



PROCLAMATION CALLING A SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

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

**Tuesday, December 14, 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 Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/83481524655>. 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: 834 8152 4655. 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:

Consent Calendar

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

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

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

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

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

Consent Calendar

1. **2021 Educator Housing Notice of Funding Availability Funding Reservation From: City Manager**
Recommendation: Adopt a Resolution to:
 1. Reserve \$24.5M in Measure O affordable housing bond funds for the BUSD Workforce Housing project (1701 San Pablo / Satellite Affordable Housing Associates / Abode Communities) with the following conditions:
 - a) Waive Section III.A.1 of the Housing Trust Fund Guidelines to allow the project to serve higher affordability levels, up to 120% of area median income (AMI) in order to meet the needs of BUSD educators; and
 - b) Condition disbursement of funding on site control.
 2. Authorize the City Manager to execute all original or amended documents or agreements to effectuate these actions.**Financial Implications:** See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Consent Calendar

2. 2021 Housing Trust Fund Request for Proposals Funding Reservations

From: City Manager

Recommendation: Adopt a Resolution to:

1. Reserve Housing Trust Funds and other currently available affordable housing funds, and forward reserve of up to \$17M in Measure O Bond funds from the third issuance (anticipated in 2025) and up to \$2.5M in FY2023 general funds from Measure U1 for the following proposals as detailed below:

Ashby Lofts (2909-2919 Ninth / Satellite Affordable Housing Associates /SAHA) at \$850,000, Ephesians Legacy Court (1708 Harmon / Community Housing Development Corporation / CHDC) at \$2,500,000, MLK House (2942-2944 MLK / Resources for Community Development / RCD) at \$1,178,974, St. Paul Terrace (2024 Ashby / Community Housing Development Corporation / CHDC) at \$2,500,000, Supportive Housing in People's Park (2556 Haste / Resources for Community Development / RCD) at \$14,359,593 (including up to \$3M for predevelopment).

2. Reserve the balance of recommended funds of approximately \$13M dollars for one of the CHDC-sponsored projects (Ephesians Legacy Court or St. Paul Terrace) to be determined based on the project's readiness and feasibility, and with the intent that once further predevelopment work has been completed, the City Manager, CHDC, and the HTF Subcommittee work together to recommend a specific project for fund reservation.

3. Prioritize future housing funds (including, but not limited to, HTF and Measure O funds) for the CHDC project (Ephesians Legacy Court or St. Paul Terrace) not fully funded through this RFP.

4. Condition predevelopment funding for new construction projects (Ephesians Legacy Court, St. Paul Terrace, and Supportive Housing in People's Park) on site control;

5. Authorize the City Manager to refinance existing HTF development loans to Ashby Lofts and MLK House and predevelopment loans for each project funded through this NOFA into new loans with terms consistent with the HTF Guidelines;

6. Approve the following waivers of the HTF Guidelines for MLK House: a. Waive Section IV.C.1 to allow a subsidy in excess of 40% of total development costs; and b. Waive Section IV.C.2 to allow an interest rate of 0% for the new loan (in line with Council's 2017 approval of 0% interest rate for the refinanced MLK House loan)

7. Allow Northern California Land Trust to submit a revised application for up to \$500k in Permanent Local Housing Allocation (PLHA) rehabilitation funds to support the renovation of 2207 Haste with the following conditions: a. Application submittal within 90 days of City Council action; and

b. include a scope of work consistent with renovations proposed and substantiated by an updated physical needs assessment.

8. Authorize the City Manager or her designee to execute all original or amended documents or agreements to effectuate these actions.

Financial Implications: See report

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

Consent Calendar

3. **Funding Recommendation and Joint Homekey Application for Golden Bear Inn at 1620 San Pablo**

From: City Manager

Recommendation: Adopt three Resolutions approving the following actions in support of a Homekey program funding allocation by:

1. Reserving up to \$8,463,535 in affordable housing funds for the Golden Bear Inn permanent supportive housing project at 1620 San Pablo as proposed by a partnership between Memar Properties and Bay Area Community Services (BACS);
2. Authorizing the City Manager or her designee to prepare and submit a joint application together with Memar Properties and BACS for the State of California Housing and Community Development (HCD) Department's Homekey program for the Golden Bear Inn permanent supportive housing project.
3. Authorizing the City Manager or her designee to take actions needed for the City's participation in HCD's Homekey program, including entering into the State's Standard Agreement and any amendments.
4. Authorizing the City Manager or her designee to execute all original or amended documents or agreements to effectuate these actions.

Financial Implications: See report

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

4. **Jointly Apply for No Place Like Home Funding for Supportive Housing in People's Park at 2556 Haste**

From: City Manager

Recommendation: Adopt two Resolutions that enable the proposed Supportive Housing in People's Park project to access State of California No Place Like Home program funds by:

1. Authorizing the City Manager to prepare and submit a joint application for Supportive Housing in People's Park at 2556 Haste.
2. Authorizing the City Manager to take actions needed for the City's participation in the No Place Like Home program by adopting State requirements regarding submitting applications, entering into the State's Standard Agreement and other documents, and providing mental health services for tenants of the resulting housing.

Financial Implications: See report

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

Action Calendar

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

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

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

Action Calendar – Public Hearings

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

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

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

5. **Amending the PY21 Annual Action Plan to accept HOME-ARP Funds and Amending the Permanent Local Housing Allocation Five-Year Plan to Support a Homekey Project**

From: City Manager

Recommendation: Conduct a Public Hearing on:

1. The proposed HOME Investment Partnerships Program – American Rescue Plan (HOME-ARP) Allocation Plan, which the City will submit to the U.S. Department of Housing and Urban Development (HUD) as a substantial amendment to the PY2021 (FY2022) Annual Action plan;

2. The proposed Permanent Local Housing Allocation (PLHA) Five-Year Plan Amendment, which the City is required to submit to the California Department of Housing and Community Development (HCD) since the proposed amendments will result in a change in funding for eligible activities that exceeds 10% of the annual allocation. And upon conclusion, adopt two Resolutions authorizing the City Manager, or her designee, to:

1. Amend the PY2021 Annual Action Plan to accept \$2,735,696 in HUD's HOME-ARP funds. Allocate up to 15% (\$410,354) for administration and planning, up to 5% for operating expenses for a Community Housing Development Organizations (CHDO) or other nonprofit organizations, up to 5% for nonprofit capacity building, and the remainder (75-85%) (\$2,051,772 - \$2,325,342) to a proposed State of California Housing and Community Development (HCD) Homekey Program (Homekey) project. In the event that the HOME-ARP allocation is modified, the same formula will be used to allocate funds. If the funds are not used for a Homekey project the City will use HOME-ARP funds for another HOME-ARP approved project.

2. Amend the PLHA Five-Year Plan to allocate \$1,138,194 to a proposed HCD Homekey project.

3. Submit the approved PY2021 Annual Action Plan Substantial Amendment #1 to HUD, and accept any resulting agreements with HUD.

4. Submit the approved PLHA Five-Year Plan Amendment to HCD and accept any resulting agreements with HCD.

Financial Implications: See report

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

Action Calendar – Public Hearings

6. **California Municipal Finance Authority Bond Financing for 2001 Ashby Avenue**
From: City Manager
Recommendation: Conduct a public hearing under the requirements of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the Internal Revenue Code of 1986, as amended, and upon conclusion, adopt a Resolution approving the issuance of the bonds by the California Municipal Finance Authority (CMFA) for the benefit of the 2001 Ashby Avenue rental housing development.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Action Calendar – Old Business

7. **Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code**
(Continued from November 30, 2021) (Item Contains Supplemental Material)
From: City Manager
Recommendation: Adopt a Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code.
Financial Implications: None
Contact: LaTanya Bellow, City Manager's Office, (510) 981-7000, Jennifer Louis, Police, (510) 981-5900

Adjournment

I hereby request that the City Clerk of the City of Berkeley cause personal notice to be given to each member of the Berkeley City Council on the time and place of said meeting, forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Berkeley to be affixed on this December 9, 2021.



Jesse Arreguin, Mayor

Public Notice – this Proclamation serves as the official agenda for this meeting.

ATTEST:



Date: December 9, 2021
Mark Numainville, City Clerk

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.



Office of the City Manager

CONSENT CALENDAR
December 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: 2021 Educator Housing Notice of Funding Availability Funding Reservation

RECOMMENDATION

Adopt a Resolution to:

1. Reserve \$24.5M in Measure O affordable housing bond funds for the BUSD Workforce Housing project (1701 San Pablo / Satellite Affordable Housing Associates / Abode Communities) with the following conditions:
 - a) Waive Section III.A.1 of the Housing Trust Fund Guidelines to allow the project to serve higher affordability levels, up to 120% of area median income (AMI) in order to meet the needs of BUSD educators; and
 - b) Condition disbursement of funding on site control.
2. Authorize the City Manager to execute all original or amended documents or agreements to effectuate these actions.

FISCAL IMPACTS OF RECOMMENDATION

The recommendation would reserve \$24.5 million in Measure O bond funds from the second issuance (anticipated in April 2022).

CURRENT SITUATION AND ITS EFFECTS

The City issued a Notice of Funding Availability (NOFA) on May 25, 2021 to solicit a proposal for an educator housing project to be developed on the Berkeley Adult School property at 1701 San Pablo Avenue. Educator housing will serve school district employees including classified staff, certificated teachers, and other administrative support staff. Council established the requirement that only the development team selected by Berkeley Unified School District (BUSD) was eligible to apply. The selected development team of Satellite Affordable Housing Associates (SAHA) and Abode Communities (Adobe) submitted an application on the NOFA due date of September 23, 2021.

At their November 4, 2021 meeting, the Housing Advisory Commission (HAC) supported the staff recommendation to fund the proposed project as described in the recommendation.

Reserving funds for affordable housing projects is a Strategic Plan Priority Project; advancing our goal to create affordable housing and housing support service for our most vulnerable community members and champion and demonstrate social and racial equity.

BACKGROUND

In November 2018, Berkeley voters approved Measure O, a \$135 million bond measure to support the development and preservation of affordable housing. The second bond issuance is expected to be \$40 million. In December 2019, City Council reserved \$15.432 million of the second issuance of Measure O bond funds for Maudelle Miller Shirek Community (2001 Ashby) and established a priority for a BUSD-sponsored educator housing project for the remaining funds in that issuance. Council authorized the Educator Housing NOFA in April 2021, with leasing preference for BUSD employees and their households, and staff estimate that approximately \$24.5M is available for an educator housing project.

Staff evaluated the application according to the following criteria identified in the NOFA:

- Developer Capacity,
- Project Feasibility,
- Local Needs and Priorities, and
- Readiness to Proceed.

At its November 4, 2021 meeting, the HAC took the following action:

Action: M/S/C (Simon-Weisberg/Johnson) to recommend that Council fund the BUSD Workforce Housing project (1701 San Pablo / SAHA / Abode) at \$24.5M with the following conditions:

- Waive Section III.A.1 of the Housing Trust Fund Guidelines to allow the project to serve higher affordability levels in order to meet the needs of BUSD educators.
- Condition disbursement of funding on site control.

Vote: Ayes: Fain, Johnson, Lee-Egan, Potter, Sanidad, Sargent, and Simon-Weisberg.
Noes: None. Abstain: None. Absent: Mendonca (approved) and Rodriguez (unapproved).

BUSD Workforce Housing – Satellite Affordable Housing Associates (SAHA) and Abode Communities (Abode)

SAHA and Abode requested \$24.5M to develop affordable educator housing at 1701 San Pablo Avenue.

BUSD issued a Request for Qualifications in March 2021 to select a development team to build educator housing on the Berkeley Adult School site, and selected SAHA and

Abode in May 2021. BUSD and the development team are negotiating an option to ground lease.

SAHA and Abode will create a joint venture limited liability corporation (LLC) and together will develop a 110-unit project with a leasing preference for BUSD employees and their households. The project would include a mix of 1-, 2-, and 3-bedroom units serving households earning between 30% and 120% of the Area Median Income (AMI). The proposed unit mix and affordability levels are based on a 2017 survey of BUSD staff. The development team will issue an updated survey to assess current need, and may revise the unit mix and proposed affordability accordingly.

The proposed funding plan includes 4% tax credits, Infill Infrastructure Grant funding from the state, and California Housing Finance Agency's (CalHFA) Mixed Income Program (MIP) funds. The latter is highly competitive, and most of the awards to date have gone to for-profit developers. Although the proposed costs for this project are on par with other affordable projects, CalHFA prioritizes cost containment and the BUSD Workforce Housing may not score as well as a prevailing wage job. The development team could lower the MIP request (currently \$6.6M), but would need to identify an eligible source of financing to fill that gap.

The City's funding reservation is conditioned on the development team securing entitlements and full project funding within two years. The development team anticipates that the entitlements and financing could be secured within the next year, with construction lasting from spring 2023 to spring 2025.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The development team plans to incorporate a wide range of environmentally sustainable features into the project design, addressing many of the City's Climate Action Plan building policies. The project will be built to either LEED Gold or GreenPoint Gold standards.

RATIONALE FOR RECOMMENDATION

In 2019, Council identified educator housing as a priority for the second issuance of Measure O bond funds in order to support local school district employees who may otherwise be priced out of market-rate housing in Berkeley. The proposed unit mix and affordability levels match the need of BUSD employees and their households, and would offer restricted affordable units to moderate- income levels (up to 120% AMI) not typically served through the Housing Trust Fund program.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions considered.

CONTACT PERSON

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

Attachments:

1: Resolution

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

APPROVAL OF THE 2021 EDUCATOR HOUSING NOTICE OF FUNDING
AVAILABILITY FUNDING RESERVATION

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

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

WHEREAS, City Council adopted HTF Guidelines (the "Guidelines") as revised on January 19, 2021, and authorized the City Manager to implement the HTF Program in accordance with the Guidelines; and

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

WHEREAS, the City's bond counsel indicated that approximately \$40 million is available for the second issuance of Measure O Bonds; and

WHEREAS, on December 10, 2019 the City Council reserved \$15,432,000 from the second issuance of Measure O Bonds for Maudelle Miller Shirek Community (2001 Ashby), and indicated that a Berkeley Unified School District (BUSD) sponsored educator housing project would get first priority at the remaining funds in that second issuance; and

WHEREAS, the Guidelines currently require developments that receive HTF funding to restrict 60% of all units at or below 60% of the area median income, which would exclude some households employed by BUSD; and

WHEREAS, on April 20, 2021 the City Council approved issuing a Notice of Funding Availability (NOFA) through the HTF program to allocate up to \$24.5 million in Measure O Bond funds to a BUSD-sponsored affordable housing development; and

WHEREAS, the NOFA was only open to the development team selected by BUSD to develop affordable educator housing; and

WHEREAS, the City issued an RFP on May 25, 2021 and announced acceptance of applications for funding from the Housing Trust Fund until September 23, 2021, and subsequently received one response; and

December 14, 2021

WHEREAS, on November 4, 2021 the HAC approved a motion recommending a funding reservation for Satellite Affordable Housing Associates' and Abode Communities' BUSD Workforce Housing project (1701 San Pablo), conditioned on the development team's site control.

WHEREAS, the HAC's motion included a recommendation to waive a section of the Housing Trust Fund Guidelines in order to allow higher affordability levels in the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council approves the \$24.5 million funding reservation for Satellite Affordable Housing Associates' and Abode Communities' BUSD Workforce Housing project.

BE IT FURTHER RESOLVED that the Council waives the requirements of Section III.A.1 of the Housing Trust Fund Guidelines to allow affordability levels of up to 120% of the area median income, to reflect the incomes and needs of BUSD educators.

BE IT FURTHER RESOLVED that development loan funds shall be reserved for a period of no more than 24 months from the date of this Resolution, contingent on the developers' obtaining all required land use approvals and securing commitments for full project funding that the City Manager or her designee deems sufficient within the reservation period.

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

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

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



Office of the City Manager

CONSENT CALENDAR
December 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: 2021 Housing Trust Fund Request for Proposals Funding Reservations

RECOMMENDATION

Adopt a Resolution to:

1. Reserve Housing Trust Funds and other currently available affordable housing funds, and forward reserve of up to \$17M in Measure O Bond funds from the third issuance (anticipated in 2025) and up to \$2.5M in FY 2023 General Funds from Measure U1 for the following proposals as detailed below:
 - Ashby Lofts (2909-2919 Ninth / Satellite Affordable Housing Associates /SAHA) at \$850,000
 - Ephesians Legacy Court (1708 Harmon / Community Housing Development Corporation / CHDC) at \$2,500,000
 - MLK House (2942-2944 MLK / Resources for Community Development / RCD) at \$1,178,974
 - St. Paul Terrace (2024 Ashby / Community Housing Development Corporation / CHDC) at \$2,500,000
 - Supportive Housing in People's Park (2556 Haste / Resources for Community Development / RCD) at \$14,359,593 (including up to \$3M for predevelopment)
2. Reserve the balance of recommended funds of approximately \$13M dollars for one of the CHDC-sponsored projects (Ephesians Legacy Court or St. Paul Terrace) to be determined based on the project's readiness and feasibility, and with the intent that once further predevelopment work has been completed, the City Manager, CHDC, and the HTF Subcommittee work together to recommend a specific project for fund reservation.
3. Prioritize future housing funds (including, but not limited to, HTF and Measure O funds) for the CHDC project (Ephesians Legacy Court or St. Paul Terrace) not fully funded through this RFP.

4. Condition predevelopment funding for new construction projects (Ephesians Legacy Court, St. Paul Terrace, and Supportive Housing in People's Park) on site control;
5. Authorize the City Manager to refinance existing HTF development loans to Ashby Lofts and MLK House and predevelopment loans for each project funded through this NOFA into new loans with terms consistent with the HTF Guidelines;
6. Approve the following waivers of the HTF Guidelines for MLK House:
 - a. Waive Section IV.C.1 to allow a subsidy in excess of 40% of total development costs; and
 - b. Waive Section IV.C.2 to allow an interest rate of 0% for the new loan (in line with Council's 2017 approval of 0% interest rate for the refinanced MLK House loan)
7. Allow Northern California Land Trust to submit a revised application for up to \$500k in Permanent Local Housing Allocation (PLHA) rehabilitation funds to support the renovation of 2207 Haste with the following conditions:
 - a. Application submittal within 90 days of City Council action; and
 - b. include a scope of work consistent with renovations proposed and substantiated by an updated physical needs assessment.
8. Authorize the City Manager or her designee to execute all original or amended documents or agreements to effectuate these actions.

SUMMARY

Council authorized a Request for Proposals (RFP) on April 27, 2021 to solicit applications for affordable housing projects to be funded through the City's Housing Trust Fund (HTF) program. The RFP included funds from the HTF, Permanent Local Housing Allocation (PLHA) funds, and Measure O bond funds from the first two tranches.

The City received six applications. On November 4, 2021, the Housing Advisory Commission (HAC) considered a report from Health, Housing and Community Services staff and the HAC's HTF Subcommittee evaluating the projects based on criteria identified in the RFP: developer capacity, feasibility, local needs and priorities, and readiness. The recommended actions in the attached resolution will effectuate the HAC's recommendations.

FISCAL IMPACTS OF RECOMMENDATION

Applicants requested \$42.5M in predevelopment, development and operating funds through this RFP.

Staff estimated that approximately \$17.3 million could be allocated through this RFP, including the available HTF balance, Permanent Local Housing Allocation Funds, and unallocated funds projected from the first two issuances of Measure O. The recommendation would reserve all of that available funding, and forward reserve \$2.5M in FY23 general funds generated pursuant to Measure U1, as well as the unallocated funds from the third issuance of Measure O bond (estimated at \$17M less any bond issuance costs). The recommendation also includes prioritizing future housing funding for whichever CHDC project does not get fully funded with the available and recommended funds.

CURRENT SITUATION AND ITS EFFECTS

The City issued an RFP on August 3, 2021 to solicit proposals for new construction and renovation projects. The City received six applications by the September 2, 2021 due date.

At their November 4, 2021 meeting, the HAC supported the staff and HTF Subcommittee recommendations for all six proposals as shown in the resolution, including a forward reservation of Measure O bond funds and FY23 general funds from Measure U1.

Reserving funds for affordable housing projects is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support services for our most vulnerable community members.

BACKGROUND

Staff and the HAC's HTF Subcommittee evaluated the applications according to the following criteria identified in the RFP:

- Developer Capacity,
- Project Feasibility,
- Local Needs and Priorities, and
- Readiness to Proceed.

At its November 4, 2021 meeting, the HAC took the following actions:

Action: M/S/C (Lee-Egan/Potter) to recommend that Council:

1. Fund the following proposals at the following levels:
 - Ashby Lofts (2909-2919 Ninth / Satellite Affordable Housing Associates / SAHA) at \$850,000
 - Ephesians Legacy Court (1708 Harmon / Community Housing Development Corporation / CHDC) at \$2,500,000
 - MLK House (2942-2944 MLK / Resources for Community Development / RCD) at \$1,178,974
 - St Paul Terrace (2024 Ashby / Community Housing Development Corporation / CHDC) at \$2,500,000

- Supportive Housing in People's Park (2556 Haste / Resources for Community Development / RCD) at \$14,359,593 (including up to \$3M for predevelopment)
2. Reserve the balance of approximately \$13M dollars for a CHDC project to be determined based on the project's readiness and feasibility, and with the intent that once further predevelopment work has been completed, the City Manager, CHDC, and the HTF Subcommittee work together to recommend a specific project for fund reservation.
 3. Prioritize future housing funds (including, but not limited to, HTF and Measure O funds) for the CHDC project not funded through this RFP.
 4. Make a forward reservation of the following funds, in addition to currently available housing funds in the RFP:
 - a. Up to \$17M in Measure O bond funds from the third issuance (anticipated in 2025); and
 - b. Up to \$2.5M in FY2023 general funds from Measure U1
 5. Condition predevelopment funding for new construction projects on site control;
 6. Authorize the City Manager to refinance existing HTF development loans and predevelopment loans for each project into new loans with terms consistent with the HTF Guidelines;
 7. Approve the following waivers of the HTF Guidelines for MLK House:
 - a. Waive Section IV.C.1 to allow a subsidy in excess of 40% of total development costs; and
 - b. Waive Section IV.C.2 to allow an interest rate of 0% for the new loan (in line with Council's 2017 approval of 0% interest rate for the refinanced MLK House loan)
 8. Allow Northern California Land Trust to submit a revised application for up to \$500k in Permanent Local Housing Allocation (PLHA) rehabilitation funds to support the renovation of 2207 Haste.
 - a. Within 90 days of City Council action; and
 - b. With a scope of work consistent with renovations proposed, substantiated by an updated physical needs assessment.

Vote: Ayes: Fain, Johnson, Lee-Egan, Potter, Sanidad, Sargent, and Simon-Weisberg. Noes: None. Abstain: None. Absent: Mendonca (approved) and Rodriguez (unapproved).

Ashby Lofts – Satellite Affordable Housing Associates (SAHA)

SAHA requested \$850,000 for the renovation of Ashby Lofts, located at 2909-2919 Ninth Street.

Ashby Lofts is a 54-unit, occupied affordable housing property owned and operated by SAHA. The City of Berkeley provided \$3M in funding for the project between 2004 and 2007. SAHA is proposing a tax credit resyndication in order to generate revenue to address capital needs at the property. The proposed rehabilitation would include substantial life safety upgrades to the building exterior, as well as building electrification. Ashby Lofts serves households earning between 30% and 50% of the Area Median Income (AMI), some of whom have physical or mental disabilities. The project includes 18 1-bedroom units, 24 2-bedroom units, and 12 3-bedroom units.

SAHA proposed funding the project with 4% tax credits, a bank loan, a seller carryback loan, and deferred developer fee.

Ephesians Legacy Court – Community Housing Development Corporation (CHDC)

CHDC requested \$12,902,599 for the development of Ephesians Legacy Court, located at 1708 Haste, and requested that \$2.5 million of their request be available for predevelopment costs anticipated between now and construction loan closing.

CHDC is working with the property owner, Ephesians Church of God in Christ (EGOGIC) to develop their property into affordable housing. The entities entered into a Memorandum of Understanding (MOU), and are working with attorneys to form their development partnership. CHDC is also negotiating the terms of the ground lease with EGOIC, though it's expected to be 99 years to satisfy the anticipated lenders and tax credit investor requirements. Ephesians Legacy Court will provide 82 affordable apartments for seniors earning 30% to 60% AMI. CHDC proposed setting aside 20 units for the formerly unhoused. The development team will pursue entitlements under SB35.

CHDC will pursue Multifamily Housing Program funds from the state, in addition to 4% tax credits and either Infill Infrastructure Grant (IIG) funds or Transit Oriented Development (TOD) funds.

Homeless to Housed - Northern California Land Trust (NCLT)

NCLT requested operating subsidy equal to \$3,450,000 to support formerly homeless households at three NCLT properties: 2207 Haste (8 bedrooms/SROs), 1349 Hearst (1 unit, pending acquisition), and 1340-1348 Blake (1 unit).

NCLT proposed managing the ten scattered site units as one project with resident case management provided by an outside agency. The ten subsidized units would house formerly unhoused residents with expected incomes around 15% AMI. The proposal included leveraging the City operating subsidy to support the acquisition of 1349 Hearst and renovation of 2207 Haste.

In addition to City funds, NCLT proposed using a bank loan, an energy efficiency loan, and their own equity to fund the project.

Housing staff were concerned about the long-term viability and advisability of supportive housing in small, scattered properties without onsite management. The HAC supported staff's recommendation that NCLT be allowed to submit a revised application for up to \$500,000 to support renovations at 2207 Haste.

