification of a participating candidate's eligibility, or as soon thereafter as is practicable. City staff shall report a certification or denial to the Commission no later than the Commission's next regular meeting, consistent with the Brown Act.
- F. The Commission shall establish a schedule for the submission of Fair Elections funds payment requests, permitting a candidate to submit a Fair Elections funds payment request at least once per month. However, the Commission shall schedule a minimum of three payment request submission dates within the thirty days prior to an election.
- G. The City shall provide each participating candidate with a written determination specifying the basis for any non-payment of Fair Elections funds. The Commission shall provide participating candidates with a process by which they may immediately upon receipt of such determination petition the Commission for reconsideration of any such non-payment and such reconsideration shall occur within seven business days of the filing of such petition. In the event that the Commission denies such petition then it shall immediately notify the candidate of his or her right to seek judicial review of the Commission's denial pursuant to Section [2.12.235](#).

H. Unspent funds of any Participating Candidate who does not remain a candidate until the election for which they were distributed, or such funds that remain unspent by a Participating Candidate following the date of the election for which they were distributed shall be deposited into the Fair Elections Fund. A Participating Candidate shall deposit all unspent funds into the Fair Elections Fund, up to the total amount of funds that the Participating Candidate received as Fair Elections Fund distributions in that election cycle, within sixty (60) days after the date of the election. (Ord. 7723-NS § 2, 2020: Ord. 7691-NS § 3, 2020: Ord. 7674-NS § 2, 2019: Ord. 7564-NS § 8, 2017: Ord. 7524-NS § 3.6 (part), 2016)

2.12.510 Candidate statement notice.

A candidate certified as a Fair Elections program participant shall be identified as such by a notice printed on the same page as the candidate's statement of qualifications distributed to voters pursuant to City Charter Article III Section 6.1. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.515 Transition rule for current election cycle.

During the first election cycle that occurs after Council implementation of this Act, a candidate may be certified as a participating candidate, notwithstanding the acceptance of contributions other than qualified contributions before the date of enactment that would, absent this Section, disqualify the candidate as a participating candidate, provided that any funds other than qualified contributions accepted but not expended before the effective date of this Act shall be:

- A. Returned to the contributor;
- B. Held in a special campaign account and used only for retiring a debt from a previous campaign; or
- C. Submitted to the City for deposit in the Fair Elections Fund. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.520 Special municipal elections.

The provisions of this chapter apply to special municipal elections as defined in City Charter Article III Section 4. The Commission shall adjust the deadlines in this Act to account for the circumstances of the special municipal election. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.525 Campaign accounts for participating candidates.

- A. During an election cycle, each participating candidate shall conduct all campaign financial activities through a single campaign expenditure and contribution account as required by Section [2.12.250](#).
- B. A participating candidate may maintain a campaign account other than the campaign account described in subsection A if the other campaign account is for the purpose of retiring a campaign debt that was incurred during a previous election campaign in which the candidate was not a participating candidate.
- C. Contributions for the purposes of a retiring a previous campaign debt that are deposited in the kind of "other campaign account" described in subsection B shall not be considered "contributions" to the candidate's current campaign.
- D. Participating candidates shall file reports of financial activity related to the current election cycle separately from reports of financial activity related to previous election cycles. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.530 Use of Fair Elections funds.

- A. A participating candidate shall use Fair Elections funds and contributions only for direct campaign purposes.
- B. A participating candidate shall not use Fair Elections funds or contributions for:
 - 1) Costs of legal defense in any campaign law enforcement proceeding under this Act, or penalties arising from violations of any local, state, or federal campaign laws;

- 2) The candidate's personal support or compensation to the candidate or the candidate's family;
- 3) Indirect campaign purposes, including but not limited to:
 - a) Any expense that provides a direct personal benefit to the candidate, including clothing and other items related to the candidate's personal appearance;
 - b) Capital assets having a value in excess of five hundred dollars (\$500) and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;
 - c) A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;
 - d) An independent expenditure as defined in Berkeley Municipal Code Section [2.12.142](#) as may be amended;
 - e) Any payment or transfer for which compensating value is not received;

C. The term "Contribution" is defined in [2.12.100](#) and includes "Qualified Contributions" as defined in [2.12.167](#) and contributions from non-residents of Berkeley as described in [2.12.500.A.7](#).

D. The dollar amounts in Section 2.12.530.B.3.b may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545. (Ord. 7691-NS § 4, 2020: Ord. 7674-NS § 3, 2019: Ord. 7564-NS § 9, 2017: Ord. 7524-NS § 3.6 (part), 2016)

2.12.535 Administrative modification of timelines.

Notwithstanding any provision in this chapter to the contrary, the Commission may alter any of the time periods or deadlines listed herein if it finds that they are impracticable, so long as the readjusted period or deadline meets the objectives of this chapter. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.540 Insufficient funds in the program.

If the Commission determines that there are insufficient funds in the Fair Elections Fund to fund adequately all participating candidates, the Commission shall notify participating candidates that the Commission will not likely be capable of distributing to all participating candidates the maximum aggregate amount of Fair Elections funds payments permissible under Section [2.12.505.B](#). Under such circumstances, at such time as the Commission is unable to fulfill a valid application for Fair Elections funds submitted by a participating candidate pursuant to Section [2.12.505.C](#), the participating candidate may solicit for such candidate's controlled committee and accept any contributions permissible under City law and shall no longer be subject to the restriction on use of personal funds established by Section [2.12.500.A.6](#). (Ord. 7524-NS § 3.6 (part), 2016)

2.12.545 Cost of living adjustments.

The Commission shall adjust the dollar amounts specified in Sections [2.12.167](#), [2.12.500.A.3](#), [2.12.505.B](#) and 2.12.530.B.3.b for cost of living changes pursuant to Section [2.12.075](#) in January of every odd-numbered year following Council implementation. Such adjustments shall be rounded to the nearest ten dollars (\$10) with respect to Sections [2.12.167](#), [2.12.500.A.3](#) and 2.12.530.B.3.b and one thousand dollars (\$1,000) with respect to Section [2.12.505.B](#). (Ord. 7691-NS § 5, 2020: Ord. 7564-NS § 10, 2017: Ord. 7524-NS § 3.6 (part), 2016)

2.12.550 Fair Elections Act penalties.

In addition to other enforcement and penalty provisions of this Article:

- A. It is a violation of the law for candidates to accept more Fair Elections Act benefits than those to which they are entitled or misuse such benefits or Fair Elections funding.
- B. If a participating candidate knowingly or willfully accepts or spends Fair Elections funding in violation of this Act, then the candidate shall repay to the Fair Elections Fund an amount equal to twice the value of Fair Elections funding unlawfully accepted or spent.
- C. The Commission shall, after a hearing held pursuant to Section [2.12.230](#), have the authority to impose the fine created by this section upon a two-thirds vote. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.555 Violation--Persons ineligible for public funds--Time limit.

No person who commits a substantial violation of this chapter shall be eligible to receive public funds for a period of four years from and after the date that the Commission determines, upon a two-thirds vote, that such a violation has occurred, following a hearing held pursuant to Section [2.12.230](#). The Commission shall by regulation state the criteria to be satisfied in order to make a finding of a substantial violation. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.560 Review by Commission.

After each of the first two election cycles that occur after Council implementation of this Act, the Commission shall review the Fair Elections program and make recommendations to Council for policy changes to improve and refine the program. (Ord. 7524-NS § 3.6 (part), 2016)

The Berkeley Municipal Code is current through Ordinance 7778-NS, passed June 29, 2021.

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

City Website: <https://www.cityofberkeley.info/Home.aspx>
 (<https://www.cityofberkeley.info/Home.aspx>)
 Telephone number: (510) 981-6900
 Code Publishing Company
 (<https://www.codepublishing.com/>)

Home (<https://www.cityofberkeley.info>) | Web Policy (<https://www.cityofberkeley.info/webpolicy>) | Text-Only Site Map
 (<https://www.cityofberkeley.info/SiteMap.aspx>) | Contact Us (<https://www.cityofberkeley.info/contactus>)
 City Clerk (<http://www.cityofberkeley.info/clerk>) , 2180 Milvia Street, Berkeley, CA 94704
 Questions or comments? Email: clerk@cityofberkeley.info (<mailto:clerk@cityofberkeley.info>) Phone: (510) 981-6900

CITY OF BERKELEY CAMPAIGN EXPENDITURES 2014-2020

for Auditor, Rent Board, and School Board

Data collected from the City of Berkeley's Public Portal for Lobbyist and Campaign Finance Disclosure by MapLight, a nonprofit research organization.

Candidates with less than \$500 in total expenditures were excluded from this dataset.

Winning candidates are indicated by an asterisk*

2014

Office Sought	Candidate	Total Expenditures
Auditor	Anne-Marie Hogan*	\$ 2,639
Rent Stabilization Board	James Chang*	\$ 2,092
Rent Stabilization Board	John Selawsky*	\$ 1,894
Rent Stabilization Board	Jesse Townley*	\$ 1,705
Rent Stabilization Board	Katherine Harr*	\$ 1,553
Rent Stabilization Board	Paola Laverde*	\$ 1,110
School Board Trustee	Ty Alper*	\$ 48,298
School Board Trustee	Julie Sinai	\$ 30,220
School Board Trustee	Joshua Daniels*	\$ 22,430
School Board Trustee	Karen Hemphill*	\$ 11,533

Independent Expenditures

No independent expenditures found for the above contests.

2016

Office Sought	Candidate	Expenditures
Rent Stabilization Board	Judy Hunt	\$ 7,991
Rent Stabilization Board	Christina Murphy*	\$ 6,846
Rent Stabilization Board	Leah Simon-Weisberg*	\$ 5,615
Rent Stabilization Board	Igor Tregub*	\$ 5,110
Rent Stabilization Board	Alejandro Soto-Vigil*	\$ 4,013
Rent Stabilization Board	Nathan Wollman	\$ 3,551
School Board Trustee	Judy Appel*	\$ 5,342
School Board Trustee	Beatriz Leyva-Cutler*	\$ 1,301
School Board Trustee	Abdur Sikder	\$ 1,069

Independent Expenditures

Committee	Candidate	Support or Oppc	Total Expenditures	Office Sought
Berkeley Working Families	Alejandro Soto-Vigil	support	734	Rent Stabilization Board
Berkeley Working Families	Christina Murphy	support	734	Rent Stabilization Board
Berkeley Working Families	Igor Tregub	support	734	Rent Stabilization Board
Berkeley Working Families	Leah Simon-Weisberg	support	734	Rent Stabilization Board

2018

Office Sought	Candidate	Total Expenditures
Auditor	Jennifer Wong*	\$ 24,875
Auditor	Vladislav Davidzon	\$ 14,714
Auditor	John Selawsky	\$ 1,970
Rent Stabilization Board	James Chang*	\$ 9,749
Rent Stabilization Board	Judy Hunt	\$ 5,161
Rent Stabilization Board	Maria Poblet*	\$ 2,089
Rent Stabilization Board	John Selawsky*	\$ 1,970
Rent Stabilization Board	Solomon Alpert*	\$ 1,959
Rent Stabilization Board	Paola Laverde*	\$ 1,844
School Board Trustee	Ty Alper*	\$ 37,567
School Board Trustee	Julie Sinai*	\$ 29,767
School Board Trustee	Ka'Dijah Brown*	\$ 10,594
School Board Trustee	Lea Baechler-Brabo	\$ 500

Independent Expenditures

Committee	Candidate	Support or Opp	Total Expenditures	Office Sought
California Federation Of Teachers	Jule Sinai	support	2,420	School Board
California Federation Of Teachers	Ka'Dijah Brown	support	2,420	School Board
California Federation Of Teachers	Ty Alper	support	2,420	School Board

2020

Office Sought	Candidate	Total Expenditures
Rent Stabilization Board	Andy Kelley*	\$ 16,104
Rent Stabilization Board	Bahman Ahmadi	\$ 13,600
Rent Stabilization Board	Soulmaz Panahi	\$ 11,970
Rent Stabilization Board	Dan McDunn	\$ 8,756
Rent Stabilization Board	Leah Simon-Weisberg*	\$ 8,646
Rent Stabilization Board	Wendy Hood	\$ 7,638
Rent Stabilization Board	Carole Marasovic	\$ 6,762
Rent Stabilization Board	Pawel Moldenhawer	\$ 5,823
Rent Stabilization Board	Timothy Johnson*	\$ 4,848
Rent Stabilization Board	Mari Mendonca*	\$ 4,547
Rent Stabilization Board	Dominique Walker*	\$ 4,115
School Board Trustee	Ana Vasudeo*	\$ 23,061
School Board Trustee	Laura Babbit*	\$ 12,291
School Board Trustee	Michael Chang	\$ 16,503
School Board Trustee	Jose Bedolla	\$ 3,371
School Board Trustee	Esfandiar Imani	\$ 2,732

Independent Expenditures

Committee	Candidate	Support or Oppose	Expenditures	Office Sought
National Association Of Realtors Fund	Bahman Ahmadi	support	54,143	Rent Stabilization Board
National Association Of Realtors Fund	Dan McDunn	support	17,791	Rent Stabilization Board
National Association Of Realtors Fund	Soulmaz Panahi	support	17,791	Rent Stabilization Board
National Association Of Realtors Fund	Wendy Saenz Hood Ne	support	17,791	Rent Stabilization Board
Committee For Ethical Housing, Suppo	Pawel Moldenhawer	support	5,756	Rent Stabilization Board
Committee For Ethical Housing, Suppo	Wendy Saenz Hood Ne	support	5,756	Rent Stabilization Board
Committee For Ethical Housing, Suppo	Dan McDunn	support	5,756	Rent Stabilization Board
Committee For Ethical Housing, Suppo	Soulmaz Panahi	support	5,756	Rent Stabilization Board
Committee For Ethical Housing, Suppo	Bahman Ahmadi	support	5,756	Rent Stabilization Board



Rashi Kesarwani
Councilmember District 1

CONSENT CALENDAR
September 14, 2021

TO: Honorable Mayor and Members of City Council

FROM: Councilmember Rashi Kesarwani (Author), Councilmember Harrison (Co-Sponsor)

SUBJECT: Resolution in Support of Observance of August 30, the International Day of the Victims of Enforced Disappearances in El Salvador

RECOMMENDATION

Adopt a resolution in support of retroactively enacting August 30 as a day of observance in recognition of the International Day of the Victims of Enforced Disappearances in El Salvador.

BACKGROUND

The Salvadoran civil war (1980-1992) was a time of a militarily repressive regime, aided in part by United States tax dollars, that brought about the displacement, death and forced disappearances of hundreds of thousands of Salvadoran civilians. The multi-year armed conflict instigated an exodus of tens of thousands of Salvadoran migrants to the United States, many of whom have family members that were disappeared during this war. Current Salvadoran migrants living in the United States seek to be made whole through recognition of their collective trauma of the forced disappearances symbolized by this resolution, and through the continuing search for the remains of their loved ones.

CURRENT SITUATION AND ITS EFFECTS

The Mauricio Aquino Foundation (MAF), with offices in Berkeley, was founded in 2013 by Salvadoran Americans with the goal to help their community members find closure to the traumas of forced disappearances experienced during the Salvadoran civil war; educate Americans about the causes of the diaspora that brought Salvadoran migrants to the United States; and build a strong community engaged in social change and empowerment for themselves and the community at large. The MAF has been working in cities with large Salvadoran communities (such as San Francisco; Los Angeles; Washington, D.C.; and Houston) for the past several years

2180 Milvia Street, Berkeley, CA 94704 • Tel: (510) 981-7110 • TDD: (510) 981-6903 • Fax: (510) 981-7111
E-Mail: rkesarwani@cityofberkeley.info

to bring reconciliation to thousands of the grieving families in the United States and in El Salvador by working towards securing the remains of their loved ones. During this time, they have built coalitions with eleven other human rights groups that have put pressure on the U.S. and Salvadoran governments, achieving significant results. In 2016, the sitting Salvadoran president acknowledged the forced disappearance of adults during the civil war. That same year, 26 members of the U.S. Congress signed MAF's letter asking then-President Barack Obama to declassify records of the disappeared in El Salvador's war. And in 2018 the first Salvadoran government-sanctioned commission, called the Commission for the Search of the Disappeared Adults during the Armed Conflict, was established and charged with investigating cases of disappeared relatives. The work continues, however, as the current Salvadoran President and legislature refuse to resolve the disappearances any further. The MAF, in conjunction with The Central American Resource Center (CARECEN) and the SHARE Foundation, is requesting solidarity from city, regional, state, and national elected leaders and governments to pass resolutions in support of the Salvadoran American community as they advance their cause. Such resolutions will help to address collective trauma while reckoning with the past and providing models of truth and reconciliation, and providing some measures of accountability.

FISCAL IMPLICATIONS

None.

ENVIRONMENTAL IMPACTS

This resolution will have no negative environmental effects.

CONTACT PERSON

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

Attachment:
Resolution

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

RESOLUTION IN SUPPORT OF OBSERVANCE OF AUGUST 30 THE
INTERNATIONAL DAY OF THE VICTIMS OF ENFORCED DISAPPEARANCES IN
EL SALVADOR

WHEREAS, the United Nations declared August 30 The International Day of the Victims of Enforced Disappearances; and

WHEREAS, El Salvador endured a civil war (1980-1992) that displaced 500,000 people, forced the migration of 1 Million, killed 75,000, and forcibly disappeared at least another 10,000; and

WHEREAS, the U.S. Government supported government and military repression, providing more than \$4 billion in U.S. tax dollars for training and aid to the Salvadoran military; and

WHEREAS, over 2 million Salvadorans currently live and work in the United States forming the third largest Latinx community in the country, with over 740,000 Salvadorans residing in California and over 105,000 in the Bay Area; and

WHEREAS, the families and friends of the victims of forced disappearance experience post-traumatic stress disorder, mental anguish, alternating between hope and despair, wondering and waiting, sometimes for years, for news that may never come with the impunity compounding the suffering and anguish; and

WHEREAS, the United Nations declared Forced Disappearance a crime against humanity in its 1992 Declaration on the Protection of All Persons from Enforced Disappearance; and

WHEREAS, El Salvador's National Assembly and President have not ratified the United Nations International Convention for the Protection of All Persons from Enforced Disappearance; and

WHEREAS, forced disappearance has frequently been used by dictatorships as a strategy to spread terror within the society, and affects the communities and society as a whole; and

WHEREAS, the victims' families have the right to seek reparations, and to demand the truth about the disappearance of their loved ones; and

WHEREAS, remembering dignifies the victims and their families, and constructs bridges to transmit historical memory to younger generations of Salvadoran Americans; and

WHEREAS, the mothers and relatives of the disappeared in El Salvador and in the Bay Area have been searching for the whereabouts of their loved ones for decades, demanding that the Salvadoran National Assembly recognize and enact August 30 the International Day of the Victims of Enforced Disappearances;

THEREFORE, BE IT RESOLVED, that the Berkeley City Council enacts the observance of August 30 as the International Day of the Victims Enforced Disappearances in El Salvador as a special tribute to U.S. Salvadorans.

AND, BE IT FURTHER RESOLVED, that the Berkeley City Council calls on the Salvadoran National Assembly to recognize and declare August 30 The International Day of the Victims of Enforced Disappearances, and requests that President Biden declassify U.S. records that relate to disappearances and other human rights violations that took place during the civil war.



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf, Mayor Arreguín, Councilmember Droste,
Councilmember Taplin

Subject: Resolution Expressing Conceptual Support for an East Bay Wildfire Prevention
and Vegetation Management Joint Powers Agency

RECOMMENDATION

Adopt a Resolution in favor of Conceptual Support for an East Bay Wildfire Prevention
and Vegetation Management Joint Powers Agency.

FINANCIAL IMPLICATIONS

None

BACKGROUND

This item is in support of the concept of using the Joint Powers Authority structure and process to address the wildfire threat posed by vegetation management in the hills of Alameda and Contra Costa counties. Today, local government agencies are responsible for preventing and fighting wildfires in urbanized areas. Counties are responsible for unincorporated areas.

However, wildfires cross jurisdictional boundaries involving multiple cities and counties. Wildfires move at hurricane speeds and force, with winds from 60 to 100 mph, forceful enough to jump huge freeways. It took only one hour for the Berkeley Oakland Tunnel Fire to move from the Berkeley Hills across the Highway 24 freeway to destroy homes in the Upper Rockridge area of Oakland. To the north, it took only four hours for the Tubbs Fire to move from the Napa Valley to Santa Rosa. To the south, the Thomas Fire moved from Ventura to Santa Barbara, jumping a 15-lane freeway. Once started, the intensity of heat and speed makes extinguishing wildfires very challenging, leaving evacuation as the only tool to protect life safety. Evacuation times are often measured in minutes, or less. Since they are impossible to stop once they get going, preventing wildfires becomes a priority.

In Alameda County alone, there are 14 separate cities. If vegetation in our area is to be well managed to reduce the threat of wildfire, the necessary expertise, workforce and financial resources must be assembled over a broad enough area to be effective. Local

agencies with all their present responsibilities unfortunately lack sufficient breadth and resources to adequately address the enormity of the problem. Coordinating vegetation management among all the East Bay local public agencies is an impossible challenge without a structure and mechanism to lead that effort. Just as we have special districts in the Bay Area to manage air quality, water quality, lead abatement and regional planning and transportation, it is time to think about creating a wildfire prevention district to manage vegetation and dramatically reduce the fuel that causes the spread of wildfires in our neighborhoods in the wildland urban interface. Local government agencies in Alameda and Contra Costa counties should begin the process of discussing the creation of a joint powers authority to accomplish this goal.

Discussions around creating an East Bay Wildfire Prevention and Vegetation Management Joint Powers Agency might include:

(1) Developing a plan to reduce the most flammable wildlands vegetation in the East Bay Hills to the maximum extent feasible and to replace it with wildfire resistant vegetation where appropriate, to protect wildlife habitat and native plants.

(2) A "Defensible Space" program to aid owners of private property with information resources to manage vegetation on their properties.

(3) A "Home Hardening" program to advise homeowners, schools and commercial property owners on how their structures can be protected from wildfires.

5) The JPA raising funds by applying for state and federal grants, preparing tax measures for voter approval and other means permitted by law.

6) Implementing the plan by retaining sufficient staff and equipment and/or by contracting with others to remove the most flammable vegetation in wildland areas and to implement the public information programs for defensible space and home hardening.

ENVIRONMENTAL SUSTAINABILITY

California's 2020 wildfires caused greenhouse gas emissions similar to 24 million passenger vehicles driven for one year, according to the EPA's Greenhouse Gas Equivalencies Calculator. That's nearly three times the emissions from California's 2018 wildfires. Emissions from wildfire undermine California's work towards greenhouse gas reduction, a situation worsening as climate change accelerates.¹

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

¹ <https://news.bloomberglaw.com/environment-and-energy/californias-2020-wildfire-emissions-akin-to-24-million-cars>

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

**EXPRESSING CONCEPTUAL SUPPORT FOR THE FORMATION OF AN EAST BAY
WILDFIRE PREVENTION AND VEGETATION MANAGEMENT JOINT POWERS
AGENCY**

WHEREAS, historic wildfires throughout California and the Western United States in recent years demonstrate that the impacts of global climate change will continue to have potentially devastating effects throughout the region; including loss of life, loss of property, economic impacts, infrastructure damage, and public health hazards associated with air quality, among others; and

WHEREAS, reactive approaches to fire management and containment are deployed during times of crisis and overextend local and state resources; and

WHEREAS, the spread of wildfire does not respect political or jurisdictional boundaries; burn areas and air quality impacts from smoke extend throughout the region; and

WHEREAS, a large portion of the East Bay region, including the East Bay Hills from Hercules to Fremont are a designated high-risk fire hazard zone by the State Agency CALFIRE; and

WHEREAS, a more coordinated approach and investment in wildfire prevention and vegetation management may help to mitigate the number and severity of wildfire events; and

WHEREAS, regional coordination may prove both more effective and more efficient in developing and implementing best practices, as well as sharing expertise and other resources; and

WHEREAS, the East Bay contains more than 33 municipalities, numerous unincorporated communities, and fire and special districts, that may all benefit from a coordinated fire management approach; and

WHEREAS, a regional initiative has been launched to form a Joint Powers Authority (JPA) bringing together cities, counties, and jurisdictions from throughout the East Bay to pursue coordinated planning and funding for vegetation management and fire prevention; and

WHEREAS, participating in planning and development of a JPA will be beneficial for the City of Berkeley to access and leverage state and federal resources for vegetation management and pursue coordinated projects to reduce fire risk in the East Bay Hills.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley agrees to be involved and participate in presentations, meetings, and negotiations to consider, in concept, the formation of a regional Vegetation Management Joint Powers Agency to address and improve fire safety in the East Bay.

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon passage and adoption.



Office of the City Manager

PUBLIC HEARING
September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Jordan Klein, Director, Planning and Development Department
 Subject: Adoption of the Baseline Zoning Ordinance (BZO)

RECOMMENDATION

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

SUMMARY

The Zoning Ordinance Revision Project (ZORP) originated from a 2016 City Council referral which asked the Planning Department to undertake structural revisions of the Zoning Ordinance. The goals of the referral included making the ordinance more straightforward to use, reducing the types of projects requiring extensive discretionary review, and adding graphic illustrations of terms, regulations and processes. The project has been divided into two phases. The first is a new Baseline Zoning Ordinance (BZO), which is reworded and formatted to make land use regulations easier to read, understand and administer. The BZO contains all the regulatory elements of the existing Zoning Ordinance and contains no major substantive policy changes. The second phase, yet to begin, will include substantive amendments intended to reduce the complexity of the City's zoning regulations and address the streamlining recommended in the referral.

A fully-formatted and more readable PDF of the Baseline Zoning Ordinance can be found at this link:

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Att%201%20Exhibit%20A%20-%20Baseline%20Zoning%20Ordinance.pdf

FISCAL IMPACTS OF RECOMMENDATION

Revising the Zoning Ordinance is a staff-intensive effort with a robust public input process and significant time dedicated to drafting language and reviewing for accuracy. Staffing costs are covered utilizing the existing Land Use Policy team and project

consultants. Consultant work for development of the BZO cost approximately half of the ZORP's \$300,000 project budget.

It will cost \$15,000 for the City's ordinance publisher to replace the existing online-version of the BMC Title 23 with the BZO. This will include hyperlinked cross-referencing and quality assurance check of presentation on the City website.

CURRENT SITUATION AND ITS EFFECTS

The BZO is a Strategic Plan Priority Project, advancing the City's goal to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community. This project was initiated by a January 26, 2016 City Council referral that focused on customer service enhancements and the need to provide a Zoning Ordinance that was written clearly and concisely and laid out in an intuitive manner (see Attachment 2). Requested revisions would clarify rules and procedures, provide informative tables and figures, and ensure internal consistency with the rest of the BMC. The 2017 City-commissioned Zucker report on Planning Department customer service also recommended that the City revise the Ordinance to correct grammatical and technical errors, reduce complexity, eliminate possible conflicts or contradictions, and align with current policies and practices.

Project Approach

In 2017, staff released a Request for Proposals and selected a consultant team with technical zoning expertise (Ben Noble and Clarion Associates) to support the ZORP project. ZORP began with a baseline evaluation of the existing Zoning Ordinance that involved a thorough review of the existing zoning code, prior zoning interpretations, and staff-suggested technical edits. The project team also interviewed Planning Department staff to understand challenges implementing the code and to compile a summary of issues raised by members of the public. Based on this evaluation and a survey of Zoning Ordinances from cities of similar size and character, the project team proposed a two-phased approach to ZORP.

Phase 1: Prepare a new Baseline Zoning Ordinance (BZO). This phase will result in a newly written, newly formatted Zoning Ordinance that is easy to read, understand and administer. Phase 1 also provides the opportunity to systematically review the regulations to identify code sections that could benefit from substantive changes to be addressed in Phase 2.

Phase 2: Undertake selected major substantive changes, identified in Phase 1, that could be implemented to bolster customer service or improve the permitting process. Phase 2 revisions will be aligned with other Planning Division initiatives and outstanding referrals from City Council.

Meetings and Engagement

The Planning Commission and the Zoning Adjustments Board have been actively involved in this project. Planning Commission supported the two-phase approach, and appointed three members to a ZORP Subcommittee. The Zoning Adjustments Board (ZAB) also formed a ZORP Subcommittee that met concurrently with Planning Commission's subcommittee to provide guidance, input and review of draft BZO chapters. The full Planning Commission and ZAB received regular updates from subcommittee members at their meetings, and the project team provided project updates annually to the full commission/board when subcommittees were re-established¹, providing an opportunity for feedback from the parent commission/board and public comment from the community.

On July 7, 2020 the ZORP Subcommittees recommended that the draft BZO move forward for public review and public hearings. The BZO then went through a final round of drafting and returned to the Planning Commission on December 16, 2020 for a public hearing. At that meeting, Planning Commission voted to recommend that City Council adopt the BZO (Moved: Vincent; Seconded: Wiblin. Vote 8-0-1; Ayes: Beach, Hauser, Kapla, Krpata, Lacey, Schildt, Vincent and Wiblin. Noes: none. Abstain: Ghosh; see Attachment 3).

Public Outreach and Feedback

In addition to receiving feedback at public meetings, the project team designed a Community Outreach Plan to solicit input on the draft BZO, which included:

- The creation of the Zoning Ordinance Revision Project website (see Link 1);
- Targeted outreach to over 35 frequent project applicants;
- Internal outreach to Planning Department staff;
- Office hours to meet with members of the public via Zoom, to introduce the BZO and receive questions and comments; and
- A Berkeley Considers survey, which received 194 visitors and 24 responses.

Summary of BZO

The BZO rewrites and reformats the Zoning Ordinance without making any substantive changes in regulations. The BZO addresses a portion of the Council referral and provides a better customer experience with the following improvements:

- **Provides Easy to Follow Format and Writing Style.** The current Zoning Ordinance has been criticized for containing technical jargon, wordy phrases, inconsistent formatting, and a repetitive structure. The BZO addresses these concerns by providing clear explanations, updated formatting, and an intuitive

¹ The Commissioners Handbook requires parent commissions to re-elect subcommittee members on an annual basis.

outline structure. In addition, the BZO is written in accessible language and presents regulations in tables or lists when appropriate, to provide a better user experience. See Attachment 4 for an example of this improved writing format and style.

- **Consolidates Land Use Tables.** In the current Zoning Ordinance, each of the 25 zoning districts contains a unique land use table that lists permitted uses and permit requirements. Having 25 separate land use tables has resulted in different lists of uses and disparate treatment of similar uses across zoning districts. These inconsistencies raise questions about whether these differences are intentional or not. The BZO instead provides three comprehensive Land Use Tables (Residential, Commercial and Industrial) that consolidate land uses, applies naming conventions, and allows for easy comparisons among districts.
- **Introduces New Maps and Figures.** The current Zoning Ordinance includes only narrative descriptions of certain important geographic areas and subzones, such as the University Strategic Plan Area, the Car-Free Housing Overlay, or the Downtown Arts District Overlay. The BZO uses maps to illustrate important districts, subzones and areas, eliminating long, narrative descriptions and references to other adopted plans. The BZO also includes updated figures and diagrams to illustrate important land use regulations, such as Floor Area Ratio, setbacks, and measurement methods.
- **Eliminates Repetitive Language.** The current Zoning Ordinance is repetitive. Each of the 25 districts lists special land use regulations, development standards, and permit requirements separately. Sometimes these are unique to one district, but often they apply to multiple districts. Similarly, administrative procedures that apply to various types of permits are often repeated in various sections. This repetition creates an opportunity for technical errors and discrepancies when word choice or punctuation differs from district to district, or when amendments are made to some but not all sections. These inadvertent errors result in inconsistent application of regulations. The BZO eliminates this unnecessary repetition by collecting these special land use regulations, development standards or permit requirements and stating them in a single section.
- **Introduces a List of “Consent Changes.”** Developing the BZO has provided the opportunity to make a number of minor, but important, changes to the Zoning Ordinance. These changes are not substantive. They clarify ambiguous terms, reflect updated legal requirements, and codify existing interpretations and practice. Including these changes in the BZO makes it a clearer, more comprehensive document. These consent changes are summarized in a Consent Changes Matrix (see Attachment 5), which includes an explanation for each change.

The recommendation for adoption of the BZO requests an effective date of December 1, 2021. This time allows staff to work with the City's code publisher after the second reading of the Ordinance to ensure a timely and accurate version of the BZO is uploaded to the City's website, including hyperlinks and graphics.

BACKGROUND

The current Zoning Ordinance was adopted in 1999. It constituted the first comprehensive revision of the Zoning Ordinance since its original adoption in 1949, and still carries many of the original provisions. It is codified in Title 23 of the BMC and includes six sub-titles:

- Title 23A, Ordinance Applicability, which includes the official title of the Ordinance and the Zoning Ordinance's purpose.
- Title 23B, Ordinance Administration, which includes all of the processes for permit approval and review, application requirements, regulations for abating nuisances, as well as defining the roles of the Zoning Adjustments Board, the Design Review Committee and the Zoning Officer.
- Title 23C, General Provisions Applicable to All Districts, which includes citywide regulations, such as Inclusionary Zoning, Short-Term Rentals and Cannabis Uses.
- Title 23D, Provisions Applicable in All Residential Districts, which includes the regulations for all of the Residential (R) zoning districts;
- Title 23E, Provisions Applicable in All Non-Residential Districts, which includes the regulations for all of the Commercial (C) and Manufacturing (M) zoning districts, as well as the Hillside Overlay (H) zone; and
- Title 23F, Definitions, which includes definitions of many of the terms and most of the uses included in the Zoning Ordinance.

The Zoning Maps are also included as part of Title 23.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental and climate impacts or opportunities associated with the BZO.

RATIONALE FOR RECOMMENDATION

Preparation of the BZO has been a thorough and detail-oriented process. The involvement of the Planning Commission and ZAB has meant that the draft BZO was

reviewed for consistency of land use policy and for usability when reviewing project proposals. The BZO has also been reviewed by Planning Department staff to ensure its usability in day-to-day work. Finally, the public has provided feedback on the BZO that supports the new document. The Planning Commission recommended that the City Council adopt the BZO, finding it a clear improvement over the existing Zoning Ordinance and agreeing that it met project goals and objectives.

ALTERNATIVE ACTIONS CONSIDERED

No alternatives were considered; however, City Council could choose to not adopt the BZO.

CONTACT PERSON

Justin Horner, Associate Planner, Planning and Development, 510-981-7476
Alene Pearson, Principal Planner, Planning and Development, 510-981-7489

Attachments:

- 1: Ordinance
 - Exhibit A: Text of new Baseline Zoning Ordinance
 - Exhibit B: Revised Zoning Map
- 2: 2016 City Council Referral
- 3: December 16, 2020 Planning Commission Final Minutes
- 4: Code Comparison Example (Variance Section)
- 5: Consent Changes Matrix
6. December 16, 2020 Planning Commission Staff Report (without BZO attachment)
7. Public Hearing Notice

Link

- 1: ZORP website:

[https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Zoning_Ordinance_Revision_Project_\(ZORP\).aspx](https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Zoning_Ordinance_Revision_Project_(ZORP).aspx)

- 2: A PDF of the full Baseline Zoning Ordinance:

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Att%201%20Exhibit%20A%20-%20Baseline%20Zoning%20Ordinance.pdf

ORDINANCE NO. -N.S.

REPEALING ZONING ORDINANCE AND OFFICIAL ZONING MAP (BERKELEY MUNICIPAL CODE TITLE 23) AND ADOPTING NEW ZONING ORDINANCE AND OFFICIAL ZONING MAP

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

Section 1. That the existing Berkeley Municipal Code Title 23, including the Official Zoning Map adopted by Berkeley Municipal Code Section 23A.16.010, is repealed.

Section 2. That a new Berkeley Municipal Code Title 23 is adopted as set forth in Exhibit A.

Section 3. That the new Official Zoning Map is adopted as set forth in Exhibit B.

Section 4. That the new Official Zoning Map maintains existing boundaries, but creates two new zoning districts (University Avenue Commercial [C-U] and Corridor Commercial [C-C]) from the General Commercial (C-1) zoning district.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Exhibits

A: New Baseline Zoning Ordinance (BMC Title 23)

B: New Official Zoning Map

TABLE OF CONTENTS

DIVISION 1 – GENERAL PROVISIONS

23.102	Introductory Provisions	12
23.102.010	– Title	12
23.102.020	– Effective Date	12
23.102.030	– Authority	12
23.102.040	– Purpose of the Zoning Ordinance	12
23.102.050	– Applicability and Jurisdiction	13
23.102.060	– Emergencies	14
23.102.070	– Conflicting Provisions	15
23.102.080	– Transitional Provisions	15
23.102.090	– Severability	16
23.102.100	– Rules of Evidence and Procedure	16
23.104	Interpreting the Zoning Ordinance	17
23.104.010	– Chapter Purpose	17
23.104.020	– Authority	17
23.104.030	– Rules of Interpretation	17
23.104.040	– Threshold Regulations	19
23.104.050	– Zoning Map	19
23.106	Rules of Measurement	20
23.106.010	– Chapter Purpose	20
23.106.020	– Lot Coverage	20
23.106.030	– Floor Area, Gross	20
23.106.040	– Floor Area, Leasable	21
23.106.050	– Floor Area Ratio	22
23.106.060	– Story	22
23.106.070	– Setbacks	23
23.106.080	– Building Separation	24
23.106.090	– Height	24

23.108 Zoning Districts and Map.....27
 23.108.010 – Chapter Purpose27
 23.108.020 – Zoning Districts27
 23.108.030 – Zoning Map29

DIVISION 2 -- ZONING DISTRICTS

23.202 Residential Districts32
 23.202.010 – Chapter Purpose32
 23.202.020 – Allowed Land Uses32
 23.202.030 – Additional Permit Requirements.....36
 23.202.040 – Use-Specific Regulations37
 23.202.050 – R-1 Single-Family Residential District.....37
 23.202.060 – R-1A Limited Two-Family Residential District.....39
 23.202.070 – ES-R Environmental Safety-Residential District41
 23.202.080 – R-2 Restricted Two-Family Residential District.....48
 23.202.090 – R-2A Restricted Multiple-Family Residential District.....50
 23.202.100 – R-3 Multiple-Family Residential District52
 23.202.110 – R-4 Multi-Family Residential District55
 23.202.120 – R-5 High-Density Residential District.....57
 23.202.130 – R-S Residential Southside District59
 23.202.140 – R-SMU Residential Southside District.....62
23.204 Commercial Districts68
 23.204.010 – Chapter Purpose68
 23.204.020 – Allowed Land Uses68
 23.204.030 – Additional Permit Requirements.....80
 23.204.040 – Use-Specific Permit Requirements and Regulations83
 23.204.050 – C-C Corridor Commercial District.....86
 23.204.060 – C-U University Commercial District.....90
 23.204.070 – C-N Neighborhood Commercial District.....99
 23.204.080 – C-E Elmwood Commercial District.....103
 23.204.090 – C-NS North Shattuck Commercial District107
 23.204.100 – C-SA South Area Commercial District111

23.204.110	– C-T Telegraph Avenue Commercial District.....	119
23.204.120	– C-SO Solano Avenue Commercial District.....	124
23.204.130	– C-DMU Downtown Mixed-Use District	129
23.204.140	– C-W West Berkeley Commercial District.....	140
23.204.150	– C-AC Adeline Corridor Commercial District	147
23.206	Manufacturing Districts.....	159
23.206.010	– Chapter Purpose	159
23.206.020	– Allowed Land Uses and Permit Requirements.....	159
23.206.030	– Additional Permit Requirements.....	168
23.206.040	– Use-Specific Regulations	170
23.206.050	– Protected Uses.....	172
23.206.060	– M Manufacturing District	177
23.206.070	– MM Mixed Manufacturing District.....	181
23.206.080	– MU-LI Mixed Use-Light Industrial District.....	182
23.206.090	– MU-R Mixed Use-Residential District.....	185
23.206.100	– Permit Findings	189
23.208	Special Purpose Districts.....	191
23.208.010	– Specific Plan District	191
23.208.020	– Unclassified District.....	191
23.210	Overlay Zones	193
23.210.010	– Purpose of Overlay Zones	193
23.210.020	– Hillside Overlay Zone	193
23.210.030	– Civic Center District Overlay Zone	195

DIVISION 3 -- CITYWIDE PROVISIONS

23.302	Supplemental Use Regulations	202
23.302.010	– Purpose.....	202
23.302.020	– General Use Regulations.....	202
23.302.030	– Temporary Uses and Structures	206
23.302.040	– Home Occupations.....	211
23.302.050	– Bed and Breakfast Establishments in Residential Districts.....	215
23.302.060	– Sidewalk Cafe Seating	216

23.302.070 – Use-Specific Regulations	217
23.304 General Development Standards	224
23.304.010 – Purpose	224
23.304.020 – Lot Requirements	224
23.304.030 – Setbacks	225
23.304.040 – Building Separation in Residential Districts.....	231
23.304.050 – Building Height	231
23.304.060 – Accessory Buildings and Enclosed Accessory Structures	233
23.304.070 – Unenclosed Accessory Structures in Residential Districts.....	236
23.304.080 – Fences	236
23.304.090 – Usable Open Space	239
23.304.100 – Site Features in Residential Districts	240
23.304.110 – Dormers	240
23.304.120 – Lot Coverage.....	241
23.304.130 – Non-Residential Districts Abutting a Residential District.....	241
23.304.140 – Area Plans.....	242
23.306 Accessory Dwelling Units	243
23.306.010 – Purposes	243
23.306.020 – Applicability	243
23.306.030 – Permit Procedures	243
23.308 Emergency Shelters	244
23.308.010 – Chapter Purpose	244
23.308.020 – Applicability and Nonconformities	244
23.308.030 – Required Permits	244
23.308.040 – Standards for Emergency Shelters	245
23.310 Alcoholic Beverage Sales and Service	248
23.310.010 – Chapter Purpose	248
23.310.020 – General Requirements Excluding Incidental Beer and Wine Service 248	
23.310.030 – Alcoholic Beverage Service When Incidental to Food Service	249
23.312 Live/Work.....	253
23.312.010 – Chapter Purpose	253
23.312.020 – Applicability	253

23.312.030	– Required Permits	254
23.312.040	– Standards for Live/Work.....	255
23.312.050	– Findings.....	257
23.314	Short-Term Rentals.....	260
23.314.010	– Chapter Purpose	260
23.314.020	– Definitions	260
23.314.030	– Applicability	261
23.314.040	– General Regulations	261
23.314.050	– Operating Standards and Requirements.....	262
23.314.060	– Violations and Remedies	264
23.316	Percentage for Public Art on Private Projects	266
23.316.010	– Chapter Purpose	266
23.316.020	– Applicability	266
23.316.030	– Definitions	267
23.316.040	– General Requirements	267
23.316.050	– Required Permits	268
23.316.060	– In-Lieu Fees	268
23.316.070	– Administrative Regulations (Guidelines)	268
23.318	Urban Agriculture	269
23.318.010	– Chapter Purpose	269
23.318.020	– Applicability	269
23.318.030	– Urban Agriculture Uses and Levels of Discretion.....	269
23.318.040	– Thresholds	269
23.318.050	– Operation Standards	270
23.318.060	– Complaints	270
23.320	Cannabis Uses	271
23.320.010	– Chapter Purpose	271
23.320.020	– Cannabis Retail.....	271
23.320.030	– Commercial Cannabis Cultivation	273
23.320.040	– Cannabis Manufacturers, Testing Labs, and Distributors	274
23.320.050	– Microbusinesses	275
23.322	Parking and Loading	276

23.322.010	– Chapter Purpose	276
23.322.020	– Applicability	276
23.322.030	– Required Parking Spaces	277
23.322.040	– General Requirements	285
23.322.050	– Parking Reductions	289
23.322.060	– C-DMU Parking and Transportation Demand Management	294
23.322.070	– Off-Street Parking Maximums for Residential Development.....	296
23.322.080	– Parking Layout and Design	297
23.322.090	– Bicycle Parking.....	302
23.322.100	– On-site Loading Spaces.....	303
23.322.110	– Parking Lots in Residential Districts.....	305
23.322.120	– Transportation Services Fee	305
23.324	Nonconforming Uses, Structures, and Buildings.....	307
23.324.010	– Chapter Purpose	307
23.324.020	– General	307
23.324.030	– Nonconforming Lots	308
23.324.040	– Nonconforming Uses.....	308
23.324.050	– Nonconforming Structures and Buildings.....	310
23.324.060	– Exemptions	313
23.326	Demolition and Dwelling Unit Control	315
23.326.010	– Chapter Purpose	315
23.326.020	– General Requirements	315
23.326.030	– Eliminating Dwelling Units through Demolition.....	315
23.326.040	– Eliminating Dwelling Units through Conversion and Change of Use 318	
23.326.050	– Private Right of Action.....	320
23.326.060	– Elimination of Residential Hotel Rooms	320
23.326.070	– Demolitions of Non-Residential Buildings	321
23.326.080	– Building Relocations.....	322
23.326.090	– Limitations	323
23.328	Inclusionary Housing	324
23.328.010	– Chapter Purpose and Applicability	324
23.328.020	– General Requirements	325

23.328.030	– Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units	325
23.328.040	– Requirements Applicable to All Inclusionary Units	326
23.328.050	– Inclusionary Unit Requirements for Rental Housing Projects	328
23.328.060	– Inclusionary Unit Requirements for Ownership Projects	329
23.328.070	– Special Requirements for Avenues Plan Area	331
23.328.080	– Administrative Regulations	337
23.328.090	– Fees	337
23.330	Density Bonus	338
23.330.010	– Chapter Purpose	338
23.330.020	– Definitions	338
23.330.030	– Application Requirements	339
23.330.040	– Density Bonus Calculations and Procedures	340
23.330.050	– Incentives and Concessions	340
23.330.060	– Waivers and Reductions	341
23.330.070	– Qualifying Units	341
23.330.080	– Regulatory Agreements	341
23.332	Wireless Communication Facilities	342
23.332.010	– Chapter Purpose and Applicability	342
23.332.020	– Definitions	343
23.332.030	– General Requirements	345
23.332.040	– Minimum Application Requirements	345
23.332.050	– Location Requirements	348
23.332.060	– Height Requirements	348
23.332.070	– Design Requirements	348
23.332.080	– Operation and Maintenance Standards	352
23.332.090	– Public Information Requirements	354
23.332.100	– Certification Requirements	354
23.332.110	– Permits and Findings Required for Approval	357
23.332.120	– Cessation of Operations	358
23.334	Transportation Demand Management	360
23.334.010	– Chapter Purpose	360
23.334.020	– Applicability	360

23.334.030 – Transportation Demand Management Program Requirements361
 23.334.040 – Monitoring, Reporting and Compliance361

DIVISION 4 -- PERMITS AND ADMINISTRATION

23.402 Administrative Responsibility365
 23.402.010 – Purpose365
 23.402.020 – Review and Decision-Making Authority365
 23.402.030 – Planning and Development Department368
 23.402.040 – Zoning Officer368
 23.402.050 – Landmarks Preservation Commission369
 23.402.060 – Design Review Committee369
 23.402.070 – Zoning Adjustments Board370
 23.402.080 – Planning Commission371
 23.402.090 – City Council371
23.404 Common Permit Requirements372
 23.404.010 – Purpose and Applicability372
 23.404.020 – Application Submittal372
 23.404.030 – Application Review374
 23.404.040 – Public Notice376
 23.404.050 – Public Hearings and Decisions382
 23.404.060 – Post-Decision Provisions385
 23.404.070 – Permit Modifications387
 23.404.080 – Permit Revocation388
23.406 Specific Permit Requirements392
 23.406.010 – Purpose392
 23.406.020 – Zoning Certificates392
 23.406.030 – Administrative Use Permits393
 23.406.040 – Use Permits395
 23.406.050 – Variances395
 23.406.060 – Master Use Permits397
 23.406.070 – Design Review398

23.406.080	– Modification of Development Standards in West Berkeley Plan Area	403
23.406.090	– Reasonable Accommodations	404
23.408	Green Pathway	408
23.408.010	– Purpose	408
23.408.020	– Applicability	408
23.408.030	– Eligibility Determination	408
23.408.040	– Green Pathway Application	410
23.408.050	– General Requirements	411
23.408.060	– Requirements for Large Buildings and Hotels.....	412
23.408.070	– Development Standards.....	412
23.408.080	– Streamlined Permitting Process.....	413
23.408.090	– Tolling.....	415
23.408.100	– Compliance	415
23.408.110	– City Manager Authority to Issue Regulations	415
23.410	Appeals and Certifications.....	416
23.410.010	– Chapter Purpose	416
23.410.020	– Appeal Subjects and Jurisdiction	416
23.410.030	– Filing and Processing of Appeals.....	419
23.410.040	– Hearing and Decision	420
23.410.050	– City Council Certifications	422
23.412	Zoning Ordinance Amendments	423
23.412.010	– Purpose.....	423
23.412.020	– Initiation	423
23.412.030	– Application.....	423
23.412.040	– Planning Commission Hearing and Action.....	423
23.412.050	– City Council Hearing and Action	424
23.412.060	– Findings for Approval	425
23.412.070	– Limitations on Resubmittals after Denial.....	425
23.412.080	– Zoning Map Amendment Notations.....	426
23.414	Nuisance Abatement	427
23.414.010	– Purpose.....	427
23.414.020	– Enforcement Responsibility.....	427

23.414.030 – Violations a Misdemeanor.....427

23.414.040 – Nuisances Prohibited427

23.414.050 – City Attorney Action.....428

23.414.060 – Abatement Procedures428

23.414.070 – Statements of Violations429

23.414.080 – Remedies430

23.414.090 – Recovery of Costs.....430

23.414.100 – Private Right of Action.....431

DIVISION 5 -- GLOSSARY

23.502 Glossary.....433

23.502.010 – Purpose.....433

23.502.020 – Defined Terms.....433

23.502.030 – Acronyms469

Appendix A: Table Relating Ordinance Sections: New Ordinance to Old Ordinance Table

Appendix B: Table Relating Ordinance Sections: Old Ordinance to New Ordinance Table

DIVISION 1: GENERAL PROVISIONS

23.102: Introductory Provisions

- 23.102.010 – Title
- 23.102.020 – Effective Date
- 23.102.030 – Authority
- 23.102.040 – Purpose of the Zoning Ordinance
- 23.102.050 – Applicability and Jurisdiction
- 23.102.060 – Emergencies
- 23.102.070 – Conflicting Provisions
- 23.102.080 – Transitional Provisions
- 23.102.090 – Severability
- 23.102.100 – Rules of Evidence and Procedure

23.104: Interpreting the Zoning Ordinance

- 23.104.010 – Chapter Purpose
- 23.104.020 – Authority
- 23.104.030 – Rules of Interpretation
- 23.104.040 – Threshold Regulations
- 23.104.050 – Zoning Map

23.106: Rules of Measurement

- 23.106.010– Chapter Purpose
- 23.106.020– Lot Coverage
- 23.106.030– Floor Area, Gross
- 23.106.040– Floor Area, Leasable
- 23.106.050– Floor Area Ratio
- 23.106.060– Story
- 23.106.070– Setbacks
- 23.106.080– Building Separation
- 23.106.090– Height

23.108: Zoning Districts and Map

- 23.108.010– Chapter Purpose
- 23.108.020– Zoning Districts
- 23.108.030– Zoning Map

23.102 INTRODUCTORY PROVISIONS

Sections:

- 23.102.010 – Title
- 23.102.020 – Effective Date
- 23.102.030 – Authority
- 23.102.040 – Purpose of the Zoning Ordinance
- 23.102.050 – Applicability and Jurisdiction
- 23.102.060 – Emergencies
- 23.102.070 – Conflicting Provisions
- 23.102.080 – Transitional Provisions
- 23.102.090 – Severability
- 23.102.100 – Rules of Evidence and Procedure

23.102.010 – Title

Municipal Code Title 23 is known and cited as the “City of Berkeley Zoning Ordinance” and referred to in this title as “the Zoning Ordinance.”

23.102.020 – Effective Date

The Zoning Ordinance takes effect and is in force from and after [date of adoption].

23.102.030 – Authority

The Zoning Ordinance is adopted under the authority in California Government Code Section 65850 and all other relevant laws of the State of California. If the Zoning Ordinance refers to a section of state law that is later amended or superseded, the Zoning Ordinance is deemed amended to refer to the amended section or the section that most closely corresponds to the superseded section.

23.102.040 – Purpose of the Zoning Ordinance

- A. **General.** The purpose of the Zoning Ordinance is to implement the General Plan and adopted area plans and to protect the public health, safety, and welfare.
- B. **Specific.** The Zoning Ordinance is intended to:
 - 1. Encourage appropriate land uses and a harmonious relationship among land uses by regulating the location and type of allowed land uses and development.
 - 2. Provide for the appropriate intensity of development by regulating:
 - a. The establishment, density and change of uses;
 - b. The construction of buildings and additions; and
 - c. The size and coverage of lots.

3. Provide for adequate light and air by:
 - a. Limiting building height, bulk, and size; and
 - b. Requiring building setbacks from lot lines and separations between buildings.
4. Provide for adequate usable open space, off-street parking, and off-street loading spaces for specified land uses by:
 - a. Requiring reservations of land and structures for such purposes; and
 - b. Regulating the number, placement, and location of such spaces and areas.
5. Prevent adverse effects of commercial and manufacturing activities by:
 - a. Limiting the hours, intensity, presence of outdoor activities, and other aspects of commercial and manufacturing land uses; and
 - b. Limiting the number and size of commercial and manufacturing land uses in specified districts.
6. Provide review of major changes in buildings by regulating proposals for their demolition, conversion, or relocation.
7. Ensure that the construction and alteration of buildings in Non-Residential Districts is compatible with the existing neighborhoods by requiring Design Review to provide for a pleasing Berkeley environment and encourage excellence in design.
8. Protect Berkeley's existing housing stock by regulating the reduction in size, removal, demolition, or conversion of dwelling units, group living accommodations, and residential hotel rooms.
9. Promote the development of affordable housing for all persons and in particular for persons with low and moderate incomes.
10. Incorporate the substantive provisions of the Neighborhood Preservation Ordinance (Ordinance 4641-NS, not codified), a citizen initiative, to the extent permitted by law.

23.102.050 – Applicability and Jurisdiction

A. Applicability.

1. **General.** The Zoning Ordinance applies to all property in Berkeley, including property owned by the City and other governmental entities, to the full extent permitted by law.
2. **Public Right-of-Way.** The Zoning Ordinance does not apply to uses and structures wholly in the public right-of-way, unless otherwise specified. Such uses and structures must comply with Encroachment Permit regulations in

Municipal Code Chapter 16.18 (Right-of-Way Encroachments and Encroachment Permits).

- B. **Compliance Required.** All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations.
- C. **City Actions.** No City department, employee, or official may issue a permits or license for a use or structures that conflicts with the Zoning Ordinance. Any permit or license issued in conflict with the Zoning Ordinance is null and void. Nothing in this subsection is intended to create a mandatory duty under Government Code Section 815.6.
- D. **Approvals Required.** A land use may be established and a structure may be constructed, altered, or moved only after:
 - 1. All applicable project review and approval processes have been followed;
 - 2. All required permits and approvals have been obtained; and
 - 3. All required authorizations to proceed have been issued.
- E. **Other Regulations.** Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

23.102.060 – Emergencies

- A. **Deviations Allowed.** During a local emergency, the City Council may allow a land use or structure to be established without a Use Permit or other approval ordinarily required by the Zoning Ordinance.
- B. **Approval Procedures.**
 - 1. The City Council may approve such a land use or structure by the same vote required for the adoption of an urgency ordinance upon finding that:
 - a. An emergency exists as defined in Municipal Code Section 2.88.020—
Emergency Defined; and
 - b. The use or structure is required to ameliorate the effects of the emergency.
- C. **Effective Date of Action.** Action by the City Council under this section is effective immediately.
- D. **Post-Emergency Requirements.**
 - 1. Uses and structures permitted under this section are no longer authorized after the City Council declares the emergency has ended.
 - 2. After the emergency has ended, uses and structures shall either:

- a. Be removed or discontinued; or
- b. Apply for all permits and approvals required by the Zoning Ordinance.

23.102.070 – Conflicting Provisions

- A. **Conflict with State or Federal Regulations.** Where the Zoning Ordinance conflicts with state or federal laws, higher law controls over lower law unless local variation is permitted.
- B. **Conflict with Other City Regulations.** Where the Zoning Ordinance conflicts with other ordinances, resolutions, or regulations of the City of Berkeley, the more restrictive controls.
- C. **Conflict with Private Agreements.** It is not the intent of the Zoning Ordinance to interfere with, abrogate, or annul any easement, covenant, deed restriction, or other agreement between private parties. If the Zoning Ordinance imposes a greater restriction than imposed by a private agreement, the Zoning Ordinance controls. Private agreements may impose greater restrictions than the Zoning Ordinance, but the City is not responsible for monitoring or enforcing private agreements.

23.102.080 – Transitional Provisions

- A. **Relation to Prior Zoning Ordinance.** The Zoning Ordinance supersedes the prior Zoning Ordinance codified in Municipal Code Title 23, including all Title 23 sub-titles and appendices.
- B. **Violations Continue.** A violation of the prior Zoning Ordinance continues to be a violation under this Zoning Ordinance unless the violation is brought into compliance with this Zoning Ordinance.
- C. **Pending Applications.**
 1. If the City deems an application complete but does not take final action on the application before the effective date of this Zoning Ordinance, the application remains subject to prior Zoning Ordinance in effect when the application was deemed complete.
 2. If an application is withdrawn before a decision, any re-application is subject to the requirements of this Zoning Ordinance.
- D. **Approved Projects.**
 1. Permits and other approvals valid on the effective date of this Zoning Ordinance remain valid until their expiration date.
 2. Projects with valid permits or approvals shall be completed in compliance with the standards in effect at the time of approval. If the permit or approval expires, future development shall comply with the requirements of this Zoning Ordinance.

- E. **Nonconformities.** A parcel, land use, or structure lawfully established before [effective date of Zoning Ordinance] that does not comply with this Zoning Ordinance is considered nonconforming and subject to the requirements in Chapter 23.324 (Nonconforming Uses, Structures, and Buildings).

23.102.090 – Severability

If any portion of the Zoning Ordinance is found invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or the constitutionality of the remaining portions of the Zoning Ordinance, which shall remain in full force and effect. The City Council declares that it would have passed the Zoning Ordinance and each of its portions, regardless of whether any portion is declared invalid or unconstitutional.

23.102.100 – Rules of Evidence and Procedure

Except as otherwise expressly provided in this Ordinance, formal rules of evidence or procedure which must be followed in a court of record in this state shall not apply. No action, inaction or recommendation made by any City official, employee, commission, board or other entity under this Ordinance shall be void or invalid or be set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect or omission (hereinafter called error) as to any matter pertaining to petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals or any matters of procedure whatever, unless after an examination of the entire case, including the evidence, the court is of the opinion that the error complained of was prejudicial, and that by reason of such error the party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error had not occurred or existed. There shall be no presumption that error is prejudicial or that injury was done if error is shown.

23.104 INTERPRETING THE ZONING ORDINANCE

Sections:

- 23.104.010 – Chapter Purpose
- 23.104.020 – Authority
- 23.104.030 – Rules of Interpretation
- 23.104.040 – Threshold Regulations
- 23.104.050 – Zoning Map

23.104.010 – Chapter Purpose

This chapter establishes rules and procedures for interpreting the Zoning Ordinance to ensure that it is applied and enforced in a consistent manner.

23.104.020 – Authority

The Zoning Officer is responsible for interpreting the meaning and applicability of all provisions in the Zoning Ordinance. Zoning Officer interpretations are subject to review and modification by the Zoning Adjustments Board (ZAB) and City Council.

23.104.030 – Rules of Interpretation

- A. **Meaning and Intent.** All language shall be construed according to the purpose and intent set out in Section 23.102.040 (Purpose of the Zoning Ordinance).
- B. **Minimum Requirements.** The Zoning Ordinance establishes minimum requirements to promote the public health, safety, and general welfare. When the Zoning Ordinance provides for discretion on the part of a City official or body, that discretion may be exercised to impose more stringent requirements as necessary to achieve the purpose and intent of the Zoning Ordinance set out Section 23.102.040 (Purpose of the Zoning Ordinance).
- C. **Harmonious Construction.** The City intends that all provisions of the Zoning Ordinance be construed harmoniously. When two or more provisions of the Zoning Ordinance appear to conflict, the City shall construe such provisions to give effect to both, if possible, by harmonizing them with each other. In cases of conflict, the more restrictive shall govern.
- D. **Headings, Illustrations, and Text.** In cases where text conflicts with any heading, table, or figure, the text controls.
- E. **Lists and Examples.** Unless otherwise specifically indicated, lists of items or examples that use terms such as “including,” “such as,” or similar language are intended to provide examples, not to be exhaustive lists of all possibilities.
- F. **Computation of Time.** References to days are consecutive calendar days unless otherwise stated. When business days are referenced, they include only days when

City Hall is open. The end of a time period is computed by excluding the first day and including the last day. If the last day is a holiday observed by the City or a City Hall non-business day, that day is excluded.

- G. **Rounding of Fractional Numbers.** Unless otherwise stated, a fraction of one-half or more is rounded to the nearest highest whole number and a fraction of less than one-half is rounded to the next lowest whole number.
- H. **References to Other Regulations, Publications, and Documents.** Whenever reference is made to a resolution, ordinance, regulation, or document, it is construed as a reference to the most recent edition of such resolution, ordinance, regulation, or document, unless specifically stated.
- I. **Technical and Non-Technical Terms.** Words and phrases are construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law are construed and understood according to such meaning.
- J. **Terms Not Defined.** If there is a term used in the Zoning Ordinance that is not defined in this title, the Zoning Officer has the authority to provide a definition based upon intended meaning of the undefined term.
- K. **Public Officials and Agencies.** All public officials, bodies, and agencies to which references are made are those of the City of Berkeley, unless otherwise indicated.
- L. **Mandatory and Discretionary Terms.** The words “shall,” “will,” “must,” and “is” are always mandatory. The words “may” and “should” are advisory and discretionary terms.
- M. **Conjunctions.** Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:
 - 1. “And” means that all connected items apply.
 - 2. “And/or” means that the connected words or provisions may apply singularly or in any combination.
 - 3. “Or” means that any one of the connected items may apply singularly but not in combination.
 - 4. “Either...or” means that the connected words or provisions shall apply singularly but not in combination.
- N. **Tenses and Plurals.** Words used in one tense (past, present, or future) include all other tenses, unless the context clearly indicates the contrary. The singular includes the plural, and the plural includes the singular.

23.104.040 – Threshold Regulations

To determine if a non-residential project application is subject to a requirement which applies only if certain development or use thresholds are reached, any construction or change of use which is subject to the same regulation and was completed within one year before the application is considered part of the same application.

23.104.050 – Zoning Map

A. Zoning Map Boundaries. Where uncertainty exists as to the boundaries of districts shown on the Zoning Map, the following rules apply:

1. Boundaries shown as approximately following lot lines are construed to follow the lot lines.
2. Boundaries shown as approximately following the centerlines of streets, highways, and alleys are construed to follow the centerlines.
3. Boundaries shown as approximately following city limits are construed to follow city limits.
4. Where a district boundary divides a lot, the location of the boundary is determined by the use of the scale appearing on the Zoning Map unless otherwise indicated by a legal description of the property.

B. Lots Containing Two or More Districts.

1. For lots containing two or more districts, each part of the lot is subject to the regulations of district in which it is located, except as allowed by Paragraph (2) below.
2. The City may apply the setback requirements in one part of a lot to a part of the lot located in another district with a Use Permit, subject to the following:
 - a. The development intensity (residential density and/or floor area ratio) of the project may not exceed the development intensity that would be allowed if the setbacks requirements are not adjusted; and
 - b. Allowed land uses in each part of the lot are only as permitted in the district in which it is located.

23.106 RULES OF MEASUREMENT

Sections:

- 23.106.010– Chapter Purpose
- 23.106.020– Lot Coverage
- 23.106.030– Floor Area, Gross
- 23.106.040– Floor Area, Leasable
- 23.106.050– Floor Area Ratio
- 23.106.060– Story
- 23.106.070– Setbacks
- 23.106.080– Building Separation
- 23.106.090– Height

23.106.010 – Chapter Purpose

This chapter establishes rules for the measurement of standards contained in the Zoning Ordinance.

23.106.020 – Lot Coverage

- A. **Lot Coverage Defined.** Lot coverage means all the area of a lot, as projected on a horizontal plane, which is:
 1. Enclosed by the exterior walls of buildings or enclosed accessory structures; or
 2. Covered by decks, porches, stairs and/or landings which cover an enclosed space or paved ground area.
- B. **Exclusions.** The lot coverage calculation excludes:
 1. Uncovered porches, landings and stairs;
 2. Uncovered decks, except that a deck on the roof of a building or accessory structure or over an enclosed space or paved ground area is included in the lot coverage calculation; and
 3. The area of the roof of a subterranean structure, when such a structure is not more than 3 feet above finished grade.

23.106.030 – Floor Area, Gross

- A. **Gross Floor Area Defined.** Gross floor area means the total gross horizontal areas of all floors of a building or enclosed structure.
- B. **Basements and Cellars.** Gross floor area includes usable basements and cellars that are either:

1. Below the roof and within the outer surface of the main walls of a main or accessory building (or the centerlines of party walls separating such buildings or portions of buildings); or
 2. Within lines drawn parallel to and 2 feet within the roof line of any building or portion of a building without walls.
- C. **Access Features in Multi-Story Buildings.** For a multi-story building with a covered or enclosed stairways, stairwells, or elevator shafts, the horizontal area of these features is counted only once at the floor level of their greatest area of horizontal extent.
- D. **Excluded Areas.** The following areas are excluded from gross floor area calculation:
1. Covered or uncovered areas used for off-street parking or loading spaces.
 2. Driveways ramps between floors and maneuvering aisles of a multi-level parking garage.
 3. Mechanical, electrical, and telephone equipment rooms below finished grade.
 4. Areas which qualify as usable open space.
 5. Arcades, porticoes, and similar open areas for non-residential uses which are:
 - a. Located at or near street level;
 - b. Accessible to the general public; and
 - c. Are not designed or used as sales, display, storage, service, or production areas.
- E. **Covered Pedestrian Access Features for Non-Residential Uses.** For non-residential uses, gross floor area includes pedestrian access interior walkways or corridors, or interior courtyards, walkways, paseos or corridors covered by a roof or skylight.
- F. **Mezzanines.** Gross floor area includes the floor area of a mezzanine.

23.106.040 – Floor Area, Leasable

- A. **Leasable Floor Area Defined.** Leasable floor area means the total interior floor area of a commercial lease space available for use by a single business.
- B. **Included Areas.** Leasable floor area includes all sales, customer, display, shelving, assembly, seating, counter, kitchen, storage, and office areas.
- C. **Excluded Areas.** Leasable floor area does not include stairs, restrooms, and unenclosed walkways and areas serving more than one lease space such as

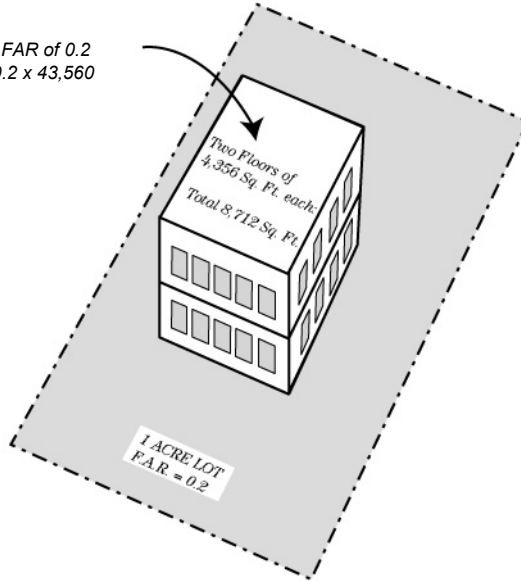
hallways, corridors, lobbies, maintenance areas, vestibules and other common areas.

23.106.050 – Floor Area Ratio

- A. **Floor Area Ratio Defined.** Floor area ratio (FAR) means the quotient resulting from division of the gross floor area of all buildings on a lot by the area of the lot. See Figure 23.106-1: Floor Area Ratio.

FIGURE 23.106-1: FLOOR AREA RATIO

Maximum Floor Area for a FAR of 0.2 on a 43,560 Sq. Ft. Lot = 0.2 x 43,560 Sq. Ft. = 8,712 Sq. Ft.

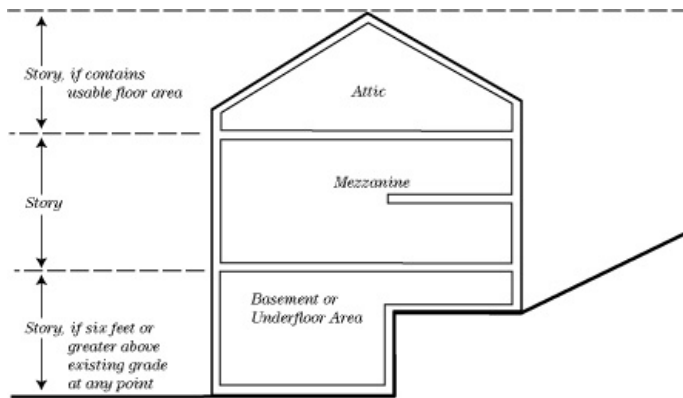


- B. **Development on Contiguous Lots.** In a single integrated development on contiguous lots, the permitted floor area ratio is calculated using the total combined area of all such lots.

23.106.060 – Story

- A. **Story Defined.** A story means the portion of a building included between the upper surface of any floor and the upper surface of the floor next above. See Figure 23.106-2: Story.

FIGURE 23.106-2: STORY

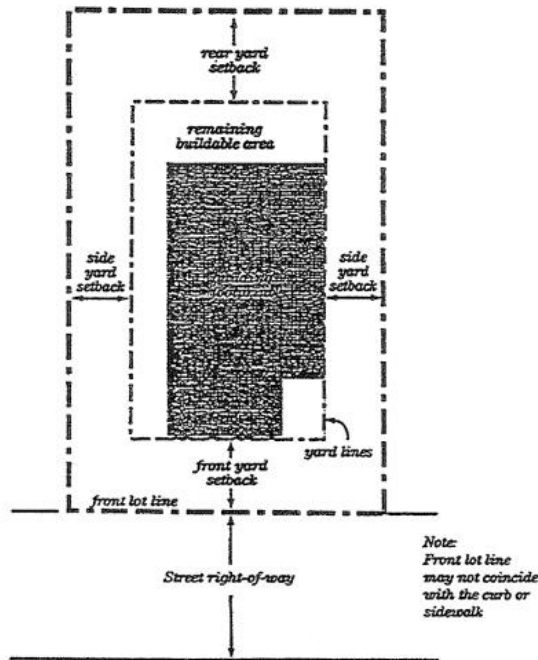


- B. **Topmost Story.** The topmost story of a building is the portion of a building between the floor of the topmost floor and the ceiling or roof above.
- C. **Below Grade Spaces.** If the finished floor level directly above the ceiling of a basement, garage structure, cellar, or unused underfloor space is more than 6 feet above existing grade at any point, such basement, cellar, or unused underfloor space is considered a story.
- D. **Penthouses.** A penthouse used for purposes other than shelter of mechanical equipment or shelter of vertical shaft openings in the roof is considered a story.
- E. **Mezzanines.** When the total floor area of a mezzanine exceeds 33.3 percent of the total floor area in that room, it constitutes an additional story.

23.106.070 – Setbacks

- A. **Measurement.** A required setback is measured as the distance between the surface of a building's outer wall and the applicable lot line.
- B. **Setback Areas.** As shown in Figure 23.106-3: Setbacks, a setback area means the required open area on a lot that is between a lot line and a setback line. A setback area must be unoccupied and unobstructed from the ground upward by any portion of a building or structure except as otherwise permitted by the Zoning Ordinance. Required setback areas are defined as follows:
 1. **Front Setback Area:** The area extending across the full width of the front of a lot from the front lot line to the front setback line.
 2. **Rear Setback Area:** The area extending across the full width of the lot between the rear lot line and the rear setback line.
 3. **Interior Side Setback Area:** The area between an interior side lot line and the side setback line, and extending from the front lot line to the rear lot line.
 4. **Street Side Setback Area:** The area between a street side lot line and the side setback line, and extending from the front lot line to the rear lot line.

FIGURE 23.106-3: SETBACKS



23.106.080 – Building Separation

- A. **Measurement.** Building separation is measured as the distance between the surface of a main building's outer wall and the outer wall surface of the closest neighboring main building.
- B. **Main Buildings with Different Height.** The required building separation between two or more main buildings which are of different heights is that required for the number of stories in the tallest building.

23.106.090 – Height

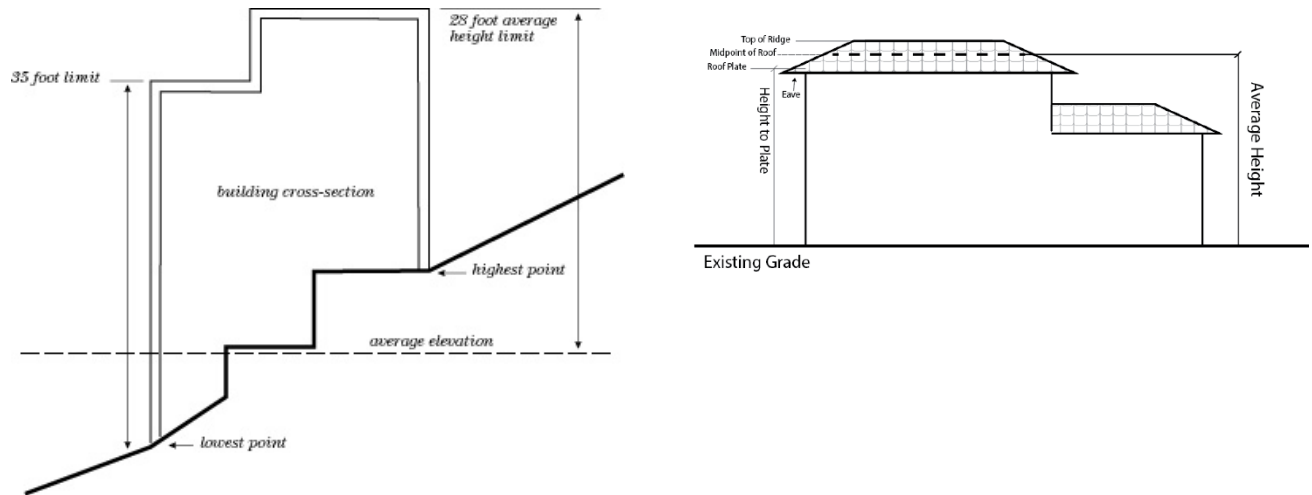
A. Average Building Height.

1. **Average Building Height:** The vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building (or, in the case of residential additions, that portion of the lot covered by the addition) to the roof features shown in Table 23.106-1: Average Building Height Measurement. See
2. Figure 23.106-4: Average Building Height.
3. Dormers are not included in the average building height calculation.

TABLE 23.106-1: AVERAGE BUILDING HEIGHT MEASUREMENT

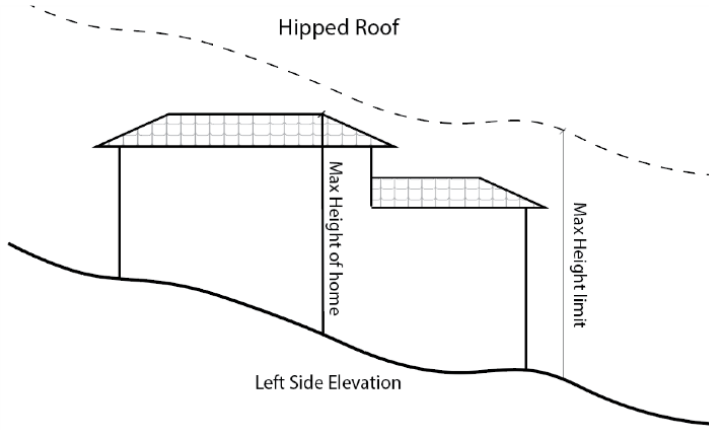
ROOF TYPE	AVERAGE BUILDING HEIGHT MEASURED TO:
Sloped, hipped, gabled roofs	The average height of the roof between the ridge and where the eave meets the plate
Roof with parapet walls	The top of the parapet wall
Gambrel roof	The average height of the roof between the ridge and the point where the uppermost change in the roof's slope occurs
Mansard roof	The height of the deck
Shed roof	The height of the roof ridge

FIGURE 23.106-4: AVERAGE BUILDING HEIGHT



B. **Maximum Building Height:** The vertical distance of a building at any point, within a given plane, from finished grade to the top of the roof or parapet walls. See Figure 23.106-5: Maximum Building Height

FIGURE 23.106-5: MAXIMUM BUILDING HEIGHT



23.108 ZONING DISTRICTS AND MAP

Sections:

- 23.108.010– Chapter Purpose
- 23.108.020– Zoning Districts
- 23.108.030– Zoning Map

23.108.010 – Chapter Purpose

This chapter identifies the districts that apply to land within the Berkeley city limits and establishes the official Berkeley Zoning Map.

23.108.020 – Zoning Districts

- A. **Districts.** Berkeley is divided into districts as shown in Table 23.108-1: Zoning Districts. Unique regulations apply within each district as established in Chapters 23.202 – 23.208 (Zoning Districts).

TABLE 23.108-1: ZONING DISTRICTS

DISTRICT SYMBOL	NAME OF DISTRICT
Residential Districts	
R-1	Single-Family Residential
R-1A	Limited Two-family Residential
ES-R	Environmental Safety Residential
R-2	Restricted Two-family Residential
R-2A	Restricted Multiple-family Residential
R-3	Multiple-family Residential
R-4	Multi-family Residential
R-5	High Density Residential
R-S	Residential Southside
R-SMU	Residential Southside Mixed Use
Commercial Districts	
C-C	Corridor Commercial
C-U	University Avenue Commercial
C-N	Neighborhood Commercial
C-E	Elmwood Commercial

DISTRICT SYMBOL	NAME OF DISTRICT
C-NS	North Shattuck Commercial
C-SA	South Area Commercial
C-T	Telegraph Avenue Commercial
C-SO	Solano Avenue Commercial
C-DMU	Downtown Mixed-Use
C-W	West Berkeley Commercial
C-AC	Adeline Corridor Commercial
Manufacturing Districts	
M	Manufacturing
MM	Mixed Manufacturing
MU-LI	Mixed Use-Light Industrial
MU-R	Mixed Use-Residential
Special Districts	
S	Specific Plan
U	Unclassified

B. **Undesignated Areas.** Any area not specifically designated as a district on the Zoning Map is subject to the Unclassified (U) district requirements.

C. **Overlay Zones.**

1. The Zoning Ordinance and Zoning Map include the overlay zones shown in
2. Table 23.108-2: Overlay Zones. Overlay zones impose additional regulations on properties beyond what is required by the underlying district.
3. As shown in
4. Table 23.108-2: Overlay Zones, provisions for overlay zones that apply to two or more districts are located in Chapter 23.210 (Overlay Zones). Provisions for overlay zones that apply only in one district are located in the Zoning Ordinance chapter for that district.

TABLE 23.108-2: OVERLAY ZONES

OVERLAY ZONE SYMBOL	NAME OF OVERLAY ZONE	LOCATION IN ZONING ORDINANCE
---------------------	----------------------	------------------------------

Overlay Zones that Apply in Two or More Districts		
H	Hillside	23.210.020– Hillside Overlay Zone
C	Civic Center	23.210.030– Civic Center District Overlay Zone
Overlay Zones that Apply in One District		
D	Dealership	23.204.100.B.5– C-SA South Area Commercial District (Automobile/Motorcycle Sales)
DA	Downtown Arts	23.204.130– C-DMU Downtown Mixed-Use District (Arts Overlay District)

5. If the overlay zone applies a standard to a property that conflicts with the underlying district, the overlay zone standard governs. If the overlay zone is silent on a standard in the underlying district, the underlying district standard applies.

D. **Vacated Streets.** Where a public street or alley is officially vacated or abandoned, the land area of the street or alley acquires the district classification of the property to which it reverts.

23.108.030 – Zoning Map

- A. **Adoption.** The City Council hereby adopts the City of Berkeley Zoning Map (“Zoning Map”), which establishes the boundaries of all districts and overlay zones provided for in the Zoning Ordinance.
- B. **Incorporation by Reference.** The Zoning Map, including all legends, symbols, notations, references, and other information shown on the map, is incorporated by reference and made a part of the Zoning Ordinance.
- C. **Location.** The Zoning Map is kept, maintained, and updated electronically by the City Clerk, and is available for viewing by the public at the Planning and Development Department and on the official City of Berkeley website.

DIVISION 2: ZONING DISTRICTS

23.202: Residential Districts

- 23.202.010– Chapter Purpose
- 23.202.020– Allowed Land Uses
- 23.202.030– Additional Permit Requirements
- 23.202.040– Use-Specific Regulations
- 23.202.050– R-1 Single-Family Residential District
- 23.202.060– R-1A Limited Two-Family Residential District
- 23.202.070– ES-R Environmental Safety-Residential District
- 23.202.080– R-2 Restricted Two-Family Residential District
- 23.202.090– R-2A Restricted Multiple-Family Residential District
- 23.202.100– R-3 Multiple-Family Residential District
- 23.202.110– R-4 Multi-Family Residential District
- 23.202.120– R-5 High-Density Residential District
- 23.202.130– R-S Residential Southside District
- 23.202.140– R-SMU Residential Southside District

23.204: Commercial Districts

- 23.204.010– Chapter Purpose
- 23.204.020– Allowed Land Uses
- 23.204.030– Additional Permit Requirements
- 23.204.040– Use-Specific Permit Requirements and Regulations
- 23.204.050– C-C Corridor Commercial District
- 23.204.060– C-U University Commercial District
- 23.204.070– C-N Neighborhood Commercial District
- 23.204.080– C-E Elmwood Commercial District
- 23.204.090– C-NS North Shattuck Commercial District
- 23.204.100– C-SA South Area Commercial District
- 23.204.110– C-T Telegraph Avenue Commercial District
- 23.204.120– C-SO Solano Avenue Commercial District
- 23.204.130– C-DMU Downtown Mixed-Use District
- 23.204.140– C-W West Berkeley Commercial District
- 23.204.150– C-AC Adeline Corridor Commercial District

23.206: Manufacturing Districts

- 23.206.010– Chapter Purpose
- 23.206.020– Allowed Land Uses and Permit Requirements

- 23.206.030– Additional Permit Requirements
- 23.206.040– Use-Specific Regulations
- 23.206.050– Protected Uses
- 23.206.060– M Manufacturing District
- 23.206.070– MM Mixed Manufacturing District
- 23.206.080– MU-LI Mixed Use-Light Industrial District
- 23.206.090– MU-R Mixed Use-Residential District
- 23.206.100– Permit Findings

23.208: Special Purpose Districts

- 23.208.010– Specific Plan District
- 23.208.020– Unclassified District

23.210: Overlay Zones

- 23.210.010– Purpose of Overlay Zones
- 23.210.020– Hillside Overlay Zone
- 23.210.030– Civic Center District Overlay Zone

23.202 RESIDENTIAL DISTRICTS

Sections:

- 23.202.010– Chapter Purpose
- 23.202.020– Allowed Land Uses
- 23.202.030– Additional Permit Requirements
- 23.202.040– Use-Specific Regulations
- 23.202.050– R-1 Single-Family Residential District
- 23.202.060– R-1A Limited Two-Family Residential District
- 23.202.070– ES-R Environmental Safety-Residential District
- 23.202.080– R-2 Restricted Two-Family Residential District
- 23.202.090– R-2A Restricted Multiple-Family Residential District
- 23.202.100– R-3 Multiple-Family Residential District
- 23.202.110– R-4 Multi-Family Residential District
- 23.202.120– R-5 High-Density Residential District
- 23.202.130– R-S Residential Southside District
- 23.202.140– R-SMU Residential Southside District

23.202.010 – Chapter Purpose

This chapter identifies allowed land uses, permit requirements, and development standards for residential districts.

23.202.020 – Allowed Land Uses

- A. **Allowed Land Uses.** Table 23.202-1: Allowed Land Uses in Residential Districts identifies allowed land uses and required permits in the Residential Districts. All land uses are defined in Chapter 23.502—Glossary. Permit requirements are described in Chapter 23.406—Specific Permit Requirements.
- B. **Unlisted Land Uses.** Any land use not listed in Table 23.202-1: Allowed Land Uses in Residential Districts is not permitted in the Residential District

TABLE 23.202-1: ALLOWED LAND USES IN RESIDENTIAL DISTRICTS

ZC = Zoning Certificate AUP = ADMINISTRATIVE USE PERMIT UP(PH) = Use Permit NP = Not Permitted * Use-Specific Regulations Apply	RESIDENTIAL DISTRICTS										USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)
	R-1	R-1A	ES-R	R-2	R-2A	R-3	R-4	R-5	R-S	R-SMU	
Residential Uses											
Accessory Dwelling Unit	See 23.306—Accessory Dwelling Units		NP	See 23.306—Accessory Dwelling Units							
Dwellings											
Single-Family	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Two-Family	NP	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Multi-Family	NP	NP	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Group Living Accommodation	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Senior Congregate Housing	NP	NP	NP	NP	See 23.302.070.H– Use-Specific Regulations						
Mixed-Use Residential	NP	NP	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Public and Quasi-Public Uses											
Child Care Center	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Club/Lodge	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Columbaria	AUP*	AUP*	NP	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	23.302.070.C– Use-Specific Regulations
Community Care Facility	See 23.202.040.A– Use-Specific Regulations										
Community Center	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Emergency Shelter	NP	NP	NP	NP	NP	NP	See 23.308				
Family Day Care Home, Large	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	
Hospital	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	
Library	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Nursing Home	NP	NP	NP	–	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Park/Playground	ZC	ZC	UP	ZC	ZC	ZC	ZC	ZC	ZC	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)	
Public Utility Substation/Tank	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	

ZC = Zoning Certificate AUP = ADMINISTRATIVE USE PERMIT UP(PH) = Use Permit NP = Not Permitted * Use-Specific Regulations Apply	RESIDENTIAL DISTRICTS										USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)
	R-1	R-1A	ES-R	R-2	R-2A	R-3	R-4	R-5	R-S	R-SMU	
Religious Assembly	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
School	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Commercial Uses											
Alcoholic Beverage Service	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH) *	23.310—Alcoholic Beverage Sales and Service
Food Products Store	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH) *	23.202.140.B.3—R-SMU Residential Southside District
Food Service Establishment	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH) *	23.302.070.E—Use-Specific Regulations
Hotel, Tourist	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Laundromat and Cleaner	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	
Office	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	NP	UP(PH)	
Parking Lot/Structure	UP(PH) *	UP(PH) *	UP(PH) *	UP(PH) *	UP(PH) *	UP(PH) *	UP(PH) *	UP(PH) *	UP(PH) *	UP(PH) *	23.302.070.G—Unenclosed Accessory Structures in Residential Districts 23.322.100— On-site Loading Spaces
Personal and Household Service, General	NP	NP	NP	NP	NP	NP	NP	NP	NP	ZC*	23.202.140.B.2—R-SMU Residential Southside District
Retail, General	NP	NP	NP	NP	NP	NP	UP(PH) *	UP(PH) *	UP(PH) *	UP(PH) *	23.202.040.B—Use-Specific Regulations
Veterinary Clinic	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	
Video Tape/Disk Rental	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	

ZC = Zoning Certificate AUP = ADMINISTRATIVE USE PERMIT UP(PH) = Use Permit NP = Not Permitted * Use-Specific Regulations Apply	RESIDENTIAL DISTRICTS										USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)
	R-1	R-1A	ES-R	R-2	R-2A	R-3	R-4	R-5	R-S	R-SMU	
Industrial and Heavy Commercial Uses											
Commercial Excavation	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Other Uses											
Accessory Uses	See 23.302.020.A– General Use Regulations										
Home Occupations	See 23.302.040– Home Occupations										
Short-Term Rental	ZC*	ZC*	NP	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.314—Short-Term Rentals
Temporary Uses	See 23.302.030– Temporary Uses and Structures										
Urban Agriculture, Low-Impact	ZC*	ZC*	NP	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.318—Urban Agriculture
Urban Agriculture, High-Impact	AUP*	AUP*	NP	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	23.318—Urban Agriculture
Wireless Telecommunication Facility	See 23.332—Wireless Communication Facilities										

- C. **Use-Specific Regulations.** Uses subject to supplemental regulations are shown in Table 23.202-1: Allowed Land Uses in Residential Districts with an asterisk (*) following the permit requirement (e.g., UP*). The Use-Specific Regulations column in **Error! Reference source not found.** identifies the location of these regulations in the Zoning Ordinance.

23.202.030 – Additional Permit Requirements

- A. **Residential Additions.** See Section 23.502.020.A– Defined Terms (“A” Terms) for residential addition definitions.

1. Permits Required.

- a. In all Residential Districts except for the ES-R district, residential additions require permits as follows:
 - i. Residential additions (up to 15 percent of lot area or 600 square feet, whichever is less): Zoning Certificate.
 - ii. Major residential additions (more than 15 percent of lot area or 600 square feet, whichever is less): AUP.
- b. In the ES-R district, residential additions require permits as follows:
 - i. Residential additions up to 10 percent of lot area or 200 square feet, whichever is less: Zoning Certificate.
 - ii. Major residential additions more than 10 percent of lot area or 200 square feet, whichever is less: Use Permit.

2. Basis for AUP Decision.

- a. To deny an AUP for a residential addition in all residential districts except for the ES-R district, the review authority must find that although the proposed residential addition satisfies all other Zoning Ordinance requirements, the residential addition would unreasonably obstruct sunlight, air, or views.
- b. To approve an AUP for a residential addition in the ES-R district, the review authority must make the finding in Subsection 23.202.070.H.6– ES-R Environmental Safety-Residential District (Land Use Intensification).

B. Adding Bedrooms.

1. In the R-1, R-1A, R-2, R-2A, and R-3 districts, adding a bedroom to a lot requires permits as follows:
 - a. Adding a first, second, third, or fourth bedroom to a lot: no permit required.
 - b. Adding a fifth bedroom to a lot: AUP.
 - c. Adding a bedroom to a lot beyond the fifth: Use Permit.

2. See Section 23.502.020.B– Defined Terms (“B” Terms) for bedroom definition.
 3. In the ES-R district, any alteration to create a new bedroom in a single-family detached home on a single lot requires an AUP. See Section 23.202.070.H.6 (Land Use Intensification) for required finding.
- C. **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.
- D. **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.

23.202.040 – Use-Specific Regulations

A. Community Care Facilities.

1. **Permits Required.** Community care facilities in a Residential District require permits as follows:
 - a. Change of use: Zoning Certificate.
 - b. New construction: Use Permit.
2. **ES-R District.** Community care facilities in the ES-R district must comply with the following standards:
 - a. Maximum of six residents.
 - b. Permitted pursuant to Health and Safety Code Section 1566.3 when occupying a legally established existing single-family dwelling.

B. General Retail. In the R-4, R-5, R-S, and R-SMU districts, general retail uses must be:

1. Accessory to another use;
2. Contained within a building with no street access; and
3. Without displays of merchandise visible from the street.

23.202.050 – R-1 Single-Family Residential District

A. District Purpose. The purpose of the Single-Family Residential (R-1) district is to:

1. Recognize and protect the existing pattern of development in the low-density, single-family residential areas of the city consistent with the General Plan;

2. Make housing available for persons who desire detached housing and a relatively large amount of usable open space;
3. Protect adjacent properties from unreasonable obstruction of light and air; and
4. Permit community facilities such as religious assembly uses, schools, parks, and libraries which serve the local population and are not detrimental to the immediate neighborhood.

B. Allowed Land Uses. See Table 23.202-1: Allowed Land Uses in Residential Districts

C. Additional Permit Requirements. See Subsection A of Section 23.202.030– Additional Permit Requirements (Residential Additions) and Subsection B of Section 23.202.030– Additional Permit Requirements (Adding Bedrooms).

D. Development Standards.

1. **Basic Standards.** See Table 23.202-2: R-1 Development Standards.
2. **Supplemental Standards.** Supplemental development standards that apply in the R-1 district are noted in Table 23.202-2: R-1 Development Standards.

TABLE 23.202-2: R-1 DEVELOPMENT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area for New Lots, Minimum	5,000 sq. ft.	23.304.020– Lot Requirements
Usable Open Space per Dwelling Unit, Minimum	400 sq. ft.	23.304.090– Usable Open Space
Floor Area Ratio, Maximum	No maximum	
Main Building Height, Average		23.304.050– Building Height
New Buildings or Non-Residential Additions	28 ft. and 3 stories [1]	
Residential Additions	14 ft. [2]	
Lot Line Setbacks, Minimum		23.304.030– Setbacks
Front	20 ft.	
Rear	20 ft.	
Interior Side	4 ft.	
Street Side	4 ft.	
Building Separation, Minimum	No minimum	
Lot Coverage, Maximum	40%	23.304.120– Lot Coverage

BASIC STANDARDS	SUPPLEMENTAL STANDARDS
Notes: [1] Maximum 35 ft. with an AUP. [2] Height greater than 14 ft. up to 28 ft. allowed with an AUP. Height greater than 28 ft up to 35 ft allowed with an additional AUP.	

23.202.060 – R-1A Limited Two-Family Residential District

- A. **District Purpose.** The purpose of the Limited Two-Family Residential (R-1A) district is to:
 1. Recognize and protect the existing pattern of low medium-density residential areas characterized by reasonable open and spacious type of development consistent with the General Plan;
 2. Protect adjacent properties from unreasonable obstruction of light and air;
 3. Allow flexibility in the use of property for residential purposes by permitting two dwelling units on one lot under limited conditions; and
 4. Appropriately regulate the rear and side setback areas for the construction of a dwelling unit in areas west of San Pablo Avenue.
- B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts
- C. **Additional Permit Requirements.** See Subsection A (Residential Additions) and Subsection B (Adding Bedrooms) of Section 23.202.030– Additional Permit Requirements.
- D. **Development Standards.**
 1. **Basic Standards.** See Table 23.202-3: R-1A Development Standards.
 2. **Supplemental Standards.** Supplemental development standards that apply in the R-1A district are noted in Table 23.202-3: R-1A Development Standards.

TABLE 23.202-3: R-1A DEVELOPMENT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area, Minimum		23.304.020– Lot Requirements
New Lots	5,000 sq. ft.	
For Two Dwelling Units	4,500 sq. ft. [1]	

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Usable Open Space Per Dwelling Unit, Minimum	400 sq. ft. [2]	23.304.090– Usable Open Space
Floor Area Ratio, Maximum	No maximum	
Main Building Height, Average		23.304.050– Building Height
New Buildings and Non-Residential Additions	28 ft. and 3 stories [3]	
Rear Main Buildings	22 ft. and 2 stories	
Residential Additions	14 ft. [4]	
Lot Line Setbacks, Minimum		23.304.030– Setbacks
Front	20 ft.	
Rear	20 ft.	
Interior Side	4 ft.	
Street Side	4 ft.	
Interior and Street Side for Rear Main Building	6 ft.	
Building Separation, Minimum		23.304.040– Building Separation in Residential Districts
1 story	8 ft.	
2 stories	12 ft.	
3 stories	16 ft.	
Lot Coverage, Maximum		23.304.120– Lot Coverage
Interior and Through Lot	40%	
Corner Lot	45%	
<p>Notes:</p> <p>[1] Maximum two units per lot.</p> <p>[2] Open space is not required for accessory dwelling unit.</p> <p>[3] Maximum 35 ft. with an AUP.</p> <p>[4] Height greater than 14 ft. up to 28 ft. allowed with an AUP. Height greater than 28 ft up to 35 ft allowed with an additional AUP.</p>		

23.202.070 – ES-R Environmental Safety-Residential District

A. District Purpose.

1. **General.** Because of its substandard vehicular access, steep slopes, inadequate water pressure and proximity to the Hayward Fault and vegetated wildlands, the Panoramic Hill area is exceptionally vulnerable to severe damage or destruction from fire and earthquake hazards. Panoramic Hill also includes one of Berkeley's most architecturally significant residential districts, which is listed in the National Register of Historic Places because of its association with the Arts and Crafts movement of the Bay Area Tradition.
2. **Specific.** The specific purpose of the Environmental Safety-Residential (ES-R) district is to:
 - a. Provide a means to implement the General Plan and the Hazard Mitigation Plan to reduce the potential for life loss, injury, and economic damage to Berkeley residents from earthquakes, wildfires, and landslides and to protect the City's unique character and values from being compromised by hazard events by reducing the vulnerability of one of the most unique and inaccessible neighborhoods in the Hill Hazardous Fire Area;
 - b. Protect the lives and property of Panoramic Hill residents in Berkeley and adjoining parts of Oakland and avoid destruction or damage to the natural environment through the application of special development regulations and by ensuring that the review of new development and alterations or additions to existing structures will require analysis and mitigation of geologic, seismic, and fire hazards;
 - c. Limit the uses of land permitted to those which are necessary to serve the housing and access needs of the district's inhabitants and will not put either current or future residents at risk due to the area's inadequate infrastructure and special vulnerability to natural hazards;
 - d. Protect the health and safety of current and future residents by ensuring that no new dwelling units will be built and no land may be subdivided to allow the construction of additional dwelling units until plans are in place that identify the future distribution, location, and extent of development in the Berkeley and Oakland neighborhoods of Panoramic Hill, including provisions to develop and maintain a system of public facilities and services adequate to meet the needs of the future population;
 - e. Establish procedures to ensure that the development review process provides for consideration of the cumulative impact of new construction, alterations, and changes in use that have the potential to increase the population or intensify the use of land in the district together with the impacts of other

projects on Panoramic Hill and within adjacent areas of Berkeley and Oakland;

- f. Restrict the size and occupancy of residential structures by imposing standards that reflect the district's limited capacity to accommodate additional population due to poor access, inadequate infrastructure, vulnerability to natural hazards and the fact that a majority of the existing development does not conform to standards that the City adopted in 1979;
- g. Assure the effective use of emergency measures available to save lives and property;
- h. Give reasonable protection to views and privacy, yet allow appropriate development of all property as long as public services and access are adequate to ensure protection of the health and safety of residents in this vulnerable area; and
- i. Protect the integrity of the Panoramic Hill Historic District by ensuring that alterations to existing buildings and new construction maintain the existing pattern of development, are appropriate to the hillside setting, and do not impair the architectural significance of contributing structures.

B. Interpretation. Nothing in this section is intended or may be construed to overturn, nullify, or affect any recorded limitation of property in favor of the City. In case of conflict between this section and other provisions of the Zoning Ordinance, the more restrictive standards apply.

C. Allowed Land Uses.

- 1. **General.** See Table 23.202-1: Allowed Land Uses in Residential Districts.
- 2. **Rental of Rooms.** Rooms may be rented to a maximum of four persons on a single property. Occupancy of a single dwelling unit by a single household as defined in Chapter 23.502—Glossary is permitted.

D. Additional Permit Requirements. See Section 23.202.030.A— Additional Permit Requirements (Residential Additions) and 23.202.030.B (Adding Bedrooms).

E. Specific Plan Required.

- 1. The City may not approve an AUP, Use Permit, Parcel Map, or Tentative Map to allow a new dwelling unit in the ES-R district until the City Council adopts a Panoramic Hill Specific Plan (“the Plan”) in compliance with applicable law.
- 2. At a minimum, the Plan shall:
 - a. Show the proposed distribution, location, and extent of land uses in the ES-R district and the location and extent of the public facilities and services required to serve the land uses;

- b. Include proposals for water, wastewater, and stormwater systems and for a circulation system adequate to accommodate projected traffic and to provide emergency access to the ES-R district and a program of implementation actions including finance measures necessary to carry out those proposal; and
 - c. Include consideration of the needs and future growth of adjacent areas in the City of Oakland that are now or can feasibly be served by the proposed facilities and services.
3. The Zoning Adjustments Board (ZAB) may approve a new residential unit in the ES-R district only after finding that:
- a. The project is consistent with the Plan; and
 - b. The public facilities and services that the Plan requires have been provided or will be developed as a condition of approval.

F. Environmental Assessment.

1. General.

- a. Due to Panoramic Hill's inadequate infrastructure and special vulnerability to natural hazards, a project that is ordinarily insignificant in its impact on the environment may be significant if it occurs in the ES-R district.
- b. Any discretionary entitlement under the Zoning Ordinance or Subdivision Ordinance (Municipal Code Title 21) will not be considered exempt from environmental review pursuant to the California Environmental Quality Act, except for alterations to create bedrooms and residential additions with a gross floor area of up to 10 percent of the lot area or 200 square feet, whichever is less, and which otherwise meet all applicable standards of this section.
- c. Environmental review shall be based on documentation in the record including the reports as described in this section where applicable. Environmental review shall include consideration of the cumulative impact of new construction, alterations, and changes in use that would result in intensification of land use in combination with other projects on Panoramic Hill and adjacent areas that affect conditions in the area.
- d. For purposes of this section, any project that increases habitable floor area, increases the size or number of sleeping rooms, or has the potential to increase vehicular trips in the area is considered an intensification of land use.

2. **Reports Required.** All applications for construction and development in the ES-R district that are not exempt from environmental review require the following special studies:

- a. **New Construction.** All new construction requires a soils report, a geologic report, and a traffic impact study subject to the requirements in this section.
 - b. **Additions and Accessory Structures.** All new accessory structures and additions to existing structures that require the installation of a foundation require a soils report, subject to the requirements below. The Building Official may waive this requirement for additions with less than 50 square feet of gross floor area or detached non-habitable structures with less than 225 square feet of gross floor area.
3. **Soils Report.** When required by Section 23.202.070.F.2– ES-R Environmental Safety-Residential District (Reports Required), a soils report shall be prepared by a civil engineer registered with the State of California, subject to the following requirements:
 - a. **Contents.** Based upon adequate test borings or excavations, the report shall assess the potential for landslides, ground shaking, and surface faulting. If the soils report indicates the presence of soil conditions which, if not corrected, could lead to structural defects, the report shall recommend corrective action that is likely to prevent structural damage to each structure proposed to be constructed.
 - b. **Review of Report.** The report shall be reviewed and approved by the City before issuance of any discretionary permit under the Zoning Ordinance, or before issuance of a building or grading permit if a discretionary permit is not required. The City may have the soils report independently reviewed by a licensed geotechnical engineer, registered by the state of California, the cost of which shall be borne by the applicant. The report’s recommended action shall be incorporated in the construction of each structure as a condition to the issuance of any building permit.
4. **Geologic Report.** When required by Section 23.202.070.F.2– ES-R Environmental Safety-Residential District (Reports Required), a geologic report in compliance with the Alquist-Priolo Earthquake Fault Zoning Act and related regulations shall be prepared by a certified engineering geologist, subject to the following requirements:
 - a. **Contents.** The report shall identify, describe, and illustrate potential hazards of surface fault rupture, seismic shaking, liquefaction or landslide.
 - b. **Review Conditions.** The report shall review of the local and regional seismic and other geological conditions that significantly affect the proposed use.
 - c. **Assessment.** The report shall assess conditions on or near the site that would contribute to the potential for damage to a proposed use from a seismic or other geological event, or the potential for a new use to create adverse effects upon existing uses because of identified geologic hazards. The

conditions assessed are to include, where applicable, rainfall, soils, slopes, water table, bedrock geology, and any other substrate conditions that may affect seismic response, landslide risk, or liquefaction potential.

- d. **Recommendations.** The report shall recommend building techniques, site preparation and mitigation measures, or setbacks necessary to reduce risks to life and structural damage to property.
5. **Traffic Impact Study.** When required by Section 23.202.070.F.2– ES-R Environmental Safety-Residential District (Reports Required), a traffic study shall be prepared by a qualified traffic engineer or transportation planner for any project that may generate new trips, subject to the following requirements:
 - a. **Content.** The report shall identify, describe, and illustrate traffic, parking, and roadway conditions in the project vicinity including design characteristics, topography, parking and traffic regulation, accident rates, and pavement condition and width.
 - b. **Assessment.** The report shall assess how the project will affect traffic operations and emergency access based on the size, use, and location, and the proposed site design including driveway locations, turn movements to and from the project site, surrounding uses, locations of nearby intersections, and potential to create unsafe traffic conditions.
 - c. **Recommendations.** The report shall recommend measures to reduce the project’s impact on traffic safety including site design, location of parking and driveways, and off-site improvements necessary to ensure that the project would not exacerbate traffic safety problems in the area.

G. Projects in the Panoramic Hill Historic District.

1. **Landmarks Preservation Commission Review.**
 - a. Before the Zoning Officer or the ZAB may take action on AUP or Use Permit for a project in the Panoramic Hill Historic District that involves new construction, exterior alteration, or demolition, the Zoning Officer shall submit the application to the Landmarks Preservation Commission for review and an advisory recommendation.
 - b. The purpose of this review is to ensure that proposed buildings, structures, landscaping, and other architectural and site design features are compatible with the design and appearance of existing buildings and structures in the Panoramic Hill Historic District that have established and contribute to its significant character.
 - c. This requirement is in addition to but does not supersede any authority or responsibility the Landmarks Preservation Commission has pursuant to Municipal Code Chapter 3.2—Landmarks Preservation Commission.

2. **Parking Expansion.** An AUP is required for any project in the Panoramic Hill Historic District that expands an existing parking area or structure or creates additional parking to comply with the requirements of Chapter 23.322—Parking and Loading.
3. **Findings.** To approve any project involving exterior alterations, construction, demolition or site plan revisions within the Panoramic Hill Historic District, the review authority must find that:
 - a. The proposed work will not adversely affect the exterior architectural features of the subject property or the relationship between the subject structure or feature and its neighboring structures and surroundings, including facade, massing, scale, materials, setbacks, height, orientation, site design, and landscaping; and
 - b. The proposed work will not detract from or adversely affect the special historical, architectural and aesthetic characteristics of the Panoramic Hill Historic District.

H. Development Standards.

1. **Basic Standards.** See
2. Table 23.202-4: ES-R Development Standards
3. **Supplemental Standards.** Supplemental development standards that apply in the ES-R district are noted in
4. Table 23.202-4: ES-R Development Standards.

TABLE 23.202-4: ES-R DEVELOPMENT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area for New Lots, Minimum	25,000 sq. ft.	23.304.020– Lot Requirements 23.202.070.H.3 (Minimum Lot Area Per Dwelling Unit Exception)
Usable Open Space Per Dwelling Unit, Minimum	400 sq. ft.	23.304.090– Usable Open Space
Floor Area Ratio, Maximum	0.3	23.202.070.H.4 (Lots under 5,000 Square Feet)
Main Building Height, Average		23.304.050– Building Height
New Buildings and Non-Residential Additions	24 ft. and 2 stories [1]	

Residential Additions	14 ft. [2]	
Main Building Height, Maximum	35 ft.	
Lot Line Setbacks, Minimum		23.304.030– Setbacks
Front	20 ft.	
Rear	20 ft.	
Interior Side	15 ft.	
Street Side	15 ft.	
Building Separation, Minimum	30 ft.	23.304.040– Building Separation in Residential Districts
Lot Coverage, Maximum	30%	23.304.120– Lot Coverage
Notes:		
[1] Maximum building height of 35 ft. allowed with an AUP. See 23.202.070.H.5– ES-R Environmental Safety-Residential District (Height Increases) for findings.		
[2] Height greater than 14 ft. up to 28 ft. allowed with a Use Permit. Height greater than 28 ft up to 35 ft allowed with an additional Use Permit. See 23.202.070.H.5 for findings.		

5. **Minimum Lot Area Per Dwelling Unit Exception.** A legally-created lot less than 25,000 square feet may be developed in compliance with ES-R district requirements if, on the effective date of the regulations that made it substandard, it was in single ownership separate from any abutting lot under the same ownership.
6. **Lots Under 5,000 Square Feet.** Lots less than 5,000 square feet are allowed no more than one dwelling unit of no more than 1,000 square feet of gross floor area. Accessory Dwelling Units as defined in Section 23.306 (Accessory Dwelling Units) are not subject to this restriction.
7. **Height Increases.** To approve an AUP or Use Permit to allow an increase in building height, the review authority must find that the increased height is:
 - a. Justified due to the topography of the site; and
 - b. Consistent with the purposes of the ES-R district as stated in Section 23.202.070.A – ES-R Environmental Safety-Residential District (District Purpose).
8. **Land Use Intensification.** To approve any project that increases habitable floor area, increases the size or number of bedrooms, may increase vehicular trips in the area, or will otherwise intensify the use of land in the ES-R district, the review authority must find that the project individually or together with other projects

within or adjacent to the ES-R district will not threaten the safety and general welfare of Panoramic Hill residents.

9. Nonconforming Uses and Structures.

- a. Additions and enlargements to structures that contain a nonconforming use are not permitted.
- b. Alteration, addition, or enlargement of a nonconforming structure that contains a conforming use is allowed provided that:
 - i. The project complies with Section 23.324.050.D– Nonconforming Structures and Buildings (Expansion); and
 - ii. All findings required for the project by the Zoning Ordinance can be made.

23.202.080 – R-2 Restricted Two-Family Residential District

- A. **District Purpose.** The purpose of the Restricted Two-Family Residential (R-2) district is to:
 - 1. Implement the General Plan by encouraging the development of low medium-density residential areas characterized by a reasonably open and spacious type of development with a pattern of housing types ranging from single-family to duplexes and small apartment structures;
 - 2. Make available housing for persons who desire a range of housing choice with a relatively large amount of open space; and
 - 3. Protect adjacent properties from unreasonable obstruction of light and air.
- B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts
- C. **Additional Permit Requirements.** See Subsection A of Section 23.202.030 (Residential Additions) and Subsection B of 23.202.030 (Adding Bedrooms).
- D. **Development Standards.**
 - 1. **Basic Standards.** See Table 23.202-5: R-2 Lot and Height Standards, Table 23.202-6: R-2 Setback and Building Separation Standards, and Table 23.202-7: R-2 Lot Coverage Standards for development standards in the R-2 district.
 - 2. **Supplemental Standards.** Supplemental development standards that apply in the R-2 district are noted in Table 23.202-5: R-2 Lot and Height Standards, Table 23.202-6: R-2 Setback and Building Separation Standards, and Table 23.202-7: R-2 Lot Coverage Standards.

TABLE 23.202-5: R-2 LOT AND HEIGHT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area, Minimum		23.304.020– Lot Requirements
New Lots	5,000 sq. ft.	
Per Dwelling Unit		2,500 sq. ft. [1]
Usable Open Space Per Dwelling Unit, Minimum		23.304.090– Usable Open Space
Floor Area Ratio, Maximum		No maximum
Main Building Height, Average		23.304.050– Building Height
New Buildings and Non-Residential Additions	28 ft. and 3 stories [2]	
Residential Additions	14 ft. [3]	
Notes:		
[1] One additional dwelling unit is allowed for any remaining lot area between 2,000 and 2,500 square feet.		
[2] Maximum 35 ft. with an AUP.		
[3] Addition height greater than 14 ft. up to 28 ft. allowed with an AUP. Addition height greater than 28 ft up to 35 ft allowed with an additional AUP.		

TABLE 23.202-6: R-2 SETBACK AND BUILDING SEPARATION STANDARDS

	STANDARDS BY BUILDING STORY			SUPPLEMENTAL STANDARDS
	1 ST	2 ND	3 RD	
Lot Line Setbacks, Minimum				
Front	20 ft.	20 ft.	20 ft.	23.304.030– Setbacks
Rear	20 ft.	20 ft.	20 ft.	
Interior	4 ft.	4 ft.	6 ft.	
Street Side	10 ft.	10 ft.	10 ft.	
Building Separation, Minimum	8 ft.	12 ft.	16 ft.	23.304.040– Building Separation in Residential Districts

TABLE 23.202-7: R-2 LOT COVERAGE STANDARDS

	STANDARD BASED ON BUILDING HEIGHT			SUPPLEMENTAL STANDARDS
	1 STORY	2 STORIES	3 STORIES	
Lot Coverage, Maximum				23.304.120– Lot Coverage
Interior and Through Lot	45%	40%	35%	
Corner Lot	50%	45%	40%	

23.202.090 – R-2A Restricted Multiple-Family Residential District

- A. **District Purpose.** The purpose of the Restricted Multiple-Family Residential (R-2A) district is to:
 - 1. Implement the General Plan by encouraging the development of medium-density residential areas characterized by small multiple-family and garden-type apartment structures with a maximum of open space consistent with this type of development;
 - 2. Make available housing for persons who desire apartment-type accommodations with a maximum of open space;
 - 3. Protect adjacent properties from unreasonable obstruction of light and air; and
 - 4. Permit only land use intensity which is compatible with existing low-density residential structures and is not detrimental to the immediate neighborhood.
- B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts.
- C. **Additional Permit Requirements.** See Subsection A of Section 23.202.030 (Residential Additions) and Subsection B of 23.202.030 (Adding Bedrooms).
- D. **Development Standards.**
 - 1. **Basic Standards.** See Table 23.202-8: R-2A Lot and Height Standards, Table 23.202-9: R-2A Setback and Building Separation Standards, and Table 23.202-10: R-2A Lot Coverage Standards.
 - 2. **Supplemental Standards.** Supplemental development standards that apply in the R-2A district are noted in Table 23.202-8: R-2A Lot and Height Standards, Table 23.202-9: R-2A Setback and Building Separation Standards, and Table 23.202-10: R-2A Lot Coverage Standards.

TABLE 23.202-8: R-2A LOT AND HEIGHT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area, Minimum		
New Lots	5,000 sq. ft.	23.304.010
Per Dwelling Unit	1,650 sq. ft. [1]	
Usable Open Space Per Dwelling Unit, Minimum	300 sq. ft.	23.304.090
Main Building Height, Average		
New Buildings and Non-Residential Additions	28 ft. and 3 stories [2]	23.304.050– Building Height
Residential Additions	14 ft. [3]	
Notes:		
[1] One additional dwelling unit is allowed for remaining lot area between 1,300 and 1,650 square feet.		
[2] Maximum 35 ft. with an AUP.		
[3] Addition height greater than 14 ft. up to 28 ft. allowed with an AUP. Addition height greater than 28 ft up to 35 ft allowed with an additional AUP.		

TABLE 23.202-9: R-2A SETBACK AND BUILDING SEPARATION STANDARDS

	STANDARDS BY BUILDING STORY			SUPPLEMENTAL STANDARDS
	1ST	2ND	3RD	
Lot Line Setbacks, Minimum				23.304.030– Setbacks
Front	15 ft.	15 ft.	15 ft.	
Rear	15 ft.	15 ft.	15 ft.	
Interior	4 ft.	4 ft.	6 ft.	
Street Side	6 ft.	8 ft.	10 ft.	
Building Separation, Minimum	8 ft.	12 ft.	16 ft.	23.304.040– Building Separation in Residential Districts

TABLE 23.202-10: R-2A LOT COVERAGE STANDARDS

	STANDARD BASED ON BUILDING HEIGHT			SUPPLEMENTAL STANDARDS
	1 STORY	2 STORIES	3 STORIES	
Lot Coverage, Maximum				23.304.120
Interior and Through Lots	45%	40%	35%	
Corner Lots	50%	45%	40%	

23.202.100 – R-3 Multiple-Family Residential District

- A. **District Purpose.** The purpose of the Multiple-Family Residential (R-3) district is to:
1. Implement the General Plan by encouraging development of relatively high-density residential areas;
 2. Make available housing for persons who desire both convenience of location and a reasonable amount of usable open space;
 3. Protect adjacent properties from unreasonable obstruction of light and air;
 4. Permit the construction of residential structures, such as dormitories, fraternity and sorority houses, boarding and rooming houses, which meet City requirements for this type of housing; and
 5. Permit the construction of specialized care and treatment facilities such as senior congregate housing, nursing homes, and hospitals when such are not detrimental to the immediate neighborhood.
- B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts.
- C. **Additional Permit Requirements.** See Subsections A of Section 23.202.030 (Residential Additions) and 23.202.030 (Adding Bedrooms).
- D. **Design Review.** Within the Southside Plan boundaries, all mixed-use and community and institutional use projects, as defined in Chapter 23.502 Glossary require Design Review. See Figure 23.202-1: R-3 Areas Subject to Design Review.

FIGURE 23.202-1: R-3 AREAS SUBJECT TO DESIGN REVIEW



Multiple-family Residential (R-3)
 Design Review In Southside Plan Area
 Parcel boundaries as of [adoption date]

E. Development Standards.

1. **Basic Standards.** See Table 23.202-11: R-3 Lot and Height Standards, Table 23.202-12: R-3 Setback and Building Separation Standards, and Table 23.202-13: R-3 Lot Coverage Standards.
2. **Supplemental Standards.** Supplemental development standards that apply in the R-3 district are noted in Table 23.202-11: R-3 Lot and Height Standards, Table 23.202-12: R-3 Setback and Building Separation Standards, and Table 23.202-13: R-3 Lot Coverage Standards.

TABLE 23.202-11: R-3 LOT AND HEIGHT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area, Minimum		23.304.020– Lot Requirements
New Lots	5,000 sq. ft.	
Per Group Living Accommodation Resident	350 sq. ft. [1]	
Usable Open Space, Minimum		23.304.090– Usable Open
Per Dwelling Unit	200 sq. ft.	

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Per Group Living Accommodation Resident	90 sq. ft.	Space
Floor Area Ratio, Maximum	No maximum	
Main Building Height, Average		23.304.050– Building Height
New Buildings and Non-Residential Additions	35 ft. and 3 stories	
Residential Additions	16 ft. [2]	
Notes: [1] One additional resident is allowed for remaining lot area between 200 and 350 square feet. [2] Maximum 35 ft. with an AUP.		

TABLE 23.202-12: R-3 SETBACK AND BUILDING SEPARATION STANDARDS

	STANDARDS BY BUILDING STORY			SUPPLEMENTAL STANDARDS
	1 ST	2 ND	3 RD	
Lot Line Setbacks, Minimum				
Front	15 ft.	15 ft.	15 ft.	23.304.030– Setbacks
Rear	15 ft.	15 ft.	15 ft.	
Interior Side	4 ft.	4 ft.	6 ft.	
Street Side	6 ft.	8 ft.	10 ft.	
Building Separation, Minimum	8 ft.	12 ft.	16 ft.	23.304.040– Building Height

TABLE 23.202-13: R-3 LOT COVERAGE STANDARDS

	STANDARD BASED ON BUILDING HEIGHT			SUPPLEMENTAL STANDARDS
	1 STORY	2 STORIES	3 STORIES	
Lot Coverage, Maximum				
Interior and Through Lot	45%	45%	30%	23.304.120– Lot Coverage
Corner Lot	50%	50%	45%	

3. **Increase in Lot Coverage.** Lot coverage may be increased for a project in an R-3 district located within the Southside Plan boundaries if an AUP is obtained with one or both of the following findings:
 - a. The increased coverage would enable a new rear dwelling on the lot; or
 - b. It would enable moving a historic building onto the lot.

23.202.110 – R-4 Multi-Family Residential District

- A. **District Purpose.** The purpose of the Multi-Family Residential (R-4) district is to:
 1. Implement the General Plan by encouraging development of relatively high-density residential areas;
 2. Make available housing for persons who desire both convenience of location and a reasonable amount of usable open space;
 3. Protect adjacent properties from unreasonable obstruction of light and air;
 4. Permit the construction of residential structures, such as residential hotels, which will provide housing opportunities for transient or seasonal residents; and
 5. Permit the construction of institutional and office uses that are not detrimental to the immediate neighborhood.
- B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts.
- C. **Additional Permit Requirements.** See Section 23.202.030.A– Additional Permit Requirements (Residential Additions).
- D. **Design Review.** All commercial and mixed-use projects in the R-4 district require Design Review.
- E. **Development Standards.**
 1. **Basic Standards.** See Table 23.202-14: R-4 Lot and Height Standards, Table 23.202-15: R-4 Setback and Building Separation Standards, and Table 23.202-16: R-4 Lot Coverage Standards.
 2. **Supplemental Standards.** Supplemental development standards that apply in the R-4 district are noted in Table 23.202-14: R-4 Lot and Height Standards, Table 23.202-15: R-4 Setback and Building Separation Standards, and Table 23.202-16: R-4 Lot Coverage Standards.

TABLE 23.202-14: R-4 LOT AND HEIGHT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area, Minimum		23.304.020– Lot Requirements
New Lots	5,000 sq. ft.	
Per Group Living Accommodation Resident	350 sq. ft. [1]	
Usable Open Space, Minimum		23.304.090– Usable Open Space
Per Dwelling Unit	200 sq. ft.	
Per Group Living Accommodation Resident	90 sq. ft.	
Floor Area Ratio, Maximum	No maximum	
Main Building Height, Average		23.304.050– Building Height
New Buildings and Non-Residential Additions	35 ft. and 3 stories [2]	
Residential Additions	16 ft. [3]	
Notes:		
[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.		
[2] Maximum 65 ft and six stories allowed with Use Permit.		
[3] Height greater than 14 ft. up to 35 ft. allowed with an AUP. Height greater than 35 ft. up to 65 ft allowed with a Use Permit.		

TABLE 23.202-15: R-4 SETBACK AND BUILDING SEPARATION STANDARDS

	STANDARDS BY BUILDING STORY						SUPPLEMENTAL STANDARDS
	1 ST	2 ND	3 RD	4 TH	5 TH	6 TH	
Lot Line Setbacks, Minimum							23.304.030– Setbacks
Front	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	
Rear	15 ft.	15 ft.	15 ft.	17 ft.	19 ft.	21 ft.	
Interior Side	4 ft.	4 ft.	6 ft.	8 ft.	10 ft.	12 ft.	
Street Side	6 ft.	8 ft.	10 ft.	12 ft.	14 ft.	15 ft.	
Building Separation, Minimum	8 ft.	12 ft.	16 ft.	20 ft.	24 ft.	28 ft.	23.304.040– Building Separation in Residential Districts

TABLE 23.202-16: R-4 LOT COVERAGE STANDARDS

	STANDARD BASED ON BUILDING HEIGHT						SUPPLEMENTAL STANDARDS
	1 STORY	2 STORIES	3 STORIES	4 STORIES	5 STORIES	6 STORIES	
Lot Coverage, Maximum							23.304.120– Lot Coverage
Interior and Through Lot	45%	45%	40%	35%	35%	35%	
Corner Lot	50%	50%	45%	40%	40%	40%	

23.202.120 – R-5 High-Density Residential District

A. **District Purpose.** The purpose of the High-Density Residential (R-5) district is to:

1. Foster development of high-density, multi-story residential areas close to major shopping, transportation, and employment centers, in accordance with the General Plan;
2. Make available housing for persons who desire convenience of location and who require relatively small amounts of usable open space;
3. Assure adequate light, air, privacy and usable open space to promote and protect their physical and mental health;
4. Protect adjacent properties from unreasonable obstruction of light and air;
5. Permit the construction of residential structures, such as apartments and hotels, which provide housing opportunities for transient or seasonal residents; and
6. Permit the construction of institutional and office uses when such uses are not detrimental to the immediate neighborhood.

B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts.

C. **Additional Permit Requirements.** See Section 23.202.030.A– Additional Permit Requirements (Residential Additions).

D. **Development Standards.**

1. **Basic Standards.** See Table 23.202-17: R-5 Lot and Height Standards, Table 23.202-18: R-5 Setback and Building Separation Standards, and Table 23.202-19: R-5 Lot Coverage Standards.
2. **Supplemental Standards.** Supplemental development standards that apply in the R-5 district are noted in Table 23.202-17: R-5 Lot and Height Standards, Table 23.202-18: R-5 Setback and Building Separation Standards, and Table

23.202-19: R-5 Lot Coverage Standards.

TABLE 23.202-17: R-5 LOT AND HEIGHT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area, Minimum		23.304.020– Lot Requirements
New Lots	5,000 sq. ft.	
Per Group Living Accommodation Resident	175 sq. ft. [1]	
Usable Open Space, Minimum		23.304.090– Usable Open Space
Per Dwelling Unit	100 sq. ft.	
Per Group Living Accommodation Resident	35 sq. ft.	
Floor Area Ratio, Maximum	No maximum	
Main Building Height, Average		23.304.050– Building Height
New Construction	40 ft. and 4 stories [2]	
Residential Additions	18 ft. [3]	
Notes:		
[1] One additional person is allowed for remaining lot area between 100 and 175 square feet.		
[2] Maximum 65 feet and 6 stories allowed with a Use Permit.		
[3] Height greater than 18 ft. up to 40 ft. allowed with an AUP. Height greater than 40 ft. up to 65 ft allowed with a Use Permit.		

TABLE 23.202-18: R-5 SETBACK AND BUILDING SEPARATION STANDARDS

	STANDARDS BY BUILDING STORY						SUPPLEMENTAL STANDARDS
	1 ST	2 ND	3 RD	4 TH	5 TH	6 TH	
Lot Line Setbacks, Minimum							23.304.030– Setbacks
Front	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	
Rear	15 ft.	15 ft.	15 ft.	17 ft.	19 ft.	21 ft.	
Interior	4 ft.	4 ft.	6 ft.	8 ft.	10 ft.	12 ft.	
Street Side	6 ft.	8 ft.	10 ft.	10 ft.	10 ft.	10 ft.	
Building Separation, Minimum	8 ft.	12 ft.	16 ft.	20 ft.	24 ft.	28 ft.	23.304.040– Building Separation in Residential Districts

TABLE 23.202-19: R-5 LOT COVERAGE STANDARDS

	STANDARD BASED ON BUILDING HEIGHT						SUPPLEMENTAL STANDARDS
	1 STORY	2 STORIES	3 STORIES	4 STORIES	5 STORIES	6 STORIES	
Lot Coverage, Maximum							23.304.120– Lot Coverage
Interior and Through Lots	55%	55%	50%	45%	40%	40%	
Corner Lots	60%	60%	55%	50%	45%	45%	

23.202.130 – R-S Residential Southside District

- A. **District Purpose.** The purpose of the Residential Southside (R-S) district is to:
1. Implement General Plan and Southside Plan policy by encouraging relatively high and moderate-density, multi-story residential development close to major shopping, transportation, and employment centers;
 2. Make housing available for persons who desire a convenient location with relatively small amounts of usable open space, yet assure adequate light, air, privacy and usable open space to promote and protect their physical and mental health;
 3. Protect adjacent properties from unreasonable obstruction of light and air;
 4. Permit the construction of residential structures, such as apartments, and residential hotels, which will provide housing opportunities for transient or seasonal residents;
 5. Encourage the construction of new housing on vacant properties and surface parking lots;
 6. Encourage the redevelopment of single-story structures that are not historically significant resources with more dense housing development; and
 7. Protect and enhance historically and architecturally significant buildings by ensuring that new development and alterations complement their existing architectural character.
- B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts.
- C. **Additional Permit Requirements.** See Section 23.202.030.A– Additional Permit Requirements (Residential Additions).

D. **Design Review.** All mixed-use and community and institutional projects, as defined in Chapter 23.502—Glossary, require Design Review.

E. **Development Standards.**

1. **Basic Standards.** See
2. Table 23.202-20: R-S Lot and Height Standards, Table 23.202-21: R-S Setback and Building Separation Standards, and Table 23.202-22: R-S Lot Coverage Standards.
3. **Supplemental Standards.** Supplemental development standards that apply in the R-S district are noted in
4. Table 23.202-20: R-S Lot and Height Standards, Table 23.202-21: R-S Setback and Building Separation Standards, and Table 23.202-22: R-S Lot Coverage Standards.

TABLE 23.202-20: R-S LOT AND HEIGHT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area, Minimum		23.304.020– Lot Requirements
New Lots	5,000 sq. ft.	
Per Group Living Accommodation Resident	350 sq. ft. [1]	
Usable Open Space, Minimum		23.304.090– Usable Open Space
Per Dwelling Unit	50 sq. ft.	
Per Group Living Accommodation Resident	20 sq. ft.	
Floor Area Ratio, Maximum	No maximum	
Main Building Height, Maximum		23.304.050– Building Height
New Construction	35 ft. and 3 stories [2]	
Residential Additions	16 ft. [3]	

Notes:

- [1] One additional person is allowed for remaining lot area between 350 and 200 square feet.
- [2] Maximum 45 feet and 4 stories allowed with a Use Permit if at least 50 percent of the total building floor area is designated for residential use and the ZAB finds that the project meets the purpose of the district.
- [3] Maximum 35 feet and 3 stories allowed with an AUP. Maximum 45 feet and 4 stories allowed with a Use Permit if at least 50 percent of the total building floor area is designated for residential use and the ZAB finds that the project meets the purpose of the district.