MLK House - Resources for Community Development (RCD)

RCD initially requested \$1,128,974 for the renovation of MLK House located at 2942-2944 Martin Luther King, Jr. Way. Prior to the HAC meeting, RCD indicated that the project would need an additional \$50,000, for a revised request of \$1,178,974. The HAC recommend funding the project at RCD's revised request.

MLK House is a 12-room SRO with a resident population comprised primarily of clients of Berkeley Mental Health (BMH). Currently, 11 units are occupied by Shelter + Care (S+C) clients, and one by a low-income tenant.

While the City's support has enabled the property to operate on a break-even basis for thirty years, RCD has struggled to build replacement reserves and keep up with the capital needs. As a result, the property needs significant physical upgrades. RCD plans to use the available reserves to fund the project in addition to the City funds.

RCD requested a 0% interest rate on a new City loan. In 2017, City Council approved a refinance of MLK House's original City loan and reset the interest rate at 0% due to the low cash flow and population served.

St Paul Terrace – Community Housing Development Corporation (CHDC)

CHDC requested \$9,840,000 for St Paul Terrace, located at 2024 Ashby, and requested that \$2.5 million of their request for St. Paul Terrace be available for predevelopment costs anticipated between now and construction loan closing.

CHDC is partnering with St. Paul AME Church to develop affordable housing on the church's property. The proposed project would have 52 units serving households earning between 30%-60% AMI. CHDC aims to reserve 11 units for formerly unhoused households, though their ability to do so depends on the availability of certain state funds. The development team will pursue entitlements under SB35.

CHDC will pursue 4% tax credits, either No Place Like Home funds or Multifamily Housing Program funds from the state, and either Infill Infrastructure Grant (IIG) funds or Transit Oriented Development (TOD) funds.

Supportive Housing in People’s Park - Resources for Community Development (RCD)

RCD requested \$10,909,593 in development funds and \$3,450,000 in operating subsidies (\$14,359,593 total) for Supportive Housing in People’s Park – a new construction project at 2556 Haste. RCD requested that \$3M be available for predevelopment funding.

The University of California, Berkeley selected RCD to develop permanent supportive housing at People’s Park, in conjunction with the University’s redevelopment of the park and construction of new student housing. Supportive Housing in People’s Park will include 119 affordable housing units serving households earning between 10-50% AMI, with at least 62 permanent supportive housing units and onsite supportive services. The project was entitled by the University in September.

RCD plans to pursue state No Place Like Home funds, Multifamily Housing Program funds, and 4% tax credits. Berkeley Housing Authority approved 27 project-based vouchers for the project.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

All six projects addressed environmental sustainability in their project design and scope. The three new construction projects would be built to third-party green building standards (either LEED Gold or GreenPoint Gold). The three renovation projects would incorporate energy efficiency and sustainability measures into the scope as feasible.

RATIONALE FOR RECOMMENDATION

All six projects meet local needs and priorities by collectively adding 253 new affordable housing units to the City’s inventory and improving the City’s existing affordable housing stock. All three new construction projects (Ephesians Legacy Court, St Paul Terrace, and Supportive Housing in People’s Park) proposed reserving a portion of the units for formerly unhoused households, though each project’s ability to do so will depend on successful state funding and sufficient operating support. Ashby Lofts, MLK House, and NCLT’s 2207 Haste have existing HTF loans and affordability restrictions, and the proposals include health, safety, and sustainability-focused renovations that would benefit current and future residents.

The proposed forward reservation of FY23 general funds from Measure U1 and Measure O bond funds from the third issuance will allow projects to compete for state funds in 2022 so they can be ready to proceed when City funds are available. Reserving the funds now will help deliver new projects on a faster timeline and lower cost (due to continuing cost escalation).

The attached table shows a draft plan for funding the projects currently in the pipeline. The City Manager may modify this plan based on the availability of funds, federal requirements, project needs, and project timing.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered making recommendations that did not include a forward commitment of Measure O Bond funds and FY23 general funds from Measure U1. However, without those funds, the City would not be able to fund either CHDC project in full. Projects without full development reservations would not be as competitive for state funding and would likely be delayed up to two years.

CONTACT PERSON

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

Attachments:

- 1: Resolution
- 2: Funding Table

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

APPROVAL OF THE 2021 HOUSING TRUST FUND REQUEST FOR PROPOSALS
RESERVATIONS

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

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

WHEREAS, City Council adopted HTF guidelines (the "Guidelines") as revised on January 19, 2021, and authorized the HTF Program in accordance with the Guidelines; and

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

WHEREAS, on April 27, 2021 the City Council approved issuing a Request for Proposals (RFP) through the HTF program to allocate available housing funds, including the balance of the HTF, Permanent Local Housing Allocation funds, and unallocated funds from the first two issuances of Measure O bonds; and

WHEREAS, the City issued an RFP on August 3, 2021 and announced acceptance of applications for funding from the Housing Trust Fund until September 2, 2021, and subsequently received six responses; and

WHEREAS, on November 4, 2021 the HAC approved a motion recommending funding reservations for Satellite Affordable Housing Associates' Ashby Lofts (2909-2919 Ninth Street), Community Housing Development Corporation's Ephesians Legacy Court (1708 Harmon Street), Resources for Community Development's MLK House (2942-2944 MLK Jr. Way), Community Development Housing Corporation's St Paul Terrace (2024 Ashby Ave), and Resources for Community Development's Supportive Housing in People's Park (2556 Haste); and

WHEREAS, the HAC recommended forward reserving up to \$17 million from the third issuance of Measure O bond funds, and \$2.5 million in FY2023 general funds from Measure U1 for the projects seeking funding through the 2021 HTF RFP; and

WHEREAS, the HAC recommended reserving the balance of funds available through this RFP (approximately \$13 million dollars, inclusive of the forward reservations) for the Community Housing Development Corporation project to be determined based on the project's readiness and feasibility, and with the intent that once further predevelopment

December 14, 2021

work has been completed, the City Manager, CHDC, and the HTF Subcommittee work together to recommend a specific project for a funding reservation; and

WHEREAS, the HAC recommended that the City prioritize future housing funds (including, but not limited to, HTF and Measure O funds) for the CHDC project not funded through this RFP; and

WHEREAS, the HAC recommended conditioning predevelopment funding for the new construction projects on site control; and

WHEREAS, the HAC recommended that the City Manager refinance existing HTF development loans and predevelopment loans for each project into new loans with terms consistent with the Guidelines; and

WHEREAS, the HAC's motion included recommendations to waive certain sections of the Guidelines in order to fund Resources for Community Development's MLK House project; and

WHEREAS, that same motion recommended allowing Northern California Land Trust up to 90 days to submit a revised application for up to \$500,000 to support the renovation of 2207 Haste.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council approves the following funding reservations from currently available affordable housing funds and from forward reservations of up to \$17 million from the third issuance of Measure O bond funds and \$2.5 million in FY2023 general funds generated pursuant to Measure U1:

- Satellite Affordable Housing Associates' Ashby Lofts (2909-2919 Ninth Street) for \$850,000;
- Community Housing Development Corporation's Ephesians Legacy Court (1708 Harmon) for \$2,500,000;
- Resources for Community Development's MLK House (2942-2944 MLK Jr. Way) for \$1,178,974
- Community Housing Development Corporation's St Paul Terrace (2024 Ashby Ave) for \$2,500,000; and
- Resources for Community Development's Supportive Housing in People's Park (2556 Haste) for \$14,359,593.

BE IT FURTHER RESOLVED that Council approves reserving the balance of funds available through this RFP (approximately \$13 million dollars, inclusive of the forward reservations of Measure O bond funds from the third issuance and FY2023 general funds from Measure U1) for the Community Housing Development Corporation project (Ephesians Legacy Court or St. Paul Terrace) to be determined based on the project's readiness and feasibility, and with the intent that once further predevelopment work has been completed and within 12 months from the date of this Resolution, the City Manager,

December 14, 2021

CHDC, and the HTF Subcommittee work together to recommend a specific project for a funding reservation.

BE IT FURTHER RESOLVED that the Council approves prioritizing future housing funds (including, but not limited to, HTF and Measure O funds) for the CHDC project not funded through this RFP (St. Paul Terrace or Ephesians Legacy Court).

BE IT FURTHER RESOLVED, that the Council conditions predevelopment funding for the new construction projects (Ephesians Legacy Court, St Paul Terrace, and Supportive Housing in People's Park) on site control.

BE IT FURTHER RESOLVED that the City Manager may incorporate each project's predevelopment loan or existing development loan (in the case of Ashby Lofts and MLK House) into a new permanent loan resulting from this resolution.

BE IT FURTHER RESOLVED that the Council waives the requirements of Section IV.C.1 of the Housing Trust Fund Guidelines and approves HTF funds in excess of 40% for Resources for Community Development's MLK House due to the nature of the development and the unavailability of alternative financing.

BE IT FURTHER RESOLVED that the Council waives the requirements of IV.C.2 of the Housing Trust Fund Guidelines and approves a 0% interest rate for Resources for Community Development's MLK House, consistent with Council's 2017 action approving the same.

BE IT FURTHER RESOLVED that the Council will allow Northern California Land Trust to submit a revised application within 90 days of this action for up to \$500,000 to support the renovation of 2207 Haste.

BE IT FURTHER RESOLVED that all development and predevelopment loan funds shall be reserved for a period of no more than 24 months from the date of this Resolution, contingent on the developers' obtaining all required land use approvals and securing commitments for full project funding that the City Manager or her designee deems sufficient within the reservation period.

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

December 14, 2021

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

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

2021 Housing Trust Fund Request for Proposals - Proposed Funds and Projects

The following table shows a draft plan for funding the proposed projects. The City Manager may modify this plan based on the availability of funds, funding requirements, project needs, and project timing.

		Ashby Lofts	Ephesians	NCLT/Haste	MLK House	St Paul	SH at People's Park	Funds Reserved for CHDC Projects
Funds Requested	42,581,526	850,000	12,902,599	3,450,000	1,178,974	9,840,000	14,359,953	
Proposed Funding:								
HTF*	4,857,308		1,500,000			1,500,000	1,857,308	-
HOME	667,332						667,332	-
Measure O tranches 1 and 2	4,600,000						4,600,000	-
PLHA - rehab	3,725,522	850,000		500,000	1,178,974		1,196,548	-
PLHA – operating	3,450,000						3,450,000	-
Measure O tranche 3**	15,408,567						2,088,765	13,319,802
U1***	2,500,000		1,000,000			1,000,000	500,000	-
Total Housing Funds:	35,208,729	850,000	2,500,000	500,000	1,178,974	2,500,000	14,359,953	13,319,802

*RFP estimated \$5.2 million in HTF.

**Not included in the initial RFP estimates. Would require Council approval at time of funding reservation. . The recommendation is to request up to \$17M from Measure O tranche 3, which also includes an \$18M reservation for affordable housing at Ashby/North Berkeley BART. The actual amount of Measure O funds available may be less than that due to costs related to the issuance of the bonds. The estimate shown here reflects the \$17 million less issuances fees. The Measure O projections can be more accurately assessed with the second issuance.

***Not included in the initial RFP estimates. Would require Council approval at time of funding reservation.



Office of the City Manager

CONSENT CALENDAR
December 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: Funding Recommendation and Joint Homekey Application for Golden Bear Inn at 1620 San Pablo

RECOMMENDATION

Adopt three Resolutions approving the following actions in support of a Homekey program funding allocation by:

1. Reserving up to \$8,463,535 in affordable housing funds for the Golden Bear Inn permanent supportive housing project at 1620 San Pablo as proposed by a partnership between Memar Properties and Bay Area Community Services (BACS);
2. Authorizing the City Manager or her designee to prepare and submit a joint application together with Memar Properties and BACS for the State of California Housing and Community Development (HCD) Department's Homekey program for the Golden Bear Inn permanent supportive housing project.
3. Authorizing the City Manager or her designee to take actions needed for the City's participation in HCD's Homekey program, including entering into the State's Standard Agreement and any amendments.
4. Authorizing the City Manager or her designee to execute all original or amended documents or agreements to effectuate these actions.

FISCAL IMPACTS OF RECOMMENDATION

The first attached resolution would reserve \$8,463,535 in City affordable housing funds, including general funds received pursuant to Measure P, federal HOME Investment - American Rescue Plan (HOME-ARP) funds, and Permanent Local Housing Allocation (PLHA) funds.

If the joint application to the Homekey program is successful, the City will not receive the \$15.7 million requested; rather, these funds will go directly to Memar Properties and BACS or the entity they create to finance this project.

The project will need ongoing operating support after the proposed capitalized operating reserves are expended (expected in the eighth year of property operations). No reservation of operating funds is recommended at this time. Staff will work with the development team to identify sources of funds to support the long-term operations of this project.

CURRENT SITUATION AND ITS EFFECTS

The City issued a Request for Proposals (RFP) on October 5, 2021 to solicit proposals for projects eligible for HCD's Homekey program funds. The RFP included \$8,463,535 in City funds, including \$5M in general funds received pursuant to Measure P, \$2,325,341 in federal HOME-ARP funds, and \$1,138,194 in PLHA funds.

The City received one proposal in response to the RFP. It was from the development team of BACS and Memar Properties, Inc. (Memar). BACS and Memar requested City funds to support the conversion of the Golden Bear Inn (located at 1620 San Pablo) into permanent supportive housing for people experiencing chronic homelessness. Forty-three of the 44 rooms would be affordable to households earning up to 30% of the area median income (AMI), with the other unit set aside for the resident manager. BACS would act as the service provider and property manager, and would select tenants through the Countywide Coordinated Entry System (CES). The development team proposed prioritizing residents exiting Project RoomKey (which provided temporary housing for people experiencing homelessness and impacted by COVID 19), which could include residents at Berkeley's Rodeway Inn.

The proposed project is eligible for an estimated \$15.7M in HCD Homekey funds, including three years of operating subsidy. The development team secured a preliminary commitment from Alameda County Health Care Services Agency to fund \$350k-\$400k/year in services (starting in year four), although no specific funding has been identified, and full commitment for the services funding would need Board of Supervisors approval.

The proposed project would provide permanent supportive housing for 43 formerly homeless households, and would require significant and ongoing operating subsidies. A portion of the HCD Homekey funds and City funds would be used for capitalized operating reserves to support the project's first seven years of operations. However, the development team did not identify a source of funds for the operating subsidy in year 8 and onwards. The project would need approximately \$506k in subsidies in year 8, increasing at a rate of 3.5% annually to \$644k in year 15. BACS, Memar, and the City will work together to identify potential sources of funding to support the project's long-term operations.

In order to access HCD's Homekey program funds, the City will need to jointly apply with BACS and Memar and provide matching funds. The City's Measure P General Funds, HOME-ARP, and PLHA funds constitute the required match. In order for the

project to receive the Homekey funds, the City will be required to enter into the State's Standard Agreement for the project but will not receive any funds directly. The Standard Agreement will be 55 years for permanent housing. The City will also execute loan documents with the development team. Staff recommend that the City enter into a side agreement clarifying responsibilities between BACS and Memar and the City for the joint application for Homekey funds. The City entered into similar side agreements with developers for other state funding programs. The second attached resolution will provide the City Manager with that authority.

Reserving funds for affordable housing projects and jointly applying for Homekey funds are Strategic Plan Priority Projects; advancing our goals to create affordable housing and housing support services for our most vulnerable community members and to champion and demonstrate social and racial equity.

BACKGROUND

On September 9, 2021, HCD released a Notice of Funding Availability (NOFA) for \$1.45B of Homekey funds. HCD established its Homekey program to provide government entities funding to purchase and rehabilitate housing, including hotels, motels, vacant apartment buildings, and other buildings; and convert them into interim or permanent, long-term housing. Under the Homekey program, local entities partner with HCD to create housing to serve people experiencing homelessness or at risk of homelessness and who are inherently impacted by or at increased risk for medical diseases or conditions due to the COVID 19 pandemic or other communicable diseases. HCD is accepting applications for Homekey projects on a rolling basis through May 2, 2022 or until all Homekey funds are allocated. Applications submitted before January 31, 2022 are eligible for a higher subsidy.

In anticipation of HCD's Homekey NOFA release, the City of Berkeley proactively issued a Request for Qualifications (RFQ) to pre-select qualified organizations to rehabilitate and/or operate a Homekey property with a goal of submitting an application to the State before January 31, 2022. BACS and Memar were selected as a qualified team. On June 29, 2021, City Council approved the issuance of the City's Homekey RFP, and authorized the use of HOME-ARP funds and general funds from Measure P to support a Homekey Project. Due to the constrained timeline and the City's desire to submit an application to HCD as soon as is feasible, this specific Homekey project proposal was not reviewed by either the Homeless Services Panel of Experts (HSPE) or the Housing Advisory Commission (HAC). However, both commissions took action to support a future Homekey project more generally.

On April 28, 2021, the HSPE took the following action:

Action: M/S/C Marasovic/Sherman HSPE recommends that at least \$3,000,000 of Measure P funding be leveraged with other sources of funding towards the Homekey Project for the purchase of hotels to house persons experiencing homelessness.

Vote: Ayes: Marasovic, Scheider, Sherman, Wehrman. Noes: None. Abstain: None. Absent: Bookstein, Whitson.

On September 30, 2021, the HAC took the following action:

Action: M/S/C (Tregub/Sargent) to recommend to City Council to approve funding for a Project Homekey housing development, to be selected through a competitive process based on applicant qualifications, project feasibility, and assessment of competitiveness for State of California Project Homekey funds.

Vote: Ayes: Lee-Egan, Mendonca, Potter, Rodriguez, Sanidad, Sargent, Simon-Weisberg, and Tregub. Noes: None. Abstain: None. Absent: Fain (unexcused) and Johnson (excused).

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental sustainability effects directly associated with the recommendations in this report. If the City's funding application is successful, the Golden Bear Inn will be acquired and rehabilitated, which is generally considered a more sustainable type of development.

RATIONALE FOR RECOMMENDATION

Conversion of the Golden Bear Inn to permanent supportive housing through a partnership with Memar and BACS will support chronically homeless individuals in the City, and will bring new permanent supportive housing units online on an expedited timeline.

ALTERNATIVE ACTIONS CONSIDERED

The City could decline to participate in the Homekey program. Since that would not be consistent with the City's Strategic Plan to increase affordable housing opportunities, staff are recommending participation as described above.

CONTACT PERSON

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

Attachments:

- 1: Resolution (Approval of the Funding Reservation for the Golden Bearn Inn Homekey Project)
- 2: Resolution (Joint Application for Homekey Funds for Golden Bear Inn Homekey Project Located at 1620 San Pablo)
- 3: Resolution (Authorizing Joint Application to and Participation in the Homekey Program for Golden Bear Inn)

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

APPROVAL OF THE FUNDING RESERVATION FOR THE GOLDEN BEAR INN
HOMEKEY PROJECT

WHEREAS, and the City of Berkeley (“City”) is interested in partnering with a qualified housing developer to create permanent supportive housing for residents who are experiencing homelessness or at risk of homelessness; and

WHEREAS, in July 2020, the State of California Housing and Community Development Department (“HCD”) created the State Homekey Program and issued its first Notice of Funding Availability (“NOFA”) to fund the conversion of existing residential buildings, such as hotels, motels, other residential buildings and non-residential structures, to permanent supportive housing for residents who are homeless or at risk of being homeless and have been impacted by COVID-19; and

WHEREAS, in anticipation of HCD issuing a second Homekey NOFA, the City issued a Request for Qualifications (“RFQ”) on May 11, 2021, to solicit interest from developers with experience in acquisition, rehabilitation, operating and/or management of affordable housing and provision of resident and supportive services; and

WHEREAS, through the RFQ the City developed a list of eligible organizations; and

WHEREAS, on June 29, 2021, Council authorized issuing a Homekey Request for Proposals (RFP), and approved the use of HOME-ARP and general funds from Measure P for a future Homekey project; and

WHEREAS, HCD issued its second Homekey NOFA on September 9, 2021; and

WHEREAS, on October 5, 2021, the City issued an RFP to solicit proposals for Homekey-eligible projects from the organizations pre-qualified through the RFQ, and subsequently received one proposal; and

WHEREAS, Bay Area Community Services (BACS) and Memar Properties, Inc. (Memar) requested City funds to support the conversion of the Golden Bearn Inn to permanent supportive housing.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council approves \$8,463,535 in funding reservations from HOME-ARP, general funds received pursuant to Measure P, and the City’s Permanent Local Housing Allocation for the Golden Bear Inn Homekey project.

BE IT FURTHER RESOLVED that funds shall be reserved for a period of no more than 12 months from the date of this Resolution, contingent on the development team obtaining all required land use approvals and securing commitments for project funding that the City Manager or her designee deems sufficient within the reservation period.

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

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

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

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

JOINT APPLICATION FOR HOMEKEY FUNDS FOR GOLDEN BEAR INN HOMEKEY
PROJECT LOCATED AT 1620 SAN PABLO

WHEREAS, the City of Berkeley (City) is considering a request for acquisition, development, and operation subsidies funding from Bay Area Community Services (BACS) and Memar Properties, Inc. (Memar) related to the development of Golden Bear Inn Homekey project, located at 1620 San Pablo; and

WHEREAS, On September 9, 2021, the State of California Housing and Community Development Department ("HCD") released a Notice of Funding Availability for \$1.45B of Homekey funds; and

WHEREAS, in order for BACS and Memar to pursue HCD funding through the Homekey program, BACS and Memar must submit a joint application with either the City or Alameda County; and

WHEREAS, the County will not provide match nor submit a joint application for projects not located in the Unincorporated area, and therefore, BACS and Memar have requested the City to submit a joint application; and

WHEREAS, the City may be required to accept a portion of the project's liability as a condition of the joint application, though the risk may be mitigated by a side agreement negotiated between the City and BACS and Memar.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it approves the submission of a joint application with BACS and Memar or their affiliate for the Homekey application for Golden Bear Inn Homekey project.

BE IT FURTHER RESOLVED that the City Manager shall work to mitigate risk to the City from serving as a joint applicant, including negotiating an agreement with BACS and Memar regarding mutual responsibilities.

BE IT FURTHER RESOLVED that the City Manager, or her designee, is authorized to execute in the name of Applicant the Homekey Program Application Package and the Homekey Program Documents as required by the Department for participation in the Homekey program.

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

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

A RESOLUTION OF THE GOVERNING BODY OF CITY OF BERKELEY
AUTHORIZING JOINT APPLICATION TO AND PARTICIPATION IN THE HOMEKEY
PROGRAM FOR GOLDEN BEAR INN

WHEREAS, The Department of Housing and Community Development (“Department”) has issued a Notice of Funding Availability, dated September 9, 2021 (“NOFA”), for the Homekey Program (“Homekey” or “Program”). The Department has issued the NOFA for Homekey grant funds pursuant to Health and Safety Code section 50675.1.3 (Assembly Bill No. 140 (2021-2022 Reg. Sess.), § 20.).

WHEREAS, CITY OF BERKELEY (“Co-Applicant”) desires to jointly apply for Homekey grant funds with BAY AREA COMMUNITY SERVICES AND MEMAR PROPERTIES (“Corporation”). Therefore, Co-Applicant is joining Corporation in the submittal of an application for Homekey funds (“Application”) to the Department for review and consideration.

WHEREAS, The Department is authorized to administer Homekey pursuant to the Multifamily Housing Program (Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code). Homekey funding allocations are subject to the terms and conditions of the NOFA, the Application, the Department-approved STD 213, Standard Agreement (“Standard Agreement”), and all other legal requirements of the Homekey Program.

NOW, THEREFORE, BE IT RESOLVED that Co-Applicant is hereby authorized and directed to submit a joint Application to the Department in response to the NOFA, and to jointly apply for Homekey grant funds in a total amount not to exceed \$15,745,000.

BE IT FURTHER RESOLVED that if the Application is approved, Co-Applicant is hereby authorized and directed to enter into, execute, and deliver a Standard Agreement in a total amount not to exceed \$15,745,000, any and all other documents required or deemed necessary or appropriate to secure the Homekey funds from the Department and to participate in the Homekey Program, and all amendments thereto (collectively, the “Homekey Documents”).

BE IT FURTHER RESOLVED that Co-Applicant acknowledges and agrees that it shall be subject to the terms and conditions specified in the Standard Agreement, and that the NOFA and Application will be incorporated in the Standard Agreement by reference and made a part thereof. Any and all activities, expenditures, information, and timelines represented in the Application are enforceable through the Standard Agreement. Funds are to be used for the allowable expenditures and activities identified in the Standard Agreement.

BE IT FURTHER RESOLVED that the City Manager or her designee is authorized to execute the Application and the Homekey Documents on behalf of Co-Applicant for participation in the Homekey Program.



Office of the City Manager

CONSENT CALENDAR
December 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: Jointly Apply for No Place Like Home Funding for Supportive Housing in People's Park at 2556 Haste

RECOMMENDATION

Adopt two Resolutions that enable the proposed Supportive Housing in People's Park project to access State of California No Place Like Home program funds by:

1. Authorizing the City Manager to prepare and submit a joint application for Supportive Housing in People's Park at 2556 Haste.
2. Authorizing the City Manager to take actions needed for the City's participation in the No Place Like Home program by adopting State requirements regarding submitting applications, entering into the State's Standard Agreement and other documents, and providing mental health services for tenants of the resulting housing.

FISCAL IMPACTS OF RECOMMENDATION

There are no direct development fiscal impacts for being a joint applicant for No Place Like Home (NPLH) funds. However, as a joint applicant, the City may share responsibility for completing the affordable housing development. Staff will evaluate the requirements and risks and, if needed, enter into side agreements with project sponsors to clarify responsibilities and mitigate risk to the City.

Additionally, the City will be required to provide mental health services to tenants of the twelve NPLH units. Berkeley Mental Health already provides mental health services to qualifying people with serious mental illness who reside in Berkeley and the City funds local agencies that provide services to homeless individuals who have a mental illness.

CURRENT SITUATION AND ITS EFFECTS

The proposed project Supportive Housing in People's Park includes 119 residential units that will be affordable to households earning between 20% - 80% of the area median income (AMI). Approximately 62 units will be permanent supportive housing, including 46 units set aside for people who were homeless and have a mental illness.

Resources for Community Development (RCD) requested \$14.4M in development and operating funding through the City's 2021 Housing Trust Fund Request for Proposals (HTF RFP). RCD's request is being considered as a separate item along with the other 2021 HTF RFP funding recommendations.

RCD is pursuing NPLH through the California Department of Housing and Community Development's (HCD) current Notice of Funding Availability (NOFA). RCD is only eligible to apply for NPLH funding if they jointly apply with a county. Because the City has its own mental health department, the City is considered a 'small county' and is an eligible applicant for the purposes of NPLH. This will be the last round of NPLH. The first attached resolution authorizes a joint application by the project and the City to HCD. The second attached resolution includes terms required by the State for the City's participation in the program. It commits the City to providing services to tenants in the resulting units, as required by NPLH, and authorizes the City Manager to take the actions necessary to apply for and receive the funds.

Tenants for the resulting units will be selected through the Countywide Coordinated Entry System (CES) which will prioritize people who are homeless and have a qualifying mental health disability and a Berkeley connection. Berkeley Mental Health is already charged with providing services to people in Berkeley with a serious mental illness.

In order for the project to receive the State funds, the City will be required to enter into the State's Standard Agreement for the project, but will not receive any funds directly. Staff recommend that the City enter into a side agreement clarifying responsibilities between Resources for Community Development and the City for the joint application for NPLH funds. The City has entered into similar side agreements with developers for other state funding programs. The first attached resolution will provide the City Manager with the authority to negotiate and execute a side agreement with RCD.

Jointly applying for NPLH funds and committing to services is a Strategic Plan Priority Project; advancing our goal to create affordable housing and housing support services for our most vulnerable community members.

BACKGROUND

On July 1, 2016, Governor Brown signed legislation enacting the NPLH program to dedicate up to \$2 billion in bond proceeds to invest in the development of permanent supportive housing for persons who need mental health services and are experiencing homelessness, chronic homelessness, or who are at risk of chronic homelessness. In this program, the State requires a local mental health jurisdiction (in this case, the City) to apply itself, if acting as a developer, or jointly with an affordable housing developer. The state expects to allocate approximately \$231M in this fourth and final competitive NPLH round.

The City submitted joint applications for Berkeley Way and Maudelle Miller Shirek Community in previous NPLH funding rounds. Joint applicants are typically required to accept joint liability, but the City and joint applicant may enter into a side agreement that

establishes project responsibilities and indemnifies the City. Joint applications also demonstrate the City's commitment to advancing affordable housing locally.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

The NPLH competitive funds can only be used for affordable housing developments targeted for people who are homeless with a serious mental illness. In addition to development funds, NPLH would provide operating support for the project's homeless units. There are very few sources for operating funds, which can help sustain the project and ensure adequate support for the higher need households.

ALTERNATIVE ACTIONS CONSIDERED

The City could request that RCD jointly apply with Alameda County. Alameda County is part of the large county pool, which was oversubscribed in previous NPLH funding rounds. RCD's application may be more competitive in the small county pool, which the attached resolutions enable application to.

CONTACT PERSON

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

Attachment:

- 1: Resolution (Joint Application for No Place Like Home Funds for Supportive Housing in People's Park at 2556 Haste)
- 2: Resolution (Authorization to Participate in the No Place Like Home Program)

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

JOINT APPLICATION FOR NO PLACE LIKE HOME FUNDS FOR SUPPORTIVE HOUSING IN PEOPLE'S PARK AT 2556 HASTE

WHEREAS, the City of Berkeley (City) is considering a request for predevelopment and development funding from Resources for Community Development (RCD) related to the development of Supportive Housing in People's Park project, located at 2556 Haste; and

WHEREAS, on October 29, 2021, the California Department of Housing and Community Development issued a Notice of Funding Availability for competitive No Place Like Home (NPLH) program funds; and

WHEREAS, in order for RCD to pursue funding through the NPLH program, RCD must submit a joint application with either the City or Alameda County; and

WHEREAS, RCD determined that a joint application with the City would be more competitive in the current NPLH funding round; and

WHEREAS, the City may be required to accept a portion of the project's liability as a condition of the joint application, though the risk may be mitigated by a side agreement negotiated between the City and RCD.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it approves the submission of a joint application with RCD or their affiliate for the NPLH application for Supportive Housing in People's Park.

BE IT FURTHER RESOLVED that the City Manager shall work to mitigate risk to the City from serving as a joint applicant, including negotiating an agreement with RCD regarding mutual responsibilities.

BE IT FURTHER RESOLVED that the City Manager, or her designee, is authorized to execute in the name of Applicant the NPLH Program Application Package and the NPLH Program Documents as required by the Department for participation in the NPLH program.

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

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

AUTHORIZATION TO PARTICIPATE IN THE NO PLACE LIKE HOME PROGRAM
FOR SUPPORTIVE HOUSING IN PEOPLE'S PARK

WHEREAS, the State of California, Department of Housing and Community Development ("Department") issued a Notice of Funding Availability for Round 4 funds dated October 29, 2021, as may be amended from time to time, ("NOFA"), under the No Place Like Home Program ("NPLH" or "Program") authorized by Government Code section 15463, Part 3.9 of Division 5 (commencing with Section 5849.1) of the Welfare and Institutions Code, and Welfare and Institutions Code section 5890;

WHEREAS, the NOFA relates to the availability of a minimum of \$486 million in Competitive Allocation funds under the NPLH Program; and

WHEREAS, City of Berkeley ("City") is an Applicant ("City"), as defined in the NPLH Program Guidelines, enacted in 2020 ("Guidelines").

NOW, THEREFORE, BE IT RESOLVED, that the City Council for the City of Berkeley does hereby determine and declare as follows:

SECTION 1. That City is hereby authorized and directed to apply for and if awarded, accept funds from the NPLH Program not to exceed \$20,000,000 ("NPLH Loan").

SECTION 2. That the City Manager, or his or her designee, is hereby authorized and directed to act on behalf of the City in connection with an award of the NPLH Loan, and to enter into, execute, and deliver any and all documents required or deemed necessary or appropriate to evidence the NPLH Loan, the City's obligations related thereto, and the Department's security therefore. These documents may include, but are not limited to, a State of California Standard Agreement ("Standard Agreement"), a regulatory agreement, a promissory note, a deed of trust and security agreement, a capitalized operating subsidy reserve agreement and any and all other documents required or deemed necessary or appropriate by the Department as security for, evidence of, or pertaining to the NPLH Loan, and all amendments thereto (collectively, the "NPLH Program Documents").

SECTION 3. That City shall be subject to the terms and conditions that are specified in the Standard Agreement; that the application in full is incorporated as part of the Standard Agreement; that any and all activities funded, information provided, and timelines represented in the application are enforceable through the Standard Agreement; and that County will use the NPLH Loan in accordance with the Guidelines, other applicable rules and laws, the NPLH Program Documents, and any and all NPLH Program requirements.

SECTION 4. That the City will make mental health supportive services available to each project's NPLH tenants for at least 20 years and will coordinate the provision of or referral to other services (including, but not limited to, substance use services) in accordance with

the County's relevant supportive services plan, and as specified in Section 202 of the Guidelines.



Office of the City Manager

PUBLIC HEARING
December 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: Amending the PY2021 Annual Action Plan to accept HOME-ARP Funds and Amending the Permanent Local Housing Allocation Five-Year Plan to Support a Homekey Project

RECOMMENDATION

Conduct a Public Hearing on:

1. The proposed HOME Investment Partnerships Program – American Rescue Plan (HOME-ARP) Allocation Plan, which the City will submit to the U.S. Department of Housing and Urban Development (HUD) as a substantial amendment to the PY2021 (FY2022) Annual Action plan;
2. The proposed Permanent Local Housing Allocation (PLHA) Five-Year Plan Amendment, which the City is required to submit to the California Department of Housing and Community Development (HCD) since the proposed amendments will result in a change in funding for eligible activities that exceeds 10% of the annual allocation.

And upon conclusion, adopt two Resolutions authorizing the City Manager, or her designee, to:

1. Amend the PY2021 Annual Action Plan to accept \$2,735,696 in HUD's HOME-ARP funds. Allocate up to 15% (\$410,354) for administration and planning, up to 5% for operating expenses for a Community Housing Development Organizations (CHDO) or other nonprofit organizations, up to 5% for nonprofit capacity building, and the remainder (75-85%) (\$2,051,772 - \$2,325,342) to a proposed State of California Housing and Community Development (HCD) Homekey Program (Homekey) project. In the event that the HOME-ARP allocation is modified, the same formula will be used to allocate funds. If the funds are not used for a Homekey project the City will use HOME-ARP funds for another HOME-ARP approved project.
2. Amend the PLHA Five-Year Plan to allocate \$1,138,194 to a proposed HCD Homekey project.
3. Submit the approved PY2021 Annual Action Plan Substantial Amendment #1 to HUD, and accept any resulting agreements with HUD.
4. Submit the approved PLHA Five-Year Plan Amendment to HCD and accept any resulting agreements with HCD.

SUMMARY

This report outlines the proposed substantial amendment to the City of Berkeley's PY2021 Annual Action Plan for HOME-ARP funds, as well as an amendment to the City's PLHA 5-year plan to allow use for a Homekey project.

HUD requires the City to submit an Annual Action Plan every year as a condition of receiving funds. Accepting the HOME-ARP funds requires a substantial amendment to the City's PY2021 Annual Action Plan, according to the City's Citizen Participation Plan. Changes to the plan discussed in this report include accepting the HOME-ARP funds and allocating the majority of them to a Homekey project.

PLHA is a non-competitive entitlement State fund that can support local affordable housing and homeless service initiatives. The City previously approved and submitted a plan which must be amended if there is a change exceeding 10% of the annual funding allocation. The attached amendment will revise the first two years of the adopted five-year plan to reallocate \$1,138,194 to a Homekey project. The final three years of the plan will remain the same, in which funding will be used to support new affordable housing units for homeless households as well as the Housing Trust Fund (HTF) program. PLHA funding for this program is collected from real estate transaction fees and, thus, will vary each year with the market.

These substantial amendments require a public hearing and City Council approval before they can be submitted to HUD and the State for approval. The Homekey program requires local matching funds, and using HOME-ARP and PLHA for this project help satisfy the match requirement.

FISCAL IMPACTS OF RECOMMENDATION

On September 20, 2021, the City of Berkeley was awarded \$2,735,696 in HOME-ARP funds. These funds are in addition to the regular HOME funds that the City receives. Accepting these one-time funds will add \$2,735,696 to the City's budget, and be available for expenditure until September 2030. Staff recommend that the City allocate the majority of funds as matching funds for a Homekey project, with the allowable 15% to program administration and planning, up to 5% for operating expenses for a CHDO or other eligible nonprofit organization, and up to 5% for nonprofit capacity building.

The City of Berkeley received a PLHA allocation of \$1,293,584 in year-one (FY2021) and will receive an allocation of \$2,010,631 in year-two (FY2022). The City's PLHA allocation over the next five years is projected at \$7,761,504. However, initial projections for the transaction fees were created by the State prior to COVID-19. The actual amounts in years three through five may be lower and therefore result in different, possibly lower, disbursements.

CURRENT SITUATION AND ITS EFFECTS

The State's Homekey program recently started accepting applications from localities to receive grant funds. This program offers the City the opportunity to partner with the State to offer interim or permanent supportive housing for people experiencing homelessness or who are also at risk of becoming homeless and who are impacted by the COVID-19 pandemic.

The Homekey program requires that the application to HCS include a match of local/private funds to the State funds. HOME-ARP and PLHA funds' allowable uses include uses compatible with Homekey and are eligible for match. Staff recommends that the City adopt use of the HOME-ARP and PLHA funding to support a future Homekey project. In a separate report, HHCS staff will request approval to submit a joint application for the Homekey program.

HOME-ARP

On March 11, 2021, President Biden signed the American Rescue Plan (ARP) into law. To address the need for homelessness assistance and supportive services, Congress appropriated \$5 billion in ARP funds to be administered through the HOME Investment Partnerships Program (HOME) to perform activities that must primarily benefit qualifying individuals and families who are homeless, at risk of homelessness, or in other vulnerable populations.

To receive the HOME-ARP funds, the City must submit an Allocation Plan (Plan) as a substantial amendment to the PY2021 Annual Action Plan. The Plan must include the details of consultation the City conducted with agencies and service providers whose clientele include the HOME-ARP qualifying populations. The purpose of the consultations was to identify unmet needs and gaps in housing or service delivery systems. It must also include public participation through a comment period and a public hearing. Today's hearing will serve as a public hearing for gathering feedback to the draft Plan. The draft Plan is attached to this report. It has been posted for public comment since November 12, 2021, adhering to the City's Citizen Participation Plan.

After this public hearing and review of public comments thereto, the City will submit the Plan to HUD for its review and acceptance. The Housing Advisory Commission (HAC) reviewed an earlier draft of the Plan on November 4th and approved it for review by the Council. Action: M/S/C (Simon-Weisberg/Potter) to recommend Council approve an amendment to the PY2021 (FY2022) Annual Action Plan to allow for a one-time allocation of \$2,735,696 of HOME Investment Partnerships Program – American Rescue Plan (HOME-ARP) funds, and that said funds are prioritized for a State of California Housing and Community Development Homekey Program project. Vote: Ayes: Fain, Johnson, Lee-Egan, Potter, Sanidad, Sargent, Simon-Weisberg. Noes: None. Abstain: None. Absent: Mendonca (excused) and Rodriguez (unexcused).

Proposed Uses of HOME-ARP Funds

The draft HOME-ARP Plan recommends the City allocate up to 15% (\$410,354) for administration and planning, up to 5% for operating expenses for a Community Housing Development Organizations (CHDO) or other nonprofit organizations, up to 5% for nonprofit capacity building, and the remainder (75-85%) (\$2,051,772 - \$2,325,342) to a proposed State Homekey project. Staff will adhere to the HUD implementing notice CPD-21-10 released in September 2021, to ensure compliance with all appropriate regulations contained therein.

PLHA

The City is entitled to its share of PLHA funding provided that it submits an application consistent with the eligible activities identified by Notice of Funding Availability (NOFA). On July 14, 2020, the City Council adopted Resolution No. 69,499-NS approving the initial PLHA Five-Year Plan. Adjustments to the five-year funding plan for all eligible activities in the submitted plan by greater than 10% require City Council and State approval and must be submitted with the application.

Approving the PLHA amendment to fund the Homekey Program project advances the City's goal to create affordable housing and housing support services for our most vulnerable community members, which is a Priority Project of the City's Strategic Plan.

Proposed Uses of PLHA Funds

The adopted PLHA Five-Year Plan allocated year-one and year-two funding to sustaining homeless services. Staff are recommending that unspent funds from Year-one and 45% of funds from Year-two be allocated to a Homekey project. Years three-five will follow the original five-year plan and shift to supporting the Housing Trust Fund program and creating subsidies for new units affordable to homeless households. The projected budget and details of each activity are outlined below.

Years 1-2: Homeless Services

Staff recommend shifting \$228,905 of unspent year-one funds to the acquisition and rehabilitation of housing through a Homekey project. In year two, staff recommend allocating 45% of funds to a Homekey project and reducing the homeless services allocation from 95% to 50%. This reduction is possible due to the availability of a new permanent housing resource, Emergency Housing Vouchers, that will be used to move Project RoomKey participants to permanent housing instead of PLHA as originally planned.

Years 1-2 Proposed Budget

Year 1 Funds			Year 2 Funds		
\$1,293,584			\$2,010,631		
Activity	Percent Allocation	Amount	Activity	Percent Allocation	Projected Amount
Homeless Services	77%	\$1,000,000	Homeless Services	50%	\$1,000,000
Homekey project	18%	\$228,095	Homekey project	45%	\$910,099
Admin*	5%	\$64,679	Admin	5%	\$100,531

*5% is the max amount allowable for administration

Years 3-5: New Housing Units for Homeless Households and HTF Support

The plan for years three to five will remain the same¹ as the previously adopted PLHA Five-Year Plan, which supports new construction initiatives via two avenues: 1) operating subsidies for homeless households; and 2) supplementing the Housing Trust Fund program.

Projected Years 3-5 Budget

Years 3-5 Annual Projected Funds*		
\$1,552,301		
Activity	Percent Allocation	Projected Amount
Housing Trust Fund	80%	\$1,241,841
Homeless Operating Subsidies	15%	\$232,845
Admin	5%	\$77,615

*Funding is collected annually through real estate recording fees and will fluctuate. These estimates were provided by HCD.

The HOME-ARP and PLHA allocations to a Homekey project are contingent on the State accepting and approving the City's application for a project. If the City's Homekey project is not accepted, the City will request that Council authorize the City Manager, or her designee, to approve a second substantial amendment to HUD that allocates HOME-ARP funds to an alternate HOME-ARP eligible project as recommended and approved through a public hearing at the Housing Advisory Commission. The City will also likely seek approval for another amendment to the PLHA Five-Year Plan to respond to the change in circumstances.

¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-14_Item_15_Permanent_Local_Housing_pdf.aspx

BACKGROUND

HOME-ARP

The City of Berkeley is an entitlement jurisdiction which receives HUD funds according to a formula. The HOME-ARP is a one-time funding source from HUD, that is administered by the HOME Investment Partnerships Program.

The HOME-ARP program adheres to the qualifications standards defined in Notice: CPD-21-10, "Requirements for the Use of Funds in the HOME-American Rescue Plan Program". These standards define qualifying individuals or families as those that are (1) homeless, as defined in section 103(a) of the McKinney-Vento Homeless Assistance Act, as amended (42 U.S.C.11302(a)) ("McKinney-Vento"); (2) at risk of homelessness, as defined in section 401 of McKinney-Vento; (3) fleeing, or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking; (4) part of other populations where providing supportive services or assistance would prevent a family's homelessness or would serve those with the greatest risk of housing instability; or (5) veterans and families that include a veteran family member that meet the criteria in one of (1)-(4) above.

HOME-ARP funds can be used for four eligible activities:

- Production or Preservation of Affordable Housing
- Tenant-Based Rental Assistance (TBRA)
- Supportive Services, Homeless Prevention Services, and Housing Counseling
- Purchase and Development of Non-Congregate Shelter

HUD regulations require that the City of Berkeley follow a Citizen Participation Process in allocating federal funding, which requires that the city enlist input from the general public when developing the spending plan and when any major changes to the spending plan are proposed. Major changes to the spending plan require the submission of a "Substantial Amendment" to the Annual Action Plan. These changes must be accompanied by a public hearing.

PLHA

The Permanent Local Housing Allocation was created by the [Building Homes and Jobs Act](#) (SB 2, 2017). This bill established a \$75 recording fee on certain real estate transaction documents to increase the supply of affordable homes in California. The PLHA is a noncompetitive application with funds allocated to cities based on the Community Development Block Grant (CDBG) distribution formula.

Eligible activities include:

- Predevelopment/Development/Acquisition/Rehab for specific projects (including operating subsidies)
- Housing Trust Fund matching funds

- Capitalized reserves for Permanent Supportive Housing services (preservation and new construction)
- Accessibility modifications
- Homeless housing/services (Rapid rehousing; Rental assistance; Navigation centers; Emergency shelters)

The City was required to submit a five-year plan to access funding through 2025. Staff recommend amending the plan to include funding for a Homekey project; in addition to funding the City's homeless services programs in the first two years and operating subsidies for homeless households and supplementing the Housing Trust Fund in years 3-5.

The City is required to hold a public hearing and submit a streamlined application, resolution, and five-year plan amendment by December 31, 2021.

Staff is interested in applying for State Homekey funds along with a qualified affordable housing developer. This is an opportunity for the City to make an immediate impact on creating long-term, permanent supportive housing or temporary housing for Berkeley by leveraging limited City funds with State and federal funds created specifically for this purpose. Per the Homekey requirements, residents will have extremely low incomes (ELI) (defined as up to 30% of the Area Median Income) and have experienced homelessness or be at risk of homelessness.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable direct environmental sustainability impacts associated with the adoption of this recommendation. Certain HOME-ARP activities are subject to the provisions of 24 CFR Part 58 (Environmental Review Procedures). Funds for such activities may not be obligated or expended until HUD has approved the release of funds in writing. A request for release of funds (RROF) must be accompanied by an environmental certification, and until the RROF is approved and notification is received no HUD funds shall be committed.

RATIONALE FOR RECOMMENDATION

The HOME-ARP and PLHA funds allow the City the opportunity to leverage limited City funds, State, and Federal funds to apply for State Homekey Program funding that would allow the City to convert existing buildings into permanent supportive housing or temporary housing. By accepting and allocating this money to a Homekey project application, the City has the opportunity to further help people experiencing and at-risk of being homeless.

ALTERNATIVE ACTIONS CONSIDERED

The City could accept HOME-ARP funds and use them on a project that would help qualifying individuals obtain or keep housing without leveraging Homekey funds.

However, such a strategy would not maximize the usage of these funds to the same extent as the recommended action.

CONTACT PERSON

Rhianna Babka, Community Service Specialist III, HCS, (510) 981-5410.

Attachments:

1: HOME-ARP Resolution:

Exhibit A: PY2021 (FY2022) HOME allocations to include HOME-ARP funds

2: PLHA Resolution

3: City of Berkeley HOME-ARP Allocation Plan (serving as the PY2021 Annual Action Plan Amendment)

4: City of Berkeley PLHA Amended Five-Year Plan

5: HOME-ARP Public Hearing Notice

6: PLHA Public Hearing Notice

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

AMENDMENT TO THE PY2021 ANNUAL ACTION PLAN IN RESPONSE TO THE HOME INVESTMENT PARTNERSHIPS PROGRAM – AMERICAN RESCUE PLAN (HOME-ARP) FUNDING

WHEREAS, on March 11, 2021 the American Rescue Plan (ARP), became Public Law 117-2, and it provides \$5 billion in ARP funds to be administered through the HOME Investment Partnerships Program (HOME) and that these funds must primarily benefit qualifying individuals and families who are homeless, at risk of homelessness, or in other vulnerable populations.; and

WHEREAS, the City of Berkeley is an entitlement jurisdiction which receives HOME Investment Partnership Program (HOME) funds from the US Department of Housing and Urban Development (HUD); and

WHEREAS, the City of Berkeley has a Program Year 21 (FY2022) Annual Action Plan, that articulates how the City plans to spend HUD HOME allocations; and

WHEREAS, the City of Berkeley was awarded \$2,735,696 in HOME-ARP funds from HUD that requires a Substantial Amendment to the existing Annual Action Plan; and

WHEREAS, HUD has issued waivers to 1) per-unit cost limits (42 U.S.C. 12742(e)), 2) 24-month commitment deadline (42 U.S.C. 12748(g)), 3) matching requirements (42 U.S.C. 12750) 4) Community Housing Development Organization (CHDO) Set-Aside Requirement 5) administrative and planning set-aside, increased to 15%, and 6) public comment requirement, now allows for revisions to the Citizen Participation Plan that include a shorter public comment period; and

WHEREAS, under the ARP, HUD has issued flexibilities for HOME-ARP funds stating that they are not subject to the same consultation and citizen participation requirements that otherwise apply to the HOME funds, however, at minimum, grantees are required to hold at least one public hearing and solicit public comment for a minimum of 15 days; and

WHEREAS, the City's Citizen Participation Plan requires that the City conduct a public hearing when major changes constituting a Substantial Amendment to the spending plan are proposed; and

WHEREAS, the City has and will continue to incur substantial costs and loss of revenue due to COVID-19; and

WHEREAS, the City has established the following ERMA budget codes HOME-ARP expenses: 530-2075-000-444-Various-; and revenues: 533-2028-000-000-431110-; and

WHEREAS, failure to authorize receipt of these funds would result in loss of potential funds for the City in response to the COVID-19 pandemic.

December 14, 2021

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or her designee, is authorized to:

1. Amend the PY2021 Annual Action Plan to accept the HUD HOME-ARP funds to the City of Berkeley, totaling \$2,735,696 and allocate up to 15% (\$410,354) for administration and planning, up to 5% for operating expenses for a Community Housing Development Organizations (CHDO) or other nonprofit organizations, up to 5% for nonprofit capacity building, and the remainder (75-85%) (\$2,051,772 - \$2,325,342) to a proposed State of California Housing and Community Development Homekey Program project. If the HOME-ARP award amount is modified, the same formulas will be applied for allocating funds.
2. Submit the approved PY2021 Annual Action Plan Substantial Amendment to HUD, and accept any resulting agreements with HUD.

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that should the City's Homekey project application not be awarded State Homekey funds, the City Manager, or her designee, is authorized to approve and submit a second substantial amendment to HUD that allocates HOME-ARP funds to an alternative HOME-ARP eligible project as recommended and approved through a public hearing at the Housing Advisory Commission.