TABLE 23.202-21: R-S SETBACK AND BUILDING SEPARATION STANDARDS

	STANDARDS BY BUILDING STORY				SUPPLEMENTAL STANDARDS
	1 ST	2 ND	3 RD	4 TH	
Lot Line Setback, Minimum					23.304.030– Setbacks
Front	10 ft.	10 ft.	10 ft.	10 ft.	
Rear	10 ft.	10 ft.	10 ft.	17 ft.	
Interior	4 ft.	4 ft.	6 ft.	8 ft.	
Street Side	6 ft.	8 ft.	10 ft.	10 ft.	
Building Separation, Minimum	8 ft.	12 ft.	16 ft.	20 ft.	23.304.040– Building Separation in Residential Districts

TABLE 23.202-22: R-S LOT COVERAGE STANDARDS

	STANDARD BASED ON BUILDING HEIGHT				SUPPLEMENTAL STANDARDS
	1 STORY	2 STORIES	3 STORIES	4 STORIES	
Lot Coverage, Maximum					23.304.120– Lot Coverage
Interior and Through Lot	65%	65%	60%	55%	
Corner Lot	70%	70%	65%	60%	

23.202.140 – R-SMU Residential Southside District

- A. **District Purpose.** The purpose of the Residential Southside Mixed Use (R-SMU) district is to:
1. Implement General Plan and Southside Plan policy by encouraging high-density, multi-story residential development close to major shopping, transportation, and employment centers;
 2. Make housing available for persons who desire a convenient location, but who require relatively small amounts of usable open space, yet assure adequate light, air, privacy and usable open space to promote and protect their physical and mental health;
 3. Protect adjacent properties from unreasonable obstruction of light and air;
 4. Permit the construction of residential structures, such as apartments and residential hotels, which will provide housing opportunities for transient or seasonal residents;
 5. Permit the construction of institutional, neighborhood serving retail, and office uses when such uses are not detrimental to the immediate neighborhood;
 6. Provide locations for relocation of office space from other locations in the Southside Plan area;
 7. Encourage the construction of new housing and mixed-use development on vacant properties and surface parking lots;
 8. Encourage the redevelopment of single-story structures that are not historically significant resources with housing and mixed-use development; and
 9. Protect and enhance historically and architecturally significant buildings by ensuring that new development and alterations complement their existing architectural character.
- B. **Allowed Land Uses.**
1. **General.** See Table 23.202-1: Allowed Land Uses in Residential Districts.
 2. **Commercial Uses.**
 - a. Any project that creates new commercial floor area requires a Use Permit. Creating new floor area includes constructing a new building or accessory building, adding floor area to an existing building, or installing a new floor or mezzanine level within or onto an existing building.
 - b. Tenant space reconfiguration of an existing commercial building requires an AUP.
 3. **Food Product Stores.** Food product stores are limited to 3,000 square feet in the R-SMU district.

C. **Additional Permit Requirements.** See Section 23.202.030.A– Additional Permit Requirements (Residential Additions).

D. **Design Review.** All commercial, mixed-use, and community and institutional use projects, as defined in Chapter 23.502—Glossary, require Design Review.

E. **Development Standards.**

1. **Basic Standards.**

- a. Table 23.202-23: R-SMU Lot and Height Standards shows lot and height standards that apply in all areas in the R-SMU district.

TABLE 23.202-23: R-SMU LOT AND HEIGHT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area, Minimum		23.304.020– Lot Requirements
New Lots	5,000 sq. ft.	
Per Group Living Accommodation Resident	175 sq. ft. [1]	
Floor Area Ratio, Maximum		No maximum
Usable Open Space, Minimum		23.304.090– Usable Open Space
Per Dwelling Unit	40 sq. ft.	
Per Group Living Accommodation Resident	20 sq. ft.	
Main Building Height, Maximum		23.304.050– Building Height
New Buildings	60 ft. and 4 stories	
Residential Additions	16 ft. [2]	
Notes:		
[1] One additional person is allowed for between 100 and 175 square feet of remaining lot area.		
[2] Maximum 60 feet and 4 stories allowed with an AUP, or up to the district limit with a UP(PH).		

- b. Table 23.202-24 and Table 23.202-25 show setback, building separation, and lot coverage standards that apply to main buildings:

- i.* With dwelling units or group living accommodations; or
- ii.* Are located north of Durant Avenue

2. **Supplemental Standards.** Supplemental development standards that apply in the R-SMU district are noted in Table 23.202-23 to Table 23.202-27.
3. **Increase in Building Height.**
 - a. The ZAB may approve a Use Permit to increase the allowed height of a main building or residential addition in the two subareas shown in Figure 23.202-2: R-SMU Subareas. Maximum allowed height is:
 - i. 75 feet and 5 stories in Subarea One; and
 - ii. 65 feet and 5 stories in Subarea Two.

FIGURE 23.202-2: R-SMU SUBAREAS



- b. To approve the Use Permit for increased building height, the ZAB must make the following findings:
 - i. At least 50 percent of the total floor area is designated for residential use.
 - ii. The project meets the purposes of the R-SMU district as stated in Section 23.202.140.A (District Purpose).
4. **Increase in Density for Group Living Accommodation.** The ZAB may approve a Use Permit to increase the density of a group living accommodation use (i.e.,

decrease the minimum lot area per group living accommodation room as shown in Table 23.202-23: R-SMU Lot and Height Standards). To approve the Use Permit, the ZAB must make the following findings:

- a. At least 50 percent of the total building floor area is designated for residential use.
- b. The increased density will not be detrimental to the immediate neighborhood.
- c. The project meets the purposes of the R-SMU district as stated in Section 23.202.140.A – R-SMU Residential Southside District (District Purpose).

TABLE 23.202-24: R-SMU SETBACK AND BUILDING SEPARATION STANDARDS FOR MAIN BUILDINGS WITH DWELLING UNITS OR GROUP LIVING ACCOMMODATIONS OR LOCATED NORTH OF DURANT AVENUE

	STANDARDS BY BUILDING STORY					SUPPLEMENTAL STANDARDS
	1 ST	2 ND	3 RD	4 TH	5 TH [1]	
Lot Line Setbacks, Minimum						
Front	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	23.304.030– Setbacks
Rear	10 ft.	10 ft.	10 ft.	17 ft.	19 ft.	
Interior	4 ft.	4 ft.	6 ft.	8 ft.	10 ft.	
Street Side	6 ft.	8 ft.	10 ft.	10 ft.	10 ft.	
Building Separation, Minimum	8 ft.	12 ft.	16 ft.	20 ft.	24 ft.	23.304.040– Building Separation in Residential Districts
[1] The 5 th story regulations are not applicable to buildings with less than 50% residential floor area nor for buildings outside of Subareas 1 and 2 (even if located north of Durant Avenue).						

TABLE 23.202-25: R-SMU LOT COVERAGE STANDARDS FOR MAIN BUILDINGS WITH DWELLING UNITS OR GROUP LIVING ACCOMMODATIONS OR LOCATED NORTH OF DURANT AVENUE

	STANDARD BASED ON BUILDING HEIGHT					SUPPLEMENTAL STANDARDS
	1 STORY	2 STORIES	3 STORIES	4 STORIES	5 STORIES	
Lot Coverage, Maximum						23.304.120– Lot Coverage

Interior and Through Lots	55%	55%	50%	45%	40%	
Corner Lots	60%	60%	55%	50%	45%	

d. Table 23.202-26 and Table 23.202-27 show setback, building separation, and lot coverage standards that apply to main buildings:

- i. Without dwelling units or group living accommodations: or
- ii. Located south of Durant Avenue.

TABLE 23.202-26: R-SMU SETBACK AND BUILDING SEPARATION STANDARDS FOR MAIN BUILDINGS WITHOUT DWELLING UNITS OR GROUP LIVING ACCOMMODATIONS OR LOCATED SOUTH OF DURANT AVENUE

	BUILDING STORY STANDARD				SUPPLEMENTAL STANDARDS
	1 ST	2 ND	3 RD	4 TH	
Lot Line Setback, Minimum					
Front	15 ft.	15 ft.	15 ft.	15 ft.	23.304.030– Setbacks
Rear	15 ft.	15 ft.	15 ft.	17 ft.	
Interior	4 ft.	4 ft.	6 ft.	8 ft.	
Street Side	6 ft.	8 ft.	10 ft.	10 ft.	
Building Separation, Minimum	8 ft.	12 ft.	16 ft.	20 ft.	23.304.040– Building Separation in Residential Districts

TABLE 23.202-27: R-SMU LOT COVERAGE STANDARDS FOR MAIN BUILDINGS WITHOUT DWELLING UNITS OR GROUP LIVING ACCOMMODATIONS OR LOCATED SOUTH OF DURANT AVENUE

	STANDARD BASED ON BUILDING HEIGHT				SUPPLEMENTAL STANDARDS
	1 STORY	2 STORIES	3 STORIES	4 STORIES	
Lot Coverage, Maximum					
Interior and Through Lot	45%	50%	40%	35%	23.304.120– Lot Coverage
Corner Lot	50%	50%	45%	40%	

5. Increase in Lot Coverage.

- a. An AUP may be approve to increase lot coverage up to 100 percent for a main building that contains dwelling units, contains group living accommodations, or is located north of Durant Avenue.
- b. To approve an AUP, a finding must be made that the increase is appropriate given the setbacks and architectural design of surrounding buildings.

23.204 COMMERCIAL DISTRICTS

Sections:

- 23.204.010– Chapter Purpose
- 23.204.020– Allowed Land Uses
- 23.204.030– Additional Permit Requirements
- 23.204.040– Use-Specific Permit Requirements and Regulations
- 23.204.050– C-C Corridor Commercial District
- 23.204.060– C-U University Commercial District
- 23.204.070– C-N Neighborhood Commercial District
- 23.204.080– C-E Elmwood Commercial District
- 23.204.090– C-NS North Shattuck Commercial District
- 23.204.100– C-SA South Area Commercial District
- 23.204.110– C-T Telegraph Avenue Commercial District
- 23.204.120– C-SO Solano Avenue Commercial District
- 23.204.130– C-DMU Downtown Mixed-Use District
- 23.204.140– C-W West Berkeley Commercial District
- 23.204.150– C-AC Adeline Corridor Commercial District

23.204.010 – Chapter Purpose

This chapter identifies allowed land uses, permit requirements, and development standards for the Commercial Districts.

23.204.020 – Allowed Land Uses

- A. **Allowed Land Use Table.** Table 23.204-1: Allowed Uses in the Commercial Districts identifies allowed land uses and required permits in the Commercial Districts. All land uses are defined in Chapter 23.502 (Glossary). Permit requirements are described in Chapter 23.406 (Specific Permit Requirements). Permits required for land uses shown in Table 23.204-1 apply to both:
1. The initial establishment of a land use in a new building; and
 2. The change of use in an existing building or portion of a building.

TABLE 23.204-1: ALLOWED USES IN THE COMMERCIAL DISTRICTS

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.030(B) [#] = Table Note Permit Requirement * 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	
Residential Uses												
Accessory Dwelling Unit	See 23.306—Accessory Dwelling Units											
Dwellings												
Single-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
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; 23.204.100.B.4
Senior Congregate Housing	See 23.302.070.H											
Public and Quasi-Public Uses												
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											

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.030(B) [#] = Table Note Permit Requirement * 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	
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)	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.030(B) [#] = Table Note Permit Requirement * 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	
School, Vocational	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	UP(PH)	AUP	
Retail Uses												
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; 23.310
Cannabis Retailer	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.320; 12.21; and 12.22
Cannabis Retailer, Delivery Only	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	--	23.320; 12.21; and 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	-	-	-	-	-	-	-	-	-	-	--	
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) 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
Personal and Household Service Uses												
Personal and Household Services,	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC	ZC [2]	ZC	ZC [5]	ZC	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.030(B) [#] = Table Note Permit Requirement * 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	
General												
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	
Office Uses												
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; 23.204.130.B.3; 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; 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; 23.204.110.B.6; 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 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; 23.204.110.B.6; 23.204.130.D.3

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.030(B) [#] = Table Note Permit Requirement * 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	
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses												
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; 23.204.110.B.2; 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)	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.030(B) [#] = Table Note Permit Requirement * 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	
Vehicle Service and Sales Uses												
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; 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; 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	23.204.140.B.3
Vehicle Sales, Used	AUP	NP	NP	NP	NP	UP(PH) *	NP	NP	UP(PH)	UP(PH) *	NP	23.204.100.B.5; 23.204.140.B.3; 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	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.030(B) [#] = Table Note Permit Requirement * 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	
Industrial and Heavy Commercial Uses												
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)	--	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.030(B) [#] = Table Note Permit Requirement * 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	
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	-	-	-	-	-	-	-	-	-	AUP	--	
Services to Buildings and Dwellings	-	-	-	-	-	-	-	-	-	AUP	--	
Warehouse	UP(PH)	NP	NP	NP	NP	NP	NP	-	UP(PH)	NP	NP	
Warehouse-Based Non-Store Retailer	-	-	-	-	-	-	-	-	-	-	--	
Wholesale Trade	-	-	-	-	--	-	-	-	-	AUP [8]	--	
Incidental Uses												
Amusement Devices	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	UP(PH)	23.302.070.B
Alcoholic Beverage	See 23.310											

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.030(B) [#] = Table Note Permit Requirement * 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	
Service												
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
Other Miscellaneous Uses												
Art/Craft Studio	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)	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.030(B) [#] = Table Note Permit Requirement * 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	
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											
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: [1] Change of use of floor area over 3,000 square feet requires an AUP. [2] Change of use of floor area over 2,000 square feet requires an AUP. [3] 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. [4] Requires a Use Permit if 5,000 sq. ft. or more. [5] 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. [6] 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. [7] Requires a Use Permit if 7,500 square feet or more. [8] 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. [9] Requires a Use Permit if more than 10,000 sq. ft.												

Unlisted Land Uses. Any use not listed in Table 23.204-1: Allowed Uses in the Commercial Districts is permitted with an AUP. To approve the AUP, the Zoning Officer must find that the use is compatible with the purposes of the district where it is located. Any use found to be incompatible with the purposes of the district is not permitted.

B. Use-Specific Regulations. Uses subject to supplemental regulations are shown in Table 23.204-1: Allowed Uses in the Commercial Districts with an asterisk (*) following the permit requirement (e.g., ZC*). The Use-Specific Regulations column in Table 23.204-1 identifies the location of these regulations in the Zoning Ordinance.

23.204.030 – Additional Permit Requirements

A. Change of Use.

1. Uses subject to additional permit requirements with a change of use are shown in Table 23.204-1: Allowed Uses in the Commercial Districts with a note [1] or [2] following the permit requirement (e.g., ZC [1]).
2. A change of use means a change to a different category of commercial or manufacturing use but does not include changes between uses that are classified in the same category of commercial or manufacturing use. For example, changing a pet store (in “Retail Use” category) to a medical practitioner (in “Offices” category) is subject to change of use permit requirements in Table 23.204-1. Changing a pet store to general retail (also in “Retail Use” category) is not subject to the change of use permit requirements.

B. 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
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.

C. 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

District	Permit Required for Tenant Space Reconfiguration Project
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

D. 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.

E. 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.

F. 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.

23.204.040 – Use-Specific Permit Requirements and Regulations

A. Commercial Recreation Centers. See Table 23.204-4: Commercial Recreation Center Permit Requirements for commercial recreation centers in the Commercial Districts.

TABLE 23.204-4: COMMERCIAL RECREATION CENTER PERMIT REQUIREMENTS

DISTRICT/USE SIZE	PERMIT REQUIRED
C-C, C-U, C-T, C-DMU, C-W	
Under 5,000 sq. ft indoor use	ZC
5,000 to 10,000 sq. ft. indoor use	AUP
Over 10,000 sq. ft. indoor use or outdoor use of any size	UP(PH)
C-N, C-E, C-NS, C-SA, C-SO, C-AC	
Under 3,000 sq. ft indoor use	AUP
Over 3,000 sq. ft. indoor use or outdoor use of any size	UP(PH)

B. Group Class Instruction.

- C-NS and C-DMU Districts.** When group class instruction in the C-NS or C-DMU districts are located on the ground floor adjacent to a street frontage, storefront windows must include a window display or to be transparent and provide pedestrian viewing at least 10 feet into the storefront area.
- C-NS District.** Group class instruction uses in the C-NS may not exceed 2,500 square feet.
- C-T District.** Group class instruction uses in the C-T district are not permitted on the ground floor.

C. Gyms and Health Clubs.

- Permits Required.** Table 23.204-5: Gym and Health Club Permit Requirements shows permits required for gyms and health clubs in the Commercial Districts.

TABLE 23.204-5: GYM AND HEALTH CLUB PERMIT REQUIREMENTS

DISTRICT/USE SIZE	PERMIT REQUIRED [1]
C-C, C-U, C-DMU	
Under 7,500 sq. ft	ZC
7,500 sq. ft. and greater	AUP
C-N, C-E, C-NS, C-SO	AUP
C-SA, C-T, C-AC	ZC
C-W	
Under 7,500 sq. ft	ZC

7,500 sq. ft. and greater	UP(PH)
<p>Note: [1] Change of use permit requirements as described in Section – Additional Permit Requirements. A (Change of Use) also apply. In the C-C, C-U, and C-SA districts, a change of use of gross floor area over 3,000 square feet requires an AUP. In the C-N, C-E, C-NS, and C-SO districts, a change of use of gross floor area over 2,000 square feet requires an AUP.</p>	

2. **C-DMU District.** When located on the ground floor adjacent to a street frontage, storefront windows for a gym and health club in the C-DMU district must include a window display or to be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

D. **Transparency Requirement for Office Uses.** When office uses shown in are located on the ground floor adjacent to a street frontage, storefront windows shall either:

1. Include a storefront window display; or
2. Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

TABLE 23.204-6: OFFICE USES SUBJECT TO TRANSPARENCY REQUIREMENT

OFFICE USE	DISTRICT
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	CN, C-E, C-NS, CT, C-SO, C-DMU
Medical Practitioners	C-T
Office, Business and Professional	CN, C-E, C-NS, C-T, C-SO, C-DMU

E. **Department Stores.** Table 23.204-7: Department Store Permit Requirements shows permits required for department stores in the Commercial Districts.

TABLE 23.204-7: DEPARTMENT STORE PERMIT REQUIREMENTS

DISTRICT/USE SIZE	PERMIT REQUIRED [1]
C-SA, C-T	
3,000 sq. ft. or less	ZC
Over 3,000 sq. ft.	AUP
C-E, C-NS, C-SO	

3,000 sq. ft. or less	ZC
Over 3,000 sq. ft.	Not Permitted
C-N	
3,000 sq. ft. or less	AUP
Over 3,000 sq. ft.	Not Permitted
C-C, C-U	ZC
C-AC	
3,000 sq ft or less	ZC
Over 3,000 sq ft	UP(PH)
<p>Note: [1] Change of use permit requirements as described in Section – Additional Permit Requirements. A (Change of Use) also apply. In the C-C, C-U, and C-SA districts, a change of use of gross floor area over 3,000 square feet requires an AUP. In the C-N, C-E, C-NS, and C-SO districts, a change of use of gross floor area over 2,000 square feet requires an AUP.</p>	

F. **Drugstores.** The following requirements apply to drugstores in the C-N, CE, C-NS, and C-SO districts.

1. **Where Prohibited.** A new or expanded drugstore is not permitted if it is:
 - a. Over 5,000 square feet in gross floor area; and
 - b. Within 1,000 feet of any property containing an existing drugstore.
2. **Measurement of Distance.** Distances between drugstores are measured by a straight line from the nearest point of the property line of the parcel on which the drugstore is proposed to the nearest point of the lot line of the lot on which the nearest drugstore is located.

23.204.050 – C-C Corridor Commercial District

A. **District Purpose.** The purpose of the Corridor Commercial (C-C) district is to:

1. Implement the General Plan’s designations for Avenue Commercial areas;
2. Provide locations for a wide variety of activities along thoroughfares;
3. Encourage development in underutilized neighborhood and community shopping areas; and
4. Promote development compatible with adjacent commercial and residential areas.

B. **Allowed Land Uses.** See Table 23.204-1: Allowed Uses in the Commercial Districts.

C. **Additional Permit Requirements.** See Section 23.204.030– Additional Permit Requirements.

D. **Development Standards.**

1. **Basic Standards.** See Table 23.204-8: C-C Development Standards. For residential-only projects, see also Table 23.204-9: C-C Setbacks and Building Separation for Residential-Only Uses and Table 23.204-10: C-C Lot Coverage Standards for Residential-Only Uses.

2. **Lots Abutting or Confronting a Residential District.** See Section 23.304.130– Non-Residential Districts Abutting a Residential District for additional building feature requirements for lots that abut or confront a Residential District.

TABLE 23.204-8: C-C DEVELOPMENT STANDARDS

	PROJECT LAND USE			SUPPLEMENTAL STANDARDS
	NON-RESIDENTIAL	MIXED USE	RESIDENTIAL ONLY	
Lot Area Minimum				23.304.020
New Lots	No minimum		5,000 sq. ft	
Per Group Living Accommodation Resident	350 sq. ft. [1]			
Usable Open Space, Minimum				23.304.090
Per Dwelling Unit	200 sq. ft.	200 sq. ft. [2]	200 sq. ft.	
Per Group Living Accommodation Resident	90 sq. ft.			
Floor Area Ratio, Maximum	3.0		No maximum	
Main Building Height, Minimum	No minimum			
Main Building Height, Maximum	40 ft. and 2 stories	40 ft. and 3 stories [3] [4]	35 ft. and 3 stories	23.304.050
Lot Line Setbacks, Minimum				23.304.030– Setbacks

	PROJECT LAND USE			SUPPLEMENTAL STANDARDS
	NON-RESIDENTIAL	MIXED USE	RESIDENTIAL ONLY	
Abutting/Confronting a Non-residential District	No minimum			
Abutting/Confronting a Residential District	See 23.304.130.C.2			
Building Separation, Minimum	No minimum			23.304.040– Building Separation in Residential Districts
Lot Coverage, Maximum	100%			23.304.120– Lot Coverage
<p>Notes:</p> <p>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.</p> <p>[2] Minimum open space for mixed use projects can be reduced with a UP(PH). See 23.204.050.D.3.</p> <p>[3] In mixed use buildings, the third and higher stories must be used for residential purposes.</p> <p>[4] The maximum height of a mixed use project can be increased to 50 ft and 4 stories with the issuance of a UP(PH).</p>				

TABLE 23.204-9: C-C SETBACKS AND BUILDING SEPARATION FOR RESIDENTIAL-ONLY USES

	STANDARDS BY BUILDING STORY [1]			SUPPLEMENTAL STANDARDS
	1 ST	2 ND	3 RD	
Lot Line Setbacks, Minimum				23.304.030– Setbacks
Front	15 ft.	15 ft.	15 ft.	
Rear	15 ft.	15 ft.	15 ft.	
Interior	4 ft.	4 ft.	6 ft.	

Street Side	6 ft.	8 ft.	10 ft.	
Building Separation, Minimum	8 ft.	12 ft.	16 ft.	23.304.040– Building Separation in Residential Districts
[1] Development standards included in this table may be modified with a UP(PH). See 23.204.050.D.3.				

TABLE 23.204-10: C-C LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES

	STANDARD BASED ON BUILDING HEIGHT [1]			SUPPLEMENTAL STANDARDS
	1 STORY	2 STORIES	3 STORIES	
Lot Coverage, Maximum				23.304.120– Lot Coverage
Interior and Through Lots	45%	45%	40%	
Corner Lots	50%	50%	45%	
[1] Development standards included in this table may be modified with a UP(PH). See 23.204.050.D.3.				

3. Modification to Standards – Mixed-Use Open Space and Residential-Only Projects.

- a. The ZAB may modify the following standards with a Use Permit:
 - i. Minimum usable open space for mixed use projects shown in Table 23.204-8.
 - ii. Any standard for residential-only projects in Table 23.204-9 and Table 23.204-10.
- b. To approve the modification, the ZAB must find that the modification achieves one or more of the following:
 - i. Encourages use of the ground floor for commercial purposes where appropriate.
 - ii. Encourages utilization of public transit and existing off-street parking facilities in the area of the proposed building.
 - iii. Facilitates the construction of residential or tourist hotel uses where appropriate.

B. Allowed Land Uses.

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
2. **Alcoholic Beverage Retail Sales.** Alcoholic beverage retail sales are allowed in the C-U district only in conjunction with a restaurant or general food product store.
3. **Residential Uses.**
 - a. **Ground Floor Residential Uses.** Ground floor residential uses, including leasing and management offices and other similar resident-serving uses, require a Use Permit.
 - b. **University Avenue Node Area.** In the University Avenue Node Area shown in Figure 23.204-1: C-U District Sub-Areas, new residential uses must be integrated with non-residential uses in a mixed-use development.
 - c. **Outside of Node Area.** Single use residential projects are permitted outside of the University Avenue Node Area with a Use Permit.

FIGURE 23.204-1: C-U DISTRICT SUB-AREAS



C. **Additional Permit Requirements.** See Section 23.204.030– Additional Permit Requirements.

D. **Development Standards.**

1. **Basic Standards.** See Table 23.204-11: C-U Development Standards and Table 23.204-12: C-U Setback Standards. For residential-only projects, see also Table 23.204-13: C-U Setback and Building Separation Standards for Residential Only Uses and Table 23.204-14: C-U Lot Coverage Standards for Residential-Only Uses. See Figure 23.204-1 for C-U district sub-area boundaries.

TABLE 23.204-11: C-U DEVELOPMENT STANDARDS

	PROJECT LAND USE		SUPPLEMENTAL STANDARDS
	NON-RESIDENTIAL OR MIXED USE	RESIDENTIAL ONLY	
Lot Area, Minimum			23.304.020– Lot Requirements
New Lots	No minimum	5,000 sq. ft.	
Per Group Living Accommodation Resident	350 sq. ft. [1]		
Floor Area Ratio, Maximum			
Avenue Mixed Use Area – North Side of University Avenue	2.2	No maximum	
Avenue Mixed Use Area – South Side of University Avenue	2.5		
Node Area – North Side of University Avenue	2.5		
Node Area – South Side of University Avenue	3.0		
Main Building Height, Minimum	30 ft. and 2 stories		
Main Building Height, Maximum			23.304.050– Building Height
Avenue Mixed Use Area, All Uses	36 ft. and 3 stories [2]	N/A	
Node Area, Non-Residential	40 ft. and 3 stories		

	PROJECT LAND USE		SUPPLEMENTAL STANDARDS
	NON-RESIDENTIAL OR MIXED USE	RESIDENTIAL ONLY	
Node Area, Mixed Use	48 ft. and 4 stories [2]		
Residential Only	N/A	36 ft. and 3 stories	
Lot Line Setbacks, Minimum	See Table 23.204-12	See Table 23.204-13	23.304.030– Setbacks
Building Separation, Minimum	No minimum		23.304.040– Building Separation in Residential Districts
Lot Coverage, Maximum	100%	See Table 23.204-14 Table 23.204-14: C-U Lot Coverage Standards for Residential-Only Uses	23.304.120– Lot Coverage
Usable Open Space, Minimum			23.304.090– Usable Open Space
Per Dwelling Unit	200 sq. ft. [3]		
Per Group Living Accommodation Resident	90 sq. ft. [3]		
<p>Notes:</p> <p>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.</p> <p>[2] In mixed-use buildings, the third and higher floors must be used for residential purposes.</p> <p>[3] Minimum usable open space for mixed use and exclusive residential uses may be modified with a UP(PH). See 23.204.060.D.3.</p>			

TABLE 23.204-12: C-U SETBACK STANDARDS

LOT LINE & PROJECT CONDITIONS	REQUIRED SETBACK
Front	

Ground-floor non-residential uses fronting University Avenue	Average 2 ft. 2 ft. at all sidewalk pedestrian entries
Ground-floor residential uses fronting University Avenue	Average 2 ft. Maximum 10 ft.[1]
Fronting a street other than University Avenue and confronting a non-residential district	No min.
Rear	
Lots on south side of University Avenue abutting lot in residential district	Average 20 ft. [2] [3]
Lots on south side of University Avenue	See 23.204.060.D.5– C-U University Commercial District (Solar Access)
All other lots	10 ft. or 10% of lot depth, whichever is greater
Interior Side	No minimum
Street Side	2 ft. average
All setbacks for lots on South Side of University Avenue fronting a street other than University Avenue	As required by 23.304.030.C.2– Setbacks (Lots Adjacent to Residential Districts) [4]
<p>Notes:</p> <p>[1] A maximum setback of 10 feet is only permitted for landscaping that enhances the streetscape and provides privacy for residential units on the first floor.</p> <p>[2] Rear setback area must be greater than or equal to the width of the lot in feet multiplied by 20 feet.</p> <p>[3] See 23.304.030.C.2.b for allowed reductions.</p> <p>[4] If a lot fronting a side street is consolidated into a single project with the adjacent University Avenue-fronting lot, the project must conform to the setback standards in this table.</p>	

TABLE 23.204-13: C-U SETBACK AND BUILDING SEPARATION STANDARDS FOR RESIDENTIAL ONLY USES [1]

	STANDARDS BY BUILDING STORY			SUPPLEMENTAL STANDARDS
	1 ST	2 ND	3 RD	
Lot Line Setbacks, Minimum				23.304.030– Setbacks
Front	Average 2 ft. and 10 ft max. [2]			
Rear	15 ft.	15 ft.	15 ft.	

Interior	4 ft.	4 ft.	6 ft.	
Street Side	6 ft.	8 ft.	10 ft.	
Building Separation, Minimum	8 ft.	12 ft.	16 ft.	
Notes: [1] Development standards included in this table may be modified with a UP(PH). See 23.204.060.D.3 [2] Setback area must be used to accommodate landscaping that enhances the streetscape and provides a sense of privacy for residential units on the first floor.				

TABLE 23.204-14: C-U LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES

	STANDARD BASED ON BUILDING HEIGHT			SUPPLEMENTAL STANDARDS
	1 STORY	2 STORIES	3 STORIES	
Lot Coverage, Maximum [1]				23.304.120
Interior and Through Lots	45%	45%	40%	
Corner Lots	50%	50%	45%	
[1] Development standards included in this table may be modified with a UP(PH). See 23.204.060.D.3.				

2. Lots Abutting or Fronting a Residential District.

- a. See 23.304.030.C.2– Setbacks (Lots Adjacent to Residential Districts) for additional setback and building feature requirements for lots:
 - i.* With a front lot line on University Avenue; and
 - ii.* That abut or confront a residential district.
- b. If the front lot line is not on University Avenue, 23.304.030.C.2– Setbacks (Lots Adjacent to Residential Districts) does not apply.

3. Modification to Standards – Mixed-Use Open Space and Residential-Only Projects.

- a. The ZAB may modify the following standards with a Use Permit:
 - i.* Minimum usable open space for mixed use projects and exclusive residential uses in Table 23.204-11.

Minimum floor to ceiling height	12 ft.	12 ft.
Minimum floor area [1]	15% 10% with Use Permit	30% 20% with Use Permit
Minimum street frontage [2]	50%	75%
Minimum area for retail sales, personal and household services, or food service [3]	No minimum	75% 50% with Use Permit
Maximum area for office use [3]	No maximum	25%
Notes: [1] Calculated as percent of project land area. [2] Calculated as percent of project's University Avenue frontage. [3] Calculated as percentage of minimum required ground floor commercial floor area.		

- b. Ground level commercial space shall be designed to allow for the space to be easily divided or assembled.

7. Ground Floor Commercial Uses – Minimum Floor Area Reductions.

- a. The ZAB may allow a reduction in the minimum required floor area to no less than indicated in Table 23.204-15 with a Use Permit for projects on lots that are:
- i.* Less than 7,500 square feet; and
 - ii.* Without side street access (internal lots).
- b. To approve the reduction, the ZAB must find that:
- i.* Parking cannot be efficiently provided at grade and project parking conflicts with the requirement for ground floor commercial space;
 - ii.* The reduced commercial area will result in a project with an enhanced commercial configuration; and
 - iii.* The reduced commercial area promotes pedestrian-oriented activity along University Avenue through the mix of commercial uses, and/or the commercial uses will remain open beyond standard business hours, such as into the evening and on weekends, and the uses will be visible from University Avenue frontage.

8. Ground Floor Commercial Uses – Minimum Frontage Reduction. The ZAB may allow a reduction in the minimum required frontage requirement along

University Avenue as shown in Table 23.204-15 with a Use Permit upon finding that the minimum frontage requirement conflicts with:

- a. Minimum project site egress requirements;
- b. Minimum required driveway access to parking areas; or
- c. Project utility needs.

9. **Parking Areas for Residential-Only Projects.** All residential-only projects shall limit ground level parking uses directly fronting on University Avenue to no more than 25 percent of the project’s University Avenue frontage. All parking garage walls adjacent to University Avenue or side streets shall be articulated through design elements or material detailing to avoid blank walls extending more than 12 feet along the University Avenue or side street frontage.

10. **Open Space.** Projects shall provide open space features as shown in Table 23.204-16: C-U Open Space Features to enhance project entries and the University Avenue frontage.

TABLE 23.204-16: C-U OPEN SPACE FEATURES

OPEN SPACE FEATURE	MINIMUM REQUIREMENT
Mixed Use and Residential-Only Projects	
Minimum open space that is either: a. at street level; or b. on a parking podium directly connected to the project entries at the street level [1]	10%
Minimum open space open to sky [1]	75%
Projects with 100 feet or more of University Avenue Frontage	
Minimum area of pedestrian-oriented open spaces and improvements open to the sidewalk [2]	1%
Minimum width and length of street level plaza or entry courtyard	6 ft.
<p>Notes:</p> <p>[1] Calculated as percentage of minimum resident-serving open spaced required by Section 23.304.090– Usable Open Space. Open space must be accessible to building occupants.</p> <p>[2] Calculated percentage of project land area.</p>	

11. **Sidewalk/Curb and Gutter.** Projects shall provide sidewalk, curb and gutter, and street corner bulb-out improvements as necessary to comply with the current City standards.

12. **Sidewalk Amenities.** Projects shall provide sidewalk amenities as necessary to comply with the current City standards. Required improvement may include:

- a. Pedestrian-scaled lighting to illuminate the sidewalk areas;
- b. New street trees and grates; and
- c. Benches and bicycle racks.

E. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-U district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:

- 1. Is compatible with the purpose of the district;
- 2. Is compatible with the surrounding uses and buildings;
- 3. Does not interfere with the continuity of retail and service facilities at the ground level; and
- 4. Does not exceed the amount and intensity of use that can be served by the available traffic capacity and potential parking supply.

23.204.070 – C-N Neighborhood Commercial District

A. **District Purpose.** The purpose of the Neighborhood Corridor (C-N) district is to:

- 1. Implement the General Plan’s designations for Neighborhood Commercial areas;
- 2. Provide locations for uses supplying convenience goods and services for residents of the immediate area;
- 3. Provide locations for other activities compatible with allowed commercial uses;
- 4. Minimize traffic and parking problems for the adjacent residential areas; and
- 5. Promote compatibility between commercial areas and nearby residential areas.

B. **Allowed Land Uses.** See Table 23.204-1: Allowed Uses in the Commercial Districts.

C. **Additional Permit Requirements.** See Section 23.204.030 (Additional Permit Requirements).

D. **Development Standards.**

- 1. **Basic Standards.** See Table 23.204-17: C-N Development Standards. For

residential-only projects, see also Table 23.204-18: C-N Setback and Building Separation Standards for Residential-Only Uses and

2. Table 23.204-19: C-N Lot Coverage Standards for Residential-Only Uses.

TABLE 23.204-17: C-N DEVELOPMENT STANDARDS

	Project Land Use			Supplemental Standards
	Non-Residential	Mixed Use	Residential Only	
Lot Area, Minimum				23.304.020– Lot Requirements
New Lots	No minimum		5,000 sq. ft.	
Per Group Living Accommodation Resident	350 sq. ft. [1]			
Usable Open Space, Minimum				23.304.090– Usable Open Space
Per Dwelling Unit	200 sq. ft.	200 sq. ft.[2]	200 sq. ft.	
Per Group Living Accommodation Resident	90 sq. ft.	90 sq. ft. [2]	90 sq. ft.	
Floor Area Ratio, Maximum	3.0		No maximum	
Main Building Height, Maximum	35 ft. and 2 stories	35 ft. and 3 stories [3]	35 ft. and 3 stories	23.304.050– Building Height
Lot Line Setbacks, Minimum				
Abutting/Confronting a Non-residential District	No minimum		See Table 23.204-18	
Abutting/Confronting a Residential District	See 23.304.030.C.2			
Building Separation, Minimum	No minimum			
Lot Coverage, Maximum	100%		See Table 23.204-19	

	Project Land Use			Supplemental Standards
	Non-Residential	Mixed Use	Residential Only	
Notes:				
[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.				
[2] Minimum open space for mixed use projects can be modified with a UP(PH). See 23.204.070.D.3.				
[3] In mixed use buildings, the third and higher stories must be used for residential purposes.				

TABLE 23.204-18: C-N SETBACK AND BUILDING SEPARATION STANDARDS FOR RESIDENTIAL-ONLY USES

	STANDARDS BY BUILDING STORY			SUPPLEMENTAL STANDARDS
	1 ST	2 ND	3 RD	
Lot Line Setbacks, Minimum [1]				23.304.030– Setbacks
Front	15 ft.	15 ft.	15 ft.	
Rear	15 ft.	15 ft.	15 ft.	
Interior	4 ft.	4 ft.	6 ft.	
Street Side	6 ft.	8 ft.	10 ft.	
Building Separation, Minimum [1]	8 ft.	12 ft.	16 ft.	23.304.040– Building Separation in Residential Districts
[1] Development standards included in this table can be modified with a UP(PH). See 23.204.070.D.3.				

TABLE 23.204-19: C-N LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES

	STANDARD BASED ON BUILDING HEIGHT			SUPPLEMENTAL STANDARDS
	1 STORY	2 STORIES	3 STORIES	
Lot Coverage, Maximum [1]				23.304.120– Lot Coverage
Interior and Through Lots	45%	45%	40%	

Corner Lots	50%	50%	45%	
[1] Development standards included in this table can be modified with a UP(PH). See 23.204.070.D.3.				

3. **Lots Abutting or Confronting a Residential District.** See Section 23.304.130– Non-Residential Districts Abutting a Residential District for additional building feature requirements for lots that abut or confront a Residential District.

4. **Modification to Standards – Mixed-Use Open Space and Residential-Only Projects.**

a. The ZAB may modify the following standards with a Use Permit:

- i.* Minimum usable open space for mixed use projects shown in Table 23.204-17: C-N Development Standards.
- ii.* Any standard for residential-only projects in Table 23.204-18: C-N Setback and Building Separation Standards for Residential-Only Uses and
- iii.* Table 23.204-19: C-N Lot Coverage Standards for Residential-Only Uses.

b. To approve the modification, the ZAB must find that the modification achieves one or more of the following:

- i.* Encourages use of the ground floor for commercial purposes where appropriate.
- ii.* Encourages utilization of public transit and existing off-street parking facilities in the area of the proposed building.
- iii.* Facilitates the construction of residential or tourist hotel uses where appropriate.
- iv.* Permits consistency with the building setbacks existing in the immediate area where a residential building setback would not serve a useful purpose.

E. **Permit Findings.** To approve any AUP or Use Permit for a project in the C-N district, the review authority must make the findings in Section 23.406.040– Use Permits and find that the proposed use or structure:

- 1. Is compatible with the purpose of the district;
- 2. Is compatible with the surrounding uses and buildings;
- 3. Does not interfere with the continuity of retail and service facilities at the ground level; and

4. Does not exceed the amount and intensity of use that can be served by the available traffic capacity and potential parking supply.

23.204.080 – C-E Elmwood Commercial District

A. **District Purpose.** The purpose of the Elmwood Commercial (C-E) district is to:

1. Implement the General Plan’s designation for a community commercial district in this area;
2. Maintain a scale and balance of retail goods and services in the district to compatibly serve the everyday needs of surrounding neighborhoods by:
 - a. Providing locations for retail goods and service establishments to serve surrounding neighborhoods;
 - b. Preventing development which exceeds the amount and intensity of use that is compatible with adjacent residential neighborhoods;
 - c. Limiting the space occupied by businesses that generate high traffic and/or parking demands;
 - d. Controlling the proliferation of establishments which, if not limited, might expand to displace establishments needed to serve surrounding neighborhoods; and
 - e. Permitting other uses which serve this objective; and
3. Ensure that new buildings, alterations, and additions to existing buildings harmonize with their surroundings.

B. **Land Use Regulations.**

1. **Allowed Land Uses.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
2. **Numerical and Size Limitations.**
 - a. Table 23.204-20 shows land uses subject to numerical and size limitations in the C-E district.

TABLE 23.204-20: C-E LAND USE NUMBER AND SIZE LIMITATIONS

USE	NUMBER LIMIT	MAXIMUM SIZE	PERMIT REQUIRED
Art/Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops	No limit	1,500 sq. ft.	ZC
Bookstores, Periodical Stands	No limit	2,000 sq. ft.	ZC

Food Service Establishments [1]	25 total	No max.	No permit required
Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services	No limit	1,000 sq. ft.	ZC
Notes: [1] Excludes food service uses accessory to a food product store. Secondary food service uses associated with all other principal uses are subject to limitations in Table 23.204-20. [2] Change of use of over 3,000 square feet requires Use Permit			

- b. The ZAB may allow a use to exceed the limitations in Table 23.204-20 with a Use Permit upon finding that:
 - i. The use will result in the positive enhancement of the purposes of the district; and
 - ii. The use is likely to experience substantial patronage by surrounding residents as indicated by neighborhood resident support, merchant support, marketing surveys, or other information.

3. **Incidental Wholesale Activities.** In the C-E district, wholesale activities incidental to a primary use require permits as follows:

- a. Six or fewer employees: Zoning Certificate.
- b. Seven or more employees: AUP.
- c. New construction: Use Permit.

C. **Additional Permit Requirements.** See Section 23.204.030 (Additional Permit Requirements).

D. **Development Standards.**

- 1. **Basic Standards.** See Table 23.204-21: C-E Development Standards. For residential-only projects, also see Table 23.204-22: C-E Setback and Building Separation Standards for Residential-Only Uses and Table 23.204-23: C-E Lot Coverage Standards for Residential-Only Uses.

TABLE 23.204-21: C-E DEVELOPMENT STANDARDS

	Project Land Use		Supplemental Standards
	Non-Residential and Mixed Use	Residential Only	
Lot Area, Minimum	No minimum	5,000 sq. ft.	23.304.020–

New Lots	No minimum	5,000 sq. ft.	Lot Requirements
Per Group Living Accommodation Resident	350 sq. ft. [1]		
Usable Open Space			23.304.090–Usable Open Space
Per Dwelling Unit	200 sq. ft. [2]		
Per Group Living Accommodation Resident	90 sq. ft.[2]		
Floor Area Ratio, Maximum			
Corner Lot	1.0	No maximum	
All Other Lot	0.8		
Main Building Height, Minimum	No minimum	No minimum	
Main Building Height, Maximum	28 ft. and 2 stories [3]	35 ft. and 3 stories	
Lot Line Setbacks, Minimum			23.304.030–Setbacks
Abutting/Confronting a Non-residential District	No minimum	See Table 23.204-22	
Abutting/Confronting a Residential District	See Table 23.304-3		
Building Separation, Minimum	No minimum	See Table 23.204-22	
Lot Coverage, Maximum	100%	See Table 23.204-23	23.304.120–Lot Coverage
<p>Notes:</p> <p>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.</p> <p>[2] Open space requirements for mixed use projects may be modified by the ZAB. See 23.204.060.D.3</p> <p>[3] A basement level devoted exclusively to parking is not counted as a story.</p>			

TABLE 23.204-22: C-E SETBACK AND BUILDING SEPARATION STANDARDS FOR RESIDENTIAL-ONLY USES

	STANDARDS BY BUILDING STORY	SUPPLEMENTAL STANDARDS
--	-----------------------------	------------------------

	1 ST	2 ND	3 RD	
Lot Line Setbacks, Minimum				23.304.030– Setbacks
Front	15 ft.	15 ft.	15 ft.	
Rear	15 ft.	15 ft.	15 ft.	
Interior	4 ft.	4 ft.	6 ft.	
Street Side	6 ft.	8 ft.	10 ft.	
Building Separation, Minimum	8 ft.	12 ft.	16 ft.	23.304.040– Building Separation in Residential Districts

TABLE 23.204-23: C-E LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES

	STANDARD BASED ON BUILDING HEIGHT			SUPPLEMENTAL STANDARDS
	1 STORY	2 STORIES	3 STORIES	
Lot Coverage, Maximum				23.304.120– Lot Coverage
Interior and Through Lots	45%	45%	40%	
Corner Lots	50%	50%	45%	

2. **Lots Abutting or Confronting a Residential District.** See 23.304.130 (Non-residential Districts Abutting a Residential District) for additional building feature requirements for lots that abut or confront a Residential District.
3. **Modifications to Standards – Mixed Use Open Space.** The ZAB may modify the usable open space requirement shown in Table 23.204-21 for mixed-use projects by finding that the modification achieves one or more of the following:
 - a. The modification encourages and maintains the present street frontage and pedestrian orientation of the district.
 - b. The modification is compatible in design and character with the commercial district and the adjacent residential neighborhoods.
 - c. The modification is compatible with the purposes set forth in Section 23.204.080.A (District Purpose) and the existing character of the district.
4. **Ground Floor Residential Uses.** A ground floor residential use must be setback at least 20 feet from a property line along College or Ashby Avenue.

5. Projections into Right-of-Way.

- a. Bay windows and balconies 11 feet or more above the sidewalk grade may project 3 feet into a street right-of-way.
- b. A maximum 60 percent of the length of a building frontage may project beyond the property line.
- c. All projections require a revocable encroachment permit from the City Council.

E. Permit Findings. To approve an AUP or Use Permit for a project in the C-E district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find the following:

- 1. The proposed use or structure will:
 - a. Encourage and maintain the present street frontage and pedestrian orientation of the district;
 - b. Be compatible in design and character with the commercial district and the adjacent residential neighborhoods; and
 - c. Be compatible with the purposes set forth in Section 23.204.080.A (District Purpose) and the existing character of the district.
- 2. The proposed use or structure will not:
 - a. Interfere with the continuity of retail or compatible service facilities at the ground level;
 - b. Interrupt a continuous wall of building facades;
 - c. Generate traffic and parking demand beyond the capacity of the commercial district or significantly increase impacts on adjacent residential neighborhoods;
 - d. Result in domination of this district by one type of use; and
 - e. Generate objectionable odors nor excessive levels of noise.

23.204.090 – C-NS North Shattuck Commercial District

A. District Purpose. The purpose of the North Shattuck Commercial (C-NS) district is to:

- 1. Implement the General Plan's designations for Community Commercial and Commercial/Residential in this area;

2. Encourage the maintenance and establishment of retail and service activities that provide goods and services to serve the residents of the adjacent and outlying neighborhoods; but do not generate high traffic volume;
3. Provide locations for other activities compatible with these commercial activities;
4. Promote compatibility between such commercial areas and adjacent residential neighborhoods;
5. Limit the space occupied by businesses that generate high traffic volumes;
6. Support the retention of types of businesses serving adjacent neighborhoods;
7. Limit space occupied by commercial uses, especially offices, that are more appropriately located in the downtown business district;
8. Prevent development of commercial spaces exceeding the amount and intensity of use that can be served by available traffic capacity and potential parking supply;
9. Encourage an adequate commercial and residential mix along Shattuck Avenue; and
10. Ensure that new buildings and additions to existing buildings harmonize with their surroundings.

B. Allowed Land Uses. See Table 23.204-1: Allowed Uses in the Commercial Districts.

C. Additional Permit Requirements. See Section 23.204.030 (Additional Permit Requirements).

D. Development Standards.

1. **Basic Standards.** See Table 23.204-24: C-NS Development Standards. See also Table 23.204-25: C-NS Setback Standards for Residential-Only Uses and Building Separation Standards for Mixed Use and Residential-Only Uses and Table 23.204-26: C-NS Lot Coverage Standards for Residential-Only Uses.

TABLE 23.204-24: C-NS DEVELOPMENT STANDARDS

	Project Land Use		Supplemental Standards
	Non-Residential and Mixed Use	Residential Only	
Lot Area, Minimum			23.304.020
New Lots	4,000 sq. ft.	5,000 sq. ft.	
Per Group Living Accommodation Resident	350 sq. ft. [1]		

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

TABLE 23.204-25: C-NS SETBACK STANDARDS FOR RESIDENTIAL-ONLY USES AND BUILDING SEPARATION STANDARDS FOR MIXED USE AND RESIDENTIAL-ONLY USES

	STANDARDS BY BUILDING STORY			SUPPLEMENTAL STANDARDS
	1 ST	2 ND	3 RD	
Lot Line Setbacks, Minimum				23.304.030–

Front	15 ft.	15 ft.	15 ft.	Setbacks
Rear	15 ft.	15 ft.	15 ft.	
Interior	4 ft.	4 ft.	6 ft.	
Street Side	6 ft.	8 ft.	10 ft.	
Building Separation, Minimum	8 ft.	12 ft.	16 ft.	23.304.040– Building Separation in Residential Districts

TABLE 23.204-26: C-NS LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES

	STANDARD BASED ON BUILDING HEIGHT			SUPPLEMENTAL STANDARDS
	1 STORY	2 STORIES	3 STORIES	
Lot Coverage, Maximum				23.304.120– Lot Coverage
Interior and Through Lot	45%	45%	40%	
Corner Lot	50%	50%	45%	

1. **Lots Abutting or Confronting a Residential District.** See Section 23.304.130– Non-Residential Districts Abutting a Residential District for additional building feature requirements for lots that abut or confront a Residential District.
2. **Ground Floor Dwelling Units in Mixed-Use Buildings.** Ground floor dwelling units in a mixed-use building shall be located at least 20 feet from a property line next to a public right-of-way.
3. **Residential Window Setback.** Mixed-use buildings shall be setback at least ten feet from an interior property line opposite a required window in any habitable room of a residential use.

E. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-NS district, the review authority must make the findings in Section 23.406.040– Use Permits and find that the proposed use or structure:

1. Is compatible in design and character with the commercial district and the adjacent residential neighborhoods;
2. Is compatible with the purposes and the existing character of the district.
3. Does not interfere with the continuity of retail or compatible service facilities at the ground level;

4. Does not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply.

23.204.100 – C-SA South Area Commercial District

A. **District Purpose.** The purpose of the South Area Commercial (C-SA) district is to:

1. Implement the General Plan's designations for Community Commercial, and the Commercial/Residential areas, as well as the policies of the South Berkeley Area Plan;
2. Provide locations for both community-serving and regional-serving businesses, particularly those which reflect the culture of the surrounding area;
3. Provide an area of neighborhood and lower intensity community commercial uses, serving as a transition between the Downtown area and the neighborhood-serving area south of Ashby Avenue;
4. Encourage the location of a wide variety of community-oriented retail goods and services in South Berkeley;
5. Encourage residential development for persons who desire both the convenience of location and more open space than is available in the Downtown;
6. Provide limited locations for other activities such as offices which may be compatible with both retail and residential uses;
7. Encourage development and amenities that support pedestrian-oriented uses;
8. Encourage appropriate mixed-use development (retail/office/residential) on appropriate sites in the district; and
9. Increase the opportunities for the establishment of businesses which are owned and operated by local residents.

B. **Allowed Land Uses.**

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts
2. **Alcoholic Beverage Retail Sales.** The sale and service of distilled alcoholic beverages (hard liquor) is not permitted along Adeline Street, south of Ashby Avenue, except that such service is allowed when incidental to meals at full-service restaurants in accordance with Section 23.310—Alcoholic Beverage Sales and Service.
3. **Bar/Cocktail Lounge/Tavern.** Service of distilled alcoholic beverages is allowed along Adeline Street south of Ashby Avenue only when incidental to seated food service.
4. **Mixed-Use Permits Required.**

- a. **Zoning Certificate.** A mixed-use project is allowed with a Zoning Certificate if the project:
 - i.* Complies with all applicable standards in Table 23.204-27, Table 23.204-28, and Table 23.204-29;
 - ii.* Includes only residential uses above the ground floor; and
 - iii.* Is less than 5,000 square feet in gross floor area, including any existing floor area incorporated into the project.
- b. **Use Permit.** If a mixed-use project does not meet the criteria for approval with a Zoning Certificate as provided above, the project requires a Use Permit and is subject to the findings in Section 23.204.100.E– C-SA South Area Commercial District (Permit Findings).

5. **Automobile/Motorcycle Sales.**

- a. **Applicability.**
 - i.* In the C-SA district, small vehicle service is not permitted. Small vehicle sales that are exclusively indoor operations are permitted with a Zoning Certificate. Otherwise, a Use Permit is required.
 - ii.* All new or relocated automobile or motorcycle sales in the C-SA district shall comply with the requirements of this subsection.
 - iii.* Expansions or modifications of existing automobile or motorcycle sales are:
 - 1. Encouraged to comply with standards in Paragraph c (Standards) below where feasible; and
 - 2. Shall not increase or exacerbate a non-conformity with these standards.
- b. **Where Allowed.** New or relocated automobile or motorcycle sales uses with outdoor activities, including but not limited to storage and display of vehicle inventory, are limited to the Dealership Overlay Area as shown in Figure 23.204-2: C-SA Dealership Overlay Area.

FIGURE 23.204-2: C-SA DEALERSHIP OVERLAY AREA



c. **Standards.**

- i.* **Street Frontage.** Outdoor vehicle display is permitted only along Shattuck Avenue and Adeline Street and is limited to 30 percent of the lot frontage on those streets.
 - ii.* **Area for Outdoor Uses.** A maximum of 40 percent of the lot area may be used for outdoor uses, including but not limited to vehicle display and storage. Adequate landscaping and/or fencing shall be used to filter the view of outdoor uses from the adjacent right-of-way and abutting properties, with the exception of outdoor vehicle display;
 - iii.* **Service Entries.** Vehicle and repair service entries may not exceed 20 percent of the primary lot frontage, no entrance may exceed a width of 20 feet. The primary street frontage is the frontage towards which the primary building entrance is oriented.
 - iv.* **Transparency.** At least 60 percent of any new building shall be within 10 feet of the right-of-way along the primary street frontage and 60 percent of the street-facing facade shall be comprised of clear glass.
 - v.* **Repair Activities.** All vehicle repair activities shall be conducted indoors.
 - vi.* **Noise.** All noise-generating equipment and activities, such as vehicle repair, shall be shielded by noise-attenuating materials. Outdoor amplification is not permitted.
 - vii.* **Lighting.** Exterior light standards and fixtures shall not be taller than 20 feet, shall achieve uniform light coverage and minimize glare, shall use light cutoffs to control light spillover onto adjacent properties and urban sky glow, and shall use low energy light fixtures consistent with the City's goals for energy efficiency.
 - viii.* **Vehicle Storage.** No vehicles shall be stored in the public right-of-way.
- d. **Modification of Standards.** The Zoning Officer may allow modification to standards in Paragraph c (Standards) above with an AUP upon finding that the modification:
- i.* Is necessary to facilitate incorporation of an existing structure;
 - ii.* Achieve greater consistency with the surrounding street pattern;
 - iii.* Buffers impacts to an adjacent residential district; or
 - iv.* Is needed to accommodate dealership operations.

C. **Additional Permit Requirements.** See Section 23.204.030– Additional Permit Requirements.

D. Development Standards.

1. **Basic Standards.** See Table 23.204-27: C-SA Development Standards and Table 23.204-28: C-SA Maximum Building Height. For residential-only projects, see also Table 23.204-29: C-SA Setback and Building Separation Standards for Mixed Use and Residential-Only Uses and Table 23.204-30: C-SA Lot Coverage Standards for Mixed Use and Residential-Only Uses.

TABLE 23.204-27: C-SA DEVELOPMENT STANDARDS

	Project Land Use			Supplemental Standards
	Non-Residential	Mixed Use	Residential Only	
Lot Area, Minimum				23.304.020
New Lots	No minimum	No minimum	5,000 sq. ft.	
Per Group Living Accommodation Resident	No minimum	350 sq. ft. [1]		
Usable Open Space, Minimum				23.304.090– Usable Open Space
Per Dwelling Unit	N/A	40 sq. ft. [3]	200 sq. ft.	
Per Group Living Accommodation Resident	N/A	No minimum	90 sq. ft.	
Floor Area Ratio, Maximum	4.0	4.0	No maximum	
Main Building Height, Minimum	No minimum			
Main Building Height, Maximum	See Table 23.204-28			
Lot Line Setbacks, Minimum				23.304.030– Setbacks
Abutting/Confronting a Non-residential District	No minimum	See Table 23.204-29		
Abutting/Confronting a Residential District	See 23.304.030. C.2			

	Project Land Use			Supplemental Standards
	Non-Residential	Mixed Use	Residential Only	
Building Separation, Minimum	No minimum	See Table 23.204-29		23.304.040– Building Separation in Residential Districts
Lot Coverage, Maximum	100%	See Table 23.204-30		23.304.120– Lot Coverage
<p>Notes:</p> <p>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.</p> <p>[2] For mixed-use projects, minimum building separation shall be as required for residential-only projects</p> <p>[3] No dimension may be less than 6 feet.</p>				

TABLE 23.204-28: C-SA MAXIMUM BUILDING HEIGHT

BUILDING LAND USE	MAXIMUM HEIGHT		
	SUBAREA 1	SUBAREA 2	SUBAREA 3
Non-Residential Uses	36 and 3 stories	24 and 2 stories	24 and 2 stories
Mixed Use and Residential Only	60 and 5 stories [1]	50 and 4 stories [1]	36 and 3 stories [1]
<p>Notes:</p> <p>[1] In mixed-use buildings, the third story and above must be used for residential purposes entirely.</p>			

FIGURE 23.204-3: C-SA BUILDING HEIGHT SUB-AREAS

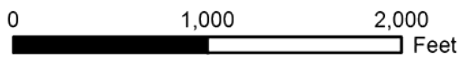
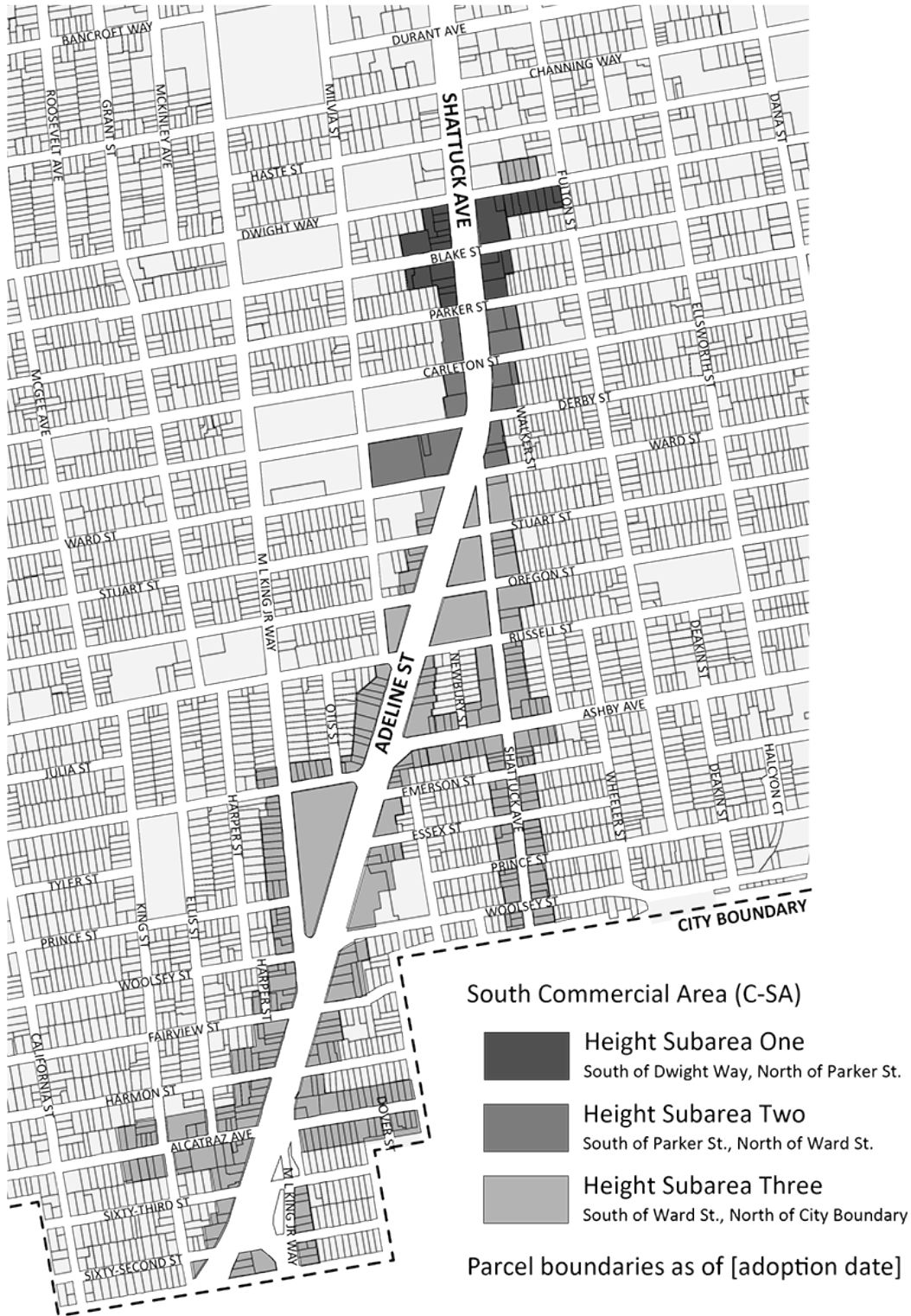


TABLE 23.204-29: C-SA SETBACK AND BUILDING SEPARATION STANDARDS FOR MIXED USE AND RESIDENTIAL-ONLY USES

	STANDARDS BY BUILDING STORY						Supplemental Standards
	1 st	2 nd	3 rd	4 th	5 th	6 th	
Lot Line Setbacks, Minimum							23.304.030– Setbacks
Front	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	
Rear	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	
Interior	4 ft.	4 ft.	6 ft.	8 ft.	10 ft.	12 ft.	
Street Side	6 ft.	8 ft.	10 ft.	12 ft.	14 ft.	15 ft.	
Building Separation, Minimum	8 ft.	12 ft.	16 ft.	20 ft.	24 ft.	28 ft.	23.304.040– Building Separation in Residential Districts

TABLE 23.204-30: C-SA LOT COVERAGE STANDARDS FOR MIXED USE AND RESIDENTIAL-ONLY USES

	STANDARD BASED ON BUILDING HEIGHT						SUPPLEMENTAL STANDARDS
	1 STORY	2 STORIES	3 STORIES	4 STORIES	5 STORIES	6 STORIES	
Lot Coverage, Maximum							23.304.120– Lot Coverage
Interior and Through Lots	45%	45%	35%	35%	35%	35%	
Corner Lots	50%	50%	45%	40%	40%	40%	

2. **Modification for Mixed Use and Residential Projects.** The ZAB may modify development standards in Table 23.204-27, Table 23.204-28, and Table 23.204-29, and Table 23.204-30 for a mixed-use or residential-only project with a Use Permit upon making one of the following findings:
 - a. The project encourages utilization of public transit and existing off-street parking facilities in the area of the proposed building;
 - b. The modification allows consistency with the building setbacks existing in the immediate area where a residential building setback would not serve a useful purpose;

- c. The modification facilitates the construction of affordable housing as defined by the U.S. Department of Housing and Urban Development (HUD) Guidelines; or
 - d. The modification provides consistency with the purposes of the district as listed in Section 23.204.100.A (District Purpose).
- E. **Findings.** To approve an AUP or Use Permit for a project in the C-SA district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:
- 1. Is compatible with the purposes of the district;
 - 2. Is compatible in design and character with the district and the adjacent residential neighborhoods; and
 - 3. Will not result in the domination of one type of commercial/retail use in any one area of the district.

23.204.110 – C-T Telegraph Avenue Commercial District

- A. **District Purpose.** The purpose of the Telegraph Avenue Commercial (C-T) district is to:
- 1. Implement the General Plan's designation of Avenue Commercial for this area;
 - 2. Implement the Southside Plan's designation for the Telegraph Avenue Commercial Subarea;
 - 3. Regulate development in the Telegraph Avenue area to satisfy the needs of the population groups using the district, especially the University population and the surrounding resident population;
 - 4. Encourage the availability of a variety of goods and services which serve residents in the district and the University population but do not generate a high volume of vehicular traffic;
 - 5. Allow for uses which maintain the cultural quality of the district giving it its regional appeal without generating substantial vehicular traffic;
 - 6. Discourage uses which, because of size, the type of the products sold, vehicular traffic generated or other considerations, are more appropriately located elsewhere in the city;
 - 7. Encourage a mix of goods and services which will prevent the dominance of any one type of use and which will produce variations within the same category of uses;

8. Encourage the establishment and maintenance of uses which will satisfy the needs of all age groups and attract a range of users and interests;
9. Encourage the creation of additional housing in the district which is affordable, including housing for those who work or study nearby;
10. Encourage those uses and structural architecture that reinforce, and discourage those uses and architecture that interrupt, the pedestrian orientation of the district;
11. Encourage mixed commercial and residential uses;
12. Encourage the construction of new housing in mixed use development on vacant properties and surface parking lots;
13. Encourage the redevelopment of single-story structures that are not historically significant resources with housing and mixed use development;
14. Protect and enhance historically and architecturally significant buildings by ensuring that new development and alterations complement their existing architectural character;
15. Encourage the establishment and survival of small, locally-owned businesses, thereby contributing to the vitality and diversity of the district;
16. Discourage the type of commercial use whose establishment will contribute to the displacement of businesses that supply neighboring residents with essential goods and services;
17. Ensure that new buildings, additions and renovations harmonize with and enhance the unique character of the district;
18. Provide environmental protection for the residents of mixed residential commercial structures and surrounding residents from such detriments as noise, fumes and litter;
19. Preserve the ethnic diversity of the resident population and users of the district and of the types of businesses providing ethnically diverse goods and services in the district;
20. Protect and encourage the development of properties accessible to the disabled for both residential and commercial use;
21. Discourage uses which are widely available in other shopping districts throughout the Bay Area and detract from the unique type and mix of goods and services available in the district.

B. Allowed Land Uses.

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

2. **Bar/Cocktail Lounge/Taverns.** Service of distilled alcoholic beverages in the C-T district is allowed only when incidental to seated food service.
3. **Drug Paraphrenia Stores.** Any use involving the sale or distribution of drug paraphrenia is not permitted in the C-T district.
4. **Fuel Stations.** Alternative fuel and gasoline stations are allowed with Use Permit when located in a parking structure.
5. **Residential-Only Buildings.** Residential-only buildings are not permitted in the C-T district. Dwelling units and group living accommodations are allowed only above the ground floor in a mixed-use building.
6. **Office Uses.**
 - a. Table 23.204-31 shows permits required for office uses in the C-T district.

TABLE 23.204-31: C-T OFFICE PERMIT REQUIREMENTS

Building Location	Permit Required	
	First and Second Story	Above Second Story
Adjacent to Bancroft Way	As required by Table 23.204-1	AUP
Not adjacent to Bancroft Way		UP(PH)

- b. When office uses are located on the ground floor adjacent to street frontage, the storefront windows must either:
 - i.* Include a window display; or
 - ii.* Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.
7. **Upper Story Uses.**
 - a. Floor area above the ground floor may be occupied only by a residential or office uses.
 - b. A commercial use that is an integral part of a ground floor establishment is permitted on the second story if the use:
 - i.* Has no entrances or exits, other than required fire exits, outside of the ground floor space; and
 - ii.* Does not exceed the ground-floor area of the use.

C. **Additional Permit Requirements.** See Section 23.204.030 (Additional Permit Requirements).

D. **Development Standards.**

1. **Basic Standards.** See Table 23.204-32: C-T Development Standards.

TABLE 23.204-32: C-T DEVELOPMENT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area Minimum		23.304.020– Lot Requirements
New Lots	No minimum	
Per Group Living Accommodation Resident	350 sq. ft. [1]	
Usable Open, Minimum		23.304.090– Usable Open Space
Space Per Dwelling Unit	40 sq. ft. [4]	
Per Group Living Accommodation Resident	No minimum	
Floor Area Ratio, Maximum		
South of Dwight Way	4.0	
North of Dwight Way	5.0 [2]	
Telegraph/Channing Parking Garage [3]	No maximum	
Main Building Height, Minimum	35 ft.	
Main Building Height, Maximum		23.304.050– Building Height
South of Dwight Way	50 ft. [2]	
North of Dwight Way	65 ft. [2]	
Telegraph/Channing Parking Garage [3]	85 ft. and 7 stories	
Lot Line Setbacks, Minimum		23.304.030– Setbacks
Abutting/Confronting a Non-residential District	No minimum	
Abutting/Confronting a Residential District	See 23.304.030.C.2	

Building Separation, Minimum	No minimum	23.304.040– Building Separation in Residential Districts
Lot Coverage, Maximum	100%	23.304.120– Lot Coverage
<p>Notes:</p> <p>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.</p> <p>[2] Increased FAR and height allowed with Use Permit. See Table 23.204-33.</p> <p>[3] APN 55-1879-6-1.</p> <p>[4] No dimension may be less than 6 feet.</p>		

2. **Lots Abutting or Confronting a Residential District.** See 23.304.130 (Non-residential Districts Abutting a Residential District) for additional building feature requirements for lots that abut or confront a Residential District.

3. **Increased Group Living Density.**

- a. Projects with group living accommodations occupying 50 percent or more of the total building floor area are eligible for increased density.
- b. To approve a Use Permit to increase the density of a group living accommodation the ZAB must make the following findings:
 - i. The increase in density will not be detrimental to the immediate neighborhood; and
 - ii. The project meets the purposes of the district.

4. **Height and FAR Increases.**

- a. Projects with 50 percent or more of the total building floor area for residential use are eligible for increased building height and FAR as shown in Table 23.204-33.

TABLE 23.204-33: C-T ALLOWED HEIGHT AND FAR INCREASES

Project Location	Allowed Increase	
	Height	FAR
South of Dwight Way	65 ft. and 5 stories	No increase allowed
North of Dwight Way	75 ft. and 6 stories	6.0

- b. The ZAB may allow the increased height and FAR with a Use Permit upon finding that the project will not result in a significant reduction in sunlight on Telegraph Avenue sidewalks.

5. **Shade Studies.**

- a. A shade study is required for all proposed buildings exceeding three stories or 40 feet.
- b. Based on the findings of the shade study, the ZAB may require the fourth or higher story of a building to be set back to minimize shade impacts on adjacent properties or the public right-of-way.

6. **Environmental Impacts.** Projects that may create environmental impacts as described in the Southside Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program (MMP).

E. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-T district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:

1. Is compatible with the purposes of the district;
2. Encourages and maintains the present street frontage of the district;
3. Does not interfere with the continuity of retail or compatible service facilities at the ground level;
4. Does not interrupt a continuous wall of building facades;
5. Is compatible in design and character with the district and the adjacent residential neighborhoods;
6. Does not generate traffic or parking demand significantly beyond the capacity of the district or significantly increase impacts on adjacent residential neighborhoods; and
7. Complies with the Southside Plan's adopted Mitigation Monitoring Program (MMP).

23.204.120 – C-SO Solano Avenue Commercial District

A. **District Purpose.** The purpose of the Solano Avenue Commercial (C-SO) district is to:

1. Implement the General Plan's designations for Community Commercial and Commercial Service areas;
2. Maintain a scale and balance of commercial activity on Solano Avenue that will:

- a. Enhance the surrounding neighborhood and serve its residents;
- b. Encourage the location of businesses on Solano Avenue that serve the everyday needs of local residents;
- c. Discourage the location of businesses on Solano Avenue that serve a larger regional clientele, and should more appropriately be located in the Central Business District;
- d. Limit the number of businesses on Solano Avenue that generate traffic or parking demand in excess of commercial parking availability, causing the overflow of traffic circulation and parking onto adjacent residential streets;
- e. Encourage location of late night commerce in appropriate areas in Berkeley, such as the downtown area, and allow businesses to address demand for late night service on Solano Avenue by establishing a 11:00 p.m. closing time for businesses on Solano Avenue; and
- f. Ensure that all construction, alterations, or additions to buildings will be in functional and aesthetic harmony with adjacent buildings and areas; and
- g. Protect local residents from commercial noise, offensive odors and parking and traffic problems.

B. Allowed Land Uses.

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
2. **Automatic Teller Machines (ATM).** A maximum of two exterior ATMs are allowed per bank establishment and only when off-street parking is provided.

C. Additional Permit Requirements. See Section 23.204.030 (Additional Permit Requirements).

D. Development Standards.

1. **Basic Standards.** See
2. Table 23.204-34: C-SO Development Standards. For residential-only projects, see also
3. Table 23.204-35: C-SO Setback and Building Separation Standards for Residential-Only Uses and Table 23.204-36: C-SO Lot Coverage Standards for Residential-Only Uses.

TABLE 23.204-34: C-SO DEVELOPMENT STANDARDS

	Project Land Use			Supplemental Standards
	Non-Residential and Mixed Use	Mixed-Use [1]	Residential Only [1]	
Lot Area, Minimum				
New Lots	No minimum		5,000 sq. ft	23.304.020– Lot Requirements
Per Group Living Accommodation Resident	350 sq. ft. [2]			
Usable Open Space, Minimum				23.304.090– Usable Open Space
Per Dwelling Unit	40 sq. ft. [4]	200 sq. ft.		
Per Group Living Accommodation Resident	No minimum	90 sq. ft.		
Floor Area Ratio, Maximum	2.0	No maximum		
Main Building Height, Minimum	No minimum			
Main Building Height, Maximum	28 ft. and 2 stories			23.304.050– Building Height
Lot Line Setbacks, Minimum				23.304.030– Setbacks
Abutting/Confronting a Non-residential District	No minimum	See Table 23.204-35		
Abutting/Confronting a Residential District	See 23.304.030.C.2			
Building Separation, Minimum	No minimum [3]	See Table 23.204-35	23.304.040– Building Separation in Residential Districts	
Lot Coverage, Maximum	100%	See Table 23.204-36	23.304.120– Lot Coverage	

	Project Land Use			Supplemental Standards
	Non-Residential and Mixed Use	Mixed-Use [1]	Residential Only [1]	
Notes-				
[1] For mixed use and residential only projects, development standards included in this table may be modified. See 23.204.120.D.2.				
[2] One additional resident is allowed for remaining lot area between 200 and 350 square feet.				
[3] For mixed-use projects, minimum building separation shall be as required for residential-only projects				
[4] No dimension may be less than 6 feet.				

TABLE 23.204-35: C-SO SETBACK AND BUILDING SEPARATION STANDARDS FOR RESIDENTIAL-ONLY USES

	STANDARDS BY BUILDING STORY			SUPPLEMENTAL STANDARDS
	1ST	2ND	3RD	
Lot Line Setbacks, Minimum [1]				
Front	15 ft.	15 ft.	15 ft.	23.304.030– Setbacks
Rear	15 ft.	15 ft.	15 ft.	
Interior	4 ft.	4 ft.	6 ft.	
Street Side	6 ft.	8 ft.	10 ft.	
Building Separation, Minimum [1]	8 ft.	12 ft.	16 ft.	23.304.040– Building Separation in Residential Districts
[1] For mixed use and residential-only projects, development standards included in this table may be modified. See 23.204.120.D.2.				

TABLE 23.204-36: C-SO LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES

	STANDARD BASED ON BUILDING HEIGHT			SUPPLEMENTAL STANDARDS
	1 STORY	2 STORIES	3 STORIES	
Lot Coverage, Maximum [1]				
Interior and Through Lots	45%	45%	40%	23.304.120– Lot Coverage

Corner Lots	50%	50%	45%	
[1] For mixed use and residential-only projects, development standards included in this table may be modified. See 23.204.120.D.2.				

1. **Lots Abutting or Confronting a Residential District.** See 23.304.130 (Non-residential Districts Abutting a Residential District) for additional building feature requirements for lots that abut or confront a Residential District.
2. **Modification to Standards –Mixed Use and Residential-Only Projects.** The ZAB may modify development standards in
3. Table 23.204-34,
4. Table 23.204-35, and Table 23.204-36 for a mixed-use or residential-only project with a Use Permit upon making one of the following findings:
 - a. The modification will encourage public transit utilization and existing off-street parking facilities in the area of the proposed building.
 - b. The modification will facilitate the construction of residential or tourist hotel uses where appropriate.
 - c. The modification will permit consistency with the building setbacks existing in the immediate area where a residential building setback would not serve a useful purpose.
5. **Ground Floor Residential Uses.** A ground floor residential uses shall be setback at least 320 feet from a street side property line.
6. **Projections into Right-of-Way.**
 - a. Bay windows and balconies 11 feet or more above the sidewalk grade may project 3 feet into a street right-of-way.
 - b. A maximum 60 percent of the length of a building frontage may project beyond the property line.
 - c. All projections require an encroachment permit from the Public Works Department.
7. **Limitations Adjacent to a R District.** The following requirements apply to commercial uses adjacent to a residential district or fronting any street other than Solano Avenue.
 - a. All openings other than fixed windows and required fire exits must be setback at least 50 feet from any property located in an Residential District to reduce noise and odor problems in residential areas

- b. Customer use of rear or side exits which open onto residential streets (with the exception of emergency access) is not permitted.
- c. Garbage and recycled materials may not be placed for collection on residential streets from storage areas located at the rear of any building. All such materials shall be stored in an enclosed area for health and sanitation reasons.
- d. Deliveries to non-residential establishments from residential streets are not permitted.

E. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-SO district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:

- 1. Encourages and maintains the character of the street frontage and pedestrian orientation of the district;
- 2. Is compatible in design and character with the district and the adjacent residential neighborhood;
- 3. Is compatible with the purposes set forth in this set of regulations and the existing character of Solano Avenue;
- 4. Does not interfere with the continuity of retail or compatible service facilities at the ground level, or interrupt a continuous wall of building facades; and
- 5. Does not generate traffic and parking demand to significantly increase impacts on adjacent residential neighborhoods.

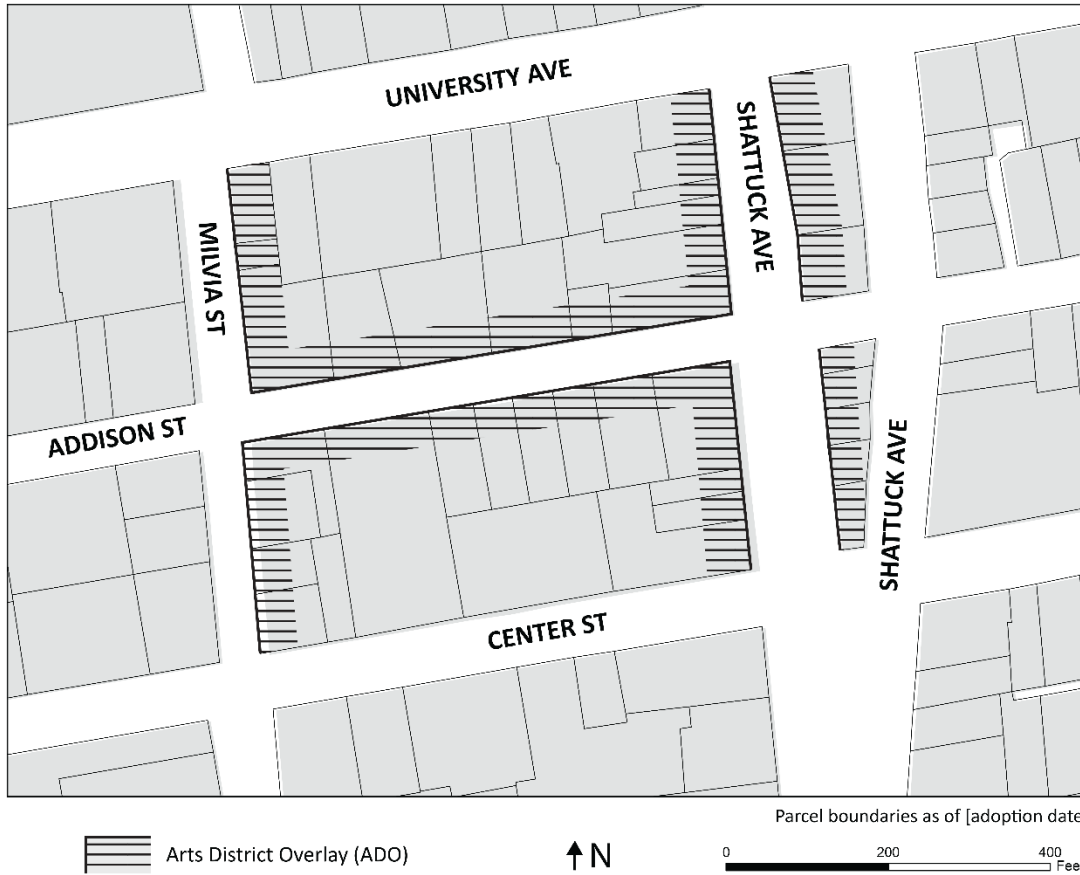
23.204.130 – C-DMU Downtown Mixed-Use District

A. **District Purpose.** The purpose of the C-DMU district is to implement the vision and goals of the Downtown Area Plan (adopted 2012), which include: Environmental Sustainability, Land Use, Access, Historic Preservation and Urban Design, Streets and Open Space, Housing and Community Health and Services, and Economic Development.

B. **Allowed Land Use.**

- 1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
- 2. **Automatic Teller Machines (ATM).** An ATM inside a non-bank building is allowed with an AUP.
- 3. **Banks and Financial Services, Retail.** Retail banks and financial services in the C-DMU require permits as follows:

FIGURE 23.204-4: C-DMU DOWNTOWN ARTS DISTRICT OVERLAY BOUNDARIES



3. **Use Limitations; Findings.** Food service establishments and offices on the ground floor adjacent to a street frontage require an AUP. To approve the AUP, the Zoning Officer must find that
 - a. The project meets the purposes of the Arts Overlay District as set forth above; and
 - b. The location, size, type, appearance, and signage of the proposed use will:
 - i. Animate and enhance the pedestrian experience on the street; and
 - ii. Be generally open to the public evenings and on weekends, whenever practicable.

E. Development Standards.

1. Height.

- a. **Height Limits.** Table 23.204-37: C-DMU Height Limits shows height limits in the C-DMU district, except as otherwise allowed by Paragraph 2 below. See Figure 23.204-5: C-DMU Sub-Areas for district sub-area boundaries.

FIGURE 23.204-5: C-DMU SUB-AREAS



- C-DMU Subareas
- Core Area
 - Outer Core
 - Corridor
 - Buffer



Parcel boundaries as of [adoption date]

TABLE 23.204-37: C-DMU HEIGHT LIMITS

SUB-AREA	MINIMUM	MAXIMUM	MAXIMUM WITH USE PERMIT
Core Area	50 ft.	60 ft.	75 ft.
Outer Core	40 ft.		
Corridor	40 ft.		
Buffer	No minimum	50 ft.	60 ft.

- b. **Parapet Walls.** For roofs with parapet walls, building height is measured to the top of the roof. Parapets may exceed the height limit by up to 5 feet as of right.
- c. **Minimum Height.** The minimum height standard applies to new buildings only, measured to the top of the plate. Theater and museum buildings are exempt.

2. Increased Height Allowance.

- a. **Allowed Height.** The ZAB may issue a Use Permit for up to five buildings that exceed the C-DMU height limits as shown in Table 23.204-38: C-DMU Increased Height Allowance.

TABLE 23.204-38: C-DMU INCREASED HEIGHT ALLOWANCE

Sub-Area	Number of Buildings	Height	
		Minimum	Maximum
Combined Core and Outer Core	2	75 ft.	120 ft.
Core	3	120 ft.	180 ft.

- b. **Application Process.**
- i. Applications for any of the five buildings over 75 feet in height may be submitted on July 1, 2012. If no applications that satisfy the submittal requirements as determined by the Zoning Officer are submitted on that date, then the next deadline to submit applications will be no later than six months from that date, with application opportunity dates at six-month intervals until the first application has been submitted. Once the first

application has been submitted, then the application opportunity date will occur once yearly on the anniversary of the date of the first submittal.

- ii. A project shall secure a position as one of the five allowed buildings over 75 feet in height following final Use Permit approval. Such Use Permits shall include a condition of approval that establishes a schedule for: submittal of a building permit application, timely response to plan check comments, payment of building permit fees such that a building permit can be issued, and beginning construction. The process for allowing extension of the timeline requirements, if any, shall be specified in the condition.
- iii. Failure of a permit holder to strictly comply with the schedule established by the Use Permit is grounds for revocation of the Use Permit pursuant to Chapter 23.404.080 (Permit Revocation).

c. Community Benefit Required.

- i. To approve a Use Permit for increased building height under this section, the ZAB must find that the project will provide significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the City, beyond what would otherwise be required by the City.
- ii. Significant community benefits may include, but are not limited to affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities.
- iii. This community benefit requirements shall be included as conditions of approval and the owner shall enter into a written agreement with the City that shall be binding on all successors in interest.

3. Setbacks.

Basic Standards. Table 23.204-39 shows minimum required lot line setbacks in the C-DMU district. Additional standards are listed in 23.204.130.3.d.

TABLE 23.204-39:C-DMU SETBACK STANDARDS

PORTION OF BUILDING AT HEIGHT OF:	FRONT OR STREET SIDE	MINIMUM INTERIOR SIDE		MINIMUM REAR
		65' AND LESS FROM LOT FRONTAGE	OVER 65' FROM LOT FRONTAGE	
Zero to 20 feet	No minimum. 5 ft. max.	No minimum		

21 feet to 75 feet	No minimum.	No minimum	5 ft.
76 feet to 120 feet	15 ft. min.	5 ft.	15 ft.
Over 120 feet	15 ft. min.	15 ft.	

- a. **Modifications to Standards.** The ZAB may modify the setback standards in Table 23.204-39 with a Use Permit upon finding that the modified setbacks will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk.
- b. **Residential Transitions.** The setback standards in Table 23.204-39 shall not apply to commercial lots abutting or confronting residential zoning. Such lots shall comply with Section 23.304.030.C.2– Setbacks (Lots Adjacent to Residential Districts).
- c. **Additional Standards.**
 - i. For buildings over 120 feet in height, that portion of the building over 120 feet must be less than 120 feet in width when measured at the widest point on the diagonal in plan view.
 - ii. For a lot that abuts the interior side or rear lot line of a residentially-zoned lot, a new building shall be set back from the shared property line by 20 feet where the building exceeds 45 feet in height.
 - iii. For a lot that confronts a residentially-zoned lot, a new building shall be set back 10 feet from the street-facing property line where the building exceeds 45 feet in height, except that this provision shall not apply to lots confronting public uses with a residential zoning designation, such as Berkeley High School, Civic Center Park, and Fire Station 2. However, this provision will apply for all lots with frontage on the Martin Luther King Jr. Way right-of-way.
 - iv. For lots with frontage on the Shattuck Avenue right-of-way south of Durant Avenue, a new building shall be set back 15 feet from the Shattuck Avenue property line where the building exceeds 65 feet in height.
 - v. Architectural features such as eaves, cornices, canopies, awnings, bay windows, uncovered porches, balconies, fire escapes, stairs and landings may project up to five feet into required setbacks of this section so long as the surface area of such projections does not exceed 50 percent of the surface area of the side of the building on which the projections are located.

4. **Usable Open Space.** Table 23.204-40 shows minimum required usable open space in the C-DMU district.

TABLE 23.204-40: C-DMU USABLE OPEN SPACE REQUIREMENTS

	MINIMUM USABLE OPEN SPACE
Residential Uses	80 sq. ft./unit [1]
Non-Residential Uses	1 sq. ft. of privately-owned public open space per 50 sq. ft. of commercial floor area.
<p>Note: [1] Each square foot of usable open space provided as privately-owned public open space is counted as two square feet of required on-site open space.</p>	

5. **Privately-Owned Public Open Space.**

- a. If a privately-owned public open space is indoors or enclosed, it shall include natural light in the form of windows, skylights, entryways, or other openings.
- b. Privately-owned public open space must be:
 - i. Clearly identified with signage in a publicly conspicuous location at street level indicating the area that is open to the public, the hours the space is open, and the party responsible for maintenance; and
 - ii. Separated from the grade of the public sidewalk by a height no greater than 3 vertical feet unless an AUP is obtained.

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. To allow payment of in-lieu fee, the ZAB must find that the payment will support timely development of open space improvements that will serve the needs of both project residents and other people living in and using the downtown.
- c. 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.


7. Ground Floor Street Frontage.

- a. Special ground floor street frontage requirements in Paragraph (b) below apply to the following uses in the C-DMU district:
 - i.* Insurance Agents, Title Companies, Real Estate Agents, Travel Agents
 - ii.* Office, Business and Professional
 - iii.* Group Class Instruction
 - iv.* Gym/Health Club
- b. New ground floor uses listed in paragraph (a) above that are adjacent to a street frontage shall either:
 - i.* Include a storefront window display; or
 - ii.* Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

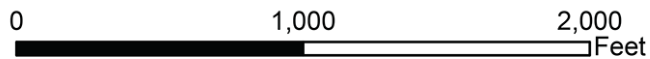
8. Residential Entrance Limitations. In new buildings constructed on public serving frontages, as shown in Figure 23.204-6, entrances to individual dwelling units and to living quarters in group living accommodations are not permitted on the street-facing side of the street-level floor.

FIGURE 23.204-6: C-DMU PUBLIC SERVING FRONTAGES



 Public-Serving Frontage Required

Parcel boundaries as of [adoption date]



F. **Streets and Open Space Improvement Plan (SOSIP) Fee.** In addition to any other requirement of this section, projects shall be subject to payment of an impact fee to implement the Streets and Open Space Improvement Plan.

G. **Green Building Provisions.**

1. **New Buildings.** Construction of any new building shall attain either:
 - a. LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC); or
 - b. Building performance equivalent to this rating, as determined by the Zoning Officer.
2. **Additions 20,000 Square Feet or Less.** Additions of 20,000 square feet or less shall be required to meet all applicable standards of the Stopwaste Small Commercial Checklist, or equivalent, as determined by the Zoning Officer. The rating shall be appropriate to the use type of the proposed construction.
3. **Additions More than 20,000 Square Feet.** Additions of more than 20,000 square feet shall attain either:
 - a. LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC); or
 - b. Building performance equivalent to this rating, as determined by the Zoning Officer.

H. **Environmental Impacts.** Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program for the Downtown Area Plan.

- I. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-DMU district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:
1. Is compatible with the purposes of the district; and
 2. Is compatible with the surrounding uses and buildings.

23.204.140 – C-W West Berkeley Commercial District

- A. **District Purpose.** The purpose of the West Berkeley Commercial (C-W) district is to:
1. Implement the West Berkeley Plan Commercial District designation;
 2. Provide locations for commercial services which primarily serve area residents and/or businesses;
 3. Support the retention and attraction of a balance of both smaller and larger stores and restaurants;
 4. Provide appropriate locations, consistent with West Berkeley Plan policies, for commercial services which serve a citywide or broader clientele;
 5. Provide a relatively compact, clearly bounded set of commercial areas in West Berkeley, so as to both improve the quality of West Berkeley shopping environments and to prevent commercial overspill into industrial areas;
 6. Encourage the intensification of commercial activity at designated nodes to help develop more pedestrian-oriented environments at those locations;
 7. Increase the opportunities for development of housing in commercial areas to support local retailing and use of transit lines and opportunities for mixed use projects combining pedestrian-oriented neighborhood-serving uses with mixed income housing in locations abutting residential districts;
 8. Encourage appropriately intense development in underutilized portions of commercial streets;
 9. Promote development compatible with adjacent commercial, residential and industrial areas;
 10. Provide a location for cultural and performing arts activities; and
 11. promote environmental protection for the residents and workers both within and adjacent to the district from such detriments as noise, fumes, and other detrimental environmental effects.
- B. **Land Use Regulations.**
1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
 2. **Mixed-Use Residential.**
 - a. See Table 23.204-41 for mixed-use residential permit requirements in the C-W district.

TABLE 23.204-41: C-W MIXED-USE RESIDENTIAL PERMIT REQUIREMENTS

Total Project Floor Area	Permit Required
Projects with both residential and retail uses where the retail space comprises 15% to 33% of total gross floor area	
Less than 20,000 square feet	ZC
20,000 square feet or more	UP(PH)
All other mixed-use residential projects	
Less than 5,000 square feet	ZC
5,000 to 9,000 square feet	AUP
More than 9,000 square feet	UP(PH)

- b. All new retail uses in an existing mixed-use development are subject to the permit requirements for mixed use development as shown in Table 23.204-41.

3. Automotive Uses.

- a. As used in this paragraph, “automotive use” means a use classified in Table 23.204-1 as a vehicle service and sales use. “Automotive site” means a site which was legally used or approved for use as an automotive use as of March 1, 1997.
- b. On lots in the C-W district with frontage on San Pablo Avenue:
- i.* An automotive use may be established only on an automotive site; and
 - ii.* If an automotive use on an automotive site is discontinued for a period of two years or more, it may not be re-established.

4. Langendorf Building. See Section 23.206.030.D– Additional Permit Requirements (Langendorf Building).

C. Additional Permit Requirements. See Section 23.204.030– Additional Permit Requirements.

D. Designated Nodes.

1. **Purpose.** The purposes of the designated nodes in the C-W district are to:
- a. Intensify retail, commercial, and mixed-use activity around major intersections;

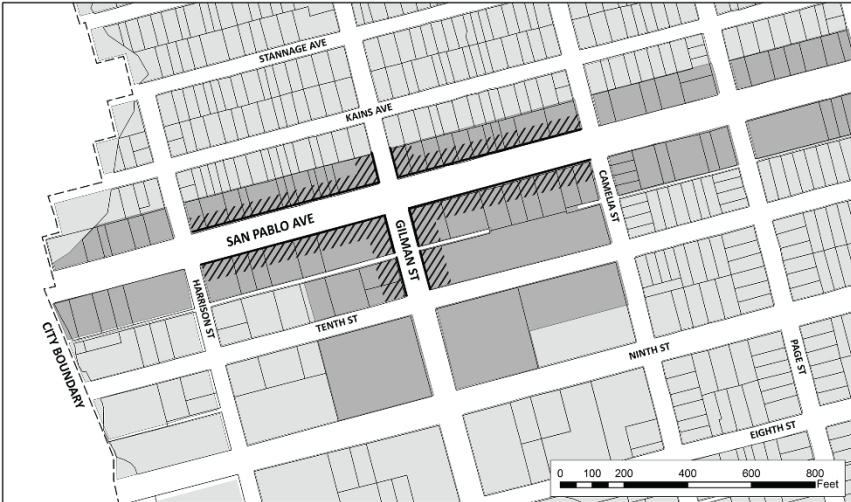
- b. Reflect and reinforce the major existing and developing concentrations of pedestrian-oriented uses;
 - c. Encourage intensified development around transit transfer points;
 - d. Help define the urban form of San Pablo Avenue by developing identifiable areas of concentrated development.
2. **Location.** Properties designated as nodes in the C-W district are shown in Figure 23.204-7: C-W Designated Nodes.
3. **Ground Floor Uses.** The ground floor of buildings in designated nodes may be used only for the following:
 - a. Retail sales
 - b. Personal and household services
 - c. Retail financial services (banks)
 - d. Food and alcohol service
 - e. Lodging
 - f. Entertainment and assembly uses
 - g. Gasoline/vehicle fuel stations
 - h. Vehicle repair uses
 - i. New car sales
 - j. Used vehicles sales
 - k. Required access to and lobbies serving upper-story uses
4. **Prohibited Uses.** The following uses are not permitted in designated nodes:
 - a. Vehicle rentals
 - b. Used vehicle sales when not principally in buildings
 - c. Vehicle washes
 - d. Tire sales and service
 - e. Open air markets
 - f. Circus/carnivals
 - g. Public utility substation buildings, tanks
5. **Findings.** To approve a Use Permit or AUP for a project in a designated node, the review authority must find that the project supports the development of a

strong retail commercial and pedestrian-oriented environment at the node.

Factors the review authority should consider when making this finding include:

- a. The placement of store entrances relative to the street and parking lots; and
- b. The size and prominence of display windows and areas facing the sidewalk.

FIGURE 23.204-7: C-W DESIGNATED NODES



West Berkeley Commercial (C-W)
 Node 1: Gillman and San Pablo
 Parcel boundaries as of [adoption date]



West Berkeley Commercial (C-W)
 Node 2: Cedar and San Pablo
 Parcel boundaries as of [adoption date]

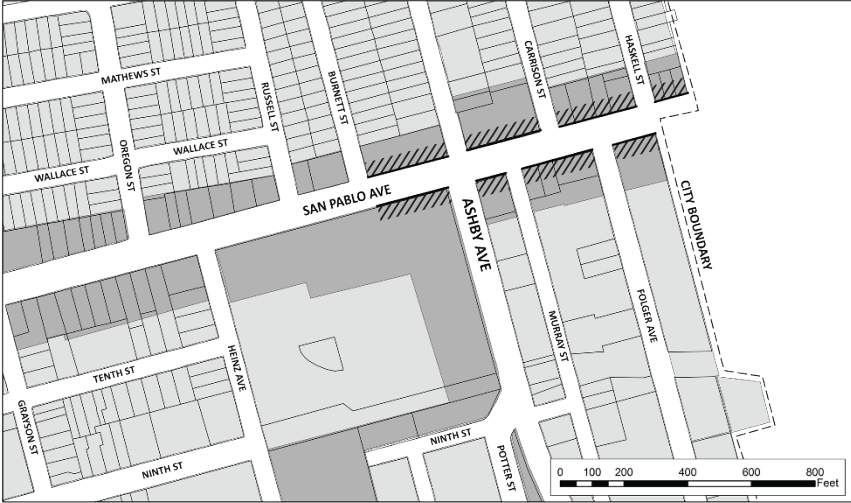


West Berkeley Commercial (C-W)
 Node 3: University and San Pablo
 Parcel boundaries as of [adoption date]

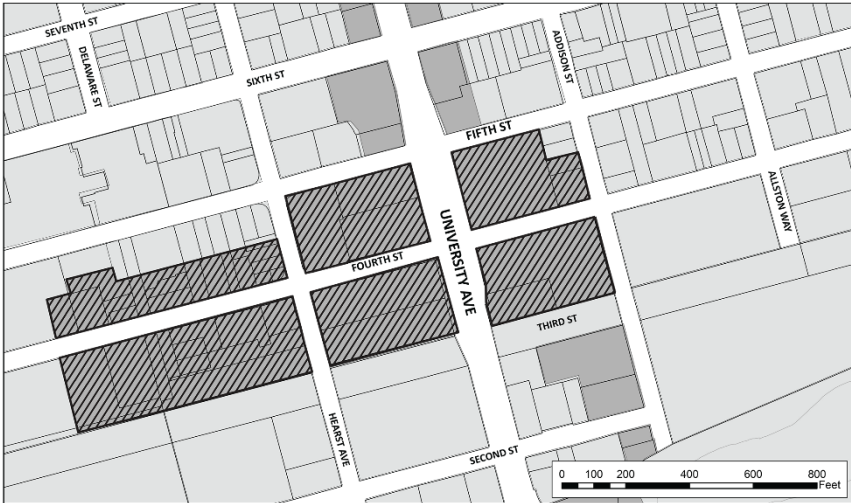


West Berkeley Commercial (C-W)
 Node 4: Dwight and San Pablo
 Parcel boundaries as of [adoption date]

FIGURE 23.204-8: C-W DESIGNATED NODES



← N
 West Berkeley Commercial (C-W)
 Node 5: Ashby and San Pablo
 Parcel boundaries as of [adoption date]



← N
 West Berkeley Commercial (C-W)
 Node 6: 4th Street and University
 Parcel boundaries as of [adoption date]

E. Development Standards.

1. **Basic Standards.** See Table 23.204-42 for development standards in the C-W district.

TABLE 23.204-42: C-W DEVELOPMENT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area Minimum		23.304.020– Lot Requirements
New Lots	No minimum	
Per Group Living Accommodation Resident	350 sq. ft.	
Usable Open Space, Minimum		23.304.090– Usable Open Space
Per Dwelling Unit or Live/Work Unit	40 sq. ft.	
Per Group Living Accommodation Resident	No minimum	
Floor Area Ratio, Maximum	3.0	
Main Building Height, Minimum	No minimum	
Main Building Height, Maximum	40 ft. and 3 stories [1,2]	23.304.050– Building Height
Lot Line Setbacks, Minimum		23.304.030– Setbacks
Abutting/Confronting a Non-residential District	No minimum	
Abutting/Confronting a Residential District	See 23.304.030.C.2	
Building Separation, Minimum	No minimum	
Lot Coverage, Maximum	100%	23.304.120– Lot Coverage
Notes:		
[1] 50 ft. and 4 stories allowed for mixed-use projects. The fourth floor must be used for residential or live/work purposes.		
[2] On Assessor Parcel Numbers 054-1763-001-03, 054-1763-010-00 and 054-1763-003-03 the maximum height is 50 feet and 4 stories.		

2. **Parking Lot Design.** See 23.322.080.E.3 (C-W District).

3. **Minimum Height in Designated Nodes.** All newly constructed main structures in designated nodes, except gasoline stations, shall be at least two stories or 25 feet in height.

F. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-W district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:

1. Is consistent with the purposes of the district;
2. Is compatible with the surrounding uses and buildings;
3. Complies with the adopted West Berkeley Plan;
4. Supports an increase in the continuity of retail and service facilities at the ground level to the degree feasible;
5. Does not substantially degrade the existing urban fabric of the street and area;
6. Provides an intensity of development which does not underutilize the property (for with new floor area);
7. Meets any applicable performance standards for off-site impacts; and
8. Does not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply.

23.204.150 – C-AC Adeline Corridor Commercial District

A. **District Purpose.** The purpose of the Adeline Corridor Commercial (C-AC) district is to:

1. Implement the General Plan's designation for Adeline Corridor Mixed Use area, as well as the policies of the Adeline Corridor Specific Plan;
2. Preserve the unique character and cultural legacy of the Adeline Corridor, sustaining the community as a place where all people can live, work, play, learn, worship, dine, shop and thrive;
3. Promote equitable access to housing by preserving existing affordable housing, preventing displacement, and producing a substantial number of new affordable housing units;
4. Foster economic opportunity for South Berkeley residents and businesses by facilitating job training and workforce development, active community spaces, and a thriving environment for commerce along the Adeline Street/South Shattuck Corridor;

5. Provide safe, equitable transportation options that meet the mobility needs of all residents, regardless of age, means and abilities, and that further the attainment of greenhouse gas emission reduction goals;
6. Provide safe, sustainable, beautiful, healthy, and inclusive public spaces that encourage social interaction, provide opportunities for recreation and environmental health, and support active community life in South Berkeley;
7. Encourage development and amenities that support pedestrian-oriented uses; and
8. Maintain and encourage a wide range of community and commercial services, including basic goods and services. Provide locations for both community-serving and regional-serving: businesses, cultural and religious institutions, and non-profit organizations.

B. Allowed Land Uses.

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
2. **Mixed Use Buildings.**
 - a. In all mixed use buildings, all stories above the second story shall be used for residential uses.
 - b. All mixed use developments require a Use Permit.
3. **Permitted Ground Floor Uses.**
 - a. **Commercial and Active Commercial Required.** In addition to other requirements of the C-AC district, the first 30 feet of depth of the ground floor, as measured from the frontage which abuts the portions of Adeline Street, Shattuck Avenue, MLK, Jr. Way or Ashby Avenue identified in Table 23.204-43: C-AC Permitted Ground Floor Uses shall be reserved for either Active Commercial Uses, or for commercial uses. Ground floor tenant spaces with frontages on streets not identified below can be used for any use permitted in the district.

TABLE 23.204-43: C-AC PERMITTED GROUND FLOOR USES

AREA	PERMITTED GROUND FLOOR USE
Shattuck Avenue between Dwight and Derby	Commercial Uses
Shattuck between Ward and Russell	Active Commercial Uses
Adeline between Russell and City boundary	
Ashby, east of Adeline	
North side of Ashby, west of Adeline	

- b. **Active Commercial Uses Defined.** Active Commercial uses are commercial uses which generate regular and frequent foot traffic. Uses include businesses in the following use categories: Retail Sales; Personal and Household Services; Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses; and the following uses: Banks and Financial Services, Retail, and Vehicle Parts Stores.
 - c. **Active Commercial Exceptions with Zoning Certificate.** The following uses are permitted on the ground floor in areas designated Active Commercial with a Zoning Certificate:
 - i. Office uses in tenant space 2,500 sf or less in area and 50 feet or less in width;
 - ii. Residential amenities (2,500 sf or less in area and 50 feet or less in width), associated with a residential use.
 - d. **Active Commercial Exceptions with AUP.** The following uses are permitted on the ground floor in areas designated Active Commercial with an AUP:
 - i. Office uses over 2,500 square feet in area or 50 feet in width.
 - ii. Art/Craft Studio.
 - e. **Affordable Residential Projects Allowed.** Residential uses where at least 50 percent of the units are affordable are permitted on the ground floor in areas designated commercial with an AUP.
 - f. **Live/Work Units Prohibited.** Live/Word units are not permitted on the ground floor in areas designated Active Commercial or commercial.
4. **Alcoholic Beverage Retail Sales.** The sale of distilled alcoholic beverages is not permitted along Adeline Street, south of Ashby Avenue.
- C. **Additional Permit Requirements.** See Section 23.204.030– Additional Permit Requirements.
- D. **Adeline Corridor Specific Plan Subareas.** The Adeline Corridor Specific Plan identifies four distinct subareas which have different physical characteristics and contexts. Different use limitations and development standards may apply to these subareas. See the Adeline Corridor Specific Plan for more specific information about each subarea.
- 1. **South Shattuck:** Parcels that have a frontage abutting Shattuck Avenue.
 - 2. **North Adeline.**
 - a. West of Adeline: Parcels located between Derby Street and Ashby Avenue, which do not front Shattuck Avenue.

- b. East of Adeline: Parcels located entirely between Russell Street and the point 110 feet south of Essex Street.

3. **Ashby BART.**

- a. West of Adeline: Parcels bounded by Ashby, MLK Jr. Way and Adeline.
- b. **East of Adeline:** Parcels located entirely between Tremont, Woolsey and Adeline, and at least 110 feet south of Essex.

- 4. **South Adeline:** Parcels located south of Woolsey Street.

E. **Development Standards.**

- 1. **Basic Standards.** See Table 23.204-44: C-AC South Shattuck Subarea Development Standards, and

3. Table 23.204-45: C-AC North and South Adeline Subarea Development Standards.
4. **Affordability Calculation.** Development standards are based on the percentage of affordable units and shall not exceed the requirements for each subarea. The minimum on-site affordable housing requirement applies to all residential and mixed use projects and must be provided as a mix of 50 percent at Low Income and 50 percent at Very Low Area Median Income (AMI) levels.
5. **Ashby BART Subarea.** Development standards for any future development in the Ashby BART area would be subject to process outlined in the MOU with BART and AB 2923.
6. **Parapet Walls.** For roofs with parapet walls, building height is measured to the top of the roof. Parapets may exceed the height limit by up to 5 feet as of right.
7. **Lots Abutting or Confronting a Residential District.**
 - a. **Setbacks.** The following standards supersede requirements in Section 23.304.030.C.2.– Setbacks (Lots Adjacent to Residential Districts).
 - i.* When a lot confronts a residentially-zoned lot, any portion of new construction that exceeds 45 feet in height shall be setback 10 feet from the front property line.
 - ii.* When a lot abuts a residentially-zoned lot, the setback shall be 10 feet from the shared lot line.
 - iii.* When a lot abuts a residentially-zoned lot, any portion of new construction that exceeds 35 feet in height shall be setback 20 feet from the shared lot line.
 - b. **Building Features.** See Section 23.304.130– Non-Residential Districts Abutting a Residential District for building feature requirements for lots that abut or confront a Residential District.

TABLE 23.204-44: C-AC SOUTH SHATTUCK SUBAREA DEVELOPMENT STANDARDS

	PROJECT LAND USE [5]							SUPPLEMENTAL STANDARDS
	Residential and Mixed Use Tier 1 (Less than 14% affordable housing)	Residential & Mixed Use Tier 2 (14% affordable housing)	Residential & Mixed Use Tier 3 (21% affordable housing)	Residential & Mixed Use Tier 4 (25% affordable housing)	Residential & Mixed Use (100% affordable housing)	Group Living Accommodation [6]	Non-Residential	
Lot Area Minimum								23.304.020– Lot Requirements
New Lots	No minimum					350 sq. ft.		
Per Group Living Accommodation Resident	N/A					350 sq. ft. [1]		
Usable Open Space, Minimum [3]	40 sq. ft.							
Per Dwelling Unit/GLA Resident [4]	40 sq. ft.							23.304.090– Usable Open Space
Floor Area Ratio, Maximum	2.5	4.0	5.0	5.5	5.5	2.5	2.5	

	PROJECT LAND USE [5]							SUPPLEMENTAL STANDARDS
	Residential and Mixed Use Tier 1 (Less than 14% affordable housing)	Residential & Mixed Use Tier 2 (14% affordable housing)	Residential & Mixed Use Tier 3 (21% affordable housing)	Residential & Mixed Use Tier 4 (25% affordable housing)	Residential & Mixed Use (100% affordable housing)	Group Living Accommodation [6]	Non-Residential	
Main Building Height, Maximum	4 stories 45 feet	6 stories 65 feet	7 stories 75 feet	8 stories 85 feet	8 stories 90 feet	4 stories 45 feet	4 stories 45 feet	23.304.050– Building Height
Residential Density, Maximum (du/acre) [2]	120	210	250	300	300	1 GLA resident per 350 sf of lot area	N/A	
Lot Line Setbacks, Minimum								23.304.030– Setbacks
Abutting/Confronting a Non-residential District	No minimum							
Abutting/Confronting a Residential District	See 23.204.150.G							
Building Separation, Minimum	No minimum							
Lot Coverage, Maximum								23.304.120– Lot Coverage
Interior Lot	60%	90%	90%	90%	90%	60%	100%	
Corner Lot	70%	90%	90%	95%	95%	70%	100%	

	PROJECT LAND USE [5]							SUPPLEMENTAL STANDARDS
	Residential and Mixed Use Tier 1 (Less than 14% affordable housing)	Residential & Mixed Use Tier 2 (14% affordable housing)	Residential & Mixed Use Tier 3 (21% affordable housing)	Residential & Mixed Use Tier 4 (25% affordable housing)	Residential & Mixed Use (100% affordable housing)	Group Living Accommodation [6]	Non-Residential	

Notes:

- [1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.
- [2] For the purposes of calculating the State Density Bonus the Tier 1 density shall constitute the maximum allowable gross residential density. Tier 2, 3, and 4 density is authorized as a local density bonus under Government Code section 65915(n).
- [3] An AUP may be granted to reduce useable open space requirements if shown to be necessary to build an all-electric building.
- [4] Each square-foot of open space that is designated as publicly accessible open space shall be counted as two square-feet of required on-site open space.
- [5] Affordable units calculated as percentage of total units

TABLE 23.204-45: C-AC NORTH AND SOUTH ADELINE SUBAREA DEVELOPMENT STANDARDS

	Project Land Use [6]							Supplemental Standards
	Residential and Mixed Use Tier 1 (Less than 14% affordable housing)	Residential & Mixed Use Tier 2 (14% affordable housing)	Residential & Mixed Use Tier 3 (21% affordable housing)	Residential & Mixed Use Tier 4 (25% affordable housing)	Residential & Mixed Use (100% affordable housing)	Group Living Accommodation	Non-Residential	
Lot Area Minimum								23.304.020
New Lots	No minimum							
Per Group Living Accommodation Resident	N/A					350 sq. ft. [1]	N/A	
Usable Open Space, Minimum [3]	40 sq. ft.							
Per Dwelling Unit/GLA Resident [4]	N/A					40 sq. ft.		23.304.090
Floor Area Ratio, Maximum	2.0	3.5	4.0	5.0	5.0	2.5	2.8	
Residential Density, Maximum (du/acre) [2]	100	150	210	250	250	1 GLA resident per 350 sf of lot area	N/A	

Main Building Height, Maximum	3 stories 35 feet	5 stories 55 feet	6 stories 65 feet	7 stories 75 feet	7 stories 80 feet	4 stories 45 feet	3 stories 45 feet	
Lot Line Setbacks, Minimum								
Abutting/Confronting a Non-residential District	No minimum							23.304.030
Abutting/Confronting a Residential District	10 ft 20 ft from any shared lot line for any portion exceeding 35 feet 45 ft from front property line for any portion exceeding 45 feet					N/A		23.304.030 23.204.150.E.4
Building Separation, Minimum	No minimum							23.304.040
Interior Lot	60%	90%	90%	90%	90%	60%	100%	
Corner Lot	70%	90%	90%	95%	95%	70%	100%	
Lot Coverage, Maximum	100%							
<p>Notes:</p> <p>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.</p> <p>[2] For the purpose State Density Bonus calculation, the Tier 1 density is the maximum allowable gross residential density. Tier 2, 3, and 4 density is authorized as a local density bonus under Government Code section 65915(n).</p> <p>[3] An AUP may be granted to reduce useable open space requirements if shown to be necessary to build an all-electric building.</p> <p>[4] Each square-foot of open space that is designated as publicly accessible open space shall be counted as two square-feet of required on-site open space.</p> <p>[5] Affordable units calculated as percentage of total units</p>								

F. Design Standards.

1. **Adeline Corridor Specific Plan.** New buildings and additions shall be reviewed for conformance to the design guidelines in the Adeline Corridor Specific Plan.
2. **Ground Floor Frontages.**
 - a. **All New Buildings.** Except as set forth below, ground floor frontages of all new buildings are subject to the following design standards:
 - i.* Blank walls along the ground floor shall be less than 30 feet in length along sidewalks, pedestrian paths, or open space.
 - ii.* Ground floors shall have a minimum floor to floor height of 12 feet.
 - iii.* Facades shall provide at least 30 percent transparency between 3 and 10 feet above grade (doors and transparent windows) to allow maximum visual interaction between the sidewalk areas and building interiors. Dark or mirrored glass will not satisfy this requirement.
 - iv.* Window glazing shall provide a high degree of light transmittance and be non-reflective.
 - b. **Active Commercial Areas.** Ground floor frontages in areas identified as Active Commercial in Table 23.204-43 shall meet the requirements of 23.304.150.I.1 except:
 - i.* Ground floors shall have a minimum floor to floor height of 15 feet and a minimum floor to ceiling height of 12 feet.
 - ii.* Facades shall provide at least 75 percent transparency between 3 and 10 feet above grade (doors and transparent windows) to allow maximum visual interaction between sidewalk areas and the interior. Dark or mirrored glass will not satisfy this requirement.
 - c. **Commercial Use Areas.** Ground floor frontages in areas identified as commercial in Table 23.204-43 shall meet the requirements of 23.204.150.I.1 except:
 - i.* Ground floors shall have a minimum floor to floor height of 15 feet and a minimum floor to ceiling height of 12 feet.
 - ii.* Facades shall provide at least 65% transparency between 3 and 10 feet above grade (doors and transparent windows) to allow maximum visual interaction between sidewalk areas and the interior of office spaces. Dark or mirrored glass will not satisfy this requirement.
 - d. **Exceptions.** The Design Review Committee or Design Review staff may grant exceptions to the blank wall and transparency requirements.

G. Permit Findings.

1. **General.** To approve any AUP or Use Permit for a project in the C-AC district, the review authority must make the findings in Section 23.406.040– Master Use Permits and find that the proposed use or structure:
 - a. Is consistent with the purpose of the district;
 - b. Is compatible in design and character with the district and the adjacent residential neighborhoods;
 - c. Encourages utilization of public transit and off-street parking facilities in the area of the proposed building; and
 - d. Complies with the Adeline Corridor Specific Plan’s adopted Mitigation Monitoring and Reporting Program (MMRP).
2. **New Residential Development.** In addition to the findings above, the ZAB shall find, for each Use Permit for new residential development, that the proposed use or structure facilitates the construction of affordable housing as defined by the U.S. Department of Housing and Urban Development (HUD) Guidelines.
3. **Office Uses.**
 - a. To approve an AUP for an office use over 2,500 square feet or over 50 feet wide on the ground floor of an Active Commercial area, the Zoning Officer must find that the use supports the development of a strong retail commercial, pedestrian-oriented environment.
 - b. Factors the Zoning Officer should consider shall include, but are not limited to, pedestrian activity that is expected to be generated at the site, the placement of store entrances relative to the street and the parking lots, and the size and prominence of display windows and areas facing the sidewalk.
4. **All-Electric Buildings.** An AUP may be granted to reduce useable open space requirements if shown to be necessary to build an all-electric building. To approve an AUP, the Zoning Officer must find that:
 - a. No other placement of the features to support construction of an all-electric building, including solar photovoltaic (PV) energy systems and water tanks for heat pump water heating, on the property is possible; and
 - b. Placement of the features to support construction of an all-electric building elsewhere on the property is not financially feasible.

23.206 MANUFACTURING DISTRICTS

Sections:

- 23.206.010– Chapter Purpose
- 23.206.020– Allowed Land Uses and Permit Requirements
- 23.206.030– Additional Permit Requirements
- 23.206.040– Use-Specific Regulations
- 23.206.050– Protected Uses
- 23.206.060– M Manufacturing District
- 23.206.070– MM Mixed Manufacturing District
- 23.206.080– MU-LI Mixed Use-Light Industrial District
- 23.206.090– MU-R Mixed Use-Residential District
- 23.206.100– Permit Findings

23.206.010 – Chapter Purpose

This chapter identifies allowed land uses, permit requirements, and development standards for the Manufacturing Districts.

23.206.020 – Allowed Land Uses and Permit Requirements

- A. **Allowed Land Uses.** Table 23.206-1 identifies allowed land uses and required permits in the Manufacturing Districts. All land uses are defined in Chapter 23.502—Glossary. Permit requirements are described in Chapter 23.406—Specific Permit Requirements. Permits required for land uses shown in Table 23.206-1 apply to both:
1. The initial establishment of a land use in a new building; and
 2. The change of use in an existing building or portion of a building.

TABLE 23.206-1: ALLOWED LAND USES IN MANUFACTURING DISTRICTS

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Residential Uses					
Accessory Dwelling Unit	P	NP	NP	See 23.306	
Dwellings					
Single-Family	NP	NP	NP	AUP*	23.206.090.B.8
Two Family	NP	NP	NP	AUP*	23.206.090.B.8
Multi-Family	NP	NP	NP	UP(PH)*	23.206.090.B.7&8
Group Living Accommodation	NP	NP	NP	UP(PH)*	23.206.090.B.8
Hotel, Residential	NP	NP	NP	NP	
Mixed-Use Residential	NP	NP	NP	UP(PH)*	23.206.090.B.8&9
Senior Congregate Housing	NP	NP	NP	See 23.302.040 .H	
Public and Quasi-Public Uses					
Child Care Center	NP	NP	AUP*	UP(PH)*	23.206.040.B&C
Cemetery/Crematory/Mausoleum	NP	NP	NP	NP	
Club/Lodge	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)	23.206.040.E
Columbaria	NP	NP	NP	–	
Community Care Facility	NP	NP	NP	ZC*	23.206.090.B.3
Community Center	NP	NP	NP	UP(PH)	
Emergency Shelter	NP	NP	NP	–	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Family Day Care Home, Large	NP	NP	ZC*	AUP*	23.206.040.C
Family Day Care Home, Small	NP	NP	ZC*	ZC*	23.206.040.C
Hospital	NP	NP	NP	NP	
Library	NP	NP	NP	UP(PH)	
Mortuaries and Crematories	NP	NP	NP	UP(PH)*	23.206.090.B.6
Municipal Animal Shelter	UP(PH)	UP(PH)	UP(PH)	–	
Nursing Home	NP	NP	NP	UP(PH)	
Park/Playground	NP	NP	NP	UP(PH)*	23.206.040.C
Public Safety and Emergency Service	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Public Utility Substation/Tank	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Religious Assembly	NP	NP	NP	UP(PH)	
School	NP	NP	NP	UP(PH)*	23.206.040.C
School, Vocational	NP	NP	ZC* [1]	UP(PH)	23.206.080.B.12
Retail Uses					
Alcoholic Beverage Retail Sale	NP	NP	UP(PH)* [2]	NP *	23.206.080.B.3; 23.206.090.B.2; 23.310
Firearm/Munitions Business	NP	NP	NP	NP	
Industrial and Mining Products	AUP [2]	AUP [2]	AUP [4]	NP	
Pawn Shop/Auction House	NP	NP	NP	NP	
Pet Store	NP	NP –	NP	NP	
Retail, General	NP	NP	AUP* [5]	AUP* [3]	23.206.080.B.6;

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
					23.206.090.B.4
Smoke Shop	NP	NP	NP	NP	
Personal and Household Service Uses					
Personal and Household Services, General	NP	NP	NP	AUP	
Kennels and Pet Boarding	NP	NP	NP	UP(PH)	
Laundromats and Cleaners	NP	NP	NP	AUP	
Veterinary Clinic	NP	NP	NP	UP(PH)	
Video Tape/Disk Rental	NP	NP	NP	NP	
Office Uses					
Business Support Services	NP	NP	AUP [6]	AUP [3]	
Banks and Financial Services, Retail	NP	NP	–	NP	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	NP	NP	–	–	
Medical Practitioners	NP	NP	NP	AUP [3]	
Non-Chartered Financial Institutions	NP	NP	–	–	
Office, Business and Professional	NP	ZC* [4]	AUP [4]	AUP [3]	23.206.070.B.2
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses					
Adult-oriented Business	-	-	NP	NP	
Amusement Device Arcade	NP	NP	–	NP	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Bar/Cocktail Lounge/Tavern	NP	NP	–	–	
Commercial Recreation Center	NP	NP	–	NP	
Dance/Exercise/Martial Arts/Music Studio	NP	NP	–	UP(PH)	
Entertainment Establishment	NP	NP	–	UP(PH)	
Food Service Establishment	See 23.302.040.E				
Group Class Instruction	NP	NP	–	UP(PH)	
Gym/Health Club	NP	NP	–	NP	
Hotel, Tourist	NP	NP	NP	NP	
Motel, Tourist	NP	NP	NP	NP	
Theater	NP	NP	UP(PH)*	NP	23.206.080.B.10
Vehicle Service and Sale Uses					
Alternative Fuel Station	AUP [4]	AUP [4]	AUP [4]	AUP	
Gasoline/Vehicle Fuel Station	NP	NP	NP	NP	
Large Vehicle Sales and Rental	–	NP	AUP [4]	NP	
Small Vehicle Sales and Rental	–	NP	NP	NP	
Tire Sales and Service	–	–	–	NP	
Vehicle Parts Store	NP	NP	NP	UP(PH)	
Vehicle Repair and Service	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Vehicle Rentals	NP	–	–	NP	
Vehicle Sales, New	AUP* [7]	NP	NP	NP	23.206.060.B.3
Vehicle Sales, Used	AUP* [7]	NP	NP	NP	23.206.060.B.3

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Vehicle Wash	NP	NP	NP	NP	
Vehicle Wrecking	AUP [7]	AUP [4]	AUP* [4]	NP	23.206.080.B.11
Industrial and Heavy Commercial Uses					
Bus/Cab/Truck/Public Utility Depot	AUP [8]	AUP [8]	AUP* [4]	UP(PH)	23.206.080.B.4
Commercial Excavation	UP(PH)	UP(PH)	UP(PH)	NP	
Contractors Yard	AUP [7]	AUP [7]	AUP [4]	UP(PH)	
Dry Cleaning and Laundry Plant	ZC* [9]	ZC [9]	ZC [1]	UP(PH)	23.206.060.B.2
Laboratory					
Commercial Physical or Biological	NP	AUP [4]	UP(PH)*	NP	23.206.080.B.5
Cannabis Testing	NP	AUP [4]	UP(PH)	NP	
Manufacturing					
Construction Products	ZC* [9]	ZC* [9]	UP(PH)*	NP	
Light Manufacturing	ZC* [7]	ZC* [7]	ZC* [1]	AUP* [3]	23.206.090.B.5
Pesticides/Herbicides/Fertilizers	NP	NP	NP	-	
Petroleum Refining and Products	NP	NP	NP	-	
Pharmaceuticals	AUP [4]	AUP [4]	AUP* [4]	-	23.206.080.B.7
Primary Production Manufacturing	AUP [4]	AUP [4]	NP	NP	
Semiconductors	UP(PH)	UP(PH)	NP	-	
Material Recovery Enterprise	-	-	UP(PH)	-	
Media Production	ZC [10]	ZC [10]	ZC [10]	AUP [11]	
Mini-storage	NP	NP	NP	NP	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Recycled Materials Processing	ZC* [9]	ZC* [9]	UP(PH)*	–	23.206.040.H; 23.206.080.B.9
Recycling Redemption Center	AUP [7]	ZC [9]	UP(PH)*	AUP	23.206.080.B.9
Repair Service, Non-Vehicle	ZC* [9]	ZC* [9]	ZC* [1]	AUP	23.206.040.G
Research and Development	-	ZC [12]	ZC [12]	–	
Services to Buildings and Dwellings	AUP	AUP	AUP	AUP	
Warehouse	ZC [9]	ZC [9]	ZC [1]	UP(PH)	
Warehouse-Based Non-Store Retailer	ZC [9]	ZC [9]	ZC [1]	–	
Wholesale Trade	ZC [9]	ZC [9]	ZC* [1]	AUP [3]	23.206.080.B.13
Incidental Uses					
Amusement Devices	NP	NP	AUP	AUP	
Alcoholic Beverage Service	See 23.310				
Cafeteria, On-Site	ZC [2]	AUP [2]	ZC [2]	AUP	
Child Care Center	NP	NP	See 23.206.040.B		
Columbaria	–	–	–	–	
Food and Beverage for Immediate Consumption	–	AUP [2]	–	–	
Food Service Establishment	AUP [2]	-	AUP [2]	AUP	
Home Occupations	NP	NP	NP	See 23.206.040	
Live Entertainment	NP	NP	UP(PH)*	UP(PH)*	23.302.020.D
Retail Sales of Goods Manufactured On-Site	AUP* [13]	AUP* [14]	AUP* [14]	AUP*	23.206.040.I

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Storage of Goods Manufactured On-Site (>25% gross floor area)	ZC	ZC	ZC	AUP	
Wholesale Activities	ZC	ZC	ZC	AUP	
Other Miscellaneous Uses					
Art/Craft Studio	ZC* [10]	ZC [10]	ZC* [10]	AUP [11]	23.206.040.A
ATM, Exterior and Attached to Bank	AUP	AUP	-	AUP	
ATM, Interior or Exterior and Not With Bank	AUP	AUP	AUP	AUP	
Circus/Carnival	NP	NP	UP(PH)*	UP(PH)	23.206.040.D
Drive-in Uses	NP	NP	NP	NP	
Live/Work	NP	NP	See 23.312		
Parking Lot/Structure	See 23.302.070.G				
Public Market, Open Air	-	-	UP(PH)* [15]	-	23.206.080.B.8
Public Market, Enclosed	-	-	AUP [5]	-	
Short-Term Rental	-	-	-	ZC*	23.314
Urban Agriculture, Low-Impact	ZC	ZC	ZC	ZC	
Urban Agriculture, High-Impact	AUP	AUP	AUP	AUP	
Notes: [1] Requires an AUP for uses 20,000 sq. ft. to 30,000 square feet. Requires a Use Permit for uses more than 30,000 sq. ft. [2] Not permitted 20,000 sq. ft. or more. [3] Requires a Use Permit if 5,000 sq. ft. or more [4] Requires a Use Permit for uses more than 20,000 sq. ft. [5] Not permitted over 2,000 sq. ft.					

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
[6] Not permitted over 3,000 sq. ft. [7] Requires a Use Permit for uses more than 40,000 sq. ft. [8] Requires a Use Permit for uses 20,000 sq. ft. to 40,000 square feet. [9] Requires an AUP for uses 20,000 sq. ft. to 40,000 square feet. Requires a Use Permit for uses more than 40,000 sq. ft. [10] Requires an AUP for uses 10,000 sq. ft. to 20,000 square feet. Requires a Use Permit for uses more than 20,000 sq. ft. [11] Allowed with Zoning Certificate if under 1,000 sq. ft.. Requires Use Permit if over 20,000 sq. ft. [12] Requires an AUP for uses more than 20,000 sq. ft. [13] Not permitted 1,500 sq. ft. or more. [14] Requires a Use Permit for sales area 1,501 to 3,000 sq. ft. Not permitted over 3,000 sq. ft. [15] Requires Use Permit for markets over 5,000 sq. ft.					

- B. **Unlisted Land Uses.** Any use not listed in Table 23.206-1 is permitted with an AUP. To approve the AUP, the Zoning Officer must find that the use is compatible with the purposes of the district where it is located. Any use found to be incompatible with the purposes of the district is not permitted.
- C. **Use-Specific Regulations.** Uses subject to supplemental regulations are shown in in Table 23.206-1 with an asterisk (*) following the permit requirement (e.g., ZC*). The Use-Specific Standards column in Table 23.206-1 identifies the location of these standards in the Zoning Ordinance.

23.206.030 – Additional Permit Requirements

- A. **New Floor Area.** A project that creates new floor area for any use requires additional permits as shown in Table 23.206-1. Creation of new floor area includes:
 1. Construction of new main buildings or accessory buildings;
 2. Additions to existing buildings; or
 3. The installation of new floor or mezzanine levels within or onto existing buildings.

TABLE 23.206-2: NEW FLOOR AREA PERMIT REQUIREMENTS

District/New Gross Floor Area	Permit Required for New Floor Area
M, MM	
Less than 20,000 sq. ft.	ZC
20,000 to less than 40,000 sq. ft.	AUP
40,000 sq. ft. or more	UP(PH)
MU-LI	
Less than 10,000 sq. ft.	ZC
10,000 to less than 20,000 sq. ft.	AUP
20,000 sq. ft. or more	UP(PH)
MU-R	
Less than 5,000 sq. ft.	ZC
5,000 to less than 10,000 sq. ft.	AUP
10,000 sq. ft. or more	UP(PH)

B. Tenant Space Reconfiguration.

1. Reconfiguration of tenant space in an existing building in the M, MM, and MU-LI districts requires a permit as listed in Table 23.206-3.