A record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.

Exhibit A: PY2021 (FY2022) HOME allocations to include HOME-ARP funds

December 14, 2021

Exhibit A: PY2021 HUD HOME-ARP Allocations

HOME Investment Partnership Program (HOME) Allocations			
REVENUES	HUD Adjusted Award FY21	Awarded FY22	HOME-ARP Award
HOME Award	\$ 778,203	\$ 754,813	\$ 2,735,696
Program Income (projected)	\$ 20,000	\$ 20,000	N/A
SUBTOTAL HOME Funds Available	\$ 798,203	\$ 774,813	\$ 2,735,696
EXPENDITURES	Amended and Adjusted Allocation FY21	Allocations FY22	Proposed Allocation*
Administration (10%)	\$ 199,551	\$ 77,481	\$ 410,354
CHDO Operating Funds (5%)	\$ 70,000	\$ 30,000	\$ 136,785
Nonprofit capacity (5%)	N/A	N/A	\$ 136,785
Available for HTF Projects	\$ 528,652	\$ 667,332	N/A
Available for Homekey Project	N/A	N/A	\$ 2,051,772
Total	\$ 798,203	\$ 774,813	\$ 2,735,696
<p>* HOME-ARP allows for up to 15% Administration. The proposed budget allows for up to 5% for both CHDO operating and nonprofit capacity. Should those not be utilized the remaining would go towards a Homekey Project (\$2,051,772 - \$2,325,342).</p>			

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

ADOPTING THE PLHA FIVE-YEAR PLAN AMENDMENT FOR THE PERMANENT LOCAL HOUSING ALLOCATION PROGRAM

WHEREAS, the Department is authorized to provide up to \$304 million under the SB2 Permanent Local Housing Allocation Program Formula Component from the Building Homes and Jobs Trust Fund for assistance to Cities and Counties (as described in Health and Safety Code section 50470 et seq. (Chapter 364, Statutes of 2017 (SB 2)).

WHEREAS, the State of California (the "State"), Department of Housing and Community Development ("Department") issued a Notice of Funding Availability ("NOFA") dated 5/3/2021 under the Permanent Local Housing Allocation (PLHA) Program;

WHEREAS, the City of Berkeley is an eligible Local government who has applied for program funds to administer one or more eligible activities, or a Local or Regional Housing Trust Fund to whom an eligible Local government delegated its PLHA formula allocation.

WHEREAS, the Department may approve funding allocations for PLHA Program, subject to the terms and conditions of the Guidelines, NOFA, Program requirements, the Standard Agreement and other contracts between the Department and PLHA grant recipients

WHEREAS, the Plan submitted in response to the NOFA and approved by the Department was for a term of five years.

WHEREAS, local governments shall obtain approval of the Department for amendments made to the Plan in each succeeding year of the term of the Plan.

WHEREAS, reallocations of more than 10 percent of funds among Activities require amendment of the Plan, with approval granted by the governing body at a publicly noticed public meeting; and

NOW THEREFORE, BE IT RESOLVED that by the Council of the City of Berkeley that if the City of Berkeley receives a grant of PLHA funds from the Department pursuant to the above referenced PLHA NOFA, it represents and certifies that it will use all such funds in a manner consistent and in compliance with all applicable state and federal statutes, rules, regulations, and laws, including without limitation all rules and laws regarding the PLHA Program, as well as any and all contracts Applicant may have with the Department.

BE IT FURTHER RESOLVED that the City of Berkeley is hereby authorized and directed to receive a PLHA grant, in an amount not to exceed the five-year estimate of the PLHA formula allocations, as stated in Appendix C of the current NOFA (\$7,761,504) in accordance with all applicable rules and laws.

BE IT FURTHER RESOLVED that the City of Berkeley hereby agrees to use the PLHA funds for eligible activities as approved by the Department and in accordance with all

December 14, 2021

Program requirements, Guidelines, other rules and laws, as well as in a manner consistent and in compliance with the Standard Agreement and other contracts between the Applicant and the Department.

BE IT FURTHER RESOLVED that Pursuant to Section 302(c)(4) of the Guidelines, the City of Berkeley's PLHA Plan Amendment for the 2019-2023 Allocations is attached to this resolution, and Applicant hereby adopts this PLHA Plan Amendment and certifies compliance with all public notice, public comment, and public hearing requirements in accordance with the Guidelines.

BE IT FURTHER RESOLVED that the City of Berkeley certifies that it has or will subgrant some or all of its PLHA funds to another entity or entities. Pursuant to Guidelines Section 302(c)(3), "entity" means a housing developer or program operator, but does not mean an administering Local government to whom a Local government may delegate its PLHA allocation.

BE IT FURTHER RESOLVED that the City of Berkeley certifies that its selection process of these subgrantees was or will be accessible to the public and avoided or shall avoid any conflicts of interest.

BE IT FURTHER RESOLVED that the City of Berkeley certifies that, if funds are used for the development of an Affordable Rental Housing Development, the Local government shall make PLHA assistance in the form of a low-interest, deferred loan to the Sponsor of the Project, and such loan shall be evidenced through a Promissory Note secured by a Deed of Trust and a Regulatory Agreement shall restrict occupancy and rents in accordance with a Local government-approved underwriting of the Project for a term of at least 55 years.

BE IT FURTHER RESOLVED that the City of Berkeley shall be subject to the terms and conditions as specified in the Standard Agreement, the PLHA Program Guidelines and any other applicable SB 2 Guidelines published by the Department.

BE IT FURTHER RESOLVED that the City Manager and/or her designee is authorized to execute the PLHA Program Application, the PLHA Standard Agreement and any subsequent amendments or modifications thereto, as well as any other documents which are related to the Program or the PLHA grant awarded to Applicant, as the Department may deem appropriate.

City of Berkeley HOME-ARP Allocation Plan DRAFT

Guidance

- To receive its HOME-ARP allocation, a Participating Jurisdiction (PJ) must:
 - Engage in consultation with at least the required organizations;
 - Provide for public participation including a 15-day public comment period and one public hearing, at a minimum; and,
 - Develop a plan that meets the requirements in the HOME-ARP Notice.
- To submit: a PJ must upload a Microsoft Word or PDF version of the plan into the Federal Integrated Disbursement Information System (IDIS) as an attachment next to the “HOME-ARP allocation plan” option on either the AD-26 screen (for PJs whose FY 2021 annual action plan is a Year 2-5 annual action plan) or the AD-25 screen (for PJs whose FY 2021 annual action plan is a Year 1 annual action plan that is part of the 2021 consolidated plan).
- PJs must also submit an SF-424, SF-424B, and SF-424D, and the following certifications as an attachment on either the AD-26 or AD-25 screen, as applicable:
 - Affirmatively Further Fair Housing;
 - Uniform Relocation Assistance and Real Property Acquisition Policies Act and Anti-displacement and Relocation Assistance Plan;
 - Anti-Lobbying;
 - Authority of Jurisdiction;
 - Section 3; and,
 - HOME-ARP specific certification.

Participating Jurisdiction: City of Berkeley

Date: December 15, 2021

Consultation

Before developing its plan, a PJ must consult with the Continuum of Care/s (CoC)/s serving the jurisdiction’s geographic area, homeless and domestic violence service providers, veterans’ groups, public housing agencies (PHAs), public agencies that address the needs of the qualifying populations, and public or private organizations that address fair housing, civil rights, and the needs of persons with disabilities, at a minimum. State PJs are not required to consult with every PHA or CoC within the state’s boundaries; however, local PJs must consult with all PHAs (including statewide or regional PHAs) and CoCs serving the jurisdiction.

Summarize the consultation process:

To be completed.

List the organizations consulted, and summarize the feedback received from these entities.

Agency/Org Consulted	Type of Agency/Org	Method of Consultation	Feedback
Housing Advisory Commission	City Advisory Commission	Public Meeting	One public comment and general discussion from commissioners in support of HOME-ARP funds for a Homekey project.
Homeless Commission	City Advisory Commission	Public Meeting – CANCELLED Written feedback requested	One response was received and was in general support of a Homekey project with concerns that the allowable administrative costs seem high and that contractors should be selected in an equitable way.
Berkeley City Council	Local Government.	Public Hearing and Public Agenda.	TBD.
All City Commissions	City Advisory Commissions.	Electronic Communication.	TBD.
Berkeley Housing Authority	Public Housing Authority.	Electronic Communication.	TBD.
Everyone HOME	Alameda County Continuum of Care.	Electronic Communication.	TBD.
Over 50 non-profit agencies	Non-profit and faith-based Agencies serving low-income Berkeley residents.	Electronic Communication & Flyer distribution.	TBD.
General Public	General Public	<ul style="list-style-type: none"> • Newspaper advertisement in Berkeley Voice on Nov. 12, 2021; • Electronic Communications, flyer distribution & invitation to comment and attend Public Hearing; 	TBD.

Agency/Org Consulted	Type of Agency/Org	Method of Consultation	Feedback
		<ul style="list-style-type: none"> Posting of Public Hearing on Berkeley's Community Calendar; Community Centers, Senior Centers, etc. 	
	Local Business	Electronic Communication & Flyer distribution.	TBD.
	Local Affordable Housing Developers	Electronic Communication & Flyer distribution.	TBD.
Berkeley Housing Authority	Low-income Berkeley residents	Mailing to residents.	TBD.

Public Participation

PJs must provide for and encourage citizen participation in the development of the HOME-ARP allocation plan. Before submission of the plan, PJs must provide residents with reasonable notice and an opportunity to comment on the proposed HOME-ARP allocation plan of **no less than 15 calendar days**. The PJ must follow its adopted requirements for "reasonable notice and an opportunity to comment" for plan amendments in its current citizen participation plan. In addition, PJs must hold **at least one public hearing** during the development of the HOME-ARP allocation plan and prior to submission.

For the purposes of HOME-ARP, PJs are required to make the following information available to the public:

- The amount of HOME-ARP the PJ will receive,
- The range of activities the PJ may undertake.

Describe the public participation process, including information about and the dates of the public comment period and public hearing(s) held during the development of the plan:

- ***Public comment period:*** start date – November 12, 2021. end date – December 14, 2021.
- ***Public hearing:*** December 14, 2021.

A Public Hearing on the PY21 Draft Annual Action Plan Amendment #1 will be held on December 14, 2021 before the Berkeley City Council. Additional information forthcoming.

Describe any efforts to broaden public participation:

Several efforts were made to broaden public participation. The draft Amendment was posted on the City's website, and a copy was presented at both the Housing Advisory Commission (HAC) November 4, 2021 and the Homeless Commission November 10, 2021 meetings. At its November meeting, the HAC approved the PY21 Draft Annual Action Plan Amendment #1. Outreach was accomplished via hard copy and electronic flyer mailings to interested parties, including Alameda County-wide Homeless Continuum of Care, community agencies serving low-income people, and public buildings such as recreation centers, senior centers, libraries and other government buildings.

A PJ must consider any comments or views of residents received in writing, or orally at a public hearing, when preparing the HOME-ARP allocation plan.

Summarize the comments and recommendations received through the public participation process:

TBD.

Summarize any comments or recommendations not accepted and state the reasons why:

TBD.

Needs Assessment and Gaps Analysis

PJs must evaluate the size and demographic composition of qualifying populations within its boundaries and assess the unmet needs of those populations. In addition, a PJ must identify any gaps within its current shelter and housing inventory as well as the service delivery system. A PJ should use current data, including point in time count, housing inventory count, or other data available through CoCs, and consultations with service providers to quantify the individuals and families in the qualifying populations and their need for additional housing, shelter, or services. The PJ may use the optional tables provided below and/or attach additional data tables to this template.

Homeless Needs Inventory and Gap Analysis Table

Homeless													
	Current Inventory					Homeless Population				Gap Analysis			
	Family		Adults Only		Vets	Famil y HH (at least 1 child)	Adult HH (w/o child)	Vets	Victim s of DV	Family		Adults Only	
	# of Beds	# of Units	# of Beds	# of Units	# of Beds					# of Beds	# of Units	# of Beds	# of Units
Emergency Shelter	50	12	221	221	12								
Transitional Housing	42	10	54	54	42								
Permanent Supportive Housing	98	25	341	341	0								
Other Permanent Housing						28	10	27	0				
Sheltered Homeless						51	295	21	87				
Unsheltered Homeless						0	813	60	203				
Current Gap										+111	+48	-502	-502

Data Sources: 1. Point in Time Count (PIT); 2. Continuum of Care Housing Inventory Count (HIC); 3. Consultation

Housing Needs Inventory and Gap Analysis Table

Non-Homeless			
	Current Inventory	Level of Need	Gap Analysis
	# of Units	# of Households	# of Households
Total Rental Units	29,822		
Rental Units Affordable to HH at 30% AMI (At-Risk of Homelessness)	1,455		
Rental Units Affordable to HH at 30% - 50% AMI (Other Populations)	640		
Total	2,095		
0%-30% AMI Renter HH w/ 1 or more severe housing problems (At-Risk of Homelessness)		6,275	
30%-50% AMI Renter HH w/ 1 or more severe housing problems (Other Populations)		3,205	
Total		9,480	
Current Gaps			-7,385

Data Sources: 1. American Community Survey (ACS); 2. Comprehensive Housing Affordability Strategy (CHAS)

Describe the size and demographic composition of qualifying populations within the PJ's boundaries:

Homeless:

The most recent (2019) point in time (PIT) count found 1,108 people who were homeless in Berkeley. Over 95% of whom were single adults and nearly three quarters (813) were unsheltered. The duration of the current episode of homelessness for all people who were homeless, was one year or more for 64%. About half (48%) of everyone in the count had been living in Alameda County (the County Berkeley is a part of) for ten years or more, and another 16% for five to nine years.

While 9% of Berkeleyans identify as Black/African American, the PIT count found that 57% of all people who were homeless residents of Berkeley were Black/African American. Conversely, 60% of the total population of Berkeley identifies as white, but 29% of the people found to be homeless in Berkeley were white. Similarly, 1% of the homeless population in the Berkeley identified as Asian, but 20% of all residents were Asian. People in the PIT count who identified as Latinx/Hispanic, Multi-Racial, American Indian or Alaskan Native and Native Hawaiian or Pacific Islander were largely proportionate in percentage terms, to the Berkeley total population.

Two-thirds of all people who were counted as homeless in the 2019 PIT count identified as male, 33% female, 1% transgender and 1% non-binary. Fourteen percent identified as LGBTQ+.

The majority of people in the PIT count (73%) were between the ages of 25 and 69 and 17% were 60 years of age or older. There was one unaccompanied youth counted as homeless and additional 81 people were young adults.

A little more than a third (35%) of people who were found to be homeless during the PIT count in 2019, were chronically homeless and nearly 6 in 10 were unsheltered. Forty-one percent of all people who were homeless reported a disabling condition.

Because “most homeless services experts agree that the HUD point in time count undercounts the number of people experiencing homelessness in a community,” to get a more accurate and detailed understanding of the homeless population in Berkeley, the City produced a report in 2019, the 1,000 Person Plan to Address Homelessness, that used 42,500 individual records from the homeless management information system (HMIS), between the years 2006 and 2017.

Analysis of this data, found that “over the course of a year in Berkeley, nearly 2000 people experience homelessness of some duration. This number has been steadily growing at an average rate of 10% every 2 years and is highly disproportionate in its racial disparity: since 2006, 65% of homeless service users in Berkeley identify as Black or African American, compared to a general population of less than 10%.”

At Risk of Homelessness:

To account for all persons at-risk of becoming homeless is difficult because this population does not always present themselves to the homelessness response system and there is not an alternative systematic way to collect this data.

However, we can analyze the most recent (2014-2018) Comprehensive Housing Affordability Strategy (CHAS) data. This data contains elements of households that go some way to meeting the definition of “at risk of homelessness” found in 24 CFR 91.5. Specifically, the CHAS data breaks down occupied housing units by HUD Area Median Family Income (HAMFI)¹, including 30% and below of HAMFI and by their housing problems. This analysis uses severe housing problems² as a proxy for the non-income criteria found in definition, thus coming close to the precise definition of “at risk of homelessness”.

The CHAS data shows that about 16% of all households in housing units, in Berkeley, meet this proxy definition of “at risk of homelessness”. Five percent of all households in owner occupied units and 24% of all households in renter occupied units are “at risk of homelessness”. This data also provides estimates of the racial and ethnic makeup for the heads of households in these units. Households headed by people who identify as Asian and Black or African American, are overrepresented in this category, as compared to the total share of all housing units (see table below).

Race of Head of Household	<=30% HAMFI & at least 1 Housing Problem	All Housing Units
White alone, non-Hispanic	43%	62%
Black or African-American alone, non-Hispanic	13%	8%
Asian alone, non-Hispanic	28%	17%
American Indian or Alaska Native alone, non-Hispanic	1%	0.4%
Pacific Islander alone, non-Hispanic	1%	0.3%
Hispanic, any race	9%	8%

¹ HAMFI – HUD Area Median Family Income. This is the median family income calculated by HUD for each jurisdiction, in order to determine Fair Market Rents (FMRs) and income limits for HUD programs. HAMFI will not necessarily be the same as other calculations of median incomes (such as a simple Census number), due to a series of adjustments that are made (For full documentation of these adjustments, consult the HUD Income Limit Briefing Materials).

² The four housing problems are: incomplete kitchen facilities; incomplete plumbing facilities more than 1 person per room; and cost burden greater than 30%.

Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking:

In the absence of comprehensive data, this report has consulted with the Berkeley Police Department (BPD) for available domestic violence data. While incomplete, given that not every victim has an accompanying case to record their victimization, examining criminal case data provides a reasonable approximation of the size and demographic makeup of this qualifying population.

In 2019, the BPD recorded 260 cases of domestic violence. In 2020, the number of cases increased to 241 and as of October 31st, there were 199 cases in 2021. Approximately, three quarters of the victims, during each time period, were female and a quarter were male. A disproportionately large number of victims have been Black or African American, compared to the total Berkeley population (~50% of victims each year vs. 6% of total population), and a disproportionately low number of victims identified as white or Asian. Fifty-four percent of the total Berkeley population identified as white, while the percent of victims who identify as white were 25, 31 and 24%, respectively. Similarly, 22% of the Berkeley population is Asian, while 7, 4, and 3% of victims identified as Asian, respectively.

Using BPD data of sexual assault cases, we find that there were 74 victims of this crime in 2019, 62 in 2020 and 47, as of October 31st, in 2021. The sex of the victims was largely female. In 2019, 85% were female, in 2020 the percentage was 95 and as of the end of October 87% of victims were female. The racial and ethnic disproportionality for sexual assault victims is different than it is from domestic violence victims. Sexual victims who identified as Black or African American made up 14% of all victims in 2019, 23% in 2020 and 23% in the most recent data from 2021 (up to October 31, 2021). These proportions are still disproportionate compared to the total population (6%), but less so than domestic violence victims. The proportion of sexual assault victims who identify as white (51 in 2019, 51 in 2020 and 36 as of October 31, 2021) is largely the same as the total population 54%.

The 2019 PIT count offers us a view of the size of the homeless population that had experience domestic violence. Five percent of the respondents in the Berkeley count reported currently experiencing domestic violence or abuse, compared to 6% of respondents in Alameda County. Twenty-five percent of the 2019 PIT count respondents in Berkeley reported a history of experiencing physical, emotional or sexual abuse by a relative or by a person with whom they have lived.

Other Populations:

(1) Other Families Requiring Services or Housing Assistance to Prevent Homelessness

The City of Berkeley currently funds a Housing Retention Program (HRP) that provides emergency rental assistance to qualifying individuals. This program has provided

emergency rental assistance for 257 households during FY21, 223 of whom were formerly homeless.

Of those recipients of emergency rental assistance who were formerly homeless, 62% were households where the head of the household was Black or African American. This is in stark contrast to the 8% of all households in Berkeley headed by someone who identifies as Black or African American. Similarly, head of households who identify as Hispanic/Latinx make up 8% of the total households in Berkeley, but were 15% of all emergency rental assistance recipients.

Conversely, 16% of all recipient, head of households, who were formerly homeless identified as white, compared to 62% of all head of households in Berkeley, and 17% of all head of households in Berkeley identify as Asian, but only 4% of emergency rental assistance recipients identify as Asian.

The largest age demographic, when broken by ten-year age groups, for this cohort, were 60-69-year olds. A little over 1 in 5 of the recipient head of households were in this age group. Just under 1 in 5 recipient head of households were in the 30-39 and 40-49 age ranges, each.

Notably, 67% of all households receiving emergency assistance from the HRP, whose head of household was formerly homeless, had a child or adult with a disability in the household. Almost a quarter of the households were headed by single parent households.

The Rapid Rehousing programs within the City also have participants that meet the definition of this qualifying population. Participants of this program are formerly homeless individuals, notably it does not include families, who receive a temporary rental subsidy while they participate in supportive services that are meant to transition them to permanent housing. The most recent data (July 2020 to March 2021), from HMIS, shows that there were 153 people served in this program, 41% of whom were female, 58% male and 1% trans women. Sixty-nine percent of participants identified as Black or African American and 25% white. The plurality of participants (31%) were 55-64 years of age. Twenty-five to 34-year-olds made up the next largest share of participants, by age group, at 21%, and a similar share (19%) was made up of 45 to 54-year-olds.

(2) At Greatest Risk of Housing Instability

(i) has annual income that is less than or equal to 30% of the area median income, as determined by HUD and is experiencing severe cost burden (i.e., is paying more than 50% of monthly household income toward housing costs)

According to the most recent (2014-2018) CHAS data, there were an estimated 44,980 occupied housing units in Berkeley. Of these, an estimated 6,295 (14%) were comprised of a household with an annual income that was less than or equal to 30% of the area median income, as determined by HAMFI, and were experiencing severe

housing cost burden (i.e. paying more than 50% of monthly household income toward housing costs).

Broken down by tenancy type, this amounted to 4% of owner-occupied units and 22% of all renter occupied units. The largest proportion (49%) of the owner-occupied units were households categorized as non-family elderly. Whereas, the largest share (69%) of renter occupied units meeting this definition of qualifying population, were households described as non-elderly and non-family.

Almost all of the units meeting this definition, 100% of owner and 95% of renter occupied unit had complete plumbing and kitchen facilities.

While there is no readily available data that estimates the racial and ethnic breakdown of this qualifying population, CHAS data has been used to estimate the racial and ethnic breakdown for the population that meets the criteria of households that have a housing cost burden of 50% or greater. Using this proxy, we find that percentage of households headed by someone who identifies as Asian (26%), is disproportionately higher than it is for the total household population of Berkeley (17%). There is also an overrepresentation of housed Black or African American headed households, that fall under this categorization (11% of $\geq 50\%$ housing cost burden vs. 8% of total housed households). Relatedly, white headed households are underrepresented in this category (49%), compared to the total population of occupied housing units (62%).

(ii) has annual income that is less than or equal to 50% of the area median income, as determined by HUD, AND meets one of the seven conditions from paragraph (iii) of the “At risk of homelessness” definition established at 24 CFR 91.5.

The most recent CHAS data can also be used to provide a limited understanding of individuals and families that meet the definition of this qualifying population. There are several ways in which an individual or family can meet the criteria for this qualifying population. One of these ways, households living in units with 1.5 or more people and a HAMFI less than or equal to 50%, is covered in the CHAS data. According to the 2014-2018 CHAS, an estimated 2% of all occupied housing units are made up of households that meet this criterion, all of which are renter occupied households. Of those households, 25% are families and 75% are non-family households.

In its 2020 Consolidated Plan the City of Berkeley defined the “At risk of homelessness” subpart, “(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient’s approved consolidated plan”; as the high cost burden of housing characteristic in Berkeley. Using the number of households with a housing cost burden of greater than 30% as a high cost burden, and a HAMFI of less than or equal to 50%, we can utilize CHAS data to further understand the size and demographics of this population.

In Berkeley, 30% of all households occupying a housing unit have an income that is 50% or less of HAMFI and pay 30% or more on their housing costs. Broken down by type of tenancy, 10% of owner occupied and 44% of renter occupied units carry this housing cost burden. Low-income renters have a greater housing cost burden.

We can further breakdown the households who meet this criterion by their type of household. According to the data using the 2014-2018 American Community Survey, the most recent version of CHAS, we find that 59% of households in this subcategory are defined as non-family and non-elderly. The next most prevalent household type is, elderly non-family making up 21% of the subpopulation, followed by small families³ (15%) and elderly families⁴ and large families⁵ (2% each).

The closest approximation to a breakdown of households that meets the definition for this qualifying population, by race and ethnicity, is the breakdown by housing cost burden found in the current CHAS data tables (meeting subpart (G) of the “at risk” definition). For all households living in a housing unit with a housing cost burden greater than 30% (18,229 estimated) we find in this data series, that 54% are headed by someone who identifies as white, 11% as Black or African American, 20% as Asian, 1% as American Indian or Alaskan Native, 0.5% as Pacific Islander, 9% as Hispanic and 5% as multi-racial or a race not identified in the survey. These percentages largely mirror the share of occupied units throughout Berkeley by race and ethnicity (62% white, 8% Black or African American, 17% Asian, 0.4% American Indian or Alaskan Native, 0.3% Pacific Islander, 8% Hispanic and 4% multi-racial or a race not specified in the data).

Veterans and Families that include a Veteran Family Member – that meet the criteria for one of the qualifying populations described above:

The most recent PIT count found that 81 people (7%) who were homeless were Veterans. The large majority (74%) of Veterans counted were living in unsheltered conditions.

Describe the unmet housing and service needs of qualifying populations, including but not limited to:

- ***Sheltered and unsheltered homeless populations;***
- ***Those currently housed populations at risk of homelessness;***
- ***Other families requiring services or housing assistance or to prevent homelessness; and,***

³ Small family is defined as: 2 persons, neither person 62 years or over, or 3 or 4 persons

⁴ Elderly family is defined as: 2 persons, with either or both age 62 or over

⁵ Large family is defined as: 5 or more persons

- ***Those at greatest risk of housing instability or in unstable housing situations:***

Homeless, At Risk of Homelessness & Other Populations at Greatest Risk of Housing Instability:

Respondents to 2019 PIT count chose benefits/income (27%), employment assistance (27%), rent assistance (26%) and mental health services (21%) as the top four services that could have prevented their homelessness. We can safely assume that to some degree this means that these services were lacking in either in quantity, quality or accessibility.

Relatedly, the top six reasons cited for being homeless can be viewed as a barometer for the needs of people who were homeless. The PIT count respondents noted that, lost job (18%), eviction/foreclosure (17%), mental health issues (15%), substance abuse issues (12%), family/friends couldn't afford to let them stay (10%) and incarceration (10%), were the top causes of homelessness.

Participants in the 2019 PIT count, people who were homeless, also identified how they think money should be spent to alleviate homelessness. This serves as another proxy for the needs expressed by people who are experiencing homelessness. In the responses, the top suggestion was to spend money on affordable rental housing (58%). A little under half (43%) of people felt that employment training/job opportunities was how money should be spent. The next most popular response (29%), was permanent help with rent/subsidies, followed by substance abuse/mental health services (28%), housing with supportive services (22%) and 24/7 basic sanitation (19%).

Examining the findings from the aforementioned, 1,000 Person Plan to Address Homelessness (the Plan) also helps to ascertain unmet housing and service needs for people who are homeless, which overlaps with people who may qualify as: at risk of homelessness. The Plan found, using the 42,500 individual records from HMIS, between the years 2006 and 2017, that:

- “The likelihood of returning back to homelessness in Berkeley after previously exiting the system for a permanent housing bed is increasing over time, irrespective of personal characteristics or the type of service accessed. Importantly, among those who previously exited the system to permanent housing in the past but eventually returned, the largest percentage of those exits had been to unsubsidized rental units. None of this is surprising given the extreme increase in the East Bay’s rental housing costs over the past several years, and the volatility that creates for poor and formerly homeless people struggling to make rent.”

- “A comprehensive regression analysis found that having any disability (physical, developmental, substance-related, etc.) is by far the single largest reason a person is unlikely to exit homelessness to housing and subsequently not return back to homelessness. Unfortunately, the percentage of homeless Berkeleyans self-reporting a disability of any kind has increased greatly, from 40% in 2006 to 68% by 2017--meaning the population is increasingly comprised of those least likely to permanently end their homelessness with the services available.”
- “Per Federal mandate, all entities receiving HUD funding for homeless services are required to create a Coordinated Entry System (CES) that prioritizes limited housing resources for those who are most vulnerable. However, Berkeley’s Federal permanent supportive housing (PSH) budget, which supports housing for 260 homeless people, can place only about 25-30 new people every year. To help alleviate this lack of permanent housing subsidy, Berkeley experimented with prioritizing rapid rehousing for its highest-needs individuals at the Hub. We found that rapid rehousing can be used as a bridge to permanent housing subsidies, but, used alone, cannot prevent some of the highest needs people from returning to homelessness.”

The Plan concludes that “the system has not created sufficient permanently subsidized housing resources to appropriately service a Coordinated Entry System, and has instead relied on rapid rehousing to exit them from the system. Overreliance on rapid rehousing with high needs individuals in a tight housing market—all of which we found evidence for in these data--is a strategy that is tenuous in the long-run.”

Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking

According to the previously referenced Berkeley Homeless Count and Survey, a history of domestic violence and partner abuse can be a primary cause of homelessness. Victims of domestic violence have a great risk of becoming homeless and experiencing poverty. According to the Family and Youth Services Bureau (<https://www.acf.hhs.gov/fysb/resource/dv-homelessness-stats-2016>), this is likely tied to a high need for services, including housing and financial support, and the lack of commensurate housing and financial resources available. The lack of affordable housing in the City likely makes it difficult for victims of domestic violence to leave their violent homes, so it is plausible that they are more likely to go unidentified, move to an overcrowded unit, or move into a homeless shelter than those not experiencing domestic violence.

After consulting with the Berkeley Police Department’s Domestic Violence and Sexual Assault Unit, three things became apparent:

- It is not uncommon for a victim of domestic violence to have to wait two or three days for a bed at a safe shelter, once they have requested it. This can lead to victims to stay with or return to their abuser while they wait for a bed to become available.
- When victims of domestic violence are housed in a safe shelter, they can be without essential household and hygiene items, and little to no financial resources to acquire these items. This may lead to the victim to return to the abuser for financial security.

Other Populations:

(1) Other Families Requiring Services or Housing Assistance to Prevent Homelessness

The City has had a rental assistance program for many years, but this program was prioritized during the COVID-19 pandemic and an additional \$3.7 million was added to provide rent relief and prevent evictions that may lead to homelessness. This program currently has a waitlist and is unable to fully meet the need in the community. The unmet needs for the recipients can be enumerated using some of the data collected from the heads of household. Loss of employment was cited as the primary reason for recipients seeking assistance. More than half (57%) listed their loss of employment and subsequent inability to find alternative employment as the reason for needing emergency rental assistance to remain housed. Increases in expenses, including child care and health care costs, accounted for a little more than a third (37%) of the recipient’s primary reason for needing assistance.

Veterans and Families that include a Veteran Family Member – that meet the criteria for one of the qualifying populations described above

The 2019 PIT count helps us better understand the needs and extrapolate the unmet needs for the population of veterans that are homeless. In this report the top four reasons the veterans list for being homeless are: Loss of Job, Other Money Issues, Mental Health Issues and Physical Health Issues.

Identify and consider the current resources available to assist qualifying populations, including congregate and non-congregate shelter units, supportive services, TBRA, and affordable and permanent supportive rental housing:

Homeless:

The City funds multiple agencies to provide 298 year around shelter beds, 30 seasonal shelter beds and 27 transitional housing beds. As part of the City’s COVID-19 response, the census at these programs has been reduced by approximately 50% so staff and participants can maintain 6’ social distancing. Additionally, funds have been provided to expand shelter operations to 24/7 and to provide three meals per day so participants don’t have to leave during the day.

To offset the census reduction, while providing a safe space, the City implemented a non-congregate shelter program to house 18 households who meet the CDC's criteria for at-risk populations, 65+ or having an underlying medical condition requiring extra precautions against COVID-19. These shelter enhancements are expected to be in place until the City's Shelter In Place (SIP) order is lifted. Rapid re-housing resources are being offered to help people move into permanent housing.

Additionally, the City expanded the Berkeley Emergency Storm Shelter operations from an inclement weather shelter to supporting a 24/7 winter shelter operation through mid-April.

Additionally, while the Emergency Solutions Grant (ESG) regulations allow for federal funds to be provided to those categorized as "at-risk" but not necessarily at "imminent risk", Berkeley uses its ESG funds for rapidly rehousing people who are literally homeless.

Berkeley funds prevention assistance for people who meet "immediate risk" criteria defined as:

"An individual or family who will imminently lose their primary nighttime residence, provided that:

- the primary nighttime residences will be lost within 14 days of the day of application for homeless assistance;
- No subsequent residence has been identified; and,
- The individual or family lacks the resources of support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing."

Alameda County has mental health, foster youth, health care, and corrections discharge policies intended to prevent discharges of individuals from these systems into homelessness, described in detail in the Consolidated Plan.

During the coronavirus pandemic, the City expanded the housing retention program to assist households unable to pay rent due to a COVID-19 related loss of income. Households must provide a dated Notice of Eviction from landlord stating amount owed for back rent OR a letter of verification from landlord stating the amount owed for back rent, since there is currently an eviction moratorium.

The City is working with local hospitals to share information about the North County HRC and available homeless services in Berkeley to reduce discharges to local daytime drop-in centers and shelters that can't support the needs of medically fragile people with severe disabling conditions. The City will continue to participate in countywide and regional efforts to reduce discharges into homelessness.

The following is a list of services targeted to people who are homeless in Berkeley:
Homelessness Prevention Services:

- Counseling/Advocacy
- Rental Assistance

Street Outreach Services:

- Law Enforcement
- Mobile Clinics
- Other Street Outreach Services

Supportive Services:

- Alcohol & Drug Abuse
- Employment and Employment Training
- Life Skills
- Mental Health Counseling
- Transportation

At Risk of Homelessness & Other Populations at Greatest Risk of Housing Instability

The City of Berkeley established the Housing Trust Fund (HTF) program in 1990, and since then the HTF program has funded the renovation or construction of approximately 1,400 units of affordable housing. The City's HTF portfolio includes units affordable to households at a variety of income levels, including units for formerly homeless households and Extremely Low-Income households. City funding is currently supporting projects that will create 559 new affordable housing units. Four City projects in the pipeline (including Berkeley Way, described below) received No Place Like Home funding from the state of California, which supports units for formerly homeless households with mental illnesses. The projects include supportive services and case management.

The City has committed more than \$27 million in local funding for the development of the City-owned Berkeley Way parking lot to address the needs identified in the plan. On September 9, 2014, after a Request for Qualifications process, the City Council approved the selection of a development team consisting of Bridge Housing, the Berkeley Food and Housing Project, and Leddy Maytum Stacy Architects (LMSA) as the preferred development team for the site. Since then the City has been working closely with the project team on a three-part project including homeless services and meal space, emergency shelter (44 beds), permanent supportive housing (53 units at 30% AMI), and affordable apartments (89 units at 50-80% AMI). The project is underway, with estimated construction completion in June 2022.

The City also offer flex funds. These funds are available for one-time costs like back payment of rent, security deposits, etc. They must generally must be used to obtaining or maintaining housing.

Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking

The following is a list of resources available to victims in Berkeley and the surrounding area:

Bay Area Women Against Rape (BAWAR) is Alameda County's community rape crisis center offering advocacy and counseling to folks in Alameda County who have experienced sexual violence. BAWAR has a 24/7 crisis line in both English and Spanish.

Family Violence Law Center (FVLC) provides survivor-centered legal advocacy and assistance for individuals who have experienced intimate partner violence or sexual assault. They have a 24/7 crisis line for people living in Alameda County.

Alameda County Family Justice Center provides access to 80 community agencies and programs that provide healing, support and resources to people impacted by domestic violence, sexual assault and exploitation, child abuse, elder and dependent adult abuse, and stalking.

- Domestic violence counseling
- Sexual assault counseling
- Restraining orders
- Case management
- Trauma recovery services
- Safety planning
- Children's counseling
- Parenting support
- Shelter/housing assistance
- Medi-CAL and CalFRESH application assistance
- Victims Compensation Program application assistance
- Safe at Home application assistance
- Self-sufficiency program: financial literacy, professional development, resume writing and interviewing skills.
- Criminal justice information and assistance
- Childcare while parent or guardian is receiving services onsite (KidZone)
- GED
- ESOL (ESL) ALCO
- Public Health Immunization Clinic
- Legal Advice Clinic
- Immigration Clinic

A Safe Place is an Oakland based domestic violence agency that provides an emergency domestic violence shelter for women with children, 24/7 crisis line, mental health services, and community outreach programs.

Deaf Hope is a center providing culturally specific services to deaf survivors of interpersonal violence and their children.

Narika is an agency providing multicultural services for people who have experienced intimate partner violence. Narika offers support groups, seed programs and a helpline particularly for immigrants from South Asian communities.

Ruby's Place is a free, multi-population program serving women, men, transgender people and accompanied minors who have experienced domestic violence, human trafficking or both. Shelter and 24/7 crisis line offered.

Shalom Bayit strives for social change and offers confidential peer counseling, support, information, referrals, and advocacy for women identified folk in the Jewish community. Healing support groups are offered in the East Bay, SF, Marin, and the Peninsula.

Other Populations

(1) Other Families Requiring Services or Housing Assistance to Prevent Homelessness

The City of Berkeley currently funds a Housing Retention Program that provides emergency rental assistance to qualifying individuals. This program has provided emergency rental assistance for 257 households during FY21.

The County of Alameda also operates an Emergency Rental Assistance Program. It has received 777 applications for emergency rental assistance, and has approved 258 applications. This program cap also has a cap that affects the amount of assistance they can provide.

As mentioned earlier, there are also several Rapid Rehousing programs that serve formerly homeless individuals that operate within the City.

Veterans and Families that include a Veteran Family Member – that meet the criteria for one of the qualifying populations described above

The Roads Home Veteran Services program of Berkeley Food & Housing Project provides the following services:

- Housing location help
- Temporary financial assistance, and
- Wraparound case management for people who are experiencing or at risk of homelessness
- Outreach to people who are unsheltered
- Permanent Supportive Housing – Six-bedroom house for local Veterans
- Temporary housing (6-24 months) and intensive life skills training to 18 homeless male veterans in Berkeley.

- Health care specific case management to Veterans and their families, including help with:
 - Accessing eligible benefits,
 - Getting to appointments,
 - Filling prescriptions,
 - Establishing home aid, and
 - Referrals to other services.
- Employment Services
- Shallow subsidy that provides two years of rental assistance that will not decrease if the household increases their income.
- Assist Veterans in preparing and submitting applications for Housing & Urban Development/Veterans Affairs Supportive Housing (HUD-VASH) vouchers
- Works with local public housing authorities to understand their eligibility criteria, in helping with HUD-VASH

Additionally, Operation Dignity operates a duplex in Berkeley that provides transitional housing for seven male veterans at a time.

Identify any gaps within the current shelter and housing inventory as well as the service delivery system:

Homeless Shelter, Housing Inventory and Service Gaps

The 2019 City Council report, *1000 Person Plan to Address Homelessness*, states that “Berkeley has roughly 260 permanent supportive housing (PSH) vouchers for homeless people. In any given year, only about 10% of these vouchers turn over for new placements, meaning that only 25-30 homeless individuals can be permanently housed, with ongoing deep rental subsidy, in any given year.”

Meanwhile, according to the 2019 PIT count, 35% of Berkeley’s homeless population is chronically homeless—387 individuals on any given night. “To alleviate this supply/demand mismatch, the City implemented a policy of prioritizing high-needs people not just for PSH, but also for rapid rehousing (RRH), beginning in 2016. As a result, the percentage of RRH clients entering with disability had approached that of PSH by 2017.

Given what we now know about the statistical effect of disability on housing success, this has had the predictable effect of reducing the percentage of clients who are able to ultimately keep their housing after the subsidy and intervention ends, from a pre-CES average of 81% to a post-CES average of 57%. Compare this to PSH homeless return rates, which were less than 9% in 2017.”

It is becoming more common for City-funded affordable housing projects to restrict a portion of their total units to formerly homeless households. This responds to the significant need for homeless housing opportunities in Berkeley, but the challenge is

identifying and securing funding to support rental subsidies and the long-term operation of the projects. Some of the City's local funds are restricted to capital costs, and state funding programs often do not include operating subsidies. The City has some local funds that can be used for this purpose, but not enough to meet the demand.

Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking Shelter, Housing Inventory and Shelter Gaps:

Determining the gaps in service and delivery system for this population specifically is difficult given the level of data available. However, given that there is generally a lack of affordable housing in the City, additional affordable housing options would likely also benefit the population.

After consulting with the Berkeley Police Department's Domestic Violence and Sexual Assault Unit, three things became apparent:

- There is inadequate housing in the area that can effectively shelter victims of human trafficking in Berkeley. If victims of this crime are housed in the community into which they have been victimized, it is likely that they will be re-victimized. Because of the nature of the crime, the perpetrator is often able to coerce victims to leave the shelter and re-enter the abusive cycle. This becomes more likely when the shelter is nearby to where the victim lives and presumably, the perpetrator. Currently, there is not adequate housing that can place victims of this crime outside of the area, a safe distance away from their abuser, with sufficient supportive services, like counseling specialized to help victims of this crime.

Other Populations

(1) Other Families Requiring Services or Housing Assistance to Prevent Homelessness

According to data provided by the City's subrecipient distributing emergency rental assistance, 57% of all recipients who were formerly homeless, needed this assistance because they could not find employment, largely due to the economic effects of COVID-19. Forty-eight percent of formerly homeless recipients stated that their disability was a contributing factor to their need for assistance, 37% said increased costs, including child care and health care costs, contributed to their need and 20% were elderly.

This data suggests there is either a gap in services to people in this qualifying population or an unmet need, that, if properly filled and met, could alleviate their need for emergency rental assistance.

Veterans and Families that include a Veteran Family Member – that meet the criteria for one of the qualifying populations described above

Determining the gaps in service and delivery system for this population specifically is difficult given the level of data available. However, given the data presented in the PIT, ongoing supportive services may be beneficial.

Identify the characteristics of housing associated with instability and an increased risk of homelessness if the PJ will include such conditions in its definition of “other populations” as established in the HOME-ARP Notice:

In the City of Berkeley, the high cost burden is a housing characteristic strongly linked with instability and an increased risk of homelessness. According to the 2019 Out of Reach report, the hourly wage needed to afford a two-bedroom at FMR (\$2,790) in downtown Berkeley is \$53.65. According to the report, the same downtown zip code (94704) also has a poverty rate of 51.4 percent with a median household income of \$26,758 and an unemployment rate of just over nine percent (9.1%). The urbanized downtown area of Berkeley sits in stark contrast with the more suburban neighboring zip code (94705), which has an unemployment rate of just over five percent (5.3%), a 10.1 percent poverty rate, an \$116,250 median household income and where the hourly wage needed to afford a two-bedroom at FMR (\$2,370) is \$45.58. Proximity to social services and regional job centers via public transit makes Berkeley’s urban downtown appealing, but its higher housing prices make it difficult for low income, transit dependent residents (without cars) to retain housing.

While the lower income households within the downtown core of Berkeley is of particular note, the numbers also reflect the impact of the University of California at Berkeley’s (UC Berkeley) student population many of whom have little or no income. Students compete with nonstudent residents for housing, creating elevated pricing conditions for existing low-income households, especially in those geographic areas surrounding the UC Berkeley campus.

Identify priority needs for qualifying populations:

Homeless, At Risk of Homelessness, Other Families Requiring Services or Housing Assistance to Prevent Homelessness & Other Populations at Greatest Risk of Housing Instability:

As discussed throughout this report, using various sources of metrics, the lack of affordable housing in the Bay Area is the greatest need for these qualifying populations.

Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking

The inability of a victim of domestic violence to find immediate safe shelter, upon request, is the top need for this qualifying population.

Explain how the level of need and gaps in its shelter and housing inventory and service delivery systems based on the data presented in the plan were determined:

The data represented here is a compilation of the most recent CHAS data, the 2019 PIT count, the 1000 Person Plan to Address Homelessness and the PY2020-2025 Consolidated Plan. All of the Plans had various methodologies and went through extensive public consultation process including multiple public hearings. We also used our consultation with various stakeholders to identify the needs and gaps in shelter, housing inventory and services.

Proposed HOME-ARP Activities

Describe the method for soliciting applications for funding and/or selecting developers, service providers, subrecipients and/or contractors and whether the PJ will administer eligible activities directly:

The City issued a Request for Qualifications (RFQ) in May 2021 to select developers qualified to develop and operate a potential Homekey project that would serve formerly homeless households. Through that RFQ, the City selected three development teams with experience acquiring, renovating, and operating affordable housing, including permanent supportive housing and temporary housing. The City then issued a Request for Proposals (RFP) in October 2021 in response to the state of California's Homekey NOFA and received one proposal. The City is currently reviewing the proposal and, if it meets the requirements and goal of providing housing for people experiencing or at risk of homelessness, the recommendation will be to move forward with the project.

If any portion of the PJ's HOME-ARP administrative funds were provided to a subrecipient or contractor prior to HUD's acceptance of the HOME-ARP allocation plan because the subrecipient or contractor is responsible for the administration of the PJ's entire HOME-ARP grant, identify the subrecipient or contractor and describe its role and responsibilities in administering all of the PJ's HOME-ARP program:

Not applicable.

PJs must indicate the amount of HOME-ARP funding that is planned for each eligible HOME-ARP activity type and demonstrate that any planned funding for nonprofit organization operating assistance, nonprofit capacity building, and administrative costs is within HOME-ARP limits. The following table may be used to meet this requirement.

Use of HOME-ARP Funding: Hotel Conversion to Permanent Supportive Housing

	Proposed Funding Amount	Percent of the Grant	Statutory Limit
Supportive Services	\$ 0		
Acquisition and Development of Non-Congregate Shelters	\$ 0		
Tenant Based Rental Assistance (TBRA)	\$ 0		
Development of Affordable Rental Housing	\$ 2,325,341.60		
Non-Profit Operating	\$ 0	0 %	5%
Non-Profit Capacity Building	\$ 0	0 %	5%
Administration and Planning	\$ 410,354.40	15 %	15%
Total HOME ARP Allocation	\$ 2,735,696		

Additional narrative, if applicable:

A development team is proposing to use HOME-ARP and other local funds to acquire and renovate a hotel in Berkeley and convert the property to permanent supportive housing for qualifying populations. The table above shows the full amount of HOME-ARP (less the portion for administration) allocated to the Development of Affordable Rental Housing. If the full amount is not required for project feasibility, the City may consider providing Non-profit Operating or Non-Profit Capacity Building support, not to exceed 5% of the total HOME Allocation for each (up to \$136,784.80 for each, \$273,569.60 in total). Any operating or capacity building support would reduce the development funds by an equal amount.

Describe how the characteristics of the shelter and housing inventory, service delivery system, and the needs identified in the gap analysis provided a rationale for the plan to fund eligible activities:

The City continues to make a considerable effort to increase its inventory of affordable housing units. However, the demand for the available units far outstrips the supply as shown in the tables above. Based on the CHAS data, the City has a deficit of 7,385 rental units affordable to households earning up to 50% AMI.

Outside of the Census data, there are other local metrics demonstrating the need for more affordable housing. A 2020 market study for a new project in predevelopment indicated that the 63-unit project serving households earning up to 60% AMI would have a capture rate of only 1.8%, which means the pool of income-qualified renter households greatly exceeds the available units. Berkeley affordable housing projects receive hundreds of applications when units are available for rent, and maintain waitlists hundreds of applicants long.

New affordable housing developments typically take at least 3-6 years from ideation to occupancy. The state Homekey program requires project completion within 12 months

of the funding award, which results in affordable units on an expedited timeline. The HOME-ARP funds will support a Homekey project (with an estimated 44 units affordable to qualifying households earning up to 30% AMI) and allow the City to be more responsive to the current need for affordable housing, particularly for the most vulnerable populations.

HOME-ARP Production Housing Goals

Estimate the number of affordable rental housing units for qualifying populations that the PJ will produce or support with its HOME-ARP allocation:

The proposed Homekey project would convert 44 hotel rooms into permanent supportive housing units (43 income-restricted, plus 1 manager's unit).

Describe the specific affordable rental housing production goal that the PJ hopes to achieve and describe how it will address the PJ's priority needs:

The City expects to use the HOME-ARP funds to support a Homekey project. Homekey is a state-funded program that provides funding to support the conversion of hotels and motels (and other buildings) to permanent supportive housing or temporary housing. The City plans to leverage its HOME-ARP allocation with the state funding, as well as other local sources.

The proposed Homekey project would convert 44 hotel rooms into permanent supportive housing units (43 income-restricted, plus 1 manager's unit). The units would be restricted as affordable to formerly homeless households (or other qualifying populations) earning up to 30% AMI. The restrictions would be in effect for 55 years, ensuring the project will continue to serve qualifying households well beyond the affordability period required by HOME-ARP. The Homekey project would make restricted units available on a much faster timeline than typical HOME-funded renovations and new construction.

Preferences

Identify whether the PJ intends to give preference to one or more qualifying populations or a subpopulation within one or more qualifying populations for any eligible activity or project:

- Preferences cannot violate any applicable fair housing, civil rights, and nondiscrimination requirements, including but not limited to those requirements listed in 24 CFR 5.105(a).
- PJs are not required to describe specific projects to which the preferences will apply.

The proposed Homekey project would serve individuals experiencing homelessness or who are at risk of homelessness, and who are inherently impacted by or at increased

risk for medical diseases or conditions due to the COVID-19 pandemic or other communicable diseases.

If a preference was identified, explain how the use of a preference or method of prioritization will address the unmet need or gap in benefits and services received by individuals and families in the qualifying population or category of qualifying population, consistent with the PJ's needs assessment and gap analysis:

As previously discussed in the section on unmet needs and gaps in services for people who were homeless, there is a high need for permanent supportive housing. This decision was largely based on the data analysis of the *1000 Person Plan to Address Homelessness*, which found that the biggest contributing factor to someone returning to homeless, after exiting to housing, was a disability and that the lack of permanent supportive housing vouchers was insufficient to meet this need.

If a preference was identified, describe how the PJ will use HOME-ARP funds to address the unmet needs or gaps in benefits and services of the other qualifying populations that are not included in the preference:

All qualifying populations will be eligible for the proposed Homekey project.