2. In the MU-R district, tenant space reconfiguration projects affecting 5,000 square or more require a Use Permit.
3. 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 23.206-3: TENANT SPACE RECONFIGURATION REQUIREMENTS IN THE M, MM, AND MU-LI DISTRICTS

Tenant Space Reconfiguration Project	Permit Required for Tenant Space Reconfiguration Project
Previously separated spaces combined into a larger space	ZC
Creating 2 to 5 separate new tenant spaces	ZC
Creating 6 to 9 separate new tenant spaces	AUP
Creating 10 or more separate new tenant spaces	UP(PH)

4. **MM District Findings.** To approve an AUP or Use Permit for a tenant reconfiguration project in the MM district, the review authority must find that the conversion is necessary to implement the purpose of the district.
5. **MU-LI District Findings.** To approve a Use Permit for a tenant reconfiguration project in the MU-LI district, the review authority must find that the reconfiguration would not create or contribute to a shortage of industrial spaces in West Berkeley for spaces of the size being converted and either:
 - a. The reconfiguration can be reasonably expected to better serve the purposes of the district than leaving the space intact; or
 - b. The reconfiguration would create spaces which could cross-subsidize larger industrial spaces.

C. Major Residential Additions.

1. **Where Allowed/Required Permits.**
 - a. Major residential additions in the MU-R district require an AUP.
 - b. Major residential additions are not permitted in MU-LI district.

- c. Major residential additions in the M and MM districts are subject to the requirement in Section 23.324 (Nonconforming Uses, Structures, and Buildings).
 2. **Findings.** To deny an AUP for a major residential addition in the MU-R district, the review authority must find that:
 - a. The proposed addition would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M or MM district; or
 - b. Existing or reasonably foreseeable adjacent land uses in the M and/or MM district would have a material adverse effect on the use of the proposed addition.
 3. **Recorded Acknowledgement.** For a residential addition in the MU-R district, the residential property owner shall record an acknowledgement on the title that existing or reasonably foreseeable adjacent land uses in the M and/or MM District may create noise, dust, odors, light/glare, and other impacts that shall not be considered a nuisance if they are developed and conducted pursuant to the standards of the district.
- D. **Langendorf Building.** The following applies to the property occupied by the Langendorf Building (2929 Seventh Street, APN 053-0164300102):
1. Commercial physical and biological laboratories are allowed with a Use Permit if at least 6,000 square feet of gross floor area is occupied by a permitted use.
 2. Retail, office, and food and alcohol service uses allowed in the C-W district are allowed in the MU-LI portion of the property if the total gross floor area of these uses are less than 10,000 square feet.
- E. **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.
- F. **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).

23.206.040 – Use-Specific Regulations

- A. **Art/Craft Studios in the M and MU-LI Districts.** Art/craft studios are allowed in the M and MU-LI districts only as workspaces. Live/work is not permitted.

B. **Child Care Centers in the MU-LI and MU-R Districts.** Table 23.206-4 shows permit requirements for child care centers in the MU-LI and MU-R districts.

TABLE 23.206-4: MU-LI AND MU-R CHILD-CARE CENTER PERMIT REQUIREMENTS

Use Characteristic	Permit Required
Incidental Use	
Providing childcare for employees only	ZC
Providing childcare for non-employees	AUP
Principal Use	UP(PH)

C. **Child-Serving Uses in the MU-LI and MU-R Districts.**

1. As used in this section, “child-serving use” means a school, child care center, family day care, or park/recreational facility used by children.
2. Before acting on an application to establish or expand a child-serving use in the MU-LI or MU-R districts, the applicant shall prepare and submit to the City an appropriate risk analysis or risk assessment, as determined by the City, that evaluates the risk to children in the use from other activities near the site.
3. All child-serving uses in the MU-LI and MU-R districts must notify in writing, on a form approved by the City, all parents of children in the child-serving use that the use is in the MU-LI or MU-R district, light manufacturing is a permitted activity in the district, and that primary production manufacturing or construction products manufacturing may be permitted uses in adjacent districts. The child-serving use must require each parent or guardian to confirm in writing that they have read and understood this information. Written confirmations shall be returned to the child-serving use and maintained at the use for City review.
4. To approve an AUP or Use Permit to establish or expand a child-serving use, the review authority must find that:
 - a. The child-serving use is not incompatible with adjacent and nearby uses, including industrial uses;
 - b. The risk analysis or risk assessment shows that there is not significant risk to children in the use from other activities near the site; and
 - c. The applicant has made adequate provisions to comply with the parent/guardian notification requirement in Paragraph (3) above.

D. **Circuses and Carnival in the MM and MU-LI Districts.** Circuses and carnivals are allowed in the MM and MU-LI districts only as a temporary use.

- E. **Club and Lodges in the M, M-M, and MU-LI Districts.** Clubs and lodges are allowed in the M, M-M, and MU-LI districts only for persons working in the district.
- F. **Manufacturing Uses in the M, MM, and MU-LI Districts.** For manufacturing uses in the M, MM, and MU-LI districts otherwise allowed with a Zoning Certificate, an AUP is required to establish the use within 150 feet of a residential use in a Residential District or in the MU-R district.
- G. **Non-Vehicle Repair Service in the M, MM, and MU-LI Districts.** Retail sales associated with a non-vehicle repair service are not permitted in the M, MM, and MU-LI districts.
- H. **Recycled Materials Processing in the M and MM Districts.** For recycled materials processing facilities under 10,000 square feet in the M and MM districts, an AUP is required if processing occurs outside of a building.
- I. **Retail Sale of Goods Manufactured On-Site.** The following requirements apply to incidental retail sales in all Manufacturing Districts:
 - 1. The size and character of signs for the retail use shall clearly indicate that the retail use is not the primary use of the site
 - 2. Maximum retail floor area: 10 percent of total gross floor area.
 - 3. Outdoor sales or food service is not permitted.
- J. **Storage, Wholesale, Manufacturing as Incidental Use.** If a storage, wholesale, or manufacturing use is allowed in the M, MM, and MU-R district with a Zoning Certificate, the use is allowed incidental to another permitted use without the need to obtain an AUP or Use Permit.
- K. **Noise.** For purposes of the Noise Ordinance, Municipal Code Chapter 13.40, the Manufacturing Districts are considered Industry Districts.

23.206.050 – Protected Uses

- A. **Protected Industrial Uses in the MM and MU-LI Districts.** The industrial use protections in this subsection apply in the MM and MU-LI districts.
 - 1. **Uses Subject to Protection.** Table 23.206-5 identifies protected industrial uses in the MM and MU-LI districts and when the requirements in this subsection apply to these uses. Protections apply only to legally-established uses.

TABLE 23.206-5: PROTECTED INDUSTRIAL USES

Zoning District	Protected Industrial Uses	Applicability of Requirements
MM	Manufacturing, warehousing, wholesale trade	Ground-level protected uses on or after January 1, 1988 [1]

MU-LI	Material recovery enterprise, manufacturing, warehousing, wholesale trade	Buildings with 33% protected use on or after January 1, 1996 [1]
<p><u>Note:</u> [1] Includes protected uses that were previously used on or after this date but now vacant.</p>		

- a. In the MM district, requirements in this subsection apply if protected use space is used, or has been used, for the manufacture, assembly, processing, repair, testing (including prototype manufacturing), storage, display (other than in retail stores) or distribution of goods. Requirements do not apply in the MM district if the protected use is or was demonstrably ancillary to another use.

- 2. **Permits Required.** Table 23.206-6 identifies permits required if a protected industrial use is changed to any use that is not a protected industrial use.

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 20,000 sq. ft. or less and 25% of protected use to a non-protected use	AUP
	Change over 20,000 sq. ft. or 25% of protected use to a non-protected use	UP(PH)

3. Permit Findings.

- a. To approve a permit required by Table 23.206-6 for changes to a protected industrial use in the MM and MU-LI districts, the review authority must find that replacement space is provided as required by Paragraph 4 (Replacement Space) below.
- b. To approve a Use Permit for a change of 25 percent more to a protected use in the MU-LI district, the Zoning Adjustments Board (ZAB) must also find that either:
 - i. The City has approved necessary Use Permits to provide comparable quality replacement space in Berkeley at a comparable rent that will be available before the demolition or change of use of the space; or
 - ii. Both of the following:

1. As a result of lawful business and building activities, there are exceptional physical circumstances (exclusive of the presence of hazardous materials in the building(s), soil or groundwater) found at the building not generally found in industrial buildings in the MU-LI district which make it financially infeasible to reuse the building for any of protected industrial uses permitted in the district. The analysis of the financial feasibility effects (which shall be verified by the City) of these physical circumstances shall consider those costs necessary to make the building meet current minimum standards for manufacturing, wholesale trade or warehouse buildings.
2. Appropriate mitigation has been made for loss of the protected industrial use space in excess of 25 percent of that space through providing such space elsewhere in the City, payment into the West Berkeley Building Acquisition Fund, or by other appropriate means.
4. **Replacement Space.** Floor area occupied by a protected industrial use that is changed to a non-protected use must be replaced, in the West Berkeley Plan area, by a comparable space devoted to one or more of protected industrial uses.
5. **Minimum Protected Use Floor Area – MM District.** For properties in the MM district where 25 percent or more of the total gross floor area was occupied by a protected industrial use as of January 1, 1996, protected industrial uses may not be reduced to less than 25 percent of the total gross floor area on the property.
6. **Cumulative Limitations – MU-LI District.** Permit requirements for changes to protected industrial uses in the MU-LI district are cumulative.
7. **Exceptions.** Changes to protected industrial uses in the MM and MU-LI districts described below are exempt from the requirements in Paragraphs 2-6 above.
 - a. **Changes to R&D Uses.**

A protected warehouse or wholesale trade use established before January 1, 2010 may be changed to a research and development (R&D) use with the permits shown in Table 23.206-7.

TABLE 23.206-7: PERMITS FOR CHANGES FROM PROTECTED TO R&D USES

Change in Protected Use Gross Floor Area	Permit Required
20,000 square feet or less	AUP
Over 20,000 square feet	UP(PH)

1. **Protected Industrial Uses Defined.** Manufacturing, warehousing, and wholesale trade are protected industrial uses in the MU-R district. Protections apply only to legally-established uses.
2. **Permit Required.** Except as allowed by Section 23.206.050.B.4 (Exempt from Permit Requirement), a Use Permit is required to change a protected industrial use to any use that is not a protected industrial use.
3. **Permit Findings.** To approve a Use Permit when required by Section 23.206.050.B.2 (Permit Required), the review authority must find that:
 - a. The change of use will not have a materially detrimental impact on the character of the MU-R district as a light industrial district, with particular reference to the character of the blocks and parts of blocks in the part of the district that is contiguous with the site; and
 - b. Appropriate mitigation has been made for loss of the manufacturing, wholesale trade, or warehouse space in excess of 25 percent of that space through providing such space elsewhere in Berkeley, payment into the West Berkeley Building Acquisition Fund, or by other appropriate means.
4. **Exempt from Permit Requirement.** A protected industrial use may be changed to an art/craft studio or contractor use with the permit required by Section 23.206.020 (Allowed Land Uses and Permit Requirements). Approval of an art/craft studio or contractor use within a protected industrial space does not eliminate any protections for the prior protected use and such protections will remain if the new non-protected use ceases.

C. Protected Non-Industrial Uses in the MU-LI and MU-R Districts.

1. **Protected Non-Industrial Uses Defined.** A use in the MU-LI or MU-R districts listed in Table 23.206-8 is classified as a protected non-industrial use, provided the use:
 - a. Was legally established as of July 6, 1989; and
 - b. Exists as a single stand-alone use or is combined with residential use in a live/work unit.

TABLE 23.206-8: PROTECTED NON-INDUSTRIAL USES

Category	Protected Uses
Category 1	Art/craft studio
Category 2	1) Art galleries, ancillary to art/craft studios and when located in the same building 2) Child care facility 3) Family day care home 4) Fine arts performance, instruction and rehearsal studios

	(dance, music, theater) 5) Theaters, stage performance, but excluding motion picture theaters
--	--

2. Permit Required for Change of Use.

- a. Table 23.206-9 shows permits required to change a protected non-industrial use.

TABLE 23.206-9: PERMITS REQUIRED FOR CHANGE TO PROTECTED NON-INDUSTRIAL USE

Existing Protected Use Gross Floor Area	New Use		
	A protected use in the same category	A protected use in a different category	A non-protected use that occupies all of the non-residential floor area in the building
Less than 5,000 sq. ft.	ZC	AUP	AUP
5,000 sq. ft. or more	AUP	UP(PH)	UP(PH)

- 3. **Owner-Occupied Exemption.** A protected non-industrial use which is owner-occupied and occupies all of the non-residential floor area in a building is exempt from the requirements of this section.

4. Findings.

- a. To approve a permit required by Table 23.206-9, the review authority must find that space occupied by the existing non-industrial protected use will be replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category. Such replacement space may not qualify for exemption under Paragraph 3 (Owner-Occupied Exemption) above or by reason of having been established after July 6, 1989.
- b. When making additional findings required by Chapter 23.406 (Specific Permit and Approval Requirements), the review authority may only consider the potential detriment associated with the new use. Dislocation of any specific previous occupant or use may not be a basis for finding detriment.

23.206.060 – M Manufacturing District

A. District Purpose. The purpose of the Manufacturing (M) district is to:

- 1. Implement the West Berkeley Plan Manufacturing District designation;

2. Encourage development of a general manufacturing district for the full range of manufacturers, including larger scale materials processing manufacturers sometimes known as heavy manufacturers;
3. Consistent with other goals expressed in these purposes, encourage development of a manufacturing district dedicated to manufacturing and industrial uses, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
4. Encourage the creation and continuation of well-paid (often unionized) industrial jobs for people without advanced degrees;
5. To the greatest degree possible and consistent with other goals expressed in these purposes, retain the stock of manufacturing and industrial buildings and/or sites, especially large buildings and sites, for manufacturing and industrial uses;
6. Support the development of industrial businesses which contribute to the maintenance and improvement of the environment;
7. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of the full range of manufacturers;
8. Support the development of retail automobile sales uses because they contribute to the economic viability of the area and provide sales tax revenues for the City; and
9. Provide opportunities for vehicle sales uses when it will not unduly interfere with manufacturing uses.

B. Land Use Regulations.

1. **Allowed Land Uses.** See Table 23.206-1: Allowed Land Uses in Manufacturing Districts.
2. **Dry Cleaning and Laundry Plants.** Retail service at a dry cleaning and laundry plant in the M district is not permitted.
3. **Vehicle Sales.** The following standards apply to both new and used vehicle sales in the M district.
 - a. Permits required for vehicle sales in the M district is determined by size of lot, not floor area.
 - b. Vehicle sales are not permitted on City-owned land used for a materials recovery enterprise or solid waste transfer station as of January 1, 2008.
 - c. When a project results in construction of a new building with more than 10,000 square feet of new gross floor area, the following standards apply to the new building:

- i.* A minimum building frontage of 40 percent of the project's primary street frontage is required within 25 feet of the public right-of-way. The primary street frontage is the frontage towards which the primary building entrance is oriented.
 - ii.* Along Gilman Street a minimum building frontage of 50 percent of the Gilman Street frontage is required within 25 feet of the public right-of-way.
 - iii.* The minimum building height is 20 feet within 25 feet of the public right-of-way along the primary street frontage.
- d. Adequate landscaping and/or fencing shall be used to screen views from street level of dealership operations that are not located within a building. Outdoor vehicle storage and display does not need screening. Such screening is not required to obscure all visibility of interior activities but shall provide some filtering of outdoor dealership operations.
- e. For the purposes of this section and Design Review, areas used for outdoor vehicle storage and display are not considered parking areas.
- f. Appropriate site design measures shall be installed to the maximum extent practicable to ensure clean water standards are met. Permanent stormwater best management practices and on-site storm water treatment shall be used for all runoff generated by new impermeable surfaces. Runoff from automobile washing and maintenance activities shall be properly collected and treated, consistent with the requirements of the Public Works Department and the Toxics Management Division of the Planning Department. When new paving is proposed, pervious paving shall be used where feasible and shall be reviewed and approved by the Public Works Department and Office of Transportation.
- g. All noise-generating activities and equipment, such as vehicle repair, shall be shielded by noise-attenuating construction or equipment. Outdoor amplification is not permitted.
- h. Exterior light standards and fixtures shall not be taller than 20 feet, light cutoffs shall be used to control light spillover onto adjacent properties, and low energy light fixtures consistent with Berkeley's goals for energy efficiency shall be used.
- i. Vehicle test drives shall not be conducted in adjacent Residential Districts.
- j. Facilities for the loading and unloading of deliveries shall be provided on-site and may not occupy street parking or block public or private streets. On-street unloading is permitted with an AUP. To approve the AUP, the Zoning Officer must find that:

- i.* On-street loading will not be unreasonably disruptive or detrimental to activities in the vicinity; and
 - ii.* On-site deliveries are not feasible due to specific site or roadway constraints.
- k. To approve an AUP or Use Permit for an automobile sales use in the M district, the review authority must find that:
 - i.* The project will not result in unreasonable impacts on circulation and parking on adjacent streets or in the immediate neighborhood;
 - ii.* The project will not result in a substantial adverse impact on existing uses in the immediate vicinity;
 - iii.* The project will not generate objectionable odors or excessive levels of noise;
 - iv.* Site design reflects the urban form of the surrounding area and new construction, materials and/or building forms reflect the area’s industrial character;
 - v.* New construction along Gilman Street reflects the importance of a defined street wall along this main entry corridor to the city; and
 - vi.* The project will not materially interfere with the activities of the City-owned solid waste center.

C. **Additional Permit Requirements.** See Section 23.206.030 (Additional Permit Requirements).

D. **Development Standards.** See Table 23.206-10 for development standards in the M district.

TABLE 23.206-10: M DEVELOPMENT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area, Minimum	20,000 sq. ft.	23.304.020– Lot Requirements
Usable Open Space Per Dwelling Unit, Minimum	n/a	
Floor Area Ratio, Maximum	2.0	
Main Building Height, Maximum	45 ft.	23.304.050– Building Height
Lot Line Setbacks, Minimum		23.304.030– Setbacks

Front	No minimum	
Rear	No minimum	
Interior Side	No minimum	
Street Side	No minimum	
Building Separation, Minimum	No minimum	
Lot Coverage, Maximum	100%	

E. **Permit Findings.** See – Permit Findings (Permit Findings).

23.206.070 – MM Mixed Manufacturing District

A. **District Purpose.** The purpose of the Mixed Manufacturing (MM) district is to:

1. Implement the West Berkeley Plan MM designation;
2. Encourage development of a general manufacturing district for the full range of manufacturers, including larger scale materials processing manufacturers sometimes known as heavy manufacturers;
3. Encourage development of a manufacturing district targeted to manufacturing and industrial uses, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
4. Encourage the creation and continuation of well paid (often unionized) jobs for men and women without advanced degrees;
5. Provide an appropriate location for the development of compatible industries which can provide high quality employment for people at all educational levels, and add significantly to the tax base, such as the biotechnology industry;
6. Allow reuse of upper story industrial space as offices to facilitate use of upper story space;
7. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of the full range of manufacturers; and
8. Support the development of industrial businesses which contribute to the maintenance and improvement of the environment.

B. **Land Use Regulations.**

1. **Allowed Land Uses.** See Table 23.206-1: Allowed Land Uses in Manufacturing Districts.
2. **Office Uses.**

- a. Office uses are allowed in the MM district only above the ground floor. Ground floor office uses are not permitted unless ancillary to a permitted use.
- b. If the office use is established above a non-manufacturing use or replaces an existing manufacturing, warehousing or wholesale trade use, an AUP is required.

C. **Additional Permit Requirements.** See Section 23.206.030– Additional Permit Requirements.

D. **Development Standards.** See Table 23.206-11 for development standards in the MM district.

TABLE 23.206-11: MM DEVELOPMENT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area, Minimum	20,000 sq. ft.	23.304.020– Lot Requirements
Usable Open Space Per Dwelling Unit, Minimum	n/a	
Floor Area Ratio, Maximum	2.0	
Main Building Height, Maximum	45 ft.	23.304.050– Building Height
Lot Line Setbacks, Minimum		23.304.030– Setbacks
Front	No minimum	
Rear	No minimum	
Interior Side	No minimum	
Street Side	No minimum	
Building Separation, Minimum	No minimum	
Lot Coverage, Maximum	100%	

E. **Permit Findings.** See Section 23.206.100– Permit Findings.

23.206.080 – MU-LI Mixed Use-Light Industrial District

A. **District Purpose.** The purpose of the Mixed Use-Light Industrial (MU-LI) district is to:

- 1. Implement the West Berkeley Plan Light Manufacturing District designation;

2. Encourage development of a mixed use-light industrial area for a range of compatible uses;
3. Encourage development of an area where light manufacturers can operate free from the economic, physical and social constraints caused by incompatible uses;
4. Encourage the creation and continuation of well-paid jobs which do not require advanced degrees;
5. Provide for the continued availability of manufacturing and industrial buildings for manufacturing uses, especially of larger spaces needed by medium sized and larger light manufacturers;
6. Provide opportunities for office development when it will not unduly interfere with light manufacturing uses and/or the light manufacturing building stock;
7. Provide the opportunity for laboratory development in appropriate locations;
8. Support the development of businesses which contribute to the maintenance and improvement of the environment;
9. Allow on-site ancillary retail as a tool to maintain and enhance the economic viability of manufacturers in the district; and
10. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of light industrial uses.

B. Land Use Regulations.

1. **Allowed Land Uses.** See Table 23.206-1: Allowed Land Uses in Manufacturing Districts.
2. **Use Permit Not Required.** An existing use in the MU-LI district may be modified or intensified without a Use Permit if:
 - a. A Use Permit is not required by this chapter; and
 - b. The Zoning Officer determines that the modification or intensification of the use can reasonably be expected not to increase any impact regulated under environmental performance standards.
3. **Alcoholic Beverage Retail Sales.** Alcoholic beverage retail sales are allowed in the MU-LI district only when incidental to food product stores.
4. **Bus/Cab/Truck/Public Utility Depot.** A Use Permit is required for a bus/cab/truck/public utility depot in the MU-LI district if the lot is over 20,000 square feet, regardless of use floor area.
5. **Commercial Physical or Biological Laboratories.** Commercial physical or biological laboratories using Class 3 organisms are not permitted the MU-LI district. Use of Class 2 organisms are permitted only in locations at least 500 feet from a Residential District or a MU-R district.

6. **General Retail.** Allowed general retail uses the MU-LI district are limited to food product stores and building materials and garden supply stores. Other types of general retail uses are not permitted.
 7. **Pharmaceuticals Manufacturing.** Pharmaceuticals manufacturing is allowed in the MU-LI district only in locations at least 500 feet from a Residential District or the MU-R district.
 8. **Public Market, Open Air.** Open air markets in the MU-LI district with 5,000 square feet or less of lot area are allowed with AUP.
 9. **Recycling Facilities.** Recycled materials processing and recycling redemption centers are allowed in the MU-LI district only on lots greater than 20,000 square feet.
 10. **Theaters.** Only live stage performances are allowed in a theater in the MU-LI district. Motion picture theaters are not permitted.
 11. **Vehicle Wrecking.** Permits required for vehicle wrecking the MU-LI district is determined by size of lot, not floor area.
 12. **Vocational Schools.** A vocational school in the MU-LI district must provide training for occupations and/or industries found in the West Berkeley Plan area.
 13. **Wholesale Trade Proximity to Residential Use.** For wholesale trade use in the MU-LI district otherwise allowed with a Zoning Certificate, an AUP is required to establish the use within 150 feet of a residential use in a Residential District or in the MU-R district.
- C. **Additional Permit Requirements.** See Section 23.206.030– Additional Permit Requirements.
- D. **Outdoor Recreation Sub-Zone.**
1. An Outdoor Recreation Sub-zone may be designated by the City Council, upon recommendation of the Planning Commission. In an Outdoor Recreation Sub-zone, parks and outdoor recreational uses are permitted with a Use Permit.
 2. Properties designated as an Outdoor Recreation Sub-zone must be:
 - a. Designated specifically for outdoor recreational use in the West Berkeley Plan;
 - b. Owned or under acquisition by a public agency which is subject to the Zoning Ordinance;
 - c. At least 5 contiguous acres in area;
 - d. Not primarily occupied by a conforming use as designated in the West Berkeley Plan; and

- e. At least 1,000 feet from any other Outdoor Recreation Sub-zone.
- 3. The initial designation of an Outdoor Recreation Sub-zone expires five years from the designation date. To permit outdoor recreational uses after that date, the Council must renew the Outdoor Recreation Sub-zone designation.

E. **Development Standards.** See Table 23.206-12 for development standards in the MU-LI district.

TABLE 23.206-12: MU-LI DEVELOPMENT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area, Minimum	No minimum	23.304.020– Lot Requirements
Usable Open Space Per Dwelling Unit, Minimum	n/a	
Floor Area Ratio, Maximum	2.0	
Main Building Height, Maximum	45 ft.	23.304.050– Building Height
Lot Line Setbacks, Minimum		23.304.030– Setbacks
Front	No minimum	
Rear	No minimum	
Interior Side	No minimum	
Street Side	No minimum	
Building Separation, Minimum	No minimum	
Lot Coverage, Maximum	100%	

F. **Permit Findings.** See Section 23.206.100– Permit Findings

23.206.090 – MU-R Mixed Use-Residential District

- A. **District Purpose.** The purpose of the Mixed Manufacturing (MU-R) district is to:
- 1. Implement the West Berkeley Plan Mixed Residential District designation;
 - 2. Support the continued development of a mixed-use district which combines residential, live/work, light industrial, arts and crafts and other compatible uses;
 - 3. Strengthen residential concentrations which exist within the district;
 - 4. Provide appropriate locations for a broad range of live/work activities to occur;
 - 5. Provide a transitional district between the Residential Districts to the east of the district and the Manufacturing Districts to the west of the district;

6. Encourage light manufacturers and wholesalers which are compatible with a mixed use-residential district;
7. Support the development of businesses of all types which contribute to the maintenance and improvement of the environment;
8. Protect residents from unreasonably detrimental effect of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare, to the extent possible and reasonable within a mixed-use West Berkeley context;
9. To the extent feasible, protect industrial uses, particularly light industrial uses, from unreasonable intrusions on their ability to operate lawfully; and
10. Permit retail and food service activities which are either limited and small scale, primarily serving persons living and/or working in the district, but not a citywide or regional clientele, or which are ancillary and designed to maintain and enhance the economic viability of manufacturers in the district.

B. Land Use Regulations.

1. **Allowed Land Uses.** See Table 23.206-1: Allowed Land Uses in Manufacturing Districts.
2. **Alcoholic Beverage Retail Sales.** Alcoholic beverage retail sales are allowed in the MU-R district only as ancillary sale of products produced or bottled on site with a Use Permit.
3. **Community Care Facility.** Community care facilities are allowed in the MU-R district only as a change of use. New construction is not permitted.
4. **General Retail.** Allowed types of general retail uses the MU-R district are limited to food product stores, building materials and garden supply stores, and arts and craft supplies. Other types of general retail uses are not permitted.
5. **Manufacturing Use Findings.** To approve an AUP or Use Permit to establish or expand a manufacturing use abutting one or more dwelling units located in the MU-R District, the review authority must find:
 - a. The manufacturer is capable of meeting all applicable performance standards; and
 - b. Permit conditions will specify all reasonable steps to minimize noise, odors, dust, vibration, glare and any other potential impacts on the abutting dwelling units.
6. **Mortuaries and Crematories.** Only mortuaries are permitted in the MU-R district. Crematories are not allowed.
7. **Multi-Family Dwellings.** Table 23.206-13 shows permits required for multi-family dwellings in the MU-R district.

TABLE 23.206-13: MU-R MULTI-FAMILY DWELLING PERMIT REQUIREMENTS

NUMBER OF UNITS	PERMIT REQUIRED
3 or 4	AUP
5 or more	UP(PH)

8. Residential Uses.

- a. A Use Permit is required to establish a dwelling unit, group living accommodation, or live/work unit MU-R that is within 150 feet of:
 - i. An M or MM district; or
 - ii. A construction product manufacturing or primary product manufacturing use.
- b. To deny a Use Permit required by Paragraph (a) above, the ZAB must find that:
 - i. The proposed residential use would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M or MM district; or
 - ii. Existing or reasonably foreseeable adjacent land uses in the M or MM district would have a material adverse effect on the proposed residential use.
- c. As a condition of approval for a Use Permit required by Paragraph (a) above, the residential property owner shall record an acknowledgement that existing or reasonably foreseeable adjacent land uses in the M or MM district may create noise, dust, odors, light/glare, and other impacts that will not be considered a nuisance if they are developed and conducted pursuant to the standards of the district.

9. **Residential Mixed-Use.** To approve an AUP or Use Permit to establish or expand of a residential mixed-use building in the MU-R district, the review authority must find that the specific combination of proposed residential and non-residential uses will not be hazardous or detrimental to persons living and/or working on the site or within the project vicinity.

C. **Additional Permit Requirements.** See Section 23.206.030– Additional Permit Requirements.

D. **Development Standards.** See Table 23.206-14: MU-R Development Standards for development standards in the MU-R district.

TABLE 23.206-14: MU-R DEVELOPMENT STANDARDS

BASIC STANDARDS	SUPPLEMENTAL STANDARDS
-----------------	------------------------

Lot Area, Minimum		23.304.020– Lot Requirements 23.304.020
New Lot	No minimum	
Per Dwelling Unit or Live/Work Unit	1,250 sq. ft. [1]	
Lot Width, Minimum		40 ft.
Usable Open Space, Minimum		23.304.090– Usable Open Space
Per Dwelling Unit	150 sq. ft.	
Per Live/Work Unit	40 sq. ft.	
Floor Area Ratio, Maximum		1.0 [2]
Main Building Height, Maximum		23.304.050– Building Height
Live/work	28 ft. and 3 stories [3]	
Residential or mixed-use [4]	35 ft. and 3 stories	
All other uses	35 ft. and 2 stories [5]	
Lot Line Setbacks, Minimum		23.304.030– Setbacks
Front	5 ft.	
Rear	No minimum [6]	
Interior Side	No minimum	
Street Side	5 ft.	
Building Separation, Minimum		No minimum
Lot Coverage, Maximum		100%
Notes:		
[1] One additional dwelling unit allowed for remaining lot area between 750 and 1,250 square feet.		
[2] Maximum 1.5 for buildings with 50 percent or more residential or live/work floor area		
[3] Maximum 35 ft. with a Use Permit.		
[4] Mixed use is defined here as a building with 50 percent or more of gross floor area used for residential (including live/work) purposes.		
[5] Maximum 3 stories for arts/craft studios and light manufacturing (with no other non-residential uses) on a block without dwelling units.		
[6] Minimum 5 ft. if rear of lot abuts a street.		
[7] Setbacks required when abutting or confronting a Residential District. See 23.304.030.C.2.		

E. **Permit Findings.** See Section 23.206.100– Permit Findings.

23.206.100 – Permit Findings

- A. All Manufacturing Districts. To approve an AUP or a Use Permit in a Manufacturing District, the review authority must find that the project:
1. Is consistent with the purposes of the district;
 2. Is compatible with the surrounding uses and buildings;
 3. Complies with the adopted West Berkeley Plan; and
 4. Meets any applicable performance standards for off-site impacts.
- B. **Additional Findings.** In addition to the findings in Section 23.206.100.A (All Manufacturing Districts), the review authority must also make the following findings to approve an AUP or Use Permit in each of the Manufacturing Districts.
1. **M and MM Districts.** The project:
 - a. Is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses; and
 - b. Is designed in such a manner to be supportive of the industrial character of the district. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site.
 2. **MU-LI District.** The project:
 - a. Is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses;
 - b. Is designed in such a manner to be supportive of the industrial character of the district. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site; and
 - c. If the building and/or site is split between the MU-LI district and the C-W district, there are clear and appropriate distinctions in all design aspects between the portions of the building and site within the MU-LI district and the portions within the C-W district.
 3. **MU-R District.** The project:
 - a. Is unlikely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential, live/work, light industrial, or arts and crafts uses; and

- b. Is designed to be supportive of the character and purposes of the district.

23.208 SPECIAL PURPOSE DISTRICTS

Sections:

23.208.010– Specific Plan District

23.208.020– Unclassified District

23.208.010 – Specific Plan District

- A. **Purpose.** The Specific Plan (SP) district establishes allowed use and permit requirements in areas subject to an adopted Specific Plan.
- B. **Allowed Uses.** Allowed uses and permit requirements in the SP district are as established in the applicable Specific Plan.
2. If the applicable Specific Plan is silent on a use allowed in another district, the use is allowed with a Use Permit.
- C. **Required Permits.**
1. Before approving a permit application in a SP district, the City must approve a Master Development Plan Permit consistent with the applicable Specific Plan. To approve a Master Development Plan Permit, the review authority must make all findings required by the Specific Plan.
 2. Applications for a Master Development Plan Permit and subsequent required permits shall be submitted and processed in accordance with Section 23.404—Common Permit Requirements and 23.406—Specific Permit Requirements.

23.208.020 – Unclassified District

- A. **Purpose.** The purpose of the Unclassified (U) district is to:
1. Implement the General Plan designations for areas included in the U district zoning classification; and
 2. Provide a district designation until such areas are classified into a residential, commercial, or manufacturing district.
- B. **Allowed Uses.**
1. All uses not prohibited by law are permitted in the U district.
 2. A Use Permit is required to establish any use, consistent with the procedures in this section.
- C. **Use Permit Procedures.** The City shall review and act on Use Permit applications in the U district as follows:
1. Each application shall be first submitted to the Planning Commission with the Planning Commission making a report to the ZAB. If the Planning Commission

fails to take an action on the report within 30 days after a Use Permit application is deemed complete, the ZAB will consider the application without a Planning Commission report.

2. After Planning Commission review, the ZAB shall take an action to approve, conditionally approve, or deny the application. The ZAB's decision is not effective until after action by the City Council. ZAB decisions may not be appealed.
 3. The ZAB will send a report of its decision, including findings and any conditions, together with the Planning Commission report, to the City Clerk within 14 days of final action.
 4. The City Council will review and act on the application within 30 days of the ZAB decision.
 5. The Council may affirm, reverse, or modify the ZAB decision.
- D. **Development Standards.** All development standards in the U District shall be set forth in the Use Permit, including lot size, density, building height, setbacks, building separation, lot coverage, floor area ratio (FAR), usable open space, and off-street parking.
- E. **Use Permit Findings.** To approve a Use Permit in the U district, the ZAB, Planning Commission, and City Council must all make the findings in Section 23.406.030.F—Administrative Use Permits (Findings for Approval).

23.210 OVERLAY ZONES

Sections:

23.210.010– Purpose of Overlay Zones

23.210.020– Hillside Overlay Zone

23.210.030– Civic Center District Overlay Zone

23.210.010 – Purpose of Overlay Zones

- A. **General.** An overlay zone is a defined geographic area shown on the Zoning Map where special requirements or limitations apply, in addition to the underlying base district requirements.
- B. **Conflicting Requirements.** Whenever a requirement of an overlay zone conflicts with a requirement of the underlying base district, the overlay zone requirement controls.

23.210.020 – Hillside Overlay Zone

- A. **Purpose.** The purpose of the Hillside (H) overlay zone is to:
 1. Implement General Plan policies for hillside development;
 2. Protect the character of Berkeley’s hillside areas and their immediate environs;
 3. Give reasonable protection to views yet allow appropriate development of all property;
 4. Allow modifications in standard setback and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the hillside areas.
- B. **Allowed Uses.**
 1. **General.** Allowed uses in the H overlay zone are the same as the underlying base district except as provided in this subsection.
 2. **Multiple Dwellings in R-2.** When the H overlay zone is combined with the R-2 district, multiple dwellings on a single property are not permitted.
- C. **Development Standards.**
 1. **General.** Development standards in the H overlay zone are the same as the underlying base district except as provided in this subsection.
 2. **Main Building Height.**
 - a. Table 23.210-1 shows the maximum allowed building height in the H overlay zone.

- b. The Zoning Officer may approve an AUP to increase the allowed average and maximum main building height upon finding the project is consistent with the purpose of the H overlay zone as stated in 23.210.020.A (Purpose).

TABLE 23.210-1: H OVERLAY ZONE MAXIMUM ALLOWED HEIGHT

UNDERLYING BASE DISTRICT	ALLOWED HEIGHT		MAXIMUM STORIES
	AVERAGE	MAXIMUM	
New Buildings			
R-1, R-1A, R-2, R-2A	28 ft.	35 ft.	3 stories
R-3, R-4, R-5, R-S, C-N, C-NS	35 ft.	35 ft.	3 stories
Residential Additions	As required by the base district or the highest existing portion of the roof, whichever is lower	20 ft.	N/A

- c. For a residential addition located above the lowest existing story that is partially or fully above grade, not habitable, and projects beyond the footprint of the habitable portion of the building, the average height is measured from the floor plate of the lowest habitable story. Maximum height is measured from grade in all cases.
- d. Height provisions in Section 23.304.050– Building Height apply in the H overlay zone.

3. Accessory Building Height.

- a. Accessory buildings are limited to 12 feet in average height and one story.
- b. The Zoning Officer may approve an AUP to increase the allowed height and/or stories upon finding that the proposed accessory building:
 - i. Will not be detrimental to the light, air, privacy, and view of adjacent property; and
 - ii. Is consistent with the purpose of the H overlay zone as stated in Section 23.210.020.A – Hillside Overlay Zone (Purpose).

4. Setbacks and Building Separation.

- a. The Zoning Officer may approve an AUP to reduce the minimum required main building lot line setbacks and the minimum required building separation in the underlying base district upon finding that the reduction is consistent with the purpose of the H overlay zone as stated in 23.210.020.A (Purpose).
- b. Setback provisions in Section 23.304.030– Setbacks apply in the H overlay zone.

23.210.030 – Civic Center District Overlay Zone

A. Purpose.

1. **General.** The general purpose of the Civic Center District (CCD) overlay zone is to implement General Plan Policy LU-22 to "Maintain the Civic Center as a cohesively designed, well-maintained, and secure place for community activities, cultural and educational uses, and essential civic functions and facilities" and Downtown Area Plan Policy LU-1.4 to "Focus City government and civic activity in the Civic Center area, and recognize Downtown's central role in providing community services."
2. **Specific.** The specific purpose of the CCD overlay zone is to:
 - a. Preserve and protect the integrity of the City of Berkeley Historic Civic Center through preservation of existing buildings and open space listed in the Civic Center Historic District;
 - b. Allow a set of uses, which are civic in nature, and support active community use;
 - c. Promote uses, which combined or individually will maintain public access to the historic buildings and resources;
 - d. Promote appropriate uses which respect the Civic Center's historic significance in unifying the community and forming a link to Berkeley's past;
 - e. Promote the cultural and architectural heritage of the Civic Center;
 - f. Preserve the Civic Center District as a place for government functions, community activities, cultural and educational uses, and civic functions and facilities; and
 - g. Promote uses which could financially support the goal of upgrading and preserving the existing historic buildings and resources.

- B. **Applicability.** The CCD overlay zone boundaries are coterminous with the Civic Center Historic District designated under Municipal Code Chapter 3.24 and apply to the following parcels:

1. APN 057 201701601 (Old City Hall/Courthouse/Public Safety Building)

2. APN 057 202202000 (Veterans Memorial Building)
3. APN 057 202200600 (State Farm Insurance Building/City offices, 1947 Center Street)
4. APN 057 202100200 (Civic Center Park)
5. APN 057 202100100 (Civic Center Building)
6. APN 057 202601500 (Downtown Berkeley YMCA)
7. Portion of APN 057 202000503 which contains the Berkeley Community Theater/Florence Schwimley Little Theater
8. APN 057 202000400 (Berkeley High School)
9. APN 057 202700500 (Berkeley Main Post Office)

C. **Definitions.** The following definitions apply only in the CCD overlay zone:

1. **Live Performance Theatre.** An establishment that has a permanent stage for the presentation of live performances and entertainment and which contains an audience viewing hall or room with fixed seats.
2. **Museum.** A non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates, and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study, and enjoyment.
3. **Public Market.** An open air or enclosed marketplace, including a farmer's market, with multiple owner operated and/or independent merchants selling retail food items and handcrafted goods from local and regional producers, so long as:
 - a. At least 75 percent of retail space is devoted to the sale of general or specialized food products; and
 - b. No more than 25 percent of retail space is devoted to one or more of the following incidental uses:
 - i.* Owner operated and/or independent food service establishment selling food from local and regional producers; and
 - ii.* Sales of retail products from local and regional produce.

D. **Allowed Uses.**

E. Table 23.210-2 shows allowed uses and permit requirements in the CCD overlay zone. All properties in the CCD overlay zone are restricted to the uses in

F. Table 23.210-2, regardless of uses permitted in the underlying base district.

TABLE 23.210-2: CCD OVERLAY ZONE ALLOWED USES

ALLOWED USE	REQUIRED PERMIT
Libraries	UP(PH)
Judicial Courts	AUP
Museums	UP(PH)
Parks and Playgrounds	ZC
Public Safety and Emergency Services	UP(PH)
Government Agencies and Institutions	AUP
Public Schools/Educational Facilities	UP(PH)
Non-Profit Cultural, Arts, Environmental, Community Service and Historical Organizations	UP(PH)
Live Performance Theatre	UP(PH)
Public Market	UP(PH)

G. Development Standards.

1. **General.** Development standards in the CCD overlay zone are the same as the underlying base district except as provided in this subsection.
2. **Building Height.** All new buildings and building additions are subject to a maximum building height of 50 feet.

DIVISION 3: CITYWIDE PROVISIONS

23.302: Supplemental Use Regulations

- 23.302.010– Purpose
- 23.302.020– General Use Regulations
- 23.302.030– Temporary Uses and Structures
- 23.302.040– Home Occupations
- 23.302.050– Bed and Breakfast Establishments in Residential Districts
- 23.302.060– Sidewalk Cafe Seating
- 23.302.070– Use-Specific Regulations

23.304: General Development Standards

- 23.304.010– Purpose
- 23.304.020– Lot Requirements
- 23.304.030– Setbacks
- 23.304.040– Building Separation in Residential Districts
- 23.304.050– Building Height
- 23.304.060– Accessory Buildings and Enclosed Accessory Structures
- 23.304.070– Unenclosed Accessory Structures in Residential Districts
- 23.304.080– Fences
- 23.304.090– Usable Open Space
- 23.304.100– Site Features in Residential Districts
- 23.304.110– Dormers
- 23.304.120– Lot Coverage
- 23.304.130– Non-Residential Districts Abutting a Residential District
- 23.304.140– Area Plans

23.306: Accessory Dwelling Units

- 23.306.010– Purposes
- 23.306.020– Applicability
- 23.306.030– Permit Procedures

23.308: Emergency Shelters

- 23.308.010– Chapter Purpose
- 23.308.020– Applicability and Nonconformities
- 0– Required Permits
- 23.308.030– Standards for Emergency Shelters

23.310: Alcoholic Beverage Sales and Service

- 23.310.010– Chapter Purpose
- 23.310.020– General Requirements Excluding Incidental Beer and Wine Service
- 23.310.030– Alcoholic Beverage Service When Incidental to Food Service

23.312: Live/Work

- 23.312.010– Chapter Purpose
- 23.312.020– Applicability
- 23.312.030– Required Permits
- 23.312.040– Standards for Live/Work
- 23.312.050– Findings

23.314: Short-Term Rentals

- 23.314.010– Chapter Purpose
- 23.314.020– Definitions
- 23.314.030– Applicability
- 23.314.040– General Regulations
- 23.314.050– Operating Standards and Requirements
- 23.314.060– Violations and Remedies

23.316: Percentage for Public Art on Private Projects

- 23.316.010– Chapter Purpose
- 23.316.020– Applicability
- 23.316.030– Definitions
- 23.316.040– General Requirements
- 23.316.050– Required Permits
- 23.316.060– In-Lieu Fees
- 23.316.070– Administrative Regulations (Guidelines)

23.318: Urban Agriculture

- 23.318.010– Chapter Purpose
- 23.318.020– Applicability
- 23.318.030– Urban Agriculture Uses and Levels of Discretion
- 23.318.040– Thresholds
- 23.318.050– Operation Standards
- 23.318.060– Complaints

23.320: Cannabis Uses

- 23.320.010– Chapter Purpose
- 23.320.020– Cannabis Retail
- 23.320.030– Commercial Cannabis Cultivation
- 23.320.040– Cannabis Manufacturers, Testing Labs, and Distributors

23.320.050– Microbusinesses

23.322: Parking and Loading

23.322.010– Chapter Purpose

23.322.020– Applicability

23.322.030– Required Parking Spaces

23.322.040– General Requirements

23.322.050– Parking Reductions

23.322.060– C-DMU Parking and Transportation Demand Management

23.322.070– Off-Street Parking Maximums for Residential Development

23.322.080– Parking Layout and Design

23.322.090– Bicycle Parking

23.322.100– On-site Loading Spaces

23.322.110– Parking Lots in Residential Districts

23.322.120– Transportation Services Fee

23.324: Nonconforming Uses, Structures, and Buildings

23.324.010– Chapter Purpose

23.324.020– General

23.324.030– Nonconforming Lots

23.324.040– Nonconforming Uses

23.324.050– Nonconforming Structures and Buildings

23.324.060– Exemptions

23.326: Demolition and Dwelling Unit Control

23.326.010– Chapter Purpose

23.326.020– General Requirements

23.326.030– Eliminating Dwelling Units through Demolition

23.326.040– Eliminating Dwelling Units through Conversion and Change of Use

23.326.050– Private Right of Action

23.326.060– Elimination of Residential Hotel Rooms

23.326.070– Demolitions of Non-Residential Buildings

23.326.080– Building Relocations

23.326.090– Limitations

23.328: Inclusionary Housing

23.328.010– Chapter Purpose and Applicability

23.328.020– General Requirements

23.328.030– Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units

23.328.040– Requirements Applicable to All Inclusionary Units

23.328.050– Inclusionary Unit Requirements for Rental Housing Projects

23.328.060– Inclusionary Unit Requirements for Ownership Projects

- 23.328.070– Special Requirements for Avenues Plan Area
- 23.328.080– Administrative Regulations
- 23.328.090– Fees

23.330: Density Bonus

- 23.330.010– Chapter Purpose
- 23.330.020– Definitions
- 23.330.030– Application Requirements
- 23.330.040– Density Bonus Calculations and Procedures
- 23.330.050– Incentives and Concessions
- 23.330.060– Waivers and Reductions
- 23.330.070– Qualifying Units
- 23.330.080– Regulatory Agreements

23.332: Wireless Communication Facilities

- 23.332.010– Chapter Purpose and Applicability
- 23.332.020– Definitions
- 23.332.030– General Requirements
- 23.332.040– Minimum Application Requirements
- 23.332.050– Location Requirements
- 23.332.060– Height Requirements
- 23.332.070– Design Requirements
- 23.332.080– Operation and Maintenance Standards
- 23.332.090– Public Information Requirements
- 23.332.100– Certification Requirements
- 23.332.110– Permits and Findings Required for Approval
- 23.332.120– Cessation of Operations

23.334: Transportation Demand Management

- 23.334.010– Chapter Purpose
- 23.334.020– Applicability
- 23.334.030– Transportation Demand Management Program Requirements
- 23.334.040– Monitoring, Reporting and Compliance

23.302 SUPPLEMENTAL USE REGULATIONS

Sections:

- 23.302.010– Purpose
- 23.302.020– General Use Regulations
- 23.302.030– Temporary Uses and Structures
- 23.302.040– Home Occupations
- 23.302.050– Bed and Breakfast Establishments in Residential Districts
- 23.302.060– Sidewalk Cafe Seating
- 23.302.070– Use-Specific Regulations

23.302.010 – Purpose

This chapter establishes land use regulations that apply in addition to regulations in Chapter 23.202—23.210 Zoning Districts.

23.302.020 – General Use Regulations

A. Accessory Uses.

1. **Long-Term Rental of Rooms in a Dwelling Unit.** Renting rooms and/or providing board in a dwelling unit to persons not living as a household is permitted by right as an accessory use in all Residential Districts. The room rental/boarding must comply with the following requirements:
 - a. Minimum time period for rental: 14 days.
 - b. Maximum number of renters: four persons.
 - c. A rented room:
 - i.* Must be fully integrated within the dwelling unit such that it has interior access to the rest of the dwelling unit;
 - ii.* May not have a separate kitchen; and
 - iii.* May not have separate assigned street addresses.
 - d. All requirements for off-street parking must be met.
2. **Non-Processed Edibles.** The sale or donation of non-processed edibles grown or raised on the premises is permitted by right as an accessory use in all residential districts. All sale and donation activities must comply with the following requirements:
 - a. Sales and donations must be directly to the end consumer of the non-processed edibles.
 - b. Sales and donation-related activities must occur between the hours of 8am and 8pm.

- c. Sales and donation-related activities must be located either indoors or in an area generally shielded from view from the public right-of-way to the extent practical based on the accessibility of the subject lot.
- d. The sale or donation of non-processed edibles may not involve hazardous materials or processes or create offensive or objectionable noise, vibration, odors, heat, dirt, or electrical disturbance perceptible by the average person beyond the lot line of the subject lot.
- e. The sale or donation of non-processed edibles may not involve more than ten customer visits to the premises in one day.

3. Chair Massage.

- a. Chair massage is permitted by right as an accessory use when incidental to a retail use in the commercial districts and the MU-R district.
- b. No additional parking is required.

4. Commercial Uses in Residential Districts. A commercial use is allowed in a Residential District as an accessory use only if the use is specifically allowed by the Zoning Ordinance.

B. Hours of Operation.

- 1. **Allowed Hours.** Table 23.302-1: Allowed Hours of Operation shows allowed hours of operation for commercial uses in the commercial districts and the MU-R district.

Exceptions. The City may allow extended hours of operations with the approval of a permit as shown in Table 23.302-1.

- 2. **Alcohol Sales in C-T District.** A Use Permit is required in the C-T district for a business selling alcohol for off-site consumption to remain open past midnight. The Use Permit may be approved only if the business’s ABC license does not require sales of alcohol for off-site consumption to cease by midnight. The Zoning Adjustments Board (ZAB) may approve the Use Permit only upon finding that the extended hours will not generate excessive noise, traffic or parking problems affecting the well-being of the residents of the district.

TABLE 23.302-1: ALLOWED HOURS OF OPERATION

DISTRICT	ALLOWED HOURS OF OPERATION	PERMIT REQUIRED TO EXTEND HOURS
C-C, C-U	7:00 a.m. – 12:00 midnight	AUP
C-N, C-E, C-NS, C-SO, C-W outside nodes	7:00 a.m. – 11:00 p.m.	UP

C-W nodes	6:00 a.m. – 12:00 midnight with Zoning Certificate	UP
C-SA	7:00 a.m. – 12:00 midnight Sundays through Thursdays 7:00 a.m. – 12:00 Fridays and Saturday	UP
C-AC	7:00 a.m. – 12:00 midnight Sundays through Thursdays 7:00 a.m. – 2:00 a.m. Fridays and Saturday	UP
C-T between Bancroft Way and the north side of Dwight Way	24 hours per day 7 days a week	N/A
C-T between the south side of Dwight Way and Parker Street	7:00 a.m. – 12:00 midnight	AUP
C-DMU	6:00 a.m. and 2:00 a.m.	AUP
MU-R	6:00 a.m. and 10:00 p.m.	AUP

3. **C-T District Findings.** The Zoning Officer may approve an AUP to extend hours of operation in the C-T district upon finding that the extended hours will not generate excessive noise, traffic, or parking problems affecting the well-being of the residents of the district.

4. **Hours of Operation Defined.**

- a. For retail or customer-serving office commercial uses, hours of operation are those times that the business is open to customer access.
- b. For food service establishments, hours of operation include the time that the business is open for customer access to the departure of the last patron. These limitations do not apply to:
 - i. The delivery, maintenance, security, product preparation and other pre-opening activities, and
 - ii. Cleanup, shutdown, and other post-closure activities which do not involve presence of customers.
- c. For other commercial and manufacturing uses which do not involve customer access, hours of operation are those times that employees are present who are engaged in non-maintenance or security activities.

C. **Indoor Storage of Goods.** In the Commercial Districts, an AUP is required for the indoor storage of goods as an incidental use occupying over 25 percent of the gross floor area.

D. **Live Entertainment.**

Permits Required. Live entertainment incidental to a permitted use is allowed as shown in

Table 23.302-2.

TABLE 23.302-2: PERMIT REQUIREMENTS FOR LIVE ENTERTAINMENT

ZONES	PERMIT REQUIRED	
	AMPLIFIED	UNAMPLIFIED
C-C, C-U, C-SA, C-T, C-SO, C-DMU, C-AC	AUP	ZC
C-N, C-NS, C-W	UP(PH)	ZC
C-E	Not Permitted	ZC
M, MM	Not Permitted	Not Permitted
MU-LI, MU-R	UP(PH)	UP(PH)

1. Allowed Activities.

- a. In the S-O district, food service establishments may have no live entertainment other than unamplified music, poetry reading, comedy or other quiet activities.
- b. In the C-NS district, food service establishments may have no live entertainment other than unamplified background music, unless a Use Permit is obtained.

E. Outdoor Uses.

1. **Applicability.** This subsection applies to outdoor uses including but not limited to exterior service windows, outside automatic teller machines, and the outside storage of goods, containers and/or materials.
2. **General.** Commercial and manufacturing uses shall be conducted solely within an interior of a building unless:
 - a. The permit as required by Paragraph 3 (Permits Required) is obtained; or
 - b. the outdoor use is specifically allowed by the Zoning Ordinance.
3. **Permits Required.**
4. Table 23.302-3: Permit Requirements for Outdoor Uses shows permits required for uses outside of a building in the Commercial and Manufacturing Districts.

TABLE 23.302-3: PERMIT REQUIREMENTS FOR OUTDOOR USES

DISTRICT/USE CHARACTERISTICS [1]	PERMIT REQUIRED
All Commercial Districts Except for C-W	
Not abutting a residential district	AUP
Abutting a residential district	UP(PH)
C-W	
Not abutting a residential district and less than 10,000 s. ft.	AUP
Abutting a residential district	UP(PH)
10,000 sq. ft. or more	UP(PH)
M, MM [2]	
Less than 20,000 sq. ft.	ZC
20,000 sq. ft. or more	AUP
MU-LI	
Less than 20,000 sq. ft.	ZC
20,000 to 30,000 sq. ft.	AUP
More than 30,000 sq. ft.	UP(PH)
MU-R	
Not abutting a residential district	AUP
Abutting a residential district	UP(PH)
Notes:	
[1] Size is measured as the lot area of the outdoor activity or storage	
[2] In the M and MM district permits are required only for activity or storage not ancillary to a permitted use.	

5. **C-W District.** In the C-W district, uses outside of a building must be permitted or incidental to permitted use in the district.
6. **M, MM, MU-LI Districts.** Outside uses in the M, MM, and MU-LI districts may not abut a residential district.

23.302.030 – Temporary Uses and Structures

A. Permitted By Right.

1. **Temporary Uses.** The following temporary uses are permitted by right:

- a. Using a dwelling, school, church, community center, or other facility as a polling or voting place for an election conducted by the City or other government agency.
- b. Conducting a garage, yard, or rummage sale on a residential property or a block sale of several properties. A sale may not exceed two days and is limited to one sale in any month's period of time.
- c. Temporary sidewalk sales conducted adjacent to, and in conjunction with, an approved commercial retail lease space, when all other City regulations are met.
- d. The use of a property as temporary parking during football games in the University of California Memorial Stadium under the provisions of Ordinance # 2435-N.S.
- e. A temporary retail use where:
 - i. The temporary sales are on the same property with an established commercial business holding a valid City business license; and
 - ii. The temporary sales conform with the approved permit for the commercial business.

2. **Temporary Structures.** The following accessory and temporary structures are permitted by right as long as they do not change the character of, and are in keeping with the purposes of the district in which they are located:

- a. Lines, wires, poles and devices to transmit electricity, telephone/telecommunications or cable television, including pipelines, conduits and appurtenances to containing such wires and devices. Allowed activities include installing, maintaining, undergrounding, and repairing such facilities. A Use Permit or AUP is required for wireless telecommunication antennas other than those located within the public right-of-way.
- b. Pipelines or conduits and appurtenances to transport oil, gas, sewage or water.
- c. Temporary construction offices, scaffolding, utility connections, on-site construction material yards and/or debris containers for not more than the time period authorized in a valid building permit.

B. AUP Required.

1. **When Required.** An AUP is required to establish, maintain, or operate a temporary use or structure not identified in Subsection A (Permitted By Right) above.

2. **Scope of Approval.** An AUP for a temporary use or structure applies only to the circumstances of the temporary use or structure existing at the time the application is granted.
 3. **Seasonal Product Sales.** Temporary seasonal product sales activity may not exceed a 45-day period and may not be established in any Residential district.
 4. **Time Period.**
 - a. The AUP shall specify the time period for the temporary use or structure, including a required ending date.
 - b. A time extension is not allowed unless approved by the Zoning Officer.
 5. **Findings.** To approve the AUP, the Zoning Officer must make the findings in Section 23.406.030.F– Administrative Use Permits (Findings for Approval). When making this finding, the Zoning Officer shall consider whether the temporary nature of the use or structure will make it not detrimental.
 6. **Appeals.**
 - a. An AUP decision for seasonal product sales of pumpkins and Christmas trees, including the temporary use of a structure for an office, may not be appealed.
 - b. All other AUP decisions for a temporary uses and structures may be appealed as provided in Chapter 23.410—Appeals and Certifications.
- C. **Violations.** Permits for temporary uses may be revoked for non-compliance with any conditions of approval and the Zoning Officer may issue an immediate cease and desist order.
- D. **Temporary Outdoor Uses on Private Property -- COVID-19 Local Emergency.**
1. **Applicability.**
 - a. This subsection is valid during and up to 90 days after a locally-declared state of emergency related to COVID 19.
 - b. An eligible business must:
 - i. Have a valid City of Berkeley Business License;
 - ii. Be located on private property in one of the following districts:
 1. Any commercial zoning district; or
 2. The Manufacturing (M) District, the Mixed Manufacturing (MM) district, or the Mixed-Use Light Industrial (MU-LI) district; and

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

4. Operating Standards.

- a. A business must comply with State and local regulations for normal business operations, including previously-imposed conditions of approval related to hours of operation and other conditions of approval not in conflict with the allowances in this subsection, in addition to State regulations for outdoor operations.
- b. A business must follow the Governor's Executive Orders, Public Health Orders, and the City of Berkeley Public Health Orders, including Appendices.
- c. A business must comply with American with Disabilities Act (ADA) requirements and the Berkeley Building Code.
- d. A Temporary Outdoor Use must maintain a 10-foot setback adjacent to any property in a residential district.
- e. A Food Service Establishment with incidental beverage service must comply with all applicable regulations of the California Department of Alcohol Beverage Control and obtain a COVID-19 temporary catering authorization.
- f. Operating Hours for a Temporary Outdoor Use are limited to 9 a.m. to 9 p.m. Operating Hours include the time that the business is open for customer access to the departure of the last patron.
 - i. Operating Hours limitations do not apply to delivery, maintenance, security, product preparation and other pre-opening activities, and cleanup, shutdown and other post-closure activities which do not involve the presence of customers.
- g. Temporary Outdoor Uses must be conducted in a manner that protects the residential character of surrounding neighborhoods from adverse impacts, including, but not limited to, commercial noise and offensive odors.
- h. Smoking is prohibited in areas designated for Temporary Outdoor Uses (BMC Section 12.70.030).
- i. Temporary outdoor lighting fixtures must be oriented in a manner to direct light away from adjacent parcels.

5. Sanitation.

- a. A business must provide garbage, recycling and compost services in accordance with the Alameda County Mandatory Recycling Ordinance.
- b. A Food Service Establishment must provide restrooms and sanitation during hours of operation.

- c. A Food Service Establishment must comply with BMC Ch. 11.64 (Single Use Foodware and Litter Reduction).
6. **Existing Parking and Loading.** Non-residential parking and loading requirements on private property are temporarily suspended if a Temporary Outdoor Use displaces areas designated for these purposes.
7. **Temporary Fixtures and Structures.**
 - a. Movable fixtures such as tables and chairs, umbrellas, heaters, generators, trucks or trailers must be stored in a secure place on private property when not in use.
 - b. Fixed structures, such as semi-permanent tents, shipping containers, portable sinks and toilets, must occupy no more than 50% of the outdoor space dedicated to a Temporary Outdoor Use, in order to allow for social distancing.
 - c. The location, type and operation of Temporary Fixtures and Structures must comply with requirement of, and be inspected by, the Building and Safety Division, Health Department, Fire Department, Police Department and/or Public Works Department, as applicable.
8. **Safety.**
 - a. If a Temporary Outdoor Use is located within an active parking lot, a business must provide temporary barriers to separate vehicle traffic from pedestrians and commercial activity.
 - b. If a Temporary Outdoor Use fully occupies a parking lot, a business must provide temporary barriers to prevent vehicle traffic from entering the parking lot.
9. **Remedies.**
 - a. A Zoning Certificate for a Temporary Outdoor Use may be revoked for non-compliance with any conditions in this subsection, and the Zoning Officer may issue a cease and desist order immediately.
 - b. A Temporary Outdoor Use that meets the nuisance criteria set forth in 23.414.404.B (Nuisances Prohibited) is subject to abatement, a set forth in 23.414 (Nuisance Abatement).

23.302.040 – Home Occupations

A. Definitions.

1. **Home Occupation.** A home occupation is a business use conducted on property developed with Residential use, which is incidental and secondary to the residential use, does not change the residential character of the residential use, is limited so as not to substantially reduce the residential use of the legally

established dwelling, accessory dwelling unit, accessory building, or group living accommodation room and is operated only by the residents of the subject residence. There are three classifications of Home Occupations. For the purposes of this section, a “customer” is considered a single paying customer, but may include more than one person receiving the services at the same time:

- a. **Class I Home Occupations.** A Class I home occupation involves no more than five customer visits per day, with no more than four persons receiving services at a time. This class does not allow shipping of goods directly from the subject residence.
- b. **Class II Home Occupations.** A Class II home occupation involves no more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site. This class does not allow shipping of goods directly from the subject residence.
- c. **Class III Home Occupation.** A Class III home occupation involves one or both of the following:
 - i. More than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site.
 - ii. Shipping of goods directly from the subject residence regardless of the number of customer visits per day.

2. **Permits Required.** Table 23.302-4 shows permits required for home occupations.

TABLE 23.302-4: PERMIT REQUIREMENTS FOR HOME OCCUPATIONS

HOME OCCUPATION	PERMIT REQUIRED
Class I	ZC
Class II	AUP
In the Hillside Overlay	Not Permitted
ES-R District	Not Permitted
Class III	
All Commercial Districts and MU-R District	UP (PH)
All other Districts, and in the Hillside Overlay	Not Permitted

3. **Additional Findings -- Class II and Class III Home Occupations.** To approve an AUP for a Class II home occupation or a Use Permit for a Class III home

occupation, the Zoning Officer or the ZAB must make the permit findings in Section 23.406 (Specific Permit Requirements) and find that, based on the circumstances of the specific use and property:

- a. The degree of customer visits will not cause a significant detrimental impact on the availability of parking spaces in the immediate vicinity of the home occupation; and
- b. The degree of shipping and delivery activity to and from the subject residence will be compatible with surrounding residential uses and will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the home occupation; and
- c. If the proposed home occupation will require a loading space on a regular basis, such loading space will be available on the subject property or the use of an on-street loading space will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the home occupation; and
- d. The degree of customer visits and shipping and delivery activities shall not cause a detrimental impact to public safety, as determined by the Fire Marshall.

B. General Provisions.

1. **Where Allowed.** A home occupation is allowed in any dwelling unit, accessory dwelling unit, accessory building, or group living accommodation room.
2. **Incidental Use.** A home occupation in compliance with this section is considered a lawful incidental use of a primary residence and is not considered a change of use thereof.

C. Standards for All Home Occupations. The following standard apply to all home occupations.

1. A home occupation is allowed as an incidental use within a dwelling unit, accessory dwelling units, accessory building, or group living accommodation room.
2. No firearm/munitions business may operate as a home occupation
3. Customer visits are not allowed in the ES-R district.
4. A Home Occupation may occupy no more than the greater of: 400 square feet or 20 percent of the gross floor area of the dwelling unit, accessory dwelling units, accessory building, or group living accommodation room from which it operates.

5. Only residents of the subject dwelling unit, accessory dwelling units, accessory building, or group living accommodation room, who live in the unit or room full-time, may operate a home occupation business.
6. Customer visits may occur only between the hours of 10am and 8pm.
7. Storage, services, repairs and other business activities, other than permitted arrival and departure of customers and goods in transit, may not be conducted outdoors.
8. A home occupation shall not involve hazardous materials or waste as defined by Municipal Code Section 15.08.060 (Hazardous Materials or Waste), or any other materials or waste that is deemed by the Hazardous Material Manager (or their designee or successor) to be inappropriate or unsafe in a residential setting.
9. A home occupation shall not create offensive or objectionable noise, vibration, odors, smoke, heat, dirt, electrical or other disturbance perceptible by the average person beyond the unit in which the home occupation is permitted.
10. No on-site signs identifying or advertising the home occupation are allowed.
11. The operator of a Home Occupation shall pay gross receipts tax pursuant to the City's business license tax ordinance in Municipal Code Chapter 9.04 (Business Licenses).
12. A lessee in possession of a property may apply for a permit without the property owner's signature; however, home occupations are not exempt from conditions in rental and lease agreements which may limit or prohibit home occupations.

D. Complaints and Imposition of Conditions.

1. **General.** Home occupations are subject to review, the imposition of conditions, or revocation. Violations may be addressed by issuing an administrative citation pursuant to Chapter 1.28.
2. **Class I and Class II Home Occupations.** The Zoning Officer shall review documented complaints, business operations, and other factors when reviewing Class I and Class II home occupations, and may impose conditions as may be necessary to prevent detrimental effects, or may revoke the permit if adequate conditions of approval are not available.
3. **Class III Home Occupations.** The ZAB shall review documented complaints, business operations, and other factors when reviewing Class III home occupations and may impose conditions as may be necessary to prevent detrimental effects, or may revoke the permit if adequate conditions of approval are not available.

23.302.050 – Bed and Breakfast Establishments in Residential Districts

A. Section Purpose.

1. The purpose of this section is to sanction the time-limited continued operation of bed and breakfast establishments (B&Bs) in residential districts that meet the requirements in this section.
2. This section is intended solely to alleviate the hardship that might occur if the owners of B&Bs were required to cease operation immediately, as would otherwise be required by the Zoning Ordinance.
3. The purpose of this section is not to permanently legalize such B&Bs.

B. Continued Operation

1. **Eligibility.** B&Bs in operation in Berkeley as of December 13, 2003 are eligible for continued operation subject to this section if, and only so long as, they satisfy the following conditions:
 - a. The B&B has been in consistent operation since January 1, 2003.
 - b. The building or buildings of which the B&B consists are legally constructed and comply with all applicable building, fire and housing code requirements, or are brought into compliance with those requirements within a reasonable time, as determined by the City.
 - c. The B&B complies with all laws related to food service and food handling.
 - d. There is no City record of complaints about the B&B within the three years before January 1, 2003.
2. **Application.** To be granted continued operation under this section, owners of eligible B&Bs must:
 - a. Apply for continued operation no later than 90 days after November 13, 2003;
 - b. Identify all owners and operators of the B&B; and
 - c. Pay all transient occupancy and business license taxes, penalties and interest due and owing, as determined by the City Council.

C. Regulations. B&Bs that are allowed to continue in operation under Subsection B (Continued Operation) above shall comply with the following requirements.

1. The owner of the property on which the B&B is located must live there as their primary residence and must be the primary operator of the B&B.
2. No part of a B&B may be rented for social events or functions.
3. A B&B may not be expanded beyond the number of rooms or units in existence as of January 1, 2003.

4. Food service, if provided by the operator, may be provided only to paying guests.
5. A B&B shall comply with all applicable laws, ordinance and regulations concerning the preparation and service of food.
6. A B&B shall comply with all applicable disability access requirements.
7. A B&B shall pay all transient occupancy and business license taxes as they become due.

D. Determinations by City Manager.

1. The City Manager or his/her designee shall make the determinations required by this section, and their decision shall be final.
2. The City Manager may give applicants under this section a reasonable period, but not to exceed six months, in which to bring the B&B into compliance with the requirements of Subsections B (Continued Operation) and C (Regulations).

E. Status of B&B Uses Under This Section.

1. Any continued operation allowed under this section does not constitute a permit and shall not run with the land, but is limited to the owner(s)/operator(s) thereof identified under Subsection B.2 (Application) and is subject to the requirements in this section.
2. A B&B sanctioned by this section shall be treated as a lawful nonconforming use, subject to automatic termination of the B&B use as provided in this section.
3. The owner shall file a deed restriction with the County Recorder, in a form approved by the City's Zoning Officer, notifying purchasers of the effect of this section.

F. Future Regulations Applicable. By seeking and accepting continued operation under this section, and thereafter operating a B&B, owners of B&Bs expressly agree that they will be subject to any and all additional regulations that may be adopted by the City to permit and regulate new B&Bs, to the extent the City so requires.

G. Automatic Repeal. If the limitation of Subsection E (Status of B&B Uses Under This Section) above is declared unlawful or invalidated by any court of competent jurisdiction, this section shall be deemed automatically repealed, and all B&B uses sanctioned by it shall immediately terminate.

23.302.060 – Sidewalk Cafe Seating

A. Section Purpose and Intent.

1. This section establishes a process to terminate an AUP previously issued for sidewalk cafe seating and identifies new permits required for this use.

2. It is the intent of the City to discontinue issuance of new and terminate existing AUPs for sidewalk cafe seating because the City did not intend to create a land use entitlement which ran with the land for this use, which occurs on the public right-of-way. The City also intends to eliminate the discretionary aspect of permit issuance for sidewalk cafe seating and to simplify the permit process by incorporating specific, identifiable standards for issuance of permits.

B. Termination of AUPs for Sidewalk Cafe Seating.

1. **Automatic Termination.** Without any action required by the City, an AUP for sidewalk cafe seating terminates upon:
 - a. The abandonment, revocation, or termination of the food service establishment which the sidewalk cafe seating serves;
 - b. The replacement of the food service establishment with another use; or
 - c. The transfer of ownership of the food service establishment.
2. **Termination by Zoning Officer.**
 - a. After providing reasonable notice and an opportunity to be heard, the Zoning Officer may terminate an AUP for sidewalk cafe seating upon determining that the permit holder has not complied with the terms of the AUP or any applicable requirement of the Zoning Ordinance.
 - b. A decision by the Zoning Officer to terminate an AUP for sidewalk cafe seating may be appealed in accordance with Chapter 23.410 (Appeals and Certification).

C. New Permit Required.

1. After an AUP for sidewalk cafe seating is terminated, the sidewalk cafe seating may continue or resume only after the food service establishment obtains a permit under Municipal Code Chapter 14.48 (Miscellaneous Use of Streets and Sidewalks).
2. Any sidewalk cafe seating that does not obtain required permits is a prohibited encroachment under Municipal Code Chapter 16.18 (Right-Of-Way Encroachments and Encroachment Permits).

23.302.070 – Use-Specific Regulations

A. Adult-Oriented Businesses.

1. **General Limitations.** An adult-oriented business may not be established:
 - a. Within 300 feet of the boundary of a Residential District, as measured along the public right-of-way;
 - b. Within a radius of 1,000 feet from any other adult-oriented business; or

c. Within a radius of 600 feet of any public park, public health clinic, public library, school or religious assembly use.

2. **District Limitations.** Adult-oriented businesses are not permitted:

- a. On lots with frontage on San Pablo Avenue in the C-W district; and
- b. On public-serving frontages in the C-DMU district.

B. Amusement Devices Arcade.

- 1. **Distance from Schools.** An amusement device arcade may not be established within a radius of 600 feet of a primary or secondary school.
- 2. **Incidental Use.** Table 23.302-5 shows permits required and maximum number of amusement devices allowed as an incidental use in the non-residential districts.

TABLE 23.302-5: PERMIT REQUIREMENTS FOR AMUSEMENT DEVICES AS INCIDENTAL USES

DISTRICT	PERMIT REQUIRED	MAXIMUM NUMBER
C-C, C-U, C-N, C-T, C-W	AUP	3
C-E, C-NS, C-SA, C-SO	UP(PH)	3
MU-LI	AUP	No max.
MU-R	AUP	3
M, MM	Not Permitted	

C. **Columbaria.** Columbaria require the permits shown in Table 23.302-6.

TABLE 23.302-6: COLUMBARIA PERMIT REQUIREMENTS

PROJECT	PERMIT REQUIRED
Columbaria that are incidental to a community and institutional use, limited to 400 niches, no more than 5% of the subject property area, and located in the main building.	ZC
All other columbaria	AUP

D. **Firearms/Munitions Business.** In all districts, a firearms/munition business is not permitted on a property containing a residential use.

E. Food Service Establishments.

- 1. **Maximum Size in R-SMU.** Food service establishments in the R-SMU district may not exceed 1,200 square feet.

2. **Permits Required in Commercial Districts.** Table 23.302-7 shows permits required for food service establishments in the commercial districts.

TABLE 23.302-7: PERMIT REQUIREMENTS FOR FOOD SERVICE ESTABLISHMENTS

DISTRICT/USE SIZE	PERMIT REQUIRED
C-C, C-U, C-T, C-W	
Under 1,500 sq. ft	ZC
1,500 sq. ft. or more	AUP
C-N, C-NS, C-SA, C-SO	
Under 1,000 sq. ft	ZC
1,000 sq. ft. or more	AUP
C-AC, South Shattuck and North Adeline Subareas	
3,000 sq ft or less	ZC
Over 3,000 sq ft	AUP
C-AC, South Adeline Subarea	
1,500 sq ft or less	ZC
Over 1,500 sq ft	AUP
C-E	AUP [1]
C-DMU	
Under 3,000 sq. ft outside the Arts District Overlay	ZC
3,000 sq. ft. or more	AUP
Any size within the Arts District Overlay	AUP [2]
Notes:	
[1] All food service uses in the C-E district require an AUP and may not be considered as an incidental use except when accessory to a food product store.	
[2] See 23.204.130.D.3 for required findings.	

3. **Notification of Decision.** Food service establishments requiring an AUP in the C-N, C-E, C-NS, C-SA, C-SO districts must provide public notification of decision (NOD) within a 300-foot radius of the subject property.
4. **Carry Out Limitations in C-U District.** Food service establishments in the C-U district that exclusively sell food for offsite consumption are not permitted at any location on University Avenue between Oxford Street and Martin Luther King Jr. Way until a Downtown Retail Plan is adopted by the City Council.

5. **Outdoor Cafe Seating.**

- a. Outdoor cafe seating on private property outside of the public right-of-way is allowed in the commercial districts with the following permits:
 - i.* Zoning Certificate when seating does not abut a residential district.
 - ii.* AUP when seating abuts a residential district.
- b. Outdoor seating is not permitted for food service establishments in the MU-LI District.
- c. Sidewalk cafe seating within the public right-of-way is subject to 23.302.060 (Sidewalk Cafe Seating).

6. **Building Openings – C-E and C-NS Districts.** Food service establishments in the C-E and C-NS districts may have no openings, other than fixed windows and required fire exits, within 50 feet of a residential district.

7. **C-W District Requirements.**

- a. Food service drive-through is not permitted on properties fronting San Pablo Avenue.
- b. To approve a Use Permit for a food service establishment on a lot with frontage on San Pablo Avenue, the ZAB must find that:
 - i.* The project does not conflict with the goals and policies of the C-W district;
 - ii.* The location, size, appearance and signage of the project will not adversely affect the San Pablo Avenue corridor;
 - iii.* The project supports pedestrian-oriented development;
 - iv.* The project is designed to protect the residential character of surrounding neighborhoods from the adverse impacts of fast food development, including, but not limited to increased traffic, litter, and noise; and
 - v.* For projects which include construction of new buildings, the project design:
 - 1. Provides intensity of development which does not underutilize the property; especially at or near intersections of major streets;
 - 2. Provides pedestrian scale and siting; and
 - 3. Incorporates continuity in street facades.

8. **Permits Required in Manufacturing Districts.** Table 23.302-8 shows permits required for food service establishments in the manufacturing districts.

TABLE 23.302-8: PERMIT REQUIREMENTS FOR FOOD SERVICE ESTABLISHMENTS IN MANUFACTURING DISTRICTS

USE TYPE AND SIZE	DISTRICT			
	M	MM	MU-LI	MU-R
Incidental Use				
Under 20,000 sq. ft.	AUP [1]	AUP [1,2]	AUP [1]	AUP [1]
20,000 sq. ft. or more	-	-	-	AUP
Carry Out Food Service (Primary Use)				
Under 5,000 sq. ft.	-	-	AUP	AUP
5,000 sq. ft. or more	-	-	UP	UP
Quick Service Restaurant (Primary Use)				
Under 5,000 sq. ft.	-	-	AUP	AUP
5,000 sq. ft. or more	-	-	UP	UP
Full-Service Restaurant (Primary Use)				
-	-	-	UP	UP
Notes: [1] Outdoor food service is not permitted. [2] Limited to food or beverage for immediate consumption.				

9. MU-LI and MU-R District – Findings.

- a. To approve an AUP or Use Permit to establish or expand a food service establishment in the MU-LI or MU-R district, the review authority must find that the establishment of the use, given its size, location, physical appearance and other relevant characteristics, will not have a significant detrimental impact on the industrial character of the area.
- b. To approve an AUP for a food service establishment less than 5,000 square feet, the Zoning Officer must find that a substantial portion of the food consists of goods manufactured on site.

F. Non-Chartered Financial Institutions.

1. No more than four non-chartered financial institutions are permitted in the city.
2. Non-chartered financial institutions may not be located within a radius of 1,320 feet of another non-chartered financial institutions.

G. Parking Lot/Structure.

1. **Permits Required.**

2. Table 23.302-9 shows required permits for the exclusive or primary use of a lot for off-street parking spaces.

TABLE 23.302-9: PERMIT REQUIREMENTS FOR PARKING LOTS/STRUCTURES

DISTRICT	PERMIT REQUIRED
Residential Districts	
R-3	Use Permit for all parking lots and structures. [1]
R-S, R-SMU	Use Permit for parking structures only. Parking lots are not permitted.
All other residential districts	Use Permit for all parking lots and structures.
Commercial Districts	
C-C, C-U	Zoning Certificate for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.
C-SO	AUP for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.
C-DMU	AUP for parking lots with 8 spaces or fewer. Use Permit for all parking structures. Lots with more than 8 spaces not permitted.
C-N, C-E, C-NS, C-SA	Use Permit for all parking lots and structures.
C-T	Use Permit for all parking structures. All parking lots not permitted.
C-W	AUP for parking lots and structures with 10 spaces or fewer. Use Permit for parking lots and structures with more than 10 spaces.
Manufacturing Districts	
M, MM	AUP for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.
MU-LI	Zoning Certificate for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. AUP for parking lots and structures with 11 spaces or more exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.
MU-R	Zoning Certificate for parking lots and structures exclusively for uses in the district. Use Permit for parking lots and structures not exclusively for uses in the district.
Notes: [1] Parking lots and structures in the R-3 district are not permitted within the Southside	

Plan area

3. **Residential District Standards.** See 23.322.110– Parking Lots in Residential Districts for standards that apply to the exclusive or primary use of a lot for off-street parking spaces in a residential district.

H. **Senior Congregate Housing.** Table 23.302-10 shows permits required for senior congregate housing.

TABLE 23.302-10: PERMIT REQUIREMENTS FOR SENIOR CONGREGATE HOUSING

PROJECT	PERMIT REQUIRED
Change of use from an existing dwelling unit to accommodate six or fewer people	ZC
Change of use from an existing dwelling unit to accommodate seven or more people	AUP
New construction to accommodate any number of people	UP(PH)

I. **Smoke Shops.** In all districts, smoke shops are not permitted within 1,400 feet of a school or public park.

J. **Warehouse Storage for Retail Use.**

1. In all districts where retail uses are allowed, on-site storage of goods is allowed as an accessory use to a primary retail use on the lot.
2. The storage of goods for a contiguous and directly accessible retail space is allowed in the MU-LI and MU-R districts subject to the following:
 - a. An AUP is required for storage 3,000 square feet or less; a Use Permit is required for storage more than 3,000 square feet.
 - b. Except for food product stores in the MU-LI district, the storage is permitted only for uses within the district. Storage for retail uses wholly or partially outside the district is not permitted.

23.304 GENERAL DEVELOPMENT STANDARDS

Sections:

- 23.304.010– Purpose
- 23.304.020– Lot Requirements
- 23.304.030– Setbacks
- 23.304.040– Building Separation in Residential Districts
- 23.304.050– Building Height
- 23.304.060– Accessory Buildings and Enclosed Accessory Structures
- 23.304.070– Unenclosed Accessory Structures in Residential Districts
- 23.304.080– Fences
- 23.304.090– Usable Open Space
- 23.304.100– Site Features in Residential Districts
- 23.304.110– Dormers
- 23.304.120– Lot Coverage
- 23.304.130– Non-Residential Districts Abutting a Residential District
- 23.304.140– Area Plans

23.304.010 – Purpose

This chapter contains development standards that apply generally in Berkeley.

23.304.020 – Lot Requirements

A. All Districts.

1. **Lot Changes.** A lot may not be subdivided or reduced in size and a lot line may not be adjusted or redrawn in a manner that conflicts with the Zoning Ordinance or:
 - a. Reduces the lot area, lot width, or lot depth below the district minimum requirement;
 - b. Reduces the area per dwelling unit, area for off-street parking spaces, or usable open space area below the district minimum requirement;
 - c. Reduces the setback or driveway dimension below minimum district requirements for any existing building; or
 - d. Creates a building site where setbacks or driveways for a new building would require a Use Permit or Variance.
2. **Transactions Contrary to Minimum Lot Size Requirements.** Any deed of conveyance, sale or contract to sell made contrary to the minimum lot size requirements of the Zoning Ordinance is voidable at the sole option of the grantee, buyer or person contracting to buy, their heirs, personal representative or trustee in insolvency or bankruptcy within one year after the date of execution of the deed of conveyance, sale, or contract.

3. **Front Lot Line Determination for Corner Lots.** For the purpose of determining lot frontage and setback requirements, the shorter of the two intersecting lot lines along the rights-of-way of a corner lot is considered the front of the lot. For lots with equal frontage, or for irregularly shaped corner lots, the Zoning Officer shall designate the front lot line in a manner to best promote the orderly development of the immediate area.
4. **Condominium Lots.** For condominium projects with a common area, all buildings and the common area together are treated as a single lot for the purpose of calculating minimum lot size, setback, density, FAR, coverage, usable open space and off-street parking requirements.
5. **Projections Over Lot Lines.** A building or structure may not project over a lot line except that:
 - a. Awnings and other architectural features may project over a lot line into the public right-of-way, and
 - b. Fences may be erected on shared lot lines.

B. Residential Districts.

1. **Lot Line Designations for Flag and Irregular Lots.** The Zoning Officer shall designate the front, side, and rear lot line for flag lots and irregular interior lots in a manner to best protect light, air, and privacy.

23.304.030 – Setbacks

- A. **All Districts.** A building or structure may not project into a required setback area except as specifically permitted by the Zoning Ordinance.

B. Residential Districts.

1. **Corner Lots with a Rear Lot Line Abutting a Key Lot.** For corner lots in the R-1, R-1A, R-2 and R-2A districts with a rear lot line abutting a key lot, the minimum street side setback is either:
 - a. One-half the front setback required or existing on the key lot, whichever is less; or
 - b. Four feet if the corner lot maintains 50 feet or more rear setback.
2. **Setback Reductions.** Lot line setback reductions are only permitted as shown in Table 23.304-1. Otherwise, they are not permitted.

TABLE 23.304-1: ALLOWED SETBACK REDUCTIONS IN RESIDENTIAL DISTRICTS

DISTRICT WHERE ALLOWED	WHEN ALLOWED	MINIMUM SETBACK WITH REDUCTION	REQUIRED PERMIT	REQUIRED ADDITIONAL FINDINGS [1]
Front Setback Reductions				
ES-R	On any lot	No minimum.	UP(PH) [2]	The reduced setback is: 1) necessary to allow economic use of property due to the size, shape of the lot or the topography of the site; and 2) consistent with the ES-R district purpose.
R-S; R-SMU	On any lot	No minimum	AUP	The reduced setback is appropriate given the setbacks and architectural design of surrounding buildings
R-SMU	For either: 1) a main building with dwelling units or group living accommodations; or 2) any building north of Durant Avenue	No minimum	AUP	The reduced setback is appropriate given the setbacks and architectural design of surrounding buildings
Rear Setback Reductions				
ES-R [3]	On any lot	No minimum	UP(PH) [2]	The reduced setback is: 1) necessary to allow economic use of property due to the size, shape of the lot or the topography of the site; and 2) consistent with the ES-R district purpose.
R-1, R-1A	On a lot less than 100 ft. deep	20% of lot depth	ZC	None

DISTRICT WHERE ALLOWED	WHEN ALLOWED	MINIMUM SETBACK WITH REDUCTION	REQUIRED PERMIT	REQUIRED ADDITIONAL FINDINGS [1]
R-1A	To construct a dwelling unit	12 ft.	AUP	The unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties.
R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU	On a lot with two or more main buildings with dwelling units	No minimum	AUP	No additional findings
R-SMU	For either: 1) a main building with dwelling units or group living accommodations; or 2) any building north of Durant Avenue	No minimum	AUP	The reduction is appropriate given the setbacks and architectural design of surrounding buildings
Side Setback Reductions				
ES-R [3]	Any lot	No minimum	UP(PH) [2]	The reduced setback is: 1) necessary to allow economic use of property due to the size, shape of the lot or the topography of the site; and 2) consistent with the ES-R district purpose.
R-1, R-1A	Lot width less than 40 ft. [4]	10% of lot width or 3 ft., whichever is greater	ZC	None
R-1A	West of San Pablo Avenue to construct a dwelling unit	No minimum	AUP	The unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties.

DISTRICT WHERE ALLOWED	WHEN ALLOWED	MINIMUM SETBACK WITH REDUCTION	REQUIRED PERMIT	REQUIRED ADDITIONAL FINDINGS [1]
R-2, R-2A	Lot width less than 40 ft.	First and second stories: 10% of lot width or 3 ft., whichever is greater; Third story: 5 ft.	ZC	None
R-SMU	For either: 1) a main building with dwelling units or group living accommodations; or 2) any building north of Durant Avenue	No minimum	AUP	The reduced setback is appropriate given the setbacks and architectural design of surrounding buildings

Notes:

[1] Findings are in addition to any AUP or Use Permit findings required in 23.406-Specific Permit Requirements.

[2] Fire Department must review and approve reduced setbacks in respect to fire safety.

[3] For lots less than 5,000 square feet, reductions are not allowed for property lines abutting a property under different ownership.

[4] Not permitted for rear main buildings in the R-1A district.

- Allowed Building Projections.** Table 23.304-2 shows building features which may project into a required setback. All projecting features must maintain a minimum 3-foot distance from an interior side lot line.

TABLE 23.304-2: ALLOWED BUILDING PROJECTIONS

BUILDING FEATURE	MAXIMUM PROJECTION INTO REQUIRED SETBACK (MUST MAINTAIN 3 FT MINIMUM FROM INTERIOR SIDE LOT LINE)			
	FRONT	REAR	INTERIOR SIDE	STREET SIDE
Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment	2.5 ft.	2.5 ft.	1.5 ft.	2.5 ft.

Eaves, Cornices, Canopies, Awnings and Bay Windows [1]	2.5 ft.	2.5 ft.	1.5 ft.	2.5 ft.
Uncovered decks, porches, landings and stairs when 30 inches or more above grade at any point [2]	6 ft.	6 ft.	1.5 ft.	2.5 ft.
Balconies and fire escapes [1]	6 ft.	6 ft.	1.5 ft.	2.5 ft.
<p>Notes:</p> <p>[1] Projecting bay windows and balconies may not exceed 25% of the length of building wall to which its attached.</p> <p>[2] Uncovered decks, porches, landings and stairs less than 30 inches in height are not subject to minimum setback requirements.</p>				

4. **Accessibility for Persons with Disabilities.** Wheelchair ramps, lifts, and other structures to accommodate persons with disabilities may project into a required setback area with approval of a reasonable accommodation request. See Section 23.406.090 (Reasonable Accommodation). Preferred designs would comply with the following:
 - a. One side yard with a pedestrian pathway of at least 3 feet in width that provides access to the rear yard shall be maintained on the lot.
 - b. The projection may not block access to or encroach into any required off-street parking space or driveway leading to such space.
5. **Building Groups.** Where two or more main buildings are constructed as part of a single project, the Zoning Officer may approve an AUP to reduce the minimum side setback requirement if:
 - a. Each building is constructed on a separate contiguous lot; and
 - b. Each building satisfies the requirements of the Berkeley Fire Code and Berkeley Building Code.
6. **Subterranean Structures.**
 - a. A subterranean structure may project into required front, side, and rear setbacks if:
 - b. The structure has a roof;
 - c. The roof elevation does not exceed 3 feet above finished grade; and
 - d. The roof is landscaped and developed so as to qualify as usable open space in conformance with 23.304.090 (Usable Open Space).

- e. A subterranean structure that projects into a required setback must be setback at least 6 feet from the front, side, and rear lot lines.
- 7. **Solar Energy Equipment.** The Zoning Officer may approve an AUP for solar energy equipment to project into a required setback upon finding that:
 - a. The projection is necessary to install the solar energy equipment;
 - b. The proposed structures and equipment are installed with the primary purpose to collect, store, and use solar energy; and
 - c. The building served by the solar energy equipment complies with the Residential Energy Conservation Ordinance (RECO).

C. Non-Residential Districts.

- 1. **Single-Use Residential Development.** Allowed setback reductions and projections in 23.304.030.B (Residential Districts) also apply to single-use residential development in a Non-Residential District.
- 2. **Lots Adjacent to Residential Districts.**
 - a. **Standards.** Table 23.304-3 shows minimum setbacks on lots in a Non-Residential District that abut or confront one or more lots in a Residential District. Required setbacks apply to structures occupied by any use, including residential-only buildings.

TABLE 23.304-3: SETBACKS ADJACENT TO RESIDENTIAL DISTRICTS

District	Minimum Lot Line Setback when Lot Line Abuts or Confronts a Lot in a Residential District			
	Front	Rear	Interior Side	Street Side
All Commercial Districts, MU-LI	Same as required in adjacent Residential District [1]	10 feet or 10% of the lot depth, whichever is less	5 ft.	Same as required in adjacent Residential District [1]
MU-R	10 ft. [1]	10 feet or 10% of the lot width, whichever is less [2]		

Notes:
 [1] In the MU-LI and MU-R districts, setback may be reduced to the smaller of front setbacks on abutting lot with an AUP.
 [2] This applies to lots that abut or confront a lot either in a Residential District or containing one or more dwelling units.

- b. **Modifications in Commercial Districts.** For lots in a Commercial District that abut or confront one or more lots in a Residential District, the Zoning

Adjustments Board (ZAB) may approve a Use Permit to allow setbacks smaller than required in Table 23.304-2 upon finding that the reduced setback would provide greater privacy or improved amenities to a lot in the Residential District.

23.304.040 – Building Separation in Residential Districts

A. Table 23.304-4 shows permits required to reduce to minimum building separation standards in Residential Districts, and when these reductions are allowed.

TABLE 23.304-4: PERMITS REQUIRED FOR BUILDING SEPARATION REDUCTIONS IN RESIDENTIAL DISTRICTS

DISTRICT WHERE ALLOWED	WHEN ALLOWED	PERMIT REQUIRED	FINDINGS [1]
R-1A	On a lot with two or more main buildings with a dwelling unit	AUP	The unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties.
R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU	On a lot with two or more main buildings with a dwelling unit	AUP	No additional findings
ES-R [2]	Any lot	UP(PH)	1) The reduced building separation is necessary to allow economic use of property for residential purposes; 2) the development complies with all other applicable setback, coverage, and floor requirements; and 3) the reduced building separation is consistent with the ES-R district purpose.

Notes:

[1] Findings in addition to AUP or Use Permit findings required in in 23.406.

[2] Fire Department must review and approve reduced setbacks in respect to fire safety.

23.304.050 – Building Height

A. **Projections Above Height Limits.** Table 23.304-5 shows features that may project above allowed height limits. For rules that apply to wireless telecommunication facilities, see Chapter 23.332 (Wireless Telecommunication Facilities).

TABLE 23.304-5: ALLOWED PROJECTIONS ABOVE HEIGHT LIMIT

Structures Allowed Above Height Limit	Maximum Projection Above Height Limit		Limitations		Permit Required
	Residential Districts	Non-Residential Districts	Residential Districts	Non-Residential Districts	
Towers, antennas, poles used for the transmission of electricity, telephone, cable television or other messages	No maximum		None		None
Flag poles, skylights, solar energy equipment, and similar structures	No maximum		None		None
Chimneys, water tanks, heating and air conditioning equipment, vents, pipes and necessary mechanical roof appurtenances	4 ft. or the minimum height required by the Building Code [1]	No maximum	Maximum 3 ft. in width [1]	No additional limitations	None
Other building and site features, including but not limited to, mechanical penthouses, elevator equipment rooms and cupolas, domes, turrets and other architectural elements	No maximum		May not exceed 15% of the average floor area of all of the building's stories. No tower or similar structure may be used as habitable space or for any commercial purpose, other than the mechanical needs of the building		AUP

Notes:

[1] May exceed allowed height and width with an AUP.

- B. **Rooftop Structures in Residential Districts.** Decks, railings, trellises, pergolas, and other similar structures may be built above a roof but less than the residential addition height limit of the district. These structures may exceed the residential addition height limit with an AUP.

23.304.060 – Accessory Buildings and Enclosed Accessory Structures

- A. **Applicability.** This section applies to accessory buildings and enclosed accessory structures as defined in 23.502 (Glossary). See Section 23.304.070 (Unenclosed Accessory Structures in Residential Districts) and Section 23.304.080 (Fences) and for requirements that apply to other unenclosed accessory structures and fences.
- B. **All Districts.**
1. **Attached or Close to Main Building.** An accessory building or enclosed accessory structure, other than a subterranean structure, that is attached to or within 3 feet of a wall of a main building, is considered a part of the main building for the purposes of setback requirements.
 2. **Demolition.** See 23.326.030.C (Accessory Buildings) and 23.326.070.B (Accessory Buildings) for permits required to demolish accessory buildings.
- C. **Residential Districts.**
1. **Permits Required.** Table 23.304-6 shows permits required for accessory buildings and accessory structures in Residential Districts.

TABLE 23.304-6: PERMIT REQUIREMENTS FOR ACCESSORY BUILDINGS AND ENCLOSED ACCESSORY STRUCTURES

District Location and Building/Structure Type	Permit Required
All Residential Districts Except ES-R	
New accessory buildings	AUP
Alterations to existing accessory buildings	ZC
Enclosed accessory structures on a lot with a main building	ZC
Enclosed accessory structures on a vacant lot without a main building	AUP
Horse stables	AUP [1]
Accessory buildings and structures with Urban Agriculture	ZC
ES-R District	
Under 100 sq. ft.	ZC

100 sq. ft. or more	UP(PH)
On a vacant lot without a main building	UP(PH)
<u>Notes:</u> [1] Horse stables are not permitted in the R-S and R-SMU districts	

2. Development and Use Standards.

- a. Development Standards.** Table 23.304-7 shows development standards for accessory buildings and enclosed accessory structures in Residential Districts.

TABLE 23.304-7: ACCESSORY BUILDING AND ENCLOSED ACCESSORY STRUCTURE STANDARDS IN RESIDENTIAL DISTRICTS

Building/Structure Feature	Standards
Average Height, Maximum	
Less than 4 ft. from lot line	10 ft.
4 ft. to less than 10 ft. from lot line	12 ft.
10 ft. or more from lot line	24 ft.
Setbacks, Minimum	
Front of Interior Lot	50% of lot dept
Front of Through Lot	25% of lot dept
Front of Corner Lot	The setback existing or required on the adjacent lot, whichever is smaller, <u>and</u> the existing setback of main building on the lot
Street Side, Corner Lot	The existing setback of main building on the lot
Interior Side	4 ft. for building/structures within 75 feet of front lot line; as required by Berkeley Building Code for buildings/structures 75 feet or more from front lot line
Edge of Alley	5 ft.
Building Length [1]	24 ft.
<u>Notes:</u> [1] Applies to building walls generally parallel to a side lot line.	

b. Deviation from Standards.

- i.* In all Residential Districts except for the ES-R district, the Zoning Officer

may approve an AUP to allow an accessory building or enclosed accessory structure to deviate from the standards in Table 23.304-7. In the ES-R district, deviations require ZAB approval of a Use Permit.

- ii. To approve the deviation, the review authority must find that the proposed building or structure will not be detrimental to the light, air, privacy, and view of adjacent properties.
- c. **Bathroom and Kitchen Facilities.** An accessory building may contain a full bathroom, including handwashing sink, toilet, and tub or shower, as well as cooking facilities, as long as the cooking facilities do not constitute a kitchen.
- d. **Rentals.** An accessory building may be rented only as a short-term rental as allowed in Section 23.314—Short-Term Rentals.

2. Rebuilding and Replacement.

- a. Notwithstanding the setback standards in this section and the coverage area standards in Chapter 23.202—Residential Districts, an accessory building or enclosed accessory structure may be constructed to replace a pre-existing lawful accessory building or enclosed accessory structure, if the replacement building or structure is in the same location and has the same or smaller footprint as the previous structure. However, any such replacement structure may not exceed the average height as the previous building or structure; otherwise an AUP is required.
- b. Such replacement buildings and structures are permitted as of right only if an application for a building permit for their construction is submitted at the same time as an application for a building permit for the demolition of the pre-existing building or structure.
- c. The demolition of any accessory building proposed for replacement under this section is subject to Municipal Code Chapter 3.24 (Landmark Preservation Commission).

D. **Non-Residential Districts.** The following requirements apply to accessory buildings and enclosed accessory structures in Non-Residential Districts.

1. Permits Required.

- a. Accessory buildings and enclosed accessory structures in a Non-Residential District require the same permits as a main building in the district, except as provided in paragraphs (b) and (c) below.
- b. Accessory buildings and structures with urban agriculture are allowed with a Zoning Certificate.
- c. In a Commercial District, an accessory building or enclosed accessory structure associated with a residential-only project requires the same permits

as in all Residential Districts except ES-R as shown in Table 23.304-7: Accessory Building and Enclosed Accessory Structure Standards in Residential Districts.

2. Development Standards.

- a. Accessory buildings and enclosed accessory structures must comply with the same development standards that apply to main buildings in the district.
- b. A detached accessory building or enclosed accessory structure may not be erected or expanded within 5 feet of an alley.

23.304.070 – Unenclosed Accessory Structures in Residential Districts

- A. **Applicability.** This section applies to unenclosed accessory structures as defined in 23.502 Glossary in a Residential District, excluding fences which are addressed in 23.304.080– Fences.
- B. **Placement on Lot.** Unenclosed accessory structures require an AUP if placed on the ground within a required setback.
- C. **Height.**
 1. For unenclosed accessory structure within a required setback, allowed height shall be specified in the AUP.
 2. No height limitations apply to unenclosed accessory structures outside of required setbacks.
 3. The height of an unenclosed accessory structure is measured as the vertical distance from the lowest existing grade point within a 3-foot radius of any point of the structure to the highest point of the structure.
- D. **Hot Tubs, Jacuzzis, and Spas.**
 1. An unenclosed outdoor hot tub, jacuzzi, or spa located anywhere on a lot requires:
 - a. An AUP in all Residential Districts except for the ES-R district; and
 - b. A Use Permit in the ES-R district.
 2. Any pump associated with an unenclosed outdoor hot tub, jacuzzi, or spa shall be mounted and enclosed so that its sound is not audible on an adjacent lot.

23.304.080 – Fences

- A. **Permits Required.** Table 23.304-8 shows permits required for fences in all districts.

TABLE 23.304-8: PERMITS REQUIRED FOR FENCES

District Location and Fences Height/Location	Permit Required
All Districts Except ES-R	
6 ft. in height or less	None required
More than 6 ft in height and on lot line or within required lot line setbacks for main building	AUP
ES-R District	
4 ft. in height or less	None required
More than 4 ft. in height and on lot line or within required lot line setbacks for main building	AUP [1]
Notes: [1] Requires Fire Department review and comment.	

B. Height Measurement. The height of a fence is measured as the vertical distance from the lowest existing grade point within a 3-foot radius of any point of the structure to the highest point of the structure.

C. Prohibited Materials in Residential Districts.

1. A fence in a Residential District may not contain strands of barbed or razor wire, sharp or jagged glass, sharp or jagged metal components (e.g., razor-spikes), or similar materials.
2. Prohibited fence materials on an existing fence may not be expanded or repaired. Table 23.304-9 shows the date by which existing non-conforming prohibited fence materials must be removed.

TABLE 23.304-9: REMOVAL OF PROHIBITED FENCE MATERIALS

ADJUSTED MARKET VALUE OF PROHIBITED FENCE MATERIAL	REQUIRED REMOVAL DATE
\$1,500 or less	October 16, 2004 or within one year from the date such feature became non-conforming, whichever date is earlier
More than \$1,500	October 16, 2005 or within one year from the date such feature became non-conforming, whichever date is earlier

3. For purposes of this section, the adjusted market value of the existing non-conforming prohibited fence feature is calculated as follows:
 - a. The "original cost" of the fence feature is the likely cost of substantially similar fence features at the time the fence feature was initially installed plus the likely costs of installation at that time.
 - b. The "original cost" is reduced by 10 percent for each year since the fence feature was installed, until the year that this section became effective. This reduced is considered the "adjusted market value."
4. If a property owner shows that the period of time in Table 23.304-9 is unreasonable as applied to a particular fence feature, the City may extend the period within which removal of such feature is required, after weighing the harm to the public interest from continued maintenance of the fence and other relevant factors. Any such determination will be made in the course of the proceedings to abate pursuant to Municipal Code Chapter 1.24 (Abatement of Nuisances).

D. Barbed or Razor Wire in Non-Residential Districts.

1. A fence adjacent to a street, sidewalk, path, or other public right-of-way in a Non-Residential District may have strands of barbed or razor wire if:
 - a. The lowest strand is more than 5 feet above the ground; and
 - b. The strands are at least 6 inches inside the property line of a privately-owned lot.
2. A fence on a lot line that abuts a Residential District must comply with 23.304.080.D– Fences (Prohibited Materials in Residential Districts).

E. MU-R District.

1. Abutting Residential Uses.

- a. If the side or rear of a lot in the MU-R district with a residential use abuts another lot with a residential use, a fence over six feet in height must be setback at least either:
 - i.* Eight feet from any main residential building on the abutting lot; or
 - ii.* Four feet from the property line if the main residential building on the abutting lot is less than 4 feet from the abutting lot line.
- b. This requirement does not apply when two lots sharing the lot line are under the same ownership.

2. Manufacturing/Residential Buffers.

- a. If a development project in the MU-R district results in a lot with a manufacturing use abutting the side or rear of a lot with a residential use, an

8-foot minimum fence with sound absorbent material is required between the manufacturing and residential uses.

- b. The Zoning Officer may approve an AUP to allow for an alternative method to provide a buffer between the manufacturing and residential uses.

23.304.090 – Usable Open Space

- A. **Applicability.** The standards in this section apply to areas used to satisfy minimum usable open space requirements as shown in Chapters 23.202–23.202.110 (Zoning Districts).
- B. **Standards.**
 - 1. **Accessibility and Use.** Usable open space shall be accessible to the occupants of the building for active or passive recreation use.
 - 2. **Assignment to Unit.** An area which is accessible and/or usable only by the occupants of a particular dwelling unit may satisfy the usable open space area requirements only for that particular dwelling unit.
 - 3. **Minimum Dimensions.** Except for balconies, a usable open space area must have a minimum width and length of 10 feet.
 - 4. **Balconies.**
 - a. A maximum of 50 percent of the total required usable open space area may be satisfied by balconies.
 - b. A balcony must have a minimum width and length of 6 feet.
 - c. At least one exterior side must be open and unobstructed except for required railings.
 - 5. **Uncovered.** Except for balconies, usable open space shall be at least 75 percent open to the sky.
 - 6. **Slope.** Usable open space must have a slope of 8 percent grade or less.
 - 7. **Landscaping.**
 - a. At least 40 percent of the total required usable open space area, exclusive of balconies above the ground floor, shall be landscaped.
 - b. A landscaped area may not include off-street parking spaces, driveways, paved walkways and paths, patios and other surfaces covered by concrete or asphalt.
 - c. For multiple dwelling uses, required landscaped areas shall incorporate automatic irrigation and drainage facilities adequate to assure healthy growing conditions for plants.

8. **Amenities.** Usable open space which is not planted shall be developed to encourage outdoor active or passive recreational use and shall include such elements as decks, sports courts, outdoor seating, decorative paved areas and walkways which do not serve as entrance walkways.
 9. **Access Features Not Included.** Usable open space may not contain area designated for off-street parking and loading, service areas, driveways, required walkways or other features used for access to dwelling units.
- C. **Other Open Space Areas.** Areas of the lot which do not qualify as usable open space and which are not designated as driveways, off-street parking spaces or required walkways, shall be retained as landscaped areas.

23.304.100 – Site Features in Residential Districts

- A. **Applicability.** The standards in this section apply in all Residential Districts.
- B. **Garbage Cans.** All garbage cans shall be effectively screened from view from the public right-of-way and surrounding properties.
- C. **Utility Meters.** For buildings with two or more units, all utility meters shall be effectively screened from view from the public right-of-way and surrounding properties.
- D. **Pedestrian Walkway for Multiple Dwellings.**
 1. All multi-family dwellings shall have an unobstructed walkway for pedestrian access from the public right-of-way to the building.
 2. The required walkway shall be separated and physically protected from a driveway or off-street parking spaces with a minimum 2-foot wide landscaped strip.
- E. **Exterior Lighting.**
 1. All exterior lighting shall be shielded and directed downward and away from lot lines to prevent excessive glare beyond the property on which the light is located.
 2. Lights on motion sensors may not be triggered by movement or activity located off the property on which the light is located.

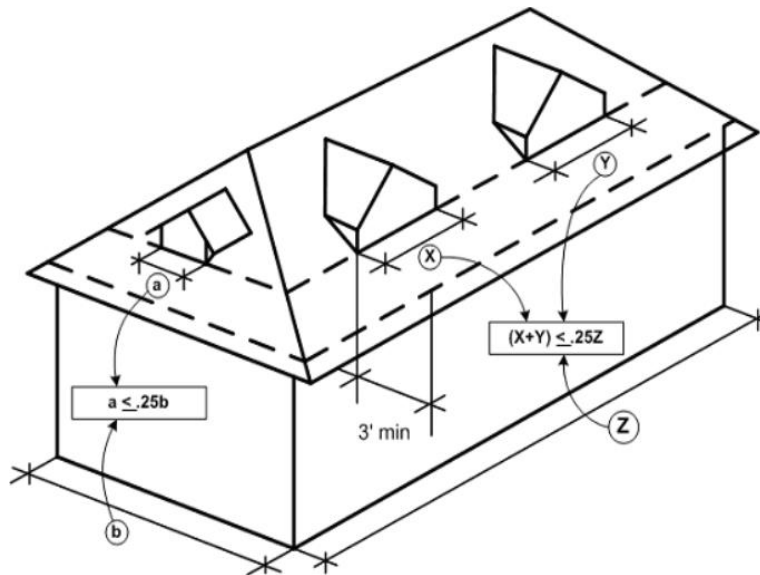
23.304.110 – Dormers

- A. **Wall Setback.** All features of a dormer shall be set back at least 3 feet from the exterior of the wall below, with the exception of the dormer's eaves, which may project horizontally not more than two feet from the exterior face of the dormer.
- B. **Placement Below Roof.** A dormer must be below the ridge of the portion of the building's roof where the dormer is located.

C. Horizontal Dimension. The total horizontal dimension of the dormer(s) facing the side of a building, as measured parallel to that side, may not exceed 25 percent of the length of the exterior wall, as shown in Figure 23.304-1: Dormers.

D. Excluded from Average Height Calculation. Dormers complying with this section are not included in the average building height calculation.

FIGURE 23.304-1: DORMERS



23.304.120 – Lot Coverage

- A. **Maximum Requirement.** A lot may not exceed the maximum lot coverage required in a district except as specifically permitted by the Zoning Ordinance.
- B. **Exception.** Solar energy equipment and wheelchair ramps and lifts in compliance with the Zoning Ordinance may exceed the maximum allowed lot coverage.

23.304.130 – Non-Residential Districts Abutting a Residential District

- A. **Applicability.** The standards in this section apply to lots in a Non-Residential District that abut or confront a lot in a Residential District.
- B. **Conflicting Provisions.** If the standards in this section conflict with a standard in Chapters 23.202–23.210 (Zoning Districts), the Chapters 23.202–23.210 standard governs.
- C. **Standards.**

1. **Display Window Orientation.** Display windows and customer entrances, other than required exits, shall not face abutting lots in a Residential District.
 2. **Exterior Lighting.** Exterior lighting shall be shielded in a manner which avoids direct glare onto abutting lots in a Residential District.
 3. **Lot Line Screening.** To provide screening, a solid wall or fence, measuring 6 feet in height from existing grade, shall be erected at the lot line of an abutting lot in a Residential District.
 4. **Exhaust Air Ducts.**
 - a. Exhaust air ducts shall be located or oriented to direct vented air flows away from a Residential District.
 - b. Exhaust air ducts shall include equipment to mitigate odors.
- D. **Modifications.** The ZAB may approve a Use Permit to reduce or waive the requirements of this section upon finding that requirement is unnecessary to minimize the effects of commercial uses on a lot in the Residential District.

23.304.140 – Area Plans

- E. **Downtown Area Plan.** Projects in the Downtown Area Plan boundaries are subject to the applicable mitigation measure in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.
- F. **Southside Plan.**
1. **Mitigation Measures.** Projects in the Southside Plan boundaries are subject to the applicable mitigation measures in the adopted Mitigation Monitoring Program of the Southside Plan Final EIR.
 2. **Permit Findings.** To approve an AUP or Use Permit for a project in the Southside Plan boundaries, the review authority must find that the project complies with the Southside Plan's adopted Mitigation Monitoring Program (MMP).
- G. **West Berkeley Plan.** Projects in the West Berkeley Plan boundaries are subject to the applicable mitigation measure in the adopted Mitigation Monitoring Program of the West Berkeley Plan Final EIR.
- H. **Adeline Corridor Plan.** Projects in the Adeline Corridor Plan boundaries are subject to the applicable mitigation measure in the adopted Mitigation Monitoring Program of the Adeline Corridor Plan Final EIR.

23.306 ACCESSORY DWELLING UNITS

Sections:

- 23.306.010– Purposes
- 23.306.020– Applicability
- 23.306.030– Permit Procedures

23.306.010 – Purposes

The purposes of this chapter are to:

- A. Implement California Government Code Section 65852.2 and 65852.22.
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of accessory dwelling units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of accessory dwelling units in zoning districts with compatible land uses and infrastructure.

23.306.020 – Applicability

- A. The provisions of this chapter apply to all lots with at least one existing or proposed dwelling unit.

23.306.030 – Permit Procedures

Zoning Certificates will be issued for Accessory Dwelling Units and Junior Accessory Dwelling Units per California Government Code Section 65852.2 and 65852.22.

23.308 EMERGENCY SHELTERS

Sections:

- 23.308.010– Chapter Purpose
- 23.308.020– Applicability and Nonconformities
- 0– Required Permits
- 23.308.030– Standards for Emergency Shelters

23.308.010 – Chapter Purpose

This chapter establishes standards for emergency shelters that ensure compatibility of shelter activities with surrounding uses and provide a safe place for individuals and families to obtain temporary shelter

23.308.020 – Applicability and Nonconformities

A. **Applicability.** This chapter applies to all emergency shelters established after January 1, 2014.

B. **Nonconformities.**

1. Emergency shelters established before January 1, 2014 may continue to operate consistent with:
 - a. The conditions in those approvals and permits;
 - b. All other applicable provisions of the Zoning Ordinance; and
 - c. Any limitations and requirements imposed as a condition of funding.
2. Except in the MU-LI district, such existing emergency shelters shall be treated as a lawful nonconforming use under Chapter 23.324(Nonconforming Uses, Structures, and Buildings). Existing shelters in the MU-LI district are not considered a nonconforming use and may add floor area with a Use Permit.

– Required Permits Table 23.308-1 shows permits required for emergency shelters.

TABLE 23.308-1: PERMIT REQUIREMENTS FOR EMERGENCY SHELTERS

DISTRICTS	PERMIT REQUIRED [1]
Residential Districts	
R-1, R-1A, ES-R, R-2, R-2A, R-3	Not Permitted
R-4, R-5, R-S, and R-SMU	
15 beds or fewer [1]	ZC
More than 15 beds	UP(PH)
Commercial Districts	
C-C, C-U, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-AC	

25 beds or fewer	ZC
More than 25 beds	UP(PH)
C-DMU	
60 beds or fewer	ZC
More than 60 beds	UP(PH)
Manufacturing Districts	
M, MM, MU-LI, MU-R	Not Permitted
Notes: [1] See also permit requirements based on floor area of use in Table 23.308.040-1	

23.308.030 – Standards for Emergency Shelters

A. **All Districts.** The following standards apply to emergency shelters in all districts.

1. No individual or household may be denied emergency shelter because of an inability to pay.
2. No emergency shelter shall be located within 300 feet of another emergency shelter, except when a Use Permit is approved to allow less of a buffer distance.
3. When abutting a Residential District, all areas for shelter activities and uses, including but not limited to waiting and intake, personal storage, facility storage, and recreation, shall be located indoors.
4. The following emergency shelter facilities are required:
 - a. An area for onsite client intake equal to one-quarter of the area provided for client beds. This may be a multi-use area.
 - b. Showers and restroom facilities.
5. The following emergency shelter facilities are optional:
 - a. Secure personal storage.
 - b. Daytime services.
 - c. Meal services.
 - d. Communal kitchen.
 - e. Laundry equipment for clients.
 - f. Child care.
 - g. Vehicle and/or bicycle parking.

6. Lighting shall be provided in all exterior areas, including pathways, parking areas, courtyards, rear yard areas, and spaces between structures. Lighting shall be directed in a manner that does not cast light onto neighboring properties.
7. On-site management shall be provided at all times the facility is in operation and at least one hour before and after facility operation hours.
8. The shelter operator shall prepare and implement a Shelter Safety and Management Plan. The Plan shall be available to the public upon request and shall address the following:
 - a. Client congregation outside of the shelter facility to prevent queuing within the public right-of-way.
 - b. Eligibility criteria, enforcement rules, and procedures for disruptive clients.
 - c. Number and responsibilities of on-site support staff, training standards, other management procedures, and a primary and secondary contact person.
 - d. Bed bug prevention.
 - e. Refuse collection.
 - f. Security procedures.
 - g. Separation of sleeping areas and restrooms by gender and for families.
 - h. Consistency with the Alameda County-Wide Homeless Continuum of Care: Health, Safety and Accessibility Standards for Shelter Facilities in Alameda County.
9. The shelter provider shall conduct a community meeting after giving notice to all owners and occupants on record with the Alameda County Assessor within a 100-foot radius of the proposed shelter location. A community meeting shall not be required when the target population of the proposed shelter requires privacy due to safety concerns as determined by the Zoning Officer.

B. Seasonal Emergency Shelters.

1. **Seasonal Emergency Shelter Defined.** A seasonal emergency shelter is an emergency shelter that may operate only during the wet weather season from November 15 through April 15, unless the City Manager determines in any given year that the wet season has begun earlier or extended later than these dates.
2. **Standards in Residential Districts.** In addition to the standards in Subsection A (Standards for All Emergency Shelters) above, the following standards apply to seasonal emergency shelters in a residential district.
 - a. A seasonal emergency shelter must be incidental to a community and institutional use.

- b. Table 23.308-2 shows permits required based on the percentage of the community and institutional use occupied by the seasonal emergency shelter.

TABLE 23.308-2: FLOOR AREA PERMIT REQUIREMENTS IN RESIDENTIAL DISTRICTS

PERCENT OF COMMUNITY AND INSTITUTIONAL USE FLOOR AREA OCCUPIED BY EMERGENCY SHELTER	PERMIT REQUIRED
25% or less	ZC
More than 25% to less than 50%	UP(PH)
50% or more	Not allowed

C. **Findings.** To approve a Use Permit for an emergency shelter under Section 23.304.030(Required Permits) or 23.308.030(Standards in Residential Districts), the Zoning Adjustments Board (ZAB) must find that:

1. A larger shelter facility will help meet the City’s goals pertaining to emergency housing of the homeless;
2. The circumstances of the subject property make the larger facility appropriate; and
3. Design features will minimize impacts on the surrounding area.

23.310 ALCOHOLIC BEVERAGE SALES AND SERVICE

Sections:

23.310.010– Chapter Purpose

23.310.020– General Requirements Excluding Incidental Beer and Wine Service

23.310.030– Alcoholic Beverage Service When Incidental to Food Service

23.310.010 – Chapter Purpose

This chapter establishes general requirements for alcoholic beverage sales or service and permit requirements and standards for alcoholic beverage service when incidental to a food service establishment.

23.310.020 – General Requirements Excluding Incidental Beer and Wine Service

A. Applicability.

1. This section applies to any application to begin or increase alcoholic beverage sales or service, excluding beer and wine service incidental to a food service establishment in a Commercial District (see 23.310 (Alcoholic Beverage Service When Incidental to a Food Service)).
2. As used in this section, an increase in alcoholic beverage sales or service includes, but is not limited to:
 - a. Adding the sales or service of distilled spirits to any existing sales or service of beer and/or wine;
 - b. Extending the hours of operation of any establishment that sells or serves any alcoholic beverage; and
 - c. Adding to the capacity, floor area, or shelf space devoted to alcoholic beverages of any establishment that sells or serves any alcoholic beverages.
3. An increase in alcoholic beverage sales or service does not include extending the hours of operation of any food service establishments with incidental beer and/or wine service.

B. **Permit Required.** A Use Permit is required to begin or increase alcoholic beverage sales or service in any way.

C. **Application – List of Nearby Establishments.** As part of an application to begin or increase alcoholic beverage sales or service, the applicant must provide a list of all establishments within a 1,000-foot radius which are in the same category of alcoholic beverage sales or service, as defined by the California Department of Alcoholic Beverage Control.

D. **Findings of Public Convenience or Necessity.** If the proposed use is within a 1,000-foot radius of the site of a use that is in the same category of alcoholic beverage sales or service, excluding food service establishments with incidental

service of beer and/or wine, the Zoning Adjustments Board (ZAB) may approve the application only if it makes all of the following findings:

1. The proposed establishment will promote the City’s economic health, contribute to General Plan or area plan policies, or further the district purpose.
2. The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales or service.
3. If the applicant has operated a licensed establishment that has been the subject of violations regarding alcohol in the State of California, or violations of public safety or nuisance statutes or regulations in Berkeley as verified by the Police Department, such violations do not indicate a high likelihood of further violations and/or detrimental impacts from the proposed establishment. In making this finding, the ZAB may consider the number, frequency, and severity of prior violations, the time elapsed since the last violation, and other relevant factors.
4. If the proposed establishment is within 1,000 feet of any public park or public school, the ZAB has taken into consideration the effect of the proposed establishment upon such sensitive public uses.
5. The Police Department has reported that the proposed establishment would not be expected to add to crime in the area.

23.310.030 – Alcoholic Beverage Service When Incidental to Food Service

A. **Permits Required.** Table 23.310-1 shows permits required for alcoholic beverage service when incidental to a food service establishment.

TABLE 23.310-1: PERMITS REQUIRED FOR ALCOHOLIC BEVERAGE SERVICE

District	Permit Required Based on Type of Beverages Served When Incidental to Food Service	
	Beer and Wine	Distilled Spirits
R-SMU	UP(PH)	UP(PH)
All Commercial Districts, except C-AC	ZC	UP(PH)
C_AC	ZC	AUP
MU-LI, MU-R	UP(PH)	UP(PH)

B. **Use Limitations.**

1. **R-SMU District.** In the R-SMU district, alcoholic beverage service is allowed only for full-service restaurants. Alcoholic beverage service is not allowed for carry out food stores and quick-service restaurants.

2. **Commercial Districts.** In Commercial Districts, beer and wine service is allowed by right when for on-site consumption with seated food service.
 3. **C-NS District.** In the C-NS district, distilled spirit service is allowed only for full-service restaurants. Distilled spirit service is not allowed for carry out food stores and quick-service restaurants.
 4. **C-T and C-SO Districts.** In the C-T and C-SO districts, distilled spirit service is allowed only for on-site consumption with seated food service.
 5. **C-AC District.** In the C-AC district, distilled spirit service is allowed along Adeline Street south of Ashby Avenue only for on-site consumption with seated food service.
- C. **Incidental Beer and Wine Service Standards.** The following standards apply to beer and wine service incidental to a food service establishment in a Commercial District.
1. **Licensing.**
 - a. The food service establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
 - b. An operator of the licensed establishment may not have a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety, or nuisance statutes or regulations before issuance or transfer of a business license at this location.
 2. **Service.**
 - a. Beer and wine beverage service shall be incidental to the primary food service use.
 - b. Beer and wine service incidental to seated food service shall only be allowed at a bona fide eating place making actual and substantial sales of meals as determined and required by the California Department of Alcohol Beverage Control.
 - c. The sale of beer and wine for off-site consumption is not permitted.
 - d. Employees may not serve beer or wine to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
 - e. All beer and wine served to patrons must be served in durable restaurant tableware. Beer or wine may not be distributed in its original bottle or can, or in any other potentially disposable container.

- f. There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service, or consumption of alcoholic beverages directly to patrons for consumption.
- g. Hours of operation are subject to review and amendment by the ZAB as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City of Berkeley standards or policies.

3. Operation.

- a. The food service establishment must operate at least five days a week.
- b. The service of beer and wine shall be limited to normal meal hours (per California Department of Alcoholic Beverage Control) during the food service establishment's hours of operation.
- c. During operating hours, 100 percent of the service area shall be designed and used for meal service and must possess the necessary utensils, and condiment dispensers with which to serve meals to the public.
- d. At no time shall the operator rent the restaurant space to a third-party.
- e. The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include:
 - i. Signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets; and
 - ii. Surveillance to public areas near the establishment, keeping public areas free of trash and litter, providing lighting, and otherwise preventing conduct that might disturb the peace and quiet of residences in the vicinity.
- f. The operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.
- g. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.

4. Advertising.

- a. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior constitute a violation of this requirement.

- b. Alcohol-dispensing facilities and signs advertising alcoholic beverages may not be visible from the public right-of-way.

5. Training.

- a. The operator shall finish a Crime Prevention through Environmental Design (CPTED) survey before beginning alcohol service.
- b. All employees selling and/or serving beer and wine, or directly supervising such sales and/or service, shall comply with Municipal Code Section 9.84.030 (Responsible Beverage Service Training) and finish the Licensee Education on Alcohol and Drugs (LEAD) program, or another equivalent program offered or certified by the California Department of Alcoholic Beverage Control within 90 days of employment at the establishment. Employees who have finished the course within the last 12 months are exempt from this requirement.

23.312 LIVE/WORK

Sections:

- 23.312.010– Chapter Purpose
- 23.312.020– Applicability
- 23.312.030– Required Permits
- 23.312.040– Standards for Live/Work
- 23.312.050– Findings

23.312.010 – Chapter Purpose

This chapter establishes live/work standards that:

- A. Provide for the appropriate development of units which incorporate both living and working space;
- B. Provide flexibility as needed for the development of live/work units, particularly within existing buildings;
- C. Provide locations where appropriate new businesses can start up;
- D. Provide opportunities for people to live in mixed-use industrial and commercial areas where compatible with existing uses;
- E. Protect existing and potential industrial uses from conflicts with nearby residential uses;
- F. Protect existing and potential residential uses from conflicts with nearby industrial uses;
- G. Permit live/work units that function predominantly as workspaces and secondarily as residences;
- H. Ensure that the division of space between living and working space within these units reflects the priority of workspace; and
- I. Ensure that the exterior design of live/work buildings is compatible with the exterior design of commercial, industrial, and residential buildings in their area, while remaining consistent with the predominantly workspace character of live/work buildings.

23.312.020 – Applicability

This chapter applies to all live/work units in any district in Berkeley.

23.312.030 – Required Permits

- A. **General Requirement.** A permit is required for a live/work unit and/or for a business that makes up the work portion of the unit.
- B. **Residential Districts.** Live/work units are not permitted in all residential districts.
- C. **Commercial Districts.**
 - 1. **All Commercial Districts Except C-SA and C-W.** In all commercial districts except the C-SA and C-W districts, live/work units are allowed with a Zoning Certificate. Special circumstances that require a Use Permit are identified in Section 23.312.040 (Standards for Live/Work).
 - 2. **C-SA District.** A Use Permit is required for all live/work units in the C-SA district.
 - 3. **C-W District.**
 - a. An AUP is required for live/work units in the C-W district when:
 - i.* Nine or fewer live/work units are created; and
 - ii.* A dwelling unit is not changed into a live/work unit.
 - b. A Use Permit is required when the AUP requirements in Paragraph (a) above are not met.
- D. **Manufacturing Districts.**
 - 1. **M and MM Districts.** Live/work units are not permitted in the M and MM districts.
 - 2. **MU-LI District.**
 - a. An AUP is required for live/work units in the MU-LI district when:
 - i.* No new floor area is created; and
 - ii.* A dwelling unit is not changed into a live/work unit.
 - b. A Use Permit is required when the AUP requirements in Paragraph (a) above are not met.
 - 3. **MU-R District.**
 - a. An AUP is required for live/work units in the MU-R district when:
 - i.* The applicable requirements 23.206.090.D (Development Standards) and 23.322 (Parking and Loading) are satisfied;
 - ii.* Less than 5,000 square feet of gross floor area is added or changed;
 - iii.* Four or fewer live/work units are created; and
 - iv.* A dwelling unit is not changed into a live/work unit.

- b. A Use Permit is required when the AUP requirements in Paragraph (a) above are not met.

23.312.040 – Standards for Live/Work

A. **All Districts.** The following standards apply to live/work units in all districts.

1. General Standards.

- a. A cooking space and sanitary facility in conformance with applicable building standards adopted by the City is required.
- b. Adequate and clearly defined working space constituting no less than 50 percent of the gross floor area of the live/work unit is required.
 - i.* The working space must be reserved for and regularly used by one or more live/work unit residents and be consistent with City administrative guidelines for live/work design.
 - ii.* If the workspace is less than 60 percent (or less than 50 percent in units created by change of use from a dwelling unit), the unit is considered a dwelling unit and is subject to all requirements applicable to dwelling units.
- c. At least 40 square feet of usable open space shall be provided for each live/work unit.
- d. For live/work units established through change of use of an existing building, the Zoning Adjustments Board (ZAB) may approve a Use Permit to substitute interior space accessible to all residents for the required open space in the project, if it finds that it is not practical or desirable to provide exterior open space.

2. **Business License.** At least one resident in each live/work unit shall maintain at all times a valid City Business License and Zoning Certificate or Use Permit for a business on the premises.

3. Employment, Client, and Customer Visits.

- a. Except in the C-AC district, persons who do not live in the live/work unit may be employed in a live/work unit if an additional Use Permit is obtained and the required on-site parking space is provided.
- b. Client and customer visits to live/work units are permitted if an additional Use Permit is obtained and the required on-site parking is provided.
- c. In the C-AC district, clients, customers and employees are permitted at the site without a Use Permit.

4. **Unit Rental and Sale.** No portion of a live/work unit may be separately rented or sold as a commercial space for a person or persons not living on the premises, or as a residential space for a person or persons not working on the premises.
5. **Change of Use.**
 - a. To change a dwelling unit to a live/work unit, the findings required by Section 23.326.040 (Elimination of Dwelling Units and Accessory Dwelling Units through Conversion and Change of Use) must be made.
 - b. Establishing or changing the work use of a live/work unit to medical offices or group instruction requires ZAB approval of a Use Permit to subject to Section 23.312.050 (Findings) below.
 - c. In districts other than the MU-LI district, live/work units may be changed to exclusively residential use or the residential floor area increased above 40 percent, only if all requirements for establishing a residential use are met.
 - d. In districts other than the MU-R district, live/work units may be changed to an exclusively commercial use, provided that in the C-W district only ground floor space may be so changed. All such changes are subject to Section 23.326.040 (Elimination of Dwelling Units and Accessory Dwelling Units through Conversion and Change of Use).
6. **Low Income Inclusionary Units.** The following low income inclusionary standards apply to any project that creates five or more live/work units.
 - a. One inclusionary live/work unit shall be provided for each five live/work units in the project, notwithstanding a fraction of a unit.
 - b. Inclusionary live/work units shall be sold or rented at a price or rent affordable to a household with an income of 80 percent of the median income for the Oakland Primary Metropolitan Statistical Area.
 - c. Inclusionary units shall be affirmatively marketed by the developer of a project to income-eligible persons performing a work activity permitted in the district where the project is located whose type of work causes them to have a requirement for a space larger in size than typically found in residential units.
 - d. Inclusionary live/work units shall maintain affordable rents or resale prices in accordance with the standards in Chapter 23.328 (Inclusionary Housing).
 - e. At the applicant's sole discretion, inclusionary live/work units may:
 - i.* Have a lower grade of finishes than other units in the project.
 - ii.* Be located anywhere within the project.
 - iii.* Be smaller than other live/work units in the project as long as they meet the minimum size requirement for live/work units in the district.