HOME-ARP Refinancing Guidelines

If the PJ intends to use HOME-ARP funds to refinance existing debt secured by multifamily rental housing that is being rehabilitated with HOME-ARP funds, the PJ must state its HOME-ARP refinancing guidelines in accordance with [24 CFR 92.206\(b\)](#). The guidelines must describe the conditions under which the PJ will refinance existing debt for a HOME-ARP rental project, including:

- ***Establish a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing to demonstrate that rehabilitation of HOME-ARP rental housing is the primary eligible activity***
Not applicable.
- ***Require a review of management practices to demonstrate that disinvestment in the property has not occurred; that the long-term needs of the project can be met; and that the feasibility of serving qualified populations for the minimum compliance period can be demonstrated.***
Not applicable.
- ***State whether the new investment is being made to maintain current affordable units, create additional affordable units, or both.***
Not applicable.

- ***Specify the required compliance period, whether it is the minimum 15 years or longer.***

Not applicable.

- ***State that HOME-ARP funds cannot be used to refinance multifamily loans made or insured by any federal program, including CDBG.***

Not applicable.

- ***Other requirements in the PJ's guidelines, if applicable:***

Not applicable.

DRAFT

Permanent Local Housing Allocation (PLHA) Five Year Spending Plan

Years 1-2: Homeless Services and Affordable Rental Housing

18 percent of funds in year one and 45 percent of funds in year two will be allocated to costs related to the acquisition, rehabilitation, and operation of housing through a Homekey project. The State Homekey Program provides government entities funding to purchase and rehabilitate housing, including hotels, motels, vacant apartment buildings, and other buildings and convert them into interim or permanent, long-term housing. Under the Homekey Program, local entities partner with the State to offer this housing to serve people experiencing homelessness or who are also at risk of becoming homeless and who are impacted by the COVID-19 pandemic.

In years one and two to fund, the PLHA funds will be used to fund an existing Navigation Center for homeless households. 77.3 percent of funds in year one and 50 percent of funds in year two will be allocated to the Pathways STAIR Navigation Center. The Navigation Center provides transitional shelter, service providers and rapid rehousing services. It is currently operating but facing an operating deficit due to reduced revenue from the Covid-19 recession. The Navigation Center has capacity for 45 beds and can serve a projected 90 households annually, with additional social distancing for Covid-19, the reduced capacity can facilitate 22 beds and serve a projected 50 people per year.

Years 1-2 Budget

Year 1 Funds			Year 2 Funds		
\$1,293,584			\$2,010,631		
Activity	Percent Allocation	Amount	Activity	Percent Allocation	Projected Amount
Homeless Services	77%	\$1,000,000	Homeless Services	50%	\$1,000,000
Homekey project	18%	\$228,095	Homekey project	45%	\$910,099
Admin*	5%	\$64,679	Admin	5%	\$100,531

*5% is the maximum amount allowable for administration

Funding Allocation Year	2019	2020	2021	2022	2023
Type of Activity	Navigation Centers	Navigation Centers			
Percentage of Funds Allocated for each Activity	77.3%	50%			
Area Median Income Level Served	15%	15%			

Funding Allocation Year	2019	2020	2021	2022	2023
Type of Activity	Affordable Rental Housing	Affordable Rental Housing			
Percentage of Funds Allocated for each Activity	18%	45%			
Area Median Income Level Served	30%	30%			

Years 3-5: New Housing Units for Homeless Households and HTF Support

In years three through five, 15 percent of funds will be allocated to project-based operating subsidies for 10 homeless households. Berkeley will issue an RFP and then negotiate one or more contracts with affordable housing provider(s) to subsidize apartments in project(s) in the City's HTF pipeline. This will allow projects to provide deeply affordable units to serve homeless households sustainably. The goal is to serve households with SSI-level income. These subsidies would be paid annually rather than capitalized in year 1 to increase total potential units and the City will commit to providing such subsidy for 15 to 17 years so that it can be layered with other affordable housing funding sources. Since the subsidy required will likely increase over time, the City will start with 10 units total to ensure that sufficient funds will be available for the length of the contract.

In years three through five, 80 percent of funds will be applied to the Housing Trust Fund program to preserve Berkeley's permanent affordable housing inventory through rehabilitation. Funds will be leveraged with other local, state and federal revenue sources as needed as part of the City's Housing Trust Fund program to support this work. Projected funding could support the rehabilitation of three to five new units, depending on construction costs.

Projected Years 3-5 Budget

Years 3-5 Annual Projected Funds*		
\$1,552,301		
Activity	Percent Allocation	Projected Amount
Housing Trust Fund	80%	\$1,241,841
Homeless Operating Subsidies	15%	\$232,845
Admin	5%	\$77,615

*Funding is collected annually through real estate recording fees and will fluctuate. These estimates were provided by HCD.

Funding Allocation Year	2019	2020	2021	2022	2023
Type of Activity			Affordable Rental Housing	Affordable Rental Housing	Affordable Rental Housing
Percentage of Funds Allocated for each Activity			15%	15%	15%
Area Median Income Level Served			30%	30%	30%

Funding Allocation Year	2019	2020	2021	2022	2023
Type of Activity			Rental	Rental	Rental
Percentage of Funds Allocated for each Activity			80%	80%	80%
Area Median Income Level Served			60%	60%	60%

**NOTICE OF PUBLIC HEARING
CITY OF BERKELEY**

**REQUEST FOR COMMENTS ON ITS
ANNUAL ACTION PLAN (2021) AMENDMENT #1 – HOME-ARP**

Starting on Friday, November 12, 2021, the City has opened a 30-day comment period during which the public is invited to review and comment on the City of Berkeley's **Annual Action Plan** Amendment #1 for Housing and Community Development that covers the period July 1, 2021 through June 30, 2022. The comment period will conclude at the December 14, 2021 Public Hearing in front of City Council.

The Annual Action Plan Amendment #1 is to allow the City of Berkeley to receive and administer \$2,735,696 in HOME Investment Partnerships Program (HOME) funding from the US Department of Housing and Urban Development (HUD) made available through the American Rescue Plan (ARP).

The City of Berkeley, and all jurisdictions receiving certain types of federal funds, are required to submit a Consolidated Plan, Annual Action Plans, and any amendments thereto to HUD. The Consolidated Plan covers five years and outlines the City's needs and goals in the areas of Housing, Homelessness, Community Development, and Non-Homeless Special Needs. It acts as a framework for the use of federal funds in these areas for the time frame. The City of Berkeley's Annual Action Plan, supports the Consolidated Plan, by presenting the City's plan for funding housing and community services each year.

The addition of HOME-ARP funds allows the City to perform four activities that must primarily benefit qualifying individuals and families who are homeless, at risk of homelessness, or in other vulnerable populations. Eligible HOME-ARP activities include, but are not limited to (1) Development and support of affordable housing, (2) tenant-based rental assistance (TBRA), (3) provision of supportive services; and (4) acquisition and development of non-congregate shelter units.

The draft PY21 Annual Action Plan Amendment #1 is available for public review on the web at <http://www.cityofberkeley.info/ContentDisplay.aspx?id=12160>.

All written comments must be sent to both rbabka@cityofberkeley.info AND CPD_COVID-19WaiverSFO@hud.gov no later than December 14, 2021, at 5:00 p.m.

For more information, contact Rhianna Babka (email: rbabka@cityofberkeley.info) at the Health, Housing and Community Services Department 2180 Milvia Street, 2nd Floor, Berkeley, 94704.

The hearing will be held on December 14, 2021 at 4:00 pm during a Special Meeting of

City Council conducted 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 Council agenda webpage at

https://www.cityofberkeley.info/Clerk/City_Council/City_Council_Agenda_Index.aspx in advance of the meeting. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

Published: November 12, 2021 in the Berkeley Voice

Notice in Spanish:

A partir del viernes, 12 de noviembre de 2021 y por 30 días la ciudadanía está invitada a revisar y dar comentarios sobre la Enmienda #1 para Vivienda y Desarrollo Comunitario del Plan de Acción Anual para la Ciudad de Berkeley. . Este Plan cubre el periodo de trabajo a partir del 1 de julio de 2021 hasta el 30 de junio de 2022. El periodo para presentar comentarios públicos concluirá el 14 de diciembre de 2021 durante la Audiencia Pública ante el Concejo Municipal.

La Enmienda #1 permitirá a la Ciudad de Berkeley recibir y administrar \$2,735,696 en fondos adicionales de la beca del Programa de Colaboraciones de Inversiones ("HOME"), de partedel Departamento de Vivienda y Desarrollo Urbano de los Estados Unidos.

La Ciudad de Berkeley y todas las jurisdicciones que reciben ciertos tipos de fondos federales tienen como requisito presentar un Plan Consolidado y Planes de Acción Anual y enmiendas del mismo al departamento de Vivienda y Desarrollo Urbano (HUD). El Plan Consolidado cubre cinco años y enumera las necesidades y metas de la Ciudad en las áreas de vivienda, indigencia, desarrollo comunitario y necesidades especiales. Sirve como referencia para el uso de fondos federales en estas áreas para el periodo de tiempo mencionado. El Plan de Acción Anual de la Ciudad de Berkeley, apoya el Plan Consolidado, en cuanto presenta el plan de la Ciudad para financiar servicios comunitarios y de vivienda cada año.

La adición de fondos de "HOME-ARP" permitirá a la Ciudad a realizar cuatro actividades que deben principalmente beneficiar individuales y familias que califican que son sin hogar, a riesgo de perder su hogar, o parte de otros grupos vulnerables. Actividades elegibles de "HOME-ARP" incluyen, pero no son limitados a, (1) Desarrollo y apoyo de vivienda accesible, (2) asistencia de renta para inquilinos, (3) provisión de servicios comprensivos; y (4) adquisición y desarrollo de unidades de refugio.

El borrador de la Enmienda #1 del Plan Consolidado, estará disponible para revisión público en la página electrónica <http://www.cityofberkeley.info/ContentDisplay.aspx?id=12160>.

Todos los comentarios escritos deben ser enviados a los correos electrónicos de la representante de la Ciudad rbabka@cityofberkeley.info Y a la oficina del CPD COVID-19WaiverSFO@hud.gov. Los comentarios serán recibidos hasta el 14 de diciembre 2021 a las 5:00 pm.

Para más información sobre este plan y su enmienda favor contactar a Rhianna Babka, (correo electrónico: rbabka@cityofberkeley.info) en el Departamento de Salud, Vivienda y Servicios Comunitarios localizado en la dirección 2180 Calle Milvia, 2do piso, Berkeley, CA 94704.

La audiencia pública se llevará a cabo el 14 de diciembre del 2021 a las 4:00 pm durante una Reunión Especial del Concejo Municipal, conducido virtualmente conforme a la Orden Ejecutiva N-29-20 emitida por el Gobernador Newsom.

Copia de la agenda y los materiales que serán discutidos durante la audiencia estarán disponibles en la página electrónica de la ciudad https://www.cityofberkeley.info/Clerk/City_Council/City_Council_Agenda_Index.aspx.. **Una vez que la agenda sea publicada, incluirá un enlace para conectarse a la videoconferencia usando la tecnología Zoom.**

伯克萊市
公眾視訊聽證會通知
及
計劃評論徵求

關於市政府的年度行動計劃書（2021年）第1輪修正案 - 《HOME ARP法案》

由星期五，2021年11月12日開始，在30天期間，伯克萊市政府將邀請公眾人士對伯克萊市政府的年度行動計劃書的第1輪修正案加以檢討及評論。本計劃書之修正案蓋括2021財政年度（由2021年7月1日至2022年6月30日）。評論期將於2021年12月14日在市議會前舉行的公開聽證會結束。

此修正案將允許伯克萊市接收和管理HOME投資夥伴計劃（HOME）經費-約兩百七十三萬五千六百九十六美元（\$2,735,696.00）。以上資金來自美國聯邦政府住房和城市發展部門（HUD）的美國救援計劃《ARP法案》。

伯克萊市和所有接受聯邦資金的司法管轄區都必須向 HUD 提交綜合計劃、年度行動計劃及其任何修訂。綜合計劃涵蓋五年，概述了伯克萊市在住房、無家可歸、社區發展和非無家可歸者特殊需求領域的需求和目標。它作為在這些領域使用聯邦資金的時間框架的

框架。 伯克萊市的年度行動計劃通過提出城市每年的住房和社區服務資金計劃來支持綜合計劃。

《HOME ARP法案》的經費增額將會允許本市開展四項活動，這些活動主要是以無家可歸、有無家可歸風險、或其他弱勢群體的個人和家庭之受益作為前題。本計劃書之修正案符合以上條件的活動包括但不限於 (1) 經濟適用房的開發和支持， (2) 租戶租賃援助 (TBRA)， (3) 提供其他類型的租戶支持服務； (4) 收購和發展非聚集庇護單位。

《年度行動計劃書第1輪修正案》草案可在互聯網上通過 <http://www.cityofberkeley.info/ContentDisplay.aspx?id=12160>進行公開審查。

所有書面意見請通過電子郵件同時郵寄於 rbabka@cityofberkeley.info 和 CPD_COVID-19WaiverSFO@hud.gov。 所有書面評論必須在2021年12月14日下午五時之前收到。

市民如有意諮詢， 請聯絡房屋及社區服務部 Rhianna Babka 小姐， 電郵地址：rbabka@cityofberkeley.info。 伯克萊市房屋及社區服務部， 地址： 2180 Milvia St., 2nd Floor, Berkeley, CA 94704。

根据加州州長紐森 (Gavin Newsom) 于二零二零年三月十七日发布的N-29-20行政命令第三條程章， 本次市議會聽證會將仅通过视频會議將在2021年12月14日下午4:00舉行。

在會議之前, 該聽證會議程材料的副本可在市議會議程網頁上找到：https://www.cityofberkeley.info/Clerk/City_Council/City_Council_Agenda_Index.aspx。 議程材料的副本發布後， 本次會議的議程將包括一個使用Zoom video技術的公眾參與鏈接。

發佈時間： 2021年11月12日， 伯克利之聲

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

PERMANENT LOCAL HOUSING ALLOCATION FUNDING APPLICATION

The Department of Health, Housing, and Community Services is proposing amendments to a five-year funding plan, in response to the California Department of Housing and Community Development’s (“HCD”) Notice of Funding Availability under the Permanent Local Housing Allocation (“PLHA”) Program.

The hearing will be held on, DECEMBER 14, 2021 at 4:00 p.m. The hearing will be held via videoconference pursuant to Government Code Section 54953(e) and the state declared emergency.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of **December 9, 2021**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Brittany Carnegie at (510) 981-5415 or bcarnegie@cityofberkeley.info.

Written comments should be mailed or delivered 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 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 (510) 981-6900 or clerk@cityofberkeley.info for further information.

Published: November 3, 2021 – The Berkeley Voice

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on December 9, 2021.



\_\_\_\_\_  
Mark Numainville, City Clerk





Office of the City Manager

PUBLIC HEARING  
December 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: California Municipal Finance Authority Bond Financing for 2001 Ashby Avenue

RECOMMENDATION

Conduct a public hearing under the requirements of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the Internal Revenue Code of 1986, as amended, and upon conclusion, adopt a Resolution approving the issuance of the bonds by the California Municipal Finance Authority (CMFA) for the benefit of the 2001 Ashby Avenue rental housing development.

FISCAL IMPACTS OF RECOMMENDATION

Resources for Community Development (RCD), 2001 Ashby Avenue's sponsor, has requested the CMFA adopt a financing plan to provide for the issuance of a tax-exempt loan in one or more bond series not to exceed \$50,000,000 in aggregate principal amount (collectively, the "Bonds"). The Bonds to be issued by the CMFA will be the sole responsibility of RCD. The City will have no financial, legal, moral obligation, liability or responsibility for the repayment of the Bonds. All financing documents with respect to the issuance of the loan will contain clear disclaimers that the loan is not an obligation of the City or the State of California but is to be paid for solely from funds provided by RCD.

The Board of Directors of the California Foundation for Stronger Communities, a California non-profit public benefit corporation (the "Foundation"), acts as the Board of Directors for the CMFA. Through its conduit issuance activities, the CMFA shares a portion of the issuance fees it receives with its member communities and donates a portion of these issuance fees to the Foundation for the support of local charities. With respect to the City it is expected that that a portion of the issuance fee attributable to the City will be granted by the CMFA to the general fund of the City. CMFA staff estimate this payment will be approximately \$16,200. Such grant may be used for any lawful purpose of the City. Staff recommend this funding be applied to the Housing Trust Fund (HTF) program.

### CURRENT SITUATION AND ITS EFFECTS

RCD is the sponsor of an 87-unit rental housing facility for low-income and very low-income tenants, including those experiencing homelessness (the "Project"), located at 2001 Ashby Avenue. The City Council approved a \$17,000,000 loan from the Housing Trust Fund (HTF) program to support this project's financing.

RCD has requested the CMFA issue the Bonds to finance the acquisition, construction, improvement, and equipping of the Project. These bonds, combined with the City's HTF loan and State sources, will facilitate the necessary financing for the Project's completion.

In order for the bonds to qualify as tax-exempt bonds, the City must conduct a public hearing (the "TEFRA Hearing") to provide members of the community an opportunity to speak in favor of or against the use of tax-exempt bonds for the Project's financing. Prior to the TEFRA Hearing, reasonable notice must be provided to the members of the community. Following the close of the TEFRA Hearing, an "applicable elected representative" of the government hosting the Project must provide its approval of the issuance of the bonds for its financing. This adoption is solely for the purposes of satisfying the requirements of TEFRA, the Internal Revenue Code, and the California Government Code Section 6500.

### BACKGROUND

The CMFA was created on January 1, 2004 pursuant to a joint exercise of powers agreement to promote economic, cultural, and community development through the financing of economic development and charitable activities throughout California. To date, over 330 municipalities, including the City of Berkeley, have become members of CMFA.

The CMFA was formed to assist local governments, non-profit organizations and businesses with the issuance of taxable and tax-exempt financing aimed at improving the standard of living in California. The CMFA's representatives and its Board of Directors have considerable experience in bond financings.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Developing infill, affordable housing is generally accepted as a best practice to reduce greenhouse gas emissions from vehicle miles traveled.

### RATIONALE FOR RECOMMENDATION

The proposed project is eligible for tax-exempt bonds. The Council's approval of the CMFA's issuance will help the Project access tax-exempt financing to support the City's supply of low- and very-low income units in accordance with the City's Regional Housing Needs Allocation and Strategic Plan goals.

The City has previously invested HTF funds to support this project's financing, which will be leveraged in conjunction with these tax-exempt bonds to support the Project's financial feasibility.

ALTERNATIVE ACTIONS CONSIDERED

The City may decline to hold a TEFRA hearing at all, or to hold the hearing but not approve the bonds. While it is preferable for the City to hold the TEFRA hearing and approve the use of bonds, CMFA could approach Alameda County to fill this role if the City declined. Alternatively, the project would need to identify a new funding plan that does not include bonds if the City Council does not approve the issuance. The resulting delays and/or additional expenses would negatively impact the Project's feasibility.

CONTACT PERSON

Jenny Wyant, Senior Community Development Project Coordinator, HHCS, (510) 981-5228  
Mike Uberti, Senior Community Development Project Coordinator, HHCS, (510) 981-5114

Attachments:

- 1: Resolution
- 2: Public Hearing Notice

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

CALIFORNIA MUNICIPAL FINANCE AUTHORITY MULTIFAMILY HOUSING  
REVENUE BONDS FOR 2001 ASHBY AVENUE

WHEREAS, Resources for Community Development (the "Sponsor"), on behalf of Maudelle Shirek, L.P., a California limited partnership, or another entity to be created by the Sponsor, RCD GP III LLC, or another affiliate of the Sponsor (such limited partnership or other entity, the "Borrower"), has requested that the California Municipal Finance Authority (the "Authority") issue one or more series of revenue bonds in an aggregate principal amount not to exceed \$50,000,000 (the "Bonds"), including but not limited to revenue bonds issued as part of a plan to finance the acquisition, construction, improvement and equipping of an 87-unit rental housing facility for low-income and very low-income tenants, including those experiencing homelessness (the "Project"), to be located at 2001 Ashby Avenue in the City of Berkeley, California (the "City"); and

WHEREAS, an "applicable elected representative" of the jurisdiction in which the Project is to be located is required to approve the issuance of the Bonds under Section 147(f) of the Code; and

WHEREAS, the City Council of the City (the "City Council") is the elected legislative body of the City and is an "applicable elected representative" for purposes of Section 147(f) of the Code; and

WHEREAS, the Authority has requested that the City Council approve the issuance of the Bonds by the Authority in order to satisfy the public approval requirement of Section 147(f) of the Code and the requirements of Section 4 of the Joint Exercise of Powers Agreement Relating to the California Municipal Finance Authority, dated as of January 1, 2004 (the "Agreement"), among certain local agencies, including the City; and

WHEREAS, pursuant to Section 147(f) of the Code, the City Council has, following notice duly given, held a public hearing regarding the issuance of the Bonds, and now desires to approve the issuance of the Bonds by the Authority; and

WHEREAS, the City Council understands that its actions in holding this public hearing and in approving this Resolution do not obligate the City in any manner for payment of the principal, interest, fees or any other costs associated with the issuance of the Bonds, and said City Council expressly conditions its approval of this Resolution on that understanding.

WHEREAS, any revenue received by the City from participation in this hearing will be applied to the Housing Trust Fund program to support the City's affordable housing initiatives.

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

Section 1. The foregoing recitals are true and correct.

December 14, 2021

Section 2. The City Council hereby approves the issuance of the Bonds by the Authority, including but not limited to Bonds issued as part of a plan to finance the facilities described herein. It is the purpose and intent of the City Council that this resolution constitutes approval of the issuance of the Bonds by the Authority for the Project, for the purposes of (a) Section 147(f) of the Code by the applicable elected representative of a governmental unit having jurisdiction over the area in which the Project is to be located, in accordance with said Section 147(f) and (b) Section 4 of the Agreement.

Section 3. The officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this resolution and the financing transaction approved hereby.

Section 4. The Clerk shall forward a certified copy of this Resolution to the Authority in care of its counsel:

Ronald E. Lee, Esq.  
Jones Hall, APLC  
475 Sansome Street, Suite 1700  
San Francisco, CA 94111

Section 5. This Resolution shall take effect from and after its passage and approval.

## NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

### CALIFORNIA PUBLIC FINANCE AUTHORITY MULTIFAMILY HOUSING REVENUE BONDS FOR 2001 ASHBY AVENUE

NOTICE IS HEREBY GIVEN that on December 14, 2021, a public hearing as required by Section 147(f) of the Internal Revenue Code of 1986 will be held with respect to the proposed issuance by the California Municipal Finance Authority (the "Authority") of its revenue bonds in one or more series in an amount not to exceed \$50,000,000 (the "Bonds"), including but not limited to revenue bonds issued as part of a plan to finance the acquisition, construction, improvement and equipping of an 87-unit rental housing facility for low-income and very low-income tenants, including those experiencing homelessness (the "Project"), to be located at 2001 Ashby Avenue in the City of Berkeley, California (the "City"). The facilities are to be owned and operated by Maudelle Shirek, L.P., a California limited partnership, or another entity to be created by the Sponsor, RCD GP III LLC, or another affiliate of Resources for Community Development.

The Bonds and the obligation to pay principal thereof and interest thereon and any redemption premium with respect thereto do not constitute indebtedness or an obligation of the City of Berkeley, the Authority, the State of California or any political subdivision thereof, within the meaning of any constitutional or statutory debt limitation, or a charge against the general credit or taxing powers of any of them. The Bonds shall be a limited obligation of the Authority, payable solely from certain revenues duly pledged therefor and generally representing amounts paid by the Borrower.

The hearing will be held on December 14, 2021 at 4:00 p.m. The hearing will be held via videoconference pursuant to Government Code Section 54953(e) and the state declared emergency.

Interested persons wishing to express their views on the issuance of the Bonds or on the nature and location of the facilities proposed to be financed may attend the public hearing by calling (833) 548 0282 (Toll Free) or, prior to the time of the hearing, submit written comments.

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 **December 9, 2021**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Jenny Wyant at (510) 981-5228.

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.



December 14, 2021

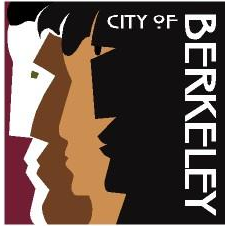
Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication 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:** December 3, 2021 – The Berkeley Voice

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on December 9, 2021.



Mark Numainville, City Clerk



Kate Harrison
Councilmember District 4

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: November 30, 2021

Item Number: 27

Item Description: **Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code**

Submitted by: Councilmember Harrison

The supplemental includes updates to the ALPR Use Policy as follows:

- Removes reference to Government Code Section 34090 consistent with SB 34 (providing for a local government to set ALPR retention limits).
- Clarifies that the definition of the State Stolen System includes the DMV's SVS database.
- Clarifies the type of data that is considered confidential pursuant to recent State Supreme Court rulings.
- Fixes inconsistency under the "Invasion of Privacy" section.
- Adds missing reference to state and federal law under "Use Based on a Protected Characteristic" section.
- Clarifies IT's role in maintaining accuracy and functionality of ALPR equipment.
- Further clarifies distinction between ALPR Read Images and ALPR Hits.
- Strikes extraneous language regarding Sworn Officer stolen vehicle verification procedures.
- Clarifies that ALPR data may only be shared with law enforcement or prosecutorial agencies as permitted by the Policy.
- Adds specific references to BMC sections under the auditing and oversight section.
- Adds other non-substantive changes.

Surveillance Use Policy – Automatic License Plate Readers

1302.1 PURPOSE

This Surveillance Use Policy is legally-enforceable pursuant to BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images for Parking Enforcement Operations and Parking Occupancy Analysis while recognizing the established privacy rights of the public.

1302.2 DEFINITIONS

“Alleged Parking Violation” means an alleged violation of time limits in parking areas designated by state and local law, or a violation of time limits and/or non-permit parking in the City’s RPP zones.

“ALPR Read Image” means images of license plates, vehicles, wheels or any other incidentally captured image.

“ALPR Read” means computer-readable data captured by an ALPR Reader, including ALPR Read Image and associated ALPR Read Metadata. ALPR Reads are transient means to create potential government records, to include Parking Occupancy Analysis data and Enforced Citations, ~~and therefore shall not be considered a government record itself pursuant to Government Code § 34090.6.~~

“ALPR Hit” means an Alleged Parking Violation or State Stolen ~~or Wanted~~ System alert resulting from computer generated analysis of ALPR Reads by the Genetec ALPR System resulting in an apparent:

- (1) match between an ALPR Read and ALPR Read Metadata stored in the Genetec ALPR System, to include the State Stolen ~~or Wanted~~ System; or
- (2) incongruence between an ALPR Read and permit information stored in the Passport Parking Management System.

“ALPR Read Metadata” means any image-based or other metadata, including but not limited to, global positioning system coordinates, block face information, tire position information, digitized license plates in alphanumeric characters, and timestamps.

“Automated License Plate Reader” or “ALPR” means one or more Genetec AutoVu mobile cameras affixed to Parking Enforcement Scooters and combined with computer software and algorithms to read and convert images of license plates, the characters they contain, and associated ALPR Read Metadata related to Parking Enforcement Operations or Parking Occupancy Analysis into computer-readable data.

“Deploy” or “Deployment” means any operation or use of ALPR Readers affixed to Parking Enforcement Scooters.

“Enforced ALPR Hit” means an Alleged Parking Violation confirmed by a Parking Enforcement Officer that results in the transmission of associated ALPR Read Image and ALPR Read Metadata to the Passport Parking Management System for storage in a database as a government record for the purpose of citation processing.

“Genetec ALPR System” means the computerized Genetec server and database that stores and pushes ALPR Read Metadata generated by ALPR Readers.

“Residential Parking Permits” or “RPP” means an annual, visitor, merchant or in-home care parking permit, typically represented by a vehicle’s license plate, and associated with the City’s Residential Parking Permit program across designated zones.

“Parking Enforcement Scooter” means the GO-4 three-wheeled parking enforcement vehicle.

“Parking Enforcement Officers” means employees of the City who work weekly rotations on Parking Enforcement Operations beats throughout the City and are properly trained to operate ALPRs and access the Genetec ALPR System.

“Parking Enforcement Operations” means Parking Enforcement Officer enforcement of parking regulations associated with local ordinances, the California Vehicle Code, and State Stolen ~~or Wanted~~ System enforcement through Parking Enforcement Scooter-based automated (ALPR) and non-automated means.

“Personally Identifiable Information” or “PII” means information:

- (1) that directly identifies an individual (e.g., name, address, vehicle registration number, or other identifying number or code, telephone number, email address, etc.) or
- (2) by which the City or other agency intends to identify specific individuals in conjunction with other data elements, i.e., indirect identification.

“Parking Occupancy Analysis” means ongoing computational or algorithmic analyses performed by Passport Parking Management System or the City of Berkeley on ALPR Read Metadata regarding the occupancy of total parking spaces across commercial districts as part of goBerkeley, the City’s data-driven, demand-responsive parking management program. ALPR Read Metadata data associated with Parking Occupancy Analysis shall not include any license plate or other PII information.

“Parking Permit Application” means an application submitted to the City for RPP or other permit that may include but is not limited to PII such as names, address, photo identification, vehicle registration (license plate and vehicle identification number), phone number and email address.

“Passport Automatic Occupancy Data Collection System” means the server and database whereby the Passport Parking Management System vendor, on behalf of the City, downloads, stores and transfers Parking Occupancy Analysis ALPR Read

Metadata stripped of any and all PII before being transferred to the goBerkeley program.

“Passport Parking Management System” means the servers and databases maintained by Passport Labs Incorporated, containing the database of the license plate numbers and other PII associated with Parking Permit Applications and Residential Parking Permits, and including historic parking citation data, to include Enforced Hits.

“PocketPEO” means a mobile device providing handheld ticket issuance and ALPR data reference capabilities.

“State Stolen ~~or Wanted~~ System” means information from the California Law Enforcement Telecommunications System's (CLETS) Department of Motor Vehicles (DMV) Stolen Vehicle System (SVS) database providing data regarding stolen vehicles, ~~and the Federal Bureau of Investigation's National Crime Information Center (NCIC) database of and wanted vehicles.~~

1302.3 AUTHORIZED AND PROHIBITED USES

Use of an ALPR is restricted to the purposes outlined below.

All data and images gathered by the ALPR are for official use by the Berkeley Police Department for Parking Enforcement Operations and may be retroactively queried in limited circumstances only as specified by this policy.

In addition, ALPR data may be used by the Finance, Information Technology (IT), Customer Service, and Public Works Departments only as specified ~~herein~~ this policy, and consistent with Parking Enforcement Operations and Parking Occupancy Analysis. ~~Since such data may contain confidential information, it is not~~ Data that is considered confidential under recent state Supreme Court rulings is not open to public review, ~~except as specified.~~

Berkeley Police Department members or other Departments shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

Anyone who engages in an impermissible use of the Genetec ALPR system or associated scan files or hot lists may be subject to administrative sanctions, up to and including termination, pursuant to and consistent with the relevant collective bargaining agreements and Department policies.

(a) An ALPR shall only be Deployed and used for Parking Enforcement Operations, and Parking Occupancy Analysis.

(b) ALPR data strictly obtained from Parking Enforcement Operations retained pursuant to this use policy, including data and metadata associated with ALPR Reads and Hits, may be used to support a specific criminal investigation only pursuant to a valid court order, subpoena, or a search warrant.

(c) The following uses of the Genetec ALPR System are specifically prohibited:

(1) Invasion of Privacy

~~Except when done pursuant to a court order, subpoena, or a search warrant, i~~ it is a violation of this Policy to utilize the ALPR to record license plates except those of vehicles that are exposed to public view (e.g., vehicles on a public road or street, or that are on private property but whose license plate(s) are visible from a public road, street, or a place to which members of the public have access, such as the parking lot of a shop or other business establishment).

(2) Harassment or Intimidation

It is a violation of this Policy to use the Genetec ALPR system to harass and/or intimidate any individual or group.

(3) Use Based on a Protected Characteristic.

It is a violation of this Policy to use the ALPRs or associated scan files or hot lists solely because of a person's, or group's race, gender, religion, political affiliation, nationality, ethnicity, sexual orientation, disability, or other classification protected by state and federal law.

(4) Personal Use

It is a violation of this Policy to use the Genetec ALPR System or associated ALPR Read data or the State Stolen ~~or Wanted~~-System hot lists for any personal purpose.

(5) First Amendment Rights

It is a violation of this Policy to use ALPRs or associated scan files or hot lists for the purpose or known effect of infringing upon First Amendment rights.

(6) Criminal Enforcement

It is a violation of this Policy to use or Deploy ALPRs to scan or canvass license plates in connection with any crime scene, patrol operation, or investigation.

(7) Use of Hot Lists

It is a violation of this Policy to use the Genetec ALPR System in conjunction with any hot list other than the State Stolen ~~or Wanted~~-System.

1302.4 DATA COLLECTION AND RETENTION

The Investigations Division Captain, or their designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's IT department and associated Genetec ALPR system providers/vendors as identified below.

IT's role will be limited to providing initial infrastructure set-up and accessing or viewing individual records or reports (potentially including PII or CLETS information as authorized by the Chief of Police), limited to the purposes of testing the accuracy of the equipment. Genetec ALPR System data provided to Parking Control Officers may also contain confidential CLETS information and is not open to public review.

ALPR information gathered and retained by the Berkeley Police Department may only be used and shared with prosecutors or other law enforcement agencies pursuant to a valid court order, subpoena, or a search warrant and as limited by this policy.

(a) ALPR Read Images

ALPR Read Images and Metadata resulting from ALPR Reads stored locally on Parking Control Officer Vehicle laptops and PocketPEO shall be purged at least nightly.

In no case shall ALPR Read Images resulting from ALPR Reads be transmitted to or stored in the Genetec ALPR System.

(b) ALPR Reads Not Resulting in ALPR Hits

All ALPR Read Metadata from ALPR Reads transmitted and stored in the Genetec ALPR System shall be purged within five (5) days consistent with the City's 72-Hour Rule (BMC Section 14.36.050).

In no case shall ALPR Read Metadata in the form of license plate data or other PII be transmitted to or stored in the Passport Automatic Occupancy Data Collection System.

(c) ALPR Hits

All ALPR Read Images, Metadata, and Hits resulting from ALPR Reads stored locally on Parking Control Officer Vehicle laptops and PocketPEO shall be purged at least nightly.

In no case shall data associated with ALPR Hits be transmitted to or stored in the Genetec ALPR System, nor shall license plate data or other PII included as part of ALPR Read Metadata be transmitted to or stored by the City for Parking Occupancy Analysis (goBerkeley), to include the Passport Automatic Occupancy Data Collection System or as City Department records.

(d) Unenforced ALPR Hits

All erroneous and unenforced ALPR Hit data and Read Metadata shall be purged locally at least nightly.

(e) Enforced ALPR Hits

Only ALPR Read Images and Metadata associated with Enforced ALPR Hits shall be downloaded to the Passport Parking Management servers with a minimum retention period of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless

it has become, or it is reasonable to believe it will become, evidence in a criminal action pursuant to a valid court order, subpoena, or a search warrant or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

1302.5 DATA ACCESS

(a) Only properly trained Parking Control Officers and information technology personnel are allowed access to the Genetec ALPR system or to collect ALPR information.

(b) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training, which shall include complying with this use policy.

(c) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.

~~(cd)~~ If a Sworn officer is called to verify a stolen vehicle, if practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR Hit.

~~(e) Police will not take any police action that restricts the freedom of any individual based solely on an ALPR Hit unless it has been validated as described above in (d).~~

~~(1) Police need to have reasonable suspicion and/or probable cause to make an enforcement stop of any vehicle. For example, if a vehicle is entered into the system because of its association with a wanted individual, Officers should attempt to visually match the driver to the description of the wanted subject prior to making the stop or should have another legal basis for making the stop.~~

~~(2) Prior to initiation of a stop of a vehicle or other intervention based on an ALPR Hit, Department members shall undertake the following:~~

~~(i) Verification of status on State Stolen or Wanted System.~~

~~An officer must receive confirmation from a Police Department Communications Dispatcher or other department computer device, that the license plate is still stolen, wanted, or otherwise of interest before proceeding (absent exigent circumstances).~~

~~(ii) Visual verification of license plate number.~~

(d) Sworn Officers shall visually verify that the license plate of interest matches identically with the ALPR Read Image of the license plate number captured (ALPR Read) by the ALPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. Department members alerted to the fact that an observed motor vehicle's license plate is entered as an ALPR Hit in a specific State Stolen ~~or Wanted~~ System list are required to make a reasonable effort to

confirm that a wanted person is actually in the vehicle and/or that a reasonable basis exists before a Department member would have a lawful basis to stop the vehicle.

1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third-Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to impacts that may violate the First and Fourth Amendments and other potentially disparate or adverse impacts on any communities or groups.

The Berkeley Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for the purpose of federal immigration enforcement, pursuant to the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq) – these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).

1302.7 PUBLIC ACCESS

Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requester in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

1302.8 THIRD-PARTY DATA-SHARING

(a) Non-law enforcement requests for access to stored ALPR data related to parking management shall be processed according to this policy, and the Records Maintenance and Release Policy in accordance with applicable law.

(b) The ALPR data may be shared only with other law enforcement or prosecutorial agencies ~~for official law enforcement purposes or~~ as permitted by this policy and under no circumstances: ALPR data is subject to the provisions of BPD Policy 415, and hence may not be shared with federal immigration enforcement officials.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided by this policy and in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

Aggregated ALPR data not related to specific criminal investigations authorized by a court order, subpoena, or search warrant shall not be released to any local, state or

federal agency or entity without the express written consent of the City Manager and only in accordance with this Use Policy.

Third-party data-sharing shall be subject to non-privileged and non-confidential City Council notification pursuant to BMC 2.99.020 (2) (a).

1302.9 TRAINING AND ALPR ADMINISTRATOR

Training for the operation of ALPR technology shall be provided by BPD personnel. All BPD employees who utilize ALPR technology shall be provided a copy of this Surveillance Use Policy.

(1) The Investigations Division Captain shall be responsible for compliance with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

(i) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the Genetec ALPR system or to collect ALPR information.

(ii) Ensuring that training requirements are completed for authorized users. The Administrator shall ensure that members receive department-approved training for those authorized to use or access ALPRs (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

(iii) A description of how the Genetec ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.

(iv) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52 and this Use Policy.

(v) The title and name of the current designee in overseeing the ALPR operation.

(vi) Ensuring this policy and related procedures are conspicuously posted on the City's website.

1302.10 AUDITING AND OVERSIGHT

Genetec ALPR System audits will be conducted by the Professional Standards Bureau's (PSD) Audit and Inspections Sergeant pursuant to Municipal Code Section BMC 2.99.020 4. k. on a regular basis, at least biannually.

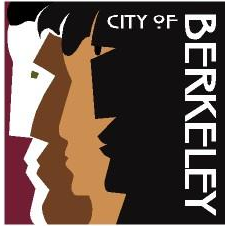
(1) Any unauthorized access or data breach shall be reported immediately to the City Manager.

(2) The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and

any associated documentation shall be placed into the annual report filed with the City Council pursuant to [BMC Section 2.99.020 2. d.](#), published on the City of Berkeley website in an appropriate location, and retained by PSD.

1302.11 MAINTENANCE

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under their command to administer the day-to-day operation of the ALPR equipment and data.



Kate Harrison
Councilmember District 4

REVISED AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: November 30, 2021

Item Number: 27

Item Description: Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code

Submitted by: Councilmembers Harrison and Hahn

Amends Resolution to adopt a Surveillance Technology Use Policy for Automatic License Plate Readers as required by the Surveillance Technology Ordinance.

To date, Council deferred adoption of a Surveillance Use Policy pursuant to Sections 2.99.020 and 2.99.050 of the Ordinance for Automatic License Plate Readers, including in order to draft a policy with enhanced civil liberties protections. Berkeley Police Department Administrative Order #001-2016, prepared in 2016 before adoption of the Surveillance Ordinance, has served as a de facto ALPR policy, however Administrative Order #001-2016 is out of date and does not satisfy the specific requirements of the Surveillance Ordinance. Adoption of an earlier proposed update to the use policy for ALPRs was deferred by Council as it did not contain sufficient information about data retention and sharing and protection of civil liberties.

The attached Use Policy supersedes Administrative Order #001-2016 and satisfies the requirements of the Ordinance, including providing a legally-enforceable Surveillance Use Policy and enhanced civil liberties protections.

Use Policy Overview:

- Provides key definitions.
- Authorizes ALPR for Parking Enforcement Operations and Parking Occupancy Analysis.
- Enumerates specifically prohibited uses of ALPR that may impact civil liberties.
- Incorporates key provisions from BPD's previously proposed Policy 1302.

- Addresses the Police Review Commission's concerns, as expressed in their September 11, 2019 letter to Council pursuant to Section 2.99.030, about the previously proposed Use Policy 1302.
- Specifies appropriate data retention periods for ALPR reads and hits.
- Specifies that personally identifiable ALPR data will not be sent to goBerkeley (as confirmed by Transportation Division staff) as part of Parking Occupancy Analysis.
- Specifies that ALPR data obtained from Parking Enforcement Operations, including data and metadata associated with ALPR Reads and Hits, may be used to support a specific criminal investigation only pursuant to a valid court order, subpoena, or a search warrant.
- Restates the City's policy of not sharing of ALPR data gathered by the City or its contractors/subcontractors for purpose of federal immigration enforcement.
- Specifies that third-party data-sharing shall be subject to non-privileged and non-confidential City Council notification pursuant to BMC 2.99.020.

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

A RESOLUTION ACCEPTING THE ANNUAL SURVEILLANCE TECHNOLOGY REPORT FOR AUTOMATIC LICENSE PLATE READERS, GPS TRACKERS, BODY WORN CAMERAS, AND THE STREET LEVEL IMAGERY PROJECT AND ADOPTING A SURVEILLANCE TECHNOLOGY USE POLICY FOR AUTOMATIC LICENSE PLATE READERS

WHEREAS, on March 27, 2018, the City Council adopted Ordinance 7,592-N.S., which is known as the Surveillance Technology Use and Community Safety Ordinance (“Ordinance”); and

WHEREAS, Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November; and

WHEREAS, the Surveillance Technology Reports satisfy the requirements of the Ordinance; and

WHEREAS, Council deferred adoption of a Surveillance Use Policy pursuant to Sections 2.99.020 and 2.99.050 of the Ordinance for Automatic License Plate Readers in order to draft a policy with enhanced civil liberties protections, and heretofore Berkeley Police Department Administrative Order #001-2016, prepared in 2016 before passage of the Surveillance Ordinance, has served as a de facto ALPR policy; and

WHEREAS, the attached Use Policy supersedes Administrative Order #001-2016 and satisfies the requirements of the Ordinance, including providing a legally-enforceable Surveillance Use Policy and enhanced civil liberties protections.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby accepts the Surveillance Technology Reports for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project and adopts a Surveillance Technology Use Policy for Automatic License Plate Readers.

Attachment

1. Surveillance Use Policy – Automatic License Plate Readers

Surveillance Use Policy – Automatic License Plate Readers

1302.1 PURPOSE

This Surveillance Use Policy is legally-enforceable pursuant to BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images for Parking Enforcement Operations and Parking Occupancy Analysis while recognizing the established privacy rights of the public.

1302.2 DEFINITIONS

“Alleged Parking Violation” means an alleged violation of time limits in parking areas designated by state and local law, or a violation of time limits and/or non-permit parking in the City’s RPP zones.

“ALPR Read Image” means images of license plates, vehicles, wheels or any other incidentally captured image.

“ALPR Read” means computer-readable data captured by an ALPR Reader, including ALPR Read Image and associated ALPR Read Metadata. ALPR Reads are transient means to create potential government records, to include Parking Occupancy Analysis data and Enforced Citations, and therefore shall not be considered a government record itself pursuant to Government Code § 34090.6.

“ALPR Hit” means an Alleged Parking Violation or State Stolen or Wanted System alert resulting from computer generated analysis of ALPR Reads by the Genetec ALPR System resulting in an apparent:

- (1) match between an ALPR Read and ALPR Read Metadata stored in the Genetec ALPR System, to include the State Stolen or Wanted System; or
- (2) incongruence between an ALPR Read and permit information stored in the Passport Parking Management System.

“ALPR Read Metadata” means any image-based or other metadata, including but not limited to, global positioning system coordinates, block face information, tire position information, digitized license plates in alphanumeric characters, and timestamps.

“Automated License Plate Reader” or “ALPR” means one or more Genetec AutoVu mobile cameras affixed to Parking Enforcement Scooters and combined with computer software and algorithms to read and convert images of license plates, the characters they contain, and associated ALPR Read Metadata related to Parking Enforcement Operations or Parking Occupancy Analysis into computer-readable data.

“Deploy” or “Deployment” means any operation or use of ALPR Readers affixed to Parking Enforcement Scooters.

“Enforced ALPR Hit” means an Alleged Parking Violation confirmed by a Parking Enforcement Officer that results in the transmission of associated ALPR Read Image and ALPR Read Metadata to the Passport Parking Management System for storage in a database as a government record for the purpose of citation processing.

“Genetec ALPR System” means the computerized Genetec server and database that stores and pushes ALPR Read Metadata generated by ALPR Readers.

“Residential Parking Permits” or “RPP” means an annual, visitor, merchant or in-home care parking permit, typically represented by a vehicle’s license plate, and associated with the City’s Residential Parking Permit program across designated zones.

“Parking Enforcement Scooter” means the GO-4 three-wheeled parking enforcement vehicle.

“Parking Enforcement Officers” means employees of the City who work weekly rotations on Parking Enforcement Operations beats throughout the City and are properly trained to operate ALPRs and access the Genetec ALPR System.

“Parking Enforcement Operations” means Parking Enforcement Officer enforcement of parking regulations associated with local ordinances, the California Vehicle Code, and State Stolen or Wanted System enforcement through Parking Enforcement Scooter-based automated (ALPR) and non-automated means.

“Personally Identifiable Information” or “PII” means information:

(1) that directly identifies an individual (e.g., name, address, vehicle registration number, or other identifying number or code, telephone number, email address, etc.) or

(2) by which the City or other agency intends to identify specific individuals in conjunction with other data elements, i.e., indirect identification.

“Parking Occupancy Analysis” means ongoing computational or algorithmic analyses performed by Passport Parking Management System or the City of Berkeley on ALPR Read Metadata regarding the occupancy of total parking spaces across commercial districts as part of goBerkeley, the City’s data-driven, demand-responsive parking management program. ALPR Read Metadata data associated with Parking Occupancy Analysis shall not include any license plate or other PII information.

“Parking Permit Application” means an application submitted to the City for RPP or other permit that may include but is not limited to PII such as names, address, photo identification, vehicle registration (license plate and vehicle identification number), phone number and email address.

“Passport Automatic Occupancy Data Collection System” means the server and database whereby the Passport Parking Management System vendor, on behalf of the City, downloads, stores and transfers Parking Occupancy Analysis ALPR Read

Metadata stripped of any and all PII before being transferred to the goBerkeley program.

“Passport Parking Management System” means the servers and databases maintained by Passport Labs Incorporated, containing the database of the license plate numbers and other PII associated with Parking Permit Applications and Residential Parking Permits, and including historic parking citation data, to include Enforced Hits.

“PocketPEO” means a mobile device providing handheld ticket issuance and ALPR data reference capabilities.

“State Stolen or Wanted System” means information from the California Law Enforcement Telecommunications System's (CLETS) Department of Motor Vehicles (DMV) Stolen Vehicle System (SVS) database providing data regarding stolen vehicles, and the Federal Bureau of Investigation's National Crime Information Center (NCIC) database of wanted vehicles.

1302.3 AUTHORIZED AND PROHIBITED USES

Use of an ALPR is restricted to the purposes outlined below.

All data and images gathered by the ALPR are for official use by the Berkeley Police Department for Parking Enforcement Operations and may be retroactively queried in limited circumstances only as specified by this policy.

In addition, ALPR data may be used by the Finance, Information Technology (IT), Customer Service, and Public Works Departments as specified herein and consistent with Parking Enforcement Operations and Parking Occupancy Analysis. Since such data may contain confidential information, it is not open to public review, except as specified.

Berkeley Police Department members or other Departments shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

Anyone who engages in an impermissible use of the Genetec ALPR system or associated scan files or hot lists may be subject to administrative sanctions, up to and including termination, pursuant to and consistent with the relevant collective bargaining agreements and Department policies.

(a) An ALPR shall only be Deployed and used for Parking Enforcement Operations, and Parking Occupancy Analysis.

(b) ALPR data strictly obtained from Parking Enforcement Operations, including data and metadata associated with ALPR Reads and Hits, may be used to support a specific criminal investigation only pursuant to a valid court order, subpoena, or a search warrant.

(c) The following uses of the Genetec ALPR System are specifically prohibited:

(1) Invasion of Privacy

Except when done pursuant to a court order, subpoena, or a search warrant, it is a violation of this Policy to utilize the ALPR to record license plates except those of vehicles that are exposed to public view (e.g., vehicles on a public road or street, or that are on private property but whose license plate(s) are visible from a public road, street, or a place to which members of the public have access, such as the parking lot of a shop or other business establishment).

(2) Harassment or Intimidation

It is a violation of this Policy to use the Genetec ALPR system to harass and/or intimidate any individual or group.

(3) Use Based on a Protected Characteristic.

It is a violation of this Policy to use the ALPRs or associated scan files or hot lists solely because of a person's, or group's race, gender, religion, political affiliation, nationality, ethnicity, sexual orientation, disability, or other classification protected by

(4) Personal Use

It is a violation of this Policy to use the Genetec ALPR System or associated ALPR Read data or State Stolen or Wanted System lists for any personal purpose.

(5) First Amendment Rights

It is a violation of this Policy to use ALPRs or associated scan files or hot lists for the purpose or known effect of infringing upon First Amendment rights.

(6) Criminal Enforcement

It is a violation of this Policy to use or Deploy ALPRs to scan or canvass license plates in connection with any crime scene, patrol operation, or investigation.

(7) Use of Hot Lists

It is a violation of this Policy to use the Genetec ALPR System in conjunction with any hot list other than the State Stolen or Wanted System.

1302.4 DATA COLLECTION AND RETENTION

The Investigations Division Captain, or their designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's IT department and associated Genetec ALPR system providers/vendors as identified below.

IT staff will not have the ability to access or view individual records or reports, as they may contain PII information they are not authorized to receive. Genetec ALPR System

data provided to Parking Control Officers may also contain confidential CLETS information and is not open to public review. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive PII or CLETS information.

ALPR information gathered and retained by the Berkeley Police Department may only be used and shared with prosecutors or other law enforcement agencies pursuant to a valid court order, subpoena, or a search warrant and as limited by this policy.

(a) ALPR Reads

ALPR Read Images and Metadata resulting from ALPR Reads stored locally on Parking Control Officer Vehicle laptops and PocketPEO shall be purged at least nightly.