- B. **C-W District.** In addition to the standards in Subsection A (All Districts) above, the following live/work standards apply in the C-W district.
 - 1. Only ground floor space may be changed to live/work units.
 - 2. The total floor area of the live/work unit must be at least 800 square feet.
- C. **MU-LI District.** In addition to the standards in Subsection A (All Districts) above, the following live/work standards apply in the MU-LI district.
 - 1. At least one resident in the live/work unit must be engaged in an art craft studio activity or in an activity which requires space not typically available in a conventional residential setting.
 - 2. The specific activity a live/work resident will engage in must be stated.
 - 3. The total floor area of the live/work unit must be at least 1,000 square feet.
- D. **MU-R District.** In addition to the standards in Subsection A (All Districts) above, the following live/work standards apply in the MU-R district.
 - 1. The total floor area of the live/work unit must be at least 1,000 square feet.
 - 2. The live/work unit must meet the location limitations in 23.206.090.B.8 (MU-R Mixed Use-Residential District - Residential Uses).

23.312.050 – Findings

- A. **All Districts.**
 - 1. To approve any Use Permit or AUP for a live/work unit in any district, the review authority must find that the proposed project is consistent with the purpose of this chapter.
 - 2. To approve a Use Permit to establish or change the work use of a live/work unit to medical office or group instruction, the ZAB must find that adequate parking for the use has been provided.
- B. **C-W District.** In addition to the findings in Subsection A (All Districts) above, the ZAB may approve a Use Permit to change a residential unit to a live/work unit and retain less than 75 percent of the pre-existing residential area as living area within the live/work unit only if it makes all of the following findings:
 - 1. There are special circumstances particular to the application which make it appropriate to retain less than 75 percent of the pre-existing residential area as living space within the live/work unit; and
 - 2. The exterior appearance of the live/work unit has been designed to be compatible with adjacent and nearby residential uses.

- C. **MU-LI District.** In addition to the findings in Subsection A (All Districts) above, the review authority may approve a Use Permit or AUP for a live/work unit in the MU-LI district only if it makes all of the following findings:
1. The applicant has made adequate provisions to ensure that within the live/work units, occupants of the live/work units will only engage in the occupations listed in the definition of art/craft studios.
 2. Development of such live/work units is not incompatible with adjacent and nearby industrial uses.
 3. The applicant has recorded with the County Recorder a statement acknowledging that the live/work unit is being established in a district where manufacturers and other industries operate lawfully and that the applicant will not seek to impede their lawful operation. In addition, the applicant will require any tenants to sign such a statement, and require all persons purchasing live/work units to sign and record such a statement.
- D. **MU-R District.** In addition to the findings listed in Subsection A (All Districts) above, the review authority may approve a Use Permit or AUP to establish or modify a live/work unit in the MU-R district only if it makes all of the following findings:
1. Establishment of a live/work unit will not interfere with the lawful operation of manufacturers and other industries existing in or adjacent to the district and will not impede the lawful future establishment of manufacturers and other industries permitted under the West Berkeley Plan.
 2. The applicant has recorded with the County Recorder a statement acknowledging that the live/work unit is being established in a district where manufacturers and other industries operate lawfully and that he/she will not seek to impede their lawful operation. In addition, the applicant will require any tenants to sign such a statement, and require all persons purchasing live/work units to sign and record such a statement.
 3. If the applicant proposes to change one or more dwelling unit to a live/work unit, the elimination of dwelling unit and the change of use would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the city.
 4. If the applicant proposes to change a residential unit to a live/work unit and retain less than 75 percent of the pre-existing residential area as living area within the live/work unit:
 - a. There are special circumstances particular to the application which make it appropriate to retain less than 75 percent of the pre-existing residential area as living space within the live/work unit; and

- b. The exterior appearance of the live/work unit has been designed to be compatible with adjacent and nearby residential uses.

23.314 SHORT-TERM RENTALS

Sections:

- 23.314.010– Chapter Purpose
- 23.314.020– Definitions
- 23.314.030– Applicability
- 23.314.040– General Regulations
- 23.314.050– Operating Standards and Requirements
- 23.314.060– Violations and Remedies

23.314.010 – Chapter Purpose

This chapter establishes short-term rental standards that:

- A. Prevent long-term rental units from being replaced with short-term rentals and protect affordable housing units from conversion;
- B. Preserve and protect neighborhood character and livability from nuisances that are often associated with short-term rentals;
- C. Generate City revenue to share infrastructure cost and other public expenditures by operation of short-term rentals under established standards; and
- D. Provide alternative forms of lodging.

23.314.020 – Definitions

- A. **Terms Defined.** Terms used in this chapter are defined as follows:
 1. **Adjacent Properties.** The dwelling units abutting and confronting, as well as above and below, a dwelling unit within which a short-term rental is located.
 2. **Host.** Any owner or tenant host. An owner host is a person who is the owner of record of residential real property, as documented by a deed or other such evidence of ownership, who offers their host residence, or a portion thereof, as a short-term rental. A tenant host is a lessee of residential real property, as documented by a lease or other such evidence, who offers their host residence, or portion thereof, as a short-term rental.
 3. **Host Present or Host Presence.** The host is living in the host residence during the short-term rental period. In the case of a parcel comprised of a single primary unit and one or more authorized accessory dwelling units and/or accessory buildings, the host is considered present if he or she is present in any unit on such parcel.
 4. **Hosting Platform.** A business or person that provides a means through which a host may offer a dwelling unit, or portion thereof, for short-term rentals. A hosting

platform is usually, though not necessarily, provided through an internet-based platform. It generally allows a property owner or tenant to advertise the dwelling unit through a website provided by the hosting platform and provides a means for potential short-term rental transients to arrange short-term rentals, whether the short-term rental transient pays rent directly to the host or to the hosting platform.

5. **Host Residence.** A host's principal place of residence, as defined by whether the host carries on basic living activities at the dwelling place and, whether such dwelling place is the host's usual place of return. Motor vehicle registration, driver's license, voter registration or other evidence as may be required by the City shall be indicia of principal residency.
 6. **Local Contact.** A person designated by the host who shall be available during the term of any short-term rental for the purpose of
 - a. Responding within sixty minutes to complaints regarding the condition or operation of the dwelling unit or portion thereof used for Short-Term Rental, or the conduct of Short-Term Rental Transients; and
 - b. Taking appropriate remedial action on behalf of the Host, up to and including termination of the short-term rental, if allowed by and pursuant to the short-term rental agreement, to resolve such complaints.
 7. **No Fault Eviction.** An eviction pursuant to the Ellis Act or Sections 13.76.130.A.9 or 10 of the Municipal Code.
 8. **Short-Term Rental.** The use of any dwelling unit, authorized accessory dwelling unit or accessory building, or portions thereof for dwelling, sleeping or lodging purposes by short-term rental transients. Excludes tourist hotels and residential hotels.
 9. **Short-Term Rental Transient or STR Transient.** Any person who rents a dwelling unit, authorized accessory dwelling unit or accessory building, or portion thereof, for less than 14 consecutive days.
- B. **Terms Not Defined.** Terms not defined in this section shall be interpreted to give this chapter its most reasonable meaning and application, consistent with applicable state and federal law.

23.314.030 – Applicability

This chapter applies to the rental of a dwelling unit, accessory dwelling unit or accessory building for a period of less than 14 consecutive days.

23.314.040 – General Regulations

- A. **Host Residence.** Short-term rentals are permitted only in the host residence.

- B. **BMR Units.** Short-term rentals are not permitted in below market rate (BMR) units. BMR units for short-term rental purposes refer to dwelling units whose rents are listed as a result of deed restrictions or agreements with public agencies, and whose tenants must be income qualified.
- C. **No-Fault Evictions.** A property containing a unit with a no-fault eviction may not operate a short-term rental for five years from the date of the eviction unless it is a single-family home that has been vacated for purposes of owner occupancy in compliance with the Rent Stabilization Ordinance in Municipal Code Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Ordinance).
- D. **Accessory Buildings.**
 - 1. Short-term rentals are allowed in:
 - a. Accessory buildings; and
 - b. Accessory dwelling units permitted before April 3, 2017 unless the accessory dwelling unit is used for long-term rentals, as defined in Municipal Code Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Ordinance) or has been used for long-term rentals at any time before April 3, 2017.
 - 2. A short-term rental is not allowed in an accessory dwelling unit permitted after April 3, 2017.

23.314.050 – Operating Standards and Requirements

A short-term rental must conform to all of the operating standards and requirements in this section.

A. Proof of Host Residency.

- 1. **Owner-Host.** An owner-host of a short-term rental must provide the Planning and Development Department documentation of owner-host and host residence status and, if applicable, host presence.
- 2. **Tenant-Host.** A tenant-host must provide the Planning and Development Department documentation of lessee status, host residence and host presence, if applicable. In addition, a tenant-host must present written authorization allowing for a short-term rental in the host residence from the building owner or authorized agent of the owner.

B. Allowed Duration and Required Residency Timeframes.

- 1. When the host is present, a short-term rental is allowed for an unlimited number of days during the calendar year.
- 2. When the host is not present, a unit may be used as a short-term rental for no more than 90 days per calendar year.

C. **Number of Occupants.** The maximum number of short-term rental transients allowed for a short-term rental unit is as provided in Municipal Code Chapter 19.40 (Uniform Housing Code).

D. **Notification.**

1. After the City approves a Zoning Certificate and Business License for a short-term rental, a host shall notify residents of all adjacent properties that a short-term rental has been established. Notification shall include host and local contact information.
2. A host shall notify residents of all adjacent properties of updated host, local contact, or other information within one week of changes to such information.

E. **Enforcement Fees.**

1. For the initial enforcement period, while enforcement costs are being determined, the host shall pay an additional enforcement fee in an amount equal to 2 percent of the rents charged by that host, not to exceed the cost of the regulatory program established by this chapter over time.
2. Enforcement fees may be paid by the hosting platform on behalf of the host. After the initial enforcement period, the City Council may revise the enforcement fee by resolution.

F. **Liability Insurance.** Liability insurance is required of the host, or hosting platform on behalf of the host, in the amount of at least \$1 million.

G. **Documents Provided to Short-Term Rental Transients.** The host or hosting platform must provide to short-term rental transients upon booking and arrival electronic or paper copies of:

1. The Community Noise Ordinance in Municipal Code Chapter 13.40 (Community Noise); and
2. The Smoke-Free Multi-Unit Housing Ordinance in Municipal Code Chapter 12.70 (Smoking Pollution Control).

H. **Transient Occupancy Tax.** Either the host or hosting platform must pay the transient occupancy tax.

I. **Housing Code Compliance.** Any building or portion of a building used for short-term rentals shall comply with Municipal Code Section 19.40 (Uniform Housing Code).

J. **Payment of Taxes.** The host shall pay all City taxes and fees owed in a timely manner.

K. **Host Responsibilities.**

1. The host shall list on any rental advertisement the Zoning Certificate number.
2. Upon request, the host must provide both the Business License number, if required by Municipal Code Chapter 9.04 (Business Licenses), and Zoning Certificate for the short-term rental to the City and/or a vendor hired by the City to administer this chapter.

23.314.060 – Violations and Remedies

- A. **Compliance with Second-Response Ordinance.** The host shall comply with the Second Response Ordinance in Municipal Code Section 13.48 (Civil Penalties for Multiple Responses to Loud or Unruly Parties, Gatherings or Other Similar Events). The host is prohibited from operating short-term rentals for one year after issuance of a third violation affidavit.
- B. **Violations and Remedies of this Chapter.**
 1. Violation of this chapter is punishable as set forth in Municipal Code Sections 1.20 (General Penalty) and 1.28 (Administrative Citations).
 2. Violation of this chapter is a public nuisance subject to abatement under Municipal Code Sections 1.24 (Abatement of Nuisances), 1.26 (Violations Declared Public Nuisance), and 23.414 (Nuisance Abatement).
 3. In any enforcement action, the prevailing party is entitled to recover reasonable attorneys' fees and costs; provided that, pursuant to Government Code Section 38773.5, attorneys' fees are only available in an action or proceeding in which the City has elected, at the beginning of such action or proceeding, to seek recovery of its own attorneys' fees. An award of attorneys' fees to a prevailing party may not exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.
 4. Any Berkeley resident may bring a private action for injunctive relief to prevent or remedy a public nuisance. No action may be brought under this subsection unless and until the prospective plaintiff has given the City and the prospective defendant(s) at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings within that period, or after initiation, has failed to diligently prosecute.
 5. The following constitute a public nuisance:
 - a. Any occurrence at a short-term rental unit that creates a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, such as excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service to or consumption of alcohol by minors, fights, disturbances of the peace, litter or other similar conditions.

- b. Any short-term rental transient of a short-term rental unit where an event is taking place refusing access to, or interfering with access by, Fire Department or other City personnel responding to an emergency call or investigating a situation.
6. Notwithstanding any provision of Municipal Code Chapter 13.48 (Civil Penalties for Multiple Responses to Loud or Unruly Parties, Gatherings or Other Similar Events) to the contrary, a public nuisance as defined in this section is subject to remedies in this subsection.

23.316 PERCENTAGE FOR PUBLIC ART ON PRIVATE PROJECTS

Sections:

- 23.316.010– Chapter Purpose
- 23.316.020– Applicability
- 23.316.030– Definitions
- 23.316.040– General Requirements
- 23.316.050– Required Permits
- 23.316.060– In-Lieu Fees
- 23.316.070– Administrative Regulations (Guidelines)

23.316.010 – Chapter Purpose

The purpose of this chapter is to establish a public art requirement for private developments to provide the following benefits to the community:

- A. Maintain Berkeley's art and culture for generations.
- B. Recognize the vital importance of the arts to the city as a whole.
- C. Enhance the economic sustainability of artists and arts organizations as a key to the vitality of the city.
- D. Make a lasting contribution to the intellectual, emotional and creative life of the community at large, and to create a more desirable community to live, work, and recreate.

23.316.020 – Applicability

- A. **Districts.** This chapter applies in all districts in Berkeley.
- B. **Uses.** This chapter applies to:
 1. New multifamily residential projects of five or more dwelling units;
 2. New commercial structures; and
 3. New industrial structures
- C. **Project Size.** This chapter applies to all construction of building additions exceeding 10,000 square feet.
- D. **Exceptions.** This chapter does not apply to the following project types:
 1. Multifamily housing that has a regulatory agreement with a government agency restricting the rent and limiting tenancy to qualifying households not exceeding specified incomes for at least 60 percent of the units.
 2. Buildings with religious assembly uses as defined in Chapter 23.502 (Glossary) and buildings with arts and cultural uses. For purposes of this section, "arts and

cultural use" means buildings that have as their primary purpose the presentation of one or more cultural resources, and that are operated by public entities or nonprofit organizations dedicated to cultural activities available to a broad public.

3. Transitional housing.

23.316.030 – Definitions

A. **Terms Defined.** Terms used in this chapter are defined as follows:

1. **Artist.** An individual independent professional practitioner of the visual, performing, or literary arts, as judged by educational qualifications, a history of creating a body of public or publicly-displayed artwork, critical recognition in publications or online, a record of exhibitions and/or artwork sales. Members of the design team are not artists for on-site publicly accessible art projects. Individuals who have a conflict of interest, including a familial or financial relationship to the developer or design team, are not artists for on-site publicly accessible art projects.
2. **Construction Cost.** The amount determined by the Chief Building Official for purposes of setting the building permit fee in accordance with the most recent building valuation date specified in the building permit fees section of the resolution establishing fees and charges as adopted by the City Council.
3. **Developer.** A person or entity that is financially and legally responsible for the planning, development and construction, or maintenance and operation of any project subject to this chapter.
4. **On-Site Publicly Accessible Art.** An original work by an artist, including, but not limited to, functional art integrated into the building, landscape, or element of infrastructure, including sculpture, monument, mural, painting, drawing, photography, fountain, banner, mosaic, textile, art glass, digital media art, video, earthworks and multi-media installation, that is in a location that is accessible to and available for use by the general public during normal hours of business operation consistent with the operation and use of the premises.
5. **Guidelines.** The guidelines adopted by the City Council pursuant to Section 23.316.070 (Administrative Regulations (Guidelines)).

B. **Terms Not Defined.** Terms not defined in this section shall be interpreted to give this chapter its most reasonable meaning and application, consistent with applicable state and federal law.

23.316.040 – General Requirements

Developers subject to this chapter shall do one of the following:

- A. Include on-site publicly accessible art valued at 1.75 percent of the construction cost. If the value of on-site publicly accessible art as installed is less than 1.75 percent of the construction cost, an amount equal to 80 percent of the difference in value shall be paid to the City as an in-lieu fee.
- B. Pay an in-lieu fee top the City of 0.80 percent of the construction cost.

23.316.050 – Required Permits

- A. **Subject to Laws and Regulations.** On-site publicly accessible art is subject to, and shall comply with, all applicable City ordinances and laws and regulations of other governmental agencies.
- B. **Permits Must Be Obtained.**
 - 1. Before construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.
 - 2. The process for identifying and securing required permits shall be set forth in the Guidelines.

23.316.060 – In-Lieu Fees

- A. **Alternative to On-Site Art.** As an alternative to providing on-site publicly accessible art, the developer may elect to pay an in-lieu fee to the City as set forth in this section.
- B. **Use of Fees.** Any in-lieu fees paid to the City pursuant to this chapter shall be used for art and cultural services as set forth in the Guidelines.
- C. **Amount of Fee.** The in-lieu fee shall be 0.80 percent of the construction cost.
- D. **Time of Payment.** The in-lieu fee shall be paid at the same time as other building permit fees.

23.316.070 – Administrative Regulations (Guidelines)

- A. **Adoption of Guidelines.** The Civic Arts Commission shall recommend and the Council, by resolution, shall adopt guidelines for the administration and implementation of this chapter.
- B. **Determining Compliance with Guidelines.** The Civic Arts Commission shall be responsible for determining if On-Site Publicly Accessible Art complies with the Guidelines.

23.318 URBAN AGRICULTURE

Sections:

- 23.318.010– Chapter Purpose
- 23.318.020– Applicability
- 23.318.030– Urban Agriculture Uses and Levels of Discretion
- 23.318.040– Thresholds
- 23.318.050– Operation Standards
- 23.318.060– Complaints

23.318.010 – Chapter Purpose

This chapter establishes urban agriculture standards to provide the following community benefits:

- A. Support the local economy and increase access to fresh local produce.
- B. Strengthen the health and social fabric of communities by encouraging and supporting community gardens.
- C. Accomplish the Berkeley Climate Action Plan goal of supporting efforts to build more complete and sustainable local food production and distribution systems.

23.318.020 – Applicability

These regulations supersede definitions of incidental or ancillary uses.

23.318.030 – Urban Agriculture Uses and Levels of Discretion

- A. **Zoning Certificate.** When all of the thresholds in Section 23.318.040 (Thresholds) are met, the use is considered Low-Impact Urban Agriculture (LIUA) and is allowed by right with a Zoning Certificate.
- B. **Administrative Use Permit.** When one or more of the thresholds in Section 23.318.040 (Thresholds) are not met, the use is considered High-Impact Urban Agriculture (HIUA) requires an AUP.

23.318.040 – Thresholds

The levels of discretion for urban agriculture are based on the following thresholds:

- A. Maximum parcel size of 7,500 square feet.
- B. Maximum lot coverage of 20 percent for accessory structures and buildings.
- C. Maximum group classes and workshops of 20 participants per class conducted no more than three times per week.

- D. Hours of operation from 8:00 a.m. to 8:00 p.m., including but not limited to activities related to gardening and planting of horticultural crops, group classes, and sales.
- E. Use of organic pesticides.

23.318.050 – Operation Standards

- A. **Performance Standards.** The growing, production, or sale of urban agricultural products may not involve hazardous materials or processes or create offensive or objectionable noise, vibration, odors, heat, dirt, or electrical disturbance perceptible by a person beyond the lot line of the subject lot.
- B. **Sales and Donations.**
 - 1. Sales and/or donations of urban agricultural products grown and produced on-site are permitted.
 - 2. If selling or donating urban agricultural products to the public, the urban agriculture use shall comply with all applicable food safety laws, including the California Health and Safety Code.
- C. **Garbage and Compost.**
 - 1. Garbage and compost receptacles must be screened from the street and adjacent properties by utilizing landscaping, fencing, or storage structures and all garbage shall be removed from the site weekly.
 - 2. Compost piles and containers must be set back at least 10 feet from residential buildings when an urban agriculture use abuts a residential use.
- D. **Farm Equipment.** Use of mechanized farm equipment is not permitted in Residential Districts and when the urban agriculture use abuts a residential use, with the following exceptions:
 - 1. Heavy equipment may be used initially to prepare the land for agriculture use.
 - 2. Landscaping equipment designed for household use is permitted.
 - 3. Equipment when not in use must be enclosed or otherwise screened from sight.

23.318.060 – Complaints

Uses, activities, or events associated with urban agriculture are subject to Municipal Code Chapters 23.414(Nuisance Abatement) and 12.92 (Anti-Blight) if found to be non-compliant with this chapter.

23.320 CANNABIS USES

Sections:

- 23.320.010– Chapter Purpose
- 23.320.020– Cannabis Retail
- 23.320.030– Commercial Cannabis Cultivation
- 23.320.040– Cannabis Manufacturers, Testing Labs, and Distributors
- 23.320.050– Microbusinesses

23.320.010 – Chapter Purpose

This chapter establishes standards for cannabis uses that supplement the regulations in Municipal Code Chapter 12.21 (Cannabis Business: General Regulations) and Chapter 12.22 (Cannabis Business Operating Standards).

23.320.020 – Cannabis Retail

- A. **Definitions.** The terms cannabis retailer, storefront retailer, delivery-only retailer, A-Retailer, and M-Retailer are defined in Municipal Code Section 12.21.020 (Definitions).
- B. **Non-Conforming M-Retailers.**
 - 1. A medical cannabis dispensary (M-Retailer) existing and authorized as of January 1, 2010 that does not comply with this section may continue at its current medical cannabis dispensing location as a legal nonconforming use.
 - 2. Notwithstanding Chapter 23.324 (Nonconforming Uses and Structures) or the regulations in this section, the Zoning Officer may approve an AUP to allow the expansion of a lawful nonconforming medical cannabis dispensary onto an adjacent parcel.
- C. **Location Changes.**
 - 1. A cannabis retailer in good standing with state and City regulations, including obtaining all necessary licenses and full payment of all fees and with no outstanding violations, may seek approval for a change in location.
 - 2. An application for a change of location shall be evaluated based on the requirements to operate a cannabis business effective at the time of the proposed change.
- D. **Storefront Retailers.**
 - 1. A storefront retailer is permitted in Commercial Districts with a Zoning Certificate, and must maintain compliance with Municipal Code Chapters 12.21 (Cannabis Business: General Regulations) and 12.22 (Cannabis Business Operating Standards) and security regulations promulgated by the Chief of Police.

2. A storefront retailer shall be approved through the selection process described in Municipal Code Section 12.22.020 (Selection Process).
3. Up to seven storefront retail permits may be issued, one of which is reserved for an equity candidate as defined in Municipal Code Section 12.21.020 (Selection Process). This limit to the number of storefront retailers shall not be reconsidered for a period of three years from March 15, 2020.
4. Expansion of an approved storefront retailer must comply with the development standards for the zoning district in which it is located.
5. Storefront retailers may operate as a retail storefront microbusiness as defined in Municipal Code Chapter 12.21 (Cannabis Business: General Regulations) subject to obtaining all required state and local licenses.
6. **Buffers.**
 - a. A storefront retailer may not be located:
 - i. Within 600 feet of another storefront retailer, a public or private elementary school, or a City-operated community center or skate park; or
 - ii. Within 1,000 feet of a public or private middle school or high school.
 - b. Notwithstanding Paragraph (a) above, a seventh storefront retailer, to be operated by an equity business, may not be located within 600 feet of another storefront retailer or school.

E. Delivery-Only Retailers.

1. Seven delivery-only retailers are permitted citywide, four of which shall be operated by an equity business, and three of which shall be a non-equity business.
2. A delivery-only retailer shall be approved through the selection process described in Municipal Code Section 12.22.020 (Selection Process).
3. Delivery-only retailers are permitted with a Zoning Certificate in all Commercial Districts other than the C-N district.
4. Delivery-only retailers are permitted in the Manufacturing (M) district, shall be evaluated and regulated for zoning purposes in the same way as a warehouse-based non-store retailer, and shall be subject to the numeric and buffer requirements in this section for delivery-only retailers.
5. A delivery-only retailer may not be located within 300 feet of any school or City-operated community center or skate park.
6. A delivery-only retailer may not be located in a street-fronting tenant space in a Commercial District.

F. Lounges.

1. A Lounge, as defined in Municipal Code Section 12.21.020 (Definitions), may be permitted at an approved retailer with a Use Permit.
2. A Lounge must comply with the operational standards established by the City of Berkeley Department of Health, Housing and Community Services.

23.320.030 – Commercial Cannabis Cultivation

A. Definition. The term “commercial cannabis cultivation” as used in this chapter is defined in Municipal Code Chapter 12.21 (Cannabis Businesses: General Regulations).

B. General Requirements.

1. Commercial cannabis cultivation shall comply with Municipal Code Chapter 12.22 (Cannabis Business Operating Standards), security measured required by the Chief of Police, and the requirements of this chapter.
2. Commercial cannabis cultivation may include testing, processing, manufacturing, and food preparation only to the extent expressly permitted by MAUCRSA.

C. Where Allowed. Commercial cannabis cultivation is permitted with a Zoning Certificate in the Manufacturing (M) district, subject to the following limitations:

1. Commercial cannabis cultivation shall only occur at licensed cannabis businesses.
2. Cannabis may not be dispensed and client, patient or member services and retail sales are not permitted at cannabis cultivation facilities.

D. Maximum Canopy Area.

1. The total citywide canopy area of cannabis cultivation facilities may not exceed 180,000 square feet.
2. The total citywide canopy area of all minor cannabis cultivation facilities may not exceed 48,000 square feet plus any area not used by a major cannabis cultivation facility.

E. Different Licenses. Separate spaces used by different licensees may be aggregated at the same location.

F. Outdoor Cultivation Prohibited. Commercial cannabis cultivation is not permitted outside of a building.

G. Cannabis Nurseries. A cannabis nursery as defined in Municipal Code Section 21.21.020 (Definitions) is subject to the same regulations as a commercial cannabis cultivation cannabis cultivation facility.

H. **Buffer.** A commercial cannabis cultivation facility may not be located within 300 feet of a school or City-operated community center or skate park.

I. **Major Cannabis Cultivation Facilities.**

1. No more than six major cannabis cultivation facilities are permitted.
2. A major cannabis cultivation facility may not be approved until the City Council adopts licensing process and standards for such uses.
3. Adopted standards shall require indoor cultivation uses to offset the net increased energy used as compared to a regular industrial facility.
4. Adopted standards also may include whether:
 - a. Cannabis cultivation uses will provide a percentage of all usable product cultivated at no cost to very low-income patients;
 - b. Cannabis cultivation uses will use organic methods in cultivation and processing to the maximum extent reasonable; and
 - c. The form of organization, ownership, and practices of cannabis cultivation uses ensure equity and accountability, low prices, and an adequate supply of high-quality cannabis to customers.

23.320.040 – Cannabis Manufacturers, Testing Labs, and Distributors

A. **Equivalent Uses.** Cannabis manufacturers, testing labs, and distributors shall be evaluated and regulated in the same way as the equivalent non-cannabis uses shown in Table 23.320-1.

TABLE 23.320-1: EQUIVALENT NON-CANNABIS USES

CANNABIS USE	EQUIVALENT NON-CANNABIS USE
Manufacturing, processing, food preparation	Light Manufacturing
Testing labs	Testing labs
Distribution	Wholesale Trade

B. **Buffer.** Cannabis manufacturers, testing labs and distributors may not be located within 300 feet of a school.

23.320.050 – Microbusinesses

- A. **Definition.** The term “microbusiness” as used in this chapter is defined in Municipal Code Chapter 12.21 (Cannabis Business: General Regulations).
- B. **General.** A microbusiness is subject to the development standards in this chapter for each use on the premises, with the following exceptions:
1. In cases where the development standards and permit thresholds for two or more uses are different, the more restrictive standards apply.
 2. Retail nursery microbusinesses are subject to 23.320.050.C (Retail Nursery Microbusinesses).
- C. **Retail Nursery Microbusinesses.**
1. A used in this section, “existing nursery” means a legally established plant nursery in Berkeley established as of March 15, 2020.
 2. Up to two existing nurseries may convert to a retail nursery microbusiness. Retail nursery microbusinesses are not subject to the numeric or canopy limitations of other retailers or cannabis cultivators.
 3. In a Commercial or Manufacturing District, an existing nursery may convert to a retail nursery microbusiness by right with a Zoning Certificate if each use conducted on the premises complies with the applicable development standards in the Zoning Ordinance.
 4. In a Residential District, an existing nursery may convert to a retail nursery microbusiness with a Use Permit for a substantial expansion or change in character to a non-conforming use as provided in Chapter 23.324 (Nonconforming Uses, Structures, and Buildings).
 5. The City shall issue the Zoning Certificates and/or Use Permits to existing nurseries on a first-come, first-served basis.
 6. The City shall determine the right to retain the allocated Zoning Certificates and/or Use Permits as follows:
 - a. For a Zoning Certificate, the date of issuance of a concurrent business license and establishing and continuously operating the business.
 - b. For a Use Permit is required, the date the Use Permit application is deemed complete so long as the Use Permit is implemented with a business license within 30 days of approval and establishing and continuously operating the business.
 7. The 600-foot buffer required between cannabis retailers in 23.320.020 (Cannabis Retail) does not apply between a storefront cannabis retailers and a retail nursery microbusiness.

23.322 PARKING AND LOADING

Sections:

- 23.322.010– Chapter Purpose
- 23.322.020– Applicability
- 23.322.030– Required Parking Spaces
- 23.322.040– General Requirements
- 23.322.050– Parking Reductions
- 23.322.060– C-DMU Parking and Transportation Demand Management
- 23.322.070– Off-Street Parking Maximums for Residential Development
- 23.322.080– Parking Layout and Design
- 23.322.090– Bicycle Parking
- 23.322.100– On-site Loading Spaces
- 23.322.110– Parking Lots in Residential Districts
- 23.322.120– Transportation Services Fee

23.322.010 – Chapter Purpose

This chapter establishes parking and loading standards to:

- A. To efficiently allocate parking spaces in the City;
- B. Regulate the provision of off-street parking spaces within the City; and
- C. Reduce the amount of on-street parking of vehicles, thus increasing the safety and capacity of Berkeley's street system.

23.322.020 – Applicability

- A. **New Uses and Buildings.** In all districts, off-street parking and loading as required by this chapter shall be provided when:
 - 1. A new building is constructed or moved onto a lot; and
 - 2. A new use is established where no use previously existed.
- B. **Enlargement and Intensification.**
 - 1. Where an existing use or structure is enlarged or intensified, but where there is no change in use, additional off-street parking and loading is required to serve only the enlarged or intensified area. Additional parking is not required to remedy parking deficiencies existing before the expansion or enlargement.
 - 2. As used in this section, enlarging or intensifying a use or structure includes, but is not limited to adding or creating floor area, dwelling units, guest rooms, seats, or employees.
- C. **Changes of Use.**

1. **Commercial Districts.** In the Commercial Districts, off-street parking is required for a change in use only when the structure is expanded to include new floor area.
2. **Manufacturing and R-SMU Districts.**
 - a. In the Manufacturing and R-SMU districts, off-street parking is required for a change in use only when:
 - i. The structure is expanded to include new floor area; and/or
 - ii. The use is changed to one with a numerical parking standard greater than the district minimum.
 - b. If the new use is changed to one with a higher numerical parking standard than the district minimum, the new use must provide the incremental difference between the two numerical parking standards. A higher numerical parking standard may be reduced to the district minimum as provided in Section 23.322.050.A.2 (Change of Use).
 - c. As used in this section, the “district minimum” parking requirement is:
 - i. 2 spaces per 1,000 square feet of floor area in the Manufacturing Districts; and
 - ii. 1 space per 1,000 square feet of floor area in the R-SMU district.
3. **All Other Residential Districts.** In all Residential Districts except for R-SMU, off-street parking spaces are required for all changes in use.

23.322.030 – Required Parking Spaces

A. Residential Districts.

1. **Spaces Required.** Table 23.322-1 shows minimum required off-street parking spaces in the Residential Districts.

TABLE 23.322-1: REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS

Land Use	Number of Required Off-street Parking Spaces
Residential Uses	
Accessory Dwelling Unit	See Chapter 23.306
Dwellings, including Group Living Accommodations	R-3, R-4, and R-5 Districts (1-9 units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit. R-3, R-4, and R-5 District (10 or more units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per 1,000 sq ft of gross floor area

Land Use	Number of Required Off-street Parking Spaces
	All Other Districts: If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit All Other Locations: None required
Dormitories, Fraternity and Sorority Houses, Rooming & Boarding Houses, Senior Congregate Housing	If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each 5 residents, plus 1 for manager. All Other Locations: None required.
Rental of Rooms	If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each two roomers All Other Locations: None required
Non-Residential Uses	
All non-residential uses except uses listed below	<u>R-SMU District</u> : 1 per 1,000 sq. ft. <u>All Other Residential Districts</u> : See 23.322.030.A.2
Community Care Facility	One per two non-resident employees
Food Service Establishment	1 per 300 sq. ft.
Hospital	<u>R-SMU District</u> : 1 per 1,000 sq. ft. <u>All Other Residential Districts</u> : 1 per each 4 beds plus 1 per each 3 employees
Library	1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	1 per 300 sq. ft.
Non-Medical Offices	<u>R-SMU District</u> : 1 per 1,000 sq. ft. <u>All Other Residential Districts</u> : 1 per 400 sq. ft.
Hotels, Tourist	1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees

Notes:

[1] Excludes community care facilities which under state law must be treated in the same manner as a single-family residence.

2. **Other Uses.** If a use requires an AUP or Use Permit and is not listed in Table 23.322-1, the review authority shall determine the required number of off-street

parking spaces based on the amount of traffic generated by the use and the number of spaces required for other similar uses.

3. Offices.

- a. In Residential Districts where offices are allowed, the Zoning Adjustments Board (ZAB) may reduce the parking requirement for non-medical offices to one parking space per 800 square feet of gross floor area.
- b. To approve the reduction, the ZAB must find that the reduction is justified because the amount of direct contact with clients, visitors, or the general public will be less than ordinarily is the case.

4. ES-R Parking Requirement.

- a. For purposes of calculating required parking in the ES-R district, “bedroom” means any habitable space in a dwelling unit or residential accessory structure other than a kitchen or living room that is intended for or capable of being used for sleeping and that is at least 70 square feet in area.
- b. A room identified as a den, library, study, loft, dining room, or other extra room that satisfies this definition is considered a bedroom.
- c. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.
- d. The division of existing habitable space does not require additional parking if there is no net increase in the gross floor area of the building and no more than one additional bedroom is created.

B. Commercial Districts.

- 1. **Spaces Required.** Table 23.322-2 shows minimum required off-street parking spaces in the Commercial Districts, excluding the C-T district.

TABLE 23.322-2: REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)

Land Use	Required Parking Spaces
Residential Uses	
Accessory Dwelling Unit	See Chapter 23.306
Dwellings, including Group Living Accommodations	If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit All Other Locations: None required
Hotel, Residential	None required
Mixed-Use Residential	None required

Land Use	Required Parking Spaces
(residential use only)	
Senior Congregate Housing	None required
Non-Residential Uses	
All non-residential uses except uses listed below	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Hospital	1 per each 4 beds plus 1 per each 3 employees
Library	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 1 per 300 sq. ft.
Hotels, Tourist	C-DMU District: 1 per 3 guest/sleeping rooms or suites C-C, C-U, C-W Districts: 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees All Other Commercial Districts: 2 per 1,000 sq. ft.
Motels, Tourist	C-DMU District: 1 per 3 guest/sleeping rooms or suites C-C, C-U, C-W Districts: 1 per guest/sleeping room plus 1 for owner or manager [1] All Other Commercial Districts: 2 per 1,000 sq. ft.
Large Vehicle Sales and Rental	C-DMU District: 1.5 per 1,000 sq. ft. C-SA District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Small Vehicle Sales and Service	C-DMU District: 1.5 per 1,000 sq. ft. C-SA District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Manufacturing	C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft [1] All Other Commercial Districts: 2 per 1,000 sq. ft.
Wholesale Trade	C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft All Other Commercial Districts: 2 per 1,000 sq. ft.
Live/Work	If workers/clients are permitted in work area, 1 per first

Land Use	Required Parking Spaces
	1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area
Notes: [1] Spaces must be on the same lot as building it serves	

2. **Exemptions.** Table 23.322-3 shows projects and land uses in the Commercial Districts that are exempt from parking requirements. No Use Permit or other discretionary approval is required for these exemptions.

TABLE 23.322-3: PARKING EXEMPTIONS IN COMMERCIAL DISTRICTS

District	Projects/Uses Exempt from Parking Requirement
C-SA	First 1,000 square feet of new gross floor area in a development project
C-E	Commercial uses with less than 6,000 square feet of gross floor area
C-DMU	Additions up to 1,000 square feet of gross floor area or up to 25% of existing gross floor area, whichever is less

3. **C-T District.**

- a. Off-street parking is not required in the C-T district.
- b. New off-street parking is not permitted on lots abutting Telegraph Avenue exclusively. New off-street parking is only permitted on lots abutting a street other than Telegraph Avenue where access to the parking is from curb cuts existing on July 6, 1989. A Use Permit is required to establish the new parking. To approve the Use Permit, the ZAB must find that traffic from the new parking will not significantly impede pedestrian circulation.

4. **C-W District.**

- a. **Required Parking Determined by Zoning Officer or ZAB.** For the following categories of uses as shown in Table 23.204-1 (Allowed Uses in Commercial Districts), the Zoning Officer or ZAB shall determine the number of required off-street parking spaces in the C-W district based on the amount of traffic generated by the use and the number of spaces required for other similar uses:
 - i. Public and quasi-public uses.
 - ii. Automobile and other vehicle oriented uses.

- iii. Outdoor uses.
 - iv. Residential and related uses.
 - v. Other miscellaneous uses.
 - vi. Other industrial uses.
- b. **Maximum Parking.** The number of parking spaces provided for new commercial floor area in the C-W district shall not exceed:
- i. 5 spaces per 1,000 square feet of gross floor area of food service uses; and
 - ii. 4 spaces per 1,000 square feet of gross floor area for all other commercial uses.

C. Manufacturing Districts.

1. **Spaces Required.**
2. Table 23.322-4 shows minimum required off-street parking spaces in the Manufacturing Districts.

TABLE 23.322-4: REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

Land Use	Required Parking Spaces
Residential Uses	
Accessory Dwelling Unit	See Chapter 23.306
Dwellings	None required
Group Living Accommodation	None required
Non-Residential Uses	
All non-residential uses except uses listed below	2 per 1,000 sq. ft.
Art/Craft Studio	1 per 1,000 sq. ft.
Community Care Facility	1 per 2 non-resident employees
Food Service Establishment	1 per 300 sq. ft.

Land Use	Required Parking Spaces
Library	1 per 500 sq. ft. of publicly accessible floor area
Laboratories	1 per 650 sq. ft.
Nursing Home	1 per 5 residents, plus 1 per 3 employees
Medical Practitioners	One per 300 sq. ft.
Large Vehicle Sales and Rental	MU-LI District: 1.5 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay
Manufacturing	MU-R District: 1.5 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Storage, warehousing, and wholesale trade	1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Live/Work	MU-LI District: 1 per 1,000 sq. ft. of work area where workers/clients are permitted MU-R District: if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area
<u>Notes:</u> [1] For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required off-street parking spaces may be reduced to 25% of what would otherwise be required for multiple-family dwelling use, subject to obtaining a Use Permit.	

3. Required Parking Determined by Zoning Officer or ZAB.

- a. For the following categories of uses as shown in Table 23-206.020-1, the Zoning Officer or ZAB shall determine the number of required off-street parking spaces in the Manufacturing Districts based on the amount of traffic generated by the use and the number of spaces required for other similar uses:
 - i. Public and Quasi-Public Uses.
 - ii. Vehicle Sales and Service Uses.
 - iii. Other Miscellaneous Uses.
 - iv. Industrial and Heavy Commercial Uses, excluding manufacturing and wholesale trade.

D. Calculating Required Spaces.

1. **Fractional Spaces.** When calculating the number of required off-street parking spaces results in a fractional space, any fraction below one-half is disregarded, and fractions one-half and above are counted as requiring one parking space.
 2. **Employees.** Where a parking requirement is based on the number of employees, the number of employees is based upon the shift or employment period when the greatest number of employees are present.
 3. **Floor Area.**
 - a. Where a parking requirement is based on floor area, the definition of gross floor area as set forth in 23.502 (Glossary) shall apply.
 - b. In Non-Residential Districts, the floor area calculation for the purpose of determining required parking shall also include outdoor dining areas, garden/building supply yards, customer-serving outdoor areas for retail sales, and other unenclosed areas of the lot.
- E. **Additional Required Parking.** If the expected demand for off-street parking spaces is found to exceed the number of spaces required by Table 23.322-1, Table 23.322-2, or
- F. Table 23.322-4, additional off-street parking may be required as a condition of approval.
- G. **Buildings with Multiple Uses.**
1. When a building contains two or more uses, the total required number of off-street parking spaces is the sum of the requirements for each use computed separately.
 2. A required off-street parking spaces for one use may not provide required off-street parking spaces for any other use except as allowed by Section 23.322.040.D (Joint Use of Parking).
- H. **Including Existing Uses.** Existing off-street parking spaces shall be counted towards meeting the overall parking requirements where new floor area is added to an existing site or project.
- I. **Spaces Serving Existing Uses.**
1. Unless otherwise allowed by this chapter, parking spaces serving an existing use may not be reduced below the number of spaces required by this section. If an existing use has fewer parking spaces than required by this section, the number of spaces serving the use may not be further reduced.
 2. In Non-Residential Districts, off-street parking spaces provided in conjunction with a use or structure existing on October 1, 1959, on the same property or on property under the same ownership, may not be reduced below, or if already less

than, may not be further reduced below, the requirements of this chapter for a similar use or structure.

3. Existing parking spaces in a non-residential district may be removed to meet ADA compliance or traffic engineering standards.

J. In-Lieu Parking Fee.

1. General.

- a. In Non-Residential Districts with a public parking fund to create public parking, an applicant may pay a fee in lieu of providing required off-street parking spaces.
 - b. The in-lieu parking fee shall be established by City Council resolution.
 - c. In-lieu payments shall be used for the purposes stated in each ordinance establishing the public parking funds.
 - d. In-lieu fees may, at the applicant's option, be paid in a lump sum or in annual installments as specified in each ordinance establishing the parking fund and may be adjusted annually for inflation.
 - e. If paid annually, the first annual payment of an in-lieu fee is due as a condition of occupancy and subsequent payments are due on January 31 of succeeding years.
2. **C-DMU District.** Paying an in-lieu fee to reduce or waive required off-street parking in the C-DMU district requires a Use Permit. To approve the Use Permit, the ZAB must find that the applicant will pay an in-lieu fee to a fund established by the City that provides enhanced transit services.

23.322.040 – General Requirements

A. Compliance Required.

1. The City may issue a Zoning Certificate or approve an AUP or Use Permit only for a use or structure that complies with this chapter.

B. Modified Requirements.

1. **Number of Spaces.** See Section 23.322.050 (Parking Reductions) for allowed reductions to the number of required off-street parking spaces.
2. **Other Requirements.**
 - a. The Zoning Officer or ZAB may reduce any parking requirement in this chapter that is unrelated to the number of required spaces for:
 - i. New floor area created through building expansions in the Commercial, Manufacturing, and R-SMU Districts; and

- ii. A change of use of existing floor area in the manufacturing and R-SMU districts where the new use has a higher numerical parking standard than the existing use.
 - b. If the use served by the parking requires an AUP, the Zoning Officer may approve the modification. If the use requires a Use Permit, the ZAB may approve the modification.
 - c. When allowed by Paragraph (a) above, the review authority may allow the modification upon finding that:
 - i. The modification allows the continued use of an existing parking supply; and
 - ii. Meeting the parking requirements is not financially feasible or practical.

C. Location of Parking.

1. Minimum Distance for Use or Structure.

- a. A required off-street parking space must be located within 300 feet from the structure or use it is intended to serve, except as otherwise allowed by this chapter.
 - b. The required distance is measured from the nearest point of the off-street parking space provided to the nearest point of the lot on which the use or structure to be served is located. Measurement is along public or private rights-of-way available for pedestrian access from the structure or use to the parking space.
- 2. C-DMU District.** Required off-street parking spaces may be provided on-site or off-site and within 800 feet of the use it serves. Off-site spaces may be more than 800 feet from the use with an AUP.
- 3. Ownership.** If a required off-street parking space is located on a different lot from the structure or use it serves, the parking space must be either:
- a. Located on land under the same ownership as the land where the structure or use is located; or
 - b. Subject to a Joint Use Agreement as provided in 23.322.040.D (Joint Use of Parking).

D. Joint Use of Parking.

- 1. All Districts.** The Zoning Officer may approve an AUP to allow two uses to share parking spaces and satisfy their off-street parking requirement with a Joint Use Agreement. To approve the AUP, the Zoning Office must find that:
 - a. The off-street parking spaces designated for joint use are located within 800 feet of the use to be served;

- b. The times demanded for joint-use parking spaces will not conflict substantially between the land uses sharing the spaces; and
 - c. The off-street parking spaces designated for joint use are not otherwise committed to satisfying the parking requirements for another land use at similar times.
2. **Offices in R-4 and R-5 Districts.** The ZAB may approve a Use Permit to allow offices in the R-4 or R-5 district to share parking spaces with a multi-family use. To approve the Use Permit, the ZAB must find that:
- a. No more than 20 percent of the off-street parking spaces required for the multiple dwelling use will serve as required off-street parking for offices; and
 - b. The shared off-street parking spaces are located on the same lot as the offices that they serve or are on property under the same ownership within 300 feet from the offices.
3. **Deed Restriction.** A property with joint-use parking spaces shall record a deed restriction as provided in Section 23.322.040.F (Deed Restrictions).

E. Off-Site Parking Spaces.

1. **Non-Residential Districts.** In Non-Residential Districts, the following requirements apply to required parking spaces not on the property where the use is located.
- a. Off-site parking spaces may not be used to satisfy the off-street parking requirement for another use.
 - b. Off-site parking must be available during the normal hours of operation of the use that it serves.
 - c. A deed restriction must be recorded as provided in Section 23.322.040.F (Deed Restrictions). Table 23.322-5 shows the maximum distance that off-site parking spaces may be located from the use or structure it serves and the permit required to exceed this distance.

TABLE 23.322-5: OFF-SITE PARKING SPACE DISTANCE REQUIREMENTS

District	Maximum Distance from Use or Structure [1]	Permit Required to Exceed Maximum Distance
Manufacturing Districts	500 ft.	AUP
C-W	500 ft.	AUP
All Other Commercial Districts	300 ft.	UP(PH)
<u>Note:</u>		

District	Maximum Distance from Use or Structure [1]	Permit Required to Exceed Maximum Distance
[1] Measurement shall be from the closest two points of the respective parcels, as measured in a straight line.		

2. **CW District.** If the use or structure served by off-site parking is within a designated node in the C-W district, the off-site parking spaces must also be located within the same designated node.

F. Deed Restrictions.

1. If a required off-street parking space is located off-site or in a joint use agreement, a statement shall be recorded in the Office of the County Recorder that restricts the use of the property and designates the off-street parking that is to serve the other property.
2. The deed restrictions shall state that the property cannot be used so as to prevent the use of the parking requirements of the City, unless the restriction is removed by the City.
3. Upon submission of satisfactory evidence either that other parking space meeting the parking requirements has been provided or that the building or use has been removed or altered in use so as to no longer require the parking space, the City of Berkeley shall remove the restriction from the property.

G. Removal of Spaces.

1. **Permit Required.** A Use Permit is required to remove parking spaces as follows:
 - a. R-S, R-SMU, C-T districts: Removing existing off-street parking spaces for main buildings.
 - b. C-SO, C-NS districts: Removing existing off-street parking spaces in excess of the number required spaces.
2. **Findings.** To approve the Use Permit in the R-S, R-SMU, and C-T districts, the ZAB must find that the parking reduction is consistent with the purposes of the district and meets the findings in Section 23.322.050.B (Findings). No additional findings are required in the C-SO and C-NS districts.

H. Required Parking Spaces for Persons with Disabilities. If the number of required off-street parking spaces in a non-residential district is reduced as allowed by this chapter, the number of required parking spaces for persons with disabilities shall be calculated as if there had been no reduction in required spaces.

I. Nonconforming Parking – ES-R District.

1. A lawfully established use that does not provide the required number of off-street parking spaces may be continued and maintained if there is no increase in the area, space, or volume occupied by or devoted to the use, except as allowed by Paragraph (2) below.
 2. A single-family detached structure that does not provide the required number of off-street parking spaces may be increased by a cumulative total of up to 200 square feet over the floor area that existed on June 6, 2010 if:
 - a. The addition or alteration complies with all other applicable standards;
 - b. The addition or alteration is not used as a bedroom; and
 - c. No portion of the building or any other structure on the same lot is used for rental rooms.
- J. **Access to Spaces.** A building, structure, alteration, fence, landscaping, or other site feature may not be constructed, erected, planted, or allowed to be established that impedes vehicle access to a required off-street parking space.
- K. **Parking Permits.** Residents in the following projects are not eligible to receive parking permits under the Residential Permit Parking Program (RPP) as provided in Municipal Code Chapter 14.72 (Preferential Parking Program):
1. Residential projects in the R-S, R-SMU, and C-T districts that are constructed without parking.
 2. Projects in the C-DMU district with residential units or group living accommodation units, including units converted from a non-residential use.

23.322.050 – Parking Reductions

- A. **Allowed Reductions.** The Zoning Officer or ZAB may reduce or waive the number of off-street parking spaces required by Section 23.322.030 (Required Parking Spaces) for the following projects.
1. **Building Expansions.**
 - a. **Where Allowed:** All Commercial and Manufacturing Districts, R-SMU district.
 - b. **Eligible Uses:** Expansions to existing buildings (all uses).
 - c. **Required Permit:** AUP.
 - d. **Findings:** The Zoning Officer must make the findings in Subsection C (Findings) below.
 2. **Change of Use.**
 - a. **Where Allowed:** All Manufacturing Districts, R-SMU district.

- b. **Eligible Uses:** Change of use to a new use with a higher numerical parking standard. In a Manufacturing District, the reduction is allowed only if the change of use is 2,500 square feet or less.
 - c. **Required Permit:** Use Permit for projects that require ZAB approval. AUP for all other projects.
 - d. **Findings:** The review authority must make the findings in Subsection C (Findings) below.
3. **Non-Residential Uses in Main Residential Building.**
- a. **Where Allowed:** R-SMU district.
 - b. **Eligible Uses:** Non-residential uses in main buildings that contain dwelling units or group living accommodations.
 - c. **Required Permit:** AUP.
 - d. **Findings:** To approve the AUP, the Zoning Officer must find that the parking reduction is consistent with the purposes of the R-SMU district as stated in 23.202.140.A (District Purpose).
4. **Residential Uses in Mixed-Use Buildings.**
- a. **Where Allowed:** All districts.
 - b. **Eligible Uses:** The residential use portion of a mixed-use building (residential and commercial).
 - c. **Required Permit:** AUP
 - d. **Findings:** To approve the Use Permit, the ZAB must make findings in each district chapter:
 - i.* C-C district: 23.204.050.D.3.b
 - ii.* C-U district: 23.204.060.D.3.b
 - iii.* C-N district: 23.204.070.D.3.b
 - iv.* C-SA district: 23.204.100.D.2
 - v.* C-SO district: 23.204.120.D.2
5. **Exclusive Residential Uses.**
- a. **Where Allowed:** All districts.
 - b. **Eligible Uses:** Buildings occupied exclusively by residential uses.
 - c. **Required Permit:** AUP

d. **Findings:** To approve the AUP, the Zoning Officer must make findings in each district chapter:

- i.* C-C district: 23.204.050.D3.b
- ii.* CU district: 23.204.060.D.3.b
- iii.* C-N district: 23.204.070.D.3.b
- iv.* C-SA district: 23.204.100.D.2
- v.* C-SO district: 23.204.120.D.2

6. **Commercial Uses in Mixed-Use Building.**

- a. **Where Allowed:** C-C, CU, C-SA districts.
- b. **Location Limitations:** In the C-C, C-U districts, the reduction is allowed only on blocks adjacent to University Avenue and lots north of University Avenue, south of Delaware Street, east of Bonita Avenue and west of Oxford Street.
- c. **Eligible Uses:** Any commercial use portion of a mixed-use building which combines retail products stores and/or personal household services and multi-family residential uses within the same building or located on the same lot (or contiguous lots as part of the same project).
- d. **Required Permit:** Use Permit.
- e. **Findings:** The ZAB must make the findings in Subsection C (Findings) below.

7. **All Uses in Mixed-Use Building.**

- a. **Where Allowed:** C-W district.
- b. **Eligible Uses:** All uses in a mixed-use building (residential and commercial).
- c. **Permit Required:** Use Permit for projects that require ZAB approval. AUP for all other projects.
- d. **Finding:** To approve the permit, the review authority must find that:
 - i.* The reduction promotes any of the C-W district purpose statements in 23.204.140.A (District Purpose); and
 - ii.* The reduction in the parking requirement is not expected to cause a serious shortage of parking in the area.

8. **Bicycle/Motorcycle Spaces.**

- a. **Where Allowed:** C-W and all Manufacturing Districts.
- b. **Eligible Uses:** All uses.

- c. **Allowed Reduction:** Up to 10 percent of required off-street automobile spaces may be designated as bicycle and/or motorcycle parking. Bicycle parking must be in addition to bicycle parking required by 23.322.090 (Bicycle Parking).
- d. **Permit Required:** Use Permit for projects that require ZAB approval. AUP for all other projects.
- e. **Finding:** To approve the permit, the review authority must find that:
 - i. The substitution will not lead to an undue shortage of automobile parking spaces; and
 - ii. It can be reasonably expected that there will be demand for the bicycle and/or motorcycle parking spaces.

9. Proximity to Public Parking Facility.

- a. **Where Allowed:** C-W district.
- b. **Eligible Uses:** All uses within 1,000 feet of a public parking facility available to all members of the public.
- c. **Permit Required:** Use Permit.
- d. **Finding:** No additional findings.

10. Downtown Reduction/Waiver.

- a. **Where Allowed:** C-DMU district.
- b. **Eligible Uses:** All uses.
- c. **Permit Required:** Use Permit or modified with an AUP.
- d. **Finding:** The Zoning Officer must make the findings in Subsection C (Findings) below.

11. Adding Residential Units.

- a. **Where Allowed:** MU-R district.
- b. **When Allowed:** Adding a residential unit to a property with one or more existing residential units.
- c. **Permit Required:** AUP
- d. **Findings.** To approve the AUP Permit, the ZAB must find that:
 - i. Existing evening parking supply is adequate; and/or
 - ii. Other mitigating circumstances exist on the property.

12. Limited Duration Reduction.

- a. **Where Allowed:** M and MM District.
- b. **Eligible Uses:** All uses.
- c. **Permit Required:** Use Permit valid for a specified duration not to exceed five years.
- d. **Findings.** To approve the Use Permit, the ZAB must find that under the circumstances of the particular use and building, the demand for parking can be expected to be below the otherwise required level for a sustained period of time.

B. **Findings.** Required findings below are in addition to permit findings required in Section 23.406 (Specific Permit Requirements).

- 1. **Commercial, R-S, and R-SMU Districts.** When required by Subsection A (Allowed Reductions) above or elsewhere in the Zoning Ordinance, the review authority must make the following findings to approve a reduction in required off-street parking spaces in a Commercial District, the R-S district, or the R-SMU district:
 - a. The reduction will not substantially reduce the availability of on-street parking in the vicinity of the use.
 - b. One of the following is true:
 - i. The use is located one-third of a mile or less from a Bay Area Rapid Transit (BART) station, intercity rail station or rapid bus transit stops.
 - ii. The use is located one-quarter of a mile or less from a public or private parking area, lot, or structure that is accessible by the employees of the use and sufficient parking supply is available therein to mitigate the reduction in parking for the use.
 - iii. A parking survey conducted under procedures set forth by the Planning Department finds that within 500 feet or less of the use, on non-residential district streets, at least two times the number of spaces requested for reduction are available at on-street parking spaces during the peak hours of operation of the use.
 - c. One of the following is true:
 - i. The parking requirement modification will meet the purposes of the district related to improvement and support for alternative transportation, pedestrian improvements, and activity, or similar policies.
 - ii. There are other factors, such as alternative transportation demand management strategies or policies in place, that will reduce the parking demand generated by the use.

2. **Manufacturing Districts.** When required by Subsection A (Allowed Reductions) above or elsewhere in the Zoning Ordinance, the review authority must make the following findings to approve a reduction in required off-street parking spaces in a Manufacturing District:
- a. The reduction will not substantially reduce the availability of on-street parking in the vicinity of the use.
 - b. One of the following is true:
 - i.* The use is located one-third of a mile or less from a rapid bus transit stop, an intercity rail station, or a bus stop serving at least four lines.
 - ii.* The use is located one-quarter of a mile or less from a public or private parking area, lot, or structure that is accessible by the employees of the use and sufficient parking supply is available in these facilities to mitigate the reduction in parking.
 - iii.* A parking survey conducted under procedures set forth by the Planning Department finds that within 500 feet or less of the use, on non-residential district streets, at least two times the number of spaces requested for reduction are available at on-street parking spaces during the peak hours of operation of the use.
 - c. One of the following is true:
 - i.* The parking requirement modification will implement the West Berkeley Plan goals and policies related to improvement and support for alternative transportation, pedestrian improvements and activity, and similar policies.
 - ii.* There are other project-specific transportation demand management strategies or policies in place, including but not limited to employer sponsored transit subsidies, car sharing programs, bicycle storage, and flexible work schedules.

23.322.060 – C-DMU Parking and Transportation Demand Management

The parking and transportation demand management requirements in this section apply in the C-DMU district.

A. Dynamic Signage.

1. New construction that results in an off-street total of more than 25 publicly available parking spaces shall install dynamic signage to Transportation Division specifications.
2. Required signage includes, but is not limited to:

- a. Real-time garage occupancy signs at the entries and exits to the parking facility with vehicle detection capabilities and enabled for future connection to the regional 511 Travel Information System; or
- b. Equivalent signs as determined by the Zoning Officer in consultation with the Transportation Division Manager.

B. Unbundled Parking.

- 1. For any new building with residential units or structures converted to a residential use, required parking spaces shall be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling unit.
- 2. The ZAB may approve a Use Permit to waive the requirement in Paragraph (1) above for projects that include financing for affordable housing. To approve the Use Permit, the ZAB must find that the applicant has shown that the combined parking is necessary to obtain financing or meeting other obligations.

C. Employee/Resident Benefits.

- 1. For new structures or additions over 20,000 square feet, the property owner shall provide at least one of the following transportation benefits at no cost to every employee, residential unit, and/or group living accommodation resident:
 - a. A pass for unlimited local bus transit service; or
 - b. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.
- 2. A notice describing these transportation benefits shall be posted in a location visible to employees and residents.

D. Vehicle Sharing Spaces.

- 1. **Spaces Required.** For residential structures constructed or converted from a non-residential use that provide off-street parking, vehicle sharing spaces shall be provided in the amounts shown in Table 23.322-6. Vehicle sharing spaces are not required for projects that do not provide off-street vehicle parking.

TABLE 23.322-6: REQUIRED VEHICLE SHARING SPACES

Number of Parking Spaces Provided	Minimum Number of Vehicle Sharing Spaces
0-10	0
11-30	1
31-60	2

Number of Parking Spaces Provided	Minimum Number of Vehicle Sharing Spaces
61 or more	3, plus one for every additional 60 spaces

2. Requirements.

- a. The required vehicle sharing spaces shall be offered to vehicle sharing service providers at no cost.
- b. The vehicle sharing spaces shall remain available to a vehicle sharing service provider as long as providers request the spaces.
- c. If no vehicle sharing service provider requests a space, the space may be leased for use by other vehicles.
- d. When a vehicle sharing service provider requests such space, the property owner shall make the space available within 90 days.

E. Parking and Transportation Demand Management Compliance Report.

1. Before issuance of a Certificate of Occupancy, the property owner shall submit to the Department of Transportation a completed Parking and Transportation Demand Management (PTDM) compliance report on a form acceptable to the City of Berkeley.
2. The property owner shall submit to the Department of Transportation an updated PTDM compliance report on an annual basis.

23.322.070 – Off-Street Parking Maximums for Residential Development

A. Applicability.

1. This section applies to new residential projects with two or more dwelling units on a parcel, including the residential portion of mixed-use projects, where any portion of the project is located either:
 - a. Within 0.25 miles of a major transit stop, as defined by Section 21064.3 of the California Public Resources Code; or
 - b. Along a transit corridor with service at 15-minute headways during the morning and afternoon peak periods.
2. **Exemptions.** The following types of projects are exempt from the requirements of this section:
 - a. Projects for which a building permit was issued before March 19, 2021.
 - b. Residential projects, including the residential portions of mixed-use projects, with the majority of the units subject to recorded affordability restrictions;

- c. Projects located on a roadway with less than 26 feet pavement width in the Hillside Overlay.
- d. Projects located in the Environment Safety-Residential (ES-R) district.

B. Off-Street Parking Maximum. Any project subject to this chapter shall not include off-street residential parking at a rate higher than 0.5 parking spaces per Dwelling Unit.

C. Adding Units to Existing Buildings or Properties.

1. The parking maximum required by this section applies to new dwelling units added to an existing property or building where the addition results in two or more units on the parcel.
2. Adding a unit to an existing property or building does not require the removal of any existing off-street parking spaces.

D. Excess Off-Street Parking.

1. Off-street residential parking in excess of the maximum number in Section 23.322.070.B (Off-Street Parking Maximum) may be approved with an AUP.
2. To approve an AUP for excess off-street parking, the review authority must make one or both of the following findings:
 - a. Trips to the use or uses to be served, and the apparent demand for additional parking, cannot be satisfied by the amount of parking permitted by this section, by transit service which exists or is likely to be provided in the foreseeable future, or by more efficient use of existing on-street and off-street parking available in the area;
 - b. The anticipated residents of the proposed project have special needs or require reasonable accommodation that relate to disability, health or safety that require the provision of additional off-street residential parking.

23.322.080 – Parking Layout and Design

A. Traffic Engineering Requirements.

1. All off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way must conform to the City of Berkeley's Traffic Engineering requirements.
2. The Traffic Engineer shall determine whether the size, arrangement, and design of off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way are adequate to create usable, functional, accessible, and safe parking areas, and are adequately integrated with Berkeley's overall street pattern and traffic flows.

- B. **Dimensional Standards.** Dimensional requirements and standards for off-street parking spaces, driveways, and other access improvements, and maneuvering aisles shall be incorporated in administrative regulations, subject to the review and approval by the City Manager and ZAB.
- C. **Access Orientation in Non-Residential Districts.** Access to new parking areas in a Non-Residential District that serve commercial uses shall be oriented in such a way as to minimize the use of streets serving primarily residential uses.
- D. **Placement – Residential Districts.**
1. **Side Setback Areas.**
 - a. One new off-street parking space in a required side setback area, where none exists, is allowed by right.
 - b. The space must be constructed of a permeable surface unless the Public Works Department or Office of Transportation determines it is infeasible.
 - c. The space must be screened as required by 23.322.080.G (Screening).
 - d. The location of the space shall minimize impact on usable open space.
 2. **Other Setback Areas.** No portion of an off-street parking space may be located in a required front, street side, or rear setback area unless:
 - a. The parking space location is authorized by Chapter 23.306 (Accessory Dwelling Units); or
 - b. The Zoning Officer approves an AUP, in consultation with the Traffic Engineer, and the space meets all applicable requirements in this section.
 3. **Multifamily Buildings.**
 - a. An off-street parking space may not be located closer than 10 feet in horizontal distance from a door or a window of a building with three or more dwelling units where the space is on the same or approximately the same level as the building.
 - b. For the purposes of this section, a window whose bottom edge or point is more than 6 feet in vertical height from the level of the subject off-street parking space is not considered on the same or approximately the same level.
 - c. The Zoning Officer may approve an AUP to grant an exception to this requirement.
- E. **Placement – Non-Residential Districts.**

1. **Where Prohibited.** Except when otherwise allowed by this chapter, ground-level off-street parking spaces are not permitted within 20 feet of the lot’s street frontage unless the parking is entirely within a building with walls.
2. **Corner Lots.** For a corner lot, the ZAB may approve a Use Permit to allow the parking within 20 feet of the street frontage facing the secondary street.
3. **C-W District.**
 - a. Off-street automobile parking in the C-W district is not permitted between the front lot line and a main structure within a designated node.
 - b. Outside of a designated node, off-street automobile parking may be allowed between the front lot line and a main structure with a Use Permit or AUP. If the project requires ZAB approval, a Use Permit is required. An AUP is required for all other projects.
 - c. To approve the AUP or Use Permit, the review authority must find that one or more of the following is true:
 - i. Parking in the rear or on the side of the property is impractical because of the lot’s depth and/or width.
 - ii. Parking in the rear of the property would result in adverse impacts on abutting residential or other uses.
 - iii. Parking in the rear or on the side of the property would result in the placement of a driveway in an unsafe location.
 - iv. Continuation or re-establishment of parking in front of the building is necessary for the reuse of an existing structure which is substantially set back from the front lot line.

F. **Grade Change.** This subsection applies to off-street parking spaces in all districts, except for parking decks in Residential Districts.

1. The difference in elevation between a parking space and the finished grade on adjacent areas of the lot may not exceed 5 feet at any point.
2. Where there is a difference in elevation between a parking space and adjacent finished grade, the parking space shall be setback from a lot line as shown in Table 23.322-7.

TABLE 23.322-7: REQUIRED SETBACKS FOR PARKING SPACES WITH ADJACENT GRADE CHANGES

Difference in Elevation	Minimum Setback
Parking space lower than finished grade	
3 to 5 ft	4 ft.

Difference in Elevation	Minimum Setback
Less than 3 ft	No min. setback
Parking space higher than finished grade	6 ft.

G. Screening.

- 1.
2. Table 23.322-8 shows required parking space screening. Screening must effectively screen parked vehicles from view from buildings and uses on adjacent, abutting, and confronting lots. Screening may not interfere with pedestrian safety.

TABLE 23.322-8: REQUIRED PARKING SPACE SCREENING

Districts	When Required	Required Screening Feature	Screening Feature Height
All Residential Districts	2 or more parking spaces, or any parking space partly or entirely within a required rear setback area	Continuous view-obscuring wood fence, masonry wall, or evergreen hedge which may be broken only for access driveways and walkways	4 ft. min and 6 ft. max.
All Commercial and Manufacturing Districts	2 or more parking spaces	Wall, fence, or evergreen shrubbery hedge in a landscape strip	Parking adjacent to public right-of-way or front lot line: 3 ft. min. and 4 ft. max. Parking adjacent to rear or side lot line: 4 ft. min and 6 ft. max.

3. In the C-W, M, MM, MU-LI districts, screening and landscape buffers are not required for any portion of a parking lot adjacent to Third Street (Southern Pacific Railroad).

H. Landscape Buffers.

1. All paved areas for off-street parking spaces, driveways, and any other vehicle-related paving must be separated from adjacent lot lines and the public right-of-way by a landscaped strip as shown in Table 23.322-9.

TABLE 23.322-9: REQUIRED LANDSCAPE BUFFERS

District/Number of Spaces	Minimum Width of Landscape Strip	
	Areas adjacent to side or rear lot lines	Areas adjacent to public right-of-way or front lot line
Residential Districts		
1-3 spaces	2 ft.	2 ft.
4 spaces or more	4 ft. [1]	4 ft. [1]
Commercial and Manufacturing Districts		
1 space	None required	None required
2-3 spaces	2 ft.	3 ft.
4 spaces or more	4 ft. [1]	4 ft. [1]

Note:

[1] Calculated as average width along the full length of landscape strip.

2. In all districts, this landscape buffer requirement does not apply to driveways that serve two adjacent lots when adjacent to a side lot line.
 3. In the Residential Districts, this landscape buffer requirement also does not apply to pedestrian walkways that are separated from such areas by a landscaped strip at least two feet wide.
- I. **Paved Setback Areas.** In Residential Districts, the total area of pavement devoted to off-street parking spaces, driveways, and other vehicle-related paving may not exceed 50 percent of any required setback area that runs parallel to and abuts a street.
- J. **Driveway Width.**
1. A driveway may not exceed 20 feet in width at any lot line abutting a street or one-half of the width of the street frontage of the lot, whichever is less.
 2. In a Non-Residential district, the Zoning Officer may modify this requirement with an AUP.
- K. **Driveway Separation.** On a single lot in a Residential District, driveways must be spaced at least 75 feet from one another, as measured along any continuous lot line abutting a street.
- L. **Tandem Parking.** Tandem spaces that provide required off-street parking require an AUP, except when allowed by right by Chapter 23.306 (Accessory Dwelling Units).

- M. **Residential Parking Lots in Non-Residential Districts.** Parking lots in a non-residential district used exclusively for residential parking must comply with standards in this section that apply in Residential Districts.
- N. **Carports.** A carport shall meet the minimum horizontal and vertical dimensions specified by the City's Traffic Engineer to be used for one or more legal parking spaces required under this chapter.

23.322.090 – Bicycle Parking

A. Parking Spaces Required.

- 1. **Non-Residential Bicycle Parking.** Table 23.322-10 shows districts where bicycle parking is required, land uses requiring bicycle parking, and the number of required spaces. Bicycle parking is required for new construction and for expansions to existing buildings that add new floor area.

TABLE 23.322-10: REQUIRED NON-RESIDENTIAL BICYCLE PARKING

District	When Required	Required Spaces
R-S, R-SMU	New commercial space	1 per 2,000 sq. ft.
All Commercial Districts except for C-E and C-T	New floor area or for expansions of existing industrial, commercial, and other non-residential buildings	1 per 2,000 sq. ft.
All Manufacturing Districts except for C-E and C-T	New floor area or for expansions of existing industrial, commercial, and other non-residential buildings	1 per 2,000 sq. ft.
C-E, C-T	None required	N/A

- a. In the C-DMU district, the Zoning Officer, in consultation with the City Traffic Engineer, may approve an AUP to modify the bicycle parking requirement in Table 23.322-10 for Tourist Hotels.

- 2. **Residential Parking.** Table 23.322-11 shows the types of residential projects, including the residential portion of mixed-use projects, for which bicycle parking is required.

TABLE 23.322-11: REQUIRED RESIDENTIAL BICYCLE PARKING

Use	Long-Term Parking Requirement [1]	Short-Term Parking Requirement [1]
Dwelling Units (1 to 4 units)	None required	None required
Dwelling Units (5 units or more)	1 space per 3 bedrooms	2, or 1 space per 40 bedrooms, whichever is

Use	Long-Term Parking Requirement [1]	Short-Term Parking Requirement [1]
		greater
Group Living Accommodations, Dormitories, Fraternity and Sorority Houses, Rooming and Boarding Houses, Transitional Housing	2, or 1 space per 2.5 bedrooms, whichever is greater	2, or 1 space per 20 bedrooms, whichever is greater
[1] Long-Term Parking and Short-Term Parking shall meet the design standards included in Appendix F of the 2017 <i>Berkeley Bicycle Plan</i> , or as subsequently amended by the Transportation Division.		

B. Bicycle Parking Standards. The following standards apply to required bicycle parking spaces in a non-residential district:

1. Bicycle parking spaces shall be located in either a locker, or in a rack suitable for secure locks, and shall require location approval by the City Traffic Engineer and Zoning Officer.
2. Bicycle parking shall be located in accordance to the Design Review Guidelines and other design specifications promulgated by the Transportation Division.

23.322.100 – On-site Loading Spaces

A. When Required. Table 23.322-12 shows land uses that require on-site loading spaces consistent with this section. In Residential Districts, on-site loading spaces are required for any modifications to existing uses and for new construction. In Commercial and Manufacturing Districts, on-site loading spaces are required for new or additional construction of 10,000 square feet or more.

TABLE 23.322-12: LAND USES REQUIRING OFF-STREET LOADING SPACES

District	Land Use [1]
R-1, R-1A, R-2	Schools 10,000 sq. ft. or more
R-2A	Senior congregate housing, nursing homes and schools 10,000 sq. ft. or more
R-3	Senior congregate housing, hospitals, nursing homes, schools 10,000 sq. ft. or more
R-4, R-5	Senior congregate housing, hospitals, nursing homes, offices, schools 10,000 sq. ft. or more
R-S, R-SMU	All non-residential uses 10,000 sq. ft. or more

District	Land Use [1]
All C Districts except C-T	All commercial uses 10,000 sq. ft. or more
C-T	No loading spaces required for all land uses
M Districts	All commercial and manufacturing uses 10,000 sq. ft. or more
<u>Note:</u> [1] Land use size is total gross floor area.	

B. **Number of Loading Spaces.** For land uses that require an on-site loading space, Table 23.322-13 shows the minimum number of required spaces.

TABLE 23.322-13: NUMBER OF REQUIRED OFF-STREET LOADING SPACES

District	Spaces Required [1]
Residential and Commercial Districts	1 space for the first 10,000 sq. ft. plus 1 additional space for each additional 40,000 sq. ft
Manufacturing Districts	1 space for the first 10,000 sq. ft. plus 1 additional space for each additional 25,000 sq. ft
<u>Note:</u> [1] Land use size is total gross floor area.	

C. **Loading Space Requirements.**

1. **General.** The following requirements apply to required on-site loading spaces in all districts except for the R-1, R-1A, R-2, R-2A districts.
 - a. **Dimensions.** A required loading space must be at least 12 feet wide and 25 feet long with a minimum vertical clearance of 14 feet.
 - b. **Location.** A required loading spaces must be located on the same lot as the structure or use the space is designed to serve.
 - c. **Parking Spaces.** A required parking space may not be used to satisfy the requirements for an off-street loading space.
 - d. **Access and Paving.** A required loading space must have adequate means of access from a street or alley. Both the space and access driveway must be paved with a durable, dustless material that is usable under all weather conditions.
2. **Residential Buffer.** An on-site loading space in a Non-Residential District may not be located within 35 feet of a lot in a Residential District unless the loading space is either:

- a. Located wholly within an enclosed building; or
 - b. Screened from such residential lot by a wall, hedge, or fence not less than 6 feet in height.
3. **C-W District.** A building or site in the C-W district may not be altered to deprive a leasable space used or designated for use by any manufacturing or wholesale trade of an on-site loading space consistent with Paragraph 1 (All Districts) above.
 4. **M and MM Districts.** All uses in the M and MM districts which have one or more on-site loading spaces shall retain at least one such space.
 5. **Modified Requirements.** In all Manufacturing and Commercial Districts other than the C-T district, the Zoning Officer in consultation with the City Traffic Engineer may approve an AUP to modify the on-site loading spaces standards in this section.

23.322.110 – Parking Lots in Residential Districts

- A. **Applicability.** This section applies to the exclusive or primary use of a lot for off-street parking spaces in a Residential District.
- B. **Use Limitations.** Commercial repair work or service of any kind is prohibited on the lot.
- C. **Standards.**
 1. Signs may only designate the parking lot name, entrances, exits, and conditions of use. No other types of signed may be erected or maintained.
 2. Lighting fixtures must be oriented to direct the light away from adjacent lots.
 3. Suitable wheel bumpers must be provided to protect screening and adjacent property.
 4. A durable and dustless surface must be provided and maintained.
 5. The lot must comply with 23.322.070.G (Screening) and 23.322.070.H (Landscape Buffers).
 6. The lot must be graded to dispose of all surface water.
- D. **Exceptions.** The ZAB may waive any of the requirements in this section with a Use Permit for a temporary parking lot.

23.322.120 – Transportation Services Fee

- A. **When Required.**

1. A Transportation Services Fee (TSF) may be required for all new construction of gross floor area pursuant to resolution of the City Council.
2. If so resolved, the following districts are required to pay a TSF: R-S, R-SMU, C-C, C-U, C-N, C-NS, C-T, C-SO, M, and MM.

B. Paying and Collecting Fees.

1. All TSF payments shall be made to the Finance Department and deposited into the City or Berkeley's traffic/transportation mitigation fund.
2. TSF payments shall be collected in the form of annual payments based on the fee rate applicable to each district multiplied by the square feet of gross floor area of new construction and may be adjusted annually for inflation.
3. TSF payments shall be made for 30 years from the issuance of a certificate of occupancy for any new floor area.
4. The first annual payment of the TSF shall be due as a condition of occupancy and subsequent payments shall be due on January 1 of each succeeding year for 29 years.

- C. Use of Funds.** TSF funds shall be used to purchase transit or paratransit passes, coupons, and tickets to be made available at a discount to employees and customers and to promote and support incentives for employee ride sharing.

23.324 NONCONFORMING USES, STRUCTURES, AND BUILDINGS

Sections:

- 23.324.010– Chapter Purpose
- 23.324.020– General
- 23.324.030– Nonconforming Lots
- 23.324.040– Nonconforming Uses
- 23.324.050– Nonconforming Structures and Buildings
- 23.324.060– Exemptions

23.324.010 – Chapter Purpose

This chapter establishes regulations for nonconforming lots, uses, structures, and buildings. These regulations are intended allow for:

- A. The development and use of lawful nonconforming lots;
- B. Changes to nonconforming uses and the termination of abandoned uses;
- C. Maintenance, repair, and expansion of nonconforming structures and buildings; and
- D. Alterations to nonconforming structures and buildings when needed for public safety.

23.324.020 – General

- A. **Cause of Nonconformity.** A nonconformity may result from any inconsistency with the Zoning Ordinance, whether substantive or procedural, including, but not limited to:
 - 1. The inconsistency of the use, building, or structure or aspects thereof, with any requirement of the Zoning Ordinance; and
 - 2. The lack of a Zoning Certificate, AUP, or Use Permit.
- B. **Change to a Conforming Use or Structure.** A use, building, or structure which is nonconforming solely by reason of the lack of a Zoning Certificate, AUP, or Use Permit may be recognized as a conforming use, building, or structure by issuance of the required Zoning Certificate, AUP, or Use Permit.
- C. **Permit and Approvals Required.** A use, building, or structure conforms to the Zoning Ordinance only if it was established or constructed with the prior approval of, or legalized after the fact by, the issuance of the required Zoning Certificate, AUP, or Use Permit.
- D. **Nonconformities in Continuous Existence.** A lawful nonconforming use, structure, building, or lot shall be deemed to comply with the Zoning Ordinance if it has remained in continuous existence.

23.324.030 – Nonconforming Lots

A. **Lawful Nonconforming Lots.** A lot with an area less than the minimum lot size required by the Zoning Ordinance is considered a lawful nonconforming lot if the lot is:

1. Described in the official records on file in the office of the County Recorder of Alameda County or Contra Costa County as a lot of record under one ownership before November 30, 1950;
2. Shown as a lot on any recorded subdivision map, filed before November 30, 1950; or
3. In the Environmental Safety Residential (ES-R) district and described in the official records on file in the office of the County Recorder of Alameda County as either:
 - a. A lot of record under one ownership; or
 - b. A lot on any recorded subdivision map filed before February 13, 1975.

B. **Requirements.**

1. A lawful nonconforming lot may be used as building site subject to all other requirements of the Zoning Ordinance, except as provided in Paragraph (2) below.
2. If the total area of all contiguous vacant lots fronting on the same street and under the same ownership on or after September 1, 1958 is less than that required for one lot under the Zoning Ordinance, such lawful nonconforming lots may be used as only one building site.

23.324.040 – Nonconforming Uses

A. **Changes to Nonconforming Uses.**

1. Table 23.324-1 shows permits required to change a lawful nonconforming use.

TABLE 23.324-1: PERMIT REQUIREMENTS FOR CHANGES TO NONCONFORMING USES

Change to Nonconforming Use	Permit Required
Changes to a use that is allowed by right, complies with floor area requirements, conforms to all applicable requirements of the Zoning Ordinance excluding parking requirements, and is in a conforming building	ZC
Any change to a nonconforming use that does not require a Zoning Certificate or Use Permit by this table	AUP
Any project that substantially expands or changes a nonconforming use	UP(PH) [1]
Notes: [1] In the ES-R district the increase in the area, space, or volume occupied by or devoted to a lawful nonconforming use is not allowed.	

2. Substantial expansions and changes to a nonconforming use, as used in Table 23.324-1, means:
 - a. All changes to a use listed in 23.404.070.B (Permit Modification Required); and
 - b. Extending the nonconforming use into an existing or expanded portion of a building which has not been previously occupied by that nonconforming use.

B. Abandoned Uses.

1. Termination.

- a. Subject to the exceptions in Paragraph 2 (Exceptions) below, the ZAB may declare a lawful nonconforming use to be terminated upon finding that:
 - i.* The use has not occurred for at least one year; and
 - ii.* The most recent prior user has not shown a good-faith intent to resume it.
- b. The ZAB may require any person claiming that the use should not be declared terminated to produce documentation to substantiate good faith intent to resume the use.

2. Exceptions.

- a. **Residential Uses.** No lawful residential use can lapse, regardless of the length of time of the non-use.
- b. **Uses with Major Investments.** Lawful nonconforming full or quick service restaurants with cooking or food preparation facilities, gas/auto fuel stations, theaters, manufacturing plants with specifically designed fixed facilities and

other uses which represent a major investment in physical plant or facilities shall not be considered or declared terminated, regardless of the duration of non-use, unless:

- i.* Such fixed structures, equipment, or facilities are removed; or
 - ii.* Other uses could not be established without major removal of or extensive remodeling or replacement of structures associated with the previous established use.
- c. **Alcoholic Beverage Retail Sales.** If a lawful nonconforming alcoholic beverage retail sale use is closed is more than 90 days, the Zoning Adjustments Board (ZAB) may not declare the use terminated if the use was closed due to:
- i.* Repair that does not change the nature of the license premises or increase the square footage of the business used for alcoholic beverages sales; or
 - ii.* Restoration of premises made totally or partially unusable by an act of nature, fire, accident, or other involuntary cause where the restoration does not increase the square footage of the business used for alcoholic beverage sales.

23.324.050 – Nonconforming Structures and Buildings

- A. **Maintenance and Repair.** A lawful nonconforming structure or building may be maintained and repaired, as long as such maintenance or repair does not result in a change to the use of the structure or building.
- B. **Replacement.** Replacing portions of a nonconforming structure or building is allowed if the removed portions were lawfully constructed and are replaced to the same size, height, extent, and configuration as previously existed.
- C. **Removal.**
 - 1. A nonconforming portion of a nonconforming structure or building may be removed by right if such removal does not constitute demolition.
 - 2. For a structure or building subject to the Landmarks Preservation Ordinance, the regulations under Municipal Code Section 3.24 (Landmarks Preservation Commission) apply.
- D. **Expansion and Alteration.**
 - 1. **General.** An addition to or enlargements of a lawful nonconforming structure or building is allowed if:
 - a. The addition or enlargement complies with all applicable laws;

- b. The existing use of the structure or building is conforming, except as provided below in Paragraph 4 (Property with Nonconforming Use); and
- c. The addition or enlargement obtains all permits required by this subsection.

2. Nonconforming Setbacks and Height.

- a. An AUP is required for an addition or enlargement that:
 - i.* Vertically or horizontally extends a building wall projecting into a minimum required setback;
 - ii.* Horizontally extends the portion of a building exceeding the height limit;
 - iii.* Alters the portion of a building (including windows and other openings) projecting into a minimum required setback; or
 - iv.* Alters the portion of a building exceeding the height limit.
- b. The Zoning Officer may approve the AUP only if:
 - i.* The addition or enlargement does not increase or exacerbate any nonconforming setbacks; and
 - ii.* The addition or enlargement does not exceed maximum or calculated height limits.

3. Nonconforming Coverage, FAR, and Density.

- a. A Use Permit is required for an addition to and/or enlargement of a structure or building that exceeds the maximum allowed lot coverage, floor area ratio, or residential density.
- b. The ZAB may approve the Use Permit only if the project does not:
 - i.* Increase or exacerbate the nonconformity; or
 - ii.* Exceed the height limit.

4. Property with Nonconforming Use.

- a. A Use Permit is required for an addition to and/or enlargement of a lawful nonconforming structure or building on a property with a lawful nonconforming use.
- b. The Use Permit is required whether or not the nonconforming use occupies the subject structure or building.

E. Tenant Space Reconfigurations.

- 1. The reconfiguration of non-residential tenant space in a nonconforming structure or building requires permits as follows:

- a. AUP for structures or buildings nonconforming to setback, height, or lot coverage standards.
- b. Use Permit for structures or buildings nonconforming to FAR standards.
2. The reconfiguration is allowed only if the existing use of the property is conforming.

F. Damage and Reconstruction.

1. **Calculation of Appraisal Value.** As used in this subsection, the “appraised value” of a structure or building is the higher of:
 - a. The records of the Assessor of the County of Alameda for the fiscal year during which such destruction occurred; or
 - b. An appraisal performed by a certified appraiser.
2. **Damage Less than 50 Percent.** If 50 percent or less of its appraised value of a lawful nonconforming structure or building is damaged or destroyed for any reason, the replacement of the damaged portions of the structure or building is allowed by right if the replaced portions are the same size, extent, and configuration as previously existed.
3. **Damage More than 50 Percent.**
 - a. Except as provided in Paragraph 4 (Residential Buildings with Four Units or Less) below, if more than 50 percent of the appraised value of a lawful nonconforming structure or building is damaged or destroyed for any reason, the structure or building shall either:
 - i.* Be brought into full compliance with the requirements of the Zoning Ordinance; or
 - ii.* Receive ZAB approval of a Use Permit for the structure or building to be rebuilt to the same size, extent, and configuration as previously existed. To approve the Use Permit, the ZAB must find that the previous use will be continued in a manner that meets the requirements of this chapter.
4. **Residential Structures or Buildings with Four Units or Less.**
 - a. A residential-only structure or building with four residential units or less, including any accessory structures or buildings, that is involuntarily damaged or destroyed may be replaced or reconstructed with a Zoning Certificate.
 - b. The Zoning Certificate may be approved only if all of the following conditions exist:
 - i.* The structure or building, or any portion thereof, has been destroyed by any involuntary cause including fire, earthquake, or flood.

- ii.* The replacement structure or building or portion thereof is substantially similar in use, dimensions, floor area, square footage, envelope, lot coverage, footprint, and number of units to the destroyed structure or building or portion thereof that it is designed to replace.
 - iii.* The replacement or repair complies with all currently applicable building codes and any other regulations including any ordinance or emergency regulation adopted by the City Council or the Director of Emergency Services to protect against serious safety problems at the site such as engineering conditions and soil stability.
- c. Where a structure or building to be replaced or rebuilt does not conform to Paragraph (b)(ii) above and is to be expanded or changed, the structure or building is subject to all otherwise applicable regulations governing such expansion or change.
 - d. The Planning Director shall establish a process that allows an owner of a qualifying residential structure or building to apply for an advance determination that the proposed repair or replacement of a structure or building is substantially similar as required by Paragraph (b)(ii) above including the information required to document existing conditions.
 - e. The Planning Director shall develop a description or building information for owners of qualifying residential structures or buildings required by the City to document existing characteristics of the building in case of future damage or destruction.

23.324.060 – Exemptions

A. Public Safety Structural Alterations.

- 1. **General.** The following public safety structural alterations or extensions to conforming and nonconforming buildings are permitted by right to the extent necessary, as determined by the Zoning Officer:
 - a. Vertical and/or horizontal extensions of a nonconforming setback.
 - b. Horizontal extensions of a nonconforming height.
 - c. Vertical extensions of a nonconforming height in residential districts.
 - d. Alterations of a portion of a building that encroaches into a nonconforming setback.
 - e. Extensions of nonconforming lot coverage.
 - f. Structural alterations to nonconforming residential density.

23.326 DEMOLITION AND DWELLING UNIT CONTROL

Sections:

- 23.326.010– Chapter Purpose
- 23.326.020– General Requirements
- 23.326.030– Eliminating Dwelling Units through Demolition
- 23.326.040– Eliminating Dwelling Units through Conversion and Change of Use
- 23.326.050– Private Right of Action
- 23.326.060– Elimination of Residential Hotel Rooms
- 23.326.070– Demolitions of Non-Residential Buildings
- 23.326.080– Building Relocations
- 23.326.090– Limitations

23.326.010 – Chapter Purpose

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing, aesthetic, and safety goals of the City.

23.326.020 – General Requirements

- A. **Applicability.** No dwelling unit or units may be eliminated or demolished except as authorized by this chapter.
- B. **Findings.** In addition to the requirements below, the Zoning Adjustments Board (ZAB) may approve a Use Permit to eliminate or demolish a dwelling unit only upon finding that eliminating the dwelling unit would not be materially detrimental to the housing needs and public interest of the affected neighborhood and Berkeley.

23.326.030 – Eliminating Dwelling Units through Demolition

A. Buildings with Two or More Units Constructed Before June 1980.

- 1. **Applicability.** This subsection only applies to building with two or more units constructed before June 1980.
- 2. **Findings.** The ZAB may approve a Use Permit to demolish a building constructed before June 1980 on a property containing two or more dwelling units if any of the following are true:
 - a. The building containing the units is hazardous or unusable and is infeasible to repair.
 - b. The building containing the units will be moved to a different location within Berkeley with no net loss of units and no change in the affordability levels of the units.
 - c. The demolition is necessary to permit construction of special housing needs facilities such as, but not limited to, childcare centers and affordable housing developments that serve the greater good of the entire community.

- d. The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

3. Fee Required.

- a. The applicant shall pay a fee for each unit demolished to mitigate the impact of the loss of affordable housing in Berkeley.
- b. The amount of the fee shall be set by resolution of the City Council.

c. In Lieu of a Fee.

- i.* In lieu of paying the impact fee, the applicant may provide a designated unit in the new project at a below market rate to a qualifying household in perpetuity.
- ii.* The affordability level of the below market rent and the income level of the qualifying household shall be set by resolution of the City Council.
- iii.* The applicant shall enter into a regulatory agreement with the City of Berkeley to provide the in lieu units.

4. Occupied Units.

a. Applicability.

- i.* The requirements in this subsection apply if units to be demolished are occupied.
- ii.* These requirements do not apply to tenants who move in after the application for demolition is submitted to the City if the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.

- b. **Notice.** The applicant shall provide all sitting tenants notice of the application to demolish the building no later than the date it is submitted to the City, including notice of their rights under Municipal Code Section 13.76 (Rent Stabilization and Eviction for Good Cause Program).

c. General Requirements.

- i.* The applicant shall provide assistance with moving expenses equivalent to in Chapter 13.84 (Relocation Services and Payments for Residential Tenant Households).
- ii.* The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Funding for the rent differential shall be guaranteed in a manner approved by the City.

iii. Exception. An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with this subsection but must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the California Relocation Act (Government Code sections 7260 et seq.).

d. Sitting Tenants Rights.

i. Sitting tenants who are displaced as a result of demolition shall be provided the right of first refusal to move into the new building.

ii. Tenants of units that are demolished shall have the right of first refusal to rent new below-market rate units designated to replace the units that were demolished, at the rent that would have applied if they had remained in place, as long as their tenancy continues.

iii. Income restrictions do not apply to displaced tenants.

iv. Exception.

1. An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with 23.326.030.A.4.a, b, and c, but must comply with the following requirement.
2. Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed building will be granted a right of first refusal subject to their ability to meet income qualifications and other applicable eligibility requirements when the new units are ready for occupancy.

B. Buildings with a Single Dwelling Unit.

1. **Applicability.** This subsection only applies to buildings with a single dwelling unit.

2. **Limitations.**

a. Demolition is not allowed if:

- i.* The building was removed from the rental market under the Ellis Act during the preceding five years; or
- ii.* There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.

b. Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall

determine whether harassment or threatened or actual illegal eviction occurred.

- C. **Accessory Buildings.** Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section 3.24 (Landmarks Preservation Ordinance), accessory buildings of any size, including, but not limited to, garages, carports, and sheds, but not including any structure containing a lawfully established dwelling unit, which serves and is located on the same lot as a lawful residential use, may be demolished by right.

23.326.040 – Eliminating Dwelling Units through Conversion and Change of Use

- A. **General.** The ZAB may approve a Use Permit for the elimination of a dwelling unit in combination with another dwelling unit used for occupancy by a single household if it finds that:

1. The existing number of dwelling units exceeds maximum residential density in the district where the building is located; and
2. One of the following is true:
 - a. One of the affected dwelling units has been occupied by the applicant's household as its principal place of residence for no less than two years before the date of the application and none of the affected units are currently occupied by a tenant.
 - b. All of the affected dwelling units are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years before the date of their death.

B. **Limitations.**

1. Demolition is not allowed if:
 - a. The building was removed from the rental market under the Ellis Act during the preceding five years; or
 - b. There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.
2. Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred.

C. **Effect of Noncompliance with the Two-Year Requirement.**

1. In a unit eliminated under Subsection A (General) is not occupied by the applicant's household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status.
2. This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City of Berkeley.
3. The condition and notice will provide that if the owner's household does not occupy the unit for at least two years from the date of elimination the affected units must either be restored as separate dwelling units and the vacant unit(s) offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area. The fee shall be deposited into the City of Berkeley's Housing Trust Fund.
4. The City of Berkeley may exempt an applicant from the two-year residency requirement if of an unforeseeable life change that requires relocation.

D. Effect of Eliminating a Dwelling Unit.

1. If eliminating a dwelling unit reduces the number of units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter 13 (Public Peace, Morals and Welfare) shall continue to apply until:
 - a. The building is demolished; or
 - b. Sufficient units are added or restored such that the building contains at least five units.
2. The Zoning Officer may issue an AUP for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed, provided the conversion meets the requirements 23.326.040.A.1 and 2 and 23.326.040.B and C.

E. Exceptions.

1. The ZAB may approve a Use Permit for a change of use to a community care or a child care facility which eliminates a dwelling unit if it finds that such use is in conformance with the regulations of the district in which it is located.
2. The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-residential occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

3. Notwithstanding the general Use Permit requirement under 23.326.020 (General Requirements), a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated with a Zoning Certificate if:
 - a. The re-conversion restores the original single-family use of the main building or lot; and
 - b. No tenant is evicted.

23.326.050 – Private Right of Action

Any affected tenant may bring a private action for injunctive and/or compensatory relief against any applicant and/or owner to prevent or remedy a violation of Sections 23.326.030 (Elimination of Dwelling Units through Demolition) and 23.326.040 (Elimination of Dwelling Units through Conversion and Change of Use). In any such action a prevailing plaintiff may recover reasonable attorney's fees.

23.326.060 – Elimination of Residential Hotel Rooms

- A. **General Requirements.** Before removal, the following requirements must be met for the ZAB to approve a Use Permit for the elimination of residential hotel rooms:
 1. The residential hotel owner shall provide or cause to be provided standard housing of at least comparable size and quality, at comparable rents and total monthly or weekly charges to each affected tenant
 2. One of the following three requirements shall be met:
 - a. The residential hotel rooms being removed are replaced by a common use facility, including, but not limited to, a shared kitchen, lounge, or recreation room, that will be available to and primarily of benefit to the existing residents of the residential hotel and that a majority of existing residents give their consent to the removal of the rooms.
 - b. Before the date on which the residential hotel rooms are removed, one-for-one replacement of each room to be removed is made, with a comparable room, in one of the methods set forth in this section.
 - c. Residential hotel rooms are removed because of building alterations related to seismic upgrade to the building or to improve access to meet the requirements of the American Disabilities Act (ADA).
- B. **Criteria for Replacement Rooms.** For purposes of this section, replacement rooms must be:
 1. Substantially comparable in size, location, quality, and amenities;

2. Subject to rent and eviction controls substantially equivalent to those provided by the Rent Stabilization Ordinance or those that applied to the original rooms which are being replaced; and
 3. Available at comparable rents and total monthly or weekly charges to those being removed. Comparable rooms may be provided by:
 - a. Offering the existing tenants of the affected rooms the right of first refusal to occupy the replacement rooms;
 - b. Making available comparable rooms, which are not already classified as residential hotel rooms to replace each of the rooms to be removed; or
 - c. Paying to the City of Berkeley's Housing Trust Fund an amount sufficient to provide replacement rooms.
 - i. The amount to be paid to the City of Berkeley shall be the difference between the replacement cost, including land cost, for the rooms and the amount which the City of Berkeley can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms.
 - ii. The calculations shall assume that rents in the newly constructed rooms shall not exceed the greater of either a level comparable to the weekly or monthly charges for the replaced rooms or the level which would be charged if no current tenant paid more than 30 percent of such tenant's gross income for rent.
- C. **Exception for Non-Profit Ownership.** In a residential hotel owned and operated by a non-profit organization, recognized as tax-exempt by either the Franchise Tax Board and/or the Internal Revenue Service, residential hotel rooms may be changed to non-residential hotel room uses if the average number of residential hotel rooms per day in each calendar year is at least 95 percent of residential hotel rooms established for that particular residential hotel.

23.326.070 – Demolitions of Non-Residential Buildings

- A. **Main Non-Residential Buildings.** A main building used for non-residential purposes may be demolished with a Use Permit.
- B. **Accessory Buildings.**
 1. Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.
 2. An accessory building with 300 square feet or more of floor area may be demolished with an AUP.
- C. **Landmarks Preservation Commission Review.**

1. Any application for a Use Permit or AUP to demolish a non-residential building or structure which is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review before consideration of the Use Permit or AUP.
2. The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the ZAB its comments on the application.
3. The ZAB shall consider the recommendations of the LPC in when acting on the application.

D. **Findings.** A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the ZAB or the Zoning Officer finds that:

1. The demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City of Berkeley; and
2. The demolition:
 - a. Is required to allow a proposed new building or other proposed new use;
 - b. Will remove a building which is unusable for activities which are compatible with the purposes of the district in which it is located or which is infeasible to modify for such uses;
 - c. Will remove a structure which represents an inhabitable attractive nuisance to the public; or
 - d. Is required for the furtherance of specific plans or projects sponsored by the City of Berkeley or other local district or authority upon a demonstration that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.

23.326.080 – Building Relocations

A. **Treatment of Building Relocation.**

1. Relocating a building from a lot is considered a demolition for purposes of this chapter.
2. Relocating a building to a lot is considered new construction and is subject to all requirements applicable to new construction.
3. When a building is relocated to a different lot within in Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot. In such cases all notification requirements apply to both the source and receiving lots.

- B. **Findings.** The ZAB may approve a Use Permit to relocate a building upon finding that:
1. The building to be relocated is not in conflict with the architectural character, or the building scale of the neighborhood or area to which it will be relocated; and
 2. The receiving lot provides adequate separation of buildings, privacy, yards, and usable open space.

23.326.090 – Limitations

A. **Unsafe, Hazard, or Danger.**

1. Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard, and is not securable and/or is in imminent danger of collapse so as to endanger persons or property, as determined by the city's building official, it may be demolished without a Use Permit.
2. The Building Official's determination in this matter shall be governed by the standards and criteria in the most recent edition of the California Building Code that is in effect in the City of Berkeley.

- B. **Ellis Act.** This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the Ellis Act (California Government Code Chapter 12.75).

23.328 INCLUSIONARY HOUSING

Sections:

- 23.328.010– Chapter Purpose and Applicability
- 23.328.020– General Requirements
- 23.328.030– Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units
- 23.328.040– Requirements Applicable to All Inclusionary Units
- 23.328.050– Inclusionary Unit Requirements for Rental Housing Projects
- 23.328.060– Inclusionary Unit Requirements for Ownership Projects
- 23.328.070– Special Requirements for Avenues Plan Area
- 23.328.080– Administrative Regulations
- 23.328.090– Fees

23.328.010 – Chapter Purpose and Applicability

A. **Purpose.** The purpose of this chapter is to:

1. Promote Housing Element goals to develop affordable housing for households with incomes below the median, as defined in this chapter, or, in the case of limited equity cooperatives, households with incomes below 120 percent of the median.
2. Require the inclusion of affordable dwelling units in specified proposed developments (“projects”).

B. **Applicability.**

1. The following types of projects must comply with the inclusionary housing requirements of this chapter:
 - a. Residential housing projects constructing five or more dwelling units.
 - b. Residential housing projects constructing one to four new dwelling units when:
 - i.* Such units are added to an existing one to four-unit property developed after August 14, 1986; and
 - ii.* The resulting number of units totals five or more.
 - c. Residential housing projects proposed on lots with a size and zoning designation that allows construction of five or more dwelling units.
2. This chapter does not apply to dormitories, fraternity and sorority houses, boarding houses, residential hotels, or live/work units.
3. Live/work units are subject to low income inclusionary provisions in Section 23.312 (Live/Work).

4. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any conflicting requirements set forth elsewhere.

23.328.020 – General Requirements

A. Minimum Percent of Units.

1. Any project subject to this chapter is required to include at least 20 percent of the total number of dwelling units within the project as inclusionary units, except that limited equity cooperatives are required to include at least 51 percent of their units as inclusionary units.
2. In applying the percentages above, any decimal fraction above a whole number of dwelling units shall be paid as an in-lieu fee as stated in Section 23.328.040 (Requirements Applicable to All Inclusionary Units).

- B. Median Income Levels.** For the purpose of determining the median income levels for households under this chapter, the City shall use the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures that are available to the City from the most recent U.S. Census.

23.328.030 – Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units

A. Applicability.

1. As an alternative to providing inclusionary units required in an ownership project, the applicant may elect to enter in an agreement with the City to pay fees as set forth in this section in-lieu of providing units that are not required to be provided at below market prices pursuant to Government Code Section 65915.
2. This section applies to projects for which all required permits have already been issued, as long as no units within such a project have been sold.

- B. Deposit.** The fee shall be deposited in the City's Housing Trust Fund.

C. Fee Amount.

1. The in-lieu fee shall be 62.5 percent of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.
2. The fee shall be calculated and collected based on the sales prices of all of the units in a project to which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the difference between the actual sales price for each unit, and the sales price that would have been permitted had that unit been an inclusionary unit.

3. The percentage shall be determined using the following formula: the number of units for which an in-lieu fee is substituted for an inclusionary unit divided by the total number of units to which the inclusionary ordinance applies, multiplied by 62.5 percent.
4. This fee shall only apply to units in a project that are counted in determining the required number of inclusionary units in a project and shall not apply to any units provided as a density bonus.
5. If the City Manager determines that an actual sales price does not reflect the fair market value of a unit, the City Manager shall propose an alternate price based on the fair market value of the unit.
6. If the developer and the City Manager cannot agree on a fair market value, the City Manager shall select an appraiser to prepare an appraisal of the unit and the appraised value shall be used as the market value.

D. Calculation of Inclusionary Sales Price.

1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee amount shall be three times 80 percent of the Area Median Income (AMI) last reported as of the closing date of the sale of the unit, with the exception that if the developer has already been authorized to charge an inclusionary sale price based on development costs pursuant to Ordinance 6,790-N.S. (adopted January 27, 2004, sunsetted February 19, 2006) the allowable inclusionary sale price for the purposes of this section shall be the price permitted under that ordinance.
2. Area median income (AMI) shall be calculated in accordance with the affordability regulations established by the City Manager pursuant to Section 23.328.080 (Administrative Regulations).

- E. Time of Payment of Fee.** The developer shall pay the in-lieu fee no later than the closing date of the sale of a unit as a condition of the closing.

23.328.040 – Requirements Applicable to All Inclusionary Units

A. Recipient Requirement.

1. All inclusionary units other than those in limited equity cooperatives shall be sold or rented to:
 - a. The City or its designee; or
 - b. Low income, lower income, or very low-income households.
2. Units in limited equity cooperatives shall be sold or rented to households whose gross incomes do not exceed 120 percent of the Oakland PMSA median.

- B. **Agreement.** The applicant shall execute a written agreement with the City indicating the number, type, location, approximate size, and construction schedule of all dwelling units and other information as required to determine compliance with this chapter.
- C. **Timing.** All inclusionary units in a project and phases of a project shall be constructed concurrently with, or before, the construction of non-inclusionary units.
- D. **Criteria.** All inclusionary units shall be:
1. Reasonably dispersed throughout the project;
 2. Of the same size and contain, on average, the same number of bedrooms as the non-inclusionary units in the project; and
 3. Comparable with the design or use of non-inclusionary units in terms of appearance, materials, and finish quality.
- E. **In-Lieu Fee Requirement.** In projects where calculating the inclusionary requirement results in a fraction of a unit, the fraction shall be paid in the form of an in-lieu fee to the City.
1. Where Government Code Section 65915 does not apply, the in-lieu fee shall be the fractional value of the difference between development cost (excluding marketing costs and profit) and actual sales price for the average comparable unit in projects.
 2. Where Government Code Section 65915 does apply, the in-lieu fee shall be the difference between affordable cost for an appropriately-sized household and the fractional value of the average comparable actual sales price for the fraction of the unit in projects to require a density bonus or equivalent incentive.
- F. **Use of In-Lieu Fees.**
1. The in-lieu fee shall be used by the City or its designee (such as a non-profit housing development corporation) to provide, construct, or promote the creation or retention of low-income housing in Berkeley.
 2. The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and Appeals Board for review and approval.
- G. **Exceptions.** Where the applicant shows, and the City agrees, that the direct construction and financing costs of the inclusionary units, excluding marketing cost and profit (and also excluding land costs if a density bonus or equivalent incentive is provided), exceeds the sales prices allowed for inclusionary units by this chapter, the Zoning Adjustments Board (ZAB) may approve one or more of the following measures to reduce costs or increase profitability:

1. Reduce the floor area or the interior amenities of the inclusionary units, provided that such units conform to applicable building and housing codes.
2. Increase the number of bedrooms in the inclusionary units.
3. In a home ownership project, construct rental units in a number required to meet the inclusionary provisions of this chapter applicable to rental housing projects.
4. Waive the in-lieu fees for fractions of units.

23.328.050 – Inclusionary Unit Requirements for Rental Housing Projects

A. General Rental Requirements.

1. All inclusionary units shall be occupied by low, lower, or very low -income households.
2. The maximum rental price for inclusionary units shall be affordable to an appropriate-sized household whose income is 81 percent of the Oakland PMSA median.
3. In projects requiring more than one inclusionary unit, at least 50 percent of those units shall be rented at a price that is affordable to low or lower-income households, provided that the City can make available rental subsidies through the federal Section 8 Existing Housing Program or an equivalent program.
4. When there is an uneven number of inclusionary units, the majority of units shall be priced to be affordable to a household at 50 percent of median income if subsidies are available.
5. If no rental subsidies are available, all inclusionary unit prices shall be affordable to households at 81 percent income of the Oakland PMSA median.
6. If an applicant agrees to provide 10 percent lower income inclusionary units, the rental price for such units shall be affordable to a household with income that is 60 percent of the Oakland PMSA median.
7. Dwelling units designated as inclusionary units shall remain in conformance with the regulations of this section for the life of the building.
8. The City or its designee shall screen applicants for the inclusionary units and refer eligible households of the appropriate household size for the unit.
9. For purposes of occupancy, the appropriate household size standards used by the housing authority for the federal Section 8 Existing Housing Program or any future equivalent program shall be used.
10. The applicant or owner shall retain final discretion in the selection of the eligible households referred by the City.

11. The owner shall provide the City with data on vacancies and other information required to ensure the long-term affordability of the inclusionary units by eligible households.

B. Affordability Defined. A unit shall be considered affordable if the rent (including utilities) does not exceed 30 percent of a household's gross income.

1. Gross household income and utility allowance shall be calculated according to the guidelines used by the Berkeley Housing Authority for the federal Section 8 Existing Housing Program.
2. For purposes of calculating rent, appropriate household size shall be determined by using the schedule contained in the administrative regulations developed for this chapter.

23.328.060 – Inclusionary Unit Requirements for Ownership Projects

A. General Sale Requirements. Inclusionary units in ownership projects shall be sold as set forth below:

1. Inclusionary units in ownership projects shall be sold at a price that is affordable to an appropriate-sized household whose income is no more than 80 percent of the area median income reported for the Oakland PMSA for households of that size, unless the cost of development of the unit is greater than the affordable sales price.
2. Appropriate sizes of household and the ratio of income to sales price for affordable units shall be defined by City Manager regulation.
3. Inclusionary ownership units shall be affirmatively marketed to tenants with Section 8 housing vouchers, and who are known to be interested in participating in the Section 8 homeownership program, or other equivalent program(s) of the City, which are in effect at the time the units are offered for sale by the developer.

B. Right of First Refusal and Purchaser Preference.

1. The applicant for a project other than a limited equity housing cooperative is required to give right of first refusal to purchase any or all new inclusionary units to the City or a City designee for a period of not less than 60 days as evidenced by issuance of a certificate of occupancy.
2. Should the City choose not to exercise its right of first refusal, it shall provide the applicant or owner with a purchaser or with a list of eligible purchasers within a period of not less than 60 days.
 - a. If the list is not provided, the applicant may select a low-income purchaser of the applicant's choice as long as the City verifies income eligibility and the unit is sold at an affordable price as described in this chapter.

- b. The City shall maintain a list of eligible low-income households and review the assets and incomes of prospective purchasers of the inclusionary units on a project-by-project basis and refer potential purchasers to the applicant or owner.
 3. All purchasers of inclusionary units shall be first-time home buyers from low, lower, or very low-income households.
 4. Purchasers are also required to occupy the unit except that such requirement may be waived with the approval of the City. In such cases, the unit shall be rented to a low, lower, or very low-income household at a rent affordable by such households.
 5. Preference of inclusionary units are as follows:
 - a. First preference will be given to eligible Berkeley residents.
 - b. Second preference will be given to eligible persons employed in Berkeley.
 - c. Other preferences may also be established administratively, with Planning Commission review, to help meet the City's Housing Element goals.
 6. The City shall advise all prospective purchasers on the City's eligibility list of the resale restrictions applicable to ownership of inclusionary units and shall provide purchasers with a Declaration of Restrictions applicable to ownership of inclusionary units.
 7. Purchasers of inclusionary units in limited equity cooperatives at time of first occupancy shall be first time home buyers with gross incomes no greater than 120 percent of the Oakland PMSA median.
 8. Subsequent purchasers of inclusionary units in limited equity cooperatives shall be first time home buyers whose yearly gross income is no more than 44 percent of the cost of a unit at the time of sale, provided that such income is no more than 110 percent of the Oakland PMSA median.
- C. **Resale Restrictions.** All inclusionary units developed under this chapter except for those in limited equity cooperatives are subject to the resale restrictions set forth below.
1. Home ownership inclusionary units offered for sale or sold under the requirements of this chapter shall be offered to the City or its designee for a period of at least 60 days by the first purchaser or subsequent purchasers from the date of the owner's notification to the City of intent to sell.
 2. The resale price of the unit shall not exceed the original price and customary closing costs, except to allow for:

- a. The lower of any increase of either the Consumer Price Index (CPI) for all urban consumers (as produced by the U.S. Bureau of Labor Statistics or its successor agencies) applicable to the Oakland PMSA; or
 - b. The increase as measured in household income guidelines published annually by the U.S. Department of Housing and Urban Development (or its successor agencies) for the Oakland PMSA.
3. The resale formula shall supersede and replace the earlier resale formula in deed restrictions executed between February 19, 1987 (adoption date for Ordinance 5791-N.S.) and May 23, 2006.
- a. The City, or its designee, shall notify each such owner of this change to the resale formula contained in their deed restriction within 60 days of adoption of this section.
 - b. All other terms and conditions of these deed restrictions shall remain in effect.
4. If the City does not act on its right of first refusal, the same procedure for new inclusionary units shall be used for selection of a purchaser.
5. The seller shall not levy or charge any additional fees nor shall any finders fee or other monetary consideration be allowed, other than customary real estate commissions if the services of a licensed real estate agent are employed.
6. The City or its designee may monitor resale of inclusionary units in limited equity cooperatives.
7. The City or its designee shall monitor the resale of ownership of inclusionary units.
8. The owners of any inclusionary units shall attach, lawfully reference in the grant deed conveying title of any such inclusionary ownership unit, and record with the County Recorder a Declaration of Restrictions provided by the City, stating the restrictions imposed pursuant to this chapter. Violators of any of the terms may be prosecuted by the City.

23.328.070 – Special Requirements for Avenues Plan Area

- A. **City Council Findings.** The City Council finds and determines that:
1. The Avenues Plan process identified several regional and Berkeley-specific barriers to housing development.
 2. Among the Berkeley-specific barriers were:
 - a. High land prices;
 - b. Lengthy, difficult, and uncertain permit processes; and
 - c. Insufficient financing, especially for affordable housing projects.

3. The Avenues Plan area represents a core area of Berkeley where it is particularly appropriate to encourage housing development because of the area's generally good access to workplaces, transit service, senior services, and retail stores.
4. The policy to encourage housing in this area is reflected in several documents, including, but not limited to, the City's Housing Element of the General Plan, the Concept Plan for the General Plan revision, the Downtown Plan, the South Berkeley Area Plan, the West Berkeley Plan, and the University Avenue statement of planning of goals.
5. Despite the City's support for housing in this area, new housing development here has been limited and this has hindered revitalization of the area.
6. As part of a multi-pronged experimental strategy to create incentives to encourage housing development, relaxation of various inclusionary zoning requirements within the Avenues Plan area as set forth in this section is appropriate.
7. These changes will also assist the buyer of below market rate inclusionary units, by allowing buyers to gain greater appreciation on their investments (market conditions permitting), making the investment more similar to conventional home ownership, while retaining the long term affordability of inclusionary units.
8. The changes will also encourage the construction of larger family-sized units, rather than the smaller units which have generally been built in multi-family developments.
9. These changes in inclusionary zoning will be followed by mechanisms to make more financing available and changes in zoning standards and permit processes.
10. The success of these changes will be reviewed annually until the five-year time period of the Avenues Plan experiment expires July 1, 2000.

B. Applicability.

1. This section shall remain in effect until July 1, 2000, at which time the Planning Commission, in consultation with other relevant commissions, shall re-examine its effectiveness. At that time the Commission may initiate modifications to, or an extension of, this section.
2. This section applies on the streets and the addresses listed in Table 23.328-1. The area of applicability consists of the entire C-DMU District and portions of the C-C, C-U, C-SA, C-W, C-N, R-2A, R-3, and R-4 districts as indicated in the table. Within this area, this section supersedes any inconsistent provisions in this chapter.

TABLE 23.328-1: AVENUE AREAS PLAN AREA: STREET AND ADDRESS RANGE

Street	Address
Acton	1940-2100
Addison	841-1145 odd, 1846 up
Adeline	All
Alcatraz Avenue	1700-1937
Allston Way	1901-1999 odd, 2000 up
Ashby Avenue	1830-2117, 2118-2198 even
Bancroft Way	2000-2300
Berkeley Square	All
Berkeley Way	1200-1800 even only, 1800-1920, 1920-2000 even only, 2000 up
Blake	1800-2100
Bonar	2000-2099
Bonita	1900-1950 even, 1950-1999
Browning	portion of West Campus only
California	1950-2009
Carleton	2000-2117
Center	All
Channing Way	1800-1850 even, 2000-2200, 2200-2300 odd
Cowper	All
Chestnut	1910-1950 even, 1950 up
Curtis	1900-2100, portion BUSD
Delaware	1041-1112, 2000-2200 even
Derby	2000-2113
Dover	All
Durant Avenue	2000-2300
Dwight Way	1800-1850 even, 1850-2200
Ellis	3124-3320 odd
Emerson	2000-2111
Essex	1901-2106
Fairview	1750 up

Street	Address
Fulton	2200-2400, 2400-2606 even
Grant	1800-1900 odd, 1900-2050, 2501-2599 odd
Harold Way	All
Harmon	1750 up
Harper	2901-3123 odd
Haste	1900-1998 even, 2000-2200
Hearst	1032-1200, 1800-2000 even, 2000-2200
Henry	1900 up
Jefferson Avenue	2000-2050
King	3221 up, odd
Kittredge	All
Martin Luther King Jr. Way	1900-2050, 2051-2199 odd, 2400-2450 even, 2450-2600, 2900 up
McGee Avenue	1900-2050
McKinley Avenue	2400-2500 odd
Milvia	1800-1950 odd, 1950-2199, 2200-2450 odd, 2450-2550, 2550-2900 odd only
Newbury	All
Oregon	2000-2122
Otis	All
Oxford	1800-2200
Parker	1800-1998 even, 2000-2200
Prince	1830-2105
Russell	1820-2000 even, 2000-2117
Sacramento	1900-2000, 2050-2100 even
San Pablo Avenue	1800-2199
Shattuck Avenue	1800 up
Shattuck Square	All
Stuart	2100-2107
Tremont	All
University Avenue	840 up

Street	Address
Walnut	1800 up
West	1950-1999
Whitney	All
Woolsey	1750-2110
6th	1916-2099
7th	1912-2099
8th	1910-2099
9th	1910-2099
10th	1908-2099
62nd	1700 up
63rd	1700 up

C. Definitions. For purposes of this section, the following definitions apply:

1. "Project" means the total number of housing units planned to be built on a single lot or on a grouping of contiguous, commonly owned, or controlled lots, regardless of whether those units are all built simultaneously.
2. "Affordable family-sized unit" means a unit which:
 - a. Is at least 850 square feet in area if two bedrooms or 1,100 square feet if three bedrooms or more;
 - b. Contains at least two lawful bedrooms;
 - c. Contains at least as many bathrooms as the corresponding two-bedroom market rate units; and
 - d. Is sold at a price that is affordable to an appropriate sized household whose income is no more than 80 percent of the metropolitan area median as reported by the Department of Housing and Urban Development (HUD).

D. Number of Inclusionary Units Required.

1. The number of inclusionary units required are shown in the Table 23.328-2.

TABLE 23.328-2: NUMBER OF INCLUSIONARY UNITS REQUIRED

Total Number of Units Built	Number of Required Inclusionary Units
10-14	1
15-19	2

Total Number of Units Built	Number of Required Inclusionary Units
Each additional multiple of 5 units	1 additional

2. For every five units which the applicant can show with bona fide sales documents have been sold at a price at or below that affordable to an appropriately sized household with an income of 100 percent of metropolitan area median, the applicant is released of the obligation to provide one inclusionary unit.
3. For every 10 affordable family-sized units, the applicant is released of the obligation to provide one inclusionary unit sold at a price at or below that affordable to an appropriately sized household with an income of 100 percent of metropolitan area median.
4. Within the area of applicability for that portion of a project wherein both the inclusionary and the non-inclusionary units contain at least as many bathrooms as the corresponding two-bedroom market rate units, only 10 percent of units must be inclusionary.

E. Pricing Requirements.

1. The first inclusionary unit in projects with units for sale shall be sold at a price that is affordable to an appropriately sized household whose income is no more than 80 percent of the Oakland PMSA median as reported by HUD.
2. Except as otherwise provided in Section 23.328.070.C.2.d above, the second inclusionary unit shall be sold at a price that is affordable to an appropriate sized household whose income is no more than 100 percent of the PMSA median and subsequent inclusionary units shall be sold alternately at these price levels.
3. Inclusionary sale units in projects in the Avenues Plan Area shall be sold at a price such that first year housing cost (including homeowners' association dues, if any) for a household of appropriate size with an income at the targeted level shall not exceed 33 percent of income.
4. This cost shall be calculated assuming that the buyer makes a 10 percent down payment, which shall not be considered a portion of the cost.
5. The housing cost shall be calculated for each project at the time the condominium association budget is approved by the California Department of Real Estate and shall not be changed after that time for that project, regardless of future changes in cost.
6. The resale price of inclusionary units within the Avenues Plan Area may increase at the rate of increase of the Consumer Price Index for all urban consumers (CPI-U) applicable to the metropolitan area.

23.328.080 – Administrative Regulations

The City Manager or the City Manager’s designee shall promulgate rules and regulations pertaining to this chapter, including but not limited to setting and administering gross rents and sale prices, requiring guarantees, entering into recorded agreements with applicants and taking other appropriate steps necessary to ensure that the required low income and very low income dwelling units are provided and occupied by low income households.

23.328.090 – Fees

The City Council, by resolution, may establish fees for the administration of this chapter.

23.330 DENSITY BONUS

Sections:

- 23.330.010– Chapter Purpose
- 23.330.020– Definitions
- 23.330.030– Application Requirements
- 23.330.040– Density Bonus Calculations and Procedures
- 23.330.050– Incentives and Concessions
- 23.330.060– Waivers and Reductions
- 23.330.070– Qualifying Units
- 23.330.080– Regulatory Agreements

23.330.010 – Chapter Purpose

The purpose of this chapter is to:

- A. Establish procedures and local standards to implement California Government Code Sections 65915–65918 consistent with local zoning regulations and development standards; and
- B. Provide special provisions consistent with the intent of State and local law. Unless otherwise noted, all section references in this chapter are to the California Government Code.

23.330.020 – Definitions

- A. **Terms Defined.** Terms used in this chapter are defined as follows:
 1. **Administrative Regulations.** Guidelines and procedures promulgated by the Planning Director that may be modified from time to time to effectively implement this ordinance.
 2. **Base Project.** The maximum allowable residential density on a housing development site pursuant to the applicable zoning district or, where no density standard is provided, as set forth in the Administrative Regulations before applying the density bonus.
 3. **Density Bonus.** Those residential units, floor area, rental beds or bedrooms added to the Base Project pursuant to the provisions of Government Code Section 65915 and this chapter.
 4. **Eligible Housing Development.** As defined in Government Code Section 65917.2.
 5. **Housing Development.** As defined in Government Code Section 65915(i).
 6. **Incentive and Concession.** An incentive or a concession as the terms are used in Government Code Section 65915 and in particular as defined in Section

65915(k) thereof. The City may request reasonable documentation from the applicant to support the request.

7. **Qualifying Unit.** A unit that is provided at a below market-rate rent or sales price as set forth in Government Code Section 65915 to receive a Density Bonus and/or Waivers and Reductions and/or Incentives and Concessions.
8. **Waiver and Reduction.** A waiver or a reduction as the terms are used in Government Code Section 65915 and in particular in Section 65915(e) thereof, and means any and all changes to or exemptions from physical lot development standards that are required to avoid precluding the construction of a Housing Development with Density Bonus Units, as set forth in Section 65915(e). The City may request reasonable documentation from the applicant to support the request.

B. **Terms Not Defined.** Terms not defined in this section shall be interpreted to give this chapter its most reasonable meaning and application, consistent with applicable state and federal law.

23.330.030 – Application Requirements

- A. **Required Information.** In addition to any other information required by the Zoning Ordinance, an application for a density bonus must include the following information:
 1. How the proposed project will satisfy the eligibility requirements of Section 65915 or 65917.2.
 2. For those districts without density standards, a density bonus schematic as set forth in the City of Berkeley Administrative Regulations.
 3. The requested density bonus pursuant to Municipal Code Section 23.330.040 (Density Bonus Calculations and Procedures).
 4. Any waivers and reductions that are sought under Section 65915.e that would be required to accommodate the housing development including the density bonus units.
 5. Any incentives and concessions that are sought under Section 65915.d accompanied by documentation of resulting cost reductions to provide for affordable housing costs.
 6. Any requested additional bonus units under Section 65915.n.
 7. Any requested parking reductions under Section 65915.p.
 8. Whether the applicant elects to receive a density bonus that is less than that mandated by Section 65915, including a density bonus of zero. In such cases, the applicant retains their entitlement to incentives and concessions.

9. Documentation of how a project complies with regulations regarding replacement units as described in Section 65915.c.3.

B. **Documentation Supporting Requests.** The City may request reasonable documentation from the applicant to support requested waivers/reductions and incentives/concessions.

23.330.040 – Density Bonus Calculations and Procedures

A. **Calculation.** Density bonuses must be calculated as set forth in Section 65915, 65917.2, and pursuant to the Administrative Regulations.

B. **Procedures.** Density bonus requests must accompany housing development permit applications and will be decided upon concurrent with the underlying permit for the project.

23.330.050 – Incentives and Concessions

A. **Calculation.** For purposes of this chapter, the number of incentives and concessions are counted as follows:

1. Any incentive and concession that would otherwise require discretionary approval by the Zoning Officer, the ZAB, or City Council of any single dimensional lot development standard, such as height or setbacks, or any single quantitative lot development standard, such as parking or open space, counts as one.
2. A proposed incentive and concession that would involve exceedance of a single physical lot development standard counts as one even if that exceedance would otherwise require more than one permit (e.g., extra height may require permits for height, floor area ratio, and/or number of stories but would count as one incentive and concession for height).
3. Where it is ambiguous as to whether a proposed incentive and concession involves one or more dimensional or quantitative lot development standards, the stricter interpretation applies, as determined by the review authority.

B. **Procedural Requirements.**

1. The City shall grant incentives and concession unless findings are made as set forth in Section 65915d.1.
2. The City is not required to deny a proposed incentive and concession solely because it can make a finding under Section 65915.d.1.
3. The City bears the burden of proof for the denial of a requested incentive and concession.

4. Unless denied under Section 65915, incentives and concessions are exempt from discretionary review of permits under the Zoning Ordinance, other than Design Review, and by law do not modify the CEQA review status of a project.

23.330.060 – Waivers and Reductions

- A. **Proposal.** An applicant may submit to the City a proposal for waivers and reductions of development standards that physically prevent construction of a housing development and density bonus units meeting the criteria of Section 65915.b.
- B. **Negotiated Process.** The City may negotiate changes to the requested waivers and reductions as part of the Use Permit and Design Review process, in coordination with the applicant, to address aspects of the project that may be of concern in the community or inconsistent with overarching principles of the General Plan, Zoning Ordinance, and Design Guidelines.
- C. **Denial.** The City may deny waivers and reductions for the reasons set forth in Section 65915.e.1.

23.330.070 – Qualifying Units

Qualifying units must meet the standards set forth in Section 23.328.040 (Requirements Applicable to All Inclusionary Units).

23.330.080 – Regulatory Agreements

Before issuance of a certificate of occupancy for a housing development that has received a density bonus, the applicant must enter into a regulatory agreement in a form provided by the City that implements Sections 65915–65918 and this chapter.

23.332 WIRELESS COMMUNICATION FACILITIES

Sections:

- 23.332.010– Chapter Purpose and Applicability
- 23.332.020– Definitions
- 23.332.030– General Requirements
- 23.332.040– Minimum Application Requirements
- 23.332.050– Location Requirements
- 23.332.060– Height Requirements
- 23.332.070– Design Requirements
- 23.332.080– Operation and Maintenance Standards
- 23.332.090– Public Information Requirements
- 23.332.100– Certification Requirements
- 23.332.110– Permits and Findings Required for Approval
- 23.332.120– Cessation of Operations

23.332.010 – Chapter Purpose and Applicability

A. Purpose. The purpose of this chapter is to:

1. Provide a uniform and comprehensive set of standards for the development, siting, installation, and operation of wireless telecommunications antennas and related facilities (“wireless telecommunications facilities”) for personal wireless services;
2. Foster an aesthetically pleasing urban environment, prevent visual blight, protect and preserve public safety and general welfare, and maintain the character of residential areas, including those adjacent to commercial areas and neighborhood commercial areas, consistent with the General Plan and adopted area plans and in compliance with applicable state and federal legislation; and
3. Prevent the location of wireless telecommunications facilities in Residential Districts unless:
 - a. The City is required to permit them in such locations to avoid violating the Telecommunications Act of 1996.
 - b. The wireless telecommunications facilities are designed to interfere as little as possible with the character of the neighborhood.
4. Establish and maintain telecommunications facilities that are components of a wireless telecommunications infrastructure designed to enhance the City’s emergency response network and not interfere with such emergency systems in violation of applicable federal or state regulations.
5. Establish a process for obtaining necessary permits for wireless telecommunication facilities that provides greater certainty to both applicants and

interested members of the public while ensuring compliance with all applicable zoning requirements.

6. Provide opportunities for further reduction in potential aesthetic or land use impacts of wireless telecommunications facilities as changes in technology occur.
7. Support the use of personal wireless services to enhance personal and public health and safety as well as the public welfare of Berkeley.

B. **Applicability.** The regulations in this chapter apply to all wireless telecommunications facilities for personal wireless services on property other than the public right-of-way in Berkeley.

23.332.020 – Definitions

A. **Terms Defined.** Terms used in this chapter are defined as follows:

1. **Antenna.** Any system of wires, poles, rods, panels, whips, cylinders, reflecting discs, or similar devices used for transmitting or receiving electromagnetic waves when such system is either external to or attached to the exterior of a structure, or is portable or movable. "Antenna" includes devices having active elements extending in any direction, and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be a part of the antenna.
2. **Antenna - Facade Mounted (also known as Building Mounted).** Any antenna, directly attached or affixed to the elevation of a building, tank, tower, or other structure.
3. **Antenna - Ground Mounted.** Any antenna with its base, whether consisting of single or multiple posts, placed directly on the ground or a single mast less than 15 feet tall and 6 inches in diameter.
4. **Antenna - Parabolic (also known as Satellite Dish Antenna).** Any device incorporating a reflective surface that is solid, open mesh, or bar configured that is shallow dish, cone, horn, bowl or cornucopia shaped and is used to transmit or receive electromagnetic or radio frequency communication/signals in a specific directional pattern.
5. **Approved Engineer.** Radio frequency engineer or licensed electrical engineer specializing in EMF or RFR studies approved by City of Berkeley staff to conduct analysis required pursuant to this chapter.
6. **Co-Location.** Location of any telecommunication facility owned or operated by a different telecommunication service provider on the same tower, building, or property.