In no case shall ALPR Read Images resulting from ALPR Reads be transmitted to or stored in the Genetec ALPR System.

(b) ALPR Reads Not Resulting in ALPR Hits

All ALPR Read Metadata from ALPR Reads transmitted and stored in the Genetec ALPR System shall be purged within five (5) days consistent with the City's 72-Hour Rule (BMC Section 14.36.050).

In no case shall ALPR Read Metadata in the form of license plate data or other PII be transmitted to or stored in the Passport Automatic Occupancy Data Collection System.

(c) ALPR Hits

All ALPR Read Images, Metadata, and Hits resulting from ALPR Reads stored locally on Parking Control Officer Vehicle laptops and PocketPEO shall be purged at least nightly.

In no case shall data associated with ALPR Hits be transmitted to or stored in the Genetec ALPR System, or license plate data or other PII included as part of ALPR Read Metadata be transmitted to or stored by the City for Parking Occupancy Analysis, to include the Passport Automatic Occupancy Data Collection System or as City Department records.

(d) Unenforced ALPR Hits

All erroneous and unenforced ALPR Hit data and Read Metadata shall be purged locally at least nightly.

(e) Enforced ALPR Hits

Only ALPR Read Images and Metadata associated with Enforced ALPR Hits shall be downloaded to the Passport Parking Management servers with a minimum retention period of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless

it has become, or it is reasonable to believe it will become, evidence in a criminal action pursuant to a valid court order, subpoena, or a search warrant or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

1302.5 DATA ACCESS

- (a) Only properly trained parking control officers and information technology personnel are allowed access to the Genetec ALPR system or to collect ALPR information.
- (b) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (c) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.
- (d) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR Hit.
- (e) Police will not take any police action that restricts the freedom of any individual based solely on an ALPR Hit unless it has been validated.
 - (1) Police need to have reasonable suspicion and/or probable cause to make an enforcement stop of any vehicle. For example, if a vehicle is entered into the system because of its association with a wanted individual, Officers should attempt to visually match the driver to the description of the wanted subject prior to making the stop or should have another legal basis for making the stop.
 - (2) Prior to initiation of a stop of a vehicle or other intervention based on an ALPR Hit, Department members shall undertake the following:
 - (i) Verification of status on State Stolen or Wanted System.

An officer must receive confirmation from a Police Department Communications Dispatcher or other department computer device, that the license plate is still stolen, wanted, or otherwise of interest before proceeding (absent exigent circumstances).

- (ii) Visual verification of license plate number.

Officers shall visually verify that the license plate of interest matches identically with the ALPR Read Image of the license plate number captured (ALPR Read) by the ALPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. Department members alerted to the fact that an observed motor vehicle's license plate is entered as an ALPR Hit in a specific State Stolen or Wanted System list are required to make a reasonable effort to confirm that a wanted person is actually in the vehicle and/or that a reasonable basis exists before a Department member would have a lawful basis to stop the vehicle.

1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to impacts that may violate the First and Fourth Amendments and other potentially disparate or adverse impacts on any communities or groups.

The Berkeley Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for purpose of federal immigration enforcement, pursuant to the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq) – these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).

1302.7 PUBLIC ACCESS

(a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.

(b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requester in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

1302.8 THIRD-PARTY DATA-SHARING

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as permitted by this policy. ALPR data is subject to the provisions of BPD Policy 415, and hence may not be shared with federal immigration enforcement officials.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

Aggregated ALPR data not related to specific criminal investigations authorized by a court order, subpoena, or search warrant shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.

Third-party data-sharing shall be subject to non-privileged and non-confidential City Council notification pursuant to BMC 2.99.020 (2) (a).

1302.9 TRAINING AND ALPR ADMINISTRATOR

Training for the operation of ALPR technology shall be provided by BPD personnel. All BPD employees who utilize ALPR technology shall be provided a copy of this Surveillance Use Policy.

(1) The Investigations Division Captain shall be responsible for compliance with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

(i) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the Genetec ALPR system or to collect ALPR information.

(ii) Ensuring that training requirements are completed for authorized users. The Administrator shall ensure that members receive department-approved training for those authorized to use or access ALPRs (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

(iii) A description of how the Genetec ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.

(iv) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.

(v) The title and name of the current designee in overseeing the ALPR operation.

(vi) Ensuring this policy and related procedures are conspicuously posted on the City's website.

1302.10 AUDITING AND OVERSIGHT

Genetec ALPR System audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant pursuant to Municipal Code Section 2.99 on a regular basis, at least biannually.

(1) Any unauthorized access or data breach shall be reported immediately to the City Manager.

(2) The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be placed into the annual report filed with the City Council pursuant to Section 2.99, published on the City of Berkeley website in an appropriate location, and retained by PSD.

1302.11 MAINTENANCE

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under their command to administer the day-to-day operation of the ALPR equipment and data.



Office of the City Manager

ACTION CALENDAR

December 14, 2021

(Continued from November 30, 2021)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police
LaTanya Bellow, Interim Deputy City Manager

Subject: Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code

RECOMMENDATION

Adopt a Resolution accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with adopting the attached resolution.

CURRENT SITUATION AND ITS EFFECTS

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance (“Ordinance”). The purpose of the Ordinance is to provide transparency surrounding the use of surveillance technology, as defined by Section 2.99.020 in the Ordinance, and to ensure that decisions surrounding the acquisition and use of surveillance technology consider the impacts that such technology may have on civil rights and civil liberties. Further, the Ordinance requires that the City evaluate all costs associated with the acquisition of surveillance technology and regularly report on their use.

The Ordinance imposes various reporting requirements on the City Manager and staff. The purpose of this staff report and attached resolution is to satisfy the annual reporting requirement as outlined in Section 2.99.070.

One of the reporting categories of the surveillance technology use is whether complaints have been received by the community about the various technologies. To date Berkeley Police Department Internal Affairs Bureau (IAB) has not received any external personnel complaints surrounding the use of Automatic License Plate Readers,

(Continued from November 30, 2021)

GPS Trackers, or Body Worn Cameras. External complaints from community members can be made in writing, via email, in person or via telephone. Complaints can be received with direct communication to Internal Affairs from the complainant and/or be received by any member of the Department and then forwarded through the chain of command. If a community member initiates a complaint against a subject employee and during the investigation it is determined the subject employee violated policy regarding the misuse of technology, an additional complaint is initiated by the Chief of Police.

Community members also have the right to initiate complaints against employees of BPD by reporting directly to the Police Accountability Board (PAB). The Director of Police Accountability notifies the Chief of Police when an investigation into a complaint is initiated by the PAB, which would prompt a parallel IAB investigation.

Attached to this staff report are Surveillance Technology Reports for Automatic License Plater Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project.

BACKGROUND

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance. Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November.

For each of the four technologies, the Surveillance Technology Reports were prepared to satisfy the specific, section-by-section requirements of the Ordinance, and are attached to this report.

The Surveillance Technology Use Policy for ALPR technology is still outstanding due Council questions about policy language, scheduling and directed focus during COVID-19. This item will be returned to the Council agenda in early 2022.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

City Council is being requested to adopt the attached resolution for the City to be in compliance with the Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to adopt the resolution.

(Continued from November 30, 2021)

CONTACT PERSON

LaTanya Bellow, Interim Director of Information Technology (510) 981-6541

Jennifer Louis, Acting Chief of Police, (510) 981-5700

LaTanya Bellow, Interim Deputy City Manager, (510) 981-7012

ATTACHMENTS

1. Resolution

2. Body Worn Cameras
 - a) Surveillance Technology Report: Body Worn Cameras
 - b) Retention Schedule

3. Global Positioning System (GPS) Tracking Devices
Surveillance Technology Report

4. Automated License Plate Readers
Surveillance Technology Report: Automated License Plate Readers

5. Street Level Imagery Project
Surveillance Technology Report: Street Level Imagery Project

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

A RESOLUTION ACCEPTING THE SURVEILLANCE TECHNOLOGY REPORT FOR AUTOMATIC LICENSE PLATE READERS, GPS TRACKERS, BODY WORN CAMERAS, AND THE STREET LEVEL IMAGERY PROJECT

WHEREAS, on March 27, 2018, the City Council adopted Ordinance 7,592-N.S., which is known as the Surveillance Technology Use and Community Safety Ordinance (“Ordinance”); and

WHEREAS, Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November; and

WHEREAS, the Surveillance Technology Reports satisfy the requirements of the Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby accepts the Surveillance Technology Reports for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project.

Surveillance Technology Report: Body Worn Cameras

October 1, 2020 – Sept. 30, 2021

<p>Description</p>	<p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Body Worn Cameras are used to capture video recordings of contacts between department personnel and the public, to provide an objective record of these events. These recording are used in support of criminal prosecutions, to limit civil liability, increase transparency and enhance professionalism and accountability in the delivery of police services to the community. Body Worn Camera (BWC) files are shared with the Alameda County District Attorney’s office in support of prosecution for crime, and may be shared with other law enforcement agencies to support criminal investigations.</p> <p>Policy regarding activation of the Body Worn Camera BPD Policy 425.7</p> <p>Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.</p> <p>The BWC shall be activated in any of the following situations:</p> <ul style="list-style-type: none"> (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations. (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops. (c) Self-initiated field contacts in which a member would normally notify the Communications Center. (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence. (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording. (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person. <p>What data is captured by this technology:</p> <p>BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC</p>
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	<p>recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.</p> <p>How the data is stored: BWC videos are stored on a secure server. All BWC data will be uploaded and stored on Axon Cloud Services, Evidence.com. Axon complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union and Switzerland to the United States (collectively, "Privacy Shield"). Axon has certified to the U.S. Department of Commerce that it adheres to the Privacy Shield Principles.</p> <p>Retention period of data: See attached retention schedule.</p> <p>Summary of Body Worn Camera Videos Uploaded Oct. 1, 2020 to Sept. 30, 2021:</p> <table data-bbox="592 781 1024 884"> <tr> <td>Total Number of Videos</td> <td>62,283</td> </tr> <tr> <td>Total Hours of Videos</td> <td>16,310</td> </tr> <tr> <td>Total GB of BWC Videos</td> <td>29,017</td> </tr> </table> <p>Summary of Digital Evidence Uploaded, Oct. 1, 2020 to Sept. 30, 2021:</p> <table data-bbox="586 995 1105 1262"> <thead> <tr> <th>Type</th> <th>File Count</th> <th>Size (GBs)</th> </tr> </thead> <tbody> <tr> <td>Audio</td> <td>1,150</td> <td>11.72</td> </tr> <tr> <td>Document</td> <td>737</td> <td>2.38</td> </tr> <tr> <td>Image</td> <td>67,672</td> <td>331.36</td> </tr> <tr> <td>Other</td> <td>1,292</td> <td>157.71</td> </tr> <tr> <td>Video*</td> <td>67,865</td> <td>30,086.75</td> </tr> <tr> <td>Total</td> <td>138,716</td> <td>30,589.92</td> </tr> </tbody> </table> <p>* Includes all uploaded BWC videos and all other videos booked into the evidence management system. Other videos include iPhone videos uploaded, security camera video, copies of BWC videos (for redaction, etc.), and any other videos.</p>	Total Number of Videos	62,283	Total Hours of Videos	16,310	Total GB of BWC Videos	29,017	Type	File Count	Size (GBs)	Audio	1,150	11.72	Document	737	2.38	Image	67,672	331.36	Other	1,292	157.71	Video*	67,865	30,086.75	Total	138,716	30,589.92
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Video*	67,865	30,086.75																										
Total	138,716	30,589.92																										
<p>Geographic Deployment</p>	<p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Body Worn Cameras are worn by all BPD uniformed officers city-wide at all times; BWCs are not deployed based on geographic considerations.</p>																											
<p>Complaints</p>	<p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about the deployment and use of Body Worn Cameras.</p>																											
<p>Audits and Violations</p>	<p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p>																											

	<p>File meta-data are routinely reviewed by our BWC manager, to ensure required metadata fields are completed. There have been no complaints with regards to violations of the Surveillance Use Policy.</p>
Data Breaches	<p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to BWC data.</p>
Effectiveness	<p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>Body Worn Cameras have proven effective in supporting criminal prosecutions, as video footage is available for all criminal prosecutions. Body Worn Cameras have been effective for training purposes, as footage can be reviewed in incident de-briefs. Body Worn Cameras have been extremely effective in support of Internal Affairs investigations and Use of Force Review.</p>
Costs	<p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual cost for the Body Worn Cameras, including cameras, replacement cameras, software, and Axon's secure digital evidence management system is approximately \$204,000 per year over a five-year, \$1,218,000 contract. There is one full-time employee assigned to the BWC program, an Applications Programmer Analyst II, at a cost of \$168,940 per year, including benefits.</p>

NAME	RETENTION DURATION
Uncategorized	Until manually deleted
187 / Felony Sex Assault	Until manually deleted
Civil / City / Non-Evidence	1 year
Collision	2 years
Consent / Aid	108 weeks
Detention / Warrant Only	108 weeks
Felony Evidence	5 years
Litigation	Until manually deleted
Misdemeanor Evidence	2 years
Officer Injury	Until manually deleted
OIS / Critical Incident	Until manually deleted
Pending Review	Until manually deleted
Personnel / VSA	3 years
Personnel Complaint	Until manually deleted
Traffic Stop	108 weeks
Training	60 days
Use of Force	108 weeks
z_Saved	Until manually deleted

Surveillance Technology Report: Global Positioning System Tracking Devices

October 1, 2019 – Sept. 30, 2020

Description	<p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Global Positioning System Trackers are used to track the movements of vehicles, bicycles, other items, and/or individuals.</p> <p>What data is captured by this technology: A GPS Tracker data record consists of date, time, latitude, longitude, map address, and tracker identification label. The data does not contain any images, names of subjects, vehicle information or other identifying information on individuals.</p> <p>How the data is stored: The data from the GPS tracker is encrypted by the vendor. The data is only accessible through a secure website to BPD personnel who have been granted security access.</p> <p>Retention period of data: Tracker data received from the vendor shall be kept in accordance with applicable laws, BPD policies that do not conflict with applicable law or court order, and/or as specified in a search warrant.</p> <p>For the date range of 10-01-19 through 09-30-20 the Global Positioning System (GPS) “Electronic Stake Out” (ESO) devices were deployed on “bait” bicycles 52 times, resulting in 34 arrests, 4 eluded capture, 1 person was detained and not arrested, and in 13 deployments the bicycle was not stolen. This program was suspended in mid-March due to the COVID-19 pandemic.</p> <p>GPS “Slap-N-Track” (SNT) devices were used in three separate investigations during this reporting period:</p> <ol style="list-style-type: none"> (1) An investigation of an individual for Sexual Exploitation, Child Pornography, and Distribution of Child Pornography. This suspect currently has a Federal warrant. (2) An investigation of a serial kidnap rape suspect. The suspect was arrested and charged. (3) An investigation into multiple suspects involved in a “Rolex” robbery series that involved the cities of Berkeley, Piedmont, and Orinda. Two devices were used on two different suspect vehicles during this investigation. Four suspects from the above cases were arrested and charged for their involvement in these robberies.
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	Data may be shared with the District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence; other law enforcement personnel as a part of an active criminal investigation; and other third parties, pursuant to a court order.
Geographic Deployment	<p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>GPS ESO-equipped bikes were deployed primarily in commercial districts across the city where bikes are frequently stolen.</p> <p>GPS SNT devices are deployed with judicial pre-approval, based on suspect location, rather than geographical consideration.</p>
Complaints	<p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There were no complaints made regarding GPS Trackers.</p>
Audits and Violations	<p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There were no audits and no known violations relating to GPS Trackers.</p>
Data Breaches	<p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There were no known data breaches relating to GPS Trackers.</p>
Effectiveness	<p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>GPS Trackers continue to be very effective in apprehending bicycle thieves, many of whom are repeat offenders who've committed not only bike thefts, but other crimes as well, such as burglaries, auto burglaries, and vehicle thefts. SNT trackers are effective in that they provide invaluable information on suspect vehicle location during the investigation of complex cases where suspects may be moving around the Bay Area and beyond.</p> <p>GPS Trackers greatly reduce costs associated with surveillance operations. A bike may be left for days. Surveillance operations generally involve four or more officers for the entire duration of an operation. A moving surveillance is extremely resource-intensive, requiring multiple officers in multiple vehicles for extended periods of time. Using both types of GPS trackers eliminates the need for officers' immediate presence until officers are ready to apprehend the suspect(s).</p> <p>The program was suspended in mid-March due to the COVID-19 pandemic. This program will likely resume once the pre-COVID bail schedule is re-established.</p>
Costs	Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.

The annual cost for the GPS Trackers' data service is \$1,920. Further information regarding costs is contained in Policy 1301a, the Surveillance Acquisition Report.

There are staff time costs associated with preparing and placing SNT trackers. The investigator must prepare a search warrant and obtain a judge's approval, and a small number of officers must place the tracker on the suspect's car. The total number of hours is a fraction of the time it would take to do a full surveillance operation involving numerous officers.

There are staff time costs associated with preparing ESO trackers and placing ESO tracker-equipped bikes for bait bike operations. These are on the order of two-four hours per operation. The total number of hours is extremely small, given the large number of operations, and resulting arrests.

Surveillance Technology Report: Automated License Plate Readers

October 1, 2019 – Sept. 30, 2020

Description	<p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Automated License Plate Readers (ALPRs) are used by Parking Enforcement Bureau vehicles for time zone parking and scofflaw enforcement. The City's Transportation Division uses anonymized information for purposes of supporting the City's Go Berkeley parking management program. ALPR use replaced the practice of physically "chalking" tires, which is no longer allowed by the courts.</p> <p>What data is captured by this technology: ALPR technology functions by automatically capturing an image of a vehicle's license plate, transforming that image into alphanumeric characters using optical character recognition software, and storing that information, along with relevant metadata (e.g. geo-location and temporal information, as well as data about the ALPR).</p> <p>How the data is stored: The data is stored on a secure server by the vendor.</p> <p>Retention period of data: Collected images and metadata of hits are stored no more than 365 days. Metadata of reads are not stored more than 30 days.</p> <p style="text-align: center;">Summary of ALPR Time Zone Enforcement Data</p> <p style="text-align: center;">Read Data There was an average of 12,059 "Reads" per working day (Based on one month's data: 9/1/20/-9/30/20)</p> <p style="text-align: center;">Hit Data There were 44,068 "Hits" 14,945 "Enforced Hits" resulted in citation issuance. 2,569 "Not Enforced" valid, enforceable hits resulted in no citation issued, based on PEO discretion.</p> <p>26,554 Hits were not acted upon for a variety to reasons including but not limited to:</p> <ol style="list-style-type: none"> 1) Customer comes out to move a vehicle. PEO's are directed not to issue that citation. 2) Officer gets to the dashboard and sees a permit not visible from a previous location. 3) Officer does a vehicle evaluation and confirms that the vehicle moved from the hit location (e.g. across the street within GPS range). 4) Stolen car. 5) Similar Plates. 6) 600-700 GIG cars- 100 revel scooters.
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	<p>7) Officers leave their LPR “on” collecting time zone enforcement data, but leave the area being enforced to drive to another location on another assignment, such as a traffic post at a collision scene. These hits are not enforced.</p> <p>Genetec is the vendor for the ALPR Time Zone enforcement system. A “read” indicates the ALPR system successfully read a license plate. The information that is generated when a plate is viewed by the ALPR camera is the license plate number, state and geographical (GPS) location it was viewed. A “hit” indicates the ALPR system detected a possible violation, which prompts the Parking Enforcement Officer to further assess the vehicle. At “hit” is when the “read” information is recognized as a license plate that matches, or does not match an entry in a list such as permit list or the stolen vehicle “hot list”. In many cases, hits are “rejected” or “not enforced”, meaning no enforcement action is taken, because the Parking Enforcement Officer determines the vehicle has an appropriate placard or permit, or there is other information or assignment which precludes citation.</p> <p style="text-align: center;">Summary of ALPR Booting Scofflaw Enforcement Data</p> <p style="text-align: center;">0 vehicles booted from 10/1/19-9/23/20.</p> <p>The Berkeley Police Department no longer maintains the ALPR Booting Scofflaw Enforcement Program. The contract to provide this service became cost prohibitive and the city opted not to renew the contract with the vendor. The city returned to having each PEO working a beat again become responsible for recognizing when a license plate has accumulated five or more unpaid parking tickets.</p> <p>All BPD ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes, or as otherwise permitted by law. All ALPR data is subject to the provisions of BPD Policy 415 - Immigration Law, and therefore may not be shared with federal immigration enforcement officials.</p>
<p>Geographic Deployment</p>	<p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Only Parking Enforcement Vehicles are equipped with ALPRs. ALPRs are deployed based on areas where there are parking time restrictions. ALPRs are not deployed based on geographic considerations not related to parking and scofflaw enforcement.</p>
<p>Complaints</p>	<p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about to the deployment and use of Automated License Plate Readers.</p>
<p>Audits and Violations</p>	<p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There have been no complaints of violations of the ALPR Surveillance Use Policy.</p>

<p>Data Breaches</p>	<p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to Automated License Plate Reader data.</p>
<p>Effectiveness</p>	<p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>ALPRs have proven effective in parking enforcement for time zone enforcement; the prior utilization of manually chalking car tires for time zone enforcement has been disallowed by court decision.</p> <p>ALPRs have proven effective in supporting enforcement upon vehicles which have five or more unpaid citations. The ALPR's ability to read and check license plates while being driven greatly increases efficiency, allowing an operator to cover larger areas more quickly without having to stop except to confirm a hit.</p>
<p>Costs</p>	<p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual system maintenance cost for Genetec is \$47,000. This cost is borne by the Transportation Division, which also purchased the ALPR units used in Time Zone Enforcement.</p> <p>Two new Genetec ALPR units were purchased during the period covered by this report. The two new units were purchased in order to equip the final two parking vehicles that did not have ALPR units attached to them.</p> <p>Genetec ALPR units are installed on 23 Parking Enforcement vehicles. Parking Enforcement personnel perform a variety of parking enforcement activities, and are not limited solely to time zone enforcement. Therefore, personnel costs specifically attributable to time zone enforcement are not tracked.</p>

Surveillance Technology Report: Street Level Imagery Project

<p>Description</p>	<p>A description of all non-privileged and non-confidential information about the use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report will include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Street level imagery will be utilized exclusively by authorized City staff for infrastructure asset management and planning activities. The street level imagery of City infrastructure assets in the Public Right of Way that is provided to the City will not consist of information that is capable of being associated with any individual or group.</p>
<p>Geographic Deployment</p>	<p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Street level imagery was collected by driving through the entire community over a three week period. It is accessible to the City through a proprietary third-party application, Street SmartTM.</p>
<p>Complaints</p>	<p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about the deployment and use of Street SmartTM.</p>
<p>Audits and Violations</p>	<p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There have been no complaints with regards to violations of the Surveillance Use Policy.</p>
<p>Data Breaches</p>	<p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to Cyclomedia Street Level Imagery data.</p>

<p>Effectiveness</p>	<p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>Staff considered hiring contractors to use GPS in the field to create and update the infrastructure asset GIS data. This method is costly and time consuming. Cyclomedia’s unique and patented processing techniques allow positionally-accurate GIS data to be collected in a cost-effective way and over a shorter period of time than a “boots on the ground” GPS field survey.</p> <p>The Imagery is being used to extract the following Citywide Infrastructure assets to create accurate and current Geographic Information Systems (GIS) data inventories:</p> <ul style="list-style-type: none"> • Bus pads / stops • Maintenance Access Holes • Pavement Striping • Curb paint color • Parking meters • Pedestrian Signal • Pavement marking • Storm drains • Signs • Street trees • Traffic lights <p>The street level imagery captured is also being used to:</p> <p>Create a street sign GIS layer with condition assessment to support compliance with the Manual on Uniform Traffic Control Devices Code and provide an accurate inventory of City signs. The existing sign inventory is contained in a spreadsheet that does not have accurate location data.</p> <p>Create a curb color layer with condition assessment to indicate where there are red, yellow, blue, white and green colors. This is critical to support Public Safety.</p> <p>Create pavement striping and paint symbol layers to support Transportation Planning and Vision Zero.</p> <p><u>Benefits Projected:</u></p> <p>The data from the street level imagery is being integrated into the City’s work order and asset management system for planning activities and to document repair and maintenance.</p> <p>Planners can use the street level imagery provided to the City to take measurements remotely, such as sidewalk width and public right of way impacts at proposed development locations.</p> <p>City staff can use the street level imagery to plan the location of road markings for pedestrian crossings, bike lanes or other striping.</p>
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	<p>City staff can remotely take accurate measurements of infrastructure assets to adequately plan for repair and replacement.</p> <p>City staff can use the street level imagery to enhance community engagement. The street level imagery can be used to identify and depict the impact of development such as an intersection restriping plan in order to article before and after conditions.</p>			
Costs	<p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p>			
	<p>The total cost of the system is \$232,401 and is itemized below.</p>			
	Year No.	Description	Cost	Notes
	1	Licenses	\$48,000	Resolution No: 69,482-N.S. 30JUN20
	1	Professional Services for asset extraction	\$139,401	Resolution No: 69,482-N.S. 30JUN20
	2	Licenses and Support – One-Time	\$45,000	Pending Council approval after imagery and data extraction work is completed Licensing Costs included in IT Cost allocation
3	License and Support – Ongoing Annual Costs	\$3,000	Pending Council approval after imagery and data extraction work is completed Licensing Costs included in IT Cost allocation	
Total Year 1-3		\$235,401		