7. **Personal Wireless Services.** Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services as defined in the Telecommunications Act of 1996.
8. **Readily Visible.** A wireless telecommunications facility is readily visible if it can be seen from street level or from the main living area of a legal residence in a residential district or from a public park by a person with normal vision, and distinguished as an antenna or other component of a wireless telecommunication facility, due to the fact that it stands out as a prominent feature of the landscape, protrudes above or out from the building or structure ridgeline, or is otherwise not sufficiently camouflaged or designed to be compatible with the appurtenant architecture or building materials. For purposes of this definition, "main living area" means the living and dining and similar areas of a dwelling, but not bedrooms, bathrooms or similar areas.
9. **Stealth Facility.** Any wireless telecommunications facility that is not readily visible because it has been designed to blend into the surrounding environment and is visually unobtrusive. Examples may include architecturally screened roof-mounted antennas, building-mounted antennas that are painted and treated as architectural element to blend with the existing building, monopoles that are disguised as flag poles or public art, or camouflaged using existing vegetation. A pole or tower with antennas that are flush with or do not protrude above or out from the pole or antenna is not considered to be a stealth facility unless the pole or tower is an existing pole or tower, existing utility pole or tower, or existing light standard or street light, or replacement thereof.
10. **Structure Ridgeline.** The line along the top of an existing roof or top of a structure, including existing parapets, penthouses, or mechanical equipment screens.
11. **Telecommunications.** The transmission, between or among points specified by the user, of information of the user's choosing, without change in the content of the information as sent and received as defined in the Telecommunications Act of 1996.
12. **Telecommunications Equipment.** Equipment, other than customer premises equipment, used by a Telecommunications Carrier to provide Telecommunications Services, and includes software integral to such equipment (including upgrades) that is not located, in whole or in part, in, above, or below Streets, Public Rights- of-Way or other Public Property.
13. **Telecommunications Service.** The offering of telecommunications for a fee directly or indirectly to any Person as defined in the Telecommunications Act of 1996.
14. **Telecommunications Tower.** Any mast, pole, monopole, lattice tower, or other structure designed and primarily used to support antennas. A ground or building

mounted mast greater than 15 feet tall and 6 inches in diameter supporting one or more antennas, dishes, arrays, etc. shall be considered a telecommunications tower.

15. Wireless Telecommunications Facilities. Personal wireless service facilities as defined in the Telecommunications Act of 1996, including, but not limited to, facilities that transmit and/or receive electromagnetic signals for cellular radio telephone service, personal communications services, enhanced specialized mobile services, paging systems, and related technologies. Such facilities include antennas, microwave dishes, parabolic antennas, and all other types of equipment used in the transmission or reception of such signals; telecommunication towers or similar structures supporting said equipment; associated equipment cabinets and/or buildings; and all other accessory development used for the provision of personal wireless services. These facilities do not include radio towers, television towers, and government-operated public safety networks.

B. Terms Not Defined. Terms not defined in this section shall be interpreted to give this chapter its most reasonable meaning and application, consistent with applicable state and federal law.

23.332.030 – General Requirements

- A. In addition to any other requirements imposed by this chapter, all wireless telecommunications facilities on property other than the public right-of-way in Berkeley shall be consistent with the following:
- B. The General Plan, adopted area plans, and all other applicable provisions of the Zoning Ordinance.
- C. Applicable regulations and standards of any other governmental agency with jurisdiction over the installation or operation of wireless telecommunications facilities including, but not limited to, the Federal Communications Commission, the Federal Aviation Administration, and the California Public Utilities Commission.
- D. Any applicable discretionary permit affecting the subject property, except to the extent the Zoning Officer or Zoning Adjustments Board (ZAB) may modify such requirements.

23.332.040 – Minimum Application Requirements

- A. **Section Purpose.** This section establishes limited additional application submittal requirements for wireless telecommunications facilities. The purpose of these requirements is to ensure that the purposes of this chapter are implemented to the extent permitted by the Telecommunications Act of 1996.

B. Application Requirements. In addition to meeting the standard application submittal requirements for permits shown in Chapter 23.404 (Common Permit Requirements), wireless telecommunication facility applications required this chapter shall include the following information:

1. Coverage Map and General Information.

- a. A narrative description and map showing the coverage area of the provider's existing facilities that serve customers in Berkeley and the specific site that is the subject of the application.
- b. A statement of the telecommunications objectives sought for the proposed location, whether the proposed facility is necessary to prevent or fill a significant gap or capacity shortfall in the applicant's service area, whether it is the least intrusive means of doing so, and whether there are any alternative sites that would have fewer aesthetic impacts while providing comparable service.
- c. An AUP application need not include information as to whether the proposed facility is necessary to prevent or fill a significant gap or capacity shortfall in the applicant's service area.

2. Technical Information.

- a. Copies of or a sworn statement by an authorized representative that the applicant holds all applicable licenses or other approvals to construct the proposed facility required by the Federal Communications Commission (FCC), the California Public Utilities Commission (PUC), and any other agency of the Federal or State government with authority to regulate telecommunications facilities.
- b. Documentation of or a sworn statement by an authorized representative that the applicant is in compliance with all conditions imposed in conjunction with such licenses or approvals, a description of the number, type, power rating, frequency range, and dimensions of antennas, equipment cabinets, and related wireless telecommunications facilities proposed to be installed, and engineering calculations demonstrating that the proposed facility will comply with all applicable FCC requirements and standards.

3. Visibility.

- a. A site plan, plans, and elevations drawn to scale.
 - i.* Plans shall include microcell, facade- or roof-mounted antennas, and all related equipment.
 - ii.* Elevations shall include all structures on which facilities are proposed to be located.

- b. A description of the proposed approach for screening or camouflaging all facilities from public view including plans for installation and maintenance of landscaping, sample exterior materials, and colors, and an explanation of the measures by which the proposed facility will be camouflaged or made not readily visible.
- c. Where any part of the proposed facility would be readily visible, the application shall include an explanation as to why it cannot be screened from view.
- d. A visual impact analysis including scaled elevation diagrams within the context of the building, before and after photo simulations, and a map depicting where the photos were taken.
- e. The Zoning Officer may require the submission of photo overlays, scaled models, renderings, or mockups to document the effectiveness of techniques proposed to minimize visibility.
- f. If a ground-mounted or freestanding tower is proposed, the application must include an explanation as to why other facility types are not feasible.

4. Peer Review.

- a. The application shall include sufficient information for an approved radio frequency engineer or licensed electrical engineer specializing in EMF or RFR studies (“approved engineer”) retained by the City to peer review the information provided in response to Sections 23.322.040.B.2 and 3.
 - b. The application shall include an agreement to pay the reasonable actual cost and a reasonable administrative fee for hiring an approved engineer to provide peer review.
 - c. Any proprietary information disclosed to the City or its engineer in confidence shall not be a public record and shall remain confidential and not be disclosed to any third party without the express consent of the applicant.
 - d. The City and/or its engineer shall return all proprietary information to the applicant and shall not retain any copies of such information once its decision is final.
- 5. Monitoring.** An agreement to pay a reasonable one-time or annual fee for independent monitoring as required by this chapter.
- 6. Statement of Financial Assurances.** A statement that before obtaining a building permit to erect or install the proposed facility, the applicant shall either secure a bond or provide financial assurances, in a form acceptable to the City Manager, for the removal of the facility if that its use is abandoned or the approval is otherwise terminated.

7. **Noise.** The Zoning Officer may require information concerning noise that might be generated by equipment associated with a wireless telecommunication facility, such as air conditioning equipment, if the physical circumstances of the proposed facility suggest that such noise may be detrimental.

23.332.050 – Location Requirements

- A. **Visibility.** A wireless communications facility may not be sited on or above a ridgeline or at any other location readily visible from a public park, unless ZAB makes the applicable findings required in Section 23.332.110.E (Findings).
- B. **Distance Between Freestanding Facilities.** A new freestanding facility, including towers, lattice towers, and monopoles, may not be located within 1,000 feet of another freestanding facility, unless appropriate stealth techniques have been used to minimize the visual impact of the facility to the extent feasible, and mounting on a building or co-location on an existing pole or tower is not feasible.

23.332.060 – Height Requirements

A. Measurement.

1. The height of a telecommunications tower is measured from existing grade below the center of the base of the tower to either:
 - a. The top of the tower; or
 - b. The tip of the highest antenna or piece of attached equipment if taller than the tower
2. The height of building-mounted antennas includes the height of that portion of the building on which the antenna is mounted.
3. In the case of “crank-up” or similar towers whose height is adjustable, the height of the tower is the maximum height to which it is capable of being raised.

B. Conformance with District Requirements.

1. No antenna telecommunications tower or facade-mounted antenna shall exceed or project above the height limits specified for the district in which the antenna is located.
2. Roof-mounted antennas affixed to an existing or proposed tower or pole shall not extend or project more than 15 feet above the height limit of the district.

23.332.070 – Design Requirements

In addition to all other requirements set forth in this chapter, all wireless telecommunication facilities shall meet the design requirements in this section.

A. **Order of Preference of Facility Type.** Based on potential aesthetic impact, the order of preference for facility type is as follows (ordered from most preferred to least preferred): microcell, facade-mounted, roof-mounted, ground-mounted, and freestanding tower.

B. **Visibility.**

1. All facilities shall be designed and located to minimize their visibility to the greatest extent feasible, considering technological requirements, by placement, screening, and camouflage.
2. The applicant shall use the smallest and least visible antennas feasible to accomplish the owner/operator's coverage or capacity objectives.
3. A wireless telecommunications facility that would be readily visible from the public right-of-way or from the habitable living areas of residential units within 100 feet of the facility shall incorporate appropriate techniques to camouflage or disguise the facility, and/or blend it into the surrounding environment, to the greatest extent feasible.
4. Facilities shall be compatible in scale and integrated architecturally with the design of surrounding buildings or the natural setting.

C. **Location.**

1. **View Corridor Impacts.** No readily visible antenna shall be placed at a location where it would impair a significant or sensitive view corridor except as provided for in Subsection (3) below.
2. **Facilities in Setbacks and Between Buildings and Rights-of-Way.** If telecommunications antenna or ancillary support equipment is located within any required setback or between the face of a building and a public right-of-way, permits are required as follows:
 - a. An AUP is required for microcell facilities and facilities that are completely subterranean.
 - b. A Use Permit is required for all other facilities.
3. **Roof- and Ground-Mounted Antennas.**
 - a. Roof-mounted antennas shall be located in an area of the roof where the visual impact is minimized.
 - b. Roof-mounted and ground-mounted antennas shall not be placed in direct line of sight of significant or sensitive view corridors or where they adversely affect scenic vistas unless the Zoning Officer or ZAB finds that the facility incorporates appropriate, creative stealth techniques to camouflage, disguise, and/or blend into the surrounding environment to the extent feasible.

- c. Roof mounted antennas shall be designed and sited to minimize their visibility and shall be no taller than necessary to meet the operator's service requirements.
- d. Where roof-mounted antennas are readily visible, confirmation of necessary height for service requirements, at the Zoning Officer's discretion, shall be based on independent analysis by an approved engineer retained by the City.

4. Satellite Dish or Parabolic Antennas.

- a. Satellite dish or parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.
- b. When screened from pedestrian-level view from the public right-of-way and not readily visible from any property that contains a legally established residential use, satellite dish or parabolic antennas may be located in any required setback area subject to the approval of a Use Permit.
- c. No satellite dish or parabolic antenna may exceed 39 inches in diameter unless the Zoning Officer or ZAB finds that a smaller antenna cannot feasibly accomplish the provider's technical objectives and that the facility will not be readily visible. The Zoning Officer may require that this determination be based on independent technical analysis by an approved engineer.

5. Monopoles and Lattice Towers. All monopoles and lattice towers shall be designed to be the minimum functional height and width required to support the proposed antenna installation unless a higher monopole or lattice tower will facilitate co-location or other objectives of this chapter.

D. Colors and Materials.

- 1. Colors and materials for facilities shall be chosen to minimize visibility.
- 2. All visible exterior surfaces shall be constructed of non-reflective materials.
- 3. Facilities shall be painted or textured using colors to match or blend with the primary background.

E. Lighting.

- 1. Facility lighting shall be designed to meet but not exceed minimum requirements for security, safety, or FAA regulations, and in all instances shall be designed to avoid glare and minimize illumination on adjacent properties.
- 2. Lightning arresters and beacon lights shall not be included in the design of facilities unless required by the FAA.
- 3. Lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers, and monopoles.

F. **Advertising.** No advertising shall be placed on telecommunications antennas or other equipment.

G. **Facility Design.**

1. All facilities shall be designed to be resistant to and minimize opportunities for unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous conditions, visual blight, or attractive nuisances.
2. The Zoning Officer or ZAB may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, antenna facilities have the potential to become an attractive nuisance.
3. The design of the fencing and other access control devices is subject to Design Review.

H. **Landscaping.**

1. Where appropriate and directly related to the applicant's placement, construction, or modification of wireless telecommunications facilities, the applicant shall maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, when used for screening unless appropriate replacement landscaping is approved through the Design Review process.
2. Additional landscaping shall be planted as needed to minimize the visual impact of the facility and, when feasible, to block the line of sight between facilities and adjacent residential uses and properties in a residential district.
3. The appropriate minimum size of new trees and shrubs shall be approved through the Design Review process.

I. **Projection of Equipment.** Facade-mounted equipment, not including any required screening, shall not project more than 18 inches from the face of the building or other support structure unless specifically authorized by the Zoning Officer or ZAB.

J. **Ancillary Support Equipment.**

1. In order of preference, ancillary support equipment for facilities shall be located either within a building or structure, on a screened roof top area or structure, or in a rear yard if not readily visible from surrounding properties and the public right-of-way, unless the Zoning Officer or ZAB finds that another location is preferable under the circumstances of the application.
2. Above ground and partially buried ancillary equipment, including support pads, cabinets, shelters, and buildings, shall be located where they will be the least visible from surrounding properties and the public right-of-way. Such equipment shall be designed to be architecturally compatible with surrounding structures and/or screened using appropriate techniques to camouflage, disguise, and/or

blend into the environment including landscaping, color, and other techniques to minimize their visual impact.

3. If the Zoning Officer determines that an equipment cabinet is not or cannot be adequately screened from surrounding properties or from public view or architecturally treated to blend in with the environment, the equipment cabinet shall be placed underground or inside the existing building where the antenna is located unless the Zoning Officer or ZAB finds that such placement is not feasible or consistent with the objectives of this chapter and other applicable requirements.

K. Co-Located Antennas.

1. When antennas are co-located, the City may limit the number of antennas with related equipment and providers located on a site and adjacent sites to prevent negative visual impacts associated with multiple facilities.
2. Architectural and other camouflaging treatment shall be coordinated between all users on a site.

L. Parking. Proposed facilities shall not reduce the number of available parking spaces below the amount required by the Zoning Ordinance.

M. Effect of Modification. At the time of modification or upgrade of facilities, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual and noise impacts as feasible.

23.332.080 – Operation and Maintenance Standards

All wireless telecommunication facilities shall at all times comply with the following operation and maintenance standards. Failure to comply shall be considered a violation of conditions of approval subject to the enforcement provisions in this chapter.

A. Emergency Sign Required.

1. Each owner or operator of a wireless telecommunications facility shall provide signage identifying the name and phone number of a party to contact in event of an emergency.
2. The design, materials, colors, and location of signs is subject to Design Review.
3. Contact information must be kept current.

B. Maintenance and Repair.

1. Wireless telecommunications facilities and related equipment shall be maintained in good repair, free from trash, debris, litter, graffiti, and other forms of vandalism.
2. Damage from any cause shall be repaired as soon as reasonably possible so as to minimize occurrences of dangerous conditions or visual blight.

3. Graffiti shall be removed from any facility or equipment as soon as practicable, and in no instance more than 48 hours from the time of notification by the City.
4. Vehicle and personnel access to sites for maintenance and repairs shall not be from residential streets or adjacent residential properties to the maximum extent feasible.

C. Landscaping.

1. The owner or operator of a wireless telecommunications facility shall be responsible for maintaining landscaping in accordance with the approved landscape plan and for replacing any damaged or dead trees, foliage, or other landscaping elements shown on the approved plan.
2. Amendments or modifications to the landscape plan must be submitted to the Zoning Officer for approval.

D. Operation Standards.

1. Each wireless telecommunications facility shall be operated in a manner that will minimize noise impacts to surrounding residents and persons using nearby parks, trails, and similar recreation areas.
2. Except for emergency repairs, testing and maintenance activities that will be audible beyond the property line shall only occur between the hours of 8:00 a.m. and 7:00 p.m. on Monday through Friday, excluding holidays.
3. All air conditioning units and any other equipment that may emit noise audible from beyond the property line shall be enclosed or equipped with noise attenuation devices to the extent necessary to ensure compliance with applicable noise limitations under Chapter 13.40 (Community Noise).
4. Backup generators shall only be operated during periods of power outages or for testing.
5. At no time shall equipment noise from any source exceed the standards shown in Chapter 13.40 (Community Noise).

E. Facilities Providing Service to the Government or General Public. All wireless telecommunications facilities providing service to the government or the general public shall be designed to meet the following requirements:

1. The exterior walls and roof covering of all above ground equipment shelters and cabinets shall be constructed of materials rated as nonflammable.
2. Openings in all above ground equipment shelters and cabinets shall be protected against penetration by fire and windblown embers to the greatest extent feasible.
3. Material used as supports for antennas shall be fire resistant, termite proof, and comply with all applicable regulations.

4. Telecommunications antenna towers shall be designed to withstand forces expected during earthquakes to the extent feasible.
 - a. Building-mounted facilities shall be anchored so that an earthquake does not dislodge them or tip them over.
 - b. All equipment mounting racks and attached equipment shall be anchored so that an earthquake would not tip them over, throw equipment off their shelves, or otherwise damage equipment.
 - c. All connections between various components of the wireless telecommunications facility and necessary power and telephone lines shall, to the greatest extent feasible, be protected against damage by fire, flooding, and earthquake.
5. Reasonable measures shall be taken to keep wireless telecommunication facilities in operation in the event of a natural disaster.

23.332.090 – Public Information Requirements

- A. **Map and Inventory.** The Planning and Development Department shall maintain a map and inventory of all existing and proposed wireless telecommunication sites, which shall be available to members of the public and other interested parties for inspection.
- B. **Inventory Information.** The inventory shall, at a minimum, include the following information:
 1. Address of site.
 2. Number, type, power rating, and frequency range of all antennas at the site.
 3. Name of telecommunications carrier owning, operating, or leasing each antenna at the site.
 4. Date of most recent certification.

23.332.100 – Certification Requirements

- A. **General.**
 1. No wireless telecommunications facility or combination of facilities shall at any time produce power densities that exceed the FCC's limits for electric and magnetic field strength and power density for transmitters.
 2. To ensure continuing compliance with all applicable emission standards, all wireless telecommunications facilities shall submit reports as required by this section.

3. The City may require, at the operator's expense, independent verification of the results of any analysis.
4. If an operator of a telecommunications facility fails to supply the required reports or fails to correct a violation of the FCC standard following notification, the Use Permit or AUP is subject to modification or revocation by the ZAB following a public hearing.

B. All Facilities.

1. Within 45 days of initial operation or modification of a telecommunications facility, the operator of each telecommunications antenna shall submit to the Zoning Officer written certification by a licensed professional engineer that the facility's radio frequency emissions are in compliance with the approved application and any required conditions.
 - a. The engineer shall measure the radio frequency radiation of the approved facility, including the cumulative impact from other nearby facilities, and determine if it meets the FCC requirements.
 - b. A report of these measurements and the engineer's findings with respect to compliance with the FCC's Maximum Permissible Exposure (MPE) limits shall be submitted to the Zoning Officer.
 - c. If the report shows that the facility does not comply with applicable FCC requirements, the owner or operator shall cease operation of the facility until the facility complies with, or has been modified to comply with, this standard.
 - d. Proof of compliance shall be a certification provided by the engineer who prepared the original report.
 - e. The City may require, at the applicant's expense, independent verification of the results of the analysis.
2. Before January 31 of every year, an authorized representative for each wireless carrier providing service in the City shall provide written certification to the City that each facility is being operated in accordance with the approved local and federal permits and shall provide the current contact information.
3. Once every two years, at the operator's expense, the City may conduct or retain an approved engineer to conduct an unannounced spot check of the facility's compliance with applicable FCC radio frequency standards.
4. If there is a change in the FCC's MPE limits for electric and magnetic field strength and power density for transmitters, the operator of each wireless telecommunications facility shall submit to the Zoning Officer written certification by a licensed professional engineer of compliance with applicable FCC radio frequency standards within 90 days of any change in applicable FCC radio

frequency standards or of any modification of the facility requiring a new submission to the FCC to determine compliance with emission standards.

5. If calculated levels exceed 50 percent of the FCC's MPE limits, the operator of the facility shall hire an approved engineer to measure the actual exposure levels.
6. If calculated levels are not in compliance with the FCC's MPE limit, the operator shall cease operation of the facility until the facility is brought into compliance with the FCC's standards and all other applicable requirements.
7. A report of these calculations, required measurements, if any, and the engineer's findings with respect to compliance with the current MPE limits shall be submitted to the Zoning Officer.
8. If the Zoning Officer at any time finds that there is good cause to believe that a telecommunications antenna does not comply with applicable FCC radio frequency standards, the Zoning Officer may require the operator to submit written certification that the facility is in compliance with such FCC standards.

C. Facilities Approved Before 2002.

1. The owner or operator of a wireless telecommunications facility that was approved by the City before January 17, 2002, shall submit to the Zoning Officer, within six months from the date of notification, written certification by an engineer that the facility's radio frequency emissions are in compliance with the approved application and any required conditions.
2. The engineer shall measure the radio frequency radiation of the approved facility, including cumulative impact from other nearby facilities, and determine if it meets the FCC requirements.
3. If the report shows that the facility does not comply with applicable FCC requirements, the owner or operator shall cease operation of the facility until the facility is brought into compliance.
4. To ensure the objectivity of the analysis, the City may require, at the applicant's expense, independent verification of the results of the analysis.

D. Nonconformities.

1. Any facility that was approved by the City before January 17, 2002, and which does not comply with this chapter on the date of its adoption shall be considered a lawful nonconforming use; provided, that the owner or operator submits the information required in 23.332.100.C (Facilities Approved Before 2002).
2. Roof-mounted or facade-mounted antennas proposed on an existing building, tower, or pole that is legal nonconforming in terms of height shall not extend or project more than 15 feet above the existing height of the building or structure.

3. A lawful nonconforming personal wireless service facility is subject to the requirements of 23.324 (Nonconforming Uses, Structures, and Buildings) except to the extent that they are modified as allowed by this chapter.

E. Violations.

1. Failure to submit the information required in this section is considered a violation of the Zoning Ordinance.
2. Any facility found in violation may be ordered to terminate operations by the ZAB following a duly noticed public hearing.

23.332.110 – Permits and Findings Required for Approval

A. Permit Required.

1. All wireless telecommunications facilities in any district that require a Use Permit or an AUP are subject to the permit findings in this section and Chapter 23.406 (Specific Permit Requirements).
2. Required findings in Chapter 23.406—Specific Permit Requirements shall not be based on aesthetic impacts if the proposed facility would not be readily visible, or on any other matter that the City is prohibited from considering by the Telecommunications Act of 1996.

B. Modifications. The Zoning Officer may approve minor modifications and aesthetic upgrades that do not increase the size or visibility of any legally established wireless telecommunication facilities without notice or hearing, subject to compliance with all existing conditions of approval.

C. Administrative Use Permit. The following wireless telecommunications facilities require an AUP:

1. Microcell facilities in any district.
2. Modifications to existing sites in Non-Residential Districts.
3. Additions to existing sites in Non-Residential Districts when the site is not adjacent to a Residential District.
4. All new or modified wireless communication facilities in Manufacturing Districts.

D. Use Permit. All new or modified wireless telecommunications facilities not listed in Subsection C (Administrative Use Permit) above require a Use Permit except when otherwise required by Section Chapter 23.404.070– Permit Modifications or this chapter.

E. Findings. The ZAB or Zoning Officer may approve a Use Permit or AUP under this chapter only if it makes all of the following findings:

1. The proposed project is consistent with the general requirements of this chapter and any specific requirements applicable to the proposed facility.
 2. The proposed antenna or related facility, operating alone and in conjunction with other telecommunications facilities, will comply with all applicable state and federal standards and requirements.
 3. One of the following is true:
 - a. The proposed facility is not readily visible.
 - b. It is infeasible to incorporate additional measures that would make the facility not readily visible.
 4. Except for microcell facilities, the facility is necessary to prevent or fill a significant gap in coverage or capacity shortfall in the applicant's service area and is the least intrusive means of doing so.
 5. The wireless carrier complies with Paragraphs (1) and (2) of Subsection 23.332.090.B (All Facilities). If a wireless carrier has not complied with those sections, the wireless carrier may become compliant by providing current contact information and certification statements for any sites which are not current.
- F. **Basis for Findings.** All findings must be based on substantial information in the record such as, where required, technical analysis by an approved radio frequency engineer, calculations by a state-licensed structural engineer, or other evidence.

23.332.120 – Cessation of Operations

- A. **General.** Within 30 days of cessation of operations of any wireless telecommunications facility approved pursuant to this chapter, the operator shall notify the Zoning Officer in writing.
- B. **Lapse of Permit.** The wireless telecommunications facility permit shall be deemed lapsed and of no further effect six months thereafter unless one of the following is true.
 1. The Zoning Officer has determined that the same operator resumed operation within six months of the notice.
 2. The City has received an application to transfer the permit to another operator.
- C. **Effect of Lapse.**
 1. No later than 30 days after a permit has lapsed, the operator shall remove all wireless telecommunication facilities from the site.
 2. If the operator fails to do so, the property owner shall be responsible for removal, and may use any bond or other assurances provided by the operator pursuant to the requirements of Section 23.332.050– Location Requirements to do so.

3. If such facilities are not removed, the site shall be deemed to be a nuisance pursuant to Chapter 23.414—Nuisance Abatement and the City may call the bond to pay for removal.

D. **Failure to Inform.** Failure to inform the Zoning Officer of cessation of operations of any existing facility constitutes a violation of the Zoning Ordinance and shall be grounds for any or all of the following:

1. Prosecution.
2. Revocation or modification of the permit.
3. Calling of any bond or other assurance secured by the operator pursuant to the requirements of Section 23.332.050— Location Requirements.
4. Removal of the facilities.

E. **Transfer of Ownership.**

1. Any FCC-licensed telecommunications carrier that is buying, leasing, or considering a transfer of ownership of an already approved facility, shall provide written notification to the Zoning Officer and request transfer of the existing Use Permit.
2. The Zoning Officer may require submission of any supporting materials or documentation necessary to determine that the proposed use is in compliance with the existing Use Permit and all of its conditions including, but not limited to, statements, photographs, plans, drawings, models, and analysis by a state-licensed radio frequency engineer demonstrating compliance with all applicable regulations and standards of the FCC and the California PUC.
3. If the Zoning Officer determines that the proposed operation is not consistent with the existing Use Permit, they shall notify the applicant who may revise the application or apply for modification to the Use Permit pursuant to the requirements of Chapter 23.404—Common Permit Requirements.

23.334 TRANSPORTATION DEMAND MANAGEMENT

Sections:

23.334.010– Chapter Purpose

23.334.020– Applicability

23.334.030– Transportation Demand Management Program Requirements

23.334.040– Monitoring, Reporting and Compliance

23.334.010 – Chapter Purpose

- A. **Purpose.** The purpose of this chapter is to establish a Transportation Demand Management (TDM) Program that supports:
1. Transportation Element goals to reduce vehicle trips, encourage public transit use and promote bicycle and pedestrian safety, and
 2. Climate Action Plan goals to reduce private vehicle travel and promote mode shift to more sustainable transportation options.

23.334.020 – Applicability

A. Applicability.

1. The requirements of this chapter apply to residential projects with ten or more units, including residential portions of mixed-use projects.
2. For projects that add ten or more units to an existing building or property, the requirements of this chapter apply to all of the units (existing and new) on the property.
3. The following types of projects are exempt from the requirements of this chapter:
 - a. Projects for which a building permit was issued before March 19, 2021.
 - b. Residential projects, including the residential portion of mixed-use projects or projects that add units to an existing building or property, in the C-DMU district;
 - c. Residential projects, including the residential portion of mixed-use projects, with the majority of the units subject to recorded affordability restrictions. If added to an existing building or property, the entire building or property is exempt.
4. Projects in the Southside Plan area are exempt from the transit benefit requirements in Section 23.334.030.B– Transportation Demand Management Program Requirements (Transit Benefit).

23.334.030 – Transportation Demand Management Program Requirements

- A. **Unbundled Parking.** Parking spaces provided for residents shall be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling units.
- B. **Transit Benefit.**
 - 1. At least one of the following transit benefits shall be offered, at no cost, to project residents for a period of ten years after the issuance of a Certificate of Occupancy.
 - a. A monthly pass for unlimited local bus transit service; or
 - b. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.
 - 2. For projects that include 99 dwelling units or fewer, the project shall provide one transit benefit per bedroom, up to a maximum of two benefits per dwelling unit. For projects of 100 dwelling units or more, the project shall provide one transit benefit for every bedroom in each dwelling unit.
 - 3. A notice describing these transportation benefits shall be posted in a location or locations visible to residents.
- C. **Real-Time Transportation Information.** Any project subject to this chapter shall provide publicly-available, real-time transportation information in a common area, such as a lobby or elevator bay, on televisions, computer monitors or other displays readily visible to residents and/or visitors. Provided information shall include, but is not limited to, transit arrivals and departures for nearby transit routes.

23.334.040 – Monitoring, Reporting and Compliance

- A. **Site Inspection Before Certificate of Occupancy.** For projects subject to this chapter, before issuance of a Certificate of Occupancy, the property owner shall facilitate a site inspection by Planning Department staff to confirm that the physical improvements required in Section 23.334.030.C– Transportation Demand Management Program Requirements (Real-Time Transportation Information) and 23.322.090– Bicycle Parking have been installed. The property owner shall also provide documentation that the programmatic measures required in 23.334.030.A (Unbundled Parking) and 23.334.030.B (Transit Benefit) will be implemented.
- B. **Regular TDM Compliance Reporting.** The property owner shall submit to the Planning Department TDM Compliance Reports in accordance with Administrative

Regulations promulgated by the Zoning Officer that may be modified from time to time to effectively implement this chapter.

- C. **Administrative Fees.** Property owners may be required to pay administrative fees associated with compliance with this chapter as set forth in the City's Land Use Planning Fees schedule.

DIVISION 4: PERMITS AND ADMINISTRATION

23.402: Administrative Responsibility

- 23.402.010– Purpose
- 23.402.020– Review and Decision-Making Authority
- 23.402.030– Planning and Development Department
- 23.402.040– Zoning Officer
- 23.402.050– Landmarks Preservation Commission
- 23.402.060– Design Review Committee
- 23.402.070– Zoning Adjustments Board
- 23.402.080– Planning Commission
- 23.402.090– City Council

23.404: Common Permit Requirements

- 23.404.010– Purpose and Applicability
- 23.404.020– Application Submittal
- 23.404.030– Application Review
- 23.404.040– Public Notice
- 23.404.050– Public Hearings and Decisions
- 23.404.060– Post-Decision Provisions
- 23.404.070– Permit Modifications
- 23.404.080– Permit Revocation

23.406: Specific Permit Requirements

- 23.406.010– Purpose
- 23.406.020– Zoning Certificates
- 23.406.030– Administrative Use Permits
- 23.406.040– Use Permits
- 23.406.050– Variances
- 23.406.060– Master Use Permits
- 23.406.070– Design Review
- 23.406.080– Modification of Development Standards in West Berkeley Plan Area
- 23.406.090– Reasonable Accommodations

23.408: Green Pathway

- 23.408.010– Purpose
- 23.408.020– Applicability
- 23.408.030– Eligibility Determination
- 23.408.040– Green Pathway Application

- 23.408.050– General Requirements
- 23.408.060– Requirements for Large Buildings and Hotels
- 23.408.070– Development Standards
- 23.408.080– Streamlined Permitting Process
- 23.408.090– Tolling
- 23.408.100– Compliance
- 23.408.110– City Manager Authority to Issue Regulations

23.410: Appeals and Certification

- 23.410.010– Chapter Purpose
- 23.410.020– Appeal Subjects and Jurisdiction
- 23.410.030– Filing and Processing of Appeals
- 23.410.040– Hearing and Decision
- 23.410.050– City Council Certifications

23.412: Zoning Ordinance Amendments

- 23.412.010– Purpose
- 23.412.020– Initiation
- 23.412.030– Application
- 23.412.040– Planning Commission Hearing and Action
- 23.412.050– City Council Hearing and Action
- 23.412.060– Findings for Approval
- 23.412.070– Limitations on Resubmittals after Denial
- 23.412.080– Zoning Map Amendment Notations

23.414: Nuisance Abatement

- 23.414.010– Purpose
- 23.414.020– Enforcement Responsibility
- 23.414.030– Violations a Misdemeanor
- 23.414.040– Nuisances Prohibited
- 23.414.050– City Attorney Action
- 23.414.060– Abatement Procedures
- 23.414.070– Statements of Violations
- 23.414.080– Remedies
- 23.414.090– Recovery of Costs
- 23.414.100– Private Right of Action

23.402 ADMINISTRATIVE RESPONSIBILITY

Sections:

- 23.402.010– Purpose
- 23.402.020– Review and Decision-Making Authority
- 23.402.030– Planning and Development Department
- 23.402.040– Zoning Officer
- 23.402.050– Landmarks Preservation Commission
- 23.402.060– Design Review Committee
- 23.402.070– Zoning Adjustments Board
- 23.402.080– Planning Commission
- 23.402.090– City Council

23.402.010 – Purpose

This chapter describes City roles and responsibilities when administrating the Zoning Ordinance.

23.402.020 – Review and Decision-Making Authority

- A. **Summary Table.** Table 23.402-1 summarizes the review and decision-making authority when processing permit applications and other requested approvals.
- B. **Meaning of Notations.** Authority roles as noted in Table 23.402-1 mean the following:
 1. “Recommend” means the authority reviews and makes a recommendation to a higher decision-making body.
 2. “Decision” means the authority has the power to approve, conditionally approve, or deny an application.
 3. “Appeal” means the authority has the power to hear an appeal of a decision by a lower review authority.
 4. “–” means the authority role has no role in the application.

TABLE 23.402-1: REVIEW AND DECISION-MAKING AUTHORITY

Type of Action	Zoning Ordinance Location	Role of Authority					
		Planning and Development Department	Zoning Officer	Design Review Commission	Zoning Adjustments Board	Planning Commission	City Council
Legislative Actions							
Zoning Ordinance Amendments	23.412	Recommend	–	–	–	Recommend	Decision
Permits							
Administrative Use Permits	23.406.030	–	Decision	–	Appeal	–	Appeal
Use Permits	23.406.040	Recommend	–	–	Decision	–	Appeal
Master Use Permits	23.406.060	Recommend	–	–	Decision	–	Appeal
Design Review							
Design Review	23.406.070	Recommend	–	Decision [1]	Appeal	–	Appeal
Staff-Level Design Review	23.406.070	–	Decision	Appeal	Appeal	–	Appeal
Flexibility and Relief							
Variances	23.406.050	Recommend		–	Decision	–	Appeal
Modifications to Development Standards in West Berkeley	23.406.080	Recommend	–	–	Decision	–	Appeal

Plan Area							
Reasonable Accommodations	23.406.090	–	–	See Note [2]	–	–	Appeal
Ministerial Actions							
Zoning Certificates	23.406.020	–	Decision	–	–	–	–
<p>Note:</p> <p>[1] Landmarks Preservation Commission approval required for projects that involve landmarks, structures of merit or buildings within a historic district</p> <p>[2] Either the Zoning Officer or Zoning Adjustments Board takes action on reasonable accommodation applications as described in Section 23.406.090.C.</p>							

- C. **Multiple Permit Applications.** For projects that include multiple permits, see 23.404.020.F– Application Submittal (Multiple Permit Applications).

23.402.030 – Planning and Development Department

The Planning and Development Department:

- A. Makes recommendations on requested permits and approvals as shown in Table 23.402-1: Review and Decision-Making Authority.
- B. Processes permit applications as provided in 23.404—Common Permit Requirements;
- C. Assumes responsibilities delegated by the Planning and Development Director and Zoning Officer; and
- D. Performs other duties as necessary to administer the Zoning Ordinance.

23.402.040 – Zoning Officer

- A. **Established.** The City Manager shall designate a Planning and Development Department employee to act as the Zoning Officer.
- B. **Responsibilities and Powers.**
 - 1. **The Zoning Officer:**
 - a. Acts as the Secretary to the Zoning Adjustments Board (ZAB) and the Design Review Committee (DRC);
 - b. Determines if land uses, structures, and activities conform with the Zoning Ordinance;
 - c. Serves as the review authority on applications as shown in Table 23.402-1: Review and Decision-Making Authority;
 - d. Interprets the meaning and applicability of the Zoning Ordinance;
 - e. Enforces the Zoning Ordinance in accordance with Chapter 23.414—Nuisance Abatement;
 - f. Issues administrative regulations and procedures for the administration of the Zoning Ordinance;
 - g. Refers persons to a conflict resolution or mediation service in accordance with Section 23.404.050.K– Public Hearings and Decisions (Use of Conflict Resolution and Mediation Service);
 - h. Requests legal opinions from the City Attorney on legal questions regarding pending applications; and

- i. Performs other duties to administer the Zoning Ordinance as assigned by the ZAB, Planning Commission, and City Council.
 2. The Zoning Officer may designate one or more Planning and Development Department staff to perform the duties described in Paragraph (1) above.
- C. **Duties as Secretary to ZAB and DRC.** As Secretary to the ZAB and DRC, the Zoning Officer or the Zoning Officer's designee shall:
1. Present to the ZAB and DRC applications for permits and other requested approvals;
 2. Prepare staff reports on applications;
 3. Advise the ZAB and DRC on the meaning and applicability of the Zoning Ordinance; and
 4. Transmit to the City Attorney requests for legal opinions on pending applications.

23.402.050 – Landmarks Preservation Commission

- A. **Design Review.** The Landmarks Preservation Commission (LPC) shall consider Design Review applications for projects that involve landmarks, structures of merit, or buildings within a historic district. The LPC shall either approve, modify, or deny such applications in accordance with Section 23.406.070– Design Review.
- B. **Other Responsibilities and Powers.**
1. As provided in Municipal Code Chapter 3.24 (Landmarks Preservation Commission), the LPC shall serve as the review authority for Structural Alteration Permits for designated landmarks, structures of merit, and buildings within a historic district.
 2. Municipal Code Chapter 3.24 identifies additional LPC responsibilities and powers which may affect land use and development in the city.

23.402.060 – Design Review Committee

- A. **Established.** The City shall establish and maintain a Design Review Committee (DRC) to review and approve the design of development projects in accordance with Section 23.406.070– Design Review.
- B. **Composition.**
1. The DRC shall consist of seven members, as follows:
 - a. Two members of the Zoning Adjustments Board (ZAB).
 - b. One member of the Landmarks Preservation Commission (LPC).
 - c. One member of the Civic Arts Commission (CAC).

- d. Three members of the public who are Berkeley residents.
2. DRC members from boards and commissions shall be appointed by their respective bodies, and members of the public shall be appointed by the ZAB.
3. DRC membership shall include at least two-licensed architects, one licensed landscape architect, and two laypersons (persons who are neither a planning or design professional nor an expert in the fields of land use planning, architecture, or landscape architecture).
4. The DRC shall elect a chairperson and vice chairperson

C. Responsibilities and Powers.

1. The DRC shall consider applications for Design Review and either approve, modify, or deny such applications in accordance with Section 23.406.070 (Design Review).
2. The DRC may make a recommendation on other matters upon request by the ZAB, Planning Commission, City Council, or other City boards or commissions. ZAB recommendations shall be limited to issues related to building and site design.

- D. **Procedures.** The DRC shall adopt rules of procedure and shall keep a record of its proceedings. A majority of the appointed members shall constitute a quorum.

23.402.070 – Zoning Adjustments Board

- A. **Established.** The City shall establish and maintain a Zoning Adjustments Board (ZAB) to administer the Zoning Ordinance as described in this section.

B. Composition.

1. The ZAB shall consist of nine members appointed by the City Council in accordance with Municipal Code Chapter 2.04 (City Council).
2. The ZAB shall elect a chairperson and vice chairperson.

C. Responsibilities and Powers.

1. The ZAB:
 - a. Serves as the review authority on applications as shown in Table 23.402-1: Review and Decision-Making Authority;
 - b. Hears appeals on decisions in accordance with Chapter 23.410—Appeals and Certifications;
 - c. Modifies previously approved permits in accordance with Section 23.404.070– Permit Modifications;

- d. Revokes Use Permits and Variances in accordance with Section 23.404.080–Permit Revocation;
 - e. Recommends actions to abate a public nuisance in accordance with Chapter 23.414—Nuisance Abatement;
 - f. Refers persons to a conflict resolution or mediation service in accordance with Section 23.404.050.K (Use of Conflict Resolution and Mediation Service);
 - g. Makes recommendations on other matters as requested by the City Council and Planning Commission; and
 - h. Adopts administrative regulations and procedures for the administration of the Zoning Ordinance.
2. The City Council may assign additional responsibilities to the ZAB as needed in the administration of the Zoning Ordinance.
- D. **Procedures.** The ZAB shall adopt rules of procedure and keep a record of its proceedings. A majority of the appointed members constitutes a quorum.

23.402.080 – Planning Commission

The Planning Commission:

- A. Recommends to the City Council amendments to the Zoning Ordinance in accordance with Chapter 23.412 (Zoning Ordinance Amendments);
- B. Approves revisions to Design Review guidelines and standards as provided in Section 23.406.070 (Design Review); and
- C. Performs other duties as provided in Municipal Code Chapter 3.28 (Planning Commission).

23.402.090 – City Council

The City Council:

- A. Takes action on proposed Zoning Ordinance amendments in accordance with Chapter 23.412 (Zoning Ordinance Amendments);
- B. Hears appeals on and certifies decisions in accordance with Chapter 23.410 (Appeals and Certification); and
- C. Assumes other responsibilities and take actions on other matters related to the Zoning Ordinance in accordance with the Municipal Code and state and federal laws.

23.404 COMMON PERMIT REQUIREMENTS

Sections:

- 23.404.010– Purpose and Applicability
- 23.404.020– Application Submittal
- 23.404.030– Application Review
- 23.404.040– Public Notice
- 23.404.050– Public Hearings and Decisions
- 23.404.060– Post-Decision Provisions
- 23.404.070– Permit Modifications
- 23.404.080– Permit Revocation

23.404.010 – Purpose and Applicability

This chapter establishes requirements that apply to all discretionary permits required by the Zoning Ordinance.

23.404.020 – Application Submittal

- A. **Application Submittal.** Applications for discretionary permits required by the Zoning Ordinance shall be submitted to the Planning and Development Department (“Department”).
- B. **Application Form and Contents.**
 1. Applications shall be made in writing on a form provided by the Department.
 2. Applications shall identify one person as the applicant.
 3. Applications shall be filed with all information and materials required by the Department. Depending on the type of project and required permit, required information and materials may include plans, renderings, models, photographs, material samples, reports, studies, and other items necessary to describe existing conditions and the proposed project.
 4. All submitted application materials become City property available to the public.
 5. The applicant is responsible for the accuracy and completeness of all information submitted to the City.
- C. **Eligibility for Filing.** An application may be filed by:
 1. The owner of the subject property;
 2. An agent with written authorization to represent the owner;
 3. A person under contract or with an exclusive option to purchase the property, with written consent of the current owner;
 4. A tenant with written consent of the owner or the owner’s authorized designee; or
 5. An agency lawfully instituting eminent domain proceedings.

D. Pre-Application Notice Posted by Applicant.

1. Before submitting an application for a discretionary permit, an applicant shall post a conspicuous notice of the proposed project readily visible from the street adjacent to the property's primary frontage.
2. The form and contents of the notice shall be as specified by the Department.

E. Application Fees.

1. When Required.

- a. An application shall be accompanied by all required fees listed in the current Fee Schedule approved by the City Council.
- b. The Department will process an application only if all required fees are paid, unless the City approves a fee waiver in accordance with Paragraph 2 (Fee Waivers) below. The Department will not deem an application complete if a required fee remains unpaid.
- c. Application fees are not required when the City is the applicant, or when a fee is waived under any other provision of the Municipal Code.

2. Fee Waivers. In addition to seeking a fee waiver or deferral under other provisions of the Municipal Code, an applicant may request a fee waiver or deferral as follows:

- a. An applicant shall submit to the Department a written request for a fee waiver or deferral before submitting the application. The request shall identify the amount of all Current Planning fees required for the project and describe the reasons why the fee waiver or deferral is necessary.
- b. The Director shall forward the request to the City Manager. The City Manager may approve the request upon finding that:
 - i.* The project will provide a significant public service or benefit, and
 - ii.* The waiver or deferral is necessary to make the project economically feasible to construct or establish.
- c. The City Manager shall notify the City Council of a decision to approve a requested fee waiver or deferral. At its discretion, the City Council may reverse the City Manager's decision and deny the request.
- d. If the request is approved, the applicant shall include with the application a letter from the City Manager authorizing the fee waiver or deferral. The Department will accept the application only if submitted with the City Manager's letter.

3. Refunds and Withdrawals.

- a. If an application is withdrawn before a decision, the applicant may be eligible for a refund of a portion of the fee.
- b. The amount of the refund shall be determined by the Zoning Officer based on the level of staff review conducted to date. Refunds of fees may not be made for denied applications.

F. Multiple Permit Applications.

1. **Zoning Ordinance Discretionary Permits.** The following procedures apply to proposed projects that require multiple discretionary permits under the Zoning Ordinance (e.g., Use Permit and Variance).
 - a. An applicant shall request City approval of all required permits as part of a single application unless the Zoning Officer waives this requirement.
 - b. The Department shall process multiple permit applications for the same project concurrently.
 - c. City action on projects requiring multiple permits shall occur as follows:
 - i.* Concurrently for permits reviewed by the same review authority (e.g., the Zoning Adjustments Board (ZAB) concurrently reviews and acts on a Variance and Use Permits required for a project); and
 - ii.* Sequentially for permits reviewed by different review authorities, as necessary (e.g., the City Council approves a Zoning Map amendment before ZAB action on a Use Permit).
2. **Design Review.** See Section 23.406.070 (Design Review) for the Design Review application process.
3. **Other Permits.**
 - a. Separate applications are required for permits required by portions of the Municipal Code outside of the Zoning Ordinance. The City will review and act on these applications in a separate but coordinated process from applications required under the Zoning Ordinance.
 - b. For example, if a project requires both a Use Permit approved by the ZAB and a Structural Alteration Permit (SAP) approved by the Landmarks Preservation Commission (LPC), then a separate SAP application is required. A SAP application is processed separately from the Use Permit applications and is scheduled for consideration at a hearing before the LPC.

23.404.030 – Application Review

A. Review for Completeness.

1. **Determination of Completeness.** Department staff shall determine whether an application is complete based on the Department application submittal checklist.
 2. **Request for Additional Information.** If it is not complete, the Department shall inform the applicant in writing as to the information and materials needed to complete the application.
 3. **Review Timeline.** The Department shall review and determine whether an application is complete within the timelines required by Government Code Section 65920 et seq. (Permit Streamlining Act).
- B. Record of Date of Complete Application.** The Department shall record the date the application is deemed complete.
- C. Referrals to Landmarks Preservation Commission.** At every regular Landmarks Preservation Commission (LPC) meeting, the Department shall provide the LPC a list of all pending permit applications.
- D. Project Evaluation and Staff Reports.**
1. **Staff Evaluation.** The Department shall review all applications to determine if they comply with the Zoning Ordinance, the General Plan, and other applicable City policies and regulations and state laws.
 2. **Staff Report.** For all applications requiring review by the ZAB and City Council, the Department shall prepare a staff report describing the proposed project and including, where appropriate, a recommendation to approve, approve with conditions, or deny the application.
 3. **Report Distribution.** The staff report shall be given to the applicant after it is provided to the review authority and before action on the application.
- E. Environmental Review.**
1. **CEQA Review.**
 - a. After acceptance of a complete application, the Department shall review the project in compliance with the California Environmental Quality Act (CEQA) and any adopted City CEQA guidelines.
 - b. The City shall determine the required level of environmental review (e.g., exemption, Negative Declaration) within the timeframe required by CEQA.
 2. **Special Studies Required.** Special studies, paid for in advance by the applicant, may be required to supplement the City's CEQA compliance review.
- F. Summary Denial of Applications.**
1. **Section Purpose.** This section describes the process by which the Zoning Officer may deny an application without notice or hearing ("summary denial") for

property subject to City action to abate a public nuisance or correct a Zoning Ordinance violation.

2. Applications Subject to Summary Denial.

- a. The Zoning Officer may summarily deny an application that would legalize a structure or use subject to a final City order under 23.414 (Nuisance Abatement).
- b. The Zoning Officer shall not summarily deny applications for permits that are necessary comply with any such order.

3. Factors to Consider. When deciding whether to deny such an application, the Zoning Officer shall consider:

- a. Whether the project will be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of the proposed use;
- b. Whether the project will be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City;
- c. Whether the applicant had an adequate opportunity to submit the application before the adoption of a final order under Chapter 23.414 (Nuisance Abatement); and
- d. The level of permit applied for (i.e., AUP, Use Permit, or Variance). Applications for Variances as a means of legalizing a violation are particularly disfavored.

4. Hearing Not Required. A public hearing is not required for the Zoning Officer to summarily deny an application.

5. Decision is Final. A decision by the Zoning Officer to summarily deny an application is final and may not be appealed.

23.404.040 – Public Notice

A. Notice of Administrative Decisions.

1. **When Required.** A Notice of Administrative Decision shall be given after the Zoning Officer's decision on an Administrative Use Permit (AUP).
2. **Content of Notice.** A Notice of Administrative Decision shall contain the following information:
 - a. A description of the proposed project in the AUP application.
 - b. The Zoning Officer's decision on the AUP application.

- c. The location and times in which the application may be reviewed by the public.
 - d. The procedure and time period in which the decision may be appealed to the Zoning Adjustments Board (ZAB).
 - e. The address where appeals may be filed.
3. **Timing of Notice.** A Notice of Administrative Decision shall be posted and mailed after the Zoning Officer's decision on the AUP.
4. **Notice Posting.** A Notice of Administrative Decision shall be posted at:
- a. Three visible locations in the vicinity of the subject property; and
 - b. The lobby of the Permit Service Center.
5. **Notice Mailing.**
- a. **Minimum Requirement.** A Notice of Administrative Decision shall be mailed to the following:
 - i.* Neighborhood and community organizations with a registered interest in receiving notice of the proposed project. See Section 23.404.040.E (Public Notice).
 - ii.* For projects in or adjacent to a Residential District, the owners and residents of the abutting properties.
 - iii.* For major residential additions in the R-1 district within the Hillside overlay zone, the owners and residents of properties within a 300-foot radius of the subject property.
 - iv.* The City of Berkeley Central Library.
 - b. **Additional Notice.** The Zoning Officer may include a larger area to receive a mailed notice when the proposed project may impact a larger area.
6. **Temporary Uses and Structures.** An AUP for a temporary use or structure is subject to the same notice requirements as other AUPs, except that notice shall be provided at least 14 days before the establishment of the temporary use or structure.
7. **Failure to Receive Notice.** The validity of the decision shall not be affected by the failure of any property owner, resident, or neighborhood or community organization to receive a mailed notice.

B. Public Hearing Notice.

- 1. **When Required.** Public notice shall be given as required by this section for:

- a. Zoning Adjustment Board (ZAB) hearings on Use Permits, Variances, and other decisions requiring a public hearing as specified in the Zoning Ordinance; and
 - b. City Council hearings on appeals of ZAB decisions.
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 project, including the number of dwelling units and floor area if applicable.
 - c. Maps, plans, and other information needed to describe and illustrate the proposed project, as determined necessary by the Department.
 - d. The environmental review status under the California Environmental Quality Act (CEQA).
 - e. Directions on how to obtain further information about the proposed project or hearing.
 - f. The location and times the application may be reviewed by the public.
 - g. Instructions to submit written comments on the proposed project.
3. **Timing of Notice.** Notices shall be posted and mailed at least 14 days before the hearing unless a longer notice period is required by state law. The Zoning Officer or ZAB may extend the notice period to a maximum of 30 days for applications of major significance.
4. **Notice Posting.** A notice of public hearing shall be posted:
- a. At three visible locations in the vicinity of the subject property:
 - b. At the Civic Center (Old City Hall); and
 - c. In the lobby of the Permit Service Center.
5. **Notice Mailing.**
- a. **Minimum Requirement.** A notice of public hearing shall be mailed to the following:
 - i. The owners and residents of the abutting and confronting properties.
 - ii. For the construction or demolition of one or more dwelling units, all property owners and residents within 300 feet on the same street or streets as the proposed project, including the abutting properties to the rear and within a 300-foot radius of the subject property.

- iii. For a relocated building, all property owners and residents within a 300-foot radius of both the existing and proposed new location of the building.
 - iv. Neighborhood and community organizations with a registered interest in receiving notice of the proposed project. See Section 23.404.040.E (Public Notice).
 - v. The City of Berkeley Central Library.
 - vi. Any person who has filed a written request for notice.
- b. **Additional Notice.** The Zoning Officer, ZAB, or City Council may include a larger area to receive a mailed notice when deemed appropriate.
- c. **Failure to Receive Notice.** The validity of the hearing shall not be affected by the failure of any property owner, resident, or neighborhood or community organization to receive a mailed notice.
6. **Master Use Permit.** For a Master Use Permit application, all businesses, residents, and property owners within 500 feet of the subject property shall receive a notice in addition to the notice recipients listed in Paragraph F.1 (Minimum Requirement) above.

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 14 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:
 - a. At least 14 days before the hearing; and then again
 - b. 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 than 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.

D. Public Notice for Design Review.

1. Staff-Level Design Review.

- a. **When Required.** Notice of Design Review shall be posted on or adjacent to the subject property at least 14 days before staff decision on Design Review application.
- b. **Notice Contents.** A Notice of Design Review shall contain the following information:
 - i.* A description of the proposed project.
 - ii.* Staff's anticipated decision on the Design Review application.
 - iii.* The location and times at which the application may be reviewed by the public.
 - iv.* The procedure and time period in which appeals to the Design Review Committee may be made.
 - v.* The address where such appeals may be filed.

2. Design Review Committee Meetings.

- a. **Meeting Agenda.** Agendas for Design Review Committee (DRC) meetings shall be posted at the Civic Center (Old City Hall) at least 72 hours before the meeting. The agenda must list all projects and discussion items to be considered at that DRC meeting.
- b. **Posting and Mailing Notice Not Required.** There is no requirement to mail notices or post a notice on a subject property in advance of the DRC meeting.

E. Registry of Organizations to Receive Notice.

1. The Department shall maintain a registry of neighborhood and community organizations to receive notices of public hearings and administrative decisions.
2. An organization shall be included in the registry shall submit a written request to the Department with the following information:
 - a. The name and address of the organization.
 - b. The names, addresses and phone numbers of the contact persons.
 - c. The geographic area of interest, shown on a map, for which notices will be sent to the organization.

3. It is the responsibility of the organization to inform the Department of any changes to the organization information identified in Paragraph (2) above.

23.404.050 – Public Hearings and Decisions

- A. **General.** Hearings shall be conducted in a manner consistent with the procedures approved by the review authority.
- B. **Time and Place of Hearing.** A hearing shall be held at the date, time and place for which notice was given, unless the required quorum of review authority members is not present.
- C. **Public Comment.** All hearings shall be open to the public, which have the opportunity to present their views and be heard in accordance with established procedures.
- D. **Quorum Required for Action.** A majority of the members of review authority must be present to take action on an application.
- E. **Continued Hearings.**
 1. Any public hearing may be continued from time to time without further notice, provided that the chair of the review authority announces the date, time, and place to which the hearing will be continued before the adjournment or recess of the hearing.
 2. Hearings may not be continued beyond the time limits for reviewing applications established by the Permit Streamlining Act, CEQA, and other state and federal laws unless the applicant expressly waives their rights relating to time limits for City action on a pending application.
- F. **Action.**
 1. After the close of public hearing, the review authority shall either approve, modify, or deny the application; continue the hearing to a future date; or refer the application to a mediation or conflict resolution service.
 2. If an application is referred to mediation, it must return to the review authority for action.
- G. **CEQA.** For projects not subject to a CEQA exemption, the review authority that approves the application takes final action on the project's CEQA determination. Final action on the CEQA determination, when required, shall occur before or concurrent with action on required permits. The City is not required to take final action on CEQA documents for denied applications.
- H. **Conditions of Approval.**

1. The review authority may attach conditions to any permit as it deems reasonable or necessary to achieve consistency with the General Plan and Zoning Ordinance, and to promote the public health, safety, and welfare.
2. As a condition of approval, the City may require an applicant to provide adequate financial security to guarantee the proper completion of an approved project.
3. Any approval may be subject to time limits.

I. Exceptions to Protect Constitutional Rights.

1. The ZAB or City Council may waive or limit the application of any Zoning Ordinance requirement to a development project if it finds that such requirement would result in a deprivation of the applicant's constitutional rights.
2. The burden of establishing that this exemption applies is on the applicant.

J. Use of Conflict Resolution or Mediation Service

1. **General.** The ZAB or Zoning Officer may refer an applicant and neighbors to a conflict resolution or mediation service to resolve conflicts over a proposed project.
2. **Eligible Services.** The ZAB or Zoning Officer may refer participating parties only to a conflict resolution or mediation service on a pre-approved list maintained by the City.
3. **Non-Binding Results.** The results of the conflict resolution or mediation service shall be non-binding on the final decision of the ZAB or Zoning Officer.
4. **Timing of Referral.** A referral may be made at any time after an application is deemed complete and before a final decision on the application.
5. **Additional Meetings Allowed.** Nothing in this section prevents the parties from meeting on their own at any time, with or without a mediator, in an attempt to resolve their differences.
6. **Early Discussions Encouraged.** The City encourages applicants and neighbors to discuss proposed projects early in the project-planning process so that differences may be resolved before the submission of an application.
7. **Payment for Service.** The applicant shall pay for the cost of conflict resolution or mediation service.
8. **Rules and Expectations.** Mediation and conflict resolution shall be conducted in accordance with the following provisions, a copy of which shall be made available to participating parties, before beginning the process.

- a. The goal of mediation is to seek a mutually agreeable result for the pending application.
- b. Participation for the applicant and others parties is strictly voluntary.
- c. All participants shall be made aware that there is no City requirement to come to an agreement.
- d. The ZAB or Zoning Officer shall direct the mediator as to what issues are to be addressed in the mediation process. The mediator may ask the ZAB or the Zoning Officer for a clarification of these issues from time to time.
- e. Department staff will be available to provide the mediating parties with information on rights and requirements prescribed by the Zoning Ordinance.
- f. The mediation service will provide the ZAB or the Zoning Officer with a report as to the result of the mediation within 45 days of the referral.
- g. If no agreement between the parties is reached within 45 days, or at any time that the mediator indicates that further meetings between parties is futile, the ZAB or Zoning Officer shall proceed with making a decision on the application. If the parties to the mediation/conflict resolution agree to continue the mediation process, the process may be extended for an additional time period not to exceed 45 days. Unless the applicant expressly waives their rights relating to time limits for City action on a pending application, in no case shall the time periods for mediation cause the application review period to exceed the time limits prescribed by state or federal law.
- h. Participants in mediation are advised that the ZAB or Zoning Officer cannot deny applicants the opportunity to develop their properties in a reasonable manner. The Zoning Ordinance requires that a project must meet all minimum requirements and any other applicable City ordinances and regulations.
- i. Results of the mediation will in no way be binding upon the City, and the ZAB or Zoning Officer may approve, deny, or modify any aspect of any mediated agreement.
- j. A participant who has indicated either agreement or disagreement with the results of a mediation is in no way bound by their decision, and may change their mind after the mediation.
- k. Participation in a mediated meeting, or agreement with the results of a mediation, affects in no way the statutory right of any party to appeal the ZAB or Zoning Officer decision.
- l. Only those aspects of a mediated agreement that are either incorporated into the approved plans of a project, or are made conditions of approval, shall be enforceable by the City.

K. Resubmittal of Same Application.

1. **Resubmittals Prohibited.** For twelve months following the denial of a discretionary permit application, the Department may not accept an application that is the same or substantially similar to the previously denied application, unless:
 - a. The application was denied without prejudice; and/or
 - b. Evidence or substantially changed conditions warrant resubmittal as determined by the Zoning Officer.
2. **Determination.** The Zoning Officer shall determine whether an application is the same or substantially similar to the previously denied application.
3. **Appeal.** The determination of the Zoning Office may be appealed to the ZAB, in compliance with Chapter 23.410 (Appeals and Certification).

L. Notice of ZAB Decisions.

1. A Notice of Decision shall be issued after the ZAB:
 - a. Approves, modifies, or denies a Use Permit or Variance application; or
 - b. Takes action on an appealed decision.
2. The Notice of Decision shall be issued before the ZAB's next regular meeting and shall describe the ZAB's action, findings, and applicable conditions.
3. The Notice of Decision shall be posted in the lobby of the Permit Service Center and shall be mailed to:
 - a. The applicant;
 - b. The appellant, if applicable;
 - c. Any person who has filed a written request for notice; and
 - d. The City of Berkeley Central Library.
4. The Notice of Decision shall be filed with the City Clerk and provided to the ZAB. The City Clerk shall make the notice available to interested members of the City Council and the public.

23.404.060 – Post-Decision Provisions

A. Effective Dates.

1. **Council Decisions.**
 - a. A City Council decision on a Zoning Ordinance Amendment and other legislative matters is final and becomes effective 30 days after the decision is made.

b. A City Council decision on permits, appeals, and other non-legislative matters is final and effective on the date the decision is made.

2. **Other Decisions.** The following applies to decisions of the Zoning Officer, Design Review Committee, and ZAB.

a. A non-appealable decision is final and effective on the date the decision is made.

b. An appealable decision is final and effective upon the completion of the appeal period for the decision if the decision is not appealed or certified by the City Council as provided in Chapter 23.410 (Appeals and Certifications).

B. Effect of Approval.

1. **Approval Limited to Proposed Project.** An approval authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.

2. **Replacement of Existing Uses.** When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

3. **Periodic Review and Reporting.**

a. The City may require periodic review of an approved project to verify compliance with permit requirements and conditions of approval.

b. The permit holder or property owner is responsible for complying with any periodic reporting, monitoring, or assessments requirement.

4. **Conformance to Approved Plans.**

a. **Compliance.** All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

b. **Changes.** Changes to an approved project shall be submitted and processed in compliance with Section 23.404.070 (Permit Modifications).

C. **Time Limits.** This subsection applies to approved permits that have not been exercised.

1. **Exercised Defined.**

a. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.

- b. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.

2. Expiration of Permit.

- a. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except as provided in Paragraph (b) below.
- b. A permit authorizing construction may not be declared lapsed if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction.
- c. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant.
- d. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).

- 3. **Effect of Lapsed Permit.** A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

- D. **Permits Remain Effective for Vacant Property.** Once a permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit.

23.404.070 – Permit Modifications

- A. **Purpose and Applicability.** This section establishes requirements and procedures for an applicant to request modification to an approved discretionary permit.
- B. **Permit Modification Required.** City approval of a permit modification is required to:
 - 1. Expand the floor or land area devoted to an approved use;
 - 2. Expand a customer service area and/or increase the number of customer seats;
 - 3. Change a building’s occupant load rating under the City’s Building Code so that it is classified in a different category with a higher occupancy rating;
 - 4. Increase the number of employees, beds, rooms or entrances;
 - 5. Establish a new product line, service, function or activity so as to substantially change the character of the use;
 - 6. Increase the volume of production, storage or capacity of any business manufacturing process or activity;

7. Change the type of alcohol sales and/or service; and
 8. Change, expand, or intensify a use or structure in any other manner or substantially alters the use or structure.
- C. **Review Authority.** A permit shall be modified by the review authority which originally approved the permit.
- D. **Public Notice and Hearing.**
1. **Exercised Permits.** Public notice and hearing in compliance with this chapter is required to modify a permit that has been exercised. See Section 23.404.060.C.1 (Exercised Defined).
 2. **Permits Not Yet Exercised.** For modifications to permits not yet exercised, the Zoning Officer or ZAB may act on the permit modification without a public hearing, or may set the matter for public hearing at its discretion. A noticed public hearing for a permit modification shall occur in compliance with this chapter.
- E. **New Building Permits Required.** A building permit may not be modified after construction is complete. New construction in accordance with a modified permit requires issuance of a new building permit.

23.404.080 – Permit Revocation

A. Purpose and Applicability.

1. This section establishes procedures for the City to revoke or modify a discretionary permit for completed projects due to:
 - a. Violations of permit requirements;
 - b. Changes to the approved project; and/or
 - c. Vacancy for one year or more.
2. Notwithstanding anything to the contrary, no lawful residential use can lapse, regardless of the length of time of the vacancy.
3. Expiration of permits not yet exercised are addressed in Section 23.404.060.C (Time Limits).

B. Initiation.

1. Proceedings to revoke or modify a permit may be initiated by Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.
2. Such referral shall identify the permit being considered, the property to which the permit applies, and the reason for the potential revocation or modification.
3. The Zoning Officer shall determine the public hearing date for all referrals.

C. ZAB Recommendation.

1. Public Hearing.

- a. The ZAB shall hold a public hearing on a permit revocation or modification in compliance with Section 23.404.050 (Public Hearings and Decisions). Notice shall be given in conformance with Section 23.404.040.B (Public Hearing Notice).
- b. The Department shall notify the current permit holder of the date, time, and location of the hearing.

2. ZAB Recommendation.

- a. The ZAB may recommend that the City Council revoke or modify the permit based upon the findings shown in Subsection E (Findings) below.
- b. The ZAB recommendation shall be:
 - i.* Based on the evidence, testimony, and facts presented to the ZAB at the hearing;
 - ii.* Supported by written findings; and
 - iii.* Issued within 35 days after the conclusion of the hearing.

3. **Final Decision.** A ZAB recommendation to deny or modify a permit shall be deemed a final decision if the permit holder consents to the recommendation within 10 days after the recommendation is made. In such a case, there shall be no City Council review and action on the matter.

4. **Report to City Clerk.** The Department shall file the ZAB's recommendation with the City Clerk within 14 days following the recommendation.

D. City Council Action.

1. **Report to Council.** The City Clerk shall present a ZAB recommendation to the City Council at soonest possible regular City Council meeting.

2. Public Hearing.

- a. If the ZAB recommends that the City Council revoke or modify the permit, the City Council shall hold a public hearing on the matter within 60 days after the ZAB issued its recommendation.
- b. If the ZAB does not recommend that the City Council revoke or modify the permit, the City Council may hold a public hearing on the matter at its discretion.

3. **Council Decision.** The City Council may modify or revoke the permit based upon the findings shown in Subsection E (Findings) below.

E. **Findings.** The City Council may revoke or modify a permit if any of the following findings can be made:

1. The permit holder has failed to comply with one or more of the conditions of approval.
2. The use or structure has been substantially expanded or changed in character beyond the approved project.
3. The property has been vacant for one year and the permit holder has not made a good faith effort to re-occupy the property with the use allowed by the approved permit.

G. **Notice of Decision.**

1. If the City Council revokes or modifies a permit, the City Clerk shall issue a Notice of Decision describing the City Council' s action, with its findings.
2. The City Clerk shall mail the notice to the permit holder, the property owner, the person who requested proceedings under this chapter (if any), and any person who requests such a notification.
3. The City Clerk shall file a copy of the Notice of Decision with the Department.

H. **Remedies.**

1. If the City revokes or modifies a permit, the City may impose any of the following remedies:
 - a. Enjoin the use in whole or in part.
 - b. Impose reasonable conditions upon any continued operation of the use, including existing non-conforming uses.
 - c. Require continued compliance with newly imposed any conditions.
 - d. Require the permit holder to guarantee compliance with newly imposed conditions.
2. If the permit holder fails to comply with newly imposed conditions, the City may impose additional conditions or enjoin the use in whole or in part.

I. **Recovery of Costs.**

1. **Permit Revocation and Modification.**
 - a. The City may recover the costs to administer permit revocation and modification proceedings in accordance with Sections 1.24.140 through 1.24.210 of Municipal Code Chapter 1.24 (Abatement of Nuisances), except as provided in Paragraph (b) below.

- b. The hearing provided by Section 1.24.180 (Service of Notice of Hearing) shall be held by the City Manager or his/her designee and may be appealed to the City Council within ten days after a decision is mailed. The Council shall hold a hearing on appeals as shown in Section 1.24.180.

2. Remedies.

- a. The City Council may, by resolution, establish reasonable hourly rates which may be charged for the time spent by City employees in the performance of their employment under this section. These hourly rates may be charged on an on-going basis for time spent with respect to any building, structure or use if the City Council takes any action authorized by Subsection G (Remedies) above. In this case, payment of costs charged under this paragraph shall be made a condition of continued operation of the building, structure, or use.
- b. Payments submitted under this Paragraph 2 (Remedies) shall be deducted from any payments submitted under previous Paragraph 1 (Permit Revocation and Modification).

23.406 SPECIFIC PERMIT REQUIREMENTS

Sections:

- 23.406.010– Purpose
- 23.406.020– Zoning Certificates
- 23.406.030– Administrative Use Permits
- 23.406.040– Use Permits
- 23.406.050– Variances
- 23.406.060– Master Use Permits
- 23.406.070– Design Review
- 23.406.080– Modification of Development Standards in West Berkeley Plan Area
- 23.406.090– Reasonable Accommodations

23.406.010 – Purpose

This chapter identifies procedures for specific types of permits required by the Zoning Ordinance. See Chapter 23.404 (Common Permit Requirements) for procedures that apply generally to all types of permits.

23.406.020 – Zoning Certificates

A. **Purpose.** A Zoning Certificate is a ministerial approval to:

1. Confirm that a structure or land use complies with the Zoning Ordinance; and
2. Establish a record of the initial establishment of a structure or land use.

B. **When Required.**

1. Unless specifically stated otherwise in the Zoning Ordinance, a Zoning Certificate is required to:
 - a. Construct, modify, repair, or move a structure; and/or
 - b. Establish, change, or expand a land use.
2. A Zoning Certificate is not required to:
 - a. Continue a previously-approved use or structure; or
 - b. Establish a temporary use or structure allowed by right as shown in 23.302.030.A (Permitted By Right).

C. **Applications.**

1. Zoning Certificate applications shall be made in writing on a form provided by the Department accompanied by all fees, information, and materials as required by the Department.
2. An application fee is not required where the legal use of property or building is unchanged and no building alterations occur.

- D. **Referrals.** The Zoning Officer may review applications referred from other City departments, including building permits and business licenses applications, and require that applicants submit Zoning Certificate applications and additional information as needed.
- E. **Review and Action.**
1. The Zoning Officer shall review a Zoning Certificate application to verify compliance with the Zoning Ordinance. If the project complies with all applicable requirements, the Zoning Officer shall approve the application.
 2. The Zoning Officer may attach to the Zoning Certificate project plans and other information as needed to document project compliance with the Zoning Ordinance.
- F. **When Exercised.** A Zoning Certificate is considered exercised when either:
1. The approved use is established at the subject premises; or
 2. In the case of construction, when a valid building permit, if required, is issued for the approved structure and construction has begun.
- G. **Scope of Approval.** A Zoning Certificate applies only to the structures and uses shown in the application specifically approved through the application. A Zoning Certificate does not in any way validate or constitute approval of any building, structure, use, subdivision, or lot line adjustment not shown in the application.
- H. **Appeals.** A decision on a Zoning Certificate may not be appealed.
- I. **Non-Compliance.** A Zoning Certificate is considered null and void if a structure or land use is established:
1. Contrary to the project description attached to a Zoning Certificate approval; and
 2. In a manner that violates the Zoning Ordinance or requires additional City approvals.

23.406.030 – Administrative Use Permits

- A. **Purpose.** An Administrative Use Permit (AUP) is a discretionary permit approved by the Zoning Officer to ensure that a proposed project will not adversely impact neighboring properties or the general public.
- B. **Review Authority.**
1. The Zoning Officer takes action on AUP applications.
 2. For a project with special neighborhood or community significance, the Zoning Officer may refer an AUP application to the Zoning Adjustments Board (ZAB) for

review and final decision. In such an instance, the ZAB shall review and act on the application following the requirements that apply to Use Permit applications.

C. When Required. An AUP is required for:

1. Land uses and development projects in each district as identified in Chapters 23.202 – 23.210 (Zoning Districts);
2. Temporary land uses and structures in accordance with Section 23.302.030.B (AUP Required); and
3. Other types of development projects when specifically required by the Zoning Ordinance.

E. Public and City Franchise Uses. The Zoning Officer may issue an AUP for any accessory building for public use or any use on City-owned property that is subject to franchise by the City. Such an AUP is subject to the same appeal and certification procedures as all other AUPs.

F. Public Notice and Hearing. See Section 23.404.040.A (Notice of Administrative Decisions).

H. Findings for Approval.

1. To approve an AUP, the Zoning Officer shall find that the proposed project:
 - a. Will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or neighborhood, of the proposed use; and
 - b. Will not be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.
2. To approve the AUP, the Zoning Officer must also make any other AUP findings specifically required by the Zoning Ordinance for the proposed project.
3. When taking action on an AUP, the Zoning Officer shall consider the following when making findings:
 - a. The proposed land use; and
 - b. The structure or addition that accommodates the use.
4. Required findings shall be made based on the circumstances existing at the time a decision is made on the application.
5. The Zoning Officer shall deny an AUP application if unable to make any of the required findings.

I. ZAB Notification. The Zoning Officer shall inform the ZAB of all AUP decisions.

23.406.040 – Use Permits

- A. **Purpose.** A Use Permit is a discretionary permit approved by the Zoning Adjustments Board (ZAB) to ensure that a proposed project will be designed, located, and operated to be compatible with neighboring properties and minimize impacts to the general public.
- B. **Review Authority.** The ZAB takes action on all Use Permit applications.
- C. **When Required.** A Use Permit is required for:
 - 1. Land uses and development projects in each district as identified in Chapters 23.202 – 23.210 (Zoning Districts).
 - 2. Other types of development projects when specifically required by the Zoning Ordinance.
- D. **Public Notice and Hearing.** The ZAB shall review and take action on a Use Permit application at a noticed public hearing in compliance with Chapter 23.404 (Common Permit Requirements).
- E. **Findings for Approval.**
 - 1. To approve a Use Permit, the ZAB shall find that the proposed project:
 - a. Will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or visiting in the area or neighborhood of the proposed use; and
 - b. Will not be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City.
 - 2. To approve the Use Permit, the ZAB must also make any other Use Permit findings specifically required by the Zoning Ordinance for the proposed project.
 - 3. When taking action on a Use Permit, the ZAB shall consider in its findings:
 - a. The proposed land use; and
 - b. The structure or addition that accommodates the use.
 - 4. Required findings shall be made based on the circumstances existing at the time a decision is made on the application.
 - 5. The ZAB shall deny a Use Permit application if it determines that it is unable to make any of the required findings.

23.406.050 – Variances

- A. **Purpose.** A Variance is a discretionary approval that allows for deviations from development standards and land use regulations in the Zoning Ordinance. The City

may grant a Variance only when the strict application of development standards creates a unique hardship due to unusual circumstances associated with the property.

B. When Allowed.

1. **Deviations Allowed with a Variance.** The ZAB may grant a Variance to allow for deviation from any provision in the Zoning Ordinance related allowed land uses, use-related standards, and development standards.
2. **Deviations Allowed with a Use Permit.** The ZAB may allow deviations from building setback, lot coverage, and on-site parking standards with a Use Permit instead of a Variance if:
 - a. The property is 30 feet or less from an open creek; and
 - b. Deviation from the standard is necessary to comply with Chapter 17.08 (Preservation and Restoration of Natural Watercourses).

C. Variances Not Allowed. A Variance may not be granted to allow deviation from a requirement of the General Plan.

D. Review Authority. The ZAB takes action on all Variance applications.

E. Public Notice and Hearing. The ZAB shall review and act on a Variance application at a noticed public hearing in compliance with Chapter 23.404(Common Permit Requirements).

F. Findings for Approval.

1. To approve a Variance, the ZAB shall make all of the following findings:
 - a. There are exceptional circumstances applying to the property which do not apply generally in the same district.
 - b. The Variance is necessary to preserve a substantial property right.
 - c. The Variance will not adversely affect the health or safety of persons residing or working near the property.
 - d. The Variance will not be materially detrimental to the public welfare or injurious to nearby property or improvements.
 - e. The Variance will promote the municipal health, welfare, and safety and benefit the city as a whole.
 - f. Any other Variance findings required by Zoning Ordinance can be made.
2. The ZAB shall deny a Use Permit application if it determines that it is unable to make any of the required findings.

23.406.060 – Master Use Permits

- A. **Purpose.** A Master Use Permit is a discretionary approval that allows flexibility in the amount of space occupied by individual tenants in a multi-user site. The purpose of a Master Use Permit is to:
1. Facilitate the implementation of the General Plan and area plans, including the West Berkeley Plan;
 2. Expedite the reuse of large and multi-user sites that might otherwise prove difficult to reuse;
 3. Facilitate the development and reuse of large, multi-user sites as integrated units in a stable and desirable environment to benefit occupants, the neighborhood, and the city as a whole.;
 4. Allow the review and analysis of impacts of multi-tenant projects in a coordinated, consolidated manner; and
 5. Improve Berkeley's competitiveness in attracting and retaining businesses by allowing businesses to quickly move into a site once overall development requirements have been established.
- B. **Review Authority.** The ZAB takes action on all Master Use Permit applications.
- C. **Voluntary Option.** A Master Use Permit is a voluntary option for property owners. If a property owner does not request and receive a Master Use Permit, individual tenants are subject to the Use Permit requirements that ordinarily apply as required by the Zoning Ordinance.
- D. **Where Allowed.** A property that meets the following criteria may apply for a Master Use Permit:
1. The property is located entirely or partially in one of the following districts:
 - a. Any Commercial District.
 - b. Mixed Use-Light Industrial (MU-LI).
 - c. Mixed Manufacturing (MM).
 - d. Manufacturing (M).
 2. The property will be occupied by three or more independently operating businesses.
- E. **Use Allocation.**
1. A Master Use Permit may allow by right more than one individual business and/or use on a site, provided that all other applicable requirements of the Zoning Ordinance are met.

2. A Master Use Permit shall state the square feet of buildings and land allocated for the following uses:
 - a. Industrial (manufacturing, wholesaling, and warehousing).
 - b. Office (excludes offices ancillary to other uses).
 - c. Commercial (retail, personal service, restaurants).
 - d. Live/work units.
 - e. Residential.

F. Allowed Variations.

1. The area of a building or site occupied by a use may exceed the Master Use Permit allocation with the permits shown in Table 23.406-1.

TABLE 23.406-1: ALLOWED VARIATION IN USE ALLOCATIONS

Variation in Use Allocation from Master Use Permit	Permit Required
10% or less	No Permit Required
More than 10% to 25%	AUP
More than 25%	UP(PH)

2. If the allocation of floor area for various uses as shown in Paragraph D (Where Allowed) above remains within the limits set forth in Table 23.406-1, lease spaces may be divided or aggregated in any manner as-of-right.

G. Public Notice and Hearing. The ZAB shall review and take action on a Master Use Permit application at a noticed public hearing in compliance with Chapter 23.404 (Common Permit Requirements).

H. Findings for Approval. To approve a Master Use Permit, the ZAB must find that approval will expedite occupancy and use of the site consistent with the purpose of the district, the General Plan, and any applicable area plan.

23.406.070 – Design Review

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

1. Encourage excellence in building and site design;
2. Ensure that development is compatible with its urban context; and

3. Provide a pleasing urban environment for persons living, working, or visiting the city.

B. When Required.

1. Design Review is required for:
 - a. Projects in all Non-Residential Districts.
 - b. Mixed use and community and institutional projects in the R-3 district within the Southside Plan area. See Figure 23.202-1: R-3 Areas Subject to Design Review; and
 - c. Commercial, mixed-use, and community and institutional projects in the R-4, R-SMU, and R-S districts.
2. As used in Paragraph (1) above, “project” means an activity requiring a building or sign permit that involves any of the following:
 - a. Modifying the exterior of an existing structure.
 - b. Additions to an existing structure.
 - c. Demolishing all or a portion of an existing structure.
 - d. Removing all or part of a building facade fronting the public right-of-way.
 - e. Constructing a new structure.
 - f. Installing or replacing a sign.

C. Design Review Process.

1. **Use Permit Projects.**
 - a. If a project requires a Use Permit, Preliminary Design Review is required before ZAB action on the Use Permit.
 - b. Review authority for Preliminary Design Review is described in Section 23.406.070.D (Review Authority).
 - c. The ZAB shall consider Preliminary Design Review recommendations when acting on the Use Permit. Before acting on the Use Permit, the ZAB may require further review by the Design Review Committee or Department staff as part of the Preliminary Design Review process.
 - d. As a condition of Use Permit approval, the ZAB may require Final Design Review to verify that the project conforms to design-related Use Permit conditions of approval or to review finalized project design details. The Design Review Committee conducts Final Design Review unless the ZAB directs staff to conduct Final Design Review as a condition of approval.

- e. If the ZAB requires Final Design Review, the City may issue a building permit only after Final Design Review is complete.

2. **Projects Not Requiring a Use Permit.**

- a. For a project that does not require a Use Permit, Department staff conducts Design Review before the Zoning Officer takes action on the required permit or approval.
- b. The Zoning Officer will consider the Design Review recommendations when acting on the required permit or approval. The Zoning Officer may require modifications to the project design as a condition of approval.
- c. The Department will verify conformance with Design Review recommendations and design-related conditions of approval when issuing a building permit, sign permit, or Zoning Certificate for the project. Final Design Review is not required.

D. **Review Authority.**

1. **Department Staff.** Department staff, under the supervision and authority of the Zoning Officer, conducts Design Review for projects that do not require a Use Permit, except when the Landmarks Preservation Commission (LPC) conducts Design Review as provided in Paragraph (3) below. Design review conducted by Department staff is referred to as “Staff-Level Design Review.”
2. **Design Review Committee.**
 - a. For projects requiring a Use Permit, Design Review is conducted by the Design Review Committee except as provided by Paragraph (b) below or when the Landmarks Preservation Commission (LPC) conducts Design Review as provided in Paragraph (3) below.
 - b. The Zoning Officer may determine that, due to unique circumstances, Department staff will conduct Design Review for a project requiring a Use Permit. The Zoning Officer, or Department staff on their behalf, shall confer with the Design Review Committee Chair before making such a determination and shall consider project size, visibility, and degree of sensitivity to the neighboring properties or the general public.
3. **Landmarks Preservation Commission.** The Landmarks Preservation Commission (LPC) conducts Design Review of projects which involve landmarks, structures of merit, or buildings within a historic district in accordance with Chapter 3.24 (Landmarks Preservation Commission). The LPC conducts Design Review for landmarked properties through the Structural Alteration Permit process.

E. **Zoning Officer and LPC Referrals.**

1. The Zoning Officer may refer any project subject to ZAB review to the Design Review Committee, staff, or the LPC for non-binding input on design-related issues. However, Design Review approval is required only for projects in Subsection B (When Required) above.
2. The LPC may refer any project subject to LPC review to the Design Review Committee for non-binding input on design-related issues.

F. Referrals to Landmarks Preservation Commission.

1. **Mandatory Referrals.** The following Design Review applications shall be referred to the LPC for review and comment before action on the application:
 - a. Projects that involve a building or structure listed on the State Historic Resources Inventory, or on the List of Structures and Sites adopted by the LPC under Chapter 3.24.
 - b. Projects that involve a building or a structure over 40 years old which may have special architectural or historical significance, as determined by the secretary to the LPC.
2. **Optional Referrals.** Department staff or the Design Review Committee may choose to refer the following projects to the LPC for review and comment before action of the application:
 - a. Projects that involve a building that is 40 years old or less that may have special architectural and/or historical significance, as determined by the secretary to the LPC.
 - b. Signs and awnings which involve a building or structure listed on the State Historic Resources Inventory, or on the LPC's current List of Structures and Sites.

G. Design Guidelines.

1. The City of Berkeley Design Guidelines provide direction to the City when reviewing proposed projects and assists applicants in planning and design of their projects. The Design Guidelines are intentionally generalized to encourage individual creativity. It is not expected that every project will respond to every guideline.
2. When conducting design review the Design Review Committee, the LPC, and staff shall use the Design Guidelines adopted by the Planning Commission as its official policy.
3. The Design Review Guidelines may be amended by the Planning Commission. The ZAB may comment to the Planning Commission on such amendments.

H. Scope of Design Review. Design Review considers only issues of building and site design and does not address land use issues. Site design included the

placement of buildings on a lot, vehicle access and circulation, pedestrian circulation, parking placement and design, landscaping, and other similar issues.

I. Design Review Timeline.

1. Design Review projects requiring an AUP or a Zoning Certificate shall be completed within 60 days of the date the application is deemed complete. If an applicant modifies the application, or if the applicant submits a written time extension, Department staff may extend the review period beyond 60 days.
2. Design Review for projects that require ZAB approval shall be completed within 60 days of submittal of complete final Design Review plans or within the time limit required by the Permit Streamlining Act, whichever is less.

J. Public Notice. Public notice of pending Design Review decisions shall be given in accordance with Section 23.404.040.D (Public Notice for Design Review).

K. Public Hearing. None required.

L. Design Review Committee Proceedings.

1. The Design Review Committee shall meet with the applicant and shall operate as a working group. Its meetings shall be open to the public.
2. Review of a project by the Design Review Committee may be continued as necessary subject to the timeline set forth in this chapter.
3. The Design Review Committee shall adopt its own rules and procedures.

M. Basis for Approval. The review authority shall consider a proposed project in relation to its surrounding context when acting on a Design Review application.

1. The review authority may approve a Design Review application only upon finding that the proposed project conforms with the City of Berkeley Design Guidelines and any City-adopted design standards and guidelines applicable to the project.
2. The review authority may consider public input during the Design Review process and may require modifications to the proposed project as a condition of Design Review approval.

N. Changes to Approved Projects.

1. **Design Review Modification (Minor Changes).** Before issuance of a building permit, Department staff may approve minor changes to a project with final Design Review approval if the change complies with all of the following criteria:
 - a. The change does not involve a feature of the project that was:
 - i.* A specific consideration by the review authority in granting the approval;
 - ii.* A condition of approval; or

- iii. A basis for a finding in the project CEQA determination.
 - b. The change is consistent with the spirit and intent of the original approval.
- 2. **Other Changes.** A project change that does not meet the definition of a minor change in previous Paragraph (1) shall be approved following the same procedures as the original Design Review approval.
- O. **Appeals.** Design Review decisions may be appealed in accordance with Chapter 23.410 (Appeals and Certification).
- P. **Review of Building Plans.** Department staff shall review all building permit applications subject to Design Review for compliance with the approved Design Review plans and conditions.

23.406.080 – Modification of Development Standards in West Berkeley Plan Area

- A. **Purpose.** A Modification of Development Standards is a discretionary approval to modify land use and development standards for development projects in the West Berkeley Plan area. The purpose of these modifications is to:
 - 1. Facilitate the implementation of the West Berkeley Plan;
 - 2. Facilitate the reuse of large and multi-user sites which might otherwise prove difficult to reuse;
 - 3. Facilitate the development and reuse of large, multi-user sites as integrated units in a stable and desirable environment to benefit occupants, the neighborhood, and the city as a whole; and
 - 4. Allow modifications of standards when:
 - a. The modifications serve the overall purposes of their districts and the West Berkeley Plan on large, complex sites; and
 - b. The design of the project is compatible with the design and character of the surrounding area.
- B. **Eligibility.** A project must satisfy the following criteria to be eligible for a Modification of Development Standards.
 - 1. More than 50 percent of the site area must be within a C-W, MU-LI, MM or M district.
 - 2. The site must be either:
 - a. At least five contiguous acres within the City boundary under a single ownership and not primarily being used by a use conforming to the West Berkeley Plan; or

- b. Less than five acres and forms a full city block bounded on all sides by public streets (exclusive of alleys), mainline railroad tracks, and/or the borders of the City.

C. **Allowed Modifications.** The ZAB may allow modifications to the following land use and development standards:

- 1. Permitted location of land uses within a building, site, or district.
- 2. Development standards including but not limited to, height, yards, open space, and parking.

D. **Project Phases.** The ZAB may approve a Modification of Development Standards application to allow a project to be built in phases.

E. **Limitation.** A Modification of Development Standards may not allow any modification that would violate Section 23.206.050 (Protected Uses).

F. **Review Authority.** The ZAB takes action on all Modification of Development Standards applications.

G. **Public Notice and Hearing.** The ZAB shall review and act on a Modification of Development Standards application at a noticed public hearing in compliance with Chapter 23.404 (Common Permit Requirements).

H. **Findings for Approval.**

- 1. To approve a Modification of Development Standards, the ZAB shall make all of the following findings:
 - a. The site is eligible for a Modification of Development Standards under Subsections B (Eligibility) and E (Limitation);
 - b. The project is likely to advance the purposes of the West Berkeley Plan and this section;
 - c. The project supports the attraction and/or retention of the types of businesses reflected in the purpose statement of the applicable district.
 - d. The modification is necessary and appropriate for the development of the proposed project.
- 2. To approve a Modification of Development Standards, the ZAB shall also make all required Use Permit findings in Section 23.406.040 (Use Permits) and any additional Use Permit findings required by the Zoning Ordinance for the use or development in the applicable district.

23.406.090 – Reasonable Accommodations

A. **Purpose.** This section establishes a process for the City to approve modifications to development regulations to support equal access to housing for persons with

disabilities. This process is established in accordance with the Federal Fair Housing Act, the Americans with Disabilities Act, and the California Fair Employment and Housing Act.

B. When Allowed.

1. Eligible Applicants.

- a. Any person with a disability, or their representative, may request reasonable accommodation as allowed by this section.
- b. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having this type of impairment, or anyone who has a record of this type of impairment.

2. **Eligible Request.** An eligible applicant may request a modification or exception to any provision in the Zoning Ordinance or Subdivision Ordinance (Title 21) that acts as a barrier to fair housing opportunities for persons with disabilities.

C. Review Authority.

1. **Zoning Officer.** The Zoning Officer takes action on reasonable accommodation applications unless the application is filed for concurrent review with a requested permit reviewed by the Zoning Adjustments Board (ZAB).
2. **Zoning Adjustments Board.** If a reasonable accommodation application is submitted concurrently with a permit application reviewed by the ZAB, the reasonable accommodation application shall be acted on by the ZAB.
3. **Referral to Zoning Adjustments Board.** The Zoning Officer may refer any reasonable accommodation application to the ZAB for review and final decision.

D. Application Requirements.

1. **Application.** A request for reasonable accommodation shall be submitted on an official City application form. No application fee is required. The application shall include:
 - a. The name, address, and telephone number of the applicant;
 - b. The address of the property for which the accommodation is requested;
 - c. The current use of the property.
 - d. The ordinance provision for which modification is requested;
 - e. Reason that the requested accommodation may be necessary to enable the person with the disability to use the dwelling; and
 - f. Other information requested by the Zoning Officer.

2. **Concurrent Applications.** If the project for which the reasonable accommodation is requested requires another planning permit (e.g., Use Permit), the reasonable accommodation application shall be filed concurrently with the related permit application.

E. Review Procedure.

1. **Independent Application.**

- a. For a Reasonable Accommodation application submitted independently from any other planning permit application, the Zoning Officer shall take action within 45 days of receiving the application.
- b. If necessary to reach a determination on the request for reasonable accommodation, the Zoning Officer may request further information from the applicant consistent with fair housing laws. If a request for additional information is made, the 45-day period to issue a decision is stayed until the applicant submits the requested information.

2. **Concurrent Application.** For a reasonable accommodation request submitted concurrently with another planning permit application, the reasonable accommodation request shall be reviewed and acted upon concurrently with the other application.

F. Action on Application.

1. **Decision.** The review authority shall make a written decision supported by findings and conclusions to approve, approve with conditions, or deny the application.
2. **Criteria.** The review authority shall consider the following factors when acting on the application:
 - a. Need for the requested modification.
 - b. Alternatives that may provide an equivalent level of benefit.
 - c. Physical attributes of and proposed changes to the property.
 - d. Whether the requested modification would impose an undue financial or administrative burden on the City.
 - e. Whether the requested modification would constitute a fundamental alteration of the City's zoning or subdivision regulations.
 - f. Whether the requested accommodation would result in a concentration of uses otherwise not allowed in a residential neighborhood to the substantial detriment of the residential character of that neighborhood.
 - g. Any other factor that may have a bearing on the request.

3. **Conditions of Approval.** The review authority may impose conditions of approval, including a condition to provide for the automatic expiration of the approval under appropriate circumstances (e.g., person with disability vacates home).
- G. **Appeals.** Reasonable accommodation decisions may be appealed in accordance with Chapter 23.410 (Appeals and Certification).

23.408 GREEN PATHWAY

Sections:

- 23.408.010– Purpose
- 23.408.020– Applicability
- 23.408.030– Eligibility Determination
- 23.408.040– Green Pathway Application
- 23.408.050– General Requirements
- 23.408.060– Requirements for Large Buildings and Hotels
- 23.408.070– Development Standards
- 23.408.080– Streamlined Permitting Process
- 23.408.090– Tolling
- 23.408.100– Compliance
- 23.408.110– City Manager Authority to Issue Regulations

23.408.010 – Purpose

- A. The purpose of this chapter is to implement the “Green Pathway” provisions of Measure R (2010) by providing a voluntary streamlined permit process for buildings that:
 1. Exceed the Green Building requirements applicable in the C-DMU district; and
 2. Provide extraordinary public benefits that could not otherwise be obtained, as specified in this chapter.
- B. This chapter establishes standards and requirements to clarify the City’s expectations for projects eligible for approval under this chapter and to ensure they will be designed and developed consistent with the Downtown Area Plan.

23.408.020 – Applicability

This chapter applies only to development projects in the Downtown Mixed Use (C-DMU) district that:

- A. Do not propose alteration or demolition of a historical resource as defined by the California Code of Regulations Title 14, Section 15064.5; and
- B. Will not have a significant adverse impact on any adjacent historical resource as defined by the California Code of Regulations Title 14, Section 15064.5.

23.408.030 – Eligibility Determination

- A. **RFD Purpose.** To determine if a project is eligible for processing under this chapter, an applicant shall submit to the City a Request for Determination (RFD). The RFD process applies to development projects that may be eligible for Green

Pathway processing notwithstanding anything to the contrary in Chapter 3.24 (Landmarks Preservation Commission).

B. RFD Submittal. A property owner or the owner's authorized agent shall request the Landmarks Preservation Commission (LPC) to determine whether the subject property, as well as each adjacent property, is an historical resource under the California Code of Regulations Title 14, Section 15064.5, by submitting a RFD. Potential historical resources include, but are not limited to, properties identified in any of the following sources:

1. Downtown Plan and EIR (Adopted 1990).
2. State Historic Preservation Office California Historical Resources Information System Historical Resources Inventory for Alameda County, City of Berkeley (Most Recent).
3. Any site identified as a potential resource needing further evaluation in the Downtown Area Plan Historic Resource Evaluation (Architectural Resource Group, 5 November 2008).

C. Processing an RFD.

1. The City shall not accept an RFD unless it is accompanied by proof that the applicant has posted a conspicuous notice on the subject property in a location that is readily visible from the street on which the structure or site has its major frontage. Such notice shall be in a form specified by the Zoning Officer.
2. Upon receiving a RFD, the City shall contract with an independent consultant from a list of qualified consultants approved by the LPC to prepare an historic resource assessment. The costs of the assessment shall be borne by the applicant. Alternatively, the applicant for a RFD may submit its own historic resource assessment, which shall then be subject to peer review by the City's consultant at the applicant's expense. If a property that is the subject of the RFD is not identified on any of the lists in Subsection B (RFD Submittal) above, the applicant's assessment may consist of a statement of why the applicant believes the property does not include an historical resource.
3. A RFD shall be deemed complete upon completion of the City consultants' historic resource assessment or peer review that determines that the applicant's submitted historic resource assessment is complete and accurate.
4. The LPC shall begin its consideration of whether to designate a property that is the subject of a RFD at a public hearing at the first regular meeting that occurs no less than 21 days after the RFD is complete, and shall take final action no later than 90 days after it is complete. Notice of the public hearing shall be provided as set forth in Municipal Code Section 3.24.140 (Designation proposal-- Public hearing notice requirements).

- D. **Timeline Extensions; Failure to Act.** Any of the timelines specified in this section may be extended at the written request of the applicant. Failure to act within any of the timelines set forth in this section, as they may be extended, shall constitute a decision to take no action to designate.
- E. **When Chapter 3.24 Applies.** If a property that is the subject of a RFD is not designated within the time limitations set forth in this section, Municipal Code Chapter 3.24 (Landmarks Preservation Commission) shall not apply to that property unless and until the earliest of the following occurs:
1. The expiration of two years from the date of any final action not to designate the property; or
 2. If an application under this chapter is submitted within that period, then either:
 - a. The application is withdrawn or denied; or
 - b. Any entitlement approved for the property expires, is cancelled or revoked, or for any other reason ceases to have effect.
- F. **Appeal and Certification.** Decisions by the LPC under this section shall be subject to appeal as set forth in Section 3.24.300 (Appeals--Procedures required--City Council authority), and certification as set forth in Section 3.24.190 (Council certification authorized when—Effect).
- G. **Effect of Determination** If a subject property is determined to be an historical resource as defined by California Code of Regulations, Title 14, Section 15064.5, it shall not be processed as a Green Pathway Project under this chapter.

23.408.040 – Green Pathway Application

- A. **Voluntary Option.** The Green Pathway authorized by this chapter is a voluntary development option under which applicants for development projects in the C-DMU district may waive certain rights and agree to certain obligations the City could not otherwise impose in return for certain processing benefits.
- B. **Application Contents.** An application for processing using the Green Pathway shall include the information otherwise required by the Zoning Ordinance for the entitlement sought, as well as:
1. The applicant's commitment to enter into binding agreements to satisfy all applicable Green Pathway requirements if the application is approved; and
 2. Proof that the LPC has not taken any action under Section 23.408.030 (Eligibility Determination) to designate the subject property as a structure of merit or landmark under Chapter 3.24 (Landmarks Preservation Commission).
- C. **Additive Requirements.** Except as expressly specified in this chapter, the requirements of this chapter are in addition to, and do not change or replace any

other requirements or standards of the Zoning Ordinance and Chapter 3.24 (Landmarks Preservation Commission).

23.408.050 – General Requirements

All Green Pathway projects are subject to the following requirements.

A. Affordable Units.

1. In addition to any other applicable affordable housing mitigation fee or requirement, at least 20 percent of the total units in a proposed multi-unit rental development shall be rented to very low income households whose annual income does not exceed 50 percent of the annual median income for Alameda County adjusted for household size based upon income levels published by the U.S. Department of Housing and Urban Development.
2. Rents for these units shall be set at prices affordable to very low income households, as defined by Section 50053 of the California Health and Safety Code for the life of the project.
3. As an alternative, an applicant may pay an in-lieu fee to the Housing Trust Fund as established by the City Council.

B. Density Bonus. The applicant shall waive, in writing, any rights under State Density Bonus Law, Section 65915 of California Government Code.

C. Local Hire Requirement.

1. The applicant shall sign an agreement that no less than 30 percent of a project's construction workers will be Berkeley residents.
2. If insufficient Berkeley residents are available to fulfill the 30 percent local hire requirement, then the next tier of residents shall come from the East Bay Green Corridor (which includes the cities of Albany, Alameda, Berkeley, El Cerrito, Emeryville, Hayward, Richmond, Oakland, and San Leandro).
3. If insufficient residents are available from the Green Corridor to fulfill the 30 percent local hire requirement, then residents of Alameda County will be used to fulfill the local hire requirements.
4. An applicant who agrees to require employment of Berkeley residents on another project the applicant is building or has approval to construct in Berkeley may count such employment toward the 30 percent local hire requirement by providing the same documentation the City requires to show compliance with paragraphs 1 and 2 of this subsection.

D. Use Regulations. Uses shall comply with the requirements and limitations of Section 23.204.130 (C-DMU Downtown Mixed-Use District).

23.408.060 – Requirements for Large Buildings and Hotels

In addition to the requirements of Section 23.408.050 (General Requirements), a Green Pathway project that includes either a hotel, a building over 75 feet in height, or a building with more than 100 units of housing, are subject to the following requirements.

A. Prevailing Wage.

1. All construction workers shall be paid state prevailing wage as established by the California Department of Industrial Relations.
2. Employees in hotels with a height over 75 feet shall be paid prevailing wages as established by the Department of Industrial Relations for hotel employees. If the Department of Industrial Relations does not establish prevailing wages for hotel employees, such employees shall be paid wages consistent with area mean wages per occupational category.

B. State Certified Apprenticeship Program. To the extent that enough qualified apprentices are reasonably available, no less than 16 percent of the construction workers shall be apprentices from a State Certified Apprenticeship program with a record of graduating apprentices.

C. Requirements Binding to Future Owners. As a condition of approval for any Green Pathway project subject to the requirements of this section, the owner shall enter into a written agreement that shall be binding on all successors in interest.

23.408.070 – Development Standards

Green Pathway projects shall comply with the applicable development standards in Section 23.204.130 (C-DMU Downtown Mixed-Use District) and the following additional requirements.

A. Building Setbacks Within View Corridors. To minimize interference with significant views, buildings that are 75 feet in height or less that are located on a corner lot at any intersection with University Avenue, Center Street, or Shattuck Avenue must include upper story setbacks as follows: any portion of a building between 45 feet and 75 feet must be set back from property lines abutting the street by at least one foot for every one foot by which the height exceeds 45 feet.

B. Street Wall Facade. Notwithstanding the Downtown Design Guidelines, the street wall facade shall be architecturally modulated by volumes that are 50 feet in width or less.

1. Smaller modulations may be incorporated within larger volumes.
2. Volumes along the street wall must be defined by structural bays and/or substantial reveals or offsets in the wall plane, and by changes in the rhythmic pattern of one or more of the following features:

- a. Window openings, oriel windows, or balconies.
- b. Awnings, canopies, or entrances.
- c. Arcades, columns, or pilasters.
- d. Materials and color.
- e. Other architectural features.

C. **Shadow Analysis.** A shadow analysis is required for buildings with heights between 60 and 75 feet. Applications shall include diagrams showing:

1. The extent of shading on public sidewalks and open spaces by a building 60 feet in height that complies with all applicable setback requirements on an area within a radius of 75 feet of the closest building wall that would be cast on March 21, June 21, December 21, and September 21 at the following times of day:
 - a. Two hours after sunrise;
 - b. 12 p.m. noon; and
 - c. Two hours before sunset.
2. Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will reduce the extent of shadowing of the proposed building to no more than 75 percent of the shadowing projected in previous Paragraph (1).

D. **Height Restrictions.** Consistent with the height standards of Measure R (adopted November 2, 2010), Section 4.B., as required by Section 3, Paragraph 12, Green Pathway Buildings of exceptional height are restricted as follows:

1. Two mixed-use buildings and one hotel/conference center in the Core, no more than 180 feet in height.
2. Two buildings, up to 120 feet in height in the Core or Outer Core.

E. **Mitigation Measures.** To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this chapter are subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.

23.408.080 – Streamlined Permitting Process

A. **Projects Involving Only Buildings at or Below 75 Feet in Height.**

1. **Projects Allowed By Right.** Notwithstanding anything to the contrary in the Zoning Ordinance, Green Pathway projects that do not involve either hotels, buildings over 75 feet, or buildings with more than 100 units of housing, shall be approved as a matter of right with a Zoning Certificate if they comply with the

applicable zoning requirements, standards, and requirements in this chapter and the Downtown Design Guidelines. Such projects are subject to Design Review under Section 23.406.070 (Design Review).

2. **Historic Resource.** If a proposed Green Pathway project is adjacent to a property that has been determined to be an historic resource under Section 23.408.030 (Eligibility Determination), the application for a Green Pathway project shall include an analysis demonstrating how the project meets the Secretary of the Interior's Standards for the Treatment of Historic Properties, including guidelines for the treatment of cultural landscapes with respect to such adjacent property.
 - a. After determining that the application is complete, the Zoning Officer shall forward the analyses described in Subsections A and B of Section 23.408.030 (Eligibility Determination) to the Secretary of the LPC to place on the agenda for the next regular meeting of the LPC that occurs no less than 21 days thereafter. The LPC shall then have 90 days in which to evaluate the submission and provide any comments to the Design Review Committee (DRC).
 - b. The DRC shall determine whether a project conforms to the Secretary of the Interior's Standards for the Treatment of Historic Properties and the associated guidelines, including the standards and guidelines for the treatment of cultural landscapes, with respect to adjacent historical resources. A project that clearly conforms to those standards and guidelines shall be considered to not have a significant impact on the historical resource. If the DRC determines that the proposed project would have a significant adverse impact on any adjacent historical resource and the project is not modified to avoid that impact, it shall not be processed as a Green Pathway project.
3. **Downtown Design Guidelines.**
 - a. Notwithstanding Section 23.406.070 (Design Review), the DRC shall determine whether the project conforms to the Downtown Design Guidelines and shall take final action on the project no later than 90 days from the date the application for a Green Pathway project, including for Design Review, is complete.
 - b. When determining whether a project subject to review under this section conforms to the Downtown Design Guidelines, the DRC shall treat applicable guidelines as standards.
 - c. The decision of the DRC regarding whether the project conforms to the Guidelines may be appealed directly to the City Council by filing an appeal stating the reasons for the appeal, along with the required fee, with the City Clerk within 14 days of the date of the DRC action. Design Review appeals shall be limited to design issues.

B. Projects Involving Buildings Over 75 Feet in Height.

1. Notwithstanding anything to the contrary in the Zoning Ordinance, the Zoning Adjustments Board (ZAB) shall take final action on a Green Pathway project over 75 feet in height or any other project not processed under previous Subsection (A) no later than 210 days after the application is complete, provided that this time limit shall be extended as necessary to comply with the California Environmental Quality Act (CEQA).
2. Such projects shall receive priority status to meet the review timeframes set forth in this section.

23.408.090 – Tolling

Timelines under this chapter shall be extended by the time taken for any proceedings pursuant to Chapter 3.24 (Landmarks Preservation Commission) relating to a Green Pathway project.

23.408.100 – Compliance

The applicable public benefit requirements of this chapter shall be included as conditions of approval and in a binding agreement for all Green Pathway projects.

23.408.110 – City Manager Authority to Issue Regulations

The City Manager or his/her designee may promulgate rules and regulations pertaining to this chapter, including, but not limited to

- A. Setting and administering gross rents and sale prices for below-market-rate units; and
- B. Specifying and requiring guarantees, including recorded agreements and other appropriate measures necessary or convenient to assure that required below-market-rate units are provided to and occupied by very low income households, and that other public benefits set forth in this chapter are secured.

23.410 APPEALS AND CERTIFICATIONS

Sections:

- 23.410.010– Chapter Purpose
- 23.410.020– Appeal Subjects and Jurisdiction
- 23.410.030– Filing and Processing of Appeals
- 23.410.040– Hearing and Decision
- 23.410.050– City Council Certifications

23.410.010 – Chapter Purpose

This chapter establishes procedures for the appeal and certification of City actions made when administering the Zoning Ordinance.

23.410.020 – Appeal Subjects and Jurisdiction

- A. **General.** City actions made when administering the Zoning Ordinance may be appealed as shown in Table 23.410-1: Appeal Subjects and Review Authority.
- B. **Code Enforcement Appeals.** See Municipal Code Chapter 1.24 (Abatement of Nuisances).
- C. **Landmarks Preservation Commission Appeals.** Decisions by the Landmarks Preservation Commission (LPC) when administering the Zoning Ordinance shall be appealed in accordance with Municipal Code Chapter 3.24 (Landmarks Preservation Commission).

TABLE 23.410-1: APPEAL SUBJECTS AND REVIEW AUTHORITY

ACTION	ORDINANCE SECTION	MAY BE APPEALED BY	IS APPEALED TO	MUST BE FILED WITHIN
Zoning Officer Actions				
AUP decisions	23.406.030	Any person	ZAB	20 days of posting Notice of Administrative Decision [1]
Staff-level Design Review	23.406.070	Any person	ZAB	14 days of posting the Notice of Design Review
Zoning Officer Reasonable Accommodation decisions [2]	23.406.090	Applicant	ZAB	14 days of mailing notice of decision
Termination of an AUP for sidewalk cafe seating	23.302.060	Permit holder	City Manager [3]	14 days of mailing of termination notice
Determination of lapsed permit	23.404.080	Permit holder	ZAB	20 days of mailing determination notice
Design Review Committee Actions				
Any Design Review action	23.406.070	Any person	ZAB [4]	14 days of Committee action
Zoning Adjustments Board Actions				
Use Permit decisions	23.406.040	Any person	City Council	14 days of mailing Notice of Decision
Variance decisions	23.406.050	Any person	City Council	14 days of mailing Notice of Decision
Decisions on an appeal	23.410	Any person	City Council	14 days of mailing Notice of Decision
<u>Notes:</u>				

ACTION	ORDINANCE SECTION	MAY BE APPEALED BY	IS APPEALED TO	MUST BE FILED WITHIN
<p>[1] The Zoning Officer may extend the appeal period for a longer time.</p> <p>[2] For reasonable accommodation requests associated with a project requiring a discretionary permit (e.g., Use Permit), the appeal procedures are the same as for the discretionary permit.</p> <p>[3] The City Manager’s decision is final. No further appeal is allowed.</p> <p>[4] Determinations of conformity with Downtown Design Guidelines for Streamlined Entitlement Process (Section 23.408.090.C) is appealed directly to the City Council.</p>				

23.410.030 – Filing and Processing of Appeals

- A. **General.** Appeals shall be filed and processed consistent with Chapter 23.404 (Common Permit Requirements) except as otherwise specified in this chapter.
- B. **Eligibility and Timing of Appeal.** Table 23.410-1 shows who is eligible to file an appeal and the date by which an appeal must be filed.
- C. **Appeal Fees.**
 - 1. Appeal fees shall be paid by the person filing the appeal (the appellant) except as provided in Paragraph (2) below.
 - 2. The City shall not charge a fee for appeals of projects denied due to conflicting decisions of the Zoning Adjustments Board (ZAB) and Landmarks Preservation Commission as described in Sections 3.24.200 through 3.24.240 of Chapter 3.24 (Landmarks Preservation Commission).
- D. **Form of Appeal.**
 - 1. An appeal shall be submitted to the Department or City Clerk in writing together with all required application fees and shall include the name and contact information of the appellant.
 - 2. The appeal application shall state the pertinent facts and the basis for the appeal.
 - 3. The whole decision or part of the decision may be appealed. If an appellant chooses, an individual finding, action, or condition may be appealed.
- E. **Appeal Subject – Design Review.** Appeals of the Design Review Commission and staff-level Design Review decisions are limited to design-related issues.
- F. **Takings Claims.**
 - 1. If a basis of an appeal is that the review authority's action constituted a taking of property under the California or United States Constitutions, that basis and all supporting evidence and argument shall be clearly stated as a basis of the appeal, or it shall be waived.
 - 2. If specific evidence is not presented as part of the appeal, the takings claim shall be waived, and appellant shall be deemed to have waived any claim to sworn testimony and cross-examination.
 - 3. This requirement shall apply to appeals on the basis that the review authority's decision or any condition of approval:
 - a. Denied the applicant any reasonable economic use of the subject property;
 - b. Was not sufficiently related to a legitimate public purpose;
 - c. Was not sufficiently proportional to any impact of the project; or

- d. For any other reason constituted a taking of property for public use without just compensation.
- G. **Copy to Zoning Officer.** If the appeal is submitted to the City Clerk, the City Clerk shall forward a copy to the Zoning Officer.
- H. **Notice to Applicant.** If the appeal is made by someone other than the applicant, the Department shall forward a copy of the written appeal to the applicant.
- I. **Effect of Appeal.** Once an appeal is filed, any action on the associated project is suspended until the appeal is processed and a final decision is made by the review authority.

23.410.040 – Hearing and Decision

A. Scheduling of Hearing.

1. Upon receiving an appeal, the Department shall schedule a hearing with the appropriate review authority.
2. For appeals of projects denied due to conflicting decisions of the ZAB and Landmarks Preservation Commission, the City Council shall schedule a hearing at the earliest feasible date after the final ZAB or Landmarks Preservation Commission action.
3. Any appeal of a Design Review decision shall be heard by the review body within 45 days of the appeal filing.
4. All appeals on a single project shall be considered together at the same hearing.

B. Public Notice. Notice of appeal hearings shall be given in accordance with Section 23.404.040 (Public Notice).

C. Staff Report and Materials. Before the hearing, Department staff shall prepare a staff report describing the appeal with relevant supporting materials.

D. Hearing Procedures. Public hearings on an appeal shall be conducted in accordance with applicable procedures in Section 23.404.040 (Public Notice).

E. De Novo Review.

1. The review authority may take action on the subject of the appeal or any aspect of the appealed project (de novo review), except as provided in Paragraph (2) below.
2. For appeals of Design Review decisions, the review authority may take action only on design-related issues.

F. **Public Comment.** The review authority may consider written correspondence concerning the appeal that is submitted after the appeal is filed, as well as any other information or evidence permitted under the Council Rules of Procedure.

G. **Action.** At the appeal hearing, the review authority may:

1. Continue the public hearing;
2. Modify, reverse, or affirm, wholly or partly, any decision, determination, condition or requirement of the prior review authority; or
3. For appeals to the City Council, remand the matter to the prior review authority to reconsider the application, and/or any revisions to the application submitted after the review authority's action.

H. **Criteria for Decision.**

1. When acting on an appeal, the appeal review authority shall use the same decision-making criteria and shall make the same findings as the prior review authority.
2. The review authority's action shall be based upon findings of fact about the appeal and shall identify the reasons for action on the appeal. In doing so, the appeal review authority may adopt the prior review authority's decision and findings as its own.

I. **Timeframe for Action – Use Permit and Variance Appeals.** If the City Council does not act on a Use Permit or Variance appeal within 30 days from the date the public hearing was closed by the City Council, then the decision of the ZAB shall be deemed affirmed and the appeal denied.

J. **Board Action on Remand.**

1. A ZAB decision on an appeal remanded by the City Council may be appealed in the normal manner unless otherwise directed by the City Council.
2. If the ZAB does not act within 90 days after an appeal is remanded by the City Council, the original appeal of the ZAB's decision shall be placed back on the City Council agenda in the same manner as a new appeal.

K. **Effective Date of Appeal Decisions.**

1. **City Council Decision.** The City Council's decision on an appeal is final and becomes effective on the date the decision is made.
2. **ZAB Decisions.** Decisions on appeals made by the ZAB becomes effective 14 days after the mailing of the Notice of Decision.

23.410.050 – City Council Certifications

- A. **Purpose.** Certification is an action by the City Council to review a decision by the ZAB or LPC.
- B. **Eligible Actions.** The City Council may certify the following actions for review:
 - 1. Decisions of the ZAB on Use Permit and Variance applications.
 - 2. Decisions of the LPC on historic resource designations as provided in Section 3.24.190 (Council certification authorized when—effect).
- C. **Initiation.**
 - 1. Any Council member may initiate the certification process by submitting a written request to the City Clerk within:
 - a. 14 days from the mailing of the Notice of Decision for ZAB decisions; and
 - b. 15 days from the mailing of the Notice of Decision for LPC decisions.
 - 2. Certification shall not require any statement of reasons or justification and shall not represent opposition to or support of an application.
- D. **Effect of Certification.** After initiating certification, any action on the associated project is suspended until City Council review is completed.
- E. **Hearing and Decision.** Certified actions shall be reviewed by the City Council at a noticed public hearing in the same manner as for appeals as described in Section 23.410.040 (Hearing and Decision).

23.412 ZONING ORDINANCE AMENDMENTS

Sections:

- 23.412.010– Purpose
- 23.412.020– Initiation
- 23.412.030– Application
- 23.412.040– Planning Commission Hearing and Action
- 23.412.050– City Council Hearing and Action
- 23.412.060– Findings for Approval
- 23.412.070– Limitations on Resubmittals after Denial
- 23.412.080– Zoning Map Amendment Notations

23.412.010 – Purpose

This chapter establishes procedures for amending the Zoning Ordinance, including the Zoning Map and Zoning Ordinance text. All amendments to the Zoning Ordinance shall be processed as set forth in Government Code Section 65853 et seq. and as specified in this chapter.

23.412.020 – Initiation

- A. **Zoning Map Amendment.** A Zoning Map amendment may be initiated by:
 1. Resolution of the City Council or Planning Commission; or
 2. Application of one or more owners of the property for which the amendment is sought.
- B. **Zoning Ordinance Text Amendment.** A Zoning Ordinance text amendment may be initiated by resolution of the City Council or Planning Commission.

23.412.030 – Application

An application for a Zoning Map amendment submitted by a property owner shall be filed and reviewed in compliance with Section 23.404.020 (Application Submittal). The application shall include the information and materials required by the Planning and Development Department, together with all required application fees.

23.412.040 – Planning Commission Hearing and Action

- A. **Public Hearing.** The Planning Commission shall hold a public hearing on a proposed Zoning Ordinance Amendment in compliance with Section 23.404.040 (Public Notice).
- B. **Planning Commission Recommendation.**
 1. The Planning Commission may recommend that the City Council approve, conditionally approve, or deny the proposed Zoning Ordinance Amendment based upon the findings specified in Section 23.412.060 (Findings for Approval).

2. A recommendation for approval shall be made by a majority vote of the total membership of the Planning Commission.
3. If the Planning Commission recommends denial of a Zoning Map amendment, the City Council is not required to take further action on the proposed amendment unless the City receives a written request from an interested party for a City Council hearing within ten days after the Planning Commission action.

C. Recommendation Expiration.

1. A Planning Commission recommendation shall expire and have no further effect if the City Council takes no action on a proposed Zoning Ordinance Amendment within six months after the date the Planning Commission approved the recommendation.
2. The City Council may extend the effective period of a Planning Commission recommendation for up to an additional 18 months.

23.412.050 – City Council Hearing and Action

A. **Public Hearing.** After receiving the Planning Commission's recommendation, the City Council shall hold a public hearing on the proposed Zoning Ordinance Amendment in compliance with Section 23.404.050 (Public Hearings and Decisions).

B. Council Action.

1. **General.**

- a. The City Council may approve, conditionally approve, or deny the proposed Zoning Ordinance Amendment based upon the findings specified in Section 23.412.060 (Findings for Approval).
- b. The action by the City Council shall be made by a majority vote of the total membership of the City Council.

2. **Referral to Planning Commission.**

- a. If the City Council proposes to adopt a substantial modification to the Zoning Ordinance Amendment not previously considered by the Planning Commission, the proposed modification shall be first referred to the Planning Commission for its recommendation.
- b. The failure of the Planning Commission to report back to the City Council within 40 days after the reference, or within the time set by the City Council, shall be deemed a recommendation of approval.

C. **Effective Date.** Zoning Ordinance Amendments become effective 30 days after the adoption of the ordinance by the City Council.

23.412.060 – Findings for Approval

The City Council may approve a Zoning Ordinance Amendment only if all of the following findings are made:

A. Findings for all Zoning Ordinance Amendments.

1. The proposed amendment is consistent with the General Plan and any applicable specific plan or area plan.
2. The proposed amendment is consistent with state law.
3. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare.

B. Additional Finding for Zoning Ordinance Text Amendments. The proposed amendment is internally consistent with other applicable provisions of the Zoning Ordinance.

C. Additional Finding for Zoning Map Amendments. The affected site is physically suitable in terms of design, location, shape, size, and other characteristics to ensure that the permitted land uses and development will comply with the Zoning Ordinance and General Plan and contribute to the health, safety, and welfare of the property, surrounding properties, and the community at large.

23.412.070 – Limitations on Resubmittals after Denial

A. One-Year Prohibition. If the City denies a Zoning Map Amendment, the City may not accept a resubmitted application for the same or substantially similar Zoning Map Amendment within one year from the date of denial, unless:

1. The original application is denied without prejudice; or
2. The City Council allows resubmittal within six-months of denial as allowed by Subsection B (Six-Month Exception) below.

B. Six-Month Exception.

1. The City Council may allow a resubmitted application within six months from the date of denial if the Council finds that:
 - a. Changed circumstances in relation to the property warrant early resubmittal, and
 - b. Any property owner objections to the original application have been withdrawn.
2. The burden rests with the applicant to submit evidence and show that the findings in Paragraph B.1 above can be made.

23.412.080 – Zoning Map Amendment Notations

All adopted amendments to the Zoning Map shall be noted on the map with the date and number of the amending ordinance.

23.414 NUISANCE ABATEMENT

Sections:

- 23.414.010– Purpose
- 23.414.020– Enforcement Responsibility
- 23.414.030– Violations a Misdemeanor
- 23.414.040– Nuisances Prohibited
- 23.414.050– City Attorney Action
- 23.414.060– Abatement Procedures
- 23.414.070– Statements of Violations
- 23.414.080– Remedies
- 23.414.090– Recovery of Costs
- 23.414.100– Private Right of Action

23.414.010 – Purpose

This chapter establish procedures to abate public nuisances associated with land uses, structures, and events as regulated by the Zoning Ordinance. These procedures supplement generally applicable code enforcement provisions in Municipal Code Title 1 (General Provisions).

23.414.020 – Enforcement Responsibility

The City Manager, or their designee, shall enforce the requirements of this chapter.

23.414.030 – Violations a Misdemeanor

Any violation of the Zoning Ordinance is a misdemeanor but may be cited or charged, at the City's discretion, as an infraction. In all other respects, the provisions of Municipal Code Chapter 1.20 (General Penalty) apply.

23.414.040 – Nuisances Prohibited

- A. **Public Nuisance Prohibited.** A land use, structure, or event shall not cause a public nuisance as defined in Subsection (B) below.
- B. **Public Nuisance Defined.** A use, structure, or event that meets any of the following criteria is a public nuisance.
 1. Any of the following activities: disturbances of the peace, illegal drug activity including sales or possession thereof, public drunkenness, drinking in public, harassment of passers-by, gambling, prostitution, public vandalism, excessive littering, excessive noise (particularly between the hours of 11:00 p.m. and 7:00 a.m.), noxious smells or fumes, curfew violations, lewd conduct or police detention, citations or arrests, or any other activity declared by the City to be a public nuisance.
 2. A violation of any City, state, or federal ordinance, law, or regulation.

3. A use or activity, other than one that takes place at a dwelling and is sponsored by a resident of that dwelling, that is conducted in a manner that results in a disturbance of any kind that requires six Berkeley Police Department patrol officers after 11:00 p.m. and before 2:00 a.m., or three Berkeley Police Department patrol officers at any other time, to quell such disturbance.

23.414.050 – City Attorney Action

- A. **Immediate Action.** The City Attorney may take immediate action to abate, remove, and enjoin a public nuisance in the manner provided by law.
- B. **Judicial Relief.** To abate a public nuisance, the City Attorney may apply for relief from the courts to:
 1. Remove a use or structure;
 2. Prevent the establishment of a use or structure;
 3. Prevent the continued operation of a use or structure; or
 4. Prevent the removal or demolition of a structure.

23.414.060 – Abatement Procedures

- A. **Initiation.**
 1. Proceedings to abate a nuisance may be initiated by Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.
 2. A nuisance abatement referral shall identify the subject property, the nature of the violation, and the reason for the proposed abatement.
 3. After receiving a nuisance abatement referral, the Zoning Officer shall schedule the matter for a public hearing.
- B. **ZAB Recommendation.**
 1. **Public Hearing.**
 - a. The ZAB shall hold a public hearing on the proposed abatement in compliance with Section 23.404.050 (Public Hearing and Decision).
 - b. The Department shall provide notice of the hearing to the property owner, property occupants, the person who requested proceedings under this chapter (if any), and any person who has filed written request of notice.
 2. **Recommendation.**
 - a. The ZAB shall recommend that the City Council determine whether a nuisance exists and, if so, the appropriate remedy.
 - b. The ZAB recommendation shall be:

- i.* Based on the evidence, testimony, and facts presented to the ZAB at the hearing;
 - ii.* Supported by written findings; and
 - iii.* Issued within 35 days after the conclusion of the hearing.
3. **Final Decision.** A ZAB recommendation to abate a nuisance shall be deemed a final decision if the property owner consents to the recommendation within 10 days after the recommendation is made. In such a case, there shall be no City Council review and action on the matter.
4. **Report to City Clerk.** The Department shall file the ZAB's recommendation with the City Clerk within 14 days following the recommendation. The City Clerk shall present a ZAB recommendation to the City Council at soonest possible regular City Council meeting.

C. City Council Action.

1. **Public Hearing.** The City Council shall hold a public hearing on the proposed abatement in compliance with Section 23.404.050 (Public Hearing and Decision). The hearing shall occur within:
 - a. 60 days of the ZAB recommendation if the ZAB recommends abatement; and
 - b. 30 days of the City Clerk report to the City Council of the ZAB decision.
2. **Decision.** After hearing, the City Council may find that the use, structure, or event constitutes a public nuisance and may impose any remedy provided for in this chapter, or take no action.

D. Notice of Decision.

1. If the City Council makes a nuisance determination, the City Clerk shall issue a Notice of Decision describing the City Council's action, with its findings.
2. The City Clerk shall mail the notice to any permit holder, the property owner, the person who requested proceedings under this chapter (if any), and any person who requests such a notification.
3. The City Clerk shall file a copy of the Notice of Decision with the Zoning Officer.

23.414.070 – Statements of Violations

A. Statement Filed with County Recorder.

1. If a person does not comply with an order of the Zoning Officer to correct a violation of this chapter within the specified time as provided in Chapter 1.24 (Abatement of Nuisances), the City may file a statement in the Office of the County Recorder that:

- a. Describes the property and nature of the violation; and
 - b. Certifies that the property violates this chapter and that the owner has been so notified.
2. The City shall record proof of service with the filed notice and order.
- B. **Statement Filed after Correction.** When a violation is corrected, the Zoning Officer shall file a new statement with the County Recorder certifying that the property is no longer in violation of this chapter.

23.414.080 – Remedies

- A. **Potential Remedies.** If the City makes a nuisance determination, the City may impose any of the following remedies:
1. Enjoin the use in whole or in part.
 2. Impose reasonable conditions upon any continued operation of the use, including existing non-conforming uses.
 3. Require continued compliance with newly imposed any conditions.
 4. Require the permit holder to guarantee compliance with newly imposed conditions.
- B. **Administrative Penalty.** In addition to or as an alternative to any other remedy, the City may impose an administrative penalty of up to \$10,000 jointly and severally on persons responsible for the nuisance and/or the property owner. The City may also impose a condition that the property owners pay the costs of all City services (including but not limited to services for public safety and by the Department of Public Works) necessary to address continuing and unabated public nuisances once the City Council has determined that a public nuisance exists.
- C. **Remedies Are Cumulative.** The procedures and remedies in Subsections (A) and (B) above are cumulative and in addition to any other procedures and remedies to which the City may be entitled by law or equity.

23.414.090 – Recovery of Costs

- A. **Abatement Proceedings.**
1. The City may recover the costs to administer abatement proceedings in accordance with Sections 1.24.140 through 1.24.210 of Municipal Code Chapter 1.24 (Abatement of Nuisances), except as provided in Sub-paragraph (2) below.
 2. The hearing provided by Section 1.24.180 shall be held by the City Manager or his/her designee and may be appealed to the City Council within ten days after a

decision is mailed. The Council shall hold a hearing on appeals as specified in Section 1.24.180.

B. Remedies.

1. If the City imposes a remedy authorized in Section 23.414.080 (Remedies), the City may recover costs for time spent administering the remedy.
2. Payment of City costs shall be a condition of continued operation of a use or structure subject to a remedy.
3. Payments submitted under this Subsection B (Remedies) shall be deducted from any payments submitted under Subsection A (Abatement Proceedings) above.

23.414.100 – Private Right of Action

- A. **General.** Any resident of the City may bring a private action in a court of law for injunctive and compensatory relief to prevent or remedy a public nuisance as defined in this chapter.
- B. **Prior Notice Required.** No action may be brought under this section unless and until the prospective plaintiff has given the City and the prospective defendant at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings under this chapter within that period, or after initiation, has failed to diligently prosecute.
- C. **Recovery of Costs.** In any action prosecuted under this section a prevailing plaintiff may recover reasonable attorneys' fees.

DIVISION 5: GLOSSARY

23.502: Glossary

- 23.502.010– Purpose
- 23.502.020– Defined Terms
- 23.502.030– Acronyms

23.502 GLOSSARY

Sections:

- 23.502.010– Purpose
- 23.502.020– Defined Terms
- 23.502.030– Acronyms

23.502.010 – Purpose

This chapter defines terms and phrases used in the Zoning Ordinance that are technical or specialized, or which may not reflect common usage. If any definitions in this chapter conflict with others in the Municipal Code, these definitions control in the Zoning Ordinance. If a word is not defined in the Zoning Ordinance, the Zoning Officer determines the appropriate definition.

23.502.020 – Defined Terms

A. “A” Terms.

1. **Abatement.** City proceedings to terminate, modify, or condition an unlawful use or structure.
2. **Abutting Lot.** See Lot, Abutting.
3. **Accessory Building.** See Building, Accessory.
4. **Accessory Dwelling Unit.** A secondary dwelling unit that is located on a lot which is occupied by one legally established single-family dwelling that conforms to the standards of Chapter 23.306. An accessory dwelling unit must comply with local building, housing, safety and other code requirements and provide the following features independent of the single-family dwelling: 1) exterior access to accessory dwelling unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An accessory dwelling Unit also includes the following:
 - a. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
 - b. A manufactured home, as defined in Section 18007 of the Health and Safety Code.
5. **Accessory Structure:** See Structure, Accessory.
6. **Accessory Use:** See Use, Accessory.
7. **Addition.** The creation of any new portion of a building which results in a vertical or horizontal extension of the building, or results in any new gross floor area that was not present in the building before construction of the addition. Includes the

creation of a mezzanine or loft, or a conversion of a previously unused attic or underfloor space to usable floor area.

8. **Addition, Residential.** The creation of any new portion of a main building which results in a vertical or horizontal extension of the building, or results in additional residential gross floor area to an existing main building, as long as such new gross floor area does not exceed 15 percent of the lot area or 600 square feet, whichever is less. For purposes of this definition gross floor area does not include:
 - a. Additions of gross floor area devoted to required off-street parking spaces, creation of mezzanines or lofts within the building's shell;
 - b. Making previously unusable attics into habitable floor area (except where new areas with vertical clearance of 6 feet or greater are created through expansions of the building shell);
 - c. Excavations of earth within the existing building footprint (i.e. expansion of existing basements or new basements), or
 - d. Replacement of existing floor area that was lawfully constructed and is located entirely within the addition's shell.
9. **Addition, Major Residential.**
 - a. A residential addition greater than 15 percent of the lot area or 600 square feet. Floor area from all residential additions since October 31, 1991, with the exception of:
 - i.* Additions that are entirely subsumed within previously existing floor area; and
 - ii.* The floor area of subsequent stories where the addition does not exceed the district residential addition height limit, shall count towards the calculation of gross floor area for the purposes of this definition.
 - b. Any new floor shall be treated as a new major residential addition for the purpose of permit processing, when the cumulative square footage exceeds 15 percent of the lot area or 600 square feet, whichever is less.
10. **Adult-oriented Businesses.** Any business operated at a fixed location by whatever name, which appeals to prurient interests, sexual titillations, appetites, fantasies or curiosities. This use includes businesses which:
 - a. Predominantly exhibit, offer for sale or engage in the sale or distribution of publications, personal services, films, videotapes, devices, products or materials, which appeal to a prurient interest or sexual appetite of the purchases or user;

- b. Engage in the showing of motion pictures or videotapes in which sexual activity, including, but not limited to, intercourse, sodomy, oral copulation, masturbation, bestiality or any other form of sexual gratification, is the primary and recurring theme;
- c. Engage in the presentation of live adult entertainment in which the actors or performers simulate or engage in sexual activity, including, but not limited to, intercourse, sodomy, oral copulation, masturbation, bestiality or suggestive body movements connoting such acts, with or without another actor, patron or spectator, such showing appealing to a prurient interest or sexual appetite of the spectator;
- d. Engage in massage service, except when made in conjunction with professional services provided by the following persons holding unrevoked licenses or certificates:
 - i.* Chiropractors governed under provisions of California State law;
 - ii.* Medical practitioners practicing under the provisions of the California State Medical Practice Act;
 - iii.* Physical therapists practicing under the provisions of the California Physical Therapy Practice Act;
 - iv.* Nurses practicing under the provisions of the California Nursing Practice Act or the California Vocational Nursing Practice Act;
 - v.* Psychologists practicing under the provisions of the California Psychology Licensing Law;
 - vi.* Osteopaths practicing under the provisions of the California Osteopathic Act;
 - vii.* Persons working under the direct and immediate supervision of any persons certified as set forth in Sections *i-vi* above.
- e. Provide dating or escort services;
- f. Specialize in providing models who pose for photographing, drawing or other representative renditions, which modeling appeals to a prurient interest or sexual appetite;
- g. Engage in encounter, rap or counseling services which appeal to a prurient interest or sexual appetite;
- h. Engage in providing nude, bottomless or topless dance partners;
- i. Use nude, bottomless or topless entertainers, or use nude, bottomless or topless employees to attend to or service tables, bars or patrons or which

- allow nude, bottomless or topless entertainers or employees to be seen by members of the public or patrons of the business;
- j. Engage in providing sauna baths, water baths, showers, steam rooms or steam baths or any other body cleansing or toning arrangement wherein an attendant, clothed or nude, accompanies the customer for the purpose of talking, touching or appealing to the customer's prurient interest or sexual appetite; or
 - k. Engage in the reading of, or providing of tapes or records for listening to, erotic literature which appeals to the prurient interest or sexual fantasies of customers.
11. **Alcoholic Beverage Retail Sales.** The retail sale of beverages containing alcohol for off-site consumption subject to regulation by the State Department of Alcoholic Beverage Control (ABC) as an off-sale establishment. This use includes liquor stores and wine shops and sale of alcoholic beverages for off-site consumption at restaurants.
 12. **Alcoholic Beverage Service.** The retail sale of beverages containing alcohol for on-site consumption subject to regulation by the State Department of Alcoholic Beverage Control ABC as an on-sale establishment.
 13. **Alley.** A public right-of-way which affords only a secondary means of access for vehicles to any abutting property.
 14. **Alteration:** See Structural Alteration.
 15. **Alternative Fuel Station.** Any establishment that dispenses alternative fuel as defined by the Energy Policy Act of 2005.
 16. **Amusement Device.** Any machine or device which may be operated for use as a game, contest or amusement upon the insertion of a coin, slug, or token in any slot or receptacle attached or connected to such machine, and which does not contain a payoff device for the return of slugs, money, coins, checks, tokens or merchandise.
 17. **Amusement Device Arcade.** A type of commercial recreation center which contains six or more amusement devices. An amusement device arcade is a type of commercial recreation center irrespective of whether the amusement devices are the principal commercial activity of the establishment.
 18. **Ancillary Use:** See Use, Ancillary.
 19. **Application.** A written application for issuance of any permit.
 20. **Approval.** Approval of any permit.
 21. **Appraiser, Certified.** A person certified by the State of California Office of Real Estate Appraisers to estimate the value of a particular real property.

22. **Art/Craft Studio.** An establishment engaged in the creation of art or crafts that requires artistic skill. Such an establishment may participate in periodic open studios, but otherwise is subject to the applicable zoning district's requirements for incidental sales of goods made on site. Art/craft studios also include rehearsal spaces not designed for public performances. Examples of individuals typically engaged in this work include woodworkers, potters/ceramicists, costume makers, set designers, stained-glass makers, glassblowers, textile artists and weavers, jewelry makers, painters, fine art printmakers, photographers/filmmakers, leather workers, metal workers, musical instrument makers, model makers, papermakers, installation artists, sculptors, video artists, and other makers of art and crafts that the Zoning Officer determines to be consistent with this definition. The use of computers in an activity does not by itself prevent its classification as an art/craft studio. This use excludes architectural and landscape services, industrial or graphic design services, computer systems design services, and other commercial activities normally conducted in an office environment.
23. **Artist Studio.** A detached accessory building, used by residents of a main dwelling unit on the same lot, to create original works of art and crafts products, but not for living quarters or sleeping purposes.
24. **Attic.** The area located between the ceiling of the top story of a building and the building's roof and not usable as habitable or commercial space.
25. **Automatic Teller Machine (ATM).** An unstaffed machine which processes deposits, withdrawals and transfers of funds of customers of a bank, credit union, savings and loan association or other financial service or network.
26. **Automobile Use.** Any commercial establishment which sells, rents, repairs, services, paints and/or conducts bodywork on automobiles, trucks or other motor driven vehicles (excepting motorcycles) on the premises.

B. "B" Terms.

1. Bakery.

- a. An establishment which engages primarily in the sale of breads or other baked goods, whether baked on-site or at another location. A bakery is not be considered a food service establishment if:
- i. No customer seating or other physical accommodations for on-site dining are provided; and
 - ii. The breads and baked goods are not packaged for immediate consumption.
- b. Any establishment whose breads and baked goods are predominantly sold at retail from a different location or locations are deemed a wholesale and/or

manufacturing use, subject to the regulations of the district in which it is located.

2. **Balcony.** A horizontal platform extending from the exterior wall of a building, accessible from the building's interior, and not directly accessible from the ground. A balcony is typically not covered by a roof or building overhang or enclosed on more than two sides by walls. However, railings shall not be considered enclosures.
3. **Banks and Financial Services, Retail.** An office, open to the public, offering teller or counter financial services including either cash, checking and/or savings account transactions or some combination of these services. This use includes banks, savings and loans, and credit unions providing these services on site, and excludes non-chartered financial institutions.
4. **Bar/Cocktail Lounge/Tavern.** A business devoted to serving alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.
5. **Basement.** The lowest usable space of a building, between the floor and the ceiling, for non-habitable use such as, but not limited to, garage or storage use.
6. **Bay Window.** A portion of a building cantilevered so as to project out from a wall and containing windows which cover at least 50 of the projection's surface.
7. **Bed and Breakfast Establishment (B&B).** A single residential property containing no more than a total of three sleeping rooms or dwelling units that are offered for rent at any given time, which is the primary residence of the owner and in which rooms or units are rented out to persons who occupy them for periods not exceeding 14 days in any month.
8. **Bedroom.** Any habitable space in a dwelling unit or habitable accessory structure other than a kitchen or living room that is intended for or capable of being used for sleeping with a door that closes the room off from other common space such as living and kitchen areas that is at least 70 square feet in area, exclusive of closets and other appurtenant space, and meets Building Code standards for egress, light and ventilation. A room identified as a den, library, study, loft, dining room, or other extra room that satisfies this definition will be considered a bedroom for the purposes of applying this requirement. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.
9. **Block.** An area designated on an official map of the City, which is bounded on all sides by the public right-of-way, a railroad right-of-way, private streets or a boundary line of unsubdivided acreage or any combination thereof.
10. **Boarding House.** A building used for residential purposes, other than a hotel, where lodging and meals for five or more persons, who are not living as a

household, are provided for compensation, whether direct or indirect. In determining the number of persons lodging in a boarding house, all residents shall be counted, including those acting as manager, landlord, landlady or building superintendent.

11. **Building.** An enclosed structure having a roof and supported by columns or walls. See Figure 23.502-1 and Figure 23.502-2.
 - a. **Accessory Building.** A detached building containing habitable space, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot.
 - b. **Main Building.** A building which is designed for, or in which is conducted, the primary use of the lot on which it is situated. In any residential district any dwelling, except an accessory dwelling unit, is the main building on the lot.

FIGURE 23.502-1: COMMERCIAL BUILDING

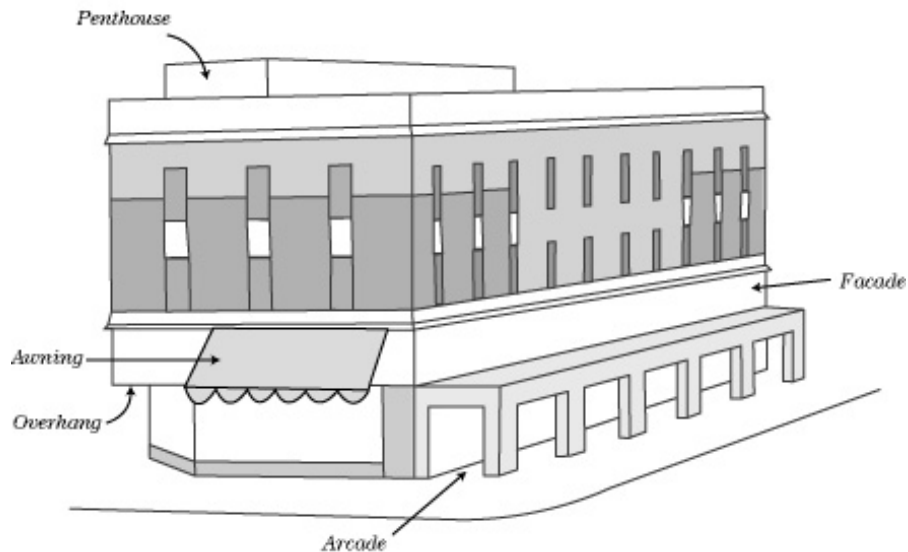
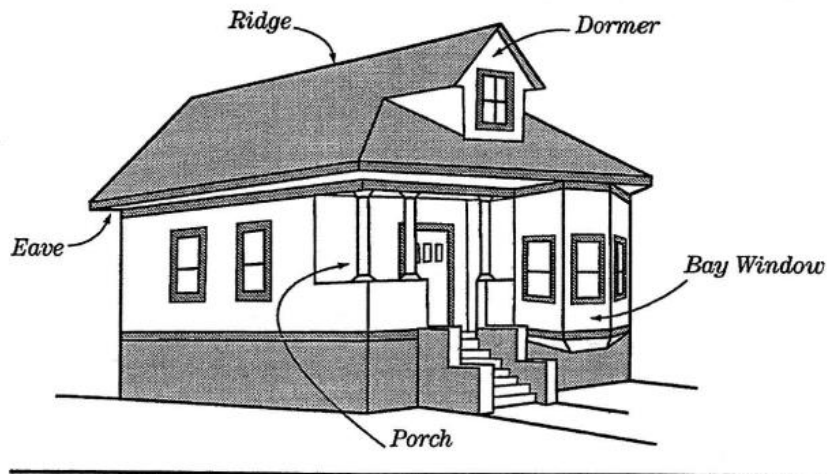


FIGURE 23.502-2: RESIDENTIAL BUILDING



12. **Building Separation.** See 23.106.080 (Building Separation).

13. **Building Site Area.** Same as lot area.

14. **Bus/Cab/Truck/Public Utility Depot.** A facility providing transportation operations for passengers and/or freight. Includes bus terminals and rail stations; facilities for transfer and movement of freight, courier, and postal services by truck or rail; and passenger transportation services, local delivery services, medical transport, and other businesses that rely on fleets of three or more vehicles.

15. **Business Activity.** Any activity subject to Municipal Code Chapter 9.04 and any economic activity which generates receipts but is exempt from Municipal Code Chapter 9.04 by state or federal law.

16. **Business Support Services.** An establishment providing goods and services to other businesses and residents, including maintenance, repair and service, testing, and rental. Permitted services for this use are limited to photocopying, desktop publishing, microfilm recording, slide duplicating, bulk mailing, parcel shipping, parcel labeling, packaging, messenger and delivery/courier, sign painting, lettering, and building maintenance.

C. **“C” Terms.**

1. **Cafeteria, On-Site.** A food service establishment intended primarily for use by employees or residents working or living at the same location, or for use by patients and/or visitors and restricted from use by the general public.
2. **Cannabis Retailer.** See 12.21.020 (Definitions).

3. **Cannabis Uses.** Includes retail sales, cultivation, manufacturing, testing, and distributing. See Municipal Code Chapters 12.21, and 12.22 for cannabis regulations and Chapter 23.320 for land use regulations.
4. **Carport.** A roofed structure for one or more automobiles which is enclosed by not more than two walls.
5. **Cemetery/Crematory/Mausoleum.** An establishment primarily engaged in operating sites or structures reserved for the interment of human or animal remains, including crematories, mausoleums, burial places, and memorial gardens.
6. **Chair Massage.** Massage given in a public, open setting to a person who is fully clothed and sitting upright on a professional bodywork seat, a stool, or office seat, wheelchair, or other chair-like device.
7. **Change of Use.** Any change in the nature or character of the use of a building or structure.
 - a. A residential change of use includes, but is not limited to, the elimination of any dwelling unit, the reduction in the floor area or habitability of a dwelling unit, or the reduction in the floor area or habitability of bedroom or sleeping quarters in a group living accommodation or residential hotel, when a new use is to replace a previous use. A residential change of use does not include the establishment of a home occupation in compliance with this chapter.
 - b. A commercial change of use includes a change to a different category of commercial or manufacturing use, but does not include changes between uses that are classified in the same category of commercial or manufacturing use.
8. **Child Care Center.** A state-licensed facility providing day care for children. This use includes nursery schools, day nurseries, infant day care centers, and cooperative day care centers, and excludes family day care homes.
9. **Circus or Carnival.** A commercial facility or event for public entertainment, typically held outdoors, with performances, rides, games, exhibitions, and other similar activities for paying customers. May be temporary or permanent.
10. **Club/Lodge.** A building occupied by a group of persons organized for a purpose to pursue common goals, activities or interests, usually characterized by certain membership qualifications, payment of fees or dues, regular meetings and a constitution or by-laws.
11. **City.** The City of Berkeley
12. **Columbaria.** A structure of vaults lined with recesses for cinerary urns or storage of cinerary remains.

13. **Commercial Districts.** The districts listed under the Commercial Districts heading in Table 23.108-1: Zoning Districts.
14. **Commercial Excavation.** The commercial excavation of earth, gravel, minerals, or other building materials, including drilling for, or removal of, oil or natural gas.
15. **Commercial Recreation Center.** Any establishment other than a theater at which recreation facilities are offered or amusement devices provided to the public as a principal commercial activity of such establishment. This use includes bingo parlors, bowling alleys, skating rinks, billiard or pool halls, miniature golf courses. Amusement device arcades are a separately defined types of commercial recreation center with their own permit requirements.
16. **Commercial Use.** The categories of commercial uses of a property include retail products store, personal/household service, food service establishment, entertainment establishment, office, tourist hotel, automobile uses, live/work units, mixed use development, wholesale use, parking lot and any use listed as a sub-category of the above uses; or any other use determined to be a business activity (except home occupations), as these terms are defined in this chapter.
17. **Community Care Facility.** A state-licensed facility for the non-medical care and supervision of children, adolescents, adults or elderly persons. This use includes community care facilities as defined in California Health and Safety Code (H&SC) Section 1500 et seq, residential care facilities for the elderly (H&SC Section 1569 et seq.), facilities for the mentally disordered or otherwise handicapped (California Welfare and Institutions Code Section 5000 et seq.), alcoholism or drug abuse recovery or treatment facilities (H&SC Section 11834.02), supportive housing (California Government Code Section 65582), and other similar facilities. This use excludes medical care institutions, skilled nursing facilities, nursing homes, foster homes, family day care homes, child care facilities, and transitional housing.
18. **Community Center.** A noncommercial facility where the public can meet for social, educational, or recreational activities.
19. **Community and Institutional Use.** The categories of community and institutional uses of a property including, but not limited to, religious assembly uses, clubs/lodges, community centers, hospitals, schools, public uses and utility uses, as these terms are defined in this chapter.
20. **Condition.** A requirement attached to a permit or entitlement, the satisfaction of which is necessary for the validity and effectiveness of the permit or entitlement.
21. **Condominium.** An estate in real property consisting of an undivided interest-in-common in a portion of a lot of real property together with a separate interest in space in a residential, industrial or commercial building on such real property

such as an apartment, office or store. A condominium may include, in addition, a separate interest in other portions of such real property.

22. **Controlled Rental Unit.** Any dwelling unit, live/work unit, bedroom or sleeping quarters portion of a group living accommodation or other unit that is subject to the City's Rent Stabilization Ordinance (Municipal Code Chapter 13.76).
23. **Construction.** The placing of construction materials and their fastening in a permanent manner to the ground or a structure or building for the purpose of creating or altering a structure or building, or excavation of a basement.
24. **Contractors Yard.** A storage facility for any person who contracts to undertake and complete a construction project or a discrete part of a construction project, including all persons defined as contractors and subject to Division 3, Chapter 9 of the State of California Business and Professions Code.
25. **Conversion, Residential.** The physical change of the floor area and/or walls of a building that is used for dwelling unit, group living accommodation or residential hotel room purposes, so as to change the number of dwelling units, sleeping rooms or residential hotel rooms, or reduce the floor area and/or habitable space of any residential living quarters.
26. **Craft.** An occupation, avocation or trade requiring special manual dexterity or artistic skill in the creation of a product.

D. "D" Terms.

1. **Dance/Exercise/Martial Arts/Music Studio.** An establishment in which customers assemble for group exercises, dancing, self-defense training, aerobics, choral or musical instrument instruction, other movement drills for learning, rehearsal or non-audience performances.
2. **Deck.** An unenclosed structure, usually made of wood, built to provide a solid continuous surface for outdoor use and/or access to a door, which is accessible from the ground level, directly or from a connecting stairway and is separated from the ground by an air space.
3. **Demolition.** A building or enclosed structure shall be considered demolished for the purposes of this chapter when, within any continuous 12-month period, such building or enclosed structure is destroyed in whole or in part or is relocated from one lot to another. For purposes of this definition, destroyed in part means when 50 percent or more of the enclosing exterior walls and 50 percent or more of the roof are removed. Removal of facades or portions of facades requires Design Review.
4. **Density Bonus.** See 23.332.020 (Definitions).
5. **Department.** The Planning and Development Department of the City of Berkeley or its successor administrative unit.

6. **Department Store.** A retail store selling several kinds of merchandise, which are usually grouped into separate sections, including but not limited to, apparel, housewares, household hardware, household appliances, household electronics and gifts.
7. **Dormer.** A projection built out from a sloping roof, usually housing a vertical window or ventilating louver. See also 23.304.110 (Dormers).
8. **Dormitory.** A building providing group living accommodations, occupied by individuals not sharing a common household, characterized by separate sleeping rooms without individual kitchen facilities and containing congregate bath and/or dining facilities or rooms.
9. **Drive-in Uses.** A use where a customer is permitted or encouraged, either by the design of physical facilities or by the service and/or packaging procedures offered, to be served while remaining seated within an automobile. This use includes drive-through food service establishments, financial services (banks), and automatic carwashes.
10. **Driveway.** A paved, vehicular accessway connecting an off-street parking space or parking lot with a public or private street.
11. **Drug Paraphernalia.** As defined in California Health and Safety Code Section 11364.5(d).
12. **Drugstore.** A retail establishment where the profession of pharmacy is practiced and/or where licensed prescription drugs and general merchandise are offered for sale. A food products store with a pharmacy is not a drugstore.
13. **Dry Cleaning and Laundry Plants.** A place where clothes are dry cleaned, dyed and/or laundered as part of a commercial business, whether or not such clothes were deposited by a customer at that location, or transported from another location, as part of a service. This use includes all establishments subject to Section 19233 of the State of California Business and Professions Code, regulating Dry Cleaning Plants, but excludes laundromats and cleaners as defined in this chapter.
14. **Duplex.** A building or use of a lot designed for, or occupied exclusively by, two households.
15. **Dwelling Unit.** A building or portion of a building designed for, or occupied exclusively by, persons living as one household.

E. **“E” Terms.**

1. **Electric Vehicle Charging Station.** A facility that supplies electric energy for the recharging of plug-in electric vehicles

2. **Emergency Shelter.** Temporary lodging for homeless persons with minimal supportive services that may be limited to occupancy of six months or less as defined in Health and Safety Code Section 50801(e)).
3. **Enhanced Transit Service.** Any facility that will result in the improved operational performance of bus and/or shuttle service, as well as improvements that will encourage the use of transit and make transit service more compatible with downtown's activities and appearance. Improvements for enhanced transit services include but are not limited to: "complete streets" to enhance pedestrian and bicycle routes to transit; transit signal priority; queue jump lanes and left turn signal phasing; bus shelters and raised bus platforms; bus curb extensions and concrete bus pads; transit pre-pay fare vending machines; bus layover facilities; transit plazas and bus stop amenities; bicycle parking and bicycle rental facilities near transit; and street improvements that mitigate the impact of transit operations on pedestrians and bicyclists.
4. **Entertainment Establishment.** A permanent establishment which includes live performances and/or patron dancing. This use includes cabarets, nightclubs, dance halls, and discotheques.

F. "F" Terms.

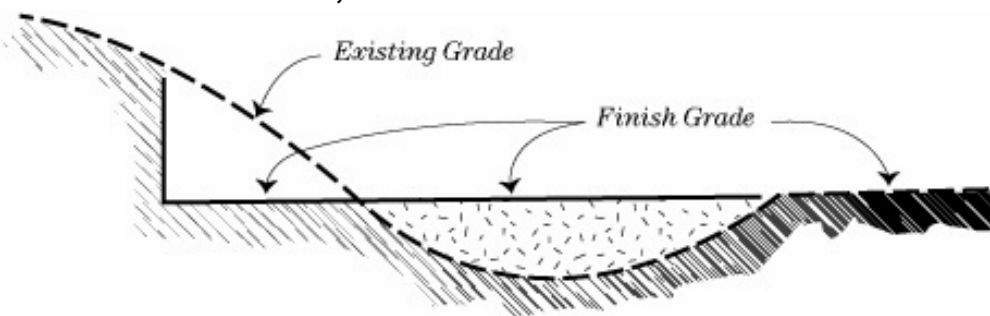
1. **Facade.** Those portions of a building, including exterior walls, porches, chimneys, balconies, parapets and roof portions, which are visible from a public right-of-way or an adjacent building.
2. **Family.** See Household.
3. **Family Day Care Home.** An establishment providing day care for 14 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. The day care operator must live in the primary dwelling on the lot.
 - 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.
4. **Fence.** A structure made of wood, metal, masonry or other material forming a physical barrier which supports no load other than its own weight, or a hedge, which is designed to delineate, screen or enclose a lot, yard, open space area or other land area.
5. **Firearm/Munitions Businesses.** Any establishment which sells, transfers, leases or offers for sale, transfer or lease any gun, ammunition, munitions, gun powder, bullets, ordnance, or other firearm or firearm parts or supplies.
6. **Floor Area, Gross.** See 23.106.030– Floor Area, Gross.

7. **Floor Area, Leasable.** See 23.106.040– Floor Area, Leasable.
8. **Floor Area Ratio (FAR).** See 23.106.050– Floor Area Ratio.
9. **Food Product Store.** A retail products store selling foods primarily intended to be taken to another location to be prepared and consumed, and the incidental preparation of food or beverages for immediate consumption off the premises.
10. **Food and Beverage for Immediate Consumption.** The sale of food or non-alcoholic beverages for immediate consumption not on the premises.
11. **Food Service Establishments.** An establishment which in whole or in part prepares food or beverages for immediate consumption on or off the premises.
 - a. **Carry Out Food Store:** A store which serves food or non-alcoholic beverages for immediate consumption not on the premises, but usually in the vicinity of the store. This use is usually characterized as an establishment which serves food altered in texture and/or temperature on a customer-demand basis, puts such food in non-sealed packages or edible containers, requires payment for such food before consumption, and provides no seating or other physical accommodations for on- premises dining. Examples of this use include delicatessens and other stores without seating which sell doughnuts, croissants, ice cream, frozen yogurt, cookies, whole pizzas and sandwiches. This use excludes bakeries and food products stores.
 - b. **Quick Service Restaurant:** An establishment which serves food or beverages for immediate consumption either on the premises, or to be taken out for consumption elsewhere. This use is usually characterized as an establishment in which food is cooked on a customer-demand basis, payment is required before consumption, limited or no able service is provided (no waiters), and seating or other physical accommodations for on- premises customer dining is provided. Examples of this use include establishments selling primarily hamburgers or other hot or cold sandwiches, hot dogs, tacos and burritos, pizza slices, fried chicken, or fish and chips.
 - c. **Full-Service Restaurant:** An establishment which serves food or beverages for immediate consumption primarily on the premises, with only a minor portion, if any, of the food being taken out of the establishment. This use is characterized as an establishment in which food is cooked or prepared on the premises on a customer-demand basis, which requires payment after consumption, and provides seating and tables for on-premises customer dining with table service (waiters).
12. **Fraternity House.** A building used for group living accommodations by an organization recognized by the University of California at Berkeley or other institution of higher learning.
13. **Front Wall.** The wall of the building nearest the front lot line.

G. "G" Terms.

1. **Garage, Residential.** A detached accessory structure or portion of a primary building, covered or roofed and enclosed on at least three sides with walls, used for off-street parking by members of the households residing on the premises.
2. **Gasoline/Vehicle Fuel Stations.** An establishment that dispenses gasoline, diesel or other similar fuel into vehicles. Excludes alternative fuel stations and electric vehicle charging stations.
3. **General Plan.** The City of Berkeley General Plan adopted pursuant to Government Code Section 65300 et seq.
4. **Gift/Novelty Shop.** A store selling small manufactured articles usually for personal use or household adornment, including, but not limited to, stores selling primarily T-shirts and/or sweatshirts with imprinted wording or images.
5. **Grade.** The location of ground surface. See also Slope.
 - a. **Existing Grade.** The elevation of the ground at any point on a lot as shown on the required survey submitted in conjunction with an application for a building permit or grading permit. See Figure 23.502-3.
 - b. **Finished Grade.** The lowest point of elevation of the finished surface of the ground between the exterior walls of a building and a point 5 feet distant from the wall, or the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and the property line if it is less than 5 feet distant from the wall. In the case of walls which are parallel to and within 5 feet of a public sidewalk, alley or other public way, the grade shall be the elevation of the sidewalk, alley or public way. See Figure 23.502-3.

FIGURE 23.502-3: GRADE, EXISTING AND FINISHED



6. **Group Class Instruction.** An establishment that offer specialized programs in personal growth and development. Includes music studios, drama schools, dance academies, art schools, tutoring schools, and instruction in other cultural and academic pursuits.
7. **Group Living Accommodations.** A building or portion of a building designed for or accommodating a residential use by persons not living together as a

household. This use includes dormitories, convents and monasteries, and other types of organizational housing, and excludes hospitals, nursing homes and tourist hotels. Group living accommodations typically provide shared living quarters without separate kitchen or bathroom facilities for each room or unit. Residential hotels and senior congregate housing are separately defined types of group living accommodations each with their own permit requirements

8. **Ground Floor Street Frontage.** The occupied floor space in a structure nearest to the public right-of-way and closest to sidewalk grade.
9. **Gyms and Health Clubs.** An indoor facility where exercise equipment, classes and related activities related to personal health and fitness are available to paying customers. Excludes parks/playgrounds.

H. "H" Terms.

1. **Habitable Space.** A space in a building which is used or designed to be used for living, sleeping, eating or cooking, but not including garages, bathrooms, utility, storage and laundry rooms, halls or closets.
2. **Hedge.** Any line or row of plants, trees or shrubs planted in a continuous line to form a dense thicket or barrier.
3. **Height of Building, Average.** See 23.106.090.A (Average Building Height).
4. **Height of Building, Maximum.** See 23.106.090.B (Maximum Building Height).
5. **Home Occupation.** A business use conducted on property developed with a residential use, which is incidental and secondary to the residential use, does not change the residential character of the residential use, is limited so as not to substantially reduce the residential use of the legally established dwelling, Accessory Dwelling Unit, Accessory Building or Group Living Accommodation room and is operated only by the residents of the subject residence.

There are three classification of Home Occupations. For the purposes of this section, a "customer" is considered a single paying customer, but may include more than one person receiving the services at the same time:

1. Class I Home Occupation - Involves no more than five customer visits per day, with no more than four persons receiving services at a time. This class does not allow shipping of goods directly from the subject residence.
2. Class II Home Occupation - Involves no more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site. This class does not allow shipping of goods directly from the subject residence.
3. Class III Home Occupation - Involves more than ten customer visits per day, with no more than four persons receiving services at a time and no more

than one non-resident engaging in business-related activities on-site and/or involves shipping of goods directly from the subject residence.

6. **Hospital.** A facility for in-patient medical care licensed under California Administrative Code, Title 17, Section 237 or 238.
 7. **Hot Tub.** A tub or small pool, usually made of wood or fiberglass, in which heated water is maintained for recreational or therapeutic activities, including, but not limited to, jacuzzis, whirlpools and spas.
 8. **Hotel, Residential.** A type of group living accommodations which provides rooms for rent for residential purposes, including single residential occupancy (SRO) rooms.
 9. **Hotel, Tourist.** A building with sleeping rooms used, designed, or intended for occupancy by transient guests for a period not to exceed 14 consecutive days. This use includes inns, bed and breakfasts (B&Bs), and hostels, and excludes building with residential hotel rooms and dwelling units.
 10. **Household.** One or more persons, whether or not related by blood, marriage or adoption, sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or rental agreement for all members of the household and other similar characteristics indicative of a single household.
 11. **Household Income, Gross.** The income of all adult members of the household as determined by the guidelines used by the Berkeley Housing Authority for its administration of the Section 8 Rental Subsidy Program. For purposes of this definition, household is the same as Family in the federal Section 8 Existing Housing Program or its future equivalent. Classification of Households, based on income, shall be based on the following percentages of the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures for income of the most recent U.S. Census that are available:
 - a. **Low Income Household.** A household whose gross income is greater than 80 percent and less than 100 percent of the median income.
 - b. **Lower Income Household.** A household whose income is no greater than 80 percent and above 50 percent of the median income.
 - c. **Very Low Income Household.** A household whose gross income is 50 percent or less of the median income.
- I. **“I” Terms.**
1. **Incidental Use.** See Use, Incidental.

2. **Inclusionary Unit.** A dwelling unit which is affordable by Households with income below the Oakland PMSA median income; or in the case of Limited Equity Cooperatives, Households with income below 120 percent of the Oakland PMSA median income.
3. **Industrial and Mining Product Sales.** Retail sale of equipment and productions for manufacturing, mining, and other industrial activities.
4. **Insurance Agents, Title Companies, Real Estate Agents, Travel Agents.** A commercial establishment providing insurance, title, real estate and travel services directly to customers.

J. **“J” Terms.**

K. **“K” Terms.**

1. **Kennels and Pet Boarding.** A facility for keeping, boarding, training, breeding or maintaining four or more dogs, cats, or other household pets not owned by the kennel owner or operator on a 24-hour basis. Excludes municipal animal shelters.
2. **Kitchen.** A habitable space used for preparation of food that contains at least a sink, a refrigerator of no less than 10 cubic feet, and either a cooktop and an oven, or a range.

L. **“L” Terms.**

1. **Laboratories.**

- a. **Commercial Physical or Biological.** A facility that provides controlled conditions in which scientific or technological research, experiments, and measurement may be performed.
- b. **Cannabis Testing.** A facility for the testing of the properties of cannabis intended for consumer use.
- c. **Class 1 Organism.** A microbe or biological agent classified as Biosafety Level 1 (BSL-1) by the U.S. Centers for Disease Control and Prevention.
- d. **Class 2 Organism.** A microbe or biological agent classified as Biosafety Level 2 (BSL-2) by the U.S. Centers for Disease Control and Prevention.
- e. **Class 3 Organism.** A microbe or biological agent classified as Biosafety Level 3 (BSL-3) by the U.S. Centers for Disease Control and Prevention.

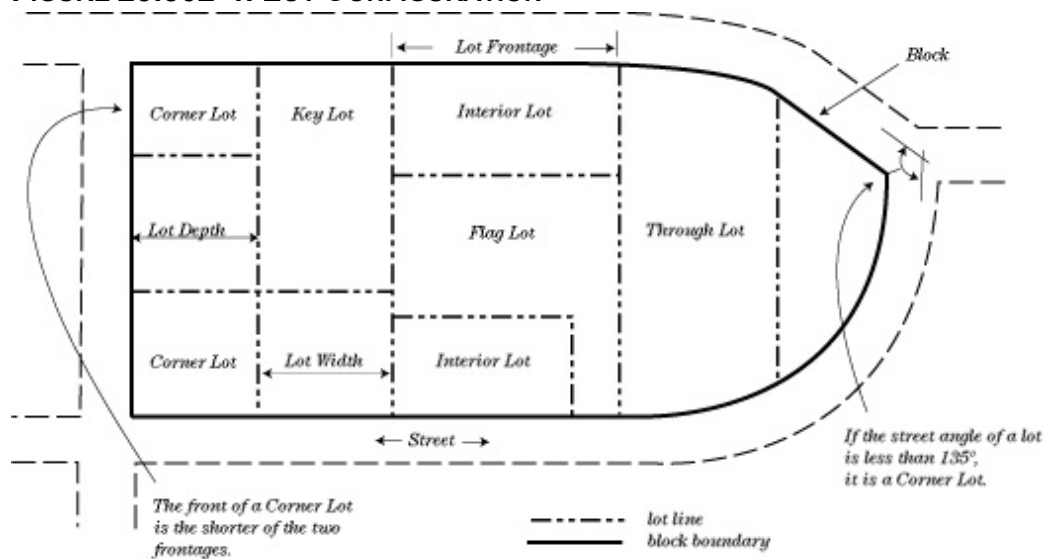
2. **Land Use.** See “Use.”

3. **Landscaped Area.** An area of ground within the boundaries of a lot which consists of living plant material including, but not limited to, trees, shrubs, ground covers, grass, flowers, gardens and vines.

4. **Large Vehicle Sales and Rental.** Establishments primarily engaged in renting or leasing trucks, truck tractors, buses, semitrailers, and utility trailers.
5. **Lattice Tower.** A support structure, erected on the ground that consists of metal crossed strips or bars to support antennas and related equipment.
6. **Laundromat and Cleaner.** A business which offers self-service laundry and/or dry-cleaning machines and dryers, which are coin, token or otherwise fee operated. This use excludes dry cleaning plants.
7. **Library.** A non-commercial facility where sources of information and similar resources (such as books, recordings, or films) are made available for public use.
8. **Limited Equity Cooperative.** The form of ownership defined in Section 11003.4(a) of the Business and Professions Code or other form of ownership, wherein appreciation of equity of dwelling units is no greater than appreciation permitted by California Health and Safety Code Section 33007.5 for a Limited Equity Cooperative.
9. **Live Entertainment.** Any one or more of any of the following, performed live by one or more persons, whether or not done for compensation and whether or not admission is charged: musical act (including karaoke); theatrical act (including stand-up comedy); play; revue; dance; magic act; disc jockey; or similar activity.
10. **Live/Work.** A built space used or designed to be used both as a workplace and as a residence by one or more persons in conformance with Chapter 23.312 (Live/Work).
11. **Loading Space, Off-street.** A covered or uncovered space for trucks or other delivery vehicles for the loading or unloading of freight, cargo, packages, containers or bundles of goods and/or bulky goods.
12. **Loft.** See mezzanine.
13. **Lot.** A separate legal subdivision of land, as recorded with the County of Alameda Recorder. See Figure 23.502-4: Lot Configuration.
 - a. **Abutting Lot.** A lot having a common property line or separated by a public path or alley, private street or easement to the subject lot.
 - b. **Confronting Lot.** A lot whose front property line is intersected by a line perpendicular to and intersecting the front property line of the subject lot.
 - c. **Corner Lot.** A lot bounded on two or more adjacent sides by street lines, providing that the angle of intersection is less than 135 degrees.
 - d. **Flag Lot.** A lot so shaped that the main portion of the lot area does not have direct street frontage, other than by a connection of a strip of land which is used for access purposes.

- e. **Interior Lot.** A lot bounded on one side by a street line and on all other sides by lot lines between adjacent lots or is bounded by more than one street with an intersection greater than or equal to 135 degrees.
- f. **Key Lot.** Any interior lot which abuts the rear lot line of a corner lot.
- g. **Receiving Lot.** The lot to which a building is relocated from a different lot.
- h. **Source Lot.** The lot from which a building is relocated to a different lot.
- i. **Through Lot.** A lot having frontage on two parallel or approximately parallel streets.

FIGURE 23.502-4: LOT CONFIGURATION



- 14. **Lot Area.** The total horizontal area within a lot's boundary lines.
- 15. **Lot Coverage.** See 23.106.020 (Lot Coverage).
- 16. **Lot Depth.** The average distance from the front lot line to the rear lot line measured in the general direction of the side lines.
- 17. **Lot Frontage.** That dimension of a lot's front lot line abutting on a street.
- 18. **Lot Lines.** The boundaries between a lot and other property or the public right-of-way.
- 19. **Lot Line, Front.** The shorter of the two intersecting lot lines along the rights-of-way of a corner lot shall be deemed to be the front of the lot for purposes of determining the lot frontage and for yard requirements. In the case of a lot having equal frontage, or in the case of an irregularly shaped lot, the Zoning Officer shall determine the front in such a manner as to best promote the orderly development of the immediate area.

20. **Lot Width.** The average distance between the side lot lines measured at right angles to the lot depth.

M. “M” Terms.

1. **Main Building.** See Building, Main.
2. **Maintenance of Building.** Those activities which preserve an existing building including, but not limited to cleaning, painting, refurbishing (but not altering) exterior and interior walls, equipment, facilities and fixtures.
3. **Manufactured Home.** A structure, designed or altered to be used as a dwelling unit, which is transportable in one or more sections and is built on a frame or chassis to which wheels may be attached so as to be transported, including mobile homes meeting the standards of the National Manufactured Housing Construction and Safety Act of 1974. If a manufactured home is mounted on a permanent foundation and connected to all utilities required for a dwelling unit built on the site, it is considered a dwelling unit.
4. **Manufacturing Districts.** The districts listed under the Manufacturing Districts heading in Table 23.108-1: Zoning Districts.
5. **Manufacturing.** A use primarily engaged in the mechanical or the chemical transformation of materials or substances into new products. Manufacturing activities include assembly, baking, brewing, fabrication, milling, processing, refining, smelting and treatment and any other uses determined by the Zoning Officer. Except as otherwise provided in this chapter, manufacturing uses are defined, and distinguished from nonmanufacturing uses, in the North American Industrial Classification Manual (311611 – 339999).
 - a. **Construction Products Manufacturing.** Manufacturing and/or processing asphalt, cement and/or concrete.
 - b. **Light Manufacturing.** Primarily involved in baking, brewing, fabricating, milling, processing and other similar forms of mechanical and chemical treatment. Light manufacturing uses are generally in the following groups in the North American Industrial Classification System (NAICS):

Use	NAICS Code
Apparel and Other Textile Mill Products	314 – 33636
Electronic and Electric Equipment, except semiconductors	334412 – 335311, 334413, 333319, 333618, 333992, 335129, 35999
Fabricated Metal Products	332 – 332999
Food Processing	311 – 311999
Furniture and Fixtures	337 – 33792
Industrial Machinery and Equipment	333 – 333999
Instruments and Related Products	334511 – 334518
Leather and Leather Products, except leather tanning	3162 – 316999
Lumber and Wood Products, except logging	321 – 321999
Miscellaneous Manufacturing	339 – 339999

Use	NAICS Code
Paper and Allied Products, except paper, pulp and paperboard mills	3222 – 322299
Perfumes, Cosmetics and Toilet Preparations	325611 – 32562
Printing and Publishing, except publishing without printing	323 – 323122
Rubber and Miscellaneous Plastic Products	326 – 326299
Stone, Clay and Glass Products, except cement	327 – 327215, 32733 – 327999
Textile Mill Products	313 – 31332
Transportation Equipment	336 – 336999

- c. **Pesticides, Herbicides and Fertilizers.** Manufacturing and/or processing of substances used for destroying insects or other organisms harmful to cultivated plants or to animals, substances toxic to plants used to destroy unwanted vegetation. and chemicals or natural substance added to soil or land to increase its fertility.
- d. **Petroleum Refining and Products.** The transformation of crude oil into gasoline and other similar petroleum products.
- e. **Pharmaceuticals.** Manufacturing and production of medical drugs.
- f. **Primary Production Manufacturing,** Manufacturing primarily involved in drawing, smelting, refining, rolling and extruding to produce materials such as metals or plastic. Primary production manufacturing uses are generally in the following groups in the North American Industrial Classification System (NAICS):

Use	NAICS Code
Chemicals and allied products, except pharmaceuticals and perfumes, cosmetics and toilet preparations	325 – 32532, 325413 – 325613, 3259 – 325998
Leather Tanning	31611
Paper, pulp and paperboard mills	32211 – 3221
Primary Metal Industries	331 – 331528

- g. **Semiconductors.** The manufacturing of a solid substance that has a conductivity between that of an insulator and that of most metals, either due to the addition of an impurity or because of temperature effects.
6. **Material Recovery Enterprise.** A business that diverts discarded materials from several waste streams including the Transfer Station, drop-off, pick-up and curbside collection. Such facilities must clean, sort, repair and/or process these materials and offer them for reuse and/or recycling through wholesale and/or retail sales, including bulk sales. The retail component of these facilities is limited to the sale of items recovered from the waste stream. No new items may be offered for sale at these facilities. This use excludes flea markets, automobile wrecking establishments, manufacturer's outlet stores (factory second stores),

consignment shops, second-hand stores, antique stores, and any store which offers only used furniture, clothing and/or household items.

7. **Media Production.** Commercial arts and art-related business services including audio and film recording and editing studios and services, film and video production, titling, video and film libraries, special effects production, motion picture and photograph processing, radio and television broadcast, and similar uses.
8. **Medical Practitioner Office.** Clinics or offices and related laboratories for doctors, dentists, chiropractors, optometrists, mental health practitioners, osteopaths, chiropodists, and similar practitioners of the traditional healing arts, as well as holistic healthcare providers and practitioners of a non-traditional nature. This use includes acupuncturists, herbalists, nutritionists, midwives, reflexologists, iridologists, physical therapists, and bodyworkers, but excludes offices for veterinarians or opticians.
9. **Mezzanine.** An intermediate level of a building interior containing floor area without complete enclosing interior walls or partitions, placed in any story or room and not separated from the floor or level below by a wall.
10. **Microbusiness.** Cannabis use involving more than one State license. See Municipal Code Chapter 12.21 for definition.
 - a. **Retail Nursery Microbusiness.** A microbusiness that is restricted to growing and selling cannabis plants and seeds. See Municipal Code Chapter 12.21 for definition.
 - b. **Retail Storefront Microbusiness.** A microbusiness that is restricted to a Storefront Retailer with limited manufacturing and distribution activities. See Municipal Code Chapter 12.21 for definition and limitations.
11. **Mini-storage.** A storage warehouse characterized by individual separate spaces, which are accessible by customers for storing and retrieval of goods.
12. **Mixed Use.** The use of a lot or building with two or more different land uses including, but not limited to, residential, commercial retail, office or manufacturing, in a single structure or a group of physically integrated structures.
13. **Mixed-Use Residential.** A development project with both residential and non-residential uses which are either 1) located together in a single building; or 2) in separate buildings on a single site of one or more contiguous properties.
14. **Microcell.** A set of antenna nodes networked with each other and connected to a wireless service source, such that a one or more high-power antennas that serve a given area are replaced by a group of lower-power antennas to serve the same geographic area.

15. **Monopole.** A single pole support structure greater than 15 feet in height erected on the ground or on a structure to support antennas and related communications equipment.
16. **Motel, Tourist.** An establishment which provides overnight lodging and parking which contains six or more guest rooms used, designed or intended to be used, let or hired out for occupancy by six or more transient individuals for compensation, whether direct or indirect, and in which the rooms are usually accessible from an outdoor parking lot.
17. **Multi-Family Dwelling.** A building, group of buildings, or portion of a building used or designed as three or more dwelling units.
18. **Municipal Animal Shelter.** A City-owned facility providing services for humane animal care with programs and services focused on maximizing opportunities for animal adoption. Supporting facilities may include medical care (including spay/neuter), kennels, exercise areas and adoption centers.

N. **“N” Terms.**

1. **New Construction.** Construction of a new main building
2. **Non-Chartered Financial Institutions.** A use, other than State or Federally chartered bank, credit union, mortgage lender, savings and loan association or industrial loan company, that offers deferred deposit transaction services or check cashing services and loans for payment of a percentage fee. This use includes deferred deposit transaction (payday loan) businesses that makes loans upon assignment of wages received, check cashing businesses that charge a percentage fee for cashing a check or negotiable instrument, and motor vehicle title lenders who offer short-term loan secured by the title to motor vehicles. This use excludes non-profit financial institutions or retail sellers engaged primarily in the business of selling consumer goods to retail buyers and that cash checks or issue money orders as a service to its customers that is incidental to its main purpose or business.
3. **Non-conforming Use or Building.** A use or building which is not consistent with a provision or provisions of the Zoning Ordinance, but which was lawfully established or constructed before the effective date of the provision(s) with which it is inconsistent. A use is not considered non-conforming if it is only inconsistent with the Zoning Ordinance with respect to the number of auto or bicycle spaces, their location on site, or screening.
4. **Non-Processed Edibles.** Foods, including fruit, vegetables, nuts, honey, and shell eggs from fowl or poultry, grown or raised in accordance with the Municipal Code, that are whole and intact and have not been processed, but not including cannabis as defined in Chapter 12.26 or meat. Washing, trimming, bundling, and

similar handling of otherwise whole and intact foods shall not be considered processing.

5. **Non-Residential Districts.** Those districts listed under the Commercial Districts, Manufacturing Districts, and Special Districts headings in Table 23.108-1: Zoning Districts.
6. **Non-Residential Use.** Any land use other than a residential use as defined by this chapter.
7. **Nursing Home.** An establishment which provides 24 hour medical, convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves, and is licensed as a skilled nursing facility by the California State Department of Health Services. This use includes rest homes and convalescent hospitals and excludes community care facilities, senior congregate housing, and hospitals.

O. **“O” Terms.**

1. **Oakland Primary Metropolitan Statistical Area (PMSA).** A geographic area defined by the U.S. Bureau of the Census, composed of the counties of Alameda and Contra Costa.
2. **Office Use.** A building or portion of a building used for conducting the business or affairs of a profession, business service, non-profit organization, agency, public utility and/or government entity.
3. **Office, Business and Professional.** A building or portion of a building used for conducting the business or affairs of a profession, business service, non-profit organization, agency, public utility and/or government entity. Includes publishing without printing.
4. **One Ownership.** Ownership of property or possession thereof under a contract to purchase by a person or persons, firm, corporation or partnership, individually, jointly, in common or in any other manner whereby such property is under a single or unified control.
5. **Outdoor Cafe Seating.** Tables and/or chairs (including benches) and umbrellas associated with a lawfully operating food service establishment located in an outdoor area on private property.
6. **Owner.** The person or persons, firm, corporation or partnership exercising One Ownership as defined in this chapter.
7. **Owner or Operator (also Provider or Service Provider).** The person, entity or agency primarily responsible for installation and maintenance of the facility, which may or may not be the same person or entity which is the owner of the property on which the facility is located.

P. "P" Terms.

1. **Parapet.** A low wall or railing not exceeding 42 inches above the roof and along its perimeter, usually for fire containment and/or architectural purposes.
2. **Parcel.** A term used by the Alameda County Tax Collector to describe a lot, portion of a lot or a group of lots for property tax purposes.
3. **Park/Playground.** Non-commercial facilities that provide open space and/or recreational opportunities to the public.
4. **Parking Area, Accessory.** An area of a lot reserved for use as off-street parking intended to serve a building or use which is the primary or main use of the lot.
5. **Parking Lot/Structure.**
 - a. **Parking Lots.** The exclusive or primary use of a lot for off-street parking spaces in an open paved area.
 - b. **Parking Structures.** The exclusive or primary use of a lot for off-street parking spaces in a structure built specifically for parking purposes.
6. **Parking Space, Off-Street.** An area, covered or uncovered, designed for the storage of an automobile which is paved, accessible by an automobile, and usable for such automobile storage use without permanent obstruction.
7. **Path.** A City-owned right-of-way used or designed for pedestrian access.
8. **Pawn Shops and Auction Houses.** Establishments engaged in the buying or selling of new or secondhand merchandise and offering loans in exchange for personal property.
9. **Penthouse, Mechanical.** A room or enclosed structure, attached to the roof level for the uppermost story, for purposes of sheltering mechanical equipment, water tanks and/or vertical openings for stairwell and elevator shafts. Such a structure is considered a story if it contains usable floor area or habitable space.
10. **Permit, Discretionary.** The following types of permits and approvals: Administrative Use Permit, Use Permit, Master Use Permit, Modification of Development Standards, Reasonable Accommodations, and Variance.
11. **Permit.** A Use Permit, Administrative Use Permit, or Variance, unless the context specifies otherwise.
12. **Personal/Household Service, General.** A business establishment which provides commercial services directly to customers. This use includes barber/beauty shops, clothing, shoes and/or household items repair shops, dry cleaning and laundry agents, framing/mounting shops, optician shops, photocopy stores, photography studios postal/packaging/po box service shops, and other similar establishments. This use excludes massage.

13. **Pet Store.** Retail sales and services for animals kept as household pets. Includes sales and grooming of animals but not boarding.
14. **Plumbing Shop.** A business offering plumbing supplies and service which has on-site supply storage and service vehicles.
15. **Porch.** A covered projecting platform that extends from the main wall of a building where the covering is supported by columns, walls, or other vertical structural elements.
16. **Primary Dwelling Unit.** A legally established single-family dwelling that is on a lot with an accessory dwelling unit.
17. **Privately-Owned Public Open Space.** Area on a lot that is designed for active or passive recreational use and that is accessible to the general public without a requirement for payment or purchase of goods. Such areas may include mid-block passageways and other amenities intended to improve pedestrian access, and may be outdoors, indoors, or enclosed.
18. **Public Property.** All real property owned, operated or controlled by the City, other than the public right-of-way and any privately- owned area within City's jurisdiction which is not yet, but is designated as a proposed public place on a tentative subdivision map approved by City.
19. **Public Right-Of-Way.** Any public street, public way, public place or rights-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, owned, operated and/or controlled by the City or subject to an easement owned by City and any privately-owned area within City's jurisdiction which is not yet, but is designated as a proposed public place on a tentative subdivision map approved by City.
20. **Public Market.** A facility or location where people regularly gather for the sale and purchase of food, beverages, flowers, crafts, and other similar goods. Public markets are open daily, year-round, in a permanent location, with multiple vendors that are owner-operated.
 - a. **Open Air.** A public market conducted outdoors.
 - b. **Enclosed.** A public market conducted indoors.
21. **Public Safety and Emergency Service.** Facilities that provide police and fire protection.
22. **Public Utility Substation/Tanks.** A permanent structure or facility providing a utility service to the general public. Includes generating plants, electric substations, solid waste collection, solid waste treatment and disposal, water or wastewater treatment plants, and similar facilities.

Q. "Q" Terms.

1. **Quorum.** A majority of the appointed members.

R. **“R” Terms.**

1. **Rear Main Building.** A main building situated behind another main building existing or proposed on a parcel located in the R-1A district.
2. **Receiving Lot.** See Lot, Receiving.
3. **Recycled Materials Processing.** A facility that receives and processes recyclable materials. Processing means preparation of material for efficient shipment, or to an end-user’s specifications, by such means as baling, briquetting, compacting, flattening, grinding, crushing, mechanical sorting, shredding, cleaning, and remanufacturing.
4. **Recycling Redemption Center.** A facility, use, or structure for the collection of recyclable goods, including beverage containers and newspapers.
5. **Related Equipment.** All equipment necessary for or related to the provision of personal wireless services. Such equipment may include, but is not limited to, cable, conduit and connectors, equipment pads, equipment shelters, cabinets, buildings and access ladders.
6. **Religious Assembly.** A building or space primarily used for an assembly of persons to conduct worship or other religious ceremonies, including, but not limited to, churches, synagogues, temples, mosques or shrines.
7. **Repair Service, Non-Vehicle.** An establishment that provides repair and maintenance services for household appliance, home electronics, office equipment, furniture and other similar items. Excludes vehicle repair.
8. **Research and Development.** An establishment comprised of laboratory or other non-office space, which is engaged in one or more of the following activities: industrial, biological or scientific research; product design; development and testing; and limited manufacturing necessary for the production of prototypes.
9. **Resident.** A person whose primary residence is in Berkeley.
10. **Residential Care Facility.** See Community Care Facility.
11. **Residential Hotel.** See Hotel, Residential.
12. **Residential Addition.** See Addition, Residential.
13. **Residential Districts.** The districts listed under the Residential Districts heading in Table 23.108-1: Zoning Districts.
14. **Residential Hotel Room.** A room which is:
 - a. Used, designed, or intended to be used for sleeping for a period of 14 consecutive days or more;

- b. Not a complete dwelling unit, as defined in this chapter; and
- c. Not a Tourist Hotel Room, as defined in this chapter.

15. **Residential Use.** Any legal use of a property as a place of residence, including but not limited to dwelling units, group living accommodations, and residential hotels.
16. **Retail, General.** A retail establishment engaged in the sales of personal, consumer, or household items to the customers who will use such items. This use includes antique stores, art galleries, arts and crafts supply stores, bicycle shops, building materials and garden supplies stores, clothing stores, computer stores, cosmetic/personal care items, department stores, drug paraphernalia stores, drug stores, fabric, textile and sewing supply shops, flower and plant stores, food product stores, furniture stores, garden supply stores, nurseries, gift/novelty shops, household hardware and housewares stores, household electronics/electrical stores, jewelry/watch shops, linen shops includes bedding, musical instruments and materials stores, office supply stores, paint stores, photography equipment supply stores, secondhand stores, sporting goods stores, stationery, cards and paper goods stores toy stores and variety stores. This use excludes video rental stores, service of vehicle parts, nurseries, and firearm/munition sales.
17. **Retaining Wall.** A wall designed to contain and resist the lateral displacement of soil and of which such soil is at a higher elevation on one side of the wall.
18. **Review Authority.** The City official or body responsible for approving or denying a permit application or other form of requested approval under the Zoning Ordinance.
19. **Rooming House.** A building used for residential purposes, other than a hotel, where lodging for 5 or more persons, who are not living as a single household, is provided for compensation, whether direct or indirect. In determining the number of persons lodging in a rooming house, all residents shall be counted, including those acting as manager, landlord, landlady or building superintendent. See also Boarding House.

S. "S" Terms.

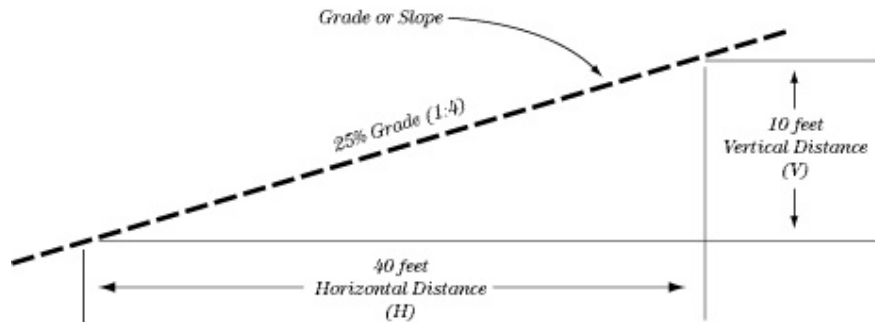
1. **Satellite Dish.** A device which is designed to receive signals or communications from orbiting satellites.
2. **School.** A building or group of buildings for educational and/or classroom purposes operated by the Berkeley Unified School District (BUSD) and/or other private or public education institutions offering a general course of study at primary, secondary or high school levels which is equivalent to the courses of study at such levels offered by the BUSD. Day nurseries, vocational and trade

schools are considered schools only when incidental to the conduct of a school as defined by this chapter.

3. **School, Vocational.** An educational institution which provides secondary or post-secondary training for technical skills required to complete the tasks of a specific job.
4. **Seasonal Product Sales.** Sales of products for a limited duration of time, usually associated with a seasonal holiday, including but not limited to, sales of Christmas trees and pumpkins.
5. **Service Use.** A business in which no more than fifty percent (50%) of its gross receipts are subject to retail sales taxes.
6. **Services to Buildings and Dwellings.** A business that provides services to customers at a location other than the business location. This use includes carpet/upholstery cleaning services, security services, and janitorial services.
7. **Senior Congregate Housing.** A type of group living accommodations occupied by persons 60 years or older who live in sleeping rooms without kitchen facilities, and which contains congregate bath and/or dining facilities or rooms. This use excludes community care facilities/homes and nursing homes.
8. **Setback.** A distance between a lot line and a building or other site improvement. See also 23.106.070 (Setbacks).
9. **Setback Area.** See 23.106.070.B (Setback Areas).
10. **Setback Line.** A line parallel to a specified lot line which defines a required setback area.
11. **Shed, Garden and/or Tool.** An accessory structure designed to store tools, lawn and garden care or maintenance equipment or materials, and which is not designed to contain any habitable space.
12. **Shelter, Homeless or Women's.** See Transitional Housing.
13. **Short-Term Rental.** See Section 23.314.020 (Definitions).
14. **Sidewalk Cafe Seating.** Tables and/or chairs (including benches) as defined in Municipal Code Section 14.48.150 (Sidewalk cafe seating, benches and planters).
15. **Sign.** Any sign as defined in Municipal Code Section 20.08.220 (Sign).
16. **Single-Family Dwelling.** A building designed for and occupied exclusively by one household.
17. **Single Residential Occupancy (SRO) Room.** A room for residential or sleeping purposes in a residential hotel which is designed for occupancy of one person only.

18. **Skateboard Ramp.** A ramp, platform, course or facility used for skateboard riding and made of wood or other solid material.
19. **Slope.** The steepness of a site, measured as the ratio of the vertical distance to the horizontal distance between the highest and lowest points of the site. See Figure 23.502-5: Grade or Slope.

FIGURE 23.502-5: GRADE OR SLOPE



20. **Small Vehicle Sales and Service.** An establishment which sells or leases long-term new, used, or pre-owned motorized vehicles other than passenger automobiles and trucks which are characterized by fewer than four wheels or a minimal frame. Types of vehicles sold or leased by this use include motorcycles, scooters, three-wheel motorcycles, electric carts, electric scooters, and such vehicles designed or refurbished for alternative fuels/power sources (alternative to conventional gasoline).
21. **Smoke Shop.** An establishment engaged primarily in the sale of tobacco and/or tobacco-related products.
22. **Solar Energy Device/Equipment.** Any solar collector or other solar energy device or any structural design feature of a building of which the primary purpose is to provide for the collection, storage or distribution of solar energy for space heating or cooling, water heating or the generation of electricity.
23. **Sorority House.** A building used for group living accommodations by an organization recognized by the UC Berkeley, or other institution of higher learning.
24. **Source Lot.** See Lot, Source.
25. **Story.** See Section 23.106.060 (Story)
26. **Street.** A public or private thoroughfare which provides principal means of access to abutting lots, including but not limited to, avenue, place, way, manor, drive, circle, lane, court, boulevard, highway, road and any other thoroughfare except an alley or a path as defined in this chapter.
27. **Street Line.** The boundary between a lot and an adjacent street.

28. **Structural Alteration.** Any physical change to or removal of the supporting members of a building, foundation or bearing walls, columns, beams or girders or creation or enlargement of a window or door, change of a roofline or roof shape, including creating, enlarging or extending a dormer.
29. **Structural Alteration, Public Safety.** Any structural alteration or physical change to a building that provides greater safety to the public or occupants by strengthening the building against seismic activity, which does not result in new floor area except that created by necessary structural improvements or physical changes as required under Municipal Code Chapter 19.38 and 19.39.
30. **Structure.** Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground. A building is a structure for the purposes of this chapter.
- a. **Accessory Structure.** A detached structure, other than an accessory building, in which non-habitable uses or activities other than the principal use of the property are conducted. Residential accessory structures include, but are not limited to, enclosed structures such as garages, carports, garden or tool sheds, and non-enclosed structures such as, but not limited to, fences, gazebos, ground-mounted satellite dishes, skateboard ramps and wheelchair ramps. Non-residential accessory structures include, but are not limited to, storage buildings, garages, sheds and other outbuildings.
 - b. **Subterranean Structure.** A roofed structure constructed underground, with no building stories aboveground, of which the roof does not exceed 3 feet above the pre-existing grade. Such structures are either separated from a building or connected to a building only by a passageway or hallway with no openings to finished grade except for a doorway.
 - c. **Temporary Structure.** A tent, tent-house, trailer, mobile office, mobile home or other movable structure or other temporary structure whose construction does not require a building permit.
31. **Studio.** See Art/Craft Studio and Dance, Exercise, Martial Arts or Music Studio.
32. **Supportive Housing.** As defined in Health and Safety Code 50675.14(b): Any dwelling unit or a Group Living Accommodation, that is occupied by the target population as defined in subdivision (d) of Section 53260 of the CA Health and Safety Code with no limit on length of stay, that is linked to on- or off-site services that assist the supportive housing residents in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community.

T. **“T” Terms.**

1. **Temporary Use.** See Use, Temporary.

2. **Tenant Space Reconfiguration.** any physical change to an existing building's walls separating leased spaces so as to change the number of lease spaces for commercial businesses or the square footage of leasable floor area of an existing commercial lease space.
3. **Theater.** Any establishment that has a permanent stage or screen for the presentation of live or recorded entertainment and which contains an audience viewing hall or room, with fixed seats. Theaters may be used for live performances of music, dance, plays, orations, and other stage performances and/or the showing of projected motion pictures and videotapes.
4. **Tire Sales and Service.** An establishment that sells, installs, and provides services for vehicle tires.
5. **Tourist Hotel.** See Hotel, Tourist.
6. **Tourist Hotel Room.** A sleeping room used, designed or intended for occupancy by transient guests for a period not to exceed 14 consecutive days, which is not a residential hotel room or a dwelling unit.
7. **Townhouse.** A dwelling unit in which ownership is in the form of a condominium arrangement which is located in a separate building from any other dwelling unit.
8. **Transitional Housing.** From Health and Safety Code Section 50675.2: Any dwelling unit or a Group Living Accommodation configured as a rental housing development, but operated under program requirements that call for the termination of assistance and recirculation of the assisted units to another eligible program recipient at some predetermined future point in time.
9. **Treehouse.** An accessory structure built within, on or above the branches of any living tree.
10. **Two-Family Dwelling.** A building or use of a lot designed for, or occupied exclusively by, two households.

U. "U" Terms.

1. **Unenclosed Accessory Structure.** An accessory structure that does not have a roof, and/or does not have walls on more than two sides. Unenclosed accessory structures include, but are not limited to, pergolas, trellises, shade structures, arbors, retaining walls, solar energy equipment, ground or pole-mounted satellite dishes, play structures, skateboard ramps, tree houses and windmills.
2. **Urban Agriculture.** The production of horticultural crops for harvest, sale, and/or donation, including community gardens. This use excludes include cannabis cultivation and does not pertain to raising animals.
 - a. **Low-Impact Urban Agriculture.** Urban agriculture that meets the thresholds in Section 23.318.040 (Thresholds).

- b. **High-Impact Urban Agriculture.** Urban agriculture that does not meet one or more of the thresholds in Section 23.318.040 (Thresholds).
3. **Urban Agricultural Products.** Horticultural crops including fruits, vegetables, nuts, flowers, herbs, and any other cultivar, and value-added products made from raw agricultural products grown at the site such as jams, fruit preserves, herb blends, and floral bouquets. Urban agricultural products do not include cannabis products.
 4. **Usable Open Space.** Outdoor space, including natural and landscaped ground areas, pools, patios, decks and balconies designed for active or passive recreational use and which is accessible to the occupants of a building on the same lot.
 5. **Usable Space.** Any portion of a building or structure which is designed to be or can be used as habitable space, which has finished walls (sheetrock or plaster) and/or is heated with any fixed furnace or central heating system, including bathrooms, halls, garages and laundry rooms. Storage areas with over 6 feet of vertical space shall also be considered usable space.
 6. **Use.** The purpose for which land or premises or a building thereon is designed, arranged, or intended or for which it is or may be occupied or maintained.
 7. **Use, Accessory.** A use that is of the same nature as or complementary to the principal use of a lot or a building located on the same lot, and that is not independent of the principal use.
 8. **Use, Ancillary.** A use that is both dependent on and commonly associated with the principal permitted use of a lot and/or building and that does not result in different or greater impacts than the principal use.
 9. **Use, Incidental.** A use of a lot and/or building that is secondary to the principal permitted use, but that by nature could be independent. An incidental use shall not exceed 25 percent of the floor area of the primary use, and if it consists of the commercial sales of a different line of products or services than the primary use, such incidental use may not generate gross receipts in excess of 33 percent of the gross receipts generated by the primary use.
 10. **Use, Primary.** The main purpose for which a site is developed and occupied, including the activities that are conducted on the site a majority of the hours during which activities occur.
 11. **Use, Temporary.** A use of a building, property or land area, that is limited in duration of time, does not permanently change the character or physical facilities of the premises or property and is in keeping with the purposes listed in the district where it is located.

12. **Utility.** An entity which provides water, sewage collection, electricity, natural gas, telephone, cable television or other public service or good to the public.

V. **“V” Terms.**

1. **Vehicle Parts Stores.** An establishment that sells automobile, truck or other vehicle parts or equipment. This use excludes service of vehicle parts.
2. **Vehicle Rentals.** An establishment which rents automobiles, trucks, motorcycles, boats, or other motor-driven vehicles that are stored either indoors or outdoors on its premises.
3. **Vehicle Repair and Service.** An establishment that repairs, services, paints and/or conducts bodywork on automobiles, trucks or other motor-driven vehicles on its premises. Includes restoration of antique and classic cars.
4. **Vehicle Sales.** An establishment which sells, or leases long-term, new, used or previously owned automobiles or trucks; restored vintage, specialty, or antique automobiles or trucks; or automobiles or trucks refurbished for alternative fuels (alternative to conventional gasoline). Ancillary uses and services that are supporting of an vehicle sales use may include the sale and installation of automobile parts, accessories and equipment; repair, maintenance, bodywork and other service of automobiles; loaning of vehicles to service patrons; storage of vehicles outdoors; and automobile washes. This use excludes establishments where more than 50 percent of vehicles sold are previously owned or used (see vehicles sales, used).
5. **Vehicle Sales, Used.** An establishment which sells automobiles and/or trucks of which more than fifty percent at any time are previously owned and/or used.
6. **Vehicle Sharing** (which includes “Car Sharing”). A membership-based service that:
 - a. Provides a mobility service that helps meet City goals for alternative transportation to enhance mobility options, reduce congestion and promote walking, biking and transit;
 - b. Is primarily designed for shorter time and shorter distance trips that can function as an extension of the public transportation network;
 - c. Offers membership to all qualified drivers in the City;
 - d. Does not require a separate written agreement or human intervention to access vehicles each time a member reserves and uses a vehicle;
 - e. Offers members access to a dispersed network of shared automotive vehicles, available 24 hours per day, 7 days a week, at self-service locations where the vehicles are not attended; and

- f. Provides vehicle usage without restriction at hourly and/or per mile rates that are directly proportional to usage and include fuels (gas), insurance, maintenance, and reserved parking when vehicles are not in use.
7. **Vehicle Sharing Pod.** Any location reserved for shared vehicles that:
 - a. Is located in a location approved for off-street parking or municipal parking lot; or
 - b. Is located on street in a site designated by the City for this use; and
 - c. Does not involve more than five shared vehicles per vehicle sharing service provider; and
 - d. Where the shared vehicles must be parked in assigned spaces in conformance with all applicable laws and ordinances.
 8. **Vehicle Wash.** An establishment where the Washing, waxing, or cleaning of automobiles or similar light vehicles are the primary use. Includes self-serve washing facilities.
 9. **Vehicle Wrecking.** An establishment which engages in the on-site dismantling or wrecking of automobiles, trucks, or trailers for the purpose of obtaining parts, metal, or materials for re-use or resale or the storage and keeping of such dismantled parts.
 10. **Veterinary Clinic.** A facility providing veterinarian and/or medical care or treatment for animals. This use includes pet hospitals but excludes kennels or other animal boarding facilities for non-medical care of animals of over 24 hours.
 11. **Video Tape/Disk Rental Stores.** A commercial establishment where the primary business is the rental of video tapes and DVD for the short-term use of customers.
 12. **View Corridor.** A significant view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz Island or any other significant vista that substantially enhances the value and enjoyment of real property.

W. "W" Terms.

1. **Warehouse.** A facility for the storage of commercial goods. Includes storage of goods for a contiguous and directly accessible retail space. Excludes mini-storage.
2. **Warehouse-Based Non-Store Retailers.** Retail activity that is based on sales without on-site customer visits. This use includes businesses engaged in catalog sales, internet sales, and phone orders. Goods may be both stored and distributed from site. This use includes delivery-only cannabis retailers located in the Manufacturing (M) district.

3. **Wheelchair Ramp.** A sloping ramp, designed in width and steepness to allow a person in a wheelchair to reach an entrance doorway of a building or a landing at the same level as the doorway.
4. **Wholesale Trade.** The sale of goods to other businesses for resale. Any use defined as conducting Wholesale Trade under Municipal Code Section 9.04.150 is considered a wholesale trade establishment.
5. **Windmill.** A device that converts the kinetic energy of the wind to a usable form of electrical or mechanical energy, usually by rotating blades.

X. **“X” Terms.**

Y. **“Y” Terms.**

1. **Yard.** See Setback Area

Z. **“Z” Terms.**

1. **Zoning Ordinance.** Title 23 of the City of Berkeley Municipal Code.

23.502.030 – Acronyms

- A. **Error! Reference source not found.** shows terms corresponding to acronyms used in the Zoning Ordinance. For zoning district names that correspond to district symbols (e.g., R-1 for Single-Family Residential), see Table 23.108-1: Zoning Districts.

TABLE 23.502-1: ACRONYMS USED IN ZONING ORDINANCE

ACRONYM	TERM
ADA	Americans with Disabilities Act
AUP	Administrative Use Permit
DU	Dwelling Unit
FAR	Floor Area Ratio
HUD	U.S. Department of Housing and Urban Development
LPC	Landmarks Preservation Commission
NPO	Neighborhood Preservation Ordinance
TSF	Transportation Services Fee
UBC	Uniform Building Code
UP(PH)	Use Permit, Public Hearing
ZAB	Zoning Adjustments Board
ZC	Zoning Certificate

Appendix A
CITY OF BERKELEY BASELINE ZONING ORDINANCE (BZO)
TABLE RELATING NEW ORDINANCE TO OLD ORDINANCE

New Chapters	Old Chapters
Division 1: General Provisions	
23.102: Introductory Provisions	23A.04: Title, Adoption and Purposes 23A.12: General Regulations 23A.24: Applicability, Emergencies, Interpretation, Severability, Rules of Evidence and Procedure
23.104: Interpreting the Zoning Ordinance	23A.08: Interpretation and Construction of the Zoning Ordinance
23.106: Rules of Measurement	23D.04: Lot and Development Standards 23F.04: Definitions
23.108: Zoning Districts and Map	23A.16: Zoning Maps, Districts and Boundaries
Division 2: Zoning Districts	
23.202: Residential Districts	23D.16: R-1 Single Family Residential District Provisions 23D.20: R-1A Limited Two-Family Residential District Provisions 23D.24: ES-R Environmental Safety-Residential District Provisions 23D.28: R-2 Restricted Two-Family Residential District Provisions 23D.32: R-2A Restricted Multiple-Family Residential District Provisions 23D.36: R-3 Multiple Family Residential District Provisions 23D.40: R-4 Multi-Family Residential District Provisions 23D.44: R-5 High Density Residential District Provisions 23D.48: R-S Residential Southside District Provisions

New Chapters	Old Chapters
	23D.52: R-SMU Residential Southside Mixed Use District Provisions
23.204: Commercial Districts	23E.16: Special Use Standards 23E.18: Temporary Outdoor Uses on Private Property 23E.24: Sidewalk Café Seating 23E.36: C-1 General Commercial District Provisions 23E.40: C-N Neighborhood Commercial District Provisions 23E.44: C-E Elmwood Commercial District Provisions 23E.48: C-NS North Shattuck Commercial District Provisions 23E.52: C-SA South Area Commercial District Provisions 23E.56: C-T Telegraph Avenue Commercial District Provisions 23E.60: C-O Solano Avenue Commercial District Provisions 23E.64: C-W West Berkeley Commercial District Provisions 23E.68: C-DMU Downtown Mixed Use District Provisions 23E.70: C-AC Adeline Corridor Commercial District Provisions
23.206: Manufacturing Districts	23E.72: M Manufacturing District Provisions 23E.76: MM Mixed Manufacturing District Provisions 23E.80: MU-LI Mixed Use-Light Industrial District Provisions 23E.84: MU-R Mixed Use-Residential District Provisions
23.208: Special Purpose Districts	23E.88: SP Specific Plan District Provisions 23E.92: U Unclassified District Provisions
23.210: Overlay Zones	23E.96: H Hillside Overlay District Provisions

New Chapters	Old Chapters
	23E.98: Civic Center District Overlay
Division 3: Citywide Provisions	
23.302: Supplemental Use Regulations	23C.06: Bed and Breakfast Establishments in Residential Districts 23C.16: Home Occupations 23C.20: Exemptions 23E.18: Temporary Outdoor Uses on Private Property
23.304: General Development Standards	23C.04: Lot and Development Standards 23D.08: Accessory Buildings and Structures 23E.04: Lot and Development Standards
23.306: Accessory Dwelling Units	23D.10: Accessory Dwelling Units
23.308: Emergency Shelters	23C.10: Emergency Shelter Zoning
23.310: Alcoholic Beverage Sales and Service	
23.312: Live/Work	23E.20: Live/Work
23.314: Short-Term Rentals	23C.22: Short-Term Rentals
23.316: Percentage for Public Art on Private Projects	23C.23: One-Percent for Public Art on Private Projects
23.318: Urban Agriculture	23C.26: Urban Agriculture
23.320: Cannabis Uses	23C.25: Cannabis Uses
23.322: Parking and Loading	23C.19: Off-Street Parking Maximums for Residential Development 23D.12: Off-Street Parking Requirements 23E.28: Off-Street Parking and Transportation Services Fee 23E.32: Loading Space Requirements
23.324: Nonconforming Uses, Structures, and Buildings	23C.04: Conforming and Non-Conforming Uses, Buildings and Lots
23.326: Demolition and Dwelling Unit Control	23C.08: Demolition and Dwelling Unit Control
23.328: Inclusionary Housing	23C.12: Inclusionary Housing Requirements
23.330: Density Bonus	23C.14: Density Bonus
23.332: Wireless Communication Facilities	23C.17: Wireless Telecommunication Facilities
23.334: Transportation Demand Management	23C.18: Transportation Demand Management

New Chapters	Old Chapters
Division 4: Permits and Administration	
23.402: Administrative Responsibility	23B.04: Zoning Adjustments Board 23B.08: Design Review Committee 23B.12: Zoning Officer
23.404: Common Permit Requirements	23B.16: Use of Conflict Resolution or Mediation Service 23B.24: Applications for Permits 23B.56: Conditions Applicable to All Permits 23B.60: Compliance and Revocation
23.406: Specific Permit Requirements	23B.20: Zoning Conformance Review 23B.28: Administrative Use Permits 23B.32: Use Permits 23B.36: Master Use Permits 23B.40: AUPs for Temporary Uses 23B.44: Variances 23B.48: Modification of Development Standards 23B.52: Reasonable Accommodation 23E.08: Design Review 23E.12: Design Review Process
23.408: Green Pathway	23B.34: Green Pathway
23.410: Appeals and Certifications	23.326: Demolition and Dwelling Unit Control
23.412: Zoning Ordinance Amendments	23A.20: Zoning Ordinance Amendments
23.414: Nuisance Abatement	23B.64: Abatement of Nuisances 23B.68: Private Right of Action
Division 5: Glossary	
23.502: Glossary	23F.04: Definitions

Appendix B
CITY OF BERKELEY BASELINE ZONING ORDINANCE (BZO)
TABLE RELATING OLD ORDINANCE TO NEW ORDINANCE

Old Chapters	New Chapters
Sub-Title 23A: Ordinance Applicability	
23A.04: Title, Adoption and Purposes	23.102: Introductory Provisions
23A.08: Interpretation and Construction of Ordinance	23.104: Interpretation of the Zoning Ordinance
23A.12: General Regulations	23.102: Introductory Provisions
23A.16: Zoning Maps, Districts and Boundaries	23.108: Zoning Districts and Map
23A.20: Zoning Ordinance Amendments	23.412: Zoning Code Amendments
23A.24: Applicability, Emergencies, Interpretation, Severability, Rules of Evidence and Procedure	23.102: Introductory Provisions
Sub-Title 23B: Ordinance Administration	
23B.04: Zoning Adjustments Board	23.402: Administrative Responsibility
23B.08: Design Review Committee	
23B.12: Zoning officer	
23B.16: Use of Conflict Resolution or Mediation Service	23.404: Common Permit Requirements
23B.20: Zoning Conformance Review	23.406: Specific Permit Requirements
23B.24: Applications for Permits	23.404: Common Permit Requirements
23B.28: Administrative Use Permits	23.406: Specific Permit Requirements
23B.32: Use Permits	
23B.34: Green Pathway	23.408: Green Pathway
23B.36: Master Use Permits	23.406: Specific Permit Requirements
23B.40: AUPs For Temporary Uses	
23B.44: Variances	
23B.48: Modification of Development Standards	
23B.52: Reasonable Accommodation	
23B.56: Conditions Applicable to All Permits	23.404: Common Permit Requirements
23B.60: Compliance and Revocation	
23B.64: Abatement of Nuisances	23.414: Nuisance Abatement
23B.68: Private Right of Action	
Sub-Title 23C: General Provisions Applicable in All Districts	
23C.04: Conforming and Non-Conforming Uses, Buildings and Lots	23.324: Nonconforming Uses and Structures

Old Chapters	New Chapters
23C.06: Bed and Breakfast Establishments in Residential Districts	23.302: Supplemental Use Regulations
23C.08: Demolition and Dwelling Unit Controls	23.326: Demolition and Dwelling Unit Control
23C.10: Emergency Shelter Zoning	23.308: Emergency Shelters
23C.12: Inclusionary Housing Requirements	23.328: Inclusionary Housing
23C.14: Density Bonus	23.330: Density Bonus
23C.16: Home Occupations	23.302: Use-Specific Regulations
23C.17: Wireless Telecommunication Facilities	23.332: Wireless Communication Facilities
23C.18: Transportation Demand Management	23.334: Transportation Demand Management
23C.19: Off-Street Parking Maximums for Residential Development	23.322: Parking and Loading
23C.20: Exemptions	23.302: Supplemental Use Regulations
23C.22: Short-Term Rentals	23.314: Short-Term Rentals
23C.23: One-Percent for Public Art on Private Projects	23.316: Percentage for Public Art on Private Projects
23C.24: Accessory Dwelling Units	23.306: Accessory Dwelling Units
23C.25 Cannabis Uses	23.320: Cannabis Uses
23C.26: Urban Agriculture	23.318: Urban Agriculture
Sub-Title 23D: Provisions Applicable in All Residential Districts	
23D.04: Lot and Development Standards	Chapter 23.304: General Development Standards
23D.08: Accessory Buildings and Structures	
23D.10: Accessory Dwelling Units	23.306: Accessory Dwelling Units
23D.12: Off-Street Parking Requirements	23.322: Parking and Loading
23D.16: R-1 Single Family Residential District Provisions	23.202: Residential Districts
23D.20: R-1A Limited Two-Family Residential District Provisions	
23D.24: ES-R Environmental Safety-Residential District Provisions	
23D.28: R-2 Restricted Two-Family Residential District Provisions	
23D.32: R-2A Restricted Multiple-Family Residential District Provisions	
23D.36: R-3 Multiple Family Residential District Provisions	
23D.40: R-4 Multi-Family Residential District Provisions	

Old Chapters	New Chapters
23D.44: R-5 High Density Residential District Provisions	
23D.48: R-S Residential Southside District Provisions	
23D.52: R-SMU Residential Southside Mixed Use District Provisions	
Sub-Title 23E: Provisions Applicable in All Non-Residential Districts	
23E.04: Lot and Development Standards	23.106: Rules of Measurement 23.304: General Development Standards
23E.08: Design Review	
23E.12: Design Review Process	23.406: Specific Permit Requirements
23E.16: Special Use Standards	23.204: Commercial Districts
23E.18 Temporary Outdoor Uses on Private Property	23.302: Supplemental Use Regulations
23E.20: Live/Work Provisions	23.312: Live/Work
23E.24: Sidewalk Cafe Seating	23.204: Commercial Districts
23E.28: Off-Street Parking and Transportation Services Fee	23.332: Parking and Loading
23E.32: Loading Space Requirements	
23E.36: C-1 General Commercial District Provisions	
23E.40: C-N Neighborhood Commercial District Provisions	
23E.44: C-E Elmwood Commercial District Provisions	
23E.48: C-NS North Shattuck Commercial District Provisions	
23E.52: C-SA South Area Commercial District Provisions	
23E.56: C-T Telegraph Avenue Commercial District Provisions	23.204: Commercial Districts
23E.60: C-O Solano Avenue Commercial District Provisions	
23E.64: C-W West Berkeley Commercial District Provisions	
23E.68: C-DMU Downtown Mixed Use District Provisions	
23E.70: C-AC Adeline Corridor Commercial District Provisions	
23E.72: M Manufacturing District Provisions	
23E.76: MM Mixed Manufacturing District Provisions	
23E.80: MU-LI Mixed Use-Light Industrial District Provisions	23.206: Manufacturing Districts

Old Chapters	New Chapters
23E.84: MU-R Mixed Use-Residential District Provisions	
23E.88: SP Specific Plan District Provisions	23.208: Special Purpose Districts
23E.92: U Unclassified District Provisions	
23E.96: H Hillside Overlay District Provisions	23.210: Overlay Zones
23E.98: Civic Center District Overlay	
Sub-Title 23F: Definitions	
23F.04: Definitions	23.106: Rules of Measurement 23.502: Glossary

Official Zoning Map

of the
City of Berkeley, California

Adopted by the Berkeley City Council on
March 18, 1999 - Ordinance No. 6478-N.S.

ZONING DISTRICTS

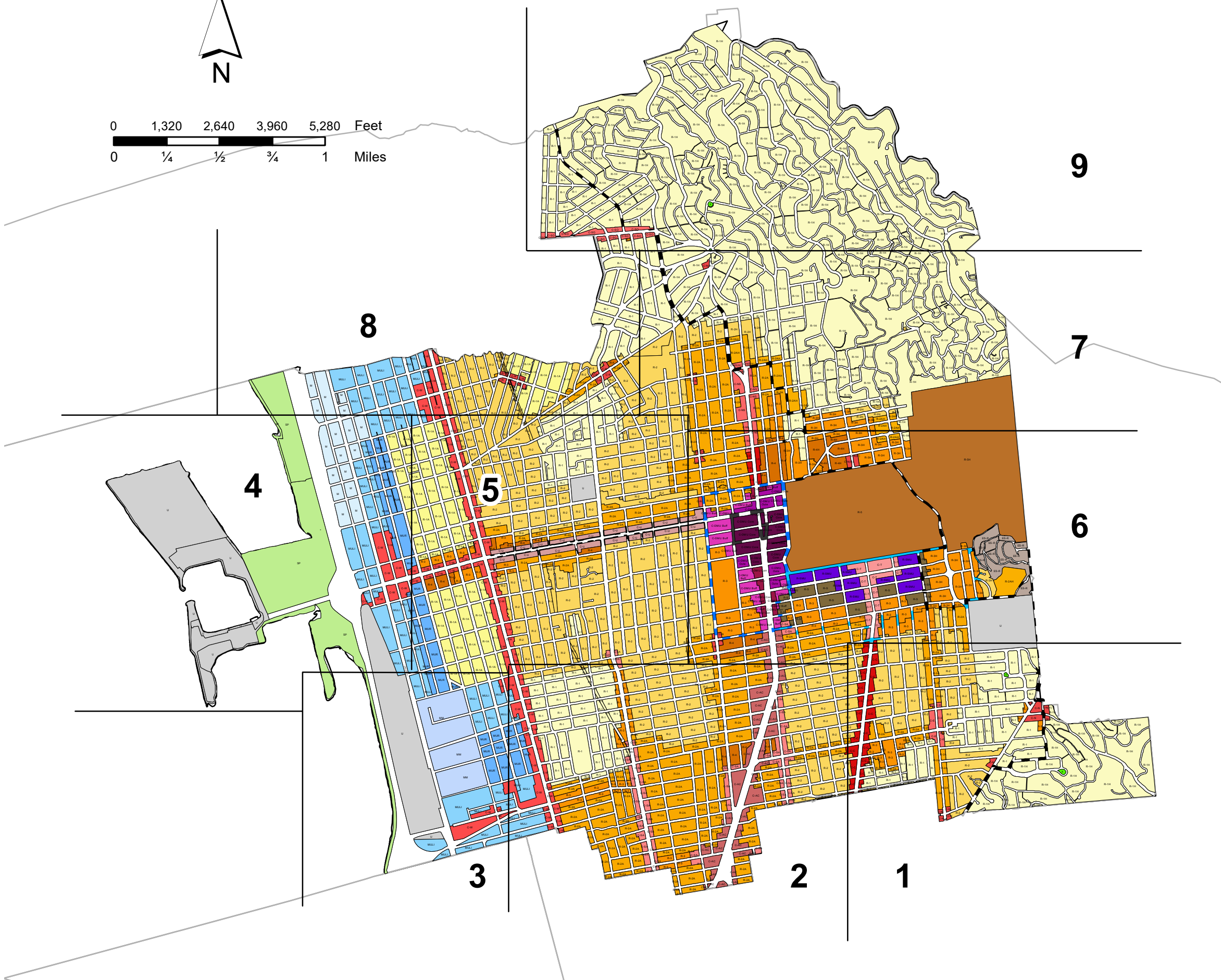
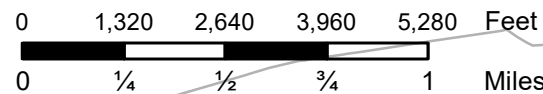
R-1	Single Family Residential
R-1A	Limited Two-family Residential
R-2	Restricted Two-family Residential
R-2A	Restricted Multiple-family Residential
R-3	Multiple-family Residential
R-4	Multi-family Residential
R-5	High Density Residential
ES-R	Environmental Safety-Residential
R-S	Residential High Density Subarea
R-SMU	Residential Mixed Use Subarea
C-DMU	C-DMU Core
C-DMU	C-DMU Outer Core
C-DMU	C-DMU Corridor
C-DMU	C-DMU Buffer
C-C	Corridor Commercial
C-E	Elmwood Commercial
C-N	Neighborhood Commercial
C-NS	North Shattuck Commercial
C-SA	South Area Commercial
C-AC	Adeline Corridor Commercial
C-SO	Solano Avenue Commercial
C-T	Telegraph Avenue Commercial
C-U	University Avenue Commercial
C-W	West Berkeley Commercial
M	Manufacturing
MM	Mixed Manufacturing
MULI	Mixed Use-Light Industrial
MUR	Mixed Use-Residential
SP	Specific Plan
U	Unclassified

OTHER MAP SYMBOLS

	Hillside Overlay Boundary
	Arts District Overlay
	Southside Plan
	Downtown Area Plan

University Ave Strategic Plan

	Avenue Mixed Use
	UASP Node



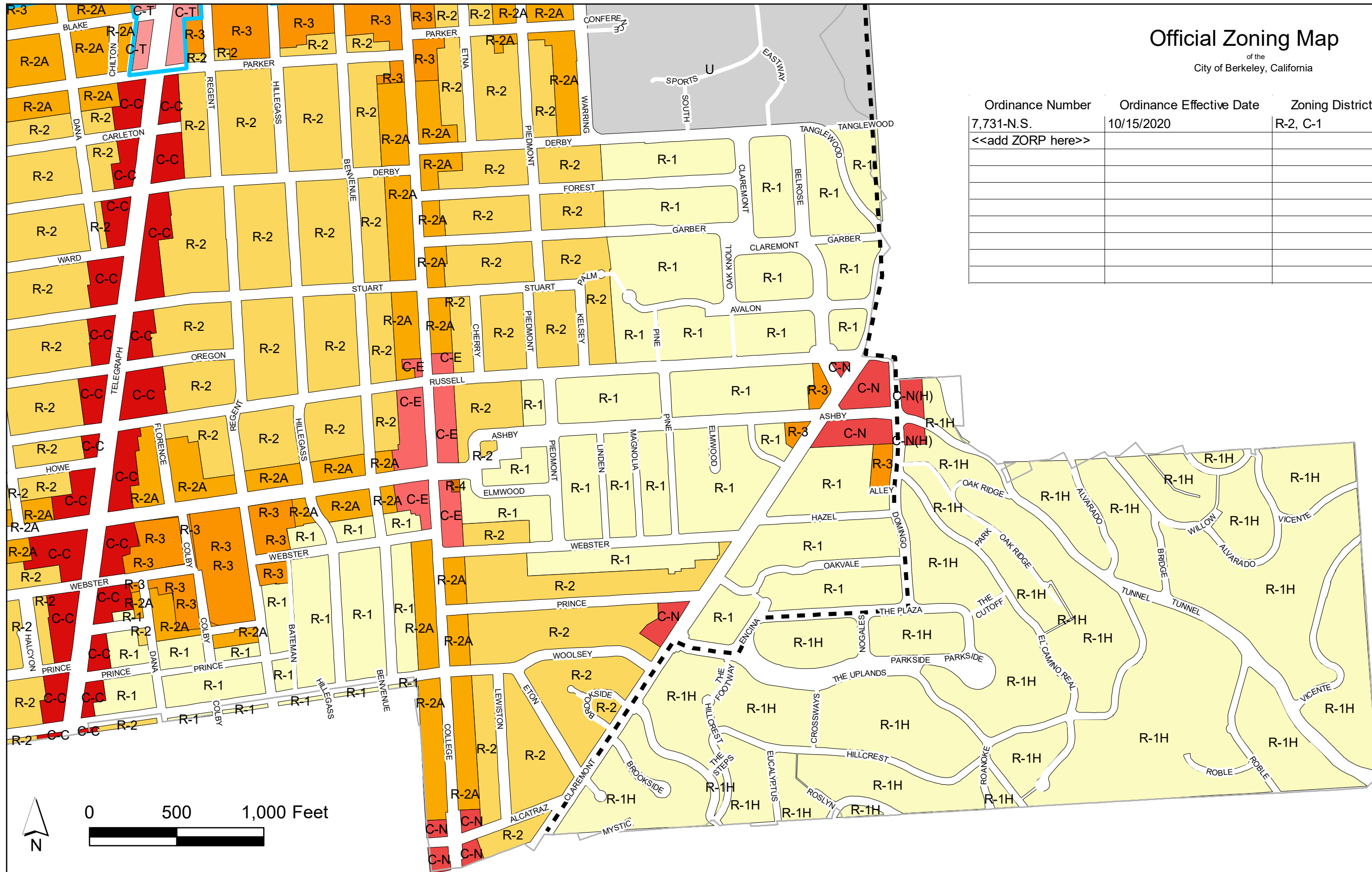
6

2

Official Zoning Map

of the
City of Berkeley, California

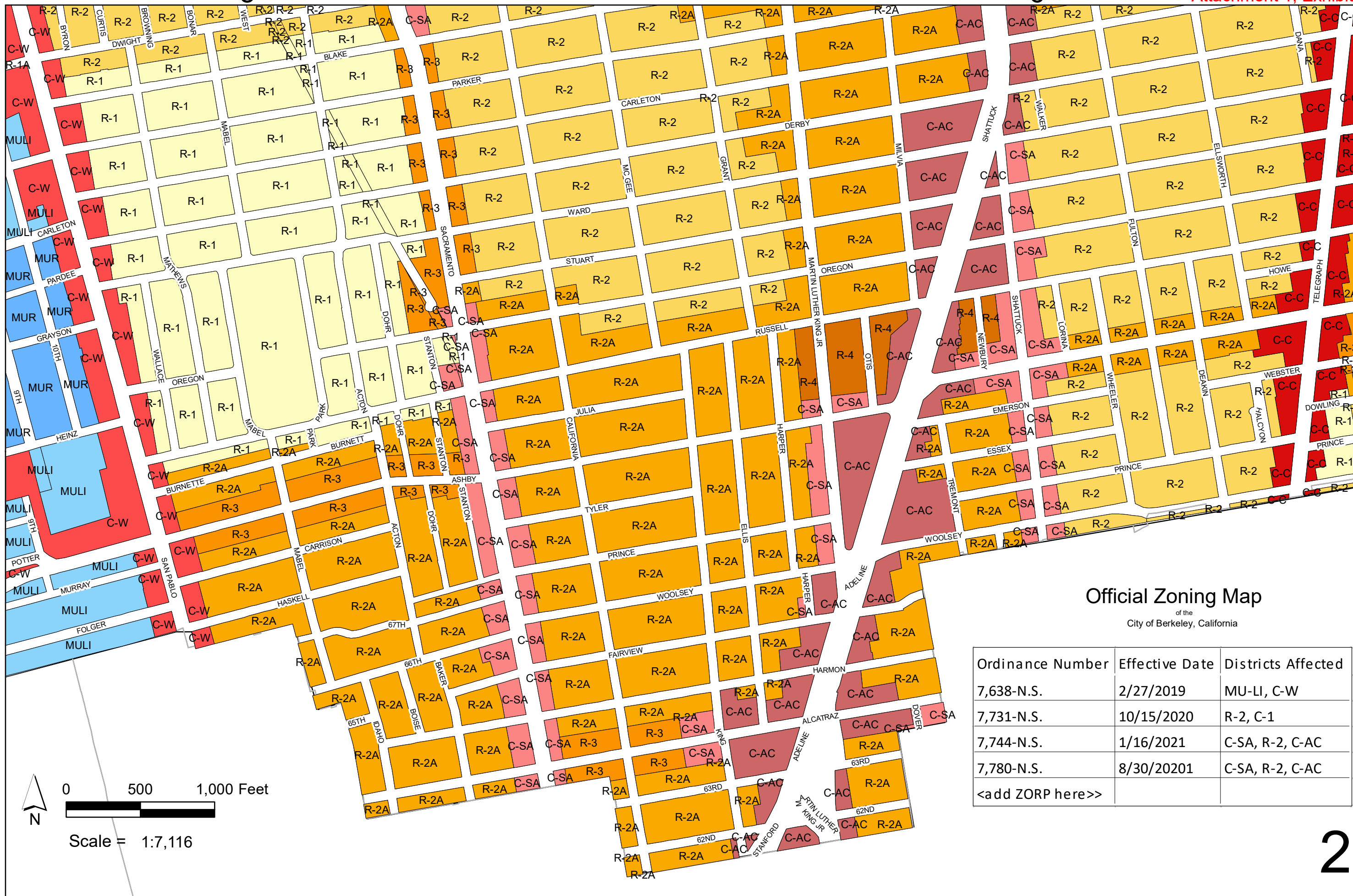
Ordinance Number	Ordinance Effective Date	Zoning Districts Affected
7,731-N.S.	10/15/2020	R-2, C-1
<<add ZORP here>>		



1

5

6



Official Zoning Map

of the
City of Berkeley, California

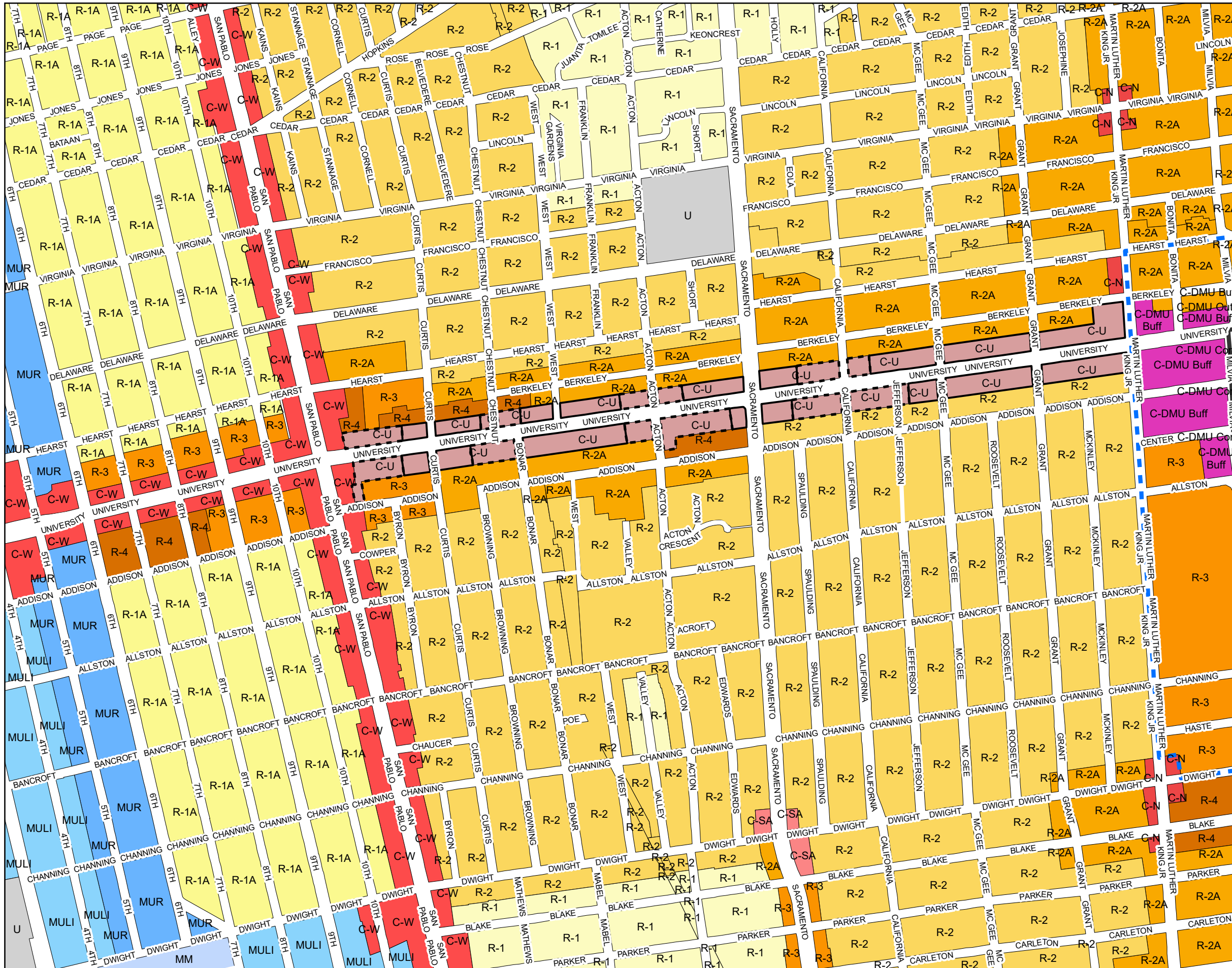
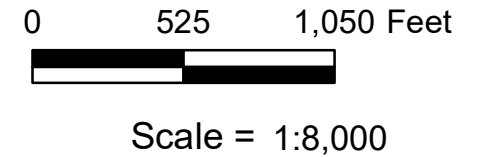
Ordinance Number	Effective Date	Districts Affected
7,638-N.S.	2/27/2019	MU-LI, C-W
7,731-N.S.	10/15/2020	R-2, C-1
7,744-N.S.	1/16/2021	C-SA, R-2, C-AC
7,780-N.S.	8/30/2021	C-SA, R-2, C-AC
<add ZORP here>>		

2

Official Zoning Map

of the
City of Berkeley, California

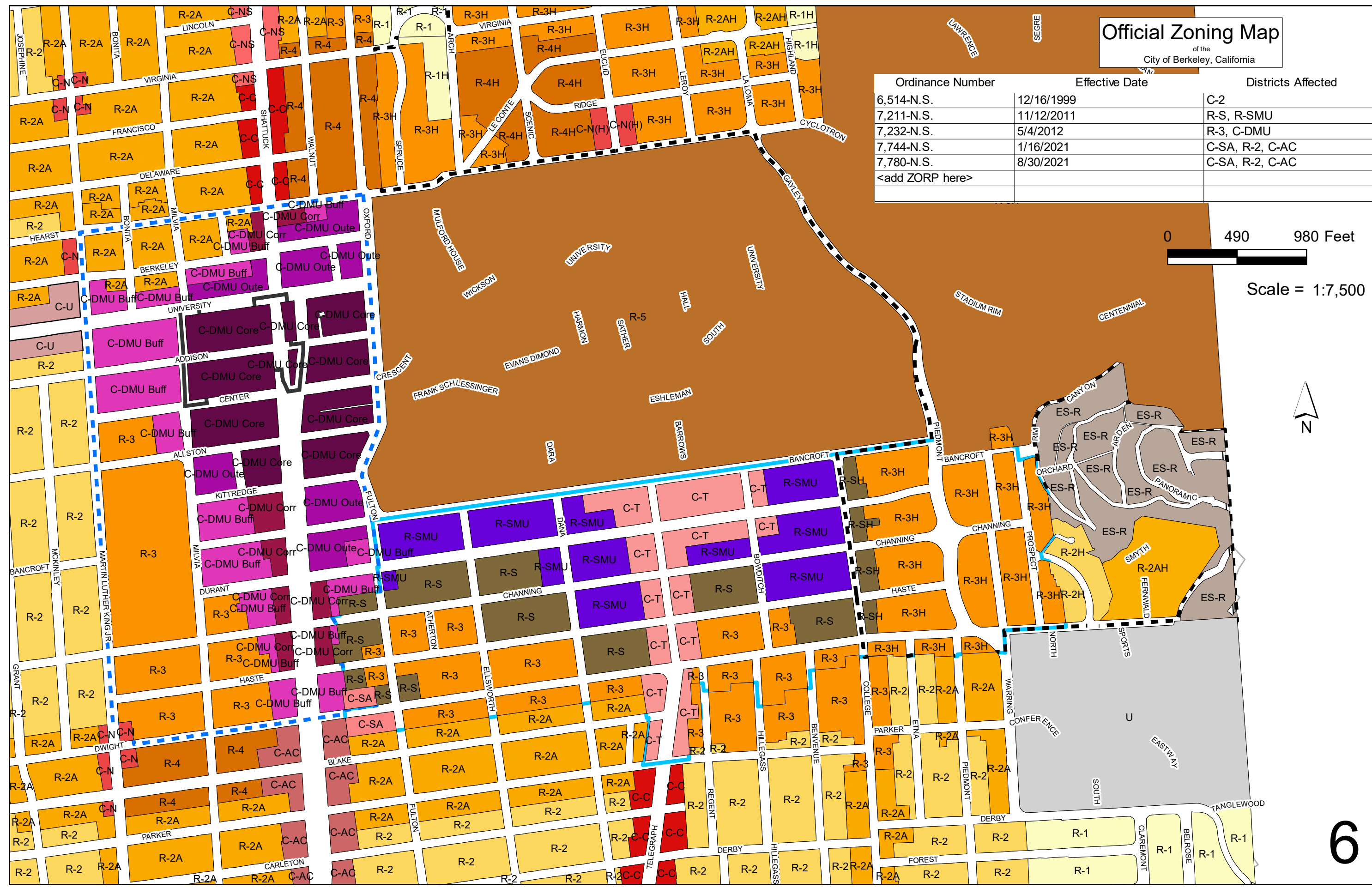
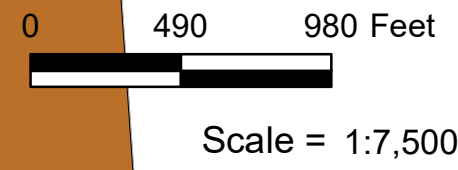
Ordinance Number	Effective Date	Districts Affected
6,681-N.S.	4/18/2002	R-3, R-2A
6,830-N.S.	1/6/2005	C-1
7,232-N.S.	5/14/2012	R-3, C-DMU
<add ZORP here>		



Official Zoning Map

of the
City of Berkeley, California

Ordinance Number	Effective Date	Districts Affected
6,514-N.S.	12/16/1999	C-2
7,211-N.S.	11/12/2011	R-S, R-SMU
7,232-N.S.	5/4/2012	R-3, C-DMU
7,744-N.S.	1/16/2021	C-SA, R-2, C-AC
7,780-N.S.	8/30/2021	C-SA, R-2, C-AC
<add ZORP here>		

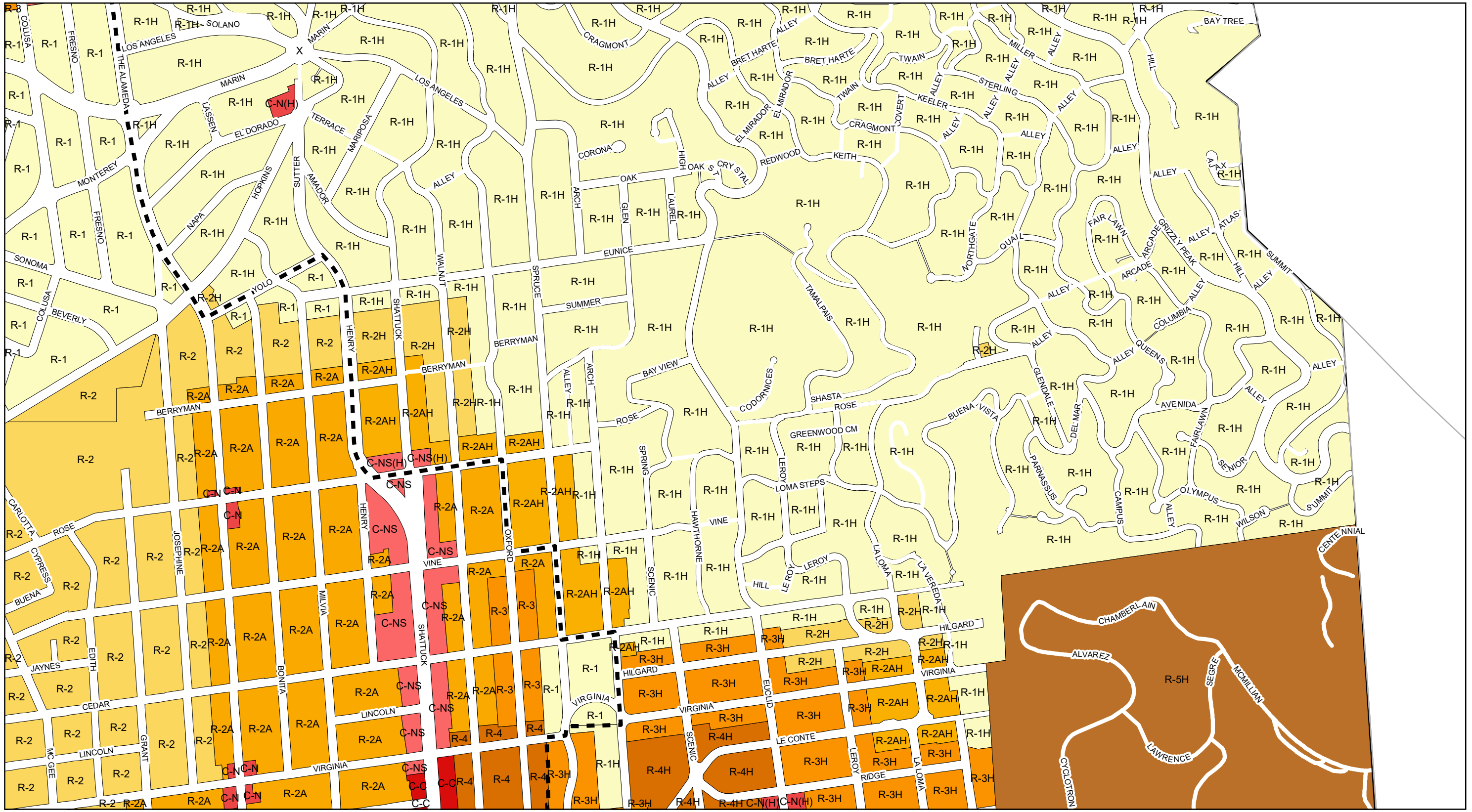


5

2

1

6

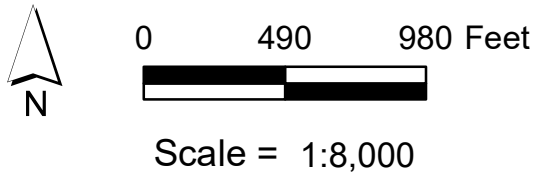


5

Official Zoning Map
of the
City of Berkeley, California

Ordinance Number	Effective Date	Districts Affected
<add ZORP here>		

6





Office of the City Manager

ACTION CALENDAR

January 26, 2016

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, Interim City Manager

Submitted by: Eric Angstadt, Director, Planning & Development

Subject: Customer Service Improvements to Land Use Permit Process

RECOMMENDATION

Direct staff to make structural improvements to the Zoning Ordinance, communication improvements to better explain complex technical and procedural elements to the public, and organizational improvements to the Land Use Planning Division; and authorize the issuance of a request for proposals (RFP) for the selection of consultants to make structural improvements to the Zoning Ordinance and develop graphic communication elements in an amount not to exceed \$300,000.

SUMMARY

This staff report describes the impact of the City of Berkeley's Zoning Ordinance and practices on land use applications, including the staffing and processing time required to conform to existing City regulations, and makes recommendations for future revisions with the goal of streamlining the process and better configuring City resources for the benefit of the public.

FISCAL IMPACTS OF RECOMMENDATION

If authorized, the hiring of a consultant to make structural improvements to the Zoning Ordinance and develop graphic communication elements would be a one-time cost of \$300,000 which would come from the Permit Service Center fund balance.

Budget Code:

833-8502-463.30-38.....	\$300,000
-------------------------	-----------

In the event that future contract awards exceed the existing budget for Planning contracts in the current fiscal year, a request for additional appropriations will be submitted as part of a subsequent amendment to the Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

LAND USE PERMIT PROCESS

The Berkeley Zoning Ordinance is extremely complex and requires some type of discretionary review for most land use related activities, whether new construction, expansion or alteration of existing buildings, or establishment or change of land use. The complexity lies in the various requirements that trigger discretionary review being located in discrete sections of the Ordinance that are frequently not identified by applicants, and only discovered once staff has conducted a detailed review of the application.

This general complexity makes it difficult for staff to apply land use regulations consistently over time, which is especially true given the number of new personnel. As a result of vacancies and the addition of new positions, over 50% of the planners in the Land Use Division have a tenure of less than two years. It is also difficult to effectively educate the public regarding the many unique aspects of the Ordinance that result in more extensive submittal requirements and longer approval procedures than comparable cities.

Berkeley is a unique city. However, the Zoning Ordinance takes a “one size fits all” approach in regard to the prescribed processes for making discretionary decisions. There is also no differentiation between the operational impacts associated with a use from the environmental impacts associated with design. As a result, the establishment of a new use or change of an existing use must be processed the same way as the construction of a new building. Despite the numerous and complicated provisions in the Ordinance that trigger discretionary review, there are only two processes, Use Permit and Administrative Use Permit, to address the entire range of land use activities. The current structure of the Ordinance does not allow for any deviation from these two processes if the associated triggers are met.

The impact of having only two processes is that the level of review is often disproportionate to the potential land use impacts, and substantial time is added to the application review and approval process, with lead time required for public noticing and statutory timelines for appeals. Highly discretionary processes are also labor intensive, with staff required to prepare mailings, post properties, review and analyze applications, and document the analysis supporting the decision or recommendation. All of this translates into higher fees and longer timelines for applicants.

COMMUNICATION

There is an ongoing effort to update the entire City of Berkeley website; however, there is an urgency to update web-based information for the Land Use Planning Division due to the need to provide more self-service options for the general public. The existing web pages for the Land Use Planning Division are excessively text-based and poorly organized. In addition, the lack of clarity in the Zoning Ordinance makes it very difficult

for the general public to look up information on their own, and this generates an extremely high volume of inquiries in all forms, whether in person, by telephone, or via email.

STAFFING

The current organization of the Land Use Planning Division is very flat and lacks positions at the paraprofessional level (such as a Planning Technician) and project manager level (Senior Planner). In addition, customer service duties, including staffing the Zoning Counter, answering phone calls, and responding to email inquiries, are distributed among all staff from the Land Use Planning Manager to Office Specialist II. While it is beneficial for all staff to be cross-trained in all aspects of the Division, requiring that all staff participate in every function is not efficient and results in delayed and sometimes inconsistent responses to customers, and disrupts the review of land use applications.

BACKGROUND

LAND USE PERMIT PROCESS

The following table compares the number of discretionary permits and associated appeals during 2015 in the City of Berkeley with those in other local cities. Permits are grouped into minor (similar to an Administrative Use Permit) and major (similar to a Use Permit) categories. Other than Piedmont and Oakland, which are significantly different in size, no other municipalities approached Berkeley in the number of discretionary permits and associated appeals.

Land Use Application Comparison for 2015		
City	Result	Population*
Berkeley	75 Major (UPs)/4 appeals 161 Minor (AUPs)/3 appeals Historically – 62.5 UPs/5 appeals 160.75 AUPs/8.5 appeals	118,853 0.002 permits/capita
Albany	13 Major/2 appeals (both withdrawn) 1 Minor Historically – 1 to 2 appeals/year Fee: \$577	19,488 0.0007 permits/capita
Dublin	3 Major 3 Minor No appeals Fee: \$200 general public, time and materials for applicant	54,695 0.0001 permits/capita
Fremont	11 Major/1 Appeal	228,758

	29 Minor Fee: Full cost recovery by appellant (typically \$5,900)	0.0002 permits/capita
Oakland	89 Major (variance, design review, conditional use permit issued by Planning Commission)/5 appeals 275 Minor (variance, design review, conditional use permit issued by Zoning Administrator)/4 appeals	413,775 0.0009 permits/capita
Piedmont	400 Applications (all Single-Family)/3 Appeals Historically – 1 to 2 appeals/yr Fee: \$630	11,236 0.004 permits/capita
*American Community Survey estimate, 7/1/14		

Additional analysis of land use decisions shows that of the last four Fiscal Years (FY), FY2012 through FY2015, there were 274 Use Permits (UPs) acted upon. Of those, 25 were appealed of which two were withdrawn resulting in an appeal rate of 8.3%. For those appeals that went to hearing, the staff recommendation was affirmed 84% of the time by ZAB and 89% by City Council. Looking at the total number of UPs processed over the last four fiscal years, the City Council disagreed with the staff recommendation only twice (0.73%).

The UP project types most frequently appealed were new dwellings in the R-1H, R-2A and R-3 districts (25%), and new mixed use buildings in the C-DMU Buffer, C-DMU Core, and R-SMU districts (13%). The zoning districts with the most appealed UPs were R-1H (17%), followed by the R-3 district (13%). The most frequent appeal claims were: Failure to make required findings (13%), Failure to comply with procedural requirements (13%), Loss of sunlight and/or views (12%) and Traffic (10%).

Similar analysis was conducted for Administrative Use Permits (AUPs). In the last four fiscal years, 532 AUPs were processed. Of those, 33 appeals were filed; however, eight were withdrawn, resulting in an appeal rate of 4.7%. Of the remaining 25 appeals that went to hearing, ZAB upheld the staff recommendation 95% of the time. Eight ZAB decisions were appealed to City Council, and in those cases the staff recommendation was upheld 100% of the time. When analyzing all of the 532 AUPs processed over the last four fiscal years, the staff recommendation was overturned only once (0.2%).

The AUP project type most frequently appealed was major residential addition (33%). The zoning districts with the most appealed AUPs were R-1H (33%), followed by R-2 (24%). The most frequent appeal claims were: Shadow impacts and/or loss of sunlight/views (27%), Parking (15%), and Noise (12%).

Cross-referencing the zoning district with type of project and basis for appeal demonstrates that the majority of appeals are related to the design of new residences or major residential additions in the R-1H zoning district. The R-1 zone is a single-family zoning district which requires a minimum lot size of 5,000 square feet. As such, the use

of property for single-family residential purposes is not in question. Rather, the question is one of the design of new or modified homes, and whether the purposes of the district are met by a proposed design. This would suggest that a design review process based on design guidelines developed specifically for single-family homes is the more appropriate mechanism to assure that the purposes of the district are met.

COMMUNICATION

Graphically enhanced FAQ sheets and user guides are commonly used to help educate the general public regarding complex and/or technical subject areas, such as land use regulation. Many zoning related topics, such as how to measure building height, are often difficult to describe with text alone.

Complex land use topics are more easily understood when presented in a combination of text and graphics. Processes can be better understood when described in an annotated flow chart. Most zoning definitions can also benefit from figures and diagrams to more clearly convey complex and technical issues.

STAFFING

The Land Use Planning Division is currently comprised of 17 planners, four administrative staff, and six interns. The planners are distributed among the follow job classifications: 1 Land Use Planning Manager, 5 Principal Planners, 1 Senior Planner, 6 Associate Planners, and 4 Assistant Planners. With the exception of the Land Use Planning Manager and Principal Planners, all planners participate in the staffing of the Zoning Counter and respond to emails and phone calls from the general public. All planners with the exception of the Land Use Planning Manager and two Principal Planners in the Policy and Special Projects Team also serve as project planners.

Similar to the “one size fits all” approach which describes the existing land use processes, the historic practice of requiring planners to be a master of all disciplines does not allow the development of special skills. Land use regulation is a rapidly evolving field that is very sensitive to changes in technology. In addition, federal and state regulations are constantly changing and can dictate how local jurisdiction may or must regulate certain uses. The continuing education required to stay abreast of the full range of such changes is often beyond the ability of any one individual. The organization of the Land Use Planning Division should be modified in acknowledgement of these requirements.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

LAND USE PERMIT PROCESS

The analyses of land use application data support the proposal to make changes to existing processes, such as introducing a minor use permit and staff-level single-family residential design review. Such structural modifications to the Zoning Ordinance would more closely align the regulation of land use with historic trends, and result in a level of discretionary review more commensurate with the documented concerns of the community. Right-sizing processes would also save the public time and money.

COMMUNICATION

Providing illustrations in addition to text assures more consistent interpretation of complicated regulations. Processes also benefit from graphics, such as flow charts, that highlight the various actors, decision-making bodies, and timing of critical decision points. These graphic communication tools can be developed in advance of the city-wide website update, and then used in conjunction with that project.

STAFFING

The requirements and expectations for responding to customer inquiries and managing projects are often in conflict, and staff struggle to achieve an appropriate balance. Reorganizing the Division by adding Senior Planner positions devoted to project management and creating a Planning Technician job classification that would be primarily responsible for responding to customer inquiries would significantly reduce the current conflicts. Planners would have more time to focus on increasingly complex land use applications, and the general public would receive more timely responses to their questions. Staff specialized in communications and whose focus is customer service would be more effective at explaining the proposed structural changes to the Zoning Ordinance, how they are applied, and how the public is involved.

ALTERNATIVE ACTIONS CONSIDERED

The Council may affirm, modify or decline to provide direction to staff.

CONTACT PERSON

Eric Angstadt, Director, Planning and Development, 981-7410

MINUTES
BERKELEY CITY COUNCIL MEETING
TUESDAY, JANUARY 26, 2016
7:00 P.M.

LONGFELLOW MIDDLE SCHOOL AUDITORIUM – 1500 DERBY STREET, BERKELEY, CA 94703

TOM BATES, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO
DISTRICT 2 – DARRYL MOORE
DISTRICT 3 – MAX ANDERSON
DISTRICT 4 – JESSE ARREGUIN

DISTRICT 5 – LAURIE CAPITELLI
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – KRISS WORTHINGTON
DISTRICT 8 – LORI DROSTE

Preliminary Matters

Roll Call: 7:15 p.m.

Present: Councilmembers Arreguin, Capitelli, Droste, Maio, Moore, Wengraf, Worthington and Mayor Bates.

Absent: Councilmember Anderson.

Ceremonial Matters:

1. Recognition of Walter Hood, Berkeley Artist
2. Celebrating the 43rd Anniversary of Roe v. Wade

City Manager Comments: None.

Public Comment on Non-Agenda Matters: 4 speakers.

Public Comment on Consent Calendar and Information Items Only: 3 speakers.

Consent Calendar

Action: M/S/C (Capitelli/Moore) to accept revised material from Councilmember Capitelli on Item 15.

Vote: Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Worthington, Droste, Bates; Noes – None; Abstain – None; Absent – Anderson.

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

Vote: Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Worthington, Droste, Bates; Noes – None; Abstain – None; Absent – Anderson.

Action Calendar – New Business

16. Customer Service Improvements to Land Use Permit Process

From: City Manager

Recommendation: Direct staff to make structural improvements to the Zoning Ordinance, communication improvements to better explain complex technical and procedural elements to the public, and organizational improvements to the Land Use Planning Division; and authorize the issuance of a request for proposals (RFP) for the selection of consultants to make structural improvements to the Zoning Ordinance and develop graphic communication elements in an amount not to exceed \$300,000.

Financial Implications: See report

Contact: Eric Angstadt, Planning and Development, 981-7400

Action: Moved to Consent Calendar. Approved recommendation.

17. a. Tobacco 21 Recommendation

From: Community Health Commission

Recommendation: In response to the City Council's referral, and upon further investigation, the Community Health Commission recommends that Council amend Berkeley Municipal Code section 9.80.035 to add a subdivision H, stating: "Effective January 1, 2017, no tobacco retailer or person shall sell tobacco-related products, including flavored tobacco products, electronic nicotine delivery systems and e-liquid, to individuals under the age of 21." This recommendation, in our belief, would advance three main objectives: 1. Decrease the rate of youth smoking in Berkeley, which would ultimately lower the rate of adult-aged regular smokers; 2. Lower the amount of secondhand smoke near schools and places where youth congregate; 3. Decrease long-term medical costs by decreasing smoking rates among the city population.

Financial Implications: See report

Contact: Tanya Bustamante, Commission Secretary, 981-5400

b. Companion Report: Tobacco Minimum Age

From: City Manager

Recommendation: Take no action on the Community Health Commission's Tobacco Minimum Age recommendation at this time pending the outcome of proposed State legislation to raise the smoking age to 21 statewide.

Financial Implications: None

Contact: Kelly Wallace, Health, Housing and Community Services, 981-5400

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

Vote: Ayes – Maio, Arreguin, Capitelli, Worthington, Droste, Bates; Noes – Wengraf; Abstain – Moore; Absent – Anderson.

Action: 4 speakers. M/S/C (Arreguin/Moore) to adopt item 17.a.

Vote: Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Worthington, Droste, Bates; Noes – None; Abstain – None; Absent – Anderson.



Planning Commission

**FINAL MINUTES OF THE SPECIAL PLANNING COMMISSION MEETING
December 16, 2020**

The meeting was called to order at 7:02 p.m.

Location: Virtual meeting via Zoom

1. ROLL CALL:

Commissioners Present: Benjamin Beach, Barnali Ghosh, Savlan Hauser, Robb Kapla, Shane Krpata, Mary Kay Lacey, Christine Schildt, Jeff Vincent, and Brad Wiblin.

Commissioners Absent: None.

Staff Present: Secretary Alene Pearson, Katrina Lapira, Justin Horner, Jordan Klein, Liz Redman Cleveland and Alisa Shen.

2. ORDER OF AGENDA: No changes.

3. PUBLIC COMMENT PERIOD: 1

4. PLANNING STAFF REPORT:

- City Council
 - January 26 – Parking Reform (4pm)
 - February 9 – Home Occupations Ordinance
- Land Use Planning received Local Early Action Planning (LEAP) that will be used to fund consultant help on the Sixth Cycle Housing Element Update. RFP available on COB website. Proposals due on January 12, 2021.

Information Items:

- Referral to Planning Commission: Re-designation and rezone of five parcels adjacent to the Adeline Corridor Plan Area (adopted by City Council on November 17, 2020)

Communications:

- None

Late Communications: *See agenda for links.*

- Supplemental Packet One
- Supplemental Packet Two
- Supplemental Packet Three

5. CHAIR REPORT:

- Welcome new Planning Commissioners!
 - Barnali Ghosh
 - Savlan Hauser

6. COMMITTEE REPORT: Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

- CAG Meeting on December 14 – Discussed and received feedback on various concepts including built form, site design, and the overall vision for both BART sites

7. APPROVAL OF MINUTES:

Motion/Second/Carried (Wiblin/Lacey) to amend Line 56 and approve the Planning Commission Meeting Minutes from December 16, 2020.

Ayes: Beach, Hauser, Kapla, Krpata, Lacey, Schildt, Vincent, and Wiblin. Noes: None. Abstain: Ghosh. Absent: None. (8-0-1-0)

8. FUTURE AGENDA ITEMS AND OTHER PLANNING-

- January 6
 - Background on Gentrification and Displacement Referral
 - Discussion of Parking Reform Item Recommendation
- January 20 – Special Concurrent Meeting with Housing Advisory Commission (HAC) to address Gentrification and Gentrification Referral

AGENDA ITEMS

9. Action: *Public Hearing to Recommend Adoption of the Baseline Zoning Ordinance (BZO)*

Staff shared the draft Baseline Zoning Ordinance (BZO), noting edits made since Planning Commission’s last review that address Commission and public feedback, responses to Commissioners’ questions, and a summary of outreach efforts.

Public Comments: 4

Motion/Second/Carried (Vincent/ Krpata) to close the public hearing on the BZO at 8:06pm. Ayes: Beach, Hauser, Kapla, Krpata, Lacey, Schildt, Vincent, and Wiblin. Noes: None. Abstain: Ghosh. Absent: None. (8-0-1-0)

Motion/Second/Carried (Vincent/ Wiblin) to recommend that the City Council adopt the draft BZO after incorporating Zoning Ordinance amendments adopted by City Council between Planning Commission's action and City Council's action and sharing with the Chair for confirmation.

Ayes: Beach, Hauser, Kapla, Krpata, Lacey, Schildt, Vincent, and Wiblin. Noes: None. Abstain: Ghosh. Absent: None. (8-0-1-0)

10. Discussion: ***Business Support Zoning Amendment Referrals – Research and Development***

Staff shared background information, research, and recommendations to address the City Council referral regarding the modification of the Research and Development (R&D) definition. After the presentation, the Commission asked questions and provided comment on protected uses, ancillary office space, and specifics related R&D jobs and high technology.

Public Comments: 3

11. Discussion: ***Adeline Corridor Plan Adoption***
The Planning Commission discussed and received public comment on the adoption of the Adeline Corridor Plan.

Public Comments: 4

12. Action: ***2021 Meeting Schedule***
The Planning Commission reviewed the 2021 meeting schedule.

Motion/Second/Carried (Kapla/ Vincent) to adopt the following 2021 Planning Commission schedule:

Wednesday, January 6, 2021
Wednesday, January 20, 2021 – Special Concurrent meeting with HAC
Wednesday, February 3, 2021
Wednesday, March 3, 2021
Wednesday, April 7, 2021
Wednesday, May 5, 2021
Wednesday, June 2, 2021
Wednesday, July 7, 2021
Wednesday, September 1, 2021
Wednesday, October 6, 2021
Wednesday, November 3, 2021
Wednesday, December 1, 2021

Ayes: Beach, Ghosh, Hauser, Kapla, Krpata, Lacey, Schildt, Vincent, and Wiblin. Noes: None.
Abstain: None. Absent: None. (9-0-0-0)

Motion/Second/Carried (Krpata/ Lacey) to adjourn the Planning Commission meeting at 10:43pm.

Ayes: Beach, Ghosh, Hauser, Krpata, Lacey, Schildt, Vincent, and Wiblin. Noes: None.
Abstain: Kapla. Absent: None (8-0-1-0)

Public Comments: 0

Members in the public in attendance: 28

Public Speakers: 11 speakers

Length of the meeting: 3 hours and 41 minutes

**COMPARRISON OF VARIANCE SECTION
IN THE CURRENT ZONING ORDINANCE AND THE PROPOSED
BASELINE ZONING ORDINANCE (BZO)**

Current Zoning Ordinance section on Variances:

23B.44.010 Variances

The Board may grant Variances to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the use of property, the height of buildings, the yard setbacks of buildings, the percentage of lot coverage, the lot area requirements, or the parking space requirements of this Ordinance; provided, however, that a use permit, rather than a variance, may be approved to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the yard setbacks of buildings, the percentage of lot coverage, or the parking space requirements when development is proposed on property which is located within thirty feet of an open creek and where varying from or modifying existing regulations is necessary to enable the property owner to comply with BMC Chapter 17.08, Preservation and Restoration of Natural Watercourses.

Draft BZO section on Variances:

Section 23.406.050 - Variances

B. When Allowed

1. **Deviations Allowed with a Variance.** *The ZAB may grant a Variance to allow for deviation from any provision in the Zoning Ordinance related allowed land uses, use-related standards, and development standards.*
2. **Deviations Allowed with a Use Permit.** *The ZAB may allow deviations from building setback, lot coverage, and on-site parking standards with a Use Permit instead of a Variance if:

 - a. *The property is 30 feet or less from an open creek; and*
 - b. *Deviation from the standard is necessary to comply with Chapter 17.08 (Preservation and Restoration of Natural Watercourses).**

BASELINE ZONING ORDINANCE CONSENT CHANGES MATRIX

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

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

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

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

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

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

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

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

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

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

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

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



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: December 16, 2020

TO: Members of the Planning Commission

FROM: Justin Horner, Associate Planner

SUBJECT: Public Hearing to Recommend Adoption of Baseline Zoning Ordinance (BZO)

RECOMMENDATION

Hold a public hearing, consider input, and make a recommendation to City Council on adoption of the Draft Baseline Zoning Ordinance (BZO; *Attachment 1*) to replace Berkeley's current Zoning Ordinance (Subtitles 23A, 23B, 23C, 23D, 23E and 23F of the Berkeley Municipal Code).

BACKGROUND

Development of the BZO is Phase 1 of the Zoning Ordinance Revision Project (ZORP). ZORP originates from a 2016 City Council Referral to "direct staff to make structural improvements to the Zoning Ordinance, communication improvements to better explain complex technical and procedural elements to the public, and organizational improvements to the Land Use Planning Division."

At its meeting of September 2, 2020, the Planning Commission was presented with a draft of the BZO, heard a presentation from staff describing the process of the development of the BZO, and was asked to provide comments and guidance to staff to finalize the BZO for formal consideration at this evening's public hearing. Specifically, the Planning Commission directed staff to return with additional details on the following three matters: the content of the Consent Changes Matrix (*Attachment 2*); clarification of the basis for some of the recommendations; and details about the outcome of community outreach efforts.

DISCUSSION

For a detailed discussion of the BZO and its development, please see the September 2, 2020 Planning Commission staff report included as *Attachment 3*. The Discussion below includes only responses to questions asked of staff at the September 2, 2020 meeting.

Consent Changes Matrix

Although the development of the BZO has not included any major policy changes, there are a number of minor substantive changes to the Zoning Ordinance that are included in the BZO. These changes explicitly state existing legal requirements, codify current practices, and clarify ambiguous terms. These changes are either revisions of existing Zoning Ordinance language or brand new language added to the BZO. In either case, these changes do not result in any significant changes in policy. To reflect their minor nature, these changes are collectively called “consent changes,” and have been collected in a Consent Changes Matrix for ease of review.

The Consent Changes Matrix reviewed at the September 2, 2020 Planning Commission meeting included only those changes that were made to existing Zoning Ordinance language. At that meeting, the Planning Commission directed staff to include two pieces of additional information in the Consent Changes Matrix. The first was to add a Rationale column to the matrix to offer a brief justification of each consent change. The second was to add any new language that qualified as a consent change to the Consent Change Matrix.

The revised Consent Changes Matrix is included as *Attachment 2* of this report.

Baseline Zoning Ordinance Clarifications

The Planning Commission had four specific questions regarding language included in the BZO.

Two questions related to Section 23.102.070 of the BZO and pertain to the relationship between the BZO and other laws and regulations. Section 23.102.070 of the BZO reads:

23.102.070 – CONFLICTING PROVISIONS

- A. **Conflict with State or Federal Regulations.** Where the Zoning Ordinance conflicts with state or federal laws, higher law applies unless local variation is permitted.
- B. **Conflict with Other City Regulations.** Where the Zoning Ordinance conflicts with other ordinances, resolutions, or regulations of the City of Berkeley, the more restrictive regulation is applied.
- C. **Conflict with Private Agreements.** It is not the intent of the Zoning Ordinance to interfere with, abrogate, or annul any easement, covenant, deed restriction, or other agreement between private parties. If the Zoning Ordinance imposes a greater restriction than imposed by a private agreement, the Zoning Ordinance controls. Private agreements may impose greater restrictions than the Zoning

The first question raised by the Planning Commission was whether Section 23.102.070(A) accurately characterizes the relationship between the BZO and state and federal law. The Planning Commission was concerned that this provision was not a correct statement of the law and could unintentionally cede legislative authority to the state and federal governments beyond the authority they already possess. There was also concern that the statement was so expansive that readers of the BZO may not feel confident that the

rules in the BZO are set and not subject to unexpected changes from the state and federal governments.

City staff consulted with the City Attorney's Office and was advised that Section 23.102.070(A) is a correct statement of the law, consistent with the Supremacy Clause of the United States Constitution and Article XI, Section 5(a) of the California Constitution ("It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws.").

For the second question, the Planning Commission requested the legal basis for Section 23.102.070(B) which discusses conflicts between the BZO and other city regulations. City staff consulted with the City Attorney's Office and was advised that 23.102.070(B) is an interpretative statement that the Planning Commission may or may not choose to include. However, generally, staff was advised that compliance with the Zoning Ordinance does not excuse non-compliance with other applicable laws or regulations, so this statement reflects a correct interpretation of the law in the vast majority of cases.

The third question was whether Section 23.404.070(C) of the draft BZO, which pertains to the modification of approved permits, is an accurate restatement of what is included in the current Zoning Ordinance. Section 23.404.070(C) reads:

C. Review Authority. A permit shall be modified by the review authority which originally approved the permit.

Staff can confirm that Section 23.404.070(C) is an accurate summary of the Zoning Ordinance's requirements. Staff notes that the Zoning Adjustments Board (ZAB), pursuant to an administrative procedure, has delegated authority to the Zoning Officer for certain modifications.

The fourth question was whether Section 23A.104.020 of the draft BZO granted the Zoning Officer broader authority to interpret the Zoning Ordinance than what is stated in the Zoning Ordinance itself. To more accurately reflect the authority stated in the existing Zoning Ordinance, Section 23.104.020 has been amended to read:

23.104.020 – Authority

The Zoning Officer is responsible for interpreting the meaning and applicability of all provisions in the Zoning Ordinance. Zoning Officer Interpretations are subject to review and modification by the ZAB and City Council.

Summary of Community Outreach Efforts for the BZO

Staff designed a Community Outreach Plan to solicit input on the BZO. The Plan consisted of the following efforts, the results of which are summarized below:

1. Creation of [Zoning Ordinance Revision Project website](#).

The ZORP webpage includes basic project information, background documents and links to past and future public meetings regarding ZORP.

2. Targeted outreach to frequent project applicants

Staff contacted about three dozen frequent project applicants to introduce them to the BZO and to request their review and comments, as well as announcing the three office hours sessions and survey (see below). Staff heard from a few parties in response to this outreach, who either requested additional information or expressed support for the simplified format.

3. Internal outreach to Current Planning project staff

Staff asked three Current Planning project staff (Planners) to utilize the BZO to review projects to which they are already assigned, to give the BZO a test run as an actual administrative document. All three Planners provided insightful feedback about the usability of the ordinance and identified some important edits. In general, all three Planners appreciated the clearer language and layout, and, even though they were utilizing a non-hyperlinked pdf document, were supportive of the BZO.

4. Office Hours sessions

Staff held three Zoom “office hours” sessions, all of which were open to the public, to introduce the BZO and take questions or comments. These sessions were held on September 7th, 9th and 14th.

5. Berkeley Considers survey

Staff launched a Berkeley Considers survey entitled “Please Review and Provide Your Feedback on the Baseline Zoning Ordinance” (Survey) to solicit input on the BZO. The Survey was publicized by the Public Information Officer in an email to approximately 60,000 recipients. The Survey was open for the month of September and received 194 visitors and 29 registered responses.

The Survey asked respondents to rate nine sections of the BZO on a scale of 1-to-5 (5 being best) based upon how well the BZO satisfies the following:

- Can be understood by a person without a technical background.
- Is organized so that users can easily find what they are looking for.
- Is written with clarity so it is easy to determine which rules apply to a project or property.
- Is organized so that users did not need to hunt for hidden information.
- Is organized so that users are unlikely to overlook something important.

The Survey also provided space for respondents to leave narrative comments.

On average, respondents judged each of the 9 sections as a “3” on a scale of 1-to-5 with respect to meeting the above criteria. There were clearly a number of respondents who judged the BZO with respect to its content, as opposed to whether it was a good revision of the existing Zoning Ordinance (for example, one commenter noted “REPEAL ENTIRE ZONING CODE”), and there were two who noted having bad experiences getting permits themselves. A number of respondents provided helpful suggestions (“more diagrams”) and a few expressed support for the clearer presentation style of the BZO.

Environmental Review

Pursuant to CEQA Guidelines Sections 15378(a), 15060(c)(2) and 15064(d)(3), environmental review is not required because the proposed Zoning Ordinance change is not a Project. The proposed Zoning Ordinance amendment does not meet the definition of a Project under CEQA Guidelines Section 15378(a), nor does it constitute an activity covered by CEQA under CEQA Guidelines Section 15060(c)(2), because passage of the BZO does not constitute a direct physical impact on the environment, nor would it result in an indirect, reasonably foreseeable physical impact on the environment. As the BZO only constitutes a revision of the existing Zoning Ordinance, and does not include any substantive policy changes, identifying and quantifying any potential changes would be highly speculative. Pursuant to CEQA Guidelines Section 15064(d)(3), any change that is speculative is not considered reasonably foreseeable.

Notwithstanding the above, even if it could be demonstrated that the Zoning Ordinance changes are a Project under CEQA, the amendment--a written revision of the Zoning Ordinance--would not constitute a significant impact on the environment under the “Common Sense Exemption,” pursuant to CEQA Guidelines Section 15061(b)(3).

The proposed amendment does not include any provisions that would exempt or otherwise reduce environmental review required under CEQA for individual development projects.

NEXT STEPS

Staff recommends Planning Commission hold a public hearing, consider public testimony, and make a recommendation to the City Council regarding the Baseline Zoning Ordinance.

Attachments:

1. Draft Baseline Zoning Ordinance (BZO)
2. Consent Changes Matrix
3. Planning Commission Staff Report: Baseline Zoning Ordinance Update and Discussion (September 2, 2020) – without attachments
4. Public Hearing Notice

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

**REPEAL THE EXISTING ZONING ORDINANCE AND ZONING MAP AND
ADOPT THE NEW ZONING ORDINANCE AND ZONING MAP
(BERKELEY MUNICIPAL CODE TITLE 23)**

The Department of Planning and Development is proposing to repeal the current Zoning Ordinance (Berkeley Municipal Code [BMC] Title 23), including the Official Zoning Map, and adopt the new Baseline Zoning Ordinance (BZO) and Official Zoning Map as BMC Title 23 with an effective date of December 1, 2021.

The BZO was developed as part of the Zoning Ordinance Revision Project (ZORP), initiated by a City Council referral in 2016, that is aimed at improving customer service. The Baseline Zoning Ordinance rewords and formats the existing Zoning Ordinance to make land use regulations easier to read, understand and administer. The BZO contains all the regulatory elements of the existing Zoning Ordinance and contains no major substantive policy changes.

The hearing will be held on, SEPTEMBER 14, 2021 at 6:00 p.m. The hearing will be held via videoconference pursuant to Governor's Executive Order N-29-20.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **September 2, 2021. Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

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

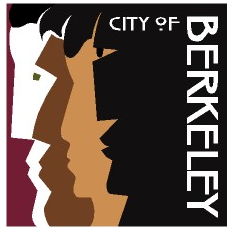
Written comments should be mailed directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or emailed to council@cityofberkeley.info in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

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

Published: Friday, September 3, 2021, per California Government Code Sections 65856(a) and 65090.

~~~~~  
I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on September 2, 2021.

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



Office of the City Manager

## SUPPLEMENTAL AGENDA MATERIAL

**Meeting Date:** March 23, 2021

**Item Number:** 17

**Item Description:** Objective Standard Recommendations for Density, Design and Shadows

**Supplemental/Revision Submitted By:** Alene Pearson, Secretary, Joint Subcommittee for the Implementation of State Housing Laws (JSISHL)

**“Good of the City” Analysis:**

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

JSISHL’s recommendation for objective design standards references a set of proposed standards for review by other City Commissions. This supplemental communication provides the matrix of proposed objective design standards, for benefit of Council and public while discussing this item.

*[from page two of the staff report]*

*To aid JSISHL in making a recommendation, staff created a matrix of design guidelines to identify design goals, introduced objective language to reflect desired design outcomes, and test-fit approved projects to double-check objective language. **JSISHL recommended the proposed objective design standards be reviewed by the Design Review Committee and further refined by Planning Commission.***

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

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

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

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



| Objective Standards for Design Guidelines |                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                  | Row # |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| Section                                   | Subsection                                                                                                                                            | Proposed Objective Design Standards                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Definitions                                                                                                                                                                                                                                                                                      |       |
| 1. Neighborhood Context                   | <p><b>Massing</b></p> <p>Goal: Promote harmony in scale and massing.</p>                                                                              | <p>Differentiate the base. A base shall visually carry the weight of the building. A base <i>is defined as a plane or material change between the ground floor and the upper floors</i> and can be made by thickening the walls or a change in material and color and <i>shall extend</i> at least 75% of <i>each individual</i> building facade.</p> <p>Buildings over three stories tall shall have major massing breaks at least every 100 feet <i>along every building frontage</i> through the use of varying setbacks, building entries, and recesses, courtyards or structural bays. Major breaks shall be a minimum of 5 feet deep and 10 feet wide and shall extend at least two-thirds of the height of the building.</p> | Base - a plane or material change between the ground floor and the upper floors                                                                                                                                                                                                                  | 1     |
|                                           | <p><b>Materials</b></p> <p>Goal: Provide texture and visual interest while minimizing glare.</p>                                                      | <p>At least two materials shall be used on any building face visible from the street or adjacent parcel in addition to glazing and railings. Any one material must comprise at least 20% of <i>street facing building facade</i>.</p> <p>Materials shall not cause glare on the public right of way or adjacent parcels.</p>                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                  | 2     |
| 2. Building Design                        | <p><b>Rooflines</b></p> <p>Goal: Vertically break up building mass at the roofline.</p>                                                               | Rooflines shall be <i>articulated at least every 50 feet along the street frontage, through the use of architectural elements such as cornices, clerestory windows, canopies, or varying roof height and/or form.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Roofline - Top termination of the massing.                                                                                                                                                                                                                                                       | 3     |
|                                           | <p><b>Façade Design</b></p> <p>Goal: Give depth to the building façade.</p>                                                                           | <p>Provide balconies or upper facade projections or recesses every 25 to 30 feet.</p> <p>Blank walls on side and rear facades shall not exceed 30 ft in length.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>Upper façade projection or recess - Any balcony, window box, window articulation that either creates a recess in or projects out from the building face.</p> <p>Blank wall - A length of uninterrupted wall space that does not include a window, door, material change, or plane change.</p> | 4     |
|                                           | <p><b>Windows</b></p> <p>Goal: Give depth to the building façade.</p>                                                                                 | <p>Windows <i>shall not exceed 75% of upper facades</i>.</p> <p>Windows set in wall surfaces shall be recessed a minimum of 2 inches <i>unless in a contiguous vertical bay, in which case the recess may be substituted with a vertical fin or projection.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                  | 5     |
| 3. Ground Floor Design                    | <p><b>Residential Lobbies</b></p> <p>Goal: Create a focal point for residents and pedestrians.</p>                                                    | <p>A primary building entrance shall be visible from the street. Direct pedestrian access shall be provided between the public sidewalk and such primary entrance.</p> <p><i>A primary building entrance</i> must have a roofed projection <i>in the form of either a canopy or the extension of a vertical bay</i>, or recess with a minimum depth of 5 feet and a minimum area of 60 sq. feet. <i>Entrances to upper floors shall be distinguished with either plane changes, material transitions, or building signage.</i></p>                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                  | 6     |
|                                           | <p><b>Ground Floor Height</b></p> <p>Goal: Enhance ground floor experience.</p>                                                                       | Ground floor <i>commercial spaces</i> shall have a minimum interior height of <i>13 feet</i> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                  | 7     |
|                                           | <p><b>Storefronts</b></p> <p>Goal: Enhance pedestrian experience and provide visual cues that distinguish between retail and residential entries.</p> | <p>Retail spaces shall be accessed directly from the sidewalk, rather than through lobbies or other internal spaces. Clear glass shall comprise at least 60% of the street facing façade where it is between 3 feet and 8 feet above elevation of adjacent sidewalk.</p> <p>Maintain the typical rhythm of 15-30 foot storefronts at ground level. Provide at least one of the following architectural features to protect pedestrians from inclement weather:</p> <p>A) awnings<br/>B) canopies<br/>C) recessed entries</p> <p>Except for recessed entries, a majority of storefront glazing shall be at the property line.</p>                                                                                                    |                                                                                                                                                                                                                                                                                                  | 8     |



| Objective Standards for Design Guidelines |                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                  |             | Row # |
|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-------|
| Section                                   | Subsection                                                                                                                 | Proposed Objective Design Standards                                                                                                                                                                                                                                                                                                                                                                                                              | Definitions |       |
| 3. Ground Floor Design                    | <p><b>Public Service Street Frontages</b></p> <p>Goal: Activate the public street.</p>                                     | <p>At least one publicly-accessible street-level entrance shall be provided for every 40 feet along a streetfacing property line. Any remainder exceeding 30 feet shall also have a publicly-accessible street-level entrance. No two entrances shall be separated by more than 50 feet.</p> <p>~ <i>Downtown only</i></p> <p>*reference Figure 43: Public Serving Frontages on page 61 of the Downtown Design Guidelines for applicability.</p> |             | 9     |
| 4. Parking Lots, Garages and Driveways    | <p><b>General Guidelines</b></p> <p>Goal: Reduce visual impact of parking on the street frontage.</p>                      | Locate parking structures underground or behind buildings or provide either landscape or architectural elements to screen view of parking from the street.                                                                                                                                                                                                                                                                                       |             | 10    |
|                                           | <p><b>Surface Lots</b></p> <p>Goal: Screen surface lots from view of the street while providing shade and landscaping.</p> | Perimeter landscaping shall include trees and shrubs. In addition to required screening, parking area shall have trees which achieve a canopy coverage of at least 50% within seven years.                                                                                                                                                                                                                                                       |             | 11    |
|                                           | <p><b>Garage Lighting and Ventilation</b></p> <p>Goal: Reduce impact of garages on neighboring parcels.</p>                | All parking garage lighting shall be shielded so that light does not shine through vents at night and headlights are not visible from the street and adjacent parcels. If forced venting is required for the garage, air shall not vent directly onto the sidewalk or podium courtyards.                                                                                                                                                         |             | 12    |
| 5. Building Accessories                   | <p><b>Lighting</b></p> <p>Goal: Prevent glare on public right of way.</p>                                                  | All lighting shall be downcast and not cause glare on the public right of way or neighboring parcels.                                                                                                                                                                                                                                                                                                                                            |             | 13    |
|                                           | <p><b>Security and Fences</b></p> <p>Goal: Reduce visual impact.</p>                                                       | <p>Security devices and grillwork visible from the street shall be integrated into the overall building design.</p> <p>Perimeter fencing utilized along public street shall be constructed of decorative iron, pre-painted welded steel, or wood picket material.</p>                                                                                                                                                                            |             | 14    |
|                                           | <p><b>Trash Service, Mechanical and Utilities</b></p> <p>Goal: Reduce visual impact.</p>                                   | Garbage receptacles, utility meters and mechanical and electrical equipment at rooftop and ground shall be screened from the view of pedestrians.                                                                                                                                                                                                                                                                                                |             | 15    |
| 6. Street Trees                           | <p>Goal: Preserve and/or add street trees.</p>                                                                             | Existing street trees shall be retained and protected <i>if determined to be healthy by the Urban Forester</i> . Work with Berkeley's Urban Forestry Department and Public Works to determine preferred locations for new street trees.                                                                                                                                                                                                          |             | 16    |
| 7. Signs and Awnings                      | <p>Goal: Cohesive sign program that is in keeping with the building design</p>                                             | <p>Coordinate the design and alignment of signs and awnings on buildings with multiple storefronts in order to achieve a cohesive appearance to the base of the building.</p> <p>Signs and awnings shall not obscure architectural elements such as clerestory windows or columns.</p> <p>All front faces shall be opaque.</p>                                                                                                                   |             | 17    |



Joint Subcommittee for the Implementation of State Housing Laws

ACTION CALENDAR  
September 14, 2021  
(Continued from July 27,  
2021)

To: Honorable Mayor and Members of the City Council  
From: Joint Subcommittee for the Implementation of State Housing Laws  
(JSISHL)  
Submitted by: Igor Tregub, Chairperson  
Subject: Objective Standards Recommendations for Density, Design and Shadows

#### RECOMMENDATION

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

#### FISCAL IMPACTS OF RECOMMENDATION

This project will involve staff and consultant time that will total approximately \$200,000. Budget for the consultant time was previously allocated from the General Fund in the 2021-2022 fiscal year budget (\$115,000). Additional staff time amounting to \$100,000 would have to be covered by re-arranging staff priorities within existing resources to support the effort.

#### CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's Zoning Ordinance and permitting process for residential and mixed use projects relies heavily on discretion and subjective development standards. State laws, such as Senate Bill (SB) 35, limit interpretation of zoning regulations and require a streamlined permit approval process for many housing projects. JSISHL was tasked with reviewing approaches to objective standards for density, design, shadows and views. Between April 2018 and July 2020 JSISHL, including representatives of the Planning Commission, Zoning Adjustments Board, and Housing Advisory Commission, met eleven times to discuss these topics and ultimately prepared the recommendations summarized below.

#### Objective Standards for Density (Building Intensity)

The referral specifically requested that JSISHL consider dwelling units per acre as an objective measurement of density. JSISHL also considered a form-based code method and floor area ratio (FAR) as approaches to objectively regulate lot buildout and development proportions. No unanimous agreement could be reached as to the best

path forward. In the end, a recommendation was made using FAR as the primary density standard in residential and commercial districts and form-based code<sup>1</sup>, which emphasizes standards with predictable physical outcome such as build-to lines and frontage and setback requirements, as a secondary approach. There was also an interest in a units/acre approach that assumed average unit sizes and bedroom counts; however, this approach was not adopted. See Attachment 1 (July 22, 2020 Final Minutes) for the text of these options. **JSISHL recommended developing an objective standard for density using FAR and potentially form-based code.**

### Objective Standards for Design

Berkeley's design review process relies heavily on four sets of design guidelines:

1. Design Review Guidelines (applied citywide);
2. Downtown Design Guidelines;
3. Southside Strategic Plan Design Guidelines; and
4. University Strategic Plan Design Guidelines.

This process heavily relies on the discretion of staff and the Design Review Committee; however, recent State laws require that cities develop objective standards for streamlined and ministerial approval processes for qualified projects. To aid JSISHL in making a recommendation, staff created a matrix of design guidelines to identify design goals, introduced objective language to reflect desired design outcomes, and test-fit approved projects to double-check objective language. **JSISHL recommended the proposed objective design standards be reviewed by the Design Review Committee and further refined by Planning Commission.**

### Objective Standards for Shadows

The Berkeley Municipal Code (BMC) addresses shadows as follows:

- Section 23E.36.070(C)(1)(a): Projects on the north side of University Avenue within the University Avenue Strategic Plan Overlay area must meet a Solar Rear Yard Setback (subject to override by Density Bonus waivers). Required daylight plane analysis is incorporated directly into the development standards: “...*shall not cast a shadow at noon more than 20 feet onto any lot in a residential zone as calculated when the sun is at a 29 degree angle above the horizon (winter solstice).*”
- Section 23B.34.070(C): Green Pathway Projects<sup>2</sup> within the Downtown Mixed-Use District (C-DMU) that are between 60 and 75 feet tall. Shadow analysis for these projects must show that:

<sup>1</sup> <https://formbasedcodes.org/standards-of-practice/>

<sup>2</sup> As defined in in Chapter 23B.34 of the municipal code, the “Green Pathway” is a streamlined permit process for buildings that exceed the Green Building requirements applicable to the C-DMU district and confer extraordinary public benefits.

1. *The extent of shading on public sidewalks and open spaces within a radius of 75 feet of the closest building wall that would be cast at two (2) hours after sunrise, 12 p.m., and two (2) hours before sunset, on March 21, June 21, December 21, and September 21, by a building 60 feet in height that complies with all applicable setback requirements; and*
2. *Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will reduce the extent of shadowing of the proposed building to no more than 75 percent of the shadowing projected in paragraph 1 above.*

Otherwise, shading impacts are evaluated on a discretionary basis during Use Permit review and are permissible provided they are not “unreasonable” or provided they will not result in a “significant reduction in sunlight.” Although the review of shadow studies is somewhat objective – administrative guidelines establish methods for analyzing impacts by time of day and time of year on living area windows and yards - the ultimate finding is subjective. Therefore, while shadow studies provide accurate information on shading due to proposed projects, the amount of shading from new development that is deemed “reasonable” depends on the context.

JSISHL discussed many aspects of shadow impacts, including shading of solar panels and roofs, windows, yards and gardens. The recommendation is fairly detailed, including five applicability considerations and four methods of measuring shadow impacts that depend on project elements. **JSISHL recommended that the proposal for objective shadow standards be reviewed and further refined by staff and the Planning Commission.**

#### BACKGROUND

On July 17, 2017, the City Council adopted a referral to address the State Housing Accountability Act (Government Code Section 65589.5) and to preserve local land use discretion (see Attachment 2). The referral requested research into a set of objective zoning standards for new development projects in the following four topic areas:

- Density and/or building intensity;
- Public health and safety standards;
- Design review standards; and
- Views, shadows, and other impacts that often underlie detriment findings.

In the time since the referral was adopted by City Council in 2017, the State adopted several bills to streamline the approval process for housing developments. Legislation facilitates housing production for projects that comply with a jurisdiction’s objective standards and prohibits localities from adopting standards what would reduce the number of residential units allowed (i.e. downzones a property or area). As a result of

these legislative actions, jurisdictions benefit from adopting objective planning standards that can guide the development process and reflect goals of the local community.

JSISHL's first few meetings in 2018 were focused on understanding and analyzing 2017 State housing laws and associated City Council referrals. At its fourth meeting, in January 2019, JSISHL adopted a work plan (see Attachment 3) to direct efforts towards researching approaches to objective standards for density, design, shadows and views. In March and May of 2019, JSISHL examined existing conditions at the City of Berkeley and implementation of the Zoning Ordinance and of State law (i.e. Density Bonus, SB-35, the Housing Accountability Act). Since September 2019, JSISHL has evaluated objective standards for density, design and shadows in order to develop a recommendation to City Council. At its final meeting on July 22, 2020, JSISHL recommended approaches to objective standards for design, density and shadows to City Council for consideration. JSISHL was not able to address objective standards for views.

#### ENVIRONMENTAL SUSTAINABILITY

Adoption of objective standards will streamline the permitting process for housing projects, encouraging infill development and density, creating opportunities to live and work within close proximity and reduce reliance on private vehicle use and/or vehicles miles traveled.

#### RATIONALE FOR RECOMMENDATION

State law requires that jurisdictions adopt objective standards in order to ministerially approved projects.

#### ALTERNATIVE ACTIONS CONSIDERED

The city can choose to not adopt objective standards, in which case projects will be ministerially approved without meeting certain standards.

#### CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

#### CONTACT PERSON

Alene Pearson, Subcommittee Secretary, Planning and Development Department, 510-981-7489

#### Attachments:

- 1: Meeting Minutes (July 22, 2020)
- 2: City Council Referral (July 17, 2017)
- 3: Work Plan (January 17, 2019)



Planning Commission

**DRAFT MINUTES OF THE REGULAR MEETING OF THE JSISHL  
(JOINT SUBCOMMITTEE FOR IMPLEMENTATION OF STATE HOUSING LAWS)**

**July 22, 2020**

The meeting was called to order at 7:02 p.m.

**Location: N/A** (This meeting was conducted exclusively through videoconference and teleconference)

**Commissioners Present:** Teresa Clarke, Dohee Kim, Thomas Lord, Shoshana O’Keefe, Igor Tregub, Alfred Twu, Jeff Vincent, Marian Wolfe (left at 9:29), Rob Wrenn

**Commissioners Absent:** None

**Staff Present:** Alene Pearson, Nilu Karimzadegan, Anne Burns and Desiree Dougherty

**ORDER OF AGENDA:** No Change

**CONSENT CALENDAR:** N/A

**PUBLIC COMMENT:** 1 speaker

**PLANNING STAFF REPORT:** Staff announced that three supplemental communications were sent out via email prior to the meeting and are posted on the online agenda. Communications received “At the Meeting” will be posted by the end of Friday.

**COMMUNICATIONS IN PACKET:**

- Email from Cantor Lois on 10/24/19 re: BART apartments
- Email from Vicki Sommer on 10/24/19 re: Objective Standards for Sunlight Detriment
- Email from Alene Pearson on 11/15/19 to JSISHL re: JSISHL October follow up and December supplemental material request
- Letter from Toni Mester on 12/2/19 re: density and solar recommendation
- Letter from David Ushijima on 12/2/19 re: Objective Standards for Shadow and Sunlight
- Email from Commissioner Wolfe on 12/2/19 re: JSISHL October follow up and December supplemental material request

**COMMISSIONER ATTACHMENTS IN PACKET:**

- Email from Alene Pearson to JSISHL on June 26, 2020 re: JSISHL Meeting scheduled for July 22
- Email from Alene Pearson to JSISHL on May 15, 2020 re: JSISHL Meeting via Zoom

- Email from Timothy Burroughs, Planning Director on April 23, 2020 re: Update on status of board and commission meetings
- Email from Commissioner Lord on April 13, 2020 re: “The Constitution.....”
- Email from Commissioner Lord on March 30, 2020 re: Objectifying and Modernizing Study Standards
- Email from Commissioner Kim on March 30, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Commissioner Wolfe on March 28, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Commissioner Wright on March 12, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Alene Pearson to JSISHL on March 6, 2020 re: Follow Up to February 26 JSISHL Meeting

**LATE COMMUNICATIONS** (Received after the Packet deadline):

- Supplemental Communication 1
- Supplemental Communication 2
- Supplemental Communication 3

**LATE COMMUNICATIONS** (Received and distributed at the meeting):

- Supplemental Communication 4

**CHAIR REPORT:** None

**COMMITTEE REPORT:** None

**7. APPROVAL OF MINUTES:**

Motion/Second/Carried (Wolfe/Clarke) to approve the JSISHL Meeting Minutes from February 26, 2020. Ayes: Clarke, Kim, Lord, Tregub, Vincent, Wolfe, Wrenn. Noes: None. Abstain: O’Keefe, Twu. Absent: None (7-0-2-0)

**8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** None

**AGENDA ITEMS**

**9. Action: Objective Standards for Density**

**PUBLIC COMMENT:** 4 speakers

Primary Motion/Second/No Action Taken (O’Keefe/Wrenn) to recommend that the City Council refer to staff and Planning Commission development of a dwelling units per acre standard in all commercial districts and in the MULI and MUR districts with consideration of a cap on average number of bedrooms. Take into consideration size of parcel and develop an average bedroom/unit (to be determined) for multi-unit buildings. Develop Floor Area Ratios (FARs) for residentially zoned (“R” prefix) districts such as R-2, R-2A, and R-3, to help clarify and make more objective what is permitted in these districts.

Substitute Motion/Second/Carried (Kim/Clarke) to recommend using FAR as a density standard with a secondary form-based approach in Residential and Commercial districts. Ayes: Clarke, Kim, Wolfe, Twu, Vincent. Noes: Lord, O’Keefe, Tregub, Wrenn. Abstain: None  
Absent: None  
(5-4-0-0)

**10. Action: Objective Standards for Design**

**PUBLIC COMMENT:** 1 speakers

Primary Motion/Second/Carried (Wolfe/Clarke) to recommend to City Council the proposed design standards be reviewed and further developed by the Design Review Committee and Planning Commission. These standards were included in JSISHL’s July 22, 2020 packet. Ayes: Clarke, Kim, O’Keefe, Tregub, Vincent, Wolfe, Wrenn. Noes: None. Abstain: Lord, Twu.  
Absent: None  
(7-0-2-0)

Substitute Motion/Second/Not Carried (Twu/O’Keefe) to recommend to City Council the proposed design standards -- minus the first four design standards (massing, material, rooflines, facades) -- be reviewed and further developed by the Design Review Committee and Planning Commission. These standards were included in JSISHL’s July 22, 2020 packet. Ayes: O’Keefe, Twu. Noes: Clarke, Kim, Lord, Tregub, Vincent, Wolfe, Wrenn. Abstain: None.  
Absent: None  
(2-7-0-0)

**11. Action: Objective Standards for Shadows**

**PUBLIC COMMENT:** 2 speakers

Motion/Second/Not Carried (Wrenn/Tregub) to recommend to City Council the following:

In developing draft objective standards, staff should start with existing daylight plane standards, including the standards for San Pablo Avenue in El Cerrito, and with the City’s own standard in effect for University Avenue.

Shadowing standards would only apply if the proposed project was asking for a Use Permit, AUP, waiver or density bonus to exceed the “base” residential and commercial zoning district development standards that are in effect as of 7/1/20.

Where there is a lot coverage limit, adjustments to the location and orientation of the massing can be required in order to minimize shadowing impacts.

In the development of shadowing standards, impacts on light and air and existing windows and door openings of the applicable adjacent buildings will be taken into consideration.



JSISHL should recommend that the City Council direct staff to go forward with drafting of an objective standard to protect existing rooftop solar panels from shadowing by new development on adjacent and nearby parcels.

JSISHL should recommend that the City Council direct staff to go forward with drafting objective shadowing standards to limit shadowing of residential buildings by new development on adjacent or nearby parcels.

Standards should apply in residentially zoned (“R” prefix) districts and to properties in commercially zoned (“C” prefix) districts that are adjacent to residential properties, where new development could cause shadowing impacts on residential properties. Staff could present to Council a range of options with draft language for each.

JSISHL should recommend that the City Council direct staff to work on standards to protect open, currently unshadowed areas of public parks, and open currently unshadowed areas of school grounds that are used for student recreation.

Ayes: O’Keefe, Tregub, Vincent, Wrenn. Noes: Lord, Abstain: Clarke, Kim, Twu. Absent: Wolfe (4-1-3-1)

Motion/Second/Carried (Clarke/Vincent) to recommend to City Council the following proposed shadow standards be reviewed and further developed by the staff and Planning Commission.

1. Applicability of Shadow Impacts:
  - a. Shadow impacts would not be considered when a proposed new building or new construction meets all base development standards.
  - b. Shadow impacts on an adjacent property would only be considered when a side or rear yard setback reduction or an increase in height is requested by use permit or by state density bonus over the allowable standard. Shadow impacts for Front or Street yard setback reductions would not be included or considered.
  - c. The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.
  - d. Adjustments would seek to limit reductions in overall building envelope and could compensate with increases in height in another portion of the building, or reduced setback in another portion of the site, or some other mutually agreed adjustment to a development standard or mitigation. Adjustments may require, if no other solution can be proposed to mitigate the impact, a reduction in the overall total building envelope proposed. However, for state density bonus projects, adjustments to a proposed new residential construction shall not require a reduction in the overall total building envelope, habitable area, or cause the number of bedrooms or units to be reduced.
  - e. If the adjacent building being affected has a reduced building setback on the adjacent side or rear yard, a light and air impact would not be applicable, except in those cases where the building has a historic designation or was built prior to the implementation of the zoning code.

2. Elements of consideration for Shadow Impact:

- a. Light & Air for Building Openings of Applicable adjacent buildings: The light and air shadow impact shall consider impact to light and air access only of the existing windows and door openings of the applicable adjacent buildings. The new construction would be required to adjust its setback such that a minimum 3 foot perpendicular distance was achieved and a 6 foot width, with minimum 1 foot on either side of the window or door for 2 stories (min. 6 foot for courts with openings on both sides) and 1 foot additional setback for each additional story up to 14 stories, or a total maximum setback of 15 feet from the adjacent building. For instance if the building is 3 feet away from the property line, a 12 foot maximum from the property line for the new building.
- b. Minimum Required Open Space of Adjacent properties: An increase in shadow impact caused by the additional height or reduced setback on the minimum required open space of the adjacent impacted property shall not be more than a 50% increase in direct shade averaged over the entire year. If the affected property has more than the required open space, the calculation would be made on the open space that is least impacted by the shadow. The setback or height shall be adjusted to result in a net shadow increase of no more than 50% (or suggest alternate per staff research) as limited in Section 1 above. The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.
- c. Solar Access: An increase for the additional impact only of more than 50% of direct shading on existing solar panels averaged over the entire year and over the entire area of solar array would require that an adjustment to the requested height or setback be made, or other mutually agreed adjustment to a development standard or mitigation be made. If a mitigation such as moving the solar panels or re-orienting the solar panels has been mutually agreed upon in lieu of a development standard adjustment, this mitigation should be completed prior to building permit issuance, if possible.

The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.

Ayes: Clarke, Kim, O’Keefe, Twu, Vincent. Noes: Lord, Wrenn. Abstain: Tregub. Absent: Wolfe. (5-2-1-1)

**The meeting was adjourned at 11: 01 p.m.**

**Commissioners in attendance: 9 of 9**

**Members in the public in attendance: 7**

**Public Speakers: 7**

**Length of the meeting: 2 hours and 59 minutes**

**APPROVED:**

---

Alene Pearson

Page 6 of 6

Secretary to the JSISHL

DRAFT

RESOLUTION NO. 69,159-N.S.

EXTENSION OF THE JOINT SUBCOMMITTEE FOR THE IMPLEMENTATION OF  
STATE HOUSING LAWS

WHEREAS, the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) was established under Resolution No. 68,308-N.S. in January 2018; and

WHEREAS, the mission of JSISHL is to advise Council regarding issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining to attain compliance with state law and take advantage of new opportunities for the development of affordable housing; and

WHEREAS, under its enabling legislation, JSISHL is tasked with completing its work by January 2020, reporting to Council by March 2020; and

WHEREAS, in order to fulfill its mission an extension is needed to provide adequate time to review recently passed State housing laws, and to provide adequate feedback on recommendations on units per acre density standards, Floor to Area Ratios (FARs) and daylight plane shadowing standards, along with anything else such as an objective definition of detriment.


NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby extends the timeline for the Joint Subcommittee for the Implementation of State Housing Laws to complete its work by July 2020, with the recommendations being brought to the City Council for consideration by the end of September 2020.

The foregoing Resolution was adopted by the Berkeley City Council on October 29, 2019 by the following vote:

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

Noes: None.

Absent: None.

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

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

RESOLUTION NO. 68,308–N.S.

ESTABLISHING A JOINT SUBCOMMITTEE FOR THE IMPLEMENTATION OF STATE HOUSING LAWS.

WHEREAS, Berkeley and California is facing an unprecedented housing affordability crisis; and

WHEREAS, rents for a two bedroom apartment in Berkeley have risen by 62.5% over the past five years; and

WHEREAS, Berkeley has so far achieved 48% of its housing allocation goals for 2014-2022 set out by the Association of Bay Area Governments, including 0% for extremely low income and moderate income; and

WHEREAS, many residential developments that have received zoning approval have yet to receive a building permit; and

WHEREAS, to address the rising crisis of housing in the State of California, 15 state bills were signed into law, with many dealing with how local municipalities respond to the development of new units; and

WHEREAS, issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining need to be addressed by the City to be compliant with state law and to take advantage of new opportunities for the development of affordable housing; and

WHEREAS, because the Zoning Adjustments Board, Housing Advisory Commission, and Planning Commission have policy and quasi-judicial powers around housing, it would be beneficial for representatives of these commissions to meet jointly to develop policies for consideration by the Planning Commission and City Council; and

WHEREAS, community input is of vital importance in the review and implementation of these housing policies, and such input can be encouraged by regular publicly-noticed meetings of the Task Force; and

WHEREAS, the Joint Subcommittee should be comprised of nine voting members, with representatives from each commission.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley does hereby establish a Joint Subcommittee composed of members from the Zoning Adjustments Board, Housing Advisory Commission, and Planning Commission.

BE IT FURTHER RESOLVED that the Joint Subcommittee members shall be appointed from the membership of the Zoning Adjustments Board, Planning Commission or Housing Advisory Commission. Any Commissioner on any of those commissions is eligible for appointment to the Joint Subcommittee, as long as there is representation from each commission on the Joint Subcommittee.


BE IT FUTHER RESOLVED that the Joint Subcommittee shall complete its work by January 2020. Staff shall forward the Joint Subcommittee's recommendations to each parent Commission for comment, and bring the Joint Subcommittee's recommendations to the City Council for consideration by the end of March 2020, along with comments by any parent commissions.

The foregoing Resolution was adopted by the Berkeley City Council on January 23, 2018 by the following vote:

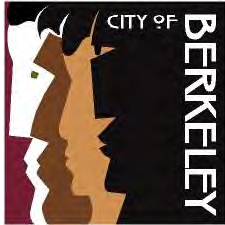
Ayes: Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: Bartlett.

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

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



Mayor Jesse Arreguin  
Councilmember Sophie Hahn, District 5

## **SUPPLEMENTAL AGENDA MATERIAL**

**Meeting Date:** June 13, 2017

**Item Number:** # 59

**Item Description:** Housing Accountability Act

**Submitted by:** Mayor Jesse Arreguin and Councilmember Sophie Hahn

The revision removes the idea that staff and the Planning Commission consider as one of several options downzoning and then upzoning by increasing development standards on a discretionary basis.

These ideas largely reflect those originally proposed by the City Attorney and Planning staff.



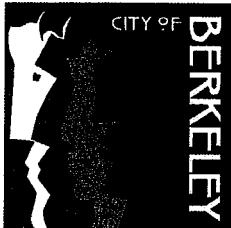
Mayor Jesse Arreguin  
Councilmember Sophie Hahn, District 5

### **Motion, Item # 59: Housing Accountability Act**

Refer to the City Manager and Planning Commission to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

- Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
- Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
- Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
- ~~Downzone & increase the number and amount of additional height, setback, and other elements available on a discretionary basis.~~
- Quantify and set standards for views, shadows, and other impacts that often underlie detriment findings.





Office of the Mayor

RECEIVED AT  
COUNCIL MEETING OF:

MAY 30 2017

OFFICE OF THE CITY CLERK  
CITY OF BERKELEY

**Motion, Item # 46: Housing Accountability Act**

Refer to the City Manager and Planning Commission to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

- Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
- Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
- Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
- Downzone & increase the number and amount of additional height, setback, and other elements available on a discretionary basis.
- Quantify and set standards for views, shadows, and other impacts that often underlie detriment findings.

Meeting Date: January 17, 2019

To: Joint Subcommittee for the Implementation of State Housing Law (JSISHL)

From: Chris Schildt, Chairperson

Subject: JSISHL background, mission, objectives, and developing 2019 Workplan

---

## Background

JSISHL held three meetings last year in April, May, and July, and had two meetings cancelled in September and November. Due to the long gap since our last meeting, I thought it'd be helpful to revisit the mission and objectives of this subcommittee, as background to a discussion of our workplan for the coming year.

At our April 17, 2018 meeting, we reviewed the mission and objectives of this subcommittee (from April 17, 2018 staff presentation to JSISHL):

**Mission:** Assist the City of Berkeley to effectively implement new State housing laws and advance City Council priorities that are designed to increase affordable housing.

### Objectives:

- Learn about the new State housing law package and its implications for our community
- Assist the City to incorporate new practices designed to enable implementation of new State housing laws
- Based on City Council priorities and referrals, assist with development of new policies for consideration by parent commissions and City Council.

At our subsequent meetings, we heard information about and discussed new state housing laws and a range of related issues, including developing objective standards, streamlining affordable housing, density bonus, and inclusionary zoning.

## Developing a 2019 Workplan

While we heard information and had a lot of discussion last year, my aim for this coming year is for this body to move forward on a finite number of items that will best position the City to implement State housing laws. To that aim, I recommend we develop a workplan with agreed upon priorities that we will work on in the coming year. This would not preclude commissioners from submitting agenda items on other topics for JSISHL to consider, but would help to align our efforts and focus.

The workplan should build off of our existing work and discussion. In last year's meetings, we discussed the following areas that relate to implementation of new State housing laws:

- Developing objective standards
- Streamlining affordable housing
- Density bonus
- Inclusionary housing

**Proposal:**

Numerous state laws, including the Housing Accountability Act, SB 35, and other potential future state legislation (e.g. SB 50) have made it difficult to implement our local laws, which were developed to be flexible with local discretion. The City has recently undertaken a review of the applicable standards that can be enforced under these laws in the light of three recent projects that have applied for approval under SB 35. For an example of how the City applied objective standards for one of the projects, 1601 Oxford Street, see:

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_ZAB/2018-12-21\\_Attachment%20C\\_SB35\\_Objective%20Standards\\_1601%20Oxford.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2018-12-21_Attachment%20C_SB35_Objective%20Standards_1601%20Oxford.pdf)

One outcome of the recent reviews has been the clear identification of those areas where the City does not have objective standards, including design review and use permit findings, which are by necessity discretionary and flexible to address unique circumstances. Developing objective standards in areas such as view, sunlight, density, and detriment could help to ensure local needs and goals are included in the development review process for all projects. These objective standards would also help address some of the other topics that have come up on this commission, such as facilitating streamlined review of affordable housing projects and improving the density bonus process.

As a proposed workplan, we could decide as a commission to use each of the next several meetings to do research and discussion on a separate topic within objective standards, and develop a set of recommendations for the City Council and/or our parent commissions. For each topic, commissioners and members of the public would be encouraged to submit information and research to this commission related to the topic to inform discussion. Attached is an example of research provided by a member of public, David Ushijima, on providing objective standards for sunlight detriment.

For example, we could dedicate one of each of these topics for each upcoming meeting:

- Daylight.
- Views.
- Density standards (Note: The city has hired a consultant, Opticos Design, to develop density standards this year. They will be presenting to this commission in 2019, date TBD).
- Detriments to health, comfort, and general welfare.

We could also agendaize for a future meeting to review the City's existing objective standards table.

At the end of the year, we can compile our research and discussion and develop a set of recommendations to send to the City Council and/or our parent bodies.

**Questions for discussion:**

- Do the members of the commission agree to develop a workplan for 2019?
- If yes, what should our priorities be for 2019?



Planning Commission

1                   **DRAFT MINUTES OF THE REGULAR MEETING OF THE JSISHL**  
2                   **(JOINT SUBCOMMITTEE FOR IMPLEMENTATION OF STATE HOUSING LAWS)**

3  
4                   **January 17, 2019**

5                   The meeting was called to order at 7:05 p.m.

6                   **Location:** 2180 Milvia Street 1st Floor, Cypress Conference Room

7                   **Commissioners Present:** Thomas Lord, Shoshana O’Keefe (arrived at 7:16), Christine Schildt  
8                   Igor Tregub, Marian Wolfe, Rob Wrenn.

9                   **Commissioners Absent:** None

10                  **Staff Present:** Alene Pearson, Nilu Karimzadegan and Beth Greene

11                  **ORDER OF AGENDA:** Order of Agenda was changed to:

12                  Discussion Item 9 (Adopt 2019 JSISHL Work Plan ), Discussion Item 10 (Renewing  
13                  Democratized Planning in Berkeley), Action Item 11 (Approve 2019 JSISHL Meetings Calendar)  
14                  and Action Item 12 (Elections: Elect 2019 JSISHL Chair and Vice Chair).

15                  Motion/Second/Carried (Lord/ Tregub) to move Agenda Item 12 to Agenda Item 10 and vote  
16                  on the 2019 JSISHL Work Plan after Agenda Item 10. Ayes: Lord, O’Keefe, Schildt, Tregub,  
17                  Wolfe, Wrenn. Noes: None. Abstain: None. Absent: None (6-0-0-0)

18  
19                  **CONSENT CALENDAR:** N/A.

20                  **PUBLIC COMMENT:** 1 speaker

21                  **PLANNING STAFF REPORT:**

22                  Staff announced that 2019 meeting dates will be decided tonight with Agenda Item 11 and future  
23                  meeting location will depend upon room availability.

24                  **COMMUNICATIONS IN PACKET:**

- 25                  • White Paper on Sunlight Impacts by David Ushijima (October 15, 2018).  
26                  • 2019-01-08\_Communication\_BNC\_Support of White Paper by Dean Metzger (January 8,  
27                  2019)

28  
29                  **LATE COMMUNICATIONS** (Received after the Packet deadline): None

31 **LATE COMMUNICATIONS** (Received and distributed at the meeting): None

32 **CHAIR REPORT:** None

33 **COMMITTEE REPORT:** None

34 **7. APPROVAL OF MINUTES:**

35 Motion/Second/Carried (Tregub/Wrenn) to approve the JSISHL Meeting Minutes from July 17,  
36 2018. Ayes: Lord, O’Keefe, Schildt, Tregub, Wrenn. Noes: None. Abstain: Wolfe. Absent:  
37 None (5-0-1-0)

38

39 **8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** None.

40 **AGENDA ITEMS**

41 **9. Discussion:** Adopt 2019 JSISHL Work Plan:

42 The Commission discussed a work plan for 2019 and developed a proposed schedule with  
43 meeting dates and topics that focus on objective standards for the implementation of State  
44 Housing Law. Below is a summary of that discussion:

45 January 17: Work Plan Development

46 March 27: Existing Objective Standard Framework

47 May 22: Density Standards and Density Bonus

48 September 25: Daylight, shadowing, and solar access

49 October 23: Views and other objective standards

50 December 12: Report out.

51 The Commissioners and the members of the public were encouraged to submit information and  
52 research related to future meeting topics. This work plan will result in a set of recommendations  
53 to parent commissions and/or City Council.

54 **PUBLIC COMMENT:** 1 speaker

55 **10. Discussion:** Renewing Democratized Planning in Berkeley

56 Commissioner Lord explained his memo and suggested modifications to the work plan  
57 developed during discussion of Agenda Item 9. The Commission added the topic of local  
58 overlay zones to the September and October meetings.

59 **PUBLIC COMMENT:** 1 speaker

60 Motion/Second/Carried (O’Keefe/Wolfe) to adopt the proposed 2019 workplan. Ayes: O’Keefe,  
61 Schildt, Tregub, Wolfe, Wrenn. Noes: Lord. Abstain: None. Absent: None (5-1-0-0)

62  
63 **11. Action:** Approve 2019 JSISHL Meetings Calendar:

64 The Commission discussed their availability and agreed on the following 2019 calendar:

65 January 17, 2019 (Wednesday)

66 March 27, 2019 (Wednesday)

67 May 22, 2019 (Wednesday)

68 September 25, 2019 (Wednesday)

69 October 23, 2019 (Wednesday)

70 December 12, 2019 (Thursday)

71 Motion/Second/Carried (O’Keefe/Tregub) to adopt the proposed 2019 calendar. Ayes: Lord,  
72 O’Keefe, Schildt, Tregub, Wolfe, Wrenn. Noes: None. Abstain: None. Absent: None  
73 (6-0-0-0)

74  
75 **12. Elections:** Elect 2019 JSISHL Chair and Vice Chair:

76 Motion/Second/Carried (Wolfe/O’Keefe) to Elect Chris Schildt as Chair and Igor Tregub as  
77 Vice Chair for 2019 JSISHL. Ayes: Lord, O’Keefe, Schildt, Tregub, Wolfe, Wrenn. Noes: None.  
78 Abstain: None. Absent: None (6-0-0-0)

79  
80 **The meeting was adjourned at 9: 03 p.m.**

81 **Commissioners in attendance: 6 of 6**

82 **Members in the public in attendance: 2**

83 **Public Speakers: 2**

84 **Length of the meeting: 1 hour and 58 minutes**



Agenda & Rules Committee

### **ACTION CALENDAR**

September 14, 2021

*(Continued from May 25, 2021)*

To: Honorable Members of the City Council  
 From: Agenda & Rules Policy Committee: Mayor Jesse Arreguin and Councilmembers Sophie Hahn and Susan Wengraf  
 Subject: Amending the Berkeley Election Reform Act (BERA) Relating to Officeholder Accounts

### **RECOMMENDATION**

Take one of the following actions:

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

Pursuant to BMC Section 2.12.051.A, BERA may be amended by the “double green light” process. This process requires that the amendment first be adopted by a two-thirds vote of the FCPC and then adopted by a two-thirds vote of the City Council, following a public hearing. This item would submit a proposal to the FCPC for its consideration. If adopted by a two-thirds vote of the FCPC, the item would return to the Council for final adoption.

### **POLICY COMMITTEE RECOMMENDATION**

On March 29, 2021, the Agenda & Rules Policy Committee adopted the following action:<sup>1</sup> M/S/C (Wengraf/Arreguin) to send the item to Council with two proposed alternatives: 1) Councilmember Hahn’s proposal to regulate officeholder accounts [with modifications brought forward by Committee members], and 2) the Fair Campaign Practices Commission proposal to prohibit officeholder accounts; and to include the Commission’s analysis of regulating officeholder accounts in the item that goes to the full Council. Vote: All Ayes.

---

<sup>1</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/City\\_Council/2021/03\\_Mar/Documents/03-29%20Minutes%20-%20Agenda%20Committee.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/City_Council/2021/03_Mar/Documents/03-29%20Minutes%20-%20Agenda%20Committee.pdf)

**BACKGROUND**

On February 4, 2020, the Fair Campaign Practices Commission (FCPC) submitted a recommendation to Council to adopt an ordinance amending the Berkeley Election Reform Act (BERA), BMC Chapter 2.12, to prohibit Officeholder Accounts.<sup>2</sup> Council took action to refer a discussion on Officeholder Accounts and Council District (D-13) Accounts to the Agenda & Rules Committee, to “consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the FCPC.”<sup>3</sup>

The Agenda & Rules Committee considered this referral with input from FCPC commissioners. The FCPC and Open Government Commission (OGC)<sup>4</sup> also submitted subsequent recommendations to Council related to this process, which were included as part of the discussion regarding officeholder and D-13 accounts. The OGC submitted a recommendation that a special temporary joint advisory committee be created consisting of members of the OGC and Council to review the practice of councilmembers making donations to community organizations from their D-13 accounts. This proposal was referred directly to the Agenda & Rules Committee on August 31, 2020. On January 11, 2021, the FCPC and OGC jointly submitted a proposal to the Council clarifying the desire to create a joint subcommittee of FCPC-OGC members and members of the Council to consider both regulation of officeholder accounts as well as D-13 account grant practices and expressing willingness to consider either prohibition or regulation of officeholder accounts. D-13 account grant practices have since been addressed separately by Council.<sup>5</sup>

The Agenda & Rules Committee discussed the question of officeholder accounts at multiple meetings in early 2021 with input from three FCPC-OGC commissioners (Chair Brad Smith, Vice Chair Jedidiah Tsang and Commissioner Patrick O’Donnell). On March 29, 2021, the Agenda & Rules Committee took action to send this item to Council with two proposed alternatives: 1) a proposal to regulate officeholder accounts in a manner based on existing regulation of campaign committees, and 2) the Fair

---

<sup>2</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/02\\_Feb/Documents/2020-02-04\\_Special\\_Item\\_02\\_Amendments\\_to\\_the\\_Berkeley\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/2020-02-04_Special_Item_02_Amendments_to_the_Berkeley_pdf.aspx)

<sup>3</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/02\\_Feb/Documents/02-04\\_Special\\_Annotated\\_Agenda\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/02-04_Special_Annotated_Agenda_pdf.aspx)

<sup>4</sup> The OGC is composed of the same membership as the FCPC and the two bodies meet concurrently. The FCPC has jurisdiction over BERA while the OGC has broad authority to make recommendations to Council regarding “open and effective government.” (BMC § 2.06.190.A.2.) Therefore, proposals regarding the prohibition or regulation of officeholder accounts in BERA have been presented by the FCPC, while recommendations regarding D-13 accounts have been offered by the OGC.

<sup>5</sup> On February 8, 2021, the Agenda & Rules Committee took action to make a positive recommendation to the City Council on part two of the Commission recommendation to prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members. The Council approved this recommendation on March 9, 2021.



Campaign Practices Commission proposal to prohibit officeholder accounts. The Committee's action also required the Commission's analysis of regulating officeholder accounts to be included in the item that goes to the full Council.<sup>6</sup>

Officeholder accounts are currently allowed in the City of Berkeley, subject only to limitations provided in State Law. The Agenda & Rules Committee's proposal to regulate officeholder accounts would establish local rules that mirror and adapt Berkeley's existing, voter-approved regulations for campaign committees, including regulation of donations and reporting requirements, and narrow the uses for which officeholder account funds can be used.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.<sup>7</sup> They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses officeholder accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, and similar expenses. Cities can place limits on officeholder accounts, as Oakland has done.<sup>8</sup> Under State law, officeholder accounts must be registered as official committees, and adhere to strict public reporting requirements, like campaign accounts. These reporting requirements provide full transparency to the public about sources and uses of funds in officeholder accounts.

The FCPC's recommendation to outlaw officeholder accounts in Berkeley was set aside by the City Council on when it referred on February 4, 2020 to the Agenda & Rules Committee to "consider a reasonable set of limitations and rules for such [officeholder] accounts and bring back recommendations to the full Council."<sup>9</sup> Some members of the FCPC who participated in the Agenda & Rules Committee discussion continued to advocate for the original proposal to outlaw Officeholder Accounts, so the Committee acted to send both the Council-requested "reasonable set of limitations" and the FCPC's original recommendation back to the Council for consideration.

### FISCAL IMPACTS

Regulating the maintenance of officeholder accounts by councilmembers and the Mayor would have a moderate impact on staff time.

### CONTACT INFORMATION

Agenda & Rules Policy Committee: Jesse Arreguin, Mayor, (510) 981-7100;  
Councilmember Sophie Hahn, District 5, 510-682-5905 (cell); and Susan Wengraf,  
Councilmember, District 6, (510) 981-7160.

<sup>6</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/City\\_Council/2021/03\\_Mar/Documents/03-29%20Minutes%20-%20Agenda%20Committee.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/City_Council/2021/03_Mar/Documents/03-29%20Minutes%20-%20Agenda%20Committee.pdf)

<sup>7</sup> <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

<sup>8</sup> <http://www2.oaklandnet.com/w/OAK052051>

<sup>9</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/02\\_Feb/Documents/02-04\\_Special\\_Annotated\\_Agenda\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/02-04_Special_Annotated_Agenda_pdf.aspx)

ATTACHMENTS

1. Officeholder Accounts Proposal As Forwarded to the City Council by the Agenda Committee on March 29, 2021
2. Proposed Ordinance Amending the Berkeley Election Reform Act and Lobbyist Registration Act to Regulate Officeholder Committees
3. Fair Campaign Practices Commission Proposal to Prohibit Officeholder Accounts,  
[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/03-29\\_Agenda\\_Committee\\_Agenda\\_Packet.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/03-29_Agenda_Committee_Agenda_Packet.aspx)

## Officeholder Accounts As Forwarded to the City Council by the Agenda Committee on March 29, 2021

This set of terms is presented as a basis to discuss a potential amendments to the Berkeley Election Reform Act (“BERA”) (BMC Ch. 2.12) to regulate the maintenance of officeholder accounts by elected officials in Berkeley. The proposal following elements are proposed for discussion by the Agenda Committee:

### General Requirements and Donation Limits

1. **Amend BERA to expressly permit the creation of officeholder accounts** by elected officials in Berkeley
2. Officeholder accounts would **be subject to the same donor requirements as campaign accounts under BERA:**
  - a. May only receive donations from natural persons.
  - b. Per-person donation limit set the same as the contribution limit under BERA (currently \$250; if BERA changes, so would these limits – idea is for them to always be parallel)
  - c. Etc. – All requirements and limitations on who can give, how much, and how donations can be made would be “by reference” to BERA and thus identical over time.
3. Officeholder accounts would be **subject to the same registration and reporting regime as campaign accounts under BERA**. State law currently requires Officeholder Accounts to report using the same forms as campaign accounts; this proposal would also incorporate the reporting requirements of BERA – for example lower thresholds for initial reporting, lower amounts reported, etc.
4. **Cumulative annual donations, not including an officeholder’s own donations to their officeholder account would be capped at fixed amounts**. Suggest the amount be set at the approximate cost of producing and mailing one newsletter to constituents, although use of funds would not be limited to that use (see below). Amount should be indexed.
5. As with campaign accounts, **an officeholder’s own donations to their officeholder account would not be subject to any limits** but would be reported. An officeholder would also still be allowed to spend their own money on officeholder expenses without using an officeholder account. This is a First Amendment issue that can’t be infringed upon.

### Complete Separation from Campaign Accounts and Expenditures

1. An officeholder would **not be allowed to simultaneously maintain an officeholder account and a campaign account of any kind:**
  - a. A winning candidate taking office would be required to close their campaign account before opening an officeholder account.

- b. An incumbent officeholder running for re-election or running for any other elected position – local, state, or federal – would be required to close their officeholder account before opening a campaign account.
- 2. An officeholder could not redesignate their officeholder account as a campaign account or use any officeholder funds to pay campaign expenses, ever.
- 3. Officeholder account funds could not be transferred to or from a candidate committee account for any elective office, local, state or federal.
- 4. “Extra” funds in an officeholder account could be used only for a legitimate officeholder expense, refunded to donors on a pro rata basis, or donated to the City’s General Fund.

### **Impermissible and Permissible Uses of Officeholder Funds**

- 5. **Officeholder accounts would not be used for the following** expenditures:
  - a. Expenditures in connection with an election for any city, county, regional, state, or federal elective office or ballot measure
  - b. Campaign consulting, research, polling, and similar expenditures related to any campaign
  - c. Membership in athletic, social, fraternal, veteran, or religious organizations
  - d. Supplemental compensation for employees for performance of their ordinary duties
  - e. Any expenditure that would violate BERA or state law
- 6. **Officeholder accounts would only be used for the following** expenditures (list likely needs to be honed/expanded – this list reflects narrowing and adaptation of the Oakland ordinance, which is overly broad):
  - f. Office equipment, furnishings, and office supplies
  - g. Officeholder communications not related to a campaign, including but not limited to:
    - i. Mailings, newsletters, and other communications, whether by electronic or traditional media
    - ii. Websites and communications by all media including email, publication, and social media
    - iii. Email and address management
    - iv. Professional/consulting services and/or staff time related to communications.
  - h. Registration, travel, lodging, meals, and related expenses for attending an activity which supports a legislative or governmental purpose, including activities which involve international travel, including but not limited to:
    - i. Conferences, meetings, receptions, sister-city visits, and other events
    - ii. Membership and participation in programs for civic, service, or professional organizations
    - iii. Educational, training, and professional development courses and events

when incurred by the officeholder, their staff, or a community representative of the officeholder (but not a family member or an individual whose organization or who themselves is subject to registration under the City's Lobbyist Ordinance)

- i. Fundraising for the officeholder account.
- j. Consulting, research, surveys, photographic or similar services not related to a campaign.
- k. Expressions of congratulations, appreciation or condolences to constituents or other persons the officeholder communicates/works with in their official capacity.
- l. Salaries or other compensation for consultants/staff working on officeholder activities, including for time spent by regular staff on officeholder activities separate/different from their ordinary duties.
- m. Tax liabilities and other official fees/costs incurred by the officeholder account.
- n. Accounting, legal, and other professional services provided to the officeholder account.
- o. Attorneys' fees and other costs related to administrative procedures, litigation, or other processes arising from the officeholder's activities, duties, or status as an elected officer.

### **Termination of Account on Leaving Office (+ Not running for any office)**

- 1. An officeholder would be **required to terminate their account within 90 days after leaving office.**
- 2. An officeholder **could not make expenditures after their last day in office** except to pay outstanding officeholder debts, repay donations on a pro rata basis, or donate remaining funds to the City's general fund.
- 3. Officeholders running for another office, local, state, or federal, would be required to close their officeholder account before opening a campaign account (see above).

### **Enforcement**

- 1. Violations of the officeholder account rules **would be subject to all enforcement provisions under BERA**, including enforcement by the Fair Campaign Practices Commission ("FCPC").

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT AND  
LOBBYIST REGISTRATION ACT TO REGULATE OFFICEHOLDER  
COMMITTEES

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

Section 1. That Berkeley Municipal Code section 2.09.220 is amended to read as follows:

**2.09.220 Restrictions on payments and expenses benefiting local public officials.**

A. No local government lobbyist or a registered client shall make any payment or incur any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds \$240 during any calendar year. This \$240 limit may be adjusted every four years by the OGC to account for inflation. The payments and expenses specified in subsections 2.09.220(A)-(D) include gifts, honoraria and any other form of compensation but do not include:

1. gifts of food or refreshment worth \$25 or less per occasion, if the local governmental lobbyist is a 501 (c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501 (c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event;
2. payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed;
3. gifts of food or beverage worth \$25 or less per occasion, if said gift is provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present;
4. a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
5. informational material;
6. campaign or officeholder contributions not to exceed the limits imposed by the Berkeley Election Reform Act or state law, as applicable; and
7. salaries, consulting fees or other payments for services rendered or bargained

for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section.

For purposes of the gift limits imposed by subsections (A)-(C), gifts shall be aggregated set forth in California Code of Regulations, Title 2, Section 18945.1, as it may hereafter be amended.

B. No lobbyist or a lobbyist's registered client shall make any payment to a third-party for the purpose of making any payment or incurring any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals.

C. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from any lobbyist for the individual's personal benefit or for the personal benefit of a member of the immediate family of one of these individuals.

D. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third-party if the officer knows or has reason to know that the third-party is providing the payment or expense on behalf of a lobbyist.

Section 2. That Berkeley Municipal Code section 2.12.100 is amended to read as follows:

**Section 2.12.100 Contribution.**

A. "Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or voter approval of one or more measures. The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; a candidate's own money or property used on behalf of his or her candidacy; the granting to a candidate or committee of discounts or rebates not available to the general public; and payments for the services of any person serving on behalf of a candidate or committee, when such payments are not made from contributions the candidate or committee must otherwise report under the terms of this chapter. The term "contribution" further includes any transfer, gift, loan, advance, deposit, forgiveness of indebtedness, payment of a debt by a third party, pledge, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, received directly or indirectly by a

committee from another committee. The term "contribution" shall not include a gift of service or labor, but shall include service or labor for which a payment is made, nor shall the term "contribution" include a gift of the use of personal or real property where the value of such use is not in excess of fifty dollars, nor shall it include food and beverages the value of which for any one event is no more than fifty dollars.

B. In the case of an officeholder committee, "contribution" means a monetary payment to an officeholder committee to be used for expenses associated with holding City office as provided in Article 9 of this Chapter.

Section 3. That Berkeley Municipal Code section 2.12.130 is amended to read as follows:

**Section 2.12.130 Expenditure.**

A. "Expenditure" means a payment, pledge or promise of payment of money or anything of value or other obligation, whether or not legally enforceable, for goods, materials, services or facilities in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or adoption of one or more measures. The term "expenditure" includes any transfer, payment, gift, loan, advance, deposit, pledge, contract, agreement or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly by one committee to another committee. "Expenditure" also includes the forgiving of a loan or the repayment of a loan by a third party.

B. In the case of an officeholder committee, "expenditure" means payment of money by an officeholder committee for expenses associated with holding elective office in the City of Berkeley as provided in Article 9 of this Chapter.

Section 4. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

**Section 2.12.157 Officeholder committee.**

"Officeholder committee" means a committee established by an Elective Officer of the City of Berkeley, as defined in Article V Section 8 of the Charter of the City of Berkeley, to receive contributions and make expenditures associated with holding elective office in the City of Berkeley as provided in Article 9 of this chapter.

Section 5. That Berkeley Municipal Code Section 2.12.545 is amended to read as follows:

**Section 2.12.545 Cost of living adjustments.**



The Commission shall adjust the dollar amounts specified in Sections 2.12.167, 2.12.500.A.3, 2.12.505.B and 2.12.530.B.3.b and 2.12.602 for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year following Council implementation. Such adjustments shall be rounded to the nearest ten dollars (\$10) with respect to Sections 2.12.167, 2.12.500.A.3 and 2.12.530.B.3.b and one thousand dollars (\$1,000) with respect to Sections 2.12.505.B and 2.12.602.

Section 6. That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as follows

### **Article 9. Officeholder Committees**

#### **Section. 2.12.600 Regulation of officeholder committees.**

- A. Elective Officers (the “officeholder” or “officeholders”) shall each be permitted to establish one officeholder committee, as defined in Section 2.12.157.
- B. Nothing in this section shall require an officeholder to open an officeholder committee or, if they have established an officeholder committee, to contribute to their officeholder committee to spend personal funds on their own officeholder expenses.
- C. Expenditures of an officeholder’s personal funds for their own officeholder expenses which are not contributed to an officeholder committee are not reportable under this chapter.

#### **Section 2.12.602 Cumulative contribution limits**

- A. For each Elected Officer representing a district within the City of Berkeley, total contributions to an officeholder committee from all contributors other than the officeholder shall not exceed five thousand dollars (\$5,000) in the aggregate per calendar year.
- B. For citywide Elected Officers, total contributions to an officeholder committee from all contributors other than the officeholder shall not exceed in the aggregate per calendar year an amount equal to four times the maximum allowed for elected officers representing districts, as provided in Section 2.12.602.A

#### **Section 2.12.604 Prohibited officeholder expenditures**

An officeholder committee shall not make expenditures for the following purposes:

- A. Expenditures in connection with an election for any city, county, regional, state or federal elective office or in connection with a ballot measure.
- B. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office.
- C. Membership in any athletic, social, fraternal, veterans or religious organization.
- D. Supplemental compensation for officeholder staff for performance of duties required or expected of the person in the regular course or hours of their employment as a City official or employee.
- E. Any expenditure that would violate any provision of the Berkeley Election Reform Act (BMC Chapter 2.12.) or the California Political Reform Act (Cal. Gov. Code § 81000 et seq.), including but not limited to the gift laws pertaining to travel payments, advancements and reimbursements under Government Code section 89506 and provisions related to permissible expenditures which serve legislative or governmental purposes under Government Code sections 89512 through 89519.

**Section 2.12.606 Permissible officeholder expenditures**

An officeholder committee may make expenditures only for the following purposes:

- A. Expenditures for fundraising for the officeholder committee.
- B. Expenditures for office equipment, furnishings and office supplies used for governmental or legislative purposes.
- C. Expenditures for compensation of staff, consultants, or other persons employed by the officeholder for time spent on officeholder activities, provided that such expenditures are not prohibited by Section 2.12.604.D.
- D. Expenditures for research, surveys, photographic, or similar services, provided such services are only for officeholder purposes.
- E. Expenditures for attendance, travel, lodging, meals and other related expenses which serve a legislative or governmental purpose by the officeholder and members of the officeholder's City staff or others employed by the officeholder to perform duties related to officeholder activities. Such permissible expenditures shall include but not be limited to:
  - 1. Expenditures for attendance at conferences, meetings, receptions, and other events occurring within or outside of the United States, including but not limited to registration or other attendance fees, travel, lodging, food, and

incidentals;

2. Expenditures for membership and participation in programs for civic, service, or professional organizations, if such membership bears a reasonable relationship to a governmental or legislative purpose; and
  3. Expenditures for educational courses or events reasonably related to a governmental or legislative purpose.
- F. Expenditures for constituent and community communications, including but not limited to:
1. Mailings, newsletters and other paper, electronic, or other communications which provide information related to community events, an officeholder's governmental duties, an officeholder's position on a particular matter, or any other matter of public concern or interest;
  2. An officeholder's website and social media;
  3. Email and address list management.
- G. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in their official capacity.
- H. Expenditures for payment of tax liabilities incurred as a result of permissible officeholder committee transactions.
- I. Expenditures for accounting, legal, professional, administrative, and similar services provided to the officeholder committee.
- J. Expenditures for attorneys' fees and other costs related to litigation, administrative procedures, or other processes arising directly from the officeholder committee's activities or the officeholder's activities, duties, or status as an elected officer.

### **Section 2.12.608 Prohibitions on transfer or reallocation of funds**

The following restrictions apply to the transfer or reallocation of officeholder funds:

- A. No funds may be contributed, redesignated, or transferred to an officeholder committee from any campaign committee for any city, county, regional, state, or federal elective office or ballot measure, or any other political committee.
- B. No funds may be contributed, redesignated, or transferred from an officeholder

committee to any candidate or campaign committee for any city, county, regional, state, or federal elective office or ballot measure, or any other political committee.

- C. No officeholder committee may be redesignated as a campaign committee for any city, county, regional, state, or federal elective office or ballot measure.
- D. No campaign committee for any city, county, regional, state, or federal elective office or ballot measure may be redesignated as an officeholder committee.

**Section 2.12.610 Prohibition on simultaneously maintaining officeholder and campaign committees**

- A. An officeholder may not simultaneously maintain an officeholder committee and a campaign committee for any city, county, regional, state or federal elective office.
- B. A candidate who is elected to any elective office in Berkeley must terminate their campaign committee before opening an officeholder committee.
- C. An officeholder must terminate any open officeholder committee prior to filing a Statement of Organization or equivalent initial filing for a campaign committee for any city, county, regional, state, or federal elective office.

For officeholders filing a Statement of Organization with the City Clerk to form a campaign committee for a City of Berkeley office, the Clerk shall provide notice of the need to close any open officeholder committee prior to accepting the campaign committee Statement of Organization.

**Section 2.12.612 Termination of officeholder committees upon leaving office**

- A. An officeholder who does not file a Statement of Organization or equivalent initial filing to seek a subsequent city, county, regional, state, or federal elective office shall terminate their officeholder committee within 90 days of leaving office.
- B. Following the date of leaving office, an officeholder shall not make any new expenditures from their officeholder committee except for the following purposes:
  - 1. Paying for legitimate, outstanding officeholder expenses accrued on or prior to the date of leaving office.
  - 2. Repaying contributions to contributors to the officeholder committee on a pro rata basis.
  - 3. Donating funds to the City's general fund.

**2.12.615 Limits and requirements for contributions and expenditures**

- A. The limit on cumulative contributions to an officeholder committee by a person other than the officeholder in a calendar year shall be the same as the limit on contributions to a candidate with respect to a single election under Section 2.12.415. Contributions to a candidate shall not be counted against the limit on contributions to an officeholder committee in the same calendar year.
- B. Officeholder committees shall be subject to the limits on contributions from organizations and entities to candidates and committees under Section 2.12.440.
- C. Nothing in this Article shall limit the amount an officeholder may contribute to their own officeholder committee or spend on officeholder expenses either through or not through an officeholder committee.
- D. All requirements and prohibitions for campaign contributions and expenditures under Sections 2.12.300, 2.12.305, 2.12.310, 2.12.315, and 2.12.320 shall apply to officeholder committees.

**2.12.645 Officeholder Committee Treasurer**

Each officeholder committee shall appoint a committee treasurer and shall comply with all requirements for campaign committee treasurers under section 2.12.245.

**2.12.650 Officeholder expenditure and contribution account – Establishment required – Procedure for use**

An officeholder committee treasurer shall establish and manage a checking account. All provisions of Section 2.12.250 regarding the establishment and use of campaign accounts shall also apply to the establishment and use of officeholder committee checking accounts, unless otherwise provided in this Article.

**2.12.655 Statement of organization – Committee required to file.**

- A. Every officeholder committee shall file with the City Clerk a statement of organization before accepting contributions.
- B. The date on which an officeholder committee is formed by filing a statement of organization shall determine the officeholder committee's obligation to file statements and reports required by this chapter.

**2.12.660 Statement of organization – information required**

The statement of organization required by Section 2.12.655 shall include:

- A. The name, street address and telephone number of the officeholder committee;
- B. The name of the officeholder;
- C. The full name, street address and telephone number of the treasurer and other principal officers;
- D. The elected office held by the officeholder;
- E. The account number and name of the bank at which the checking account, required by Section 2.12.650, is maintained; if the information required by this section is unavailable at the time of filing the statement of organization, the filer shall promptly submit an amended statement after such information becomes available;
- F. The cash on hand at the time of filing the statement of organization;
- G. Such other information as shall be required by the rules or regulations of the commission consistent with the purposes and provisions of this chapter.

**Section 2.12.665 Statement of organization--Change of information--Amendment required.**

Whenever there is a change in any of the information contained in the statement of organization, an amendment shall be filed within ten days to reflect the change.

**Section 2.12.670 Officeholder statements – filing requirements**

- A. Each officeholder committee statement shall be filed in accordance with the filing dates prescribed by state law for campaign committee statements. If state law does not establish the filing dates for campaign statements, the commission shall set the necessary filing dates.

**Section 2.12.675 Officeholder statements - Verification**

- A. Reports and statements required by this Article shall be subject to the filing requirement of Sections 2.12.025, 2.12.030, 2.12.032, 2.12.033, 2.12.035, 2.12.040, 2.12.045 and 2.12.050.
- B. An officeholder shall verify his or her officeholder statement. The verification shall be in accordance with the provisions of Section 2.12.025 except that it shall state that they have made reasonable inquiry into the truthfulness and completeness of such officeholder statement and that to the best of their knowledge, the treasurer of the officeholder committee used all reasonable diligence in the preparation of the committee's statement. This section does not relieve the treasurer of any officeholder committee from the obligation to verify each officeholder statement filed pursuant to Section 2.12.025.

**Section 2.12.680 Officeholder Statement – Information required**

Officeholder committee statements required by this article shall include all applicable information required for campaign committee statements by Section 2.12.280.

**Section 2.12.685 Enforcement**

Violations of this article involving the unlawful use of officeholder committees are subject to the enforcement procedures and penalties in Article 7 of this chapter.

## MEMORANDUM

DATE: March 29, 2021

TO: Mayor Jesse Arreguin and Councilmembers Sophie Hahn and Susan Weingraf, Members of the Council Agenda and Rules Committee

FROM: Brad Smith, Patrick O'Donnell and Jedidiah Tsang, Delegation from the Fair Campaign Practices and Open Government Commissions

SUBJECT: Officeholder Accounts

Two main approaches have been considered regarding local Officeholder Accounts in California. The first, adopted by the City of San Jose, would prohibit these accounts. The second, adopted by the city of Oakland, would permit these accounts but regulate them.

For the reasons discussed below, the FCPC previously recommended that Officeholder Accounts be prohibited (Exhibit 3). However, the Council decided in February 2020 not to approve the FCPC's recommendation and referred the issue of Officeholder Accounts, along with concomitant issues related to D-13 accounts, to the Council's Agenda and Rules Committee.

The Fair Campaign Practices and Open Government Commissions have been studying Officeholder and D-13 Accounts since 2019. At its regular meeting on November 21, 2019, the FCPC voted without opposition to recommend amendments to the Berkeley Election Reform Act (BERA) that would prohibit Officeholder Accounts. The FCPC's recommendation was presented to the City Council at a February 4, 2020 special meeting. (A copy of the Report to Council is attached as Exhibit 3.)

Although the Council did not approve the FCPC's recommendations at that time and is considering alternatives that would allow for regulated Officeholder Accounts, a discussion in which the FCPC is glad to participate, the FCPC continues to believe that the prohibition of such accounts may ultimately be the preferable solution.

Briefly, our reasons for recommending prohibiting Officeholder Accounts are as follows:

1. Donations to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.
2. The City of San Jose has prohibited Officeholder Accounts (Section 12.06.810) since January 2008, providing as a rationale "to prevent the perception by the public that such contributions may give rise to undue or improper influence over elected officials" (Section 12.06.1100).



3. There are a number of permissible expenditures that could be made from Officeholder Accounts, now made from the Councilmember's discretionary council office budget (D-13 account), that put the elected official in a favorable light. Such expenditures include contributions to nonprofit organizations and newsletters mailed to constituents related to events, information or an officeholder's position on matters before the Council. We are not arguing these expenditures should be prohibited, only not paid for by funds collected in Officeholder Accounts.

4. As evidenced by contributions to nonprofit organizations from the Councilmember's D-13 accounts, which in total increased from \$50,938 in FY 2017 to \$113,526 in FY2018, enough funds are now available to Councilmembers to cover office expenses. It stretches the imagination to see donations to nonprofit organizations as an "office expense." If not enough funds are available for office expenses, the allocation to the D-13 accounts should be increased by the Council rather than relying on funds solicited from donors for an Officeholder Account.

5. Members of the FCPC are concerned about the amount of staff time required to track paperwork required for the administration of Officeholder Accounts and to assist in the enforcement process.

6. Members of the FCPC have discussed concerns that Councilmembers from wealthier areas of the City will have an easier time of raising funds for Officeholder Accounts.

7. Finally, we note the Officeholder Account has been rarely used in Berkeley, only once in the last several years that we are aware of.

While we look forward to a good, frank discussions and careful consideration of the alternative of permitting and regulating Officeholder Accounts, we respectfully request that Council members continue to consider that a prohibition of these accounts may, in the end, be the preferable approach.

Exhibit 1. Although the FCPC continues to support prohibition, it has prepared a draft version of an ordinance that would allow for regulated Officeholder Accounts. This draft identifies the issues that a regulated approach, if pursued, would need to address.

Exhibit 2. RESOLUTION NO. 67,992-N.S. (City Council Expenditures and Reimbursement Policies), referred to in the proposed language for changes to BERA to regulate Officeholder Accounts.

Exhibit 3. Language for amending the Berkeley Election Reform Act to prohibit Officeholder Accounts included in the FCPC submission to the City Council of February 4, 2020.

[DRAFT]

[Annotations are in RED. These include ISSUES for discussion and RECOMMENDATIONS of the three FCPC members participating in the joint meetings.]

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT TO REGULATE OFFICEHOLDER ACCOUNTS

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

Section 1. That the Berkeley Municipal Code section 2.12.157 is added to read as follows:

**Section 2.12.157 Officeholder Account.**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as follows

Article 9. Officeholder Accounts

**Section. 2.12.600 Regulation of Officeholder Accounts.**

A. The Mayor and Council members (the “officeholder” or “office holders”) shall each be permitted to establish one Officeholder Account, as defined in section 2.12.157.

ISSUE: What limitations should be placed on which public officials may be authorized to open Officeholder Accounts? Currently, Berkeley law is silent on this issue, as it is generally with respect to matters relating to Officeholder Accounts. Should the authorization to have Officeholder Accounts be limited to the Mayor and Council members?

State law applies to “elected state officeholder[s],” which includes the Governor, members of the state senate and assembly, and “other statewide elected official[s] other than the Governor.” (Gov. Code sec.85316(b)(1).)

RECOMMENDATION: Amendments to BERA authorizing Officeholder Accounts should be limited to the offices of Mayor and members of the City Council. Extending the authorization more broadly appears to other city officeholders at this time appears to be fiscally unnecessary and would impose significant burdens on the clerk’s office and the FCPC, which would be responsible for compliance with reporting requirements and the enforcement of the laws relating to Officeholder Accounts. If Berkeley’s experience with Officeholder Accounts proves to be positive, BERA could be amended in the future to expand the categories of elected officials authorized to establish Officeholder Accounts.

B. All donations deposited into an Officeholder Account shall be deemed to be held in trust solely for expenses associated with holding the office currently held by the elected city

officer. For the purpose of this section, “donation” means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, in support of the office currently held by an elected official.

ISSUE: This draft uses the term “donation” throughout new section 2.12.600 instead of “contribution.” The use of the term “donation” in the proposed new section of the BERA reflects that funds made for Officeholder Accounts are different from campaign contributions; prevents making all the legal provisions applicable to campaign fund arguably applicable to officeholder donations; and avoids confusion in how the funds for this specific purpose are treated.

RECOMMENDATION: Include the new definition of “donation” in this section and use it – and related terms such as “donor” – consistently throughout, instead of using the term “contribution” in the new section on Officeholder Accounts.

C. Only a natural person who is a resident of the City may make a donation to an Officeholder Account.

ISSUE: To prevent undue influence in election campaigns, BERA currently contains limitations on who may make contributions to such campaigns. Proposed new paragraph C. would provide a similar limitation for donations to Officeholder Accounts. Specifically, like the limitation similar in the Berkeley Elections Reform Act (BERA sec. 2.12.167.), it would limit donations to Officeholder Accounts to natural persons residing in Berkeley.

There is a need for an express provision on this subject to be included in the proposed amendments. As currently written, neither of the BERA limitations relating to campaign contributions would apply by their own terms to donations to Officeholder Accounts nor would a cross-reference work.

The limitation in the Berkeley Election Reform Act to natural person residing in Berkeley is part of the definition of “qualifying contribution” to be eligible for public financing (BERA sec. 2.12.167); and so would not apply to Officeholder Accounts. The limitation in BERA section 2.12.440 prohibits “contributions” by any “proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, including non-profit corporations, or labor union”; but such contributions are prohibited only to “any candidate or committee (supporting or opposing any candidate)” and so would not apply to Officeholder Accounts. Cross-references to these sections would be confusing since by their own terms the referenced sections apply only to campaign contributions, and not to donations to Officeholder Accounts.

RECOMMENDATION: The proposed language that would expressly limit the persons eligible to make donations to “natural persons who are residents of the City of Berkeley” should be adopted. This will avoid undue influence by entities and persons outside Berkeley whose donations might improperly influence officeholders.

D. Donations to an Officeholder Account must be made by a separate check or other separate written instrument. Single donations may not be divided between the Officeholder Account and any candidate committee or other entity.

E. No donor shall make, and no elected officer shall receive from a donor, a donation or donations under this section totaling more than fifty [or two-hundred and fifty] dollars (\$50.00 [or \$250.00]) per person for the calendar year. "Donor" means a natural person who is a resident of the City who makes a donation as defined in paragraph B.

ISSUE: Any regulated scheme for Officeholder Accounts should include a limit on the amount of that each individual is permitted to donate each year. The amount of the individual donations permitted each year is an issue that the Council and the FCPC need to decide, as well as the manner in which this limit is prescribed.

The California state statute on Officeholder Accounts provides explicit limits on the amount that a person is permitted to make for each officeholder per calendar year (e.g., \$3,000 for Senate and Assembly members and \$20,000 for Governor). (Gov. Code sec. 85316(b)(1)(A)-(B).)

The proposed draft amendments to the BERA, above, currently provide for a limit on donations in the range of \$50-\$250; the exact amount is an issue to be determined. Assuming the amount chosen is \$250, this amount could be explicitly placed in the ordinance, as the draft does. Alternatively, the amount might be specified by cross-reference to the maximum campaign amount permitted under BERA (e.g., by a cross-reference stating the amounts of any individual annual donation shall not exceed the amount of a campaign contribution permitted for a single election under BERA section 2.12.415).]

RECOMMENDATION: An explicit amount should be included in the new section of BERA on Officeholder Accounts. This will make the officeholder section—including the exact amount of the donation limit—clear and easy to understand. If in the future the campaign limits under BERA are increased and it makes sense also to increase the amount of the permitted annual individual donations to Officeholder Accounts to a similar (or other) amount, the permissible amount of the donations can be revised at that time.

F. For the office of Mayor, total donations to an Officeholder Account from all donors shall not exceed ten thousand dollars (\$10,000.00) in the aggregate per calendar year. For each member of the City Council, total donations to an Officeholder Account from all donors shall not exceed five thousand dollars (\$5,000.00) in the aggregate per calendar year.

ISSUE: Any regulated scheme for Officeholder Accounts should also include a limit on the total amount of donations from all donors that can be contributed to an officeholder each year. The amount of the total "cap" is an issue that the Council and the FCPC need to decide.

RECOMMENDATION: The total aggregate donations permitted to be made to specific officeholders in Berkeley should be proportional to their offices' size, scope, and needs.

G. All donations received for, and expenditures made from, an Officeholder Account during a calendar year shall be reported at least annually on the date or dates prescribed by the FCPC and the report shall be made available to the public promptly thereafter. The FCPC shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's Officeholder Account. The forms shall be filed electronically. The information on the form or forms shall be verified by the officeholder. The information that shall be included in the Officeholder Account report shall include the following:

1. The name of the officeholder and the office held;
2. The reporting period covered by the report;
3. A description of all receipts and expenditures.
4. The full name of each donor from whom a donation or donations has been received together with their street address, occupation, and the name of their employer, if any, or the principal place of business if they are self-employed; the amount which they donated; the date on which the each donation was received during the period covered by the report; and the cumulative amount that the donor donated. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated with regard to each lender, together with the date and amount of the loan, and if the loan has been repaid, the date of the payment and by whom paid;
5. The full name and street address of each person to whom an expenditure or expenditures have been made, together with the amount of each separate expenditure to each person during the period covered by the report; a description of the purpose for which the expenditure was made; and the full name and street address of the person receiving the expenditure.
6. Under the heading "receipts," the total amount of donations received, and under the heading "expenditures," the total amount of expenditures made during the reporting period and cumulative amount of such totals;
7. The balance of cash and cash equivalents, including the amounts in the officeholder bank account, at the beginning and end of each period covered by the report.

ISSUE: The amended BERA provisions on Officeholder Accounts (Section 2.12.600.G.1-7, above), like those for campaign statements (see BERA sec. 2.12.200 A.-K.), would specify the information that must be disclosed. In new section 2.12.600, the provisions have been tailored to address donations, donors, donors' names and addresses, and so forth. Having these requirements specified in the ordinance will provide the legal foundation for the information requested about Officeholder Accounts on statements or forms. Also, having these requirements in the ordinance will make it possible for the City more easily to add or modify the information required on statements.

Subsection G. also provides that the FCPC shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's Officeholder Account. This would permit, but not require, the City to require officeholders to use California Form 460 or 470 to comply with the reporting requirements. This flexibility is important so that the City will be able to exercise its discretion as to what information needs to be reported about donations to, and expenditures from, Officeholder Accounts.

Finally, this section provides that the commission shall prescribe the time for filing the forms and that the forms shall be verified and filed electronically. These provisions will improve the effectiveness of the reporting on Officeholder Accounts.

RECOMMENDATION: Section G. should be adopted as proposed for the reasons stated above.

purposes, and may not be used for any of the purposes prohibited in subsections J. and K. of this section.

ISSUE: This provision clarifies the intent of these amendments—that they authorize “true” Officeholder Accounts whose purpose is strictly limited to lawful officeholder purposes—and are not intended for any other broader purposes. This approach should help officeholders avoid the pitfalls of running afoul of campaign finance laws (as warned against in past opinions by the Berkeley City Attorney).

RECOMMENDATION: Section H. should be adopted as proposed for the reasons stated above.

I. Allowable expenses from an Officeholder Account are limited to expenses for travel, meals, and lodging incurred in connection with the following types of activities:

1. Communicating with representatives of local, regional, state and national governments on City policy positions;
2. Attending educational seminars designed to improve officials’ skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City’s interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of normal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City’s interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies; and
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum set forth in city, state, and federal standards for when meal reimbursement may be allowed.

J. Expenditures from an Officeholder Account shall not be used for any of the following types of activities:

- 1 The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner’s expenses when accompanying the official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage, and or golf related expenses); or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic, citations, insurance or gasoline; and
7. Personal losses incurred while on City Business.

RECOMMENDATION: Sections I. and J. should be based on the list of Authorized Activities and Unauthorized Expenses in Sections IIA. and B. of the City Council Expenditure and Reimbursement Policies, Resolution No. 67,992—N.S. (“Policies”). The lists identified in the Policies are thoughtful, carefully prepared lists of which expenses are permissible or impermissible for officeholders under current law. The policies were unanimously adopted 1072



by the Berkeley City Council on May 30, 2017. For the purposes of the proposed ordinance on Officeholder Accounts, the lists in the Policies are more appropriate for adoption than the lists developed by the Oakland City Council that appear to be based largely on state laws relating to on campaign expenditures.

I. Prohibitions:

1. No funds may be contributed or transferred from an Officeholder Account to any candidate or committee, as defined in sections 2.12.085 and 2.12.095 of this chapter, including to any committee in which the officeholder is a candidate. An officeholder may not redesignate his or her Officeholder Account as a committee for a future term of the same office or redesignate his or her Officeholder Account funds to be used as campaign funds by his or her committee for a future term of the same office.
2. No funds may be used from an Officeholder Account to pay any campaign expenses.
3. An officeholder may not transfer or contribute funds from any other committee he or she controls to the Officeholder Account.

ISSUE: These prohibitions make it clear that funds from an Officeholder Account may never be used for any type of campaign purposes. This is consistent with the ordinance's intent that Officeholder Accounts be strictly limited to officeholder purposes. The provision also makes it explicit that these strictly officeholder funds cannot be redesignated as funds for a future campaign.

L. Once an officeholder's term of office ends or she or he leaves that office, whichever is earlier, the former officeholder may use his or her Officeholder Account funds only for the following purposes:

1. Paying for legitimate, outstanding officeholder expenses.
2. Repaying contributions to donors to the Officeholder Accounts.
3. Making a donation to a bona fide charitable, educational, civic, religious or similar tax-exempt, non-profit organization if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

M. The officeholder shall terminate the Officeholder Account within 90 days of the date that the officeholder's term of office ends or he or she leaves that office, whichever is earlier. The FCPC may for good cause extend the termination date. The disposition of all funds from the closed Officeholder Account, including the identification of all persons and entities that have received funds from the account and the amounts distributed, shall be described on a form prescribed by the FCPC. The officeholder must verify and file the form electronically no later the date prescribed for the termination of the Officeholder Account or an approved extension thereof.

N. All funds from a closed Officeholder Account not properly disposed of within the 90 day period prescribed above, or an approved extension thereof, shall be deposited in the City's General Fund.

ISSUES: Several issues exist with respect to the termination of Officeholder Accounts.

Draft sections 2.12.600 L.-N., above, propose procedures for terminating Officeholder Accounts in Berkeley based, in large part, on the state regulations on terminating Officeholder Accounts and committees (see Regulations of the Fair Political Practices Commission, Cal. Code of Reg., sec. 18531.63(g)).

The proposed provisions include the main options for disposing of Officeholder Account funds listed in the regulations (i.e., paying legitimate expenses, returning funds to donors, and making donations to bona fide organizations). However, the provision in the state regulations (sec. 18531.63(g)(2)) allowing for redesignation of Officeholder Accounts as accounts for a future campaign has been omitted because the Berkeley ordinance would authorize only strict Officeholder Accounts, prohibit the use of those accounts for any campaign purposes, and prohibit the redesignation of those accounts for use by campaign committees.

The proposed provisions, though, are incomplete: they do not address what should happen to an Officeholder Account if an incumbent wins re-election? Maybe it would be appropriate, under certain circumstances, for an incumbent who is elected to a new term of office, to redesignate a previous Officeholder Account for use in the officeholder's new term of office (as envisaged in the state regulations (see sec. 18531.63(g)(3)). Alternatively, as suggested at a previous joint meeting, perhaps it might be better for incumbents to terminate their Officeholder Accounts completely by a certain time before an election; and, if successful, they could open up a new Officeholder Account after their re-election.

The issues around the termination of Officeholder Accounts should be discussed by the joint committee and decisions made about what additions or modifications to the proposed ordinance are warranted.

**M. Violations of this article involving the unlawful use of Officeholder Accounts are subject to the procedures of, and the penalties in, Article 7 of this chapter.**

ISSUE: Are there any other issues on enforcement besides this general provision that need to be addressed?

\* \* \*

**OTHER ISSUES TO BE CONSIDERED:**

Some of the other issues not yet incorporated into the draft, but which merit consideration, include:

**1. Establishment of an Officeholder Committee.** State law requires an officeholder to create an Officeholder Controlled Committee if the officeholder receives more than \$2,000; and it provides guidance on the procedures for establishing such a committee, the committee's name, and other requirements. (Cal. Code of Reg., sec. 18531.63(c).) The Berkeley ordinance should probably include similar provisions.

**2. Return of Excess Contributions/Donations.** State law requires that an excess contribution to an officeholder be returned. (Gov. Code sec.85316(b)(3).) The regulations prescribe that the officeholder return the contribution within 14 days. (Cal. Code of Reg., sec. 18531.63(f).) The Berkeley ordinance should probably include similar provisions.

**3. Conforming Amendments to BERA.** A BERA section on the disposition of excess



campaign funds will probably need to be amended to be consistent with the new section 2.12.600 on Officeholder Accounts (see BERA sec. 2.12.245.C.). There may be other sections to BERA that require similar conforming changes.

## RESOLUTION NO. 67,992-N.S.

## CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

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

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, adopted in 2005 and codified as Government Code Sections 53232, et. seq., requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses; and

WHEREAS, on July 25, 2006, the City Council adopted Resolution No. 63,412-N.S. to establish the expenditure and reimbursement policy required by state law; and

WHEREAS, on September 10, 2103, the City Council rescinded Resolution No. 63,412-N.S. and replaced it with Resolution No. 66,295-N.S., which revised the expenditure and reimbursement policy required by state law.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A is incorporated by reference into the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

BE IT FURTHER RESOLVED that Resolution No. 66,295-N.S. and any amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that the policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

**CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND  
COUNCIL DEPARTMENTS**

**I. City Expenditures for Mayor and Council**

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product, good, or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.



**II. Reimbursement of Actual and Necessary Expense of Office**

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under "Authorized Activities."

**A. Authorized Activities.**

Travel, meals and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulated municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure. Most frequently, prior approval by the City Council is given in items to authorize relinquishment of Council office budget fund to general fund and grant of such funds for charitable events, which would be unauthorized expenses if not pre-approved by Council. The policy for relinquishments and grants from Councilmember office budgets is enumerated in Exhibit A.

**B. Unauthorized Expenses**

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;



4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

**C. Particular Types of Authorized Expenditures Defined**

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the California Department of General Services (DGS) Statewide Travel Program offered through the League of California Cities, [www.dgs.ca.gov/travel](http://www.dgs.ca.gov/travel)<sup>1</sup>, are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. If DGS rates are not available, reimbursement for airfare must not exceed 110% of either the state DGS rates or the Federal rates published by the U.S. General Services Administration (GSA) rates, [www.gsa.gov](http://www.gsa.gov)<sup>2</sup>, whichever is greater. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred.

<sup>1</sup> California Department of General Services Statewide Travel Program (DGS): [www.dgs.ca.gov/travel](http://www.dgs.ca.gov/travel)

<sup>2</sup> U.S. General Services Administration (GSA): [www.gsa.gov](http://www.gsa.gov)



ITEM 14  
ATTACHMENT 2

4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services (DGS) Statewide Travel Program available through the League of California Cities shall be considered the most economical and reasonable for purposes of reimbursement under this policy. If DGS rates are not available, reimbursement for car rental must not exceed 110% of either the state DGS rates or the Federal GSA rates, whichever is greater. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred.
6. **Taxis/Ride Shares/Shuttles.** Taxis, ride shares, or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.
7. ~~7.~~ **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference or activity sponsor, provided that lodging at the group rate is available to the Council member at the time of booking. If lodging at the group rate is not available, or if travel is not in connection with a conference, rates that are equal to or less than those available through the California Department of General Services (DGS) Statewide Travel Program offered through the League of California Cities, are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. If DGS rates are not available, reimbursement for lodging must not exceed 120% of the state DGS rates or 100% of the Federal rates published by the GSA, whichever is greater. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred. **Meals.** Meal expenses and associated gratuities will be reimbursed at the rate set forth in Administrative Regulation 3.9. "Meals which are served at regular meetings of associations to which the city belongs (i.e. Alameda County Mayors' Conference, league of California Cities, or ABAG) shall be exempt from this policy.
8. **Telephone/Fax/Cellular.** Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus



- long-distances charges for those calls.
9. **Airport Parking.** Short-term airport parking may not be used for travel exceeding 24-hours.
  10. **Other Travel Related Expenses.** Reasonable baggage fees given the duration of the travel will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.
  11. **Miscellaneous Office Products.** Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. In accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds, the City may reimburse such purchases.

**D. Cash Advance Policy for Airfare and Hotel Only (per A.R. 3.9)**

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity;
3. The benefit to the residents of the City;
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).

Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

**E. Expense Report Content and Submission Deadline**

1. A statement of expense must be completed, signed and submitted to the City Auditor for review and forwarded to the Finance Department for payment. The statement of expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.
2. Officials must submit their statement of expense reports to the Auditor's Office within 60 days of an expense being incurred, accompanied by receipts documenting each expense. Itemized restaurant receipts, including number of individuals served, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under \$5 are not required.
3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

**F. Audits of Expense Reports**

All expenses are subject to verification by the City Auditor of compliance with this policy.

**G. Reports**

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

**H. Compliance with Laws**

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

**I. Violation of This Policy**

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

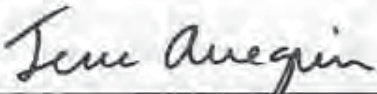
1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for misuse of public resources.

The foregoing Resolution was adopted by the Berkeley City Council on May 30, 2017 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.

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

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



Exhibit A

**Councilmember Office Budget Relinquishment and Grant Policy**Introduction – Limitations on the Expenditure of Public Funds

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

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

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

(*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

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

The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.

(*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

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

Criteria for Grants of City Funds from Councilmember Office Budgets

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



Table 1.

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

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



Fair Campaign Practices Commission

PUBLIC HEARING

February 4, 2020

To: Honorable Mayor and Members of the City Council  
 From: Fair Campaign Practices Commission  
 Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission  
 Subject: Amendments to the Berkeley Election Reform Act to prohibit  
 Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

**Action:** M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

**Vote:** Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

## BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

## **Definition of an Officeholder Account**

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's Public Access Portal.) If, however, a complaint is filed that an Officeholder Account is used for

campaign contributions or to pay “campaign expenses,” BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda’s conclusions remain valid and are still controlling guidance.

### **Contributions to Officeholder Accounts**

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official’s Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

### **Expenditures from Officeholder Accounts**

Except for the restriction that Officeholder Account funds cannot be used for “campaign expenses,” BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a “campaign expense,” would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder’s position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent’s name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not “campaign expenses,” also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.<sup>1</sup> Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

### **Recommendation**

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

#### **Part 8 - OFFICEHOLDER ACCOUNTS**

##### **12.06.810 - Officeholder account prohibited.**

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

#### **2.12.157 Officeholder Account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

#### **2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

---

<sup>1</sup> Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)



- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

#### RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

#### ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

#### CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

#### CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

#### Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

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

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE  
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

**BMC 2.12.157 Officeholder account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

**BMC 2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

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


[Home](#)
[Bill Information](#)
[California Law](#)
[Publications](#)
[Other Resources](#)
[My Subscriptions](#)
[My Favorites](#)

 Code: 

 Section: 


[Up^](#)
[<< Previous](#)
[Next >>](#)
[cross-reference chaptered bills](#)
[PDF](#)
[Add To My Favorites](#)

 Search Phrase: 


## GOVERNMENT CODE - GOV

**TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )

**CHAPTER 5. Limitations on Contributions [85100 - 85802]** ( Chapter 5 added June 7, 1988, by initiative Proposition 73. )

### ARTICLE 3. Contribution Limitations [85300 - 85321]

( Article 3 added June 7, 1988, by initiative Proposition 73. )

**85316.** (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)



(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18531.62. Elected State Officeholder Bank Accounts.**

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits: The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder



account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office.”

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:



(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees.

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of



organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision (e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

**HISTORY**

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.

2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).





Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

**FROM:** MANUELA ALBUQUERQUE, City Attorney *MA*  
By: CAMILLE COUREY, Deputy City Attorney

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO  
OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts *per se*. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

#### Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinion Index: BE 1 and HLG

CCM

F:\USERS\BGL\office\lita\mem.doc

---

<sup>2</sup> Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)



**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

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

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

**Published:** January 24, 2020 – The Berkeley Voice  
Pursuant to Berkeley Municipal Code Section 2.12.051

~~~~~  
I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on January 30, 2020.

Mark Numainville, City Clerk



Fair Campaign Practices Commission

Date: September 17, 2020

To: Fair Campaign Practices Commission and Open Government Commission

From: Commissioner Patrick O'Donnell

Subject: Amendments to the Berkeley Election Reform Act (BERA) to Regulate Officeholder Accounts and Proposed Changes to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

This memorandum to the Fair Campaign Practices Commission (FCPC) and the Open Government Commission (OGC) substitutes for the one previously posted, mailed to members of the FCPC, and appearing as Item 7 on the agenda of the FCPC. The key difference is that this memorandum addresses not only officeholder accounts, but also proposed changes to City Council Expenditure and Reimbursement Policies (so-called D-13 Accounts). These two proposals are closely linked and should be considered together. Because the proposal relating to officeholder accounts falls under the jurisdiction of the FCPC and that relating to D-13 accounts falls under the jurisdiction of the OGC, the FCPC and OGC should act jointly in considering the proposed changes to BERA and the Reimbursement Policies.

The memorandum also makes the following recommendation:

Form a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

The preceding recommendations are consistent with previous discussions and the annual workplans of the FCPC and the OGC.

To implement the recommendations in this memorandum, a revised report to the Council is attached.

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. It agreed that the Council Committee would work collaboratively with the FCPC and OGC on matters relating to officeholder accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, I propose that the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

PUBLIC HEARING
XXXXX XX, XXXX

To: Honorable Mayor and Members of the City Council

From: Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions

Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices and Open Government Commissions

Subject: Amendments to the Berkeley Election Reform Act (BERA) and Change to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

RECOMMENDATION

Form a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Officeholder accounts are not expressly regulated by BERA. However, under existing law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements.

Donations to nonprofit organizations from Councilmember’s discretionary council budgets (D-13 accounts) are allowed by the authority of City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.).

Action:

Vote:

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the “double green light” process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Changes to the City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) can be made by a majority vote of the Council.

BACKGROUND

Officeholder Accounts

During 2019, the Fair Campaign Practices Commission (FCPC) discussed whether there is a need to amend the law relating to these accounts. These accounts are not expressly regulated by BERA, but under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.”

In the course of its review of the issue of officeholder accounts, the FPPC considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met several times in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission’s proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: “Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016.” (Report, page 1.)

At the February 4, 2020 meeting, the Council had a lengthy discussion about their D-13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder accounts. The City Council referred the issues relating to officeholder and D-13 accounts to its Agenda and Rules Committee for further consideration.

Proposed Changes to City Council Expenditure and Reimbursement Policies

At the April 23, 2020 meeting of the Open Government Committee (OGC), a motion to direct staff to develop a proposal recommending Council change City policy to remove councilmember names from donations to nonprofit organizations from D-13 accounts was approved unanimously.

Donations to nonprofit organizations from the Councilmember's discretionary council budget (D-13 accounts) puts that elected official in a favorable light with Berkeley citizens at no cost to the Councilmember, an option not available to a challenger for that office. A look at the Consent Calendar of City Council Meeting Agendas will often contain one or more items from one or more Councilmembers making a donation to a nonprofit organization "from the discretionary council budget" of the Councilmember. This line item ("Services and Materials") from the General Fund was increased from \$50,938 in FY 2017 to \$113,526 in FY 2018 (approximately \$40,000 for the Mayor, the balance evenly divided among the Councilmembers; see Attachment 1 – Council Office Budget Summaries). While not technically a "campaign contribution," those individuals in the organization as well as individuals favorably disposed to the nonprofit organization receiving the funds would certainly see it favorably. A person running against this incumbent would have to draw on their own resources to match a Councilmember's contribution from public funds and without the public notice of the contribution the Councilmember receives.

In addition to favoring incumbents, the use of public moneys for contributions to nonprofit organizations from the discretionary council budgets of individual Council members is arguably improper and certainly bad optics. The commissioners of the OGC have no argument with contributions being made to nonprofit organizations from the City of Berkeley, but believe they should be made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley, not from individual Council members. Perhaps a nonprofit fund could be set up from which the donations could be made from recommendations made to one of the Council's Policy Commissions. This would free funds for other purposes now being directed to nonprofit organizations from individual Councilmember's D-13 accounts.

Proposed Action:

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee agreed to work collaboratively with the FCPC and OGC on matters relating to officeholder

accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to:

(1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and

(2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

The “double green light” process requires that the FCPC adopt an amendment by a two-thirds vote, and that the City Council hold a public hearing and also adopt an amendment by a two-thirds vote. Evidence to date suggests there are differences of perspective regarding this matter between the City Council and the FCPC regarding the D-13 accounts. It would seem to be a rational step to discuss and come to agreement and possibly compromise prior to the “double green light” process.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

CONTACT PERSON

Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions,
(510) 981-6998

Samuel Harvey, Commission Secretary, Fair Campaign Practices and Open
Government Commissions, (510) 981-6998



Fair Campaign Practices Commission

Date: September 17, 2020

To: Fair Campaign Practices Commission

From: Commissioner Patrick O'Donnell

Subject: Amendments to the Berkeley Election Reform Act to regulate officeholder accounts

In 2019, the FCPC approved an amendment to the Berkeley Election Reform Act (“BERA”) prohibiting officeholder accounts. That proposal was submitted to Council. However, some councilmembers have expressed opposition to an outright ban on officeholder accounts and a preference for developing regulations for those accounts. This report contains a new alternative proposal to regulate – rather than prohibit – officeholder accounts. At its July 16, 2020 meeting, the Commission voted to direct Commissioner O’Donnell to return at the Commission’s September 17, 2020 meeting with a version of the proposal drafted as an amendment to BERA that can be voted on and presented to Council.

Background

During 2019, the Commission discussed whether there is a need to amend the law relating to the use of officeholder accounts. These accounts are not expressly regulated by BERA. But under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.” (Report, page 14.)

In the course of its review of the issue of officeholder accounts, the Commission considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or

(3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission's proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: "Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016." (Report, page 1.) At the February 4 meeting, the Council had a lengthy discussion about their D13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder Accounts. (See Memorandum to FCPC dated February 12, 2020, a copy of which is attached.)

The City Council, however, referred both the issues relating to D13 accounts and those relating to officeholder accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. At that meeting, it was agreed that the Council Committee would work collaboratively with the FCPC on matters relating to D13 accounts and officeholder accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Alternative Proposal for Legislation on Officeholder Accounts

Given the Council's opposition to accepting an outright prohibition of officeholder accounts, the FCPC should at least explore some alternatives, including the option of amending the BERA to allow for officeholder accounts that would be subject to limitations, as the City of Oakland has done. The subcommittee which examined officeholder accounts briefly discussed this option but, given that there was unanimous support for prohibiting officeholder accounts entirely, it never developed a detailed proposal for this kind of alternative. However, now that the FCPC/OGC will be in conversation with the council about the options going forward, it seems to make good sense to examine in more detail what the alternative might look like.

For discussion purposes, a draft proposal to amend the BERA is attached (Attachment 1). It is based generally on the Oakland ordinance but differs in important ways from that statute. The basic concept behind this alternative is to allow officeholders to have *true* officeholder accounts, but to insure that the funds in these accounts are

used *strictly* for officeholder purposes and may not be used for political campaigns or other non-officeholder purposes. The proposal would also include limitations on the amount each donor may contribute and the total amount of donations to each officeholder account permitted annually. The amendments would require disclosures of the sources and amounts of all donations and expenditures. And they would specify how officeholder accounts are to be terminated.

Although not as fully effective as the complete prohibition of officeholder accounts previously recommended by the FCPC, this approach would allow officeholders to create regulated accounts for proper officeholder purposes. At the same time, these true officeholder accounts would be subject to public scrutiny and express limitations that would prevent serious abuses. Finally, the strict prohibitions in the proposed legislation against using any funds from officeholder accounts for campaign purposes would greatly simplify the management and oversight of these accounts. Current state law, which permits certain officeholder funds to be redesignated for campaign purposes under certain circumstances and subject to various disclosure and notice requirements, creates a nightmare of administrative and reporting requirements. It has made it difficult for officeholders to comply with the law and has established traps for the unwary. Thus, it is hardly surprising that most candidates elected to public office do not even attempt to set up officeholder accounts.

In the end, it may well be that the alternative presented here—or any other—may be unable to carry the day. Because of the double-green light requirements of BERA, no proposal may be able to garner the 2/3 votes of both the Council and Commission required to change the law. But for the purposes of collaborating with the Council on ways of improving the officeholder account process, the Commission should review the attached proposal which offers at least one possible scenario for addressing the problems and pitfalls involved with officeholder accounts.

Prior to approving this item, the Commission will need to make a determination regarding the dollar amounts for limits on donations to officeholder accounts. These amounts are highlighted in the attached Proposal in Section 2.12.600.E & F.

Attachments:

1. New draft proposed amendments to BERA to allow for officeholder accounts, to limit such accounts to being used strictly for officeholder purposes, and to subject these accounts to various other limitations and disclosure requirements (“Proposal”)
2. Report to the City Council from the Fair Campaign Practices Commission entitled “Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts: Amending BMC Chapter 2.12” (for Public Hearing on February 4, 2020) (with Attachments) (“Report”)
3. Memorandum from Dean Metzger, Chair, to FCPC dated February 12, 2020 (with Attachments) (“Memorandum”)



Fair Campaign Practices Commission

PUBLIC HEARING
XXXXX XX, XXXX

To: Honorable Mayor and Members of the City Council
From: Brad Smith, Chair, Open Government Commission
Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices Commission
Subject: Amendments to the Berkeley Election Reform Act

RECOMMENDATION

Adopt an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to regulate officeholder accounts.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

These recommended amendments to the Berkeley Lobbyist Registration Act were approved by the Open Government Commission at its regular meeting of XXXXX XX, XXXX.

Action:

Vote:

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the “double green light” process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

BACKGROUND

In 2019, the FCPC approved an amendment to the Berkeley Election Reform Act (“BERA”) prohibiting officeholder accounts. That proposal was submitted to Council. However, some councilmembers have expressed opposition to an outright ban on officeholder accounts and a preference for developing regulations for those accounts. This report contains a new alternative proposal to regulate – rather than prohibit – officeholder accounts.

During 2019, the Commission discussed whether there is a need to amend the law relating to the use of officeholder accounts. These accounts are not expressly regulated

by BERA. But under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.” (Report, page 14.)

In the course of its review of the issue of officeholder accounts, the Commission considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission’s proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: “Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016.” (Report, page 1.) At the February 4 meeting, the Council had a lengthy discussion about their D13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder Accounts. (See Memorandum to FCPC dated February 12, 2020, a copy of which is attached.)

The City Council, however, referred both the issues relating to D13 accounts and those relating to officeholder accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. At that meeting, it was agreed that the Council Committee would work collaboratively with the FCPC on matters relating to D13 accounts and officeholder accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Alternative Proposal for Legislation on Officeholder Accounts

At its September 17, 2020 meeting, the FCPC passed the attached proposal to amend the BERA (Attachment 1). It is based generally on the Oakland ordinance but differs in important ways from that statute. The basic concept behind this alternative is to allow officeholders to have *true* officeholder accounts, but to insure that the funds in these accounts are used *strictly* for officeholder purposes and may not be used for political

campaigns or other non-officeholder purposes. The proposal also includes limitations on the amount each donor may contribute and the total amount of donations to each officeholder account permitted annually. The amendments would require disclosures of the sources and amounts of all donations and expenditures, and specify how officeholder accounts are to be terminated.

This approach would allow officeholders to create regulated accounts for proper officeholder purposes. At the same time, these true officeholder accounts would be subject to public scrutiny and express limitations that would prevent serious abuses. Finally, the strict prohibitions in the proposed legislation against using any funds from officeholder accounts for campaign purposes would greatly simplify the management and oversight of these accounts. Current state law, which permits certain officeholder funds to be redesignated for campaign purposes under certain circumstances and subject to various disclosure and notice requirements, creates a nightmare of administrative and reporting requirements. It has made it difficult for officeholders to comply with the law and has established traps for the unwary. Thus, it is hardly surprising that most candidates elected to public office do not even attempt to set up officeholder accounts.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposal is offered as an alternative to the proposed ban on officeholder accounts previously submitted to Council by the FCPC. This proposal would regulate – rather than prohibit – officeholder accounts.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

CONTACT PERSON

Brad Smith, Chair, Open Government Commission, (510) 981-6998

Samuel Harvey, Commission Secretary, Open Government Commission (510) 981-6998

Attachments:

1. Proposed ordinance amending BERA to allow and regulate officeholder accounts
2. Report to the City Council from the Fair Campaign Practices Commission entitled “Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts: Amending BMC Chapter 2.12” (for Public Hearing on February 4, 2020) (with Attachments) (“Report”)
3. Memorandum from Dean Metzger, Chair, to FCPC dated February 12, 2020 (with Attachments) (“Memorandum”)

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT TO REGULATE
OFFICEHOLDER ACCOUNTS

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

Section 1. That the Berkeley Municipal Code section 2.12.157 is added to read as follows:**Section 2.12.157 Officeholder account.**“Officeholder account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.Section 2. That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as followsArticle 9. Officeholder Accounts**Section. 2.12.600 Regulation of officeholder accounts.**A. The mayor and council members (the “officeholder” or “office holders”) shall each be permitted to establish one officeholder account, as defined in section 2.12.157.B. All donations deposited into an officeholder account shall be deemed to be held in trust solely for expenses associated with holding the office currently held by the elected city officer. For the purpose of this section, “donation” means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, in support of the office currently held by an elected official.C. Only a natural person who is a resident of the City may make a donation to an officeholder account.D. Donations to an officeholder account must be made by a separate check or other separate written instrument. Single donations may not be divided between the officeholder account and any candidate committee or other entity.E. No donor shall make, and no elected officer shall receive from a donor, a donation or donations under this section totaling more than fifty [or two-hundred and fifty] dollars (\$50.00 [or \$250.00]) per person for the calendar year. “Donor” means a natural person who is a resident of the City who makes a donation as defined in paragraph B.F. For the office of mayor, total donations to an officeholder account from all donors shall not exceed ten thousand dollars (\$10,000.00) in the aggregate per calendar year. For each member of the city council, total donations to an officeholder account from all donors shall not exceed five thousand dollars (\$5,000.00) in the aggregate per calendar year.

G. All donations received for, and expenditures made from, an officeholder account during a calendar year shall be reported at least annually on the date or dates prescribed by the commission and the report shall be made available to the public promptly thereafter. The commission shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's officeholder account. The forms shall be filed electronically. The information on the form or forms shall be verified by the officeholder. The information that shall be included in the officeholder account report shall include the following:

1. The name of the officeholder and the office held;
2. The reporting period covered by the report;
3. A description of all receipts and expenditures.
4. The full name of each donor from whom a donation or donations has been received together with his or her street address, occupation, and the name of his or her employer, if any, or the principal place of business if he or she is self-employed; the amount which he or she donated; the date on which the each donation was received during the period covered by the report; and the cumulative amount that the donor donated. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated with regard to each lender, together with the date and amount of the loan, and if the loan has been repaid, the date of the payment and by whom paid;
5. The full name and street address of each person to whom an expenditure or expenditures have been made, together with the amount of each separate expenditure to each person during the period covered by the report; a description of the purpose for which the expenditure was made; and the full name and street address of the person receiving the expenditure.
6. Under the heading "receipts," the total amount of donations received, and under the heading "expenditures," the total amount of expenditures made during the reporting period and cumulative amount of such totals;
7. The balance of cash and cash equivalents, including the amounts in the officeholder bank account, at the beginning and end of each period covered by the report.

H. Expenditures from an officeholder account may be made only for-lawful officeholder purposes, and may not be used for any of the purposes prohibited in subsections J. and K. of this section.

I. Allowable expenditures from an officeholder account include the following:

1. Expenditures for fundraising (including solicitations by mail) for the officeholder account;
2. Expenditures for office equipment, furnishings and office supplies;

3. Expenditures for office rent;

4. Expenditures for salaries of part-time or full-time staff employed by the officeholder for officeholder activities;

5. Expenditures for consulting, research, polling, photographic or similar services except for campaign expenditures for any city, county, regional, state or federal elective office;

6. Expenditures for conferences, meetings, receptions, and events attended in the performance of government duties by (1) the officeholder (2) a member of the officeholder's staff; or (3) such other person designated by the officeholder who is authorized to perform such government duties;

7. Expenditures for travel, including lodging, meals and other related disbursements, incurred in the performance of governmental duties by (1) the officeholder, (2) a member of the officeholder's staff, (3) or such other person designated by the officeholder who is authorized to perform such government duties;

8. Expenditures for memberships to civic, service or professional organizations, if such membership bears a reasonable relationship to a governmental, legislative or political purpose;

9. Expenditures for an educational course or educational seminar if the course or seminar maintains or improves skills which are employed by the officeholder or a member of the officeholder's staff in the performance of his or her governmental responsibilities;

10. Expenditures for mailing to persons within the city which provide information related to city-sponsored events, an official's governmental duties or an official's position on a particular matter pending before the Council or Mayor;

11. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in his or her official capacity;

12. Expenditures for payment of tax liabilities incurred as a result of authorized officeholder expense fund transactions; and

13. Expenditures for accounting, professional and administrative services provided to the officeholder account.

J. Officeholder expense funds shall not be used for the following:

1. Expenditures in connection with a future election for any city, county, regional, state or federal elective office or in connection with a ballot measure;

2. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office;

3. Membership in any athletic, social, fraternal, veteran or religious organization;

4. Supplemental compensation for employees for performance of an act which would be required or expected of the person in the regular course or hours of his or her duties as a city official or employee;

5. Any expenditure that would violate the provisions the California State Political Reform Act, including Government Code Sections 89506 and 89512 through 89519, and any provisions of the BERA.

K. Prohibitions:

1. No funds may be contributed or transferred from an officeholder account to any candidate or committee, as defined in sections 2.12.085 and 2.12.095 of this chapter, including to any committee in which the officeholder is a candidate. An officeholder may not redesignate his or her officeholder account as a committee for a future term of the same office or redesignate his or her officeholder funds to be used as campaign funds by his or her committee for a future term of the same office.

2. No funds may be used from an officeholder account to pay any campaign expenses.

3. An officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account.

L. Once an officeholder's term of office ends or she or he leaves that office, whichever is earlier, the former officeholder may use his or her officeholder funds only for the following purposes:

1. Paying for legitimate, outstanding officeholder expenses.

2. Repaying contributions to contributors to the officeholder accounts.

3. Making a donation to a bona fide charitable, educational, civic, religious or similar tax-exempt, non-profit organization if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

M. The officeholder shall terminate the officeholder account within 90 days of the date that the officeholder's term of office ends or he or she leaves that office, whichever is earlier. The Commission may for good cause extend the termination date. The disposition of all funds from the closed officeholder account, including the identification of all persons and entities that have received funds from the account and the amounts distributed, shall be described on a form prescribed by the Commission. The officeholder must verify and file the form electronically no later the date prescribed for the termination of the officeholder account or an approved extension thereof.

N. All funds from a closed officeholder account not properly disposed of within the 90 day period prescribed above, or an approved extension thereof, shall be deposited in the City's general fund.

O. Violations of this article involving the unlawful use of officeholder accounts are subject to the procedures of, and the penalties in, Article 7 of this chapter.

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the regulation of officeholder accounts.

The hearing will be held on, [date of hearing] at [6:00 p.m.] in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of **[date of agenda posting]**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

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

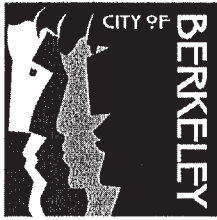
Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication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

Published: [Publication Date in Newspaper]

Pursuant to Berkeley Municipal Code section 2.12.051

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

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



Fair Campaign Practices Commission

PUBLIC HEARING  
February 4, 2020

To: Honorable Mayor and Members of the City Council

From: Fair Campaign Practices Commission

Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission

Subject: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

**Action:** M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

**Vote:** Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder AccountsPUBLIC HEARING  
February 4, 2020BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

**Definition of an Officeholder Account**

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's Public Access Portal.) If, however, a complaint is filed that an Officeholder Account is used for

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder AccountsPUBLIC HEARING  
February 4, 2020

campaign contributions or to pay "campaign expenses," BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda's conclusions remain valid and are still controlling guidance.

**Contributions to Officeholder Accounts**

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

**Expenditures from Officeholder Accounts**

Except for the restriction that Officeholder Account funds cannot be used for "campaign expenses," BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a "campaign expense," would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder's position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent's name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not "campaign expenses," also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.



Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
February 4, 2020

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.<sup>1</sup> Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

### Recommendation

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

#### Part 8 - OFFICEHOLDER ACCOUNTS

##### 12.06.810 - Officeholder account prohibited.

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

#### 2.12.157 Officeholder Account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

#### 2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

<sup>1</sup>Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
January 21, 2020

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)



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

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE  
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

**BMC 2.12.157 Officeholder account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

**BMC 2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

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

10/8/2019

Page 7 of 16



# California

## LEGISLATIVE INFORMATION

[Home](#)
[Bill Information](#)
[California Law](#)
[Publications](#)
[Other Resources](#)
[My Subscriptions](#)
[My Favorites](#)
Code: Section: 


[Up^](#)
[<< Previous](#)
[Next >>](#)
[cross-reference chaptered bills](#)
[PDF](#)
[Add To My Favorites](#)
Search Phrase: 

**GOVERNMENT CODE - GOV**
**TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )

**CHAPTER 5. Limitations on Contributions [85100 - 85802]** ( Chapter 5 added June 7, 1988, by initiative Proposition 73. )
**ARTICLE 3. Contribution Limitations [85300 - 85321]** ( Article 3 added June 7, 1988, by initiative Proposition 73. )

**85316.** (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18531.62. Elected State Officeholder Bank Accounts.**

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office.”

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees:

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of



organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision

(e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

**HISTORY**

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).





Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

**FROM:** MANUELA ALBUQUERQUE, City Attorney *MA*  
By: CAMILLE COUREY, Deputy City Attorney

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

**ISSUE:**

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

**CONCLUSION:**

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

**ANALYSIS:**

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert  
Re: Application of Berkeley Election Reform Act To Officeholder Accounts  
December 28, 1999  
Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

#### Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinions Index: H.E.I. and H.L.G.

CCM

PAUSERS\BBL2\ofhldr.mam.doc

<sup>2</sup> Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

## CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso,  Secretary & Staff CounselSUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSESBACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Ioni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

FCPC COMMISSIONERS  
December 9, 1991  
Page 2

in opposition to the nomination or election of one or more candidates . . . . (Emphasis added.)

Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.<sup>1/</sup> (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

---

<sup>1/</sup>I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

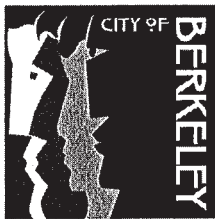
Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

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

**Published:** January 24, 2020 – The Berkeley Voice  
Pursuant to Berkeley Municipal Code Section 2.12.051

~~~~~  
I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 30, 2020.

Mark Numainville, City Clerk



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

SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: February 4, 2020

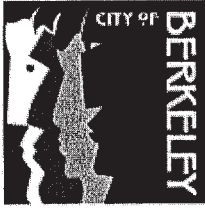
Item Number: 2

Item Description: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

Submitted by: Councilmember Hahn

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

**SOPHIE HAHN**

Berkeley City Council, District 5
 2180 Milvia Street, 5th Floor
 Berkeley, CA 94704
 (510) 981-7150
 shahn@cityofberkeley.info

ACTION CALENDAR

February 4, 2020

To: Honorable Mayor and Members of the City Council
 From: Vice Mayor Sophie Hahn
 Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.¹ They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.² Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

¹ <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

² <http://www2.oaklandnet.com/w/OAK052051>

always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, "such as a newsletter or brochure, [] delivered, by any means [] to a person's residence, place of employment or business, or post office box."³ Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.⁴ Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or "Officeholder") funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

³ <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

⁴ <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.⁵ For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

⁵ Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.⁵

members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.

Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to “speak” and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State’s restrictions, to ensure funds are not used for things like family members’ travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.⁶

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

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

⁶ <http://www2.oaklandnet.com/w/OAK052051>



Fair Campaign Practices Commission

Date: February 12, 2020
To: FAIR CAMPAIGN PRACTICES COMMISSION
From: Dean Metzger, Commission Chair
Subject: Council discussion and action with regards to the Officeholder Accounts FCPC proposal.

At the Special City Council meeting of Tuesday February 4, 2020, the City Council had a lengthy discussion about their D13 accounts, and the lack of discretionary funds Council Members have to spend. They then decided not to approve the FCPC recommendation to prohibit Officeholder Accounts.

To remedy this concern the FCPC should request from the City Manager the amount each Council Member receives in their D13 accounts and after some discussion make a recommendation to Council. If the D13 account is large enough to allow Council members to make the expenditures they feel will keep their constituents informed of their activities, travel to local meetings, provide transportation expenses and meals - there would be no need for Officeholders Accounts.

A search of the City's Budget documents did not reveal the amounts allocated to the Council D13 accounts. Once the information is available the FCPC can make its recommendations to City Council.

Attachments:

1. Mayor and City Council Financial Summary
2. Draft request to City Manager for budget details of the Mayor and each individual Council Member

MAYOR AND CITY COUNCIL FINA

	FY 2015 Actual	FY 2016 Actual	FY 2017 Adopted	FY 2018 Proposed	FY 2019 Proposed
EXPENDITURES					
By Type:					
Salaries and Benefits	1,660,661	1,760,619	1,723,617	1,833,734	1,880,031
Services and Materials	36,942	43,407	113,526	113,526	113,526
Capital Outlay	1,953	7,674			
Internal Services	89,100	81,181	81,181	81,181	81,181
Indirect Cost Transfer					
	1,788,656	1,892,881	1,918,324	2,028,441	2,074,738
By Division:					
Mayor's Office	515,095	558,137	584,877	554,389	566,917
Council Offices	1,273,561	1,334,744	1,333,447	1,474,052	1,507,821
Exiting Officials					
	1,788,656	1,892,881	1,918,324	2,028,441	2,074,738
By Fund:					
General Fund	1,788,656	1,892,881	1,918,324	2,028,441	2,074,738
	1,788,656	1,892,881	1,918,324	2,028,441	2,074,738

General Fund FTE	12.00	12.00	12.00	12.00	12.00
Total FTE	12.00	12.00	12.00	12.00	12.00

DRAFT

DRAFT

DRAFT

Date: February 20, 2020

To: Dee Williams-Riley
City Manager

From: Fair Campaign Practices Commission

Subject: Request for budget details of the Mayor and each individual Council Member.

At the Special Council meeting of Tuesday, February 4, 2020 the Council heard and took action on the FCPC recommendation to amend the Berkeley Municipal Code to prohibit Officeholder Accounts. The Council discussion went to great lengths about why they needed the Officeholder Account before declining to approve the FCPC recommendation.

The FCPC needs to understand why the Council took the action it did.

To help the Commission determine if any further action on its part would be helpful, the Commission requests that your office provide the FCPC with the detailed budgets of the Mayor and each Council Member. The Commission has the budget summaries of the Mayor and City Council but it is of little use for the discussion.

Please provide the requested information in time for the FCPC meeting on March 19, 2020.

Thank you,

Fair Campaign Practices Commission



Fair Campaign Practices Commission
Open Government Commission

ACTION CALENDAR
January 26, 2021

To: Honorable Mayor and Members of the City Council

From: Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions

Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices and Open Government Commissions

Subject: Amendments to the Berkeley Election Reform Act (BERA) and Change to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

RECOMMENDATION

Form a joint subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Officeholder accounts are not expressly regulated by BERA. However, under existing law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements.

Donations to nonprofit organizations from Councilmember's discretionary council budgets (D-13 accounts) are allowed by the authority of City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.).

Action: Motion to submit report to City Council recommending creation of a subcommittee of members of the Council, FCPC and OGC to (1) prepare an ordinance prohibiting or regulating officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies

Vote: M/S/C: Blome/Metzger; Ayes: O'Donnell, Ching, Blome, Tsang, Smith; Noes: Metzger, Sheahan; Abstain: none; Absent: McLean.

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Changes to the City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) can be made by a majority vote of the Council.

BACKGROUND

Officeholder Accounts

During 2019, the Fair Campaign Practices Commission (FCPC) discussed whether there is a need to amend the law relating to these accounts. These accounts are not expressly regulated by BERA, but under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: "[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws."

In the course of its review of the issue of officeholder accounts, the FCPC considered three options:

- (1) leaving the law on officeholder accounts unchanged;
- (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or
- (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met several times in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission's proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: "Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016." (Report, page 1.)

At the February 4, 2020 meeting, the Council had a lengthy discussion about their D- 13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder accounts. The City Council referred the issues relating to officeholder and D-13 accounts to its Agenda and Rules Committee for further consideration.

Proposed Changes to City Council Expenditure and Reimbursement Policies

At the April 23, 2020 meeting of the Open Government Committee (OGC), a motion to direct staff to develop a proposal recommending Council change City policy to remove councilmember names from donations to nonprofit organizations from D- 13 accounts was approved unanimously.

Donations to nonprofit organizations from the Councilmember’s discretionary council budget (D-13 accounts) puts that elected official in a favorable light with Berkeley citizens at no cost to the Councilmember, an option not available to a challenger for that office. A look at the Consent Calendar of City Council Meeting Agendas will often contain one or more items from one or more Councilmembers making a donation to a nonprofit organization “from the discretionary council budget” of the Councilmember. This line item (“Services and Materials”) from the General Fund was increased from \$50,938 in FY 2017 to \$113,526 in FY 2018 (approximately \$40,000 for the Mayor, the balance evenly divided among the Councilmembers; see Attachment – Council Office Budget Summaries). While not technically a “campaign contribution,” those individuals in the organization as well as individuals favorably disposed to the nonprofit organization receiving the funds would certainly see it favorably. A person running against this incumbent would have to draw on their own resources to match a Councilmember’s contribution from public funds and without the public notice of the contribution the Councilmember receives.

In addition to favoring incumbents, the use of public moneys for contributions to nonprofit organizations from the discretionary council budgets of individual Council members is arguably improper and certainly bad optics. The commissioners of the OGC have no argument with contributions being made to nonprofit organizations from the City of Berkeley, but believe they should be made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley, not from individual Council members. Perhaps a nonprofit fund could be set up from which the donations could be made from recommendations made to one of the Council’s Policy Commissions. This would free funds for other purposes now being directed to nonprofit organizations from individual Councilmember’s D-13 accounts.

Proposed Action:

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee agreed to work collaboratively with the FCPC and OGC on matters relating to officeholder accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to:

(1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and

(2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

The “double green light” process requires that the FCPC adopt an amendment by a two-thirds vote, and that the City Council hold a public hearing and also adopt an amendment by a two-thirds vote. Evidence to date suggests there are differences of perspective regarding this matter between the City Council and the FCPC regarding the D-13 accounts. It would seem to be a rational step to discuss and come to agreement and possibly compromise prior to the “double green light” process.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

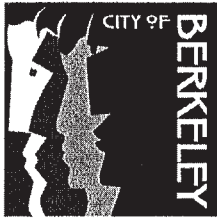
CONTACT PERSON

Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions, (510) 981-6998

Samuel Harvey, Commission Secretary, Fair Campaign Practices and Open Government Commissions, (510) 981-6998

Attachments:

1. FCPC February 4, 2020 report to Council and attachments
2. Mayor and City Council Financial Summary



Fair Campaign Practices Commission

PUBLIC HEARING
February 4, 2020

To: Honorable Mayor and Members of the City Council
From: Fair Campaign Practices Commission
Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission
Subject: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

Action: M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

Vote: Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder Accounts

PUBLIC HEARING
February 4, 2020

BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

Definition of an Officeholder Account

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's Public Access Portal.) If, however, a complaint is filed that an Officeholder Account is used for

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder Accounts

PUBLIC HEARING
February 4, 2020

campaign contributions or to pay "campaign expenses," BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda's conclusions remain valid and are still controlling guidance.

Contributions to Officeholder Accounts

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

Expenditures from Officeholder Accounts

Except for the restriction that Officeholder Account funds cannot be used for "campaign expenses," BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a "campaign expense," would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder's position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent's name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not "campaign expenses," also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder Accounts

PUBLIC HEARING
February 4, 2020

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.¹ Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

Recommendation

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

Part 8 - OFFICEHOLDER ACCOUNTS

12.06.810 - Officeholder account prohibited.

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

2.12.157 Officeholder Account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

¹ Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder Accounts

PUBLIC HEARING
January 21, 2020

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

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

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

BMC 2.12.157 Officeholder account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

BMC 2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

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



California
LEGISLATIVE INFORMATION

- Home
- Bill Information
- California Law
- Publications
- Other Resources
- My Subscriptions
- My Favorites

Code: Section:

[Up^](#)
 [<< Previous](#)
 [Next >>](#)
 [cross-reference chaptered bills](#)
 [PDF](#) | [Add To My Favorites](#)

GOVERNMENT CODE - GOV
TITLE 9. POLITICAL REFORM [81000 - 91014] (Title 9 added June 4, 1974, by initiative Proposition 9.)
CHAPTER 5. Limitations on Contributions [85100 - 85802] (Chapter 5 added June 7, 1988, by initiative Proposition 73.)

ARTICLE 3. Contribution Limitations [85300 - 85321] (Article 3 added June 7, 1988, by initiative Proposition 73.)

85316. (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

- (A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.
- (B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.
- (C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

- (A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.
- (B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.
- (C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18531.62. Elected State Officeholder Bank Accounts.

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office."

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees:

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision

(e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

HISTORY

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.

2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

FROM: MANUELA ALBUQUERQUE, City Attorney *MA*
By: CAMILLE COUREY, Deputy City Attorney

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.¹ For similar reasons, the BERA does not

¹ However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (SFPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.² Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinions Index: H.E.I. and H.L.G.

CCM

PAUSERS\BBL2\ofhldr.mem.doc

² Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

CITY OF BERKELEY

DATE: December 9, 1991 Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso, Secretary & Staff Counsel

SUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSES

BACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Ioni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

FCPC COMMISSIONERS

December 9, 1991

Page 2

in opposition to the nomination or election of one or more candidates (Emphasis added.)

Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.^{1/} (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

^{1/}I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

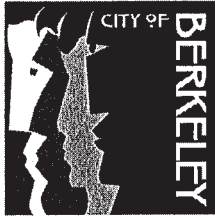
Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

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

Published: January 24, 2020 – The Berkeley Voice
Pursuant to Berkeley Municipal Code Section 2.12.051

~~~~~  
I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 30, 2020.

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



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

## **SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** February 4, 2020

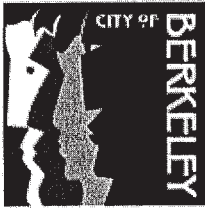
**Item Number:** 2

**Item Description:** Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

**Submitted by:** Councilmember Hahn

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.



**SOPHIE HAHN**

Berkeley City Council, District 5  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704  
(510) 981-7150  
shahn@cityofberkeley.info

ACTION CALENDAR

February 4, 2020

To: Honorable Mayor and Members of the City Council  
From: Vice Mayor Sophie Hahn  
Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.<sup>1</sup> They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.<sup>2</sup> Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

<sup>1</sup> <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

<sup>2</sup> <http://www2.oaklandnet.com/w/OAK052051>



always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, "such as a newsletter or brochure, [ ] delivered, by any means [ ] to a person's residence, place of employment or business, or post office box."<sup>3</sup> Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.<sup>4</sup> Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or "Officeholder") funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

<sup>3</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

<sup>4</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.<sup>5</sup> For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

---

<sup>5</sup> Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.<sup>5</sup>

*members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.*

Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to “speak” and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State’s restrictions, to ensure funds are not used for things like family members’ travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.<sup>6</sup>

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

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

---

<sup>6</sup> <http://www2.oaklandnet.com/w/OAK052051>



**MAYOR AND CITY COUNCIL FINANCIAL SUMMARY**

|                        | FY 2015<br>Actual | FY 2016<br>Actual | FY 2017<br>Adopted | FY 2018<br>Proposed | FY 2019<br>Proposed |
|------------------------|-------------------|-------------------|--------------------|---------------------|---------------------|
| <b>EXPENDITURES</b>    |                   |                   |                    |                     |                     |
| <b>By Type:</b>        |                   |                   |                    |                     |                     |
| Salaries and Benefits  | 1,660,661         | 1,760,619         | 1,723,617          | 1,833,734           | 1,880,031           |
| Services and Materials | 36,942            | 43,407            | 113,526            | 113,526             | 113,526             |
| Capital Outlay         | 1,953             | 7,674             |                    |                     |                     |
| Internal Services      | 89,100            | 81,181            | 81,181             | 81,181              | 81,181              |
| Indirect Cost Transfer |                   |                   |                    |                     |                     |
|                        | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |
| <b>By Division:</b>    |                   |                   |                    |                     |                     |
| Mayor's Office         | 515,095           | 558,137           | 584,877            | 554,389             | 566,917             |
| Council Offices        | 1,273,561         | 1,334,744         | 1,333,447          | 1,474,052           | 1,507,821           |
| Exiting Officials      |                   |                   |                    |                     |                     |
|                        | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |
| <b>By Fund:</b>        |                   |                   |                    |                     |                     |
| General Fund           | 1,788,656         | 1,892,881         | 1,918,324          | 2,028,441           | 2,074,738           |
|                        | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |

|                         |       |       |       |       |       |
|-------------------------|-------|-------|-------|-------|-------|
| <b>General Fund FTE</b> | 12.00 | 12.00 | 12.00 | 12.00 | 12.00 |
| <b>Total FTE</b>        | 12.00 | 12.00 | 12.00 | 12.00 | 12.00 |





Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the FITES Committee

RECOMMENDATION

Refer to Berkeley's Zero Waste and Energy Commissions (or successor Commission) to hold joint meetings regarding the proposed Ordinance regulating the use of carryout and pre-checkout bags and promoting the use of reusable bags by December 31, 2021.

As part of the series of meetings, the Commissions should:

1. strive to conduct community/business outreach and education events to include, but not limited to the following entities:
  - a. all stores and events that provide pre-checkout bags (e.g., grocery stores, convenience stores, food marts, and food vendors);
  - b. all restaurants, take-out food stores, food trucks, permitted events, and any other commercial establishment not regulated by the state that provide carryout bags; and
2. make any recommendations with respect to any amendments and appropriate phasing to the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee.

POLICY COMMITTEE RECOMMENDATION

On July 21, 2021 the FITES Committee took the following action:

Action: M/S/C (Harrison/Robinson) to make a positive recommendation to the City Council that the Council direct the Zero Waste and Energy Commission (or successor Commission) to hold joint meetings to conduct community outreach and education events and recommend proposed changes and appropriate phasing to the

Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the FITES Committee

CONSENT CALENDAR  
September 14, 2021

FITES Committee.

Vote: All Ayes

### BACKGROUND

On December 10, 2019, Councilmember Harrison and cosponsor Councilmember Hahn submitted a draft Ordinance regulating the use of carryout and pre-checkout bags and promoting the use of reusable bags. The Agenda Committee referred the item to the FITES Committee on November 25, 2019.

By closing loopholes in state and county law, the ordinance is aimed at avoiding unnecessary waste, promoting reuse, reducing greenhouse gas emissions, and protecting land/sea wildlife and the urban environment.

Committee consideration of the item was initially delayed due to examination of statewide preemption issues and the COVID-19 pandemic. Subsequently, the item has gone through a number of revisions.

The latest draft of the ordinance has been crafted to consider and complement existing regulations at the state and county levels. With respect to the regulation of carryout bags, this ordinance is intended to *only* regulate entities for which the City is not preempted by the state. Neither the state nor county regulate pre-checkout bags, however, the proposed ordinance would. This ordinance does not regulate bags that are integral to the manufacturing of products, i.e., product bags, and provides a limited exemption process.

As currently drafted, the ordinance does the following across the following bag types and entities:

#### **Carryout bags:**

- Bans thicker plastic film carryout bags, except for bags that contain hot liquids, for:
  - restaurants, take-out food stores, and food trucks.
  - permitted events and city-sponsored events
  - any other commercial establishment not regulated by the state<sup>1</sup>
- Defines reusable carryout bags as non-plastic film across:
  - restaurants, take-out food stores, and food trucks.
  - permitted events and city-sponsored events
  - any other commercial establishment not regulated by the state
- Charges \$0.10 for paper bags at:

---

<sup>1</sup> e.g., smaller clothing stores/book/furniture/electronic/gift stores, clothing stores/book/furniture/electronic/gift stores that don't sell perishable goods and have < \$2 million revenue, grocery stores under \$2 million that don't sell alcohol, convenience stores that don't sell alcohol, small pharmacies < 10k square feet etc.

- restaurants, take-out food stores, and food trucks.
- *Second phase 2023*: requires any paper carryout bag provided by the following be 100% recycled material:
  - restaurants, take-out food stores, and food trucks.
  - permitted events and city-sponsored events
  - any other commercial establishment not regulated by the state

**Pre-Checkout Bags:**

- Bans all but paper pre-checkout bags, except upon request for meat/seafood, across:
  - all stores & events
- Charges \$ 0.10 min. for any paper pre-checkout bag; *Second phase in 2023*: requires any paper pre-checkout bag to be 100% recycled across:
  - all stores & events
- Defines pre-checkout bags as non-plastic film:
  - all stores & events

In addition, the ordinance prevents stores from unreasonably denying customers from bringing their own reusable bags and containers.

As part of its consideration of the proposed ordinance, the FITES Committee provided direction at its July 21, 2021 meeting that the Zero Waste and Energy Commissions (or successor Commission) should hold joint meetings with respect to the ordinance aimed at conducting community/business outreach and education events to include the people and entities regulated by the ordinance and to make recommendations regarding any amendments and appropriate phasing of the law to FITES.

The Zero Waste and Energy Commissions respectively focus on issues ranging from City solid waste policy and goals to climate protection and energy conservation. It is in the public interest for the Council to engage its citizen-led commissions to assist in the outreach process to community members and businesses that may be impacted by the proposed ordinance.

FISCAL IMPACTS

Noticing and providing assistance to Commissioners to conduct a series of community outreach meetings will require staff time.

ENVIRONMENTAL SUSTAINABILITY

Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the FITES Committee

CONSENT CALENDAR  
September 14, 2021

By closing loopholes in state and county law, the ordinance is aimed at avoiding waste, promoting reuse, reducing greenhouse gas emissions, and protecting land/sea wildlife and the urban environment.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

ATTACHMENTS:

1. Infographic Comparing State and County Laws to the Proposed Berkeley Ordinance
2. Proposed Ordinance Adding BMC Chapter 11.63 and Regulating the Use of Carryout and Pre-checkout Bags and Promoting the Use of Reusable Bags

# COMPARISON OF STATE & COUNTY LAW TO PROPOSED BERKELEY ORDINANCE



Law: Public Resources Code Sections 42281 et seq., Senate Bill 270, Proposition 67,

### Applicability:



Retail/grocery stores with annual sales > \$2 million that sell some perishable items



Large retail stores with a pharmacy > 10,000 sq. ft. of retail space



Convenience stores, food marts, or liquor stores that sell e.g. milk, bread, soda, & snack foods, and that have a Type 20 or Type 21 alcohol license

### Regulation:



Bans flimsy plastic film carryout bags: **×**



Thicker film and other "reusable" carryout bags: **\$0.10 min**



Paper carryout bags: **\$0.10 min + 20-40% Recycled Material**



Law: Alameda County Waste Management Authority Ord. 2016-2

### Applicability:



Restaurant, take-out food & food-trucks



All other stores w/ enclosed structure selling goods e.g., clothing, food & personal items

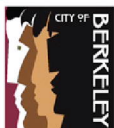
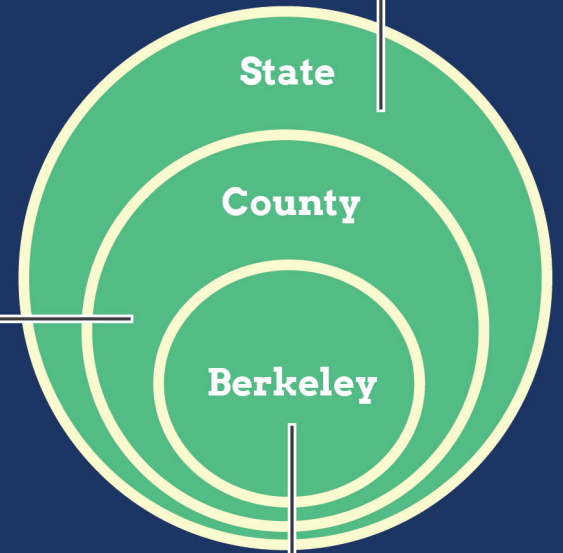
### Regulation:



Thicker film and other "reusable" carryout bags: **\$0.10 min**



Paper carryout bags **\$0.10 min (except for restaurants) + 40% Recycled Material**



Law: Proposed Ordinance BMC 11.63

### Applicability:



Restaurant, take-out food and food-truck establishments



All other stores selling goods e.g., clothing, food & personal items



Events requiring a street permit



City of Berkeley sponsored events

### Regulation:



Bans thicker film bags **×**



Paper carryout bags **\$0.10 min &**



Pre-checkout bags (e.g. produce) **Starting in 2023: 100% Recycled Paper**



Bans compostable plastic

Reusable non-film Bags

ORDINANCE NO. –N.S.

ADDING CHAPTER 11.63 TO THE BERKELEY MUNICIPAL CODE TO REGULATE THE USE OF CARRYOUT AND PRE-CHECKOUT BAGS AND PROMOTING THE USE OF REUSABLE BAGS

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

Section 1. That Chapter 11.63 of the Berkeley Municipal Code is added to read as follows:

**Chapter 11.63**

**REGULATING THE USE OF CARRYOUT AND PRE-CHECKOUT BAGS AND PROMOTING THE USE OF REUSABLE BAGS**

**Sections:**

**11.63.010 Findings and purpose.**

**11.63.020 Definitions.**

**11.63.030 Carryout Bag restrictions for Covered Entities.**

**11.63.040 Pre-checkout Bag restrictions for Grocery Stores and Covered Entities.**

**11.63.050 Unreasonable denial of customer bags or containers.**

**11.63.060 General exemptions.**

**11.63.070 Waivers—applicability and process to obtain.**

**11.63.080 City of Berkeley—purchases prohibited.**

**11.63.090 Duties, responsibilities and authority of the City of Berkeley.**

**11.63.100 Liability and enforcement.**

**11.63.110 Severability.**

**11.63.120 Construction.**

**11.63.130 Effective date.**



**11.63.010 Findings and purpose.**

The Council of the City of Berkeley finds and declares as follows:

- A. Single-use plastic bags and plastic produce bags are a significant contributor to street litter, ocean pollution, marine and other wildlife harm and their production creates greenhouse gas emissions.
- B. The production, consumption and disposal of plastic based bags contribute significantly to the depletion of natural resources. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and present a great harm to the global environment.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain plastic bags can also contain microplastics that present a great harm to our seawater and freshwater life, which indirectly presents a threat to human life.
- D. It is in the interest of the health, safety and welfare of all who live, work and do business in the City that the amount of litter on public streets, parks and in other public places be reduced.
- E. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of plastic bag waste furthers this goal.
- F. The State of California and Alameda County Waste Management Authority both regulate single-use, paper, and reusable carryout bags respectively under SB 270/Proposition 67 and Ordinance 2012-02 (as amended by Ordinance 2016-02). However, neither currently address all establishments or pre-checkout (e.g., produce) bags to carry fruits, vegetables, and other loose or bulky items while shopping before reaching the checkout area. These bags, which are often plastic, share many of the same physical qualities as single-use plastic carryout bags no longer permitted in California, and are difficult to recycle, reuse or compost.
- G. The State also does not regulate the price of bags provided at the point of sale by restaurants and streets events, including farmers' markets. While the County's Ordinance 2016-02 regulates restaurant carryout bags, it allows thicker film plastic.
- H. The City of Berkeley currently regulates a number of disposable plastic items through the Single-Use Foodware and Litter Reduction Ordinance (Ord. 7639-NS § 1 (part), 2019), but does not impose regulations with respect to bags. It is in the public interest to reduce plastic and paper waste in areas not preempted by the State of California.
- I. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan, as amended, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

**11.63.020 Definitions.**

- A. "Carryout Bag" means a bag provided at the check stand, cash register, point of sale or other location for the purpose of transporting food or merchandise out of a Covered Entity. Carryout Bags do not include Pre-checkout or Product Bags.
- B. "Covered Entity" means any of the following:
  - (1) any restaurant, take-out food establishment or other business (including, but not limited to, food sales from vehicles or temporary facilities open to the public) that

receives 90% or more of its revenue from the sale of prepared and ready-to-consume foods and/or drinks to the public and is not subject to the requirements of Public Resources Code Section 42281; and

(2) any event, or Person therein, requiring a street event permit pursuant to Berkeley Municipal Code 13.44.040 and not subject to the requirements of Public Resources Code Section 42281; and

(3) any other commercial establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food and personal items directly to a customer and not subject to the requirements of Public Resources Code Section 42281.

C. "Customer" means any Person obtaining goods from a Covered Entity or Grocery Store.

D. "Grocery Store" means a supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of goods that include perishable and nonperishable food items;

E. "100% Recycled Content Paper Bag" means either a Carryout Bag provided by a covered Entity or a Pre-checkout Bag provided by a Grocery Store that contains no old growth fiber and one hundred percent (100%) postconsumer recycled material; is one hundred percent (100%) recyclable and compostable, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; and has printed in a highly visible manner on the outside of the bag the words; "Recyclable," the name and location of the manufacturer, and the percentage of postconsumer recycled content;

F. "Reusable Carryout Bag" means a bag that is specifically designed and manufactured for multiple reuse and meets all of the following requirements:

(1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet;

(2) has a minimum volume of 15 liters;

(3) is washable by hand or machine, or is made from a material that can otherwise be cleaned or disinfected;

(4) does not contain lead, cadmium or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations for packaging or reusable bags;

(5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and

(6) is not primarily made of plastic film, regardless of thickness.

G. "Person" means an individual, firm, public or private corporation, limited liability company, partnership, industry or any other entity whatsoever.

H. "Pre-checkout Bag" means a 100% Recycled Content Paper Bag provided to a customer to carry produce, bulk food, or other food items to the point of sale inside a store.

I. "Product Bags" are bags that are integral to the packaging of a product such as film or other bags used to fully encapsulate liquid or semi-liquid takeout food items (e.g., soup containers) to prevent spillage; or bags designed to be placed over articles of clothing on a hanger at dry cleaning or laundry facility.

**11.63.030 Carryout Bag restrictions for Covered Entities.**

- A. No Covered Entity shall provide or sell a Carryout Bag other than 100% Recycled Content Paper Bags or Reusable Carryout Bags at the check stand, cash register, point of sale or other location to a Customer for the purpose of transporting food or merchandise out of such Covered Entity.
- B. A Covered Entity may provide or make available for sale to a Customer a 100% Recycled Content Paper Bags for a minimum price of ten cents (\$0.10).

**11.63.040 Pre-checkout Bag restrictions for Grocery Stores and Covered Entities.**

- A. No Grocery Store or Covered Entity shall provide Pre-checkout Bags other than 100% Recycled Content Paper Bags.
- B. Notwithstanding subsection A, Covered Entities and Grocery Stores may provide plastic film bags as Pre-checkout Bags to Customers for the sole purpose of separating meats and seafood only upon the specific request of a Customer. Covered Entities shall not solicit Customers with respect to this exception.
- C. A Grocery Store or Covered Entity may make available for sale to a Customer Pre-checkout Bags for a minimum price of ten cents (\$0.10).

**11.63.050 Unreasonable denial of customer bags or containers.**

Any establishment regulated by Public Resources Code Section 42281, Alameda County Waste Management Authority Ordinance 2016-02, or this Chapter, shall not unreasonably deny a customer from using bags or containers of any type that they bring themselves, including in lieu of using bags or containers provided by the establishment. However, establishments may refuse, at their sole discretion, any customer-provided bag or container that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended food item, or that appears to be excessively soiled or unsanitary. If the customer accepts a store-provided bags or containers in lieu, any charge required pursuant to this ordinance, other applicable law, or the establishment's policy will apply.

**11.63.060 General exemptions.**

- A. Bags exempt from the Chapter include Product Bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste or yard waste bags.
- B. Nothing in this Chapter prohibits customers from using bags of any type that they bring to the establishment themselves or from carrying away merchandise or materials that are not placed in a bag at point of sale, in lieu of using bags provided by the establishment.
- C. Notwithstanding the requirements of Sections 11.63.30 and 11.63.40, Covered Entities and Grocery Stores, except as subject to the requirements of Public Resources Code Section 42281, providing 100% Recycled Content Paper Bags as Carryout Bags at the point of sale or Pre-Checkout Bags before the point of sale, shall provide such bags at no cost to a Customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code; a Customer participating in CalFresh pursuant to Chapter 1 commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code; and a Customer participating in the Supplemental Food Program pursuant to

Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code.

**11.63.070 Waivers—applicability and process to obtain.**

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Covered Entities or Grocery Stores to obtain a partial waiver from any requirement of this ordinance upon sufficient evidence by the applicant that the provisions of this Chapter would cause undue hardship. The phrase "undue hardship" may include, but is not limited to situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.
- B. Waivers may be granted by the City Manager or their designees, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or their designees shall act on a waiver application no later than 90 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Waivers may be granted for a specified term of up to x [x months]. During the waiver term, the Covered Entities or Grocery Store shall make diligent efforts to become compliant. Under extraordinary circumstances, should a Covered Entities or Grocery Store demonstrate that, at the close or expiration of a granted waiver term, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to x (x) months each may be granted. It shall be the Covered Entities or Grocery Store's responsibility to apply for any subsequent waivers in a timely manner.
- E. Notwithstanding the x (x) month maximum term for waivers set forth in Section 11.63.070 (D), in certain limited and unique circumstances existing prior to adoption of this ordinance, where the Covered Entities or Grocery Store demonstrates diligent efforts to comply but, due to insurmountable unique circumstances, may never be reasonably able to comply, the City Manager or their designee may grant a waiver for a longer specified term.

**11.63.080 City of Berkeley—purchases prohibited.**

The City of Berkeley and any City-sponsored event shall only provide or sell to a Customer 100% Recycled Content Paper Bags or Reusable Carry-out Bags for the purpose of carrying away goods or other materials from the point of sale or event.

**11.63.090 Duties, responsibilities and authority of the City of Berkeley.**

The City Manager or their designee shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this Chapter including, but not limited to, inspecting any Covered Entity or Grocery Store's premises to verify compliance.

**11.63.100 Liability and enforcement.**

- A. Anyone violating or failing to comply with any requirement of this Chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a

requirement of this Chapter until one year after the effective date of such requirement.

- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.63.060.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

**11.63.110 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, 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 City Council hereby declares that it would have passed this title, 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.

**11.63.120 Construction.**

This Chapter is intended to be a proper exercise of the City's police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed in accordance with that intent.

**11.63.130 Effective date.**

The provisions in this ordinance are effective [ ], 2022.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of 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.





Open Government Commission

ACTION CALENDAR  
September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Open Government Commission

Submitted by: Brad Smith, Chairperson, Open Government Commission

Subject: Open Government Commission Recommendations to City Council  
Regarding Teleconferenced Meetings

#### RECOMMENDATION

Establish City Council practices for holding public meetings via teleconference technologies: (1) clearly define how the order of public speakers is determined and maintain a speaker's queue visible to members of the public; (2) clearly outline the process by which a speaker may cede time to another speaker; and (3) require that addendums to agenda items be made accessible to the public on the City Website as soon as they are made available to members of City Council.

#### FISCAL IMPACTS OF RECOMMENDATION

None.

#### CURRENT SITUATION AND ITS EFFECTS

This recommendation was approved by the Open Government Commission ("OGC") at its regular meeting of June 17, 2021.

M/S/C (Ching/Tsang) to adopt recommendation as written and submit to City Council  
Ayes: Newman, O'Donnell, Ching, Sheahan, Blome, Hynes, Humbert,  
Tsang, Smith; Noes: none; Abstain: none; Absent: none

This recommendation is provided by the OGC pursuant to its authority under BMC § 2.06.190.A.2 to "propose additional legislation or procedures that it deems advisable to ensure the City's compliance with [the Open Government Ordinance], the Brown Act, the Public Records Act, and the Lobbyist Registration Act, and advise the City Council

as to any other action or policy that it deems advisable to enhance open and effective government in Berkeley.”

### BACKGROUND

With the transition of Berkeley City Council meetings to teleconference technologies, the OGC has observed many difficulties that have reduced the public’s ability to effectively organize and voice their opinions in meetings held through Zoom. Because public participation is a necessary ingredient in democratic governance, the Open Government Commission recommends that the Berkeley City Council consider the changes below. We acknowledge that this recommendation is being made at a time when we may soon be able to return to in-person meetings. However, the OGC recognizes these technologies may continue to be used as a supplement, or may be put in place again in the future. Having policies readily available will ensure that the rights guaranteed to the public through the Berkeley City Council Rules of Procedure and Order are maintained.

First, unlike in-person meetings, where like-minded speakers could line up in an order of their choosing, there is currently no mechanism to maintain any sort of speaker’s queue that is visible to the public. Consequently, whereas members of the public may have an idea of when they will be called for public comment in an in-person meeting, this does not currently exist for members of the public in virtual meetings. We recommend that some mechanism or service be made available to the public to inform them of the order of speakers.

In a similar vein, during public comment, there have been instances where a member of the public may wish to cede time to another, permitted under the Rules of Procedure and Order. Through in-person meetings, this right could be exercised by simply lining up together, or by spontaneously offering to cede time when another speaker’s time has elapsed. However, with virtual meetings and the restricted abilities of participants in Zoom Webinars, there is no way to indicate the desire to cede time effectively (in either of the aforementioned cases). We recommend that a written policy be developed to address this issue and give clarity to the process of ceding time (a possible recommendation could be for the presiding officer to make an announcement at the beginning of the meeting, giving the public the opportunity to announce intent to cede time).

Lastly, we understand that supplemental materials are often introduced within the 72-hour public notice requirement, and often, such addendums are introduced within 24 hours of the meeting, or even during the meeting itself. This gives the public less time and opportunity to formulate opinions for public comment. Per the Brown Act, “they [agenda materials] must be made available to the public as soon as they are distributed to the members of the legislative body.” To fulfill this requirement, we request that all supplemental materials be made available on the City Website at the time that they are introduced to City Council, ideally 24 hours in advance. Adopting this practice will allow for civic engagement by all members of the public, including those who may have limited access to the internet.



ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

These recommendations aim to ensure the public has the ability to fully access and participate in City Council meetings.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager takes no position on the content of the recommendation. To assist the Council in its consideration, the City Manager is providing information on the proposed recommendation based on current City practices and policies. For the first recommendation, City staff has researched possible alternatives, and there is no feasible method within the Zoom platform to show the list of speakers to attendees. For the second recommendation, ceding of time is not permitted in virtual meetings pursuant to the City Council Rules of Procedure. For the third recommendation, City staff currently, and since the beginning of the pandemic, posts all supplemental and revised materials to the website with the agenda item at the same time the materials are made available to members of City Council.

CONTACT PERSON

Brad Smith, Chair, Open Government Commission (510) 981-6998  
Samuel Harvey, Secretary, Open Government Commission (510) 981-6998





Office of the City Manager

INFORMATION CALENDAR

September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Public Works Department

Subject: Implementation of California Senate Bill 1383 Short-Lived Climate Pollutants

SUMMARY

California Senate Bill 1383 (SB 1383), Short-Lived Climate Pollutants, was signed into law in September 2016 with the final rulemaking completed in November 2020. SB 1383 requires jurisdictions to adopt an ordinance or other enforceable mechanism that incorporates SB 1383 regulatory requirements prior to January 1, 2022. To comply with the state requirements, Public Works' Zero Waste Division will develop a proposed ordinance opting-in to the countywide Organics Reduction and Recycling Ordinance for Council consideration and adoption in November 2021.

SB 1383 is the most significant waste reduction mandate in the last 30 years. SB 1383 requires the state to reduce organic waste disposal by 75% and to increase edible food recovery for human consumption by 20% by 2025. SB 1383 regulations impose significant new requirements on local jurisdictions to achieve the ambitious state goals, including mandates for new local waste reduction policies and programs, procurement of recycled content paper and recovered organics, outreach and education, monitoring and record keeping, and enforcement.

CURRENT SITUATION AND ITS EFFECTS

SB 1383 mandates significant new requirements for all jurisdictions, haulers, generators, and edible food recovery organizations. The following table provides an overview of the major jurisdiction requirements, implementation timeline, and enforcement:

| <b>Program Requirement</b>                                        | <b>Implementation Date</b> |
|-------------------------------------------------------------------|----------------------------|
| Provide Organics Collection Service to All Residents & Businesses | January 1, 2022            |
| Establish Edible Food Recovery Program                            | January 1, 2022            |
| Conduct Outreach and Education                                    | February 1, 2022           |
| Procure Recycled Organic Products & Recycled Content Paper        | January 1, 2022            |
| Maintain Implementation Records & Annual Reporting                | January 1, 2022            |

|                                                                                           |                 |
|-------------------------------------------------------------------------------------------|-----------------|
| Adopt Ordinance to Implement Requirements                                                 | January 1, 2022 |
| Jurisdictions Monitor and Enforce Resident/Business Compliance (\$50-\$500 per violation) | January 1, 2024 |
| CalRecycle Enforces Jurisdiction Compliance (\$500-\$10,000 per violation/day)            | January 1, 2022 |

Each of the above requirements are discussed in more detail below, including potential impacts on the City's programs:

### **Provide Organics Collection Service to All Residents and Businesses**

SB 1383 requires organics (food waste, plant debris, paper products, etc.) collection service for all residents and businesses. Collection containers must comply with prescribed labeling and colors (gray for refuse, green for organics, blue for recyclables).

The City has a curbside organics collection program and is well-positioned to meet this organics collection service mandate. All Berkeley businesses and multifamily properties (five or more units) have been subject to the existing StopWaste's Mandatory Recycling Ordinance (MRO)<sup>1</sup> requirements for recycling and organics service. SB 1383 expands the service requirements to include single-family residences. Most City's residents and businesses already have these mandated recycling and organics collection services.

The City provided refuse, recycling, and organics collection carts and containers colors meet SB 1383 requirements with the single exception of brown metal (6 cubic yard sized) refuse bins and yellow roll-off debris boxes (6 to 40 cubic yard sizes) for which there are only a limited number. The City's residential split-body recycling carts are a compliant blue color. However, the brown lids for fiber recycling will need to be replaced with blue lids. Inventory purchased prior to January 1, 2022 doesn't need replacement until the end of its service life or by January 1, 2036, whichever comes first.

SB 1383 requires a ten (10) year planning horizon for sufficient organic processing capacity. The current compost contract with Recology Inc. was extended to March 1, 2025, and provides the City sufficient available capacity to meet this requirement.

### **Establish Edible Food Recovery Program**

The edible food recovery program requires reduction of edible food that goes to landfills and to feed populations in need. By January 1, 2022, each jurisdiction must establish an edible food recovery program for Tier 1 food generators, which are supermarkets, grocery stores 10,000 square feet or larger, food service providers, food distributors and wholesale food vendors. By 2024, the edible food recovery program must expand to

<sup>1</sup> <http://www.recyclingrulesac.org/ordinance-overview/>

include Tier 2 food generators (restaurants with 250 seats or 5,000 square feet or more, hotels with onsite food and 200 or more rooms, health facilities with onsite food and 100 or more beds, large events and venues, and local education facilities with on-site food facilities). Commercial food generators must recover surplus edible food and have a contract in place with a food recovery organization or service, and keep monthly records. Food recovery organizations must keep records and report annually to their jurisdictions the amount of food collected. Jurisdictions are required to monitor commercial food generator compliance and ensure edible food recovery organizations have enough capacity to process and distribute this surplus food, including the consideration of providing additional funding for this purpose.

StopWaste is taking the lead to coordinate edible food recovery organizations and services, and is conducting regional capacity planning with the Alameda County Community Food Bank, Berkeley Food Network, and other food recovery organizations. StopWaste is in conversations with the Alameda County Department of Environmental Health and the City's Environmental Health Division regarding the provision of education, monitoring, and enforcement by health inspectors during their regular onsite inspections of commercial edible food generators. This will require the City's Environmental Health Division of the Department of Health, Housing & Community Services to add these tasks to its permit implementation and enforcement activities.

### **Conduct Outreach and Education**

SB1383 requires annual education regarding organic waste reduction programs to be provided to all residents, businesses, edible food generators, and food recovery organizations. Haulers, which includes the City's Zero Waste Division, are responsible for educating their staff on the generator requirements annually. Haulers are also required to inspect and inform generators when container contamination is observed.

StopWaste is creating messaging and educational material templates. City staff will develop and disseminate additional Berkeley specific educational materials, such as bill inserts, social media posts, and direct mailers. City staff will also provide onsite outreach and education for businesses and multifamily residences. The City's new contract with the Ecology Center, Inc., for residential curbside recycling collection already increased funding for outreach and education program and materials to help meet this requirement for single and multifamily (up to 9 units) residences.

### **Procure Recycled Organic Products & Recycled Content Paper**

With an anticipated increase in recycled organic products due to the SB 1383 diversion requirements, CalRecycle requires jurisdictions to purchase 30% post-consumer recycled content paper products, such as office paper and janitorial supplies, and minimum quantities of recovered organic products. Examples of recovered organic products include: compost, mulch, renewable gas (RNG) derived from organic waste diverted from landfill, or electricity from biomass. RNG production in California is very

limited and most of the gas/electricity produced is already used or sold.<sup>2</sup> The City's electric power provider, East Bay Community Energy, includes less than one percent eligible biomass in its basic product (Bright Choice). Berkeley has opted for the 100% renewable product (Renewable 100), which includes zero electricity from biomass. The City produces mulch from tree trimmings that is reused onsite, and mulch is more expensive per ton than compost to purchase.

Therefore, it is anticipated that Berkeley will need to meet the bulk of its procurement mandate through compost purchases. Berkeley receives approximately 1,200 tons of finished compost annually per the City's current organics processing contract. SB 1383 will require Berkeley to procure more than 4,400 tons of additional compost annually. This additional cost is likely in the range of \$500,000.

City staff is working with StopWaste to identify local and regional strategies to address the procurement requirements. These strategies may include: compost application on City-owned land (capacity will need to be determined), developing agreements with direct service providers to apply compost on the City's behalf, and exploring pooled funding with other member agencies to apply compost on farmland. The application of compost on farmland will also advance the City's climate goals through soil carbon sequestration.

Most writing paper and janitorial supplies purchased by the City meet the 30% post-consumer content requirement. Staff is assessing the City's Environmental Purchasing Policy, internal Purchasing Administrative Regulations, and vendor contracts to determine if any changes are required. Internal outreach and education will be necessary to ensure all City Departments are meeting the paper purchasing requirements, including detailed recordkeeping and reporting.

### **Maintain Implementation Records & Annual Reporting**

SB 1383 significantly expands record keeping and annual CalRecycle reporting that includes:

- Organics collection service levels,
- Container monitoring and contamination inspections and notifications,
- Waivers granted for organics service,
- Education and outreach programs,
- Procurement records,
- Edible food generator program outreach and monitoring,
- Inspection and enforcement records, and
- Copies of ordinances, contracts, franchise agreements.

---

<sup>2</sup> <https://www2.calrecycle.ca.gov/Publications/Details/1652>

The implementation records must be updated regularly and maintained in one central electronic or physical location, which will require significant interdepartmental coordination. Staffing for the current Zero Waste Division (ZWD) is not sufficient to meet these records keeping and reporting requirements.

### **Adopt Ordinance to Implement Requirements**

SB 1383 requires that local jurisdictions adopt an implementing ordinance or similar enforceable mechanism consistent its regulatory requirements by January 1, 2022.

With member agency input, StopWaste adopted a countywide Organics Reduction and Recycling Ordinance (ORRO) on July 28, 2021. Jurisdictions can achieve compliance with SB1383 by opting-in to ORRO. The ORRO is based on the CalRecycle model ordinance and the prescriptive nature of SB 1383 regulations doesn't allow flexibility in the ordinance's content. ORRO requirements include:

- Single family homes, multifamily dwellings, and businesses must have organics collection service and sort properly;
- Businesses and multifamily properties must comply with requirements for color-coding and labeling containers;
- Haulers must assist with SB 1383 implementation, such as conducting route reviews (i.e., contamination monitoring) and providing compliance data;
- Commercial edible food generators must recover edible food, have a contract with food recovery organizations, and keep monthly records; and
- Food recovery organizations must keep records and report amount of food collected annually.

The ORRO authorizes both member agencies and StopWaste to serve as enforcement agencies, as appropriate. The ORRO also authorizes inspection of regulated entities for compliance and enforcement, including issuance of penalties and a process for appeals. The ORRO includes a few requirements from the existing Mandatory Recycling Ordinance (MRO) that were not included in the CalRecycle model ordinance, such as a requirement for generators to properly sort bottles and cans and a requirement for multifamily properties to provide color-coded bins for residents in shared areas. The ORRO repeals and supersedes the existing MRO.

ZWD staff will submit an ordinance for first reading by City Council in November 2021 to opt-in to ORRO and comply with all SB 1383 requirements. Any local requirements not covered in ORRO or through existing municipal codes will be included in the opt-in ordinance or through separate code or policy updates. Implementation of ORRO and the SB 1383 regulations will require engagement of many of the City's departments. ZWD staff has begun these conversations with the relevant departments.

### **Compliance Monitoring and Enforcement**

SB 1383 requires the adoption of ordinances, enforceable policies and procedures as well as the development of monitoring and enforcement programs. Enforcement of SB 1383 by all jurisdictions will include issuance of fines for non-compliance of up to \$500 per violation, depending on the severity of the violation. Monitoring and education must begin in 2022. Per SB1383, enforcement shall commence Jan 1, 2024.

Required jurisdiction monitoring and enforcement activities include:

- Conduct an annual administrative review of all commercial and multi-family account services to ensure subscription to recycling and organics service;
- Conduct annual route reviews on all refuse, recycling, and organics collection routes. Notify generators if contamination is found;
- Inspect Tier One (2022) and Tier Two (2024) Commercial Edible Food Generators and food recovery organizations/services;
- Provide waivers to non-compliant generators for de minimis amounts of organics or physical space constraints and review waivers every 5 years; and
- Issue Notice of Violations and penalties for non-compliance.

Similar to the current MRO, StopWaste has committed to serve as the lead enforcement agency for annual administrative subscription reviews, compliance notifications, waivers, and provision of service compliance enforcement for commercial and multifamily locations (5 units or more). Haulers, including the City's Zero Waste Division, will be responsible for route audits, contamination monitoring, contamination notifications, and enforcement. The City's ZWD collects 35 residential and commercial curbside collection routes, which will require annual audits. Additional staff will need to be hired to achieve full compliance with the monitoring, education, outreach, and enforcement requirements.

With SB 1383, CalRecycle has the authority to enforce compliance on municipalities. If CalRecycle determines a jurisdiction is violating one or more of the requirements, the jurisdiction will have 90 days to correct the violation. If additional time is needed, the time frame may be extended to 180 days. If violations are due to issues outside the control of the jurisdiction and may take more time to correct, the jurisdiction can be placed on a Corrective Action Plan which would allow 24 months to comply. Fines for non-compliance range from \$500 per violation up to \$10,000 per day.

## BACKGROUND

In September 2016, Governor Brown signed into law SB 1383 (Lara, Chapter 395, Statutes of 2016)<sup>3</sup> to establish methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants in various sectors of California's economy.

---

<sup>3</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160SB1383](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB1383)



The law codifies the California Air Resources Board's Short-Lived Climate Pollutant Reduction Strategy,<sup>4</sup> established pursuant to SB 605 (Lara, Chapter 523, Statutes of 2014),<sup>5</sup> to achieve reductions in the statewide emissions of short-lived climate pollutants.

Organics like food scraps, yard trimmings, paper, and cardboard are 50% of what goes into landfills.<sup>6</sup> Organic waste decomposing in landfills emits 20% of the state's methane, a climate super pollutant 84 times more potent than carbon dioxide.<sup>7</sup>

SB 1383 establishes targets to reduce disposal of organic waste by 50 percent by 2020 and 75 percent by 2025. It also requires that no less than 20 percent of edible food that is currently disposed be recovered for human consumption by 2025. The law grants CalRecycle the regulatory authority required to achieve the organic waste disposal reduction targets.

In 2019, City staff was highly engaged in this rulemaking process through a SB 1383 StopWaste working group to discuss the proposed regulations, submit written and in-person comments, and meet with CalRecycle. The City's PW and ZWD staff submitted two rounds of comments on the draft regulations in July and October 2019. CalRecycle completed the rulemaking process in October 2020 and the final regulations were approved by the Office of Administrative Law on November 3, 2020.

Since November 2020, StopWaste has coordinated with member agencies to facilitate implementation, including developing an ordinance to establish a uniform and comprehensive countywide system that complies with the SB 1383 regulations. With member agency input, the ACWMA Board adopted the Organics Reduction and Recycling Ordinance on July 28, 2021. ORRO incorporates elements of the County's existing Mandatory Recycling Ordinance and supersedes the MRO, which Berkeley opted-in to in 2012.

Compliance with SB 1383 is a City Strategic Plan Priority Project, advancing our goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Methane emissions resulting from the anaerobic decomposition of organic waste in landfills are a significant source of greenhouse gas emissions contributing to global climate change. By complying with the SB 1383 regulations, City residents and

---

<sup>4</sup> [https://ww2.arb.ca.gov/sites/default/files/2020-07/final\\_SLCP\\_strategy.pdf](https://ww2.arb.ca.gov/sites/default/files/2020-07/final_SLCP_strategy.pdf)

<sup>5</sup> [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140SB605](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB605)

<sup>6</sup> <https://www2.calrecycle.ca.gov/wastecharacterization/study>

<sup>7</sup> <https://www.calrecycle.ca.gov/organics/slcp/>

businesses will divert organics from the landfill and reduce methane emissions. SB 1383 compliance aligns with the City's Zero Waste and Climate Action Plan goals.

#### POSSIBLE FUTURE ACTION

In order to comply with the requirements of SB 1383, City Council will need to adopt an ordinance by January 1, 2022. Staff will submit a draft opt-in ordinance for City Council approval in November 2021.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The requirements of SB 1383 will have significant fiscal impacts to the City's Zero Waste Fund, but the full costs of these impacts are unknown and cannot be estimated at this time. Some of the anticipated cost impacts may include:

- At current market prices, it will cost in excess of \$500,000 annually to purchase and apply the required quantity of compost;
- Additional staff will be required to comply with SB 1383's route reviews, contamination minimization, outreach/education, monitoring and enforcement. This could require up to five (5) new positions;
- Additional funding may be necessary to expand edible food recovery infrastructure and capacity in Berkeley;
- These costs will need to be incorporated in future refuse service rate increases; and
- There are no direct costs to opt-in to ORRO, the countywide ordinance.

The Environmental Health Division plans to complete a comprehensive review and update of its fee schedule during FY22. In that process, staff will determine the range of permit issuance and enforcement activities that SB 1383 adds to the current scope of work, and recommend any related changes to the fee schedule.

#### CONTACT PERSON

Greg Apa, Solid Waste and Recycling Manager, Public Works, 510-981-6359  
Heidi Obermeit, Recycling Program Manager, Public Works, 510-981-6357

#### Attachments:

1: ACWMA 2021-02 Organics Reduction and Recycling Ordinance adopted July 28, 2021

**ORDINANCE 2021-02**  
**ORGANICS REDUCTION**  
**AND RECYCLING ORDINANCE**

**TABLE OF CONTENTS**

**SECTION 1. PURPOSE AND FINDINGS..... 1**  
**SECTION 2. TITLE OF ORDINANCE ..... 4**  
**SECTION 3. DEFINITIONS ..... 4**  
**SECTION 4. REQUIREMENTS FOR SINGLE-FAMILY GENERATORS..... 14**  
**SECTION 5. REQUIREMENTS FOR COMMERCIAL BUSINESS GENERATORS**  
**INCLUDING MULTI-FAMILY RESIDENTIAL DWELLINGS ..... 15**  
**SECTION 6. WAIVERS FOR COMMERCIAL BUSINESS GENERATORS..... 18**  
**SECTION 7. REQUIREMENTS FOR COMMERCIAL EDIBLE FOOD GENERATORS .... 19**  
**SECTION 8. REQUIREMENTS FOR FOOD RECOVERY ORGANIZATIONS AND**  
**SERVICES ..... 21**  
**SECTION 9. REQUIREMENTS FOR REGULATED HAULERS AND FACILITY**  
**OPERATORS ..... 23**  
**SECTION 10. REQUIREMENTS FOR SELF-HAULERS ..... 25**  
**SECTION 11. INSPECTIONS AND INVESTIGATIONS ..... 26**  
**SECTION 12. ENFORCEMENT ..... 27**  
**SECTION 13. LOCAL REGULATION AND OPT-OUT AND OPT-IN PROVISIONS.....30**  
**SECTION 14. SEVERABILITY.....30**  
**SECTION 15. EFFECTIVE DATE AND REPEAL OF ORDINANCE 2012-1 ..... 31**

## ORDINANCE 2021-01: ORGANICS REDUCTION AND RECYCLING ORDINANCE

The Board of the Alameda County Waste Management Authority (“WMA”) hereby ordains as follows:

### SECTION 1. PURPOSE AND FINDINGS

- (a) The purpose of this Ordinance is to reduce the amount of organic and recyclable materials deposited in landfills from commercial and residential generators. This Ordinance repeals WMA Ordinance 2012-1 (An Ordinance Requiring Actions to Reduce Landfilling of Recyclable and Organic Solid Wastes from Businesses, Multifamily Residences, and Self-Haulers) in its entirety in order to provide a single and comprehensive framework to achieve its purposes and comply with various state laws as set forth below.
- (b) The WMA has the power to enact this Ordinance pursuant to the Joint Exercise of Powers Agreement for Waste Management (“JPA”). The JPA grants the WMA the power, duty, and responsibility to prepare, adopt, revise, amend, administer, enforce, and implement the Countywide Integrated Waste Management Plan (“CoIWMP”), and pursuant to Section 5.m of the JPA, the power to adopt ordinances necessary to carry out the purposes of the JPA.
- (c) The reduction of organic and recyclable materials deposited in landfills is necessary to carry out the purposes of the JPA and implement the CoIWMP, including the following goals and objectives:
  - Goal 1 is to “maintain adequate disposal capacity and minimize landfill impacts.” Objectives 1.1 and 1.3 prioritize preserving landfill capacity in the short run through reducing landfilled materials, and aim to ultimately eliminate landfills altogether, through elimination of waste and effective recovery of materials.
  - Goal 2 is to “maximize environmental benefits by balancing high volume of recovery with related considerations such as quality of commodities, operating impacts of facilities, and other environmental impacts of programs.” Objectives 2.1 to 2.5 affirm the need for infrastructure to manage diversion of organics, minimize environmental impacts of infrastructure, support markets for recovered materials, and reduce contamination.
  - Goal 3 is to “shift from managing discards to reducing consumption, managing materials at their highest and best use, and addressing environmental impacts across the full life cycle of materials and products.”

Objectives 3.1 and 3.2 prioritize managing materials at their highest and best use and prioritize incorporating climate impacts into WMA programs.

- Goal 4 is to “inform and engage the public in waste reduction activities.” Objectives 4.2 and 4.3 provide for education of Alameda County residents, schools and businesses and emphasize the need for the public to take action and adopt positive waste reduction habits.
  - Goal 5 is to “develop and administer programs and address emerging issues in partnership with member agencies, the private sector, and other key stakeholders.” Objective 5.1 identifies the need for organizational structures that foster inter-jurisdictional cooperation.
- (d) State recycling law, Assembly Bill 939 of 1989, the California Integrated Waste Management Act of 1989 (approved by the Governor of the State of California on September 29, 1989, which among other things, added Division 30 (Section 40000, et seq.) to the Public Resources Code, as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) Solid Waste generated in their jurisdictions to the maximum extent feasible before any incineration or landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment.
- (e) State recycling law, Assembly Bill 341 of 2011 (approved by the Governor of the State of California on October 5, 2011, which amended Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public Resources Code, as amended, supplemented, superseded and replaced from time to time), places requirements on businesses and multi-family property owners that generate a specified threshold amount of Solid Waste to arrange for recycling service and requires jurisdictions to implement a Mandatory Commercial Recycling program.
- (f) State organics recycling law, Assembly Bill 1826 of 2014 (approved by the Governor of the State of California on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time), requires businesses and multi-family property owners that generate a specified threshold amount of Solid Waste, recycling, and Organic Waste per week to arrange for recycling service for those materials, requires counties and cities to implement a recycling program to divert Organic Waste from businesses subject to the law, and to implement a Mandatory Commercial Organics Recycling program.
- (g) State organics recycling law, Senate Bill 1383 of 2016, the Short-lived Climate Pollutant Reduction Act of 2016 (approved by the Governor of the State of

California on September 19, 2016, which added Sections 39730.5, 39730.6, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, as amended, supplemented, superseded, and replaced from time to time), took effect on January 1, 2017 and sets Statewide Organic Waste disposal reduction targets of 50 percent by 2020 and 75 percent by 2025, based on the 2014 organics waste disposal baseline, set forth in Section 39730.6 of the Health and Safety Code, and requires CalRecycle to develop regulations to reduce organics in landfills as a source of methane. The SB 1383 Regulations place requirements on multiple entities, including counties, cities, residential households, Commercial Businesses (including Multi-Family Residential Dwellings), Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Organizations, and Food Recovery Services to support achievement of statewide Organic Waste disposal reduction targets with compliance required beginning January 1, 2022.

- (h) In furtherance of the food recovery objectives of the laws noted above and to reduce legal risks associated with food recovery, the State food donation law, Assembly Bill 1219 of 2017, the California Good Samaritan Food Donation Act of 2017 (approved by the Governor of the State of California on October 9, 2017, which amended Section 1714.25 of the Civil Code, amended Section 58502 of, and repealed Section 58506 of, the Food and Agricultural Code, and amended Sections 114432, 114433, and 114434 of, and added Section 114435 to, the Health and Safety Code, as amended, supplemented, superseded and replaced from time to time), provides additional protections for entities that donate and distribute food for human consumption.
- (i) By January 1, 2022, the SB 1383 Regulations require jurisdictions to adopt and enforce an ordinance or other enforceable mechanism to implement relevant provisions of the SB 1383 Regulations concerning regulation of organic waste collection services, generators of organic waste, waste haulers, and generators and processors of edible food, together with enforcement mechanisms and administrative civil penalties for violations of local regulations.
- (j) It is in the public interest for participants in the Alameda County solid waste and recycling systems—including cities, the County, sanitary districts, haulers, processors, facility operators, businesses, institutions, the public, and the WMA—to work together to advance the goals in the state legislation noted above, as well as those in the ColWMP.
- (k) This Ordinance is adopted pursuant to CalRecycle’s SB 1383 Regulations. The SB 1383 Regulations were the subject of a program environmental impact report (EIR) prepared by CalRecycle, and except for provisions which maintain the already established requirements of the WMA’s Ordinance Requiring Actions to Reduce Landfilling of Recyclable and Organic Solid Wastes from Businesses, Multifamily Residences, and Self-Haulers (Ordinance 2012-1; also known as the Mandatory Recycling Ordinance), the activities to be carried out under this Ordinance are entirely within the scope of the SB 1383 Regulations and that EIR.

No mitigation measures identified in the EIR are applicable to WMA's enactment of this Ordinance. Moreover, none of the conditions requiring a subsequent or supplemental EIR, as described in Public Resources Code Section 21166 and California Environmental Quality Act (CEQA) Guidelines Sections 15162 and 15163, have occurred. The EIR therefore adequately analyzes any potential environmental effects of the Ordinance and no additional environmental review is required. On a separate and independent basis, the Ordinance is exempt from CEQA pursuant to Section 15308, Class 8 of the CEQA Guidelines as an action that will not have a significant impact on the environment and as an action taken by a regulatory agency for the protection of the environment, specifically, for the protection of the climate. There are no unusual circumstances that would cause this Ordinance to have a significant effect on the environment

## **SECTION 2. TITLE OF ORDINANCE**

This Ordinance is titled "Organics Reduction and Recycling Ordinance".

## **SECTION 3. DEFINITIONS**

The following definitions govern the use of terms in this Ordinance:

- (a) "Alameda County" means all of the geographical areas located within the incorporated and unincorporated areas of Alameda County whereas "County of Alameda" or "County" refers to the public entity, a body corporate and politic of the State of California.
- (b) "Back-Haul" means generating and transporting Organic Waste to a destination owned and operated by a generator using the generator's own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).
- (c) "C&D" means construction and demolition debris.
- (d) "CalRecycle" means California's Department of Resources Recycling and Recovery, which is the state agency designated with responsibility for developing, implementing, and enforcing the SB 1383 Regulations.
- (e) "California Code of Regulations" or "CCR" means the State of California Code of Regulations. CCR references in this Ordinance are preceded with a number that refers to the relevant Title of the CCR (e.g., "14 CCR" refers to Title 14 of CCR).
- (f) "Certification of Recycling Service Form" means documentation certifying that a Commercial Business does not subscribe to collection services for Compost Containers and/or Recycling Containers because the Commercial Business has arranged for collection of its Source Separated Compost Container Organic Waste and/or Source Separated Recyclable Materials by self-hauling, Back-Haul,

contracting with a third party hauler, or shares service with another Commercial Business.

- (g) “Commercial Business” or “Commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, institution or association (whether incorporated or unincorporated or for-profit or nonprofit), strip mall, industrial facility, or a Multi-Family Residential Dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6).
- (h) “Commercial Edible Food Generator” includes a Tier One or a Tier Two Commercial Edible Food Generator as defined herein or as otherwise defined in 14 CCR Section 18982(a)(73) and (a)(74). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators pursuant to 14 CCR Section 18982(a)(7).
- (i) “Community Composting” means any activity that composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one time does not exceed 100 cubic yards and 750 square feet, as specified in 14 CCR Section 17855(a)(4); or, as otherwise defined by 14 CCR Section 18982(a)(8).
- (j) “Compliance Review” means a review of records by the Enforcement Agency to evaluate compliance with this Ordinance.
- (k) “Compost” has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the effective date of this Ordinance, that “Compost” means the product resulting from the controlled biological decomposition of organic Solid Waste that is Source Separated from the municipal Solid Waste stream, or which is separated at a centralized facility.
- (l) “Compost Container” has the same meaning as “Green Container” in 14 CCR Section 18982(a)(29) and shall be used for the purpose of storage and collection of Source Separated Compost Container Organic Waste.
- (m) “Compostable Plastics” or “Compostable Plastic” means plastic materials that meet the ASTM D6400 and D6868 standards for compostability and are certified by the Biodegradable Products Institute (BPI) or similar third-party approved by the WMA, and are approved by the Member Agency for placement in the Compost Container.
- (n) “Container Contamination” or “Contaminated Container” means a container, regardless of type, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).
- (o) “Designee” means an entity that the WMA or a Member Agency contracts with or otherwise arranges to carry out or assist with any of the WMA’s or Member Agency’s responsibilities for compliance with the SB 1383 Regulations or



administration or enforcement of this Ordinance. A Designee may be a government entity, a private entity, or a combination of those entities.

- (p) “Edible Food” means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this Ordinance or as otherwise defined in 14 CCR Section 18982(a)(18), “Edible Food” is not Solid Waste if it is recovered and not discarded. Nothing in this Ordinance or in 14 CCR, Division 7, Chapter 12 requires or authorizes the Recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code, as codified in the Health and Safety Code Section 113700, et seq.
- (q) “Enforcement Action” means an action of the relevant Enforcement Agency to address non-compliance with this Ordinance including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.
- (r) “Enforcement Agency” means an entity with the authority to enforce part or all of this Ordinance as specified herein. Employees and agents of an Enforcement Agency may carry out inspections and enforcement activities pursuant to this Ordinance. Nothing in this Ordinance authorizing an entity to enforce its terms shall require that entity to undertake such enforcement except as agreed to by that entity.
- (s) “Excluded Waste” means hazardous substances, hazardous waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from a Member Agency and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in the reasonable opinion of the Member Agency or a Regulated Hauler operating in that Member Agency’s jurisdiction would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose the Member Agency or a Regulated Hauler to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe collection, processing, recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the Public Resources Code. Excluded Waste does not include used motor oil and filters, household batteries, universal wastes, and/or latex paint when such materials are defined as allowable materials for collection through the Member Agency’s collection programs and the generator or customer has properly placed the materials for collection pursuant to instructions provided by the Member Agency or the Regulated Hauler providing service to the generator.

- (t) “Food Distributor” means a company that distributes food to entities including, but not limited to, Supermarkets and Grocery Stores, or as otherwise defined in 14 CCR Section 18982(a)(22).
- (u) “Food Facility” has the same meaning as in Section 113789 of the Health and Safety Code.
- (v) “Food Recovery” means actions to collect and distribute food for human consumption that otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).
- (w) “Food Recovery Organization” means an entity that engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities or as otherwise defined in 14 CCR Section 18982(a)(25), including, but not limited to:
  - (1) A food bank as defined in Section 113783 of the Health and Safety Code;
  - (2) A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,
  - (3) A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

A Food Recovery Organization is not a Commercial Edible Food Generator for the purposes of this Ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7). If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this Ordinance.

- (x) “Food Recovery Service” means a person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery, or as otherwise defined in 14 CCR Section 18982(a)(26). A Food Recovery Service is not a Commercial Edible Food Generator for the purposes of this Ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).
- (y) “Food Scraps” means all edible or inedible food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, coffee grounds, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.
- (z) “Food Service Provider” means an entity primarily engaged in providing food services to institutional, governmental, Commercial, or industrial locations of others based on contractual arrangements with these types of organizations, or as otherwise defined in 14 CCR Section 18982(a)(27).

- (aa) “Food-Soiled Paper” is compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, napkins, and pizza boxes, and is approved by the applicable the Member Agency for placement in the Compost Container.
- (bb) “Food Waste” means Food Scraps, Food-Soiled Paper, and Compostable Plastics in combination or separately.
- (cc) “Grocery Store” means a store primarily engaged in the retail sale of canned food; dry goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and any area that is not separately owned within the store where the food is prepared and served, including a bakery, deli, and meat and seafood departments, or as otherwise defined in 14 CCR Section 18982(a)(30).
- (dd) “Hauler Route” means the designated itinerary or sequence of stops for each segment of a Member Agency’s collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).
- (ee) “Health Facility” has the same meaning as in Section 1250 of the Health and Safety Code.
- (ff) “High Diversion Organic Waste Processing Facility” means a facility that is in compliance with the reporting requirements of 14 CCR Section 18815.5(d) and meets or exceeds an annual average mixed waste organic content Recovery rate of 50 percent between January 1, 2022 and December 31, 2024, and 75 percent after January 1, 2025, as calculated pursuant to 14 CCR Section 18815.5(e) for Organic Waste received from the “Mixed waste organic collection stream” as defined in 14 CCR Section 17402(a)(11.5); or, as otherwise defined in 14 CCR Section 18982(a)(33).
- (gg) “Hotel” has the same meaning as in Section 17210 of the Business and Professions Code.
- (hh) “Inspection” means an Enforcement Agency’s electronic or on-site review of records, containers, and an entity’s collection, handling, recycling, or landfill disposal of Organic Waste or Edible Food handling to determine if the entity is complying with requirements set forth in this Ordinance, or as otherwise defined in 14 CCR Section 18982(a)(35).
- (ii) “Landfill Container” has the same meaning as “Gray Container” in 14 CCR Section 18982(a)(28) and shall be used for the purpose of storage and collection of Landfill Container Waste.
- (jj) “Landfill Container Waste” means Solid Waste that is collected in a Landfill Container that is part of a three-container or three-plus container collection service that prohibits the placement of Organic Waste in the Landfill Container as specified in 14 CCR Sections 18984.1(a) and (b), or as otherwise defined in 14 CCR Section

17402(a)(6.5). (Three container collection service refers to service collecting materials in Landfill Containers, Organics Containers, and Recycling Containers.)

- (kk) “Large Event” means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this Ordinance. For the purposes of this definition of Large Event, “local agency” means all public agencies except those that are not subject to the regulatory authority of the Member Agency.
- (ll) “Large Venue” means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation. For purposes of this Ordinance and implementation of 14 CCR, Division 7, Chapter 12, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this Ordinance and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this Ordinance.
- (mm) “Member Agency” means a party to the JPA. Current member agencies are the County of Alameda; the Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, and Union City; and the Castro Valley and Oro Loma Sanitary Districts. A reference to a Member Agency means the Member Agency within whose boundaries the regulated Organic Waste Generator, Self-Hauler, Regulated Hauler, Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity resides or operates. The Member Agency boundaries for the purpose of administering and enforcing this Ordinance are:
- (1) The legal boundaries of each of the 14 incorporated municipalities within Alameda County, except those portions of the Cities of Hayward and San Leandro that are within the boundaries of the Oro Loma Sanitary District.
  - (2) The legal boundaries of each of the Castro Valley and Oro Loma Sanitary Districts.
  - (3) The unincorporated sections of the County not included within the above.

- (nn) “Mixed Waste Organic Collection Stream” or “Mixed Waste” means Organic Waste collected in a container that is required by 14 CCR Sections 18984.1, 18984.2 or 18984.3 to be taken to a High Diversion Organic Waste Processing Facility or as otherwise defined in 14 CCR Section 17402(a)(11.5).
- (oo) “Multi-Family Residential Dwelling” or “Multi-Family” means of, from, or pertaining to residential premises with five or more dwelling units. Multi-Family premises are considered a distinct type of Commercial Business for the purposes of implementing this Ordinance. Consistent with the SB 1383 Regulations, residential premises that consist of fewer than five units are not “Multi-Family” and instead are “Single-Family” for the purposes of implementing this Ordinance. Multi-Family premises do not include hotels, motels, or other transient occupancy facilities, which are considered other types of Commercial Businesses.
- (pp) “Non-Compostable Paper” includes, but is not limited to, paper that is coated, lined or treated with a non-compostable material, or otherwise unacceptable to the compostable materials handling facility processing the material.
- (qq) “Non-Organic Recyclables” means non-putrescible and non-hazardous recyclable materials including but not limited to recyclable food and beverage glass containers, metal (aluminum and steel) food and beverage cans, HDPE (high density polyethylene) bottles and PET (polyethylene terephthalate) bottles, and other materials specified in 14 CCR Section 18982(a)(43).
- (rr) “Notice of Violation” means a notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties, or as otherwise defined in 14 CCR Section 18982(a)(45) or further explained in 14 CCR Section 18995.4.
- (ss) “Organic Waste” means Solid Waste containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).
- (tt) “Organic Waste Generator” means a Person or entity that is responsible for the initial creation of Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(48).
- (uu) “Paper Products” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).
- (vv) “Person” includes an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever, or as otherwise defined in Public Resources Code Section 40170.

- (ww) "Printing and Writing Paper" include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).
- (xx) "Prohibited Container Contaminants" includes all of the following: (i) materials placed in the Recycling Container that are not identified as acceptable Source Separated Recyclable Materials for the Member Agency's Recycling Container; (ii) materials placed in the Compost Container that are not identified as acceptable Source Separated Compost Container Organic Waste for the Member Agency's Compost Container; (iii) materials placed in the Landfill Container that are acceptable Source Separated Recyclable Materials and/or acceptable Source Separated Compost Container Organic Waste that can be placed in the Member Agency's Compost Container and/or Recycling Container; and, (iv) Excluded Waste placed in any container.
- (yy) "Recovery" means any activity or process described in 14 CCR Section 18983.1(b), or as otherwise defined in 14 CCR Section 18982(a)(49).
- (zz) "Recycling Container" has the same meaning as "Blue Container" in 14 CCR Section 18982(a)(5) and shall be used for the purpose of storage and collection of Source Separated Recyclable Materials and Source Separated Recycling Container Organic Waste.
- (aaa) "Regulated Hauler" means a Person that collects Solid Waste (other than Solid Waste generated by a permitted building project) originating in Alameda County from Compost Containers, Recycling Containers, and/or Landfill Containers, and does so under a contract, franchise agreement, or permit with the WMA or a Member Agency. A Member Agency that collects Solid Waste within its boundaries is not a Regulated Hauler with respect to that collection.
- (bbb) "Remote Monitoring" means the use of mechanical or electronic devices to identify the types of materials in Recycling Containers, Compost Containers, and/or Landfill Containers for purposes of identifying the quantity of materials in containers (level of fill) and/or presence of Prohibited Container Contaminants.
- (ccc) "Restaurant" means an establishment primarily engaged in the retail sale of food and drinks for on-premises or immediate consumption, or as otherwise defined in 14 CCR Section 18982(a)(64).
- (ddd) "Route Review" means a visual Inspection of containers along a Hauler Route for the purpose of determining Container Contamination, and may include mechanical or electronic Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).

- (eee) "SB 1383" means Senate Bill 1383 of 2016, the Short-lived Climate Pollutant Reduction Act of 2016.
- (fff) "SB 1383 Regulations" means or refers to, for the purposes of this Ordinance, the Short-Lived Climate Pollutants: Organic Waste Reduction regulations developed by CalRecycle and adopted in 2020 that created 14 CCR, Division 7, Chapter 12 and amended portions of regulations of 14 CCR and 27 CCR.
- (ggg) "Self-Hauler" means a Person, who hauls Solid Waste, Organic Waste or recyclable material they have generated to another Person for disposition as allowed by the Member Agency and otherwise in accordance with all applicable laws. Self-Hauler also includes a Person who Back-Hauls such materials, and as otherwise defined in 14 CCR Section 18982(a)(66).
- (hhh) "Single-Family" means, for purposes of this Ordinance, of, from, or pertaining to any residential premises with fewer than five units.
- (iii) "Solid Waste" has the same meaning as defined in Public Resources Code Section 40191, which defines Solid Waste as all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:
  - (1) Hazardous waste, as defined in the Public Resources Code Section 40141.
  - (2) Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code).
  - (3) Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in Public Resources Code Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to Division 30 of the Public Resources Code.
- (jjj) "Source Separated" means materials, including commingled recyclable materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of this Ordinance,

Source Separated shall include separation of materials by the generator, property owner, property owner's employee, property manager, or property manager's employee into different containers for the purpose of collection such that Source Separated materials are separated from Landfill Container Waste or other Solid Waste for the purposes of collection and processing.

- (kkk) "Source Separated Compost Container Organic Waste" means Source Separated Organic Waste that can be placed in a Compost Container that is specifically intended for the separate collection of Organic Waste by the generator, excluding Source Separated Recycling Container Organic Waste, carpets, Non-Compostable Paper, and textiles.
- (lll) "Source Separated Recyclable Materials" means Source Separated Non-Organic Recyclables and Source Separated Recycling Container Organic Waste.
- (mmm) "Source Separated Recycling Container Organic Waste" means Source Separated Organic Wastes that can be placed in a Recycling Container that is limited to the collection of those Organic Wastes and Non-Organic Recyclables, as defined herein or as otherwise defined in Sections 18982(a)(43) and 18982(a)(46). Source Separated Recycling Container Organic Waste shall include materials as determined by the Member Agency and includes unsoiled Paper Products and Printing and Writing Paper.
- (nnn) "Supermarket" means a full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items, or as otherwise defined in 14 CCR Section 18982(a)(71).
- (ooo) "Tier One Commercial Edible Food Generator" means a Commercial Edible Food Generator that is one of the following:
  - (1) Supermarket.
  - (2) Grocery Store with a total facility size equal to or greater than 10,000 square feet.
  - (3) Food Service Provider.
  - (4) Food Distributor.
  - (5) Wholesale Food Vendor.

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this Ordinance.

- (ppp) "Tier Two Commercial Edible Food Generator" means a Commercial Edible Food Generator that is one of the following:



- (1) Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- (2) Hotel with an on-site Food Facility and 200 or more rooms.
- (3) Health facility with an on-site Food Facility and 100 or more beds.
- (4) Large Venue.
- (5) Large Event.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition as to entities subject to the regulatory authority of a Member Agency, the definition in 14 CCR Section 18982(a)(74) shall apply to this Ordinance.

- (qqq) "Wholesale Food Vendor" means a business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination, or as otherwise defined in 14 CCR Section 189852(a)(76).
- (rrr) "WMA" means the Alameda County Waste Management Authority.

#### **SECTION 4. REQUIREMENTS FOR SINGLE-FAMILY GENERATORS**

Except Single-Family Organic Waste Generators that meet the Self-Hauler requirements in Section 10 of this Ordinance and/or that are located in a census tract for which CalRecycle has issued a low population waiver (as described in 14 CCR Section 18984.12), Single-Family generators shall:

- (a) Be subscribed to the collection service(s) approved by the Member Agency for Compost Containers, Recycling Containers, and Landfill Containers. A Member Agency shall have the right to review the number and size of a generator's containers to evaluate the adequacy of capacity provided for each type of collection service and to review the separation of materials and containment of materials. A Single-Family generator shall adjust its service level for its collection services as requested by the Member Agency in order to meet the standards set forth in this Ordinance. Generators may manage their Organic Waste by preventing or reducing their Organic Waste, managing Organic Waste on site, and/or using a Community Composting site pursuant to 14 CCR Section 18984.9(c) to the extent permitted by other applicable laws.
- (b) Participate in the Organic Waste collection service(s) approved by the Member Agency by placing designated materials in designated containers as described below, and not placing Prohibited Container Contaminants in collection containers. Generator shall place Source Separated Compost Container Organic Waste,

including Food Waste, in the Compost Container; Source Separated Recyclable Materials in the Recycling Container; and Landfill Container Waste in the Landfill Container. Generators shall not place materials designated for the Landfill Container into the Compost Container or the Recycling Container.

- (c) The Enforcement Agency for the provisions of this Section 4 is the Member Agency and any other Designee of the Member Agency.

## **SECTION 5. REQUIREMENTS FOR COMMERCIAL BUSINESS GENERATORS INCLUDING MULTI-FAMILY RESIDENTIAL DWELLINGS**

Commerical Business Organic Waste Generators, including Multi-Family Residential Dwellings, shall:

- (a) Except Commercial Businesses that meet the Self-Hauler requirements in Section 10 of this Ordinance, or that meet waiver requirements in Section 6 of this Ordinance, or that are located in a census tract for which CalRecycle has issued a low population waiver (as described in 14 CCR Section 18984.12):
  - (1) Be subscribed to collection service(s) approved by the Member Agency for Compost Containers, Recycling Containers, and Landfill Containers and comply with requirements of those services as described below. A Member Agency shall have the right to review the number and size of a generator's containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, Commercial Businesses shall adjust their service level for their collection services as requested by the Member Agency.
  - (2) Participate in collection services approved by the Member Agency for Organic Waste collection service(s) by placing designated materials in designated containers as described below. Generator shall place Source Separated Compost Container Organic Waste, including Food Waste, in the Compost Container; Source Separated Recyclable Materials in the Recycling Container; and Landfill Container Waste in the Landfill Container. Generator shall not place materials designated for the Landfill Container into the Compost Container or Recycling Container.
- (b) Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming with Sections 5(c)(1), 5(c)(2), and 5(d) below) for employees, contractors, tenants, and customers, consistent with the Recycling Container, Compost Container, and Landfill Container collection service or, if self-hauling, per the Commercial Businesses' instructions to support its compliance with its self-haul program, in accordance with Section 10.

- (c) Excluding Multi-Family Residential Dwellings, provide containers for the collection of Source Separated Compost Container Organic Waste and Source Separated Recyclable Materials generated by that business in all areas where the Commercial Business provides disposal containers for employees, contractors, tenants, customers and other users of the premises (“User Disposal Containers”). Such User Disposal Containers do not need to be provided in restrooms. If a Commercial Business does not generate, or has a waiver pertaining to, any of the materials that would be collected in one type of User Disposal Container, then the business does not have to provide that particular type of container in all areas where User Disposal Containers are provided. Pursuant to 14 CCR Section 18984.9(b), the User Disposal Containers provided by the business shall have either:
- (1) A body or lid that conforms with the following container colors, with either lids conforming to these color requirements or bodies conforming to these color requirements, or both lids and bodies conforming to these color requirements: gray or black containers for Landfill Container Waste, blue containers for Source Separated Recyclable Materials, and green containers for Source Separated Compost Container Organic Waste. Notwithstanding the foregoing, a Commercial Business is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the color requirements of this Section 5(c)(1) prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.
  - (2) Container labels that include language or graphic images, or both, indicating the primary materials accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted and primary materials prohibited in the container. Pursuant 14 CCR Section 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.
- (d) For Multi-Family Residential Dwellings, provide containers for the collection of Source Separated Compost Container Organic Waste and Source Separated Recyclable Materials in all common areas where those materials are being generated and disposal containers are provided for tenants, and in areas for internal consolidation of materials that are later deposited in Organics Containers, Recycling Containers, and Landfill Containers for collection by Regulated Haulers. Such containers do not need to be provided in restrooms accessible from common areas of the Multi-Family Dwelling. Such containers shall comply with the color and labeling requirements specified in subsections (c)(1) and (c)(2) above.
- (e) To the extent practical through education, training, inspection, and/or other measures, prohibit employees from placing materials in a container not designated for those materials per the Recycling Container, Compost Container, and Landfill Container collection service or, if self-hauling, per the Commercial Businesses’

instructions to support its compliance with its self-haul program, in accordance with Section 10.

- (f) Periodically inspect Recycling Containers, Compost Containers, and Landfill Containers for contamination and inform employees if containers are contaminated and of the requirements to keep contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3).
- (g) Annually provide information to employees, contractors, tenants, building residents, and customers about Organic Waste Recovery requirements and about proper sorting of Source Separated Compost Container Organic Waste and Source Separated Recyclable Materials.
- (h) Provide information before or within fourteen days of new occupation of the premises to new tenants and no less than fourteen days before tenants move out of the premises, unless a tenant does not provide fourteen or more days' notice to before moving out, that describes requirements to keep Source Separated Compost Container Organic Waste and Source Separated Recyclable Materials separate from each other and from Landfill Container Waste and the location of containers and the rules governing their use at the property.
- (i) Provide or arrange access for the Enforcement Agency to their properties during all Inspections conducted in connection with this Ordinance and timely provide documents requested by the Enforcement Agency to confirm compliance with the requirements of this Ordinance.
- (j) Accommodate and cooperate with any Remote Monitoring program established by a Regulated Hauler or a Member Agency for Inspection of the types of materials placed in containers for Prohibited Container Contaminants to evaluate generator's compliance with Section 5(a)(1).
- (k) At Commercial Business' option and subject to approval by the Enforcement Agency, implement its own Remote Monitoring program for self-inspection of the types of materials placed in Recycling Containers, Compost Containers, and Landfill Containers for the purpose of monitoring the contents of containers to determine appropriate levels of service and to identify Prohibited Container Contaminants. Purchase and maintenance of the Remote Monitoring program shall be the responsibility of the Commercial Business.
- (l) Nothing in this Section prohibits a generator from preventing or reducing waste generation, managing Organic Waste on site, or using a Community Composting site pursuant to 14 CCR Section 18984.9(c) to the extent permitted by other applicable laws.
- (m) The Enforcement Agency for the provisions of this Section 5 is the Member Agency and, if authorized by the Member Agency, the WMA, and any other Designee of the Member Agency.

## SECTION 6. WAIVERS FOR COMMERCIAL BUSINESS GENERATORS

- (a) De Minimis Waivers. Except for Multi-Family Residential Dwellings, the Enforcement Agency may waive a Commercial Business' obligation to comply with some or all of the Organic Waste collection service requirements of this Ordinance if the Commercial Business provides documentation demonstrating that the business generates below a certain amount of Organic Waste material, as described in Section 6(a)(2) below. A Commercial Business requesting a de minimis waiver shall:
- (1) Submit an application to the Enforcement Agency specifying the service or requirements for which it is requesting a waiver.
  - (2) Provide documentation with the application that either:
    - (A) The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a Recycling Container or Compost Container comprises less than 20 gallons per week per applicable container of the business' total waste; or,
    - (B) The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a Recycling Container or Compost Container comprises less than 10 gallons per week per applicable container of the business' total waste.
    - (C) For the purposes of subsections (A) and (B) above, total Solid Waste shall be the sum of weekly Landfill Container Waste, Source Separated Recyclable Materials, and Source Separated Compost Container Organic Waste measured in cubic yards.
  - (3) If the waiver is granted, notify the Enforcement Agency granting the waiver if circumstances change such that Commercial Business's Organic Waste exceeds threshold required for waiver, in which case the waiver will be rescinded.
  - (4) If the waiver is granted, provide written verification of continued eligibility for de minimis waiver to the Enforcement Agency every 5 years.
- (b) Physical Space Waivers. The Enforcement Agency may waive a Commercial Business' or property owner's (including a Multi-Family Residential Dwelling's) obligation to comply with some or all of the recyclable materials and/or Organic Waste collection service requirements of this Ordinance if the Enforcement Agency has evidence from a Regulated Hauler, licensed architect, licensed engineer, or other Person authorized by the Enforcement Agency demonstrating that the

premises lacks adequate space for the collection containers required for compliance with the Organic Waste collection requirements of Section 5.

A Commercial Business requesting a physical space waiver shall:

- (1) Submit an application to the Enforcement Agency specifying the service or requirements for which it is requesting a waiver.
  - (2) Provide documentation with the application that the premises lacks adequate space for Recycling Containers and/or Compost Containers, which shall include documentation from its Regulated Hauler, licensed architect, licensed engineer, or other Person authorized by the Enforcement Agency.
  - (3) If the waiver is granted, notify the Enforcement Agency granting the waiver if the Commercial Business' physical space configurations or amounts of Solid Waste generation change, in which case the waiver may be rescinded.
  - (4) If the waiver is granted, provide written verification to the Enforcement Agency of continued eligibility for a physical space waiver every five years.
- (c) Collection Frequency Waiver. The Enforcement Agency, at its discretion and in accordance with 14 CCR Section 18984.11(a)(3), may allow the owner or tenant of any residence, premises, business establishment or industry that subscribes to the Member Agency's three- or, if relevant, three-plus container Organic Waste collection service to arrange for the collection of their Recycling Container, Landfill Container, or both once every fourteen days, rather than once per week.
- (d) The Enforcement Agency for the provisions of this Section 6 is the Member Agency and, if authorized by the Member Agency, the WMA, and any other Designee of the Member Agency.

## **SECTION 7. REQUIREMENTS FOR COMMERCIAL EDIBLE FOOD GENERATORS**

- (a) Tier One Commercial Edible Food Generators must comply with the requirements of this Section 7 commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3 or such later deadline established by State law or regulations.
- (b) Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require Food Facilities operating at the Large Venue or Large Event to comply with the requirements of this Section, commencing January 1, 2024 or such later deadline established by State law or regulations.
- (c) Commercial Edible Food Generators shall comply with the following requirements:

- (1) Arrange to safely recover for human consumption the maximum amount of Edible Food that would otherwise be disposed.
- (2) Enter into a contract or other written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection for Food Recovery of Edible Food that would otherwise be disposed; or, (ii) acceptance of Edible Food that would otherwise be disposed that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.
- (3) Use best efforts to abide by all contractual or written agreement requirements specified by the Food Recovery Organization or Food Recovery Service on how Edible Food should be prepared, packaged, labeled, handled, stored, distributed or transported to the Food Recovery Organization or Service.
- (4) Not intentionally donate food that has not been prepared, packaged, handled, stored and/or transported in accordance with the safety requirements of the California Retail Food Code.
- (5) Not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.
- (6) Allow the Enforcement Agency to review records upon request, including by providing electronic copies or allowing access to the premises, pursuant to 14 CCR Section 18991.4.
- (7) Keep records that include the following information, or as otherwise specified in 14 CCR Section 18991.4:
  - (A) A list of each Food Recovery Service or Food Recovery Organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).
  - (B) A copy of all contracts and written agreements established under 14 CCR Section 18991.3(b) and/or this Ordinance.
  - (C) A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:
    - (i) The name, address and contact information of the Food Recovery Service or Food Recovery Organization.
    - (ii) The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.
    - (iii) The established frequency that food will be collected or self-hauled.

- (iv) The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.
- (D) If it has not entered into a contract or written agreement with Food Recovery Organizations or Food Recovery Services pursuant to Section 7(c)(2), a record that describes (i) its direct donation of Edible Food to end recipients (including employees) and/or (ii) its food waste prevention practices that result in it generating no surplus Edible Food that it can donate.
- (8) Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators shall provide, upon request, a Food Recovery report to the Enforcement Agency that includes the information in Section 7(c)(7). Entities shall provide the requested information within 60 days of the request.
- (d) Nothing in this Ordinance shall be construed to limit or conflict with (1) the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 commencing with Section 49580 to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time); or (2) otherwise applicable food safety and handling laws and regulations.
- (e) Nothing in this Ordinance prohibits a Commercial Edible Food Generator from donating Edible Food directly to end recipients for consumption, pursuant to Health and Safety Code Section 114432(a).
- (f) The Enforcement Agency for the provisions of this Section 7 is the Member Agency and, if authorized by the applicable Member Agency, the WMA, and any other Designee of the Member Agency.

## **SECTION 8. REQUIREMENTS FOR FOOD RECOVERY ORGANIZATIONS AND SERVICES**

- (a) Nothing in this Ordinance prohibits a Food Recovery Service or Food Recovery Organization from refusing to accept edible food from a Commercial Edible Food Generator, in accordance with 14 CCR Section 18990.2(d).
- (b) Food Recovery Services collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(1):



- (1) The name, address, and contact information for each Commercial Edible Food Generator from which the service collects Edible Food.
  - (2) The quantity in pounds of Edible Food collected from each Commercial Edible Food Generator per month. This may also include the total quantity in pounds of food collected that was spoiled when received from a Commercial Edible Food Generator or otherwise not able to be used to feed people.
  - (3) The quantity in pounds of Edible Food transported to each Food Recovery Organization per month.
  - (4) The name, address, and contact information for each Food Recovery Organization that the Food Recovery Service transports Edible Food to for Food Recovery.
- (c) Food Recovery Organizations collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(2):
- (1) The name, address, and contact information for each Commercial Edible Food Generator from which the organization receives Edible Food.
  - (2) The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month. This may also include the total quantity in pounds of food collected that was spoiled when received from a Commercial Edible Food Generator or otherwise not able to be used to feed people.
  - (3) The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.
- (d) Food Recovery Organizations and Food Recovery Services that have their primary address physically located in Alameda County and contract with or have written agreements with one or more Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall report to the WMA the total pounds of Edible Food recovered from the Tier One and Tier Two Commercial Edible Food Generators they have established a contract or written agreement with pursuant to 14 CCR Section 18991.3(b) according to the following schedule: (i) no later than August 15, 2022, submit an initial report covering the period of January 1, 2022 to June 30, 2022; and (ii) no later than March 31, 2023, and no later than every March 31 thereafter, submit a report covering the period of January 1 to December 31 of the previous calendar year.
- (e) In order to support Edible Food Recovery capacity planning assessments and similar studies, Food Recovery Services and Food Recovery Organizations operating in Alameda County shall provide, upon request, information and

consultation to the Enforcement Agency regarding existing, or proposed new or expanded, Food Recovery capacity in a form that can be provided to or that can be accessed by the WMA, Member Agencies, and Commercial Edible Food Generators in Alameda County. A Food Recovery Service or Food Recovery Organization contacted by the Enforcement Agency shall respond to such request for information within 60 days, unless a shorter timeframe is otherwise specified by the Enforcement Agency.

- (f) The Enforcement Agency for the provisions of this Section 8 is Member Agency and, if authorized by the Member Agency, the WMA and any other Designee of the Member Agency.

## **SECTION 9. REQUIREMENTS FOR REGULATED HAULERS AND FACILITY OPERATORS**

- (a) Requirements for Regulated Haulers.
  - (1) A Regulated Hauler providing Single-Family, Commercial, or industrial Organic Waste collection service to generators within Alameda County shall meet the following requirements and standards in connection with collection of Organic Waste:
    - (A) Through written notice to the Member Agency annually on or before March 31, identify the facilities to which they will transport Organic Waste including facilities for Source Separated Recyclable Materials and Source Separated Compost Container Organic Waste.
    - (B) Transport Source Separated Recyclable Materials to a facility that recycles those materials and transport Source Separated Compost Container Organic Waste to a facility, operation, activity, or property that recovers Organic Waste as defined in 14 CCR, Division 7, Chapter 12, Article 2.
    - (C) Obtain approval from the Member Agency to haul Organic Waste, unless it is transporting Source Separated Organic Waste to a Community Composting site or lawfully transporting C&D in a manner that complies with 14 CCR Section 18989.1, Section 13 of this Ordinance, and any WMA and Member Agency rules.
  - (2) Within the boundaries of any Member Agency in which it has customers, a Regulated Hauler collecting Organic Waste shall:
    - (A) Up to four times per year, provide reports to the WMA and Member Agency on Commercial Business account information and service levels in a form to be specified by the WMA.

- (B) Assist in the dissemination of SB 1383 educational materials to Single-Family and Commercial Business accounts. .
- (C) At least annually and during new staff on-boarding, train Regulated Hauler's customer service representatives and account managers/recycling coordinators serving Organic Waste Generators in Alameda County on the generator requirements set forth in Sections 4 and 5 of this Ordinance, SB 1383 Regulations as they may be revised from time to time and on resources available to assist in compliance. Trainings may be in a virtual or in-person format.
- (D) Where a Regulated Hauler provides Landfill Container collection service, notify Single-Family and Commercial Business accounts that (i) they must also be subscribed to Recycling Container collection service and Compost Container collection service to comply with this Ordinance, except if an applicable waiver has been granted for the account, if an applicable waiver application has been submitted and is under review for the account, or if the account has an approved Certification of Recycling Service Form and (ii) that the Regulated Hauler will inform the Member Agency if the account fails to subscribe to a required collection service offered by the Regulated Hauler.
- (E) Provide quarterly reports to the WMA identifying Single-Family and Commercial accounts that are subscribed to Landfill Container collection service but that are not subscribed to Recycling Container and/or Compost Container collection service. WMA shall provide this information to the Member Agency. If a Regulated Hauler providing Landfill Container collection service does not offer Recycling Container Collection Service and/or Compost Container collection service to its Landfill Container collection service customers, the requirements of subsection (D) and (E) shall not apply with respect to those customers and the type(s) of service that is not offered.
- (F) Conduct or comply with Container Contamination minimization efforts such as Route Reviews or waste evaluations. Inform generators when Container Contamination is observed by the Regulated Hauler.
- (G) If requested by the Enforcement Agency, assist generators with verification of physical space constraints when generator submits an application for a physical space waiver.
- (H) Provide Commercial Business accounts with interactive assistance such as employee trainings, in a virtual or in-person format, when Recycling Container collection service or Composting Container collection service is added, or upon request.

- (3) The Enforcement Agency for the provisions of this Section 9(a) is the Member Agency and, where authorized by the Member Agency, the WMA, and any other Designee of the Member Agency.
- (b) Requirements for Facility Operators and Community Composting Operations
- (1) Owners of facilities, operations, and activities that recover Organic Waste, including, but not limited to, compost facilities, in-vessel digestion facilities, and publicly-owned treatment works shall, upon request from the WMA, provide within 60 days information regarding available and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes.
  - (2) Community Composting operators shall, upon request from the WMA, provide within 60 days information to support Organic Waste capacity planning, including, but not limited to, an estimate of the amount of Organic Waste anticipated to be handled at the Community Composting operation.
  - (3) The Enforcement Agency for the provisions of this Section 9(b) is the WMA and any Designee of the WMA.

## **SECTION 10. REQUIREMENTS FOR SELF-HAULERS**

- (a) Self-Haulers shall source separate all recyclable materials and Organic Waste (materials that the Member Agency otherwise requires generators to separate for collection in the Member Agency's organics and recycling collection program) generated or handled on-site from Solid Waste in a manner consistent with 14 CCR Sections 18984.1 and 18984.2, or shall haul Organic Waste to a High Diversion Organic Waste Processing Facility as specified in 14 CCR Section 18984.3.
- (b) Self-Haulers shall haul their Source Separated Recyclable Materials to a facility that recovers those materials; and haul their Source Separated Compost Container Organic Waste to a Solid Waste facility, operation, activity, or property that processes or recovers Source Separated Organic Waste. Alternatively, Self-Haulers may haul Organic Waste to a High Diversion Organic Waste Processing Facility. Self-Haulers may Back-haul to a destination owned and operated by the generator using the generator's own employees and equipment and then haul those consolidated materials to facilities meeting the requirements of this subsection (b).
- (c) Self-Haulers that are Commercial Businesses (including Multi-Family Residential Dwellings) shall keep a record of the amount of Organic Waste delivered to each Solid Waste facility, operation, activity, or property that processes or recovers

Organic Waste; this record shall be subject to Inspection by the Enforcement Agency. The records shall include the following information:

- (1) Delivery receipts and weight tickets from the entity accepting the material.
  - (2) The amount of material in cubic yards or tons transported by the generator to each entity.
  - (3) If the material is transported to an entity that does not have scales on-site, or employs scales incapable of weighing the Self-Hauler's vehicle in a manner that allows it to determine the weight of materials received, the Self-Hauler is not required to record the weight of material but shall keep a record of the entities that received the Organic Waste.
- (d) Self-Haulers that are Commercial Businesses (including Multi-Family Residential Dwellings) shall submit a Certification of Recycling Service Form to the Enforcement Agency for review for compliance if they do not also subscribe to separate collection service for Compost Containers and/or Recycling Containers by a Regulated Hauler. Applications will be considered for approval to the extent permitted by other applicable laws.
  - (e) Self-Haulers that are Commercial Businesses (including Multi-Family Residential Dwellings) shall submit a new Certification of Recycling Service Form to the Enforcement Agency for compliance review every five years, if they do not also subscribe to separate collection service for Compost Containers and/or Recycling Containers by a Regulated Hauler.
  - (f) Self-Haulers shall notify the Enforcement Agency if they subscribe to separate collection service for Compost Containers and/or Recycling Containers by a Regulated Hauler, such that they are no longer Self-Haulers.
  - (g) Self-Haulers that are Commercial Businesses (including Multi-Family Residential Dwellings) shall provide information, upon request, collected in Section 10(c) to the Enforcement Agency. Entities shall provide the requested information within 60 days.
  - (h) A Single-Family Organic Waste Generator that self-hauls Organic Waste is not required to record or report information in Sections 10(c) through (g).
  - (i) The Enforcement Agency for the provisions of this Section 10 is the Member Agency and, where authorized by the Member Agency, the WMA, and any other Designee of the Member Agency.

## **SECTION 11. INSPECTIONS AND INVESTIGATIONS**

- (a) The Enforcement Agency is authorized to conduct Inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or

transfer, processing, or disposal facility for materials collected from generators, or Source Separated materials to confirm compliance with the provisions of this Ordinance for which it has enforcement authority by Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), Commercial Edible Food Generators, Regulated Haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow entry in a private residential dwelling unit for Inspection. For the purposes of inspecting Commercial Business containers for compliance with Section 5(b) of this Ordinance, the Enforcement Agency may conduct container Inspections for Prohibited Container Contaminants using Remote Monitoring, and Commercial Businesses shall accommodate and cooperate with the Remote Monitoring pursuant to Section 5(j) of this Ordinance.

- (b) A Person subject to the requirements of this Ordinance shall provide or arrange for access during all Inspections (with the exception of a private residential dwelling unit) and shall cooperate with the Enforcement Agency during such Inspections and investigations. Such Inspections and investigations may include confirmation of proper placement of materials in containers, inspection of Edible Food Recovery activities, review of required records, or other verification or Inspection to confirm compliance with any other requirement of this Ordinance. Failure to provide or arrange for: (i) access to the premises; (ii) installation and operation of Remote Monitoring equipment, if a Remote Monitoring program is adopted; or (iii) access to records for any Inspection or investigation is a violation of this Ordinance and may result in penalties described in Section 12.
- (c) Any records obtained by the Enforcement Agency during Inspections, Remote Monitoring, and other reviews shall be subject to the requirements and applicable disclosure exemptions of the California Public Records Act as set forth in Government Code Section 6250 et seq.
- (d) The Enforcement Agency is authorized to conduct any Inspections, Remote Monitoring, or other investigations as reasonably necessary to further the goals of this Ordinance, subject to applicable laws.
- (e) The Enforcement Agency shall accept written complaints from persons regarding an entity that may be potentially non-compliant with this Ordinance.
- (f) The Enforcement Agency for the provisions of this Section 11 is the Member Agency and any Designee authorized by the Member Agency to enforce one or more sections of this Ordinance.

## **SECTION 12. ENFORCEMENT**

- (a) Violation of any provision of this Ordinance shall constitute grounds for issuance of a Notice of Violation and assessment of a fine by the Enforcement Agency. Enforcement Actions under this Ordinance are issuance of an administrative

citation and assessment of a fine. The Enforcement Agency's procedures on imposition of administrative citations and fines as contained shall govern the imposition, enforcement, collection, and review of administrative citations and fines issued to enforce this Ordinance and any rule or regulation adopted pursuant to this Ordinance, except as otherwise indicated in this Ordinance.

(b) Other remedies allowed by law may be used, including civil action or prosecution as a misdemeanor or infraction. The Enforcement Agency may pursue civil actions in the California courts to seek recovery of unpaid administrative citations, and fines. The Enforcement Agency may choose to delay court action until such time as a sufficiently large number of violations, or cumulative size of violations exist such that court action is a reasonable use of Enforcement Agency staff and resources.

(c) Process for Enforcement

(1) The following provisions of this Ordinance may be enforced beginning on January 1, 2022: Section 5 concerning Requirements for Commercial Business Generators, Section 6 concerning Waivers for Commercial Business Generators, Section 9 concerning Requirements for Haulers and Facility Operators, Section 10 concerning Requirements for Self-Haulers, and Inspections related to compliance with those sections.

(2) The following provisions of this Ordinance may be enforced beginning on January 1, 2024: Section 4 concerning Requirements for Single Family Generators, Section 7 concerning Requirements for Commercial Edible Food Generators, and Section 8 concerning Requirements for Food Recovery Organizations and Services, and Inspections related to compliance with those sections.

(3) The Enforcement Agency will monitor compliance with this Ordinance through Compliance Reviews, Route Reviews, investigation of complaints, and an Inspection program (that may include Remote Monitoring).

(4) The Enforcement Agency may issue a Notice of Violation requiring compliance within 60 days of issuance of the notice.

(5) Absent compliance by the respondent within the deadline set forth in the Notice of Violation, the Enforcement Agency shall commence an action to impose penalties, via an administrative citation and fine, pursuant to the Enforcement Agency's standard procedures.

(d) Penalty Amounts for Violations

The penalty levels are as follows:

- (1) For a first violation, the amount of the penalty shall be \$50 to \$100 per violation or such higher amount as may be established by the Enforcement Agency.
- (2) For a second violation, the amount of the penalty shall be \$100 to \$200 per violation or such higher amount as may be established by the Enforcement Agency.
- (3) For a third or subsequent violation, the amount of the penalty shall be \$250 to \$500 per violation or such higher amount as may be established by the Enforcement Agency.

(e) Compliance Deadline Extension Considerations

The Enforcement Agency may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with this Section 12 if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:

- (1) Acts of nature such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;
- (2) Delays not within the control of respondent or their agents in obtaining discretionary permits or other government agency approvals; or,
- (3) Deficiencies in Organic Waste recycling infrastructure or Edible Food Recovery capacity and the Member Agency is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.

(f) Appeals Process

Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation. A hearing will be held only if it is requested within the time prescribed in the administrative citation and consistent with the Enforcement Agency's appeal procedures.

(g) Education Period for Non-Compliance

With respect to provisions of this Ordinance subject to enforcement starting January 1, 2024, the Enforcement Agency will, prior to that date, conduct Inspections, Remote Monitoring (if such a program is implemented), Route Reviews or waste evaluations, and Compliance Reviews, depending upon the type of regulated entity, to determine compliance, and if the Enforcement Agency determines that Organic Waste Generator, Self-Hauler, Regulated Hauler, Tier One Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance, it shall provide educational materials to the entity describing its obligations under this Ordinance and a notice



that compliance is required and that violations may be subject to administrative citations, penalties, or other remedies starting on January 1, 2024.

(h) Civil Penalties for Non-Compliance

If the Enforcement Agency determines that an Organic Waste Generator, Self-Hauler, Regulated Hauler, Tier One or Tier Two Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance with this Ordinance, it may document the noncompliance or violation, issue a Notice of Violation, and/or take Enforcement Action pursuant to this Section 12, as needed and consistent with the enforcement commencement dates set forth in subsection (c)(1), above.

(i) The Enforcement Agency for the provisions of this Section 12 is the Member Agency and any Designee authorized by the Member Agency to enforce one or more sections of this Ordinance.

### **SECTION 13. LOCAL REGULATION AND OPT-IN PROVISIONS**

- (a) Nothing in this Ordinance shall be construed to prohibit any Member Agency from enacting and enforcing ordinances and regulations regarding the collection, transport, storage, processing, and deposit in landfill(s) of Solid Waste within its jurisdiction, including more stringent requirements than those in this Ordinance.
- (b) This Ordinance shall apply only within the boundaries of Member Agencies that have adopted an ordinance declaring that the Member Agency is opting in to this Ordinance and that it shall apply within their jurisdiction. For any Member Agency that opts in, this Ordinance shall apply as to that Member Agency from the date specified in the ordinance adopted by the Member Agency. A Member Agency that has adopted such an ordinance may declare that this Ordinance no longer applies within its boundaries by adopting a subsequent ordinance setting forth the date upon which this Ordinance shall no longer apply.

### **SECTION 14. SEVERABILITY**

If any provision of this Ordinance or the application thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such invalidity shall not affect the remaining provisions or application of the remaining provisions of this Ordinance, which can be given effect without the invalid provisions or application.

**SECTION 15. EFFECTIVE DATE AND REPEAL OF ORDINANCE 2012-1**

This Ordinance shall be posted at the WMA Office after its adoption by the Board for at least thirty (30) days and shall take effect commencing on January 1, 2022. The WMA's Ordinance 2012-01 (An Ordinance Requiring Actions to Reduce Landfilling of Recyclable and Organic Solid Wastes from Businesses, Multifamily Residences, and Self-Haulers) is repealed as of the time that this Ordinance takes effect.

**Following introduction on June 23, 2021, passed and adopted July 28, 2021 by the following vote:**

**AYES:** Arkin, Carling, Cavanaugh, Cox, Hannon, Hernandez, Jordan, Kalb, Kassan, Lamnin, Martinez, Patiño, Sadoff, Spencer, Wengraf, Young

**NOES:** None

**ABSTAIN:** None

**ABSENT:** Haubert

**I certify that under the penalty of perjury that the foregoing is a full, true and correct copy of Ordinance No. 2021-02.**



---

**ARLISS DUNN**

**CLERK OF THE BOARD**



Office of the City Manager

INFORMATION CALENDAR

September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Public Works

Subject: Mental Health Services Center Renovation Project Wins APWA National Award

INTRODUCTION

The Mental Health Services Center Renovation Project has been selected as one of the American Public Works Association's (APWA) Public Works Projects of the Year for 2021. The project first won regional recognition in February 2021 from the Northern California Chapter of APWA for the category for historical restoration/preservation for over \$5 million but less than \$25 million. In July 2021, the project gained a **national** award from APWA in the same project category. Projects were selected based on demonstrated excellence in construction management techniques, safety performance and program, community relations, environmental preservation, unique or unusual accomplishments, and climate resiliency and sustainability.

CURRENT SITUATION AND ITS EFFECTS

The Mental Health Services Center Renovation project is a Strategic Plan Priority Project, advancing our goal provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

The honor and recognition of receiving a national APWA award highlights the City's vision in selecting, scoping, and funding this important project. The award recognizes the groundbreaking nature of the renovation of this 95-year-old building into a modern facility that preserves many of its historic features and incorporates energy efficient and innovative designs and building systems. Using this project as a pilot, these efforts are expected to have an impact on other building renovation designs throughout the state for the next decade.

The ribbon cutting ceremony for this project was on April 14, 2021, and it is now open and serving over 350 adults with ongoing clinical case management services per year.

BACKGROUND

This renovation project had a unique focus on climate resiliency and sustainability. The newly renovated building is all electric (no natural gas); has new state of the art HVAC and electrical systems strategically selected and designed to reduce energy consumption;

further reduces energy consumption through the use of 5 skylights and 34 daylighting tubes; employs a dual electric vehicle charging station with the capacity to add an additional dual station in the future; and generates more energy than it consumes through the 118 solar panels purposefully placed on its crowded rooftop. The culmination of all this is a Zero Net Energy (ZNE) building – pending verification of energy usage and consumption during the first 12 months of occupancy.

The building at 2640 Martin Luther King Jr. Way in Berkeley, California was built in 1925 and designed by James Placheck, a prolific local architect. It served the community as a mortuary for almost five decades before being revived in 1971 as the Rainbow Sign. The Rainbow Sign was a “vibrant black cultural arts center — a 1970s Bay Area hub for black art, music, cinema, literature, education and civic gathering — that drew cultural icons from across the country, from Maya Angelou and James Baldwin to Huey Newton and Nina Simone.”<sup>1</sup> The building’s historical significance is highlighted in the current U.S. Vice President’s 2019 memoir, *The Truths We Hold*. Vice President Kamala Harris dedicates pages to her experiences at the Rainbow Sign and how it and Berkeley’s ethnic communities shaped her: “My favorite night of the week was Thursday. On Thursdays, you could always find us in an unassuming beige building at the corner of what was then Grove Street and Derby. Once a mortuary, the building I knew was bursting with life, home to a pioneering black cultural center: Rainbow Sign.”

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

One goal of the new mental health facility was to incorporate as many net zero energy facility improvements as is feasible. A net zero energy facility has a positive environmental impact and has economic advantages over the long-term. Some net-zero features in this project include solar panels, energy efficient heating and air conditioning, and low flow fixtures.

#### POSSIBLE FUTURE ACTION

There are no anticipated future actions associated with receiving the award.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no anticipated fiscal impacts.

#### CONTACT PERSON

Joe Enke, Acting City Engineer, Public Works, (510) 981-6411  
Elmar Kapfer, Supervising Civil Engineer, Public Works, (510) 981-6435  
Nick Cartagena, Associate Civil Engineer, Public Works, (510) 981-6338

#### Attachments:

- 1: APWA Reporter Magazine – Projects of the Year
- 2: Photo of Project Award

<sup>1</sup> <https://news.berkeley.edu/2017/09/19/rainbow-sign/>





# REPORTER

AMERICAN PUBLIC WORKS ASSOCIATION / July 2021 / [www.apwa.net](http://www.apwa.net)

## PROJECTS OF THE YEAR

See pages 28-57 for the  
22 outstanding projects selected in 2021

### INSIDE:

- Annual Transportation Issue
- Virtual Snow Conference highlights
- Highway Asset Management: Kiwi-style





# Mental Health Services Center Renovation

Managing Agency: City of Berkeley, CA, Primary Contractor: B Bros Construction, Primary Consultant: ELS Architecture, Nominated By: APWA Northern California Chapter

**T**he Mental Health Services Center (MHSC) renovation project was a comprehensive renovation of a historic building designed to be environmentally conscious (net zero energy), seismically safe, and accessible for community services. The MHSC renovation was substantially completed by December 18, 2020.

At the onset of construction, the MHSC project's schedule indicated completion in March of 2020. Once underway, time extensions were granted by the City of Berkeley (the City) due to a litany of unforeseen conditions, such as the removal and remediation of an underground storage tank; additional abatement of asbestos and lead beyond what was anticipated; additional demolition of a safe room originally constructed in 1925 with 16-inch-thick reinforced concrete walls; additional

demolition of a room found in the building's crawlspace; COVID-19 related delays; and more.

Although these surprises delayed the eventual completion and re-opening of the facility, it was important that they were addressed and handled properly. In the end, the newly renovated facility was able to meet the project's overall goals because of the project team's focus on addressing challenges head on.

As part of the renovation project, a historical resources consultant conducted research into the building's history and past historical surveys. They determined that the building is identified on the State's Office of Historic Preservation Historic Property Directory as a "3s", which means that it "appears eligible for the NR [National Register] as an individual property through survey evaluation."

The project's design team identified elements of the building's architecture that were part of the original 1925 build and held historical significance. It was determined that the building exterior envelope, the large community gathering room dubbed "the chapel," the mezzanine overlooking the chapel, and the first room off of the main entrance would be preserved and restored. The remaining portions of the building would need to be gutted, tactfully rebuilt and modernized.

The intent of the current renovation project was not to restore the building to its original interior condition. It has gone through at least two major previous interior alterations and is no longer used as it was originally constructed (as a mortuary). So, although extensive renovations were required, the project was able to meet historic regulatory standards.



AMERICAN PUBLIC WORKS ASSOCIATION

**APWA**



**NORTHERN CALIFORNIA CHAPTER**

**2021**

**PUBLIC WORKS PROJECT  
AWARD**

**HISTORICAL RESTORATION/PRESERVATION**

————— ••••• —————  
**\$5 MILLION LESS THAN  
\$25 MILLION**

**MENTAL HEALTH SERVICES CENTER  
RENOVATION PROJECT**

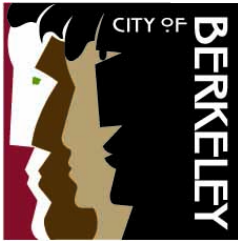
**City of  
Berkeley**

DELIVERED









Fair Campaign Practices Commission

## INFORMATION CALENDAR

September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Fair Campaign Practices Commission

Submitted by: Brad Smith, Chairperson, Fair Campaign Practices Commission

Subject: Fair Campaign Practices Commission FY2021-2022 Work Plan

### INTRODUCTION

The Fair campaign Practices Commission (FCPC) has updated its work plan, which outlines Commission objectives for the upcoming fiscal year. This work plan includes ongoing compliance review of campaign statements; ongoing review of alleged violations of BERA; receiving due process training for hearing complaints; finding ways to reduce the number of pages printed in commission packets; review of BERA's enforcement procedures; establish guidelines for approval of applications for public financing; developing guidelines to avoid preventing a candidate from receiving public funds for minor violations of BERA; review lobbying registration and reporting practices for individuals and organizations; and to work collaboratively with the City Council to develop policy related to Officeholder Accounts.

### CURRENT SITUATION AND ITS EFFECTS

At the regular meeting on June 17, 2021, the Fair Campaign Practices Commission unanimously approved the FY2021-2022 Work Plan, which will be used to guide the Commission's work throughout the year.

M/S/C (Blome/Hynes) to adopt work plan removing completed items from FY2020-2021 Work Plan re public campaign financing program

Ayes: Newman, O'Donnell, Ching, Sheahan, Blome, Hynes, Humbert, Tsang, Smith;  
Noes: none; Abstain: none; Absent: none.

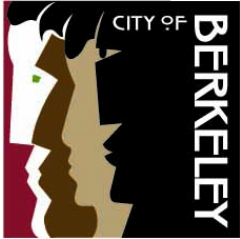
### BACKGROUND

See attached Work Plan.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental impacts or opportunities were identified as a result of this recommendation.

### POSSIBLE FUTURE ACTION



**Fair Campaign Practices Commission**

Based on Commission research and public hearings, new initiatives and recommendations to City Council may be submitted to City Council at such time deemed necessary.

**FISCAL IMPACTS OF POSSIBLE FUTURE ACTION**

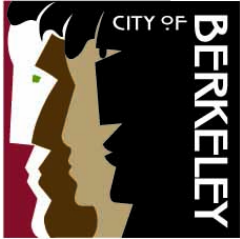
Unknown, but none expected.

**CONTACT PERSON**

Samuel Harvey, Commission Secretary (510) 981-6998  
Brad Smith, Chairperson, (510) 981-6998

Attachment: 1: Fair Campaign Practices Commission Work Plan

Attachment 1



Fair Campaign Practices Commission

**Work Plan for FY2021-2022 (July 1, 2021- June 30, 2022)  
Approved June 17, 2021**

- Ongoing compliance review of campaign statements.
- Ongoing review of alleged violations of BERA.
- Receive due process training for hearing complaints.
- Find ways to reduce the number of pages in commission packets.
- Review BERA enforcement procedures.
- Work collaboratively with the City Council to develop policy related to Officeholder Accounts.





Open Government Commission

INFORMATION CALENDAR  
September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Open Government Commission

Submitted by: Brad Smith, Chairperson, Open Government Commission

Subject: Open Government Commission FY2021-2022 Work Plan

INTRODUCTION

The Open Government Commission (OGC) has updated its work plan, which outlines Commission objectives for the upcoming fiscal year. This work plan includes the ongoing review of complaints concerning alleged non-compliance with the Open Government Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration Act; proposing legislation or procedures to further ensure the City of Berkeley's compliance with the Open Government Ordinance, the Brown Act, the Public Records Act, and the Lobbyist Registration Act; advising the City Council of any action or policy that would enhance open and effective government in the City of Berkeley; reviewing, approving, and forwarding to City Council the report submitted to the Open Government Commission by the City Manager regarding compliance with the Open Government Ordinance, the Public Records Act, the Brown Act, the Lobbyist Registration Act, and any other information the City Manager deems appropriate for open and effective government in the City of Berkeley; and working collaboratively with the City Council to develop policy related to Council District (D-13) accounts.

CURRENT SITUATION AND ITS EFFECTS

At the regular meeting on June 17, 2021, the Open Government Commission unanimously approved the FY2021-2022 Work Plan, which will be used to guide the Commission's work throughout the year.

M/S/C (Hynes/Ching) to adopt work plan with amendment re making Lobbyist Registration Ordinance more effective and clarification re annual report from City Manager

Ayes: Newman, O'Donnell, Ching, Sheahan, Blome, Hynes, Humbert, Tsang, Smith  
Noes: none  
Abstain: non  
Absent: none



Open Government Commission

BACKGROUND

See attached Work Plan.

ENVIRONMENTAL SUSTAINABILITY

No environmental impacts or opportunities were identified as a result of this recommendation.

POSSIBLE FUTURE ACTION

Based on Commission research and public hearings, new initiatives and recommendations to City Council may be submitted to City Council at such time deemed necessary.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Unknown, but none expected.

CONTACT PERSON

Samuel Harvey, Commission Secretary (510) 981-6998  
Brad Smith, Chairperson (510) 926-2047

Attachment: 1: Open Government Commission FY2020-2021 Work Plan



Open Government Commission

Attachment 1

**Open Government Commission Work Plan  
FY2021-2022 (July 1, 2021 – June 30, 2022)  
Approved June 17, 2021**

- Ongoing review of complaints concerning alleged non-compliance with the Open Government Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration Act.
- Propose legislation or procedures to further ensure the City of Berkeley's compliance with the Open Government Ordinance, the Brown Act, the Public Records Act, and the Lobbyist Registration Act.
- Administer and make more effective the Lobbyist Registration Ordinance.
- Advise the City Council of any action or policy that would enhance open and effective government in the City of Berkeley.
- Review, approve, and forward to the City Council the annual report submitted to the Open Government Commission by the City Manager regarding compliance with the Open Government Ordinance, the Public Records Act, the Brown Act, the Lobbyist Registration Act, and any other information the City Manager deems appropriate for open and effective government in the City of Berkeley.
- Work collaboratively with the City Council to develop policy related to Council District (D-13) accounts.







BERKELEY CITY AUDITOR

INFORMATION CALENDAR

September 14, 2020

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor *JW*

Subject: City Auditor Fiscal Year 2022 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. As restrictions are lifted, there are still risks that make oversight and accountability bodies like my office even more important. The City has experienced many changes to operations and services while also facing decreased revenues due to COVID-19. Berkeley received a short term injection of funding from the American Rescue Plan to make up for the lost revenue, but with long-term financial issues such as significant unfunded liabilities, it is still critical that we assess the City's financial sustainability in the long run. Now, more than ever, we need to evaluate how the City can best respond to this ongoing crisis and keep residents and employees safe with minimal disruption to operations and services.

For Fiscal Year 2022, we have identified areas we hope to address in the upcoming year:

- Police Department budget analysis (continued from FY 2021)
- Financial condition
- Rent Stabilization Board
- Homelessness
- Employee retention (resumed after being put on hold in FY 2020 due to COVID-19)
- 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 2021 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 2022

# Audit Plan

# Fiscal Year 2022

## Inside

Letter from the Auditor

Planned Engagements

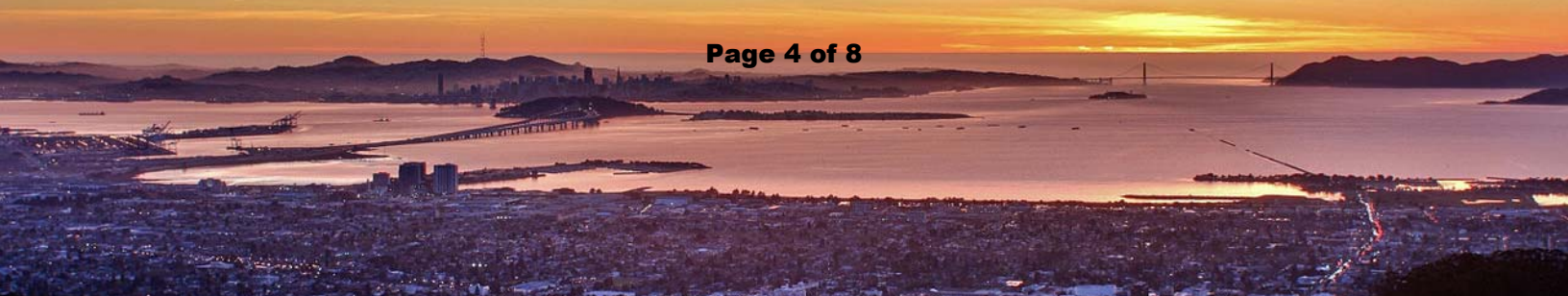
Plan Description

Audit Selection Process

Auditor's Authority



BERKELEY CITY AUDITOR



I am pleased to present the Berkeley City Auditor’s Fiscal Year 2022 Audit Plan.<sup>1</sup> Our office is responsible for conducting performance audits of city functions—deep dives into the workings of our various city programs with the goal of maximizing taxpayer dollars and delivering top-quality services. It is our goal 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.

In drafting this plan, we considered how we can add the most value to the City while also taking into consideration resource constraints of the City and my department. The impacts of COVID-19 are still ongoing and uncertain. As restrictions are lifted, there are still risks that make oversight and accountability bodies like my office even more important. The City has experienced many changes to operations and services while also facing decreased revenues due to COVID-19. Berkeley received a short term injection of funding from the American Rescue Plan to make up for the lost revenue, but with long-term financial issues such as significant unfunded liabilities, it is still critical that we assess the City’s financial sustainability in the long run.

Our office and the City face unique challenges, but we are also in a unique position to work collaboratively, provide expertise and guidance, and hold the City accountable during this time. Now, more than ever, we need to evaluate how the City can best respond to the communities most critical needs in a time of decreased revenues. By embracing flexibility, and looking at both the short-term and long-term impact of COVID-19 on the organization, our office can help the City emerge from this crisis stronger than ever.

In FY 2022, we plan to begin an analysis of the City’s financial condition and audits of employee retention, the Rent Stabilization Board, and the City’s role in addressing issues related to homelessness. We will also continue our audit of the Police Department budget focusing on overtime. In FY 2021, we paused our ongoing process of following up on departments’ implementation of recommendations from previous audits to allow the City to prioritize its response to COVID-19. We will resume the audit follow up process to ensure that the City is implementing adopted recommendations. Along with producing these reports, we may also conduct short-term projects in topic areas that will provide timely information to key decision makers on issues that are important to the public and the mission of our office.

I look forward to carrying out these audits to deliver independent, transparent, and accountable oversight, thereby safeguarding the public’s investments in the City of Berkeley. I am committed to providing ongoing information on how tax dollars are spent and how government operates, on behalf of everyone who cares about Berkeley, including residents, business owners, visitors, workers, and decision-makers.

Respectfully,

JENNY WONG  
City Auditor

<sup>1</sup>We emailed this audit plan to City Council on June 30, 2020 as required by the Berkeley Municipal Code.



# Planned Engagements FY 2022

---

## **Financial condition**

The Auditor’s office will examine the City’s financial well-being by calculating financial ratios, analyzing trends, and comparing the results to other similar cities.

---

## **Rent Stabilization Board**

The Auditor’s office will conduct an audit examining the Rent Stabilization Board’s finances or operations.

---

## **Homelessness**

The Auditor’s office will examine a defined area within the topic of homelessness to shed light on the City’s investment or role in addressing issues in this area.

---

## **Employee retention**

The Auditor’s office will continue an audit of employee retention that was deferred during FY 2020 due to the COVID-19 pandemic. The audit will examine factors that affect retention of city employees.

---

## **Follow-up**

The Auditor’s office will continue to track and follow-up on all audit recommendations to determine if they are properly implemented.

---

## **Short-term projects**

In order to be responsive to the needs of the City and the public, we may engage in short-term projects to provide timely and relevant information and analysis to the City and community.

---

## **Ongoing engagements**

We will continue our analysis of the Police Department budget that we started in FY 2022.

---

# 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 2022 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 2022 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 audit recommendations should take two years for the City to implement.

## 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.



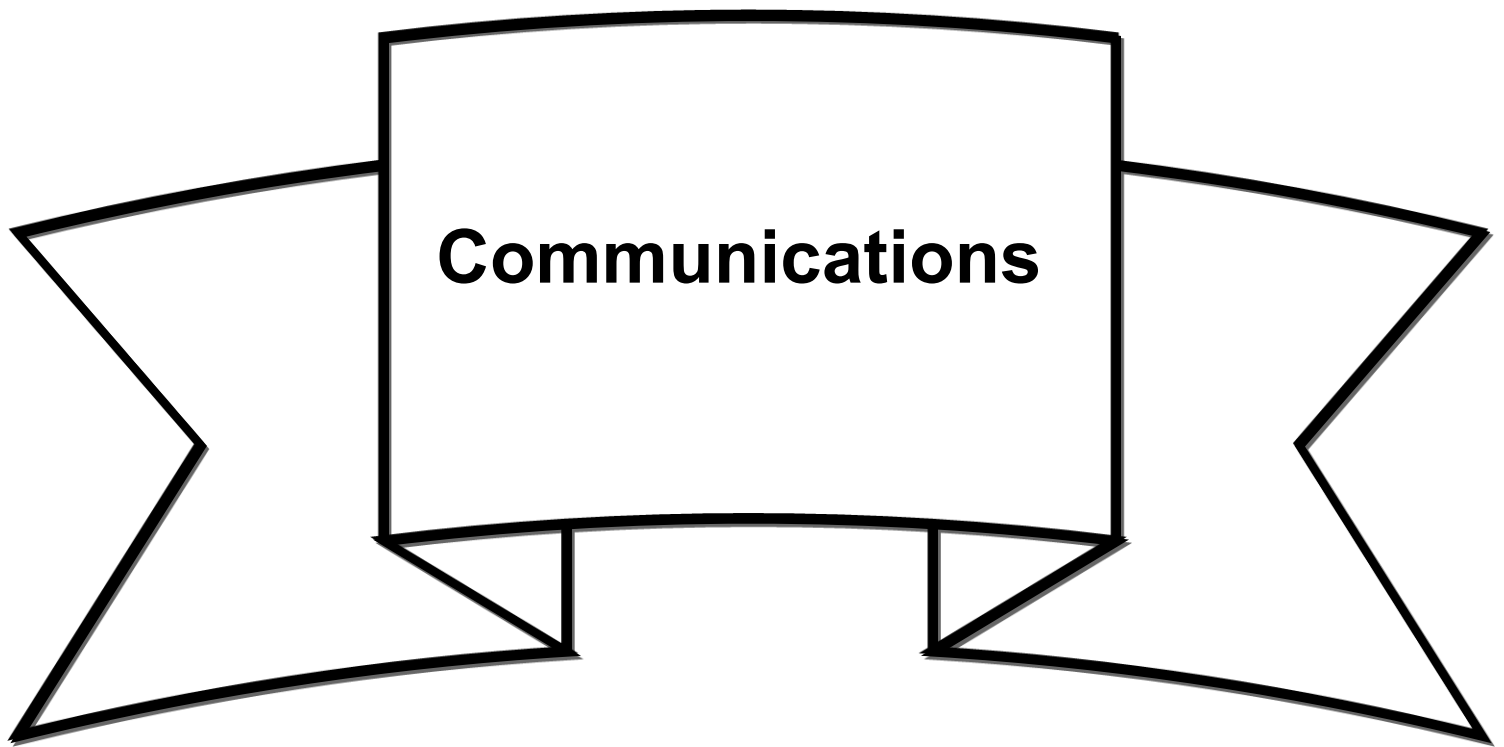
BERKELEY CITY AUDITOR

2180 Milvia Street, 3rd Floor, Berkeley, California 94704

510-981-6750

[www.cityofberkeley.info/auditor](http://www.cityofberkeley.info/auditor)





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**

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

